Chartered Institute of Taxation
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Excellence in Taxation

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TAX Adviser

Make sure you're ready

Michelle Robinson and *Rachel McEleney* identify the issues you must address now to be prepared for tax-year end, p6

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Peter Rayney

Empty Chairs at Empty Tables

Nearly a year ago, our examination team were facing the stark reality of 'Empty Chairs at Empty Tables' in our CTA exam centres across the UK. Not that this can be directly comparable to Darius's lament in the very poignant scene in Les Misérables but it was a pretty serious situation for us and our students. Lockdown restrictions meant that the May 2020 examination sittings had to be cancelled at short notice.

Gold standard

Our CTA member exams are widely acknowledged to represent the gold standard in terms of tax knowledge and application skills. We have worked very hard over the years to maintain these very high standards, whilst also ensuring that the coverage and content of the various papers meet the current needs of tax advisers and tax specialists.

The protection and continuance of our examination system immediately became a key objective for us. We also had an important obligation to all our 'employers' and students who had been working hard towards their CTA exams and qualifying as CIOT members.

We had already looked at replacing our traditional paper-based written CTA exams with answers being typed instead, with access to electronic legislation and using remote invigilation. However, these proposals were at the very early stages of being scoped out. The original proposal was to launch the new system in 2022, thus giving ample time for tutorial bodies to prepare the students and for everyone to practise using the new system.

The emergency pilot

Given the uncertainties faced with the Covid-19 disruption, we had to accelerate our plans to use computer-based exams. Fortunately, we were able to salvage the position for some students with a pilot emergency session for the six variants of the Application and Professional Skills exam in June and July 2020.

This was a complex project which had to be implemented speedily but also with great care. We teamed up with our longstanding partner for computer-based exams to make this happen. New guidance and explanatory videos were created to give everyone the best chance to understand the new set up. Nearly 300 students took part in this special exam sitting and they were invigilated via their laptop/PC webcam. There were significant challenges faced by some students and we really appreciate the support given by everyone who sat these exams as they helped us to develop an entirely new CTA exam system. The lessons learned from the 'pilot exam' were hugely important in the full 'roll-out' of computer-based CTA exams in November 2020 where much greater student numbers were expected.

November 2020 and going forward

A key decision was to move to the Exam4 System for the November 2020 exams. (We already had considerable experience with this exam platform with ADIT examinations.) Exam questions were on screen and the exams were 'open book' with no invigilation. However, special software was used to detect plagiarism and collusion and some students were chosen for a random personal ID check – all these features ensured a fair examination process.

This is not the way we expected to transition to full computer-based exams! Nevertheless, we are extremely proud that over 2,800 exams were sat in November and our students will be able to progress their careers as a result. The students had not expected to be examined in this way when they started studying, but they met the challenge very well! The exam results appear in this edition of *Tax Adviser*.

Increased functionality will be in place for the May and November 2021 exams, giving our students certainty about how these exams will run. And this means our Education Team and Exam Committee can plan effectively for the 2022 exams.

Massive team effort [One Day More]

The maintenance of our exam system is one of the many difficult Covid-19 related challenges that our Institute has faced and we have passed with flying colours. We are very proud of the dedication and commitment shown by all our examination teams in delivering this important milestone in our CTA exams.

On behalf of the CIOT, I would like to thank our Exam Committee – chaired by Daniel Lyons and his deputy Mike Thexton – all of whom have been fully supportive throughout. A big 'thank you' must also go to all our Education Team – headed up by Rosalind Baxter, our (indefatigable) Director of Education, all of whom have played an important part in making this effective and rapid change – I am sorry I cannot name you all!

Remember to look after yourselves and stay safe.

Peter Rayney
President, CIOT
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> **"Given the uncertainties faced with the Covid-19 disruption, we had to accelerate our plans to use computer-based exams.**

ATT welcome

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Richard Todd

Brexit and the Border in the Irish Sea

We always knew that remaining within the UK but also being within the EU's Customs Zone would be difficult for Northern Ireland. Certainly no one ever said it was going to be easy.

Local businesses have been highlighting the potential problems for the best part of a year or more. Early January saw the teething problems: businesses had misplaced their GB EORI number. (You may recall that these were issued *en masse* in late 2019 in anticipation of a 'No Deal' exit from the EU; and following the agreement of the Northern Ireland Protocol in late 2020, HMRC issued XI EORI numbers to local VAT registered businesses.)

Local businesses were also encouraged to sign up to the new Trader Support Service (TSS). However, I found that some business owners had put the notification of their GB EORI and XI EORI numbers away in a safe place – and, you guessed it, it was such a safe place that they could not recall where that was. They had to resort to asking HMRC for a copy of the XI EORI number again.

Further guidance was issued by HMRC on 6 January to highlight the steps that hauliers must take to enter the Republic of Ireland from Great Britain (England, Scotland and Wales): 'We have been made aware of a number of hauliers being turned back when attempting to board on GB routes into the Republic of Ireland due to them having not completed the necessary steps required by Irish Revenue. One issue in particular is that some hauliers have not met the Pre-Boarding Notification requirement.'

Here is a summary of the Pre-Boarding Notification (PBN) – Irish Revenue requirement:

- If you carry goods from GB to the Republic of Ireland using a 'RoRo' ferry service (accompanied or unaccompanied), a PBN must be submitted to Irish Customs. This notification must be submitted in advance of the goods leaving GB.
- The haulier is responsible for ensuring that the PBN is submitted using information provided by the importer. However, the PBN may be created by anyone in the supply chain that has the required information.
- Only one PBN should be created per vehicle, irrespective of the number of consignments in the vehicle.
- Vehicles will not be allowed to board ferries in GB without a valid PBN.

Here are some more details for you:

- PBNs are created on Irish Revenue's Customs RoRo Service (see bit.ly/35ZXUsC).
- Irish Revenue has also set up a dedicated email support service to deal with all PBN related queries at customsPBN@revenue.ie
- Irish Revenue put a temporary arrangement in place that allowed for the creation of a PBN for goods movements that began before the end of the transition period (31 December) and ended after that date. This temporary arrangement is no longer available for all sailings departing GB on or after 18:00 hours on 5 January 2021.
- Irish Revenue has issued a press release with advice to hauliers and truck drivers moving goods from GB into Irish ports. Full details are available at bit.ly/3sJwYr1.
- A PBN user guide has been added to their website. This is available at bit.ly/3bZBxYc.

I also understand that some hauliers have not met the requirements for submitting a Safety & Security Entry Summary Declaration (ENS).

Not even a week later, we hear that the Irish Revenue has temporarily suspended customs checks on shipments from GB into Irish ports after hauliers warned that Brexit red tape could cause shortages of goods and leave gaps on supermarket shelves.

Before I move away from Brexit, I did notice an interesting story about the personal duty-free allowance for travellers between GB and the EU (see bit.ly/39Q6Xh3). The personal allowance has been increased (amongst other limits) to four litres of 40% ABV spirits (it remains one litre from outside the EU). HMRC believes that the price of a one litre bottle of 40% ABV spirits could be up to £11.50 cheaper. Just a pity we all must stay at home.

The next event on the horizon is Budget 2021, which has been scheduled for 3 March 2021. The big question is whether the Chancellor will delay tax rises? (Remember, Rishi Sunak has been hinting at this for several months now.)

If you have not already filed your Annual Return (not your personal tax return but the one that is required as a Member of CIOT/ATT), would you please do so soon?

Stay safe.

Richard Todd
ATT Deputy President
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> "We always knew that remaining within the UK but also being within the EU's Customs Zone would be difficult for Northern Ireland.

It's time to complete your 2020 Annual Return.

Don't get caught out. Stay compliant.

All members* are required to complete an Annual Return confirming their contact, work details and compliance with membership obligations such as:

- continuing professional development
- anti-money laundering supervision
- professional indemnity insurance.

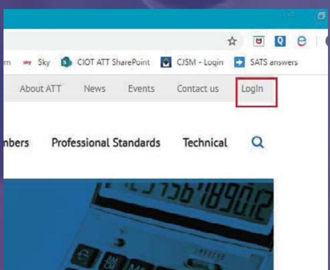
Please check that you have completed yours by logging on to the Members Portal (https://pilot-portal.tax.org.uk) then going to Secure area/Members Area/Compliance/Annual Return where you will be able to complete any outstanding form.

*Excludes those who are fully retired and students.

STEP BY STEP GUIDE TO COMPLETING YOUR 2020 ANNUAL RETURN

1. Login

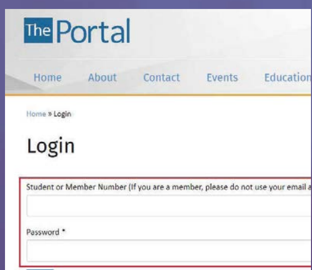
On the ATT website click login located in the top right.
On the CIOT home page please refer to the advert on the right hand side.



2. Portal

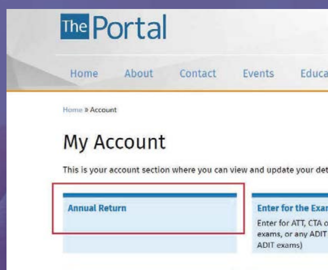
To access your account on the portal please use your:

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



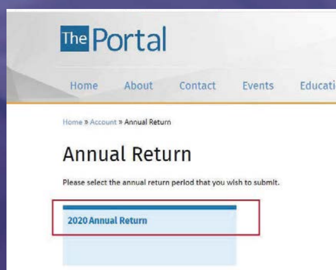
3. Account

Select Annual Return option



4. Period

Select 2020 Annual Return period



Failure to complete an Annual Return is contrary to membership obligations and may result in referral to the Taxation Disciplinary Board (TDB).

Getting ready for the deadline

Michelle Robinson and *Rachel McEleney* set out the issues you should consider now in order to be ready for tax-year end

KEY POINTS

- **What is the issue?**
The end of the 2020/21 tax year is fast approaching. We have outlined in this article various tax points that individuals, business owners and their families may wish to consider ahead of the tax year-end on 5 April 2021.
- **What does it mean for me?**
There are a broad number of things to consider in preparing for the tax year-end, including the personal allowance, pension contributions, the capital gains tax annual exemption, tax relief for capital losses, inheritance tax and tax efficient investments.
- **What can I take away?**
Ahead of the year-end, it is worth considering whether all beneficial allowances and claims have been made. Consideration should also be given to planning ahead for the 2021/22 tax year.

The end of the 2020/21 tax year is fast approaching. We have outlined in this article various tax points that individuals, business owners and their families may wish to consider ahead of the tax year-end on 5 April 2021. Unless otherwise stated, all rates and bands below are for the 2020/21 tax year.

This article only comments on taxation: financial and/or pensions advice may be required from appropriately regulated persons.

Income tax

Preserving the personal allowance

Where the personal allowance is available, it is phased out on income between £100,000 and £125,000. This results in an effective tax rate of up to 60% (61.5% for Scottish residents) within this income bracket. It may be possible to reduce taxable income through pension contributions and eligible charitable donations.

The personal allowance is not available to non-UK domiciled individuals who claim the remittance basis.

Charitable donations

Tax relief is available for cash gifts to UK registered charities, and charitable organisations in the European Union, Norway, Iceland and Liechtenstein. Non-UK charitable organisations have to satisfy certain conditions. If a 45% taxpayer makes a cash donation to a charity of £20,000 under the Gift Aid scheme, the charity may reclaim £5,000 from HMRC and the donor can obtain tax relief of £6,250 via their tax return. The overall effect is that the charity receives a £25,000 donation at a net cost to the donor of £13,750.

Income tax relief is also available on charitable donations of certain types of assets, such as UK land and FTSE or AIM-listed shares. The donor receives a deduction from his or her income before tax is applied to it. Charities cannot reclaim tax on the donation of assets.

Pension contributions

The amount of tax-deductible pension contributions individuals can make each tax year is limited to the annual allowance. The standard annual allowance has been £40,000 since 6 April 2014. From 2016/17 to 2019/20, the allowance was reduced by £1 for every £2 of income between £150,000 and £210,000, resulting in a £10,000 annual allowance for those earning £210,000 or more. With effect from 6 April 2020, the income threshold at which the annual allowance begins to be tapered was raised to £240,000 and the minimum annual allowance was reduced to £4,000. Income for this purpose is taxable income plus most pension contributions by the individual and/or their employer.

PROFILE

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Unused annual allowances can be carried forward for up to three years. Accordingly, in 2020/21 unused allowances from 2017/18 to 2019/20 can be used. The allowances will be available if the individual was a member of a UK registered pension scheme in the relevant tax year (in some circumstances this is extended to membership of overseas pension schemes).

The rules in this area are complex. In addition to considering the tax position on pension contributions, the effect on the lifetime allowance should be considered. Investment advice should also be taken from an FCA registered pension adviser as needed.

Capital gains tax (CGT)

Using the CGT annual exemption

Each UK individual has an annual exemption of £12,300. If it is not used, it cannot be carried forward and is lost. If the annual exemption has not been used, consideration could be given to selling assets, subject to considering investment matters. However, anti-avoidance rules mean that if shares and securities are sold and repurchased on the same day, or within the following 30 days, the disposal will be matched with the later acquisition when calculating the gain.

Gift to spouse or civil partner prior to a disposal

Assets can usually be transferred between spouses and civil partners without a tax charge arising on the transfer. If an asset standing at a gain is transferred to a spouse who sells the asset, the gain realised by the recipient spouse may be covered by their CGT annual exemption and/or capital losses (if any). Any taxable gain may be subject to 10% or 18% CGT instead of 20% or 28%, depending on income levels and the nature of the asset.

In order for this to be effective, any gift of assets must be absolute and unconditional. If the transfer is from a UK domiciled individual to their non-UK domiciled spouse or civil partner, it should be borne in mind that the inheritance tax spouse exemption is capped. Therefore the gift could be a potentially exempt transfer for inheritance tax purposes.

Claiming tax relief for capital losses

Capital losses must be claimed within four years of the end of the tax year in which they are realised, meaning capital losses realised in 2016/17 must be claimed by 5 April 2021. Claims are generally made as part of the tax return for the year in which the loss was made, though consideration should be given to whether or not individuals may have unclaimed losses. This could be particularly relevant to non-UK domiciled individuals (see below).

It may also be possible to claim a capital loss on assets or investments which have fallen in value and are now worthless, and/or on loans made to trading companies (or other traders) that have become irrecoverable. For loans made before 24 January 2019, relief on irrecoverable loans is only available if the borrower is UK resident.

Where a capital loss relates to shares in an unquoted trading company, it may be possible to offset the loss against income which would otherwise be subject to income tax at up to 45% (or 46% for Scottish residents). The loss that can be offset in this way is typically capped at the higher of £50,000 or 25% adjusted total income.

Capital loss considerations for non-UK domiciled individuals

Non-UK domiciled individuals who are deemed UK domiciled or who have never claimed the remittance basis can claim relief for foreign losses. Individuals who have claimed the remittance basis and who are not deemed UK domiciled must make an election (a section 16ZA election) in order to be able to do so. Section 16ZA elections must be made within four tax years of the first tax year after 2007/08 in which the remittance basis is claimed. Accordingly, individuals who first claimed the remittance basis in 2016/17 must make the election by 5 April 2021 if they wish to do so. The wider implications of making such an election should be considered, and it may not be appropriate to make an election in all cases.

Section 16ZA elections enable foreign capital losses to be claimed: capital losses must be claimed separately and the usual four year deadline for doing so continues to apply based on the tax year(s) in which the foreign loss was realised. If an election is or has been made, potential foreign loss claims for years between 2016/17 to 2020/21 (inclusive) should be considered. This may be relevant where losses were not computed at the time, or where the section 16ZA election is made some years after the remittance basis was first claimed.

Using other current year exemptions and allowances

The main annual tax exemptions and allowances not already mentioned in this article are set out below.

Inheritance tax £3,000 annual exemption
Individuals can give away £3,000 each tax year without any inheritance tax implications. If all or part of the previous tax year's (2019/20) £3,000 annual exemption was unused, the remainder can be carried forward. This means that up to £6,000 can be given away tax-free in 2020/21. Other reliefs and exemptions may also be relevant.

Stakeholder pensions of £3,600 per annum (gross)
Any UK resident individual under the age of 75 can contribute up to £2,880 (net) into a stakeholder pension each year, irrespective of their income level or employment status, so these pensions can be funded for non-working spouses and children. The pension provider will reclaim 20% tax relief direct from HMRC, so the policy will be credited with a gross contribution of £3,600. It is important to note that the funds will not be accessible until the minimum pension age. This is currently 55. The government has, however, confirmed that it intends to increase the minimum pension age to 57 in 2028.

Individual Savings Accounts (ISAs)
The annual overall subscription limit for an ISA for 2020/21 is £20,000, which can be invested in cash, UK stocks and shares, foreign shares, corporate bonds and other permitted investments. ISAs are available to UK resident individuals aged 18 or over (age 16 or over for cash ISAs). Income tax and CGT do not apply to investment returns from ISAs.

Other types of ISA exist, including the Innovative Finance and Lifetime ISAs. The annual investment limit applies across all ISAs in total. Be aware of the conditions and features of the various ISAs before investing to ensure that the appropriate ISA type is used. A comparison with saving into a pension may also be important. Regulated financial advice may be required.

Junior ISAs
Junior ISAs are available to children under the age of 18 who are UK resident and who do not have a child trust fund. The annual subscription limit in 2020/21 is £9,000, which can be split between stocks and shares and/or cash. The funds are locked-in until the child is 18, when the account will default to a normal ISA if the funds are not withdrawn. Ordinarily, when a parent gives money to a child, if the income arising from the gift exceeds £100, the whole of the income is taxable on the parent (while the child is under 18). This provision does not apply to a Junior ISA.

Tax efficient investments
There are a number of statutorily provided tax efficient investments available, including National Savings, the Enterprise Investment Scheme (EIS), Seed EIS (SEIS), Social Investment Tax Relief (SITR) and Venture Capital Trusts (VCTs). EIS, SEIS, SITR and VCT investments all have annual limits, as follows:

- EIS: £1,000,000 with income tax relief of 30%, or up to £2,000,000 provided the additional £1,000,000 is invested in 'knowledge-intensive' companies;
- SEIS: £100,000 with income tax relief of 50%;
- SITR: £1,000,000 with income tax relief of 30%. This relief is only available on investments made up to 5 April 2021 as the relief is due to end on 6 April 2021; and
- VCT: £200,000 with income tax relief of 30%.

Any gains realised on the disposal of shares in the above four tax efficient investments (and loans in the case of SITR) may be exempt from CGT. In addition, it may be possible to defer gains on the disposal of other assets into EIS or (for gains made before 6 April 2021 only) SITR investments. SEIS provides for part of the gain on the disposal of other assets to be exempted from CGT rather than deferred.

5 April 2021 time limits

A number of claims and elections relating to the 2016/17 tax year have a time limit of 5 April 2021, and so need to be considered before that date. Further to the points included above, relief for tax overpaid in 2016/17 must be claimed by 5 April 2021. The most likely scenario in which this could occur is for those taxed under PAYE, where the PAYE deductions are excessive, although overpayments could arise in other cases.

Looking to the next tax year

Reviewing income and assets
In addition to considering taxes for the 2020/21 tax year, it is sensible to consider the potential tax position for future years. This can include the following:

- Considering how much income each spouse has and what this means for income tax rates and the availability of the personal allowance. In some cases, individuals choose to transfer income producing assets from one spouse to another. Such gifts need to be outright and unconditional.
- Individuals who hold assets that may be eligible for business asset disposal relief or investors' relief may wish to review their position, as qualifying criteria must be met for a minimum period before disposal in order for the relief to be available (broadly, two and three years respectively).

Off-payroll working (IR35)
The extension of IR35 to the private sector was delayed last year but is now due to take effect from 6 April 2021. The new rules apply to situations where individuals ('contractors') provide their personal services to end users via a Personal Service Company (PSC) or a similar intermediary. In such circumstances, the person the individual provides their services to (the 'client' or 'end user') will have to determine whether the relationship with the contractor would be one of employment if the worker was directly engaged.

If so, the client will need to issue a status determination statement to the contractor and to any relevant third party, such as an agency. In addition, the person who pays the PSC will need to withhold income tax and national insurance from payments made. The client will become liable if there is a failure to apply the rules. In long supply chains, any of the parties in the chain could become liable if they breach the rules.

The rules are complex and are likely to make engaging through PSCs less attractive in many circumstances. Individuals currently supplying their services through their own PSC may wish to review existing contracts and arrangements. Employment agencies and umbrella companies may provide alternative vehicles that enable contractors to continue to work on a contingent basis, subject to appropriate due diligence being undertaken.

The IR35 rules do not apply to clients for tax years in which the client qualifies as 'small' or does not have a 'UK connection'. In such cases, IR35 instead applies to the contractor's PSC directly.

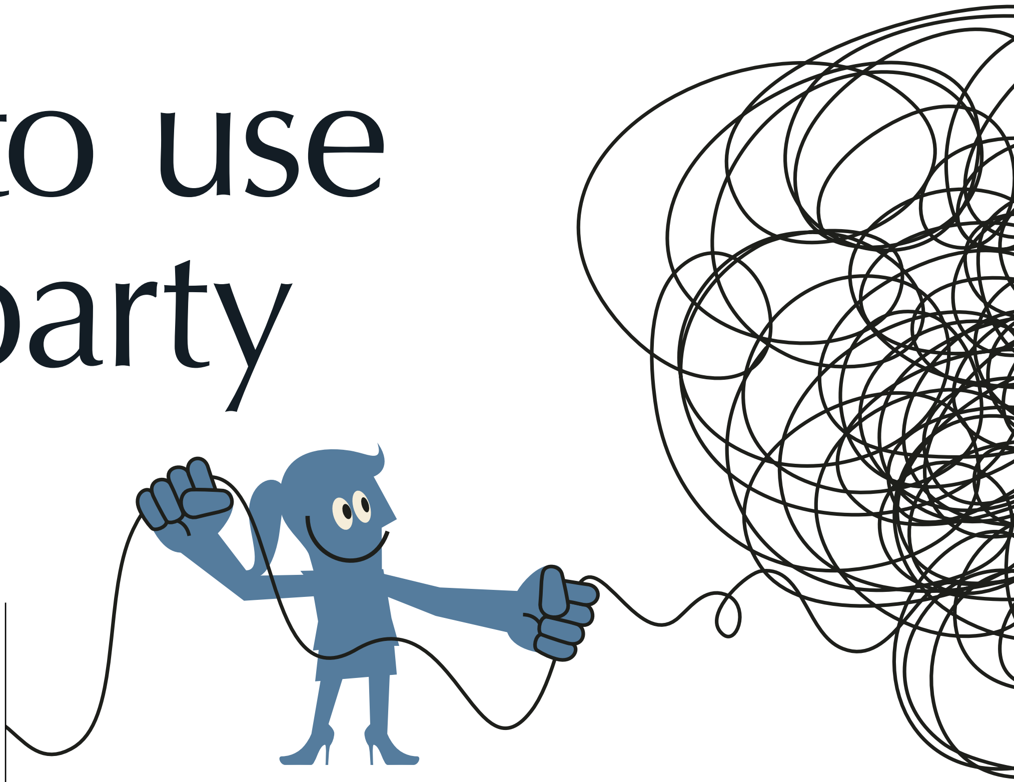
VAT
Those who run a business with turnover above the VAT threshold (£85,000) should be prepared for changes to Making Tax Digital (MTD) reporting from 1 April 2021. Since April 2019, businesses have been required to maintain records digitally for VAT purposes and provide VAT return information to HMRC via MTD functional compatible software. For VAT periods starting on or after 1 April 2021, these businesses must also have digital links in place for the transfer of data between the software applications and systems that they use to support their VAT compliance process.

Taxpayers who deferred their VAT payments under Covid-19 measures between 20 March and 30 June 2020 will be able to pay that VAT in two to 11 equal monthly instalments from April 2021, without incurring interest. Applicants must be up to date with their VAT returns and be able to pay the deferred VAT by direct debit.

Conclusion

Ahead of the year-end, it is worth considering whether all beneficial allowances and claims have been made. Consideration should also be given to planning ahead for the 2021/22 tax year.

How to use third-party data



Bill Dodwell considers who is best placed to supply information to HMRC

KEY POINTS

- **What is the issue?**
The fundamental point about the PAYE system is that it is designed to collect the right amount of tax from most taxpayers – without them needing to file an annual tax return.
- **What does it mean for me?**
The Office of Tax Simplification has launched a review that will look at smarter ways to use third party data. The purpose of the review is not to find additional data for HMRC; rather it is to ask who would be best placed to provide existing data to HMRC.
- **What can I take away?**
Please consider responding to our online survey for individual taxpayers and call for evidence, which can be found on the OTS home page.

In 1944, the Pay As You Earn system was introduced and about 12 million adults started to find their employer deducting tax from their salaries and wages. The system was introduced due to government and Inland Revenue concern that the old system of payment in arrears did not work well for the much larger working population now subject to income tax. There was a particular issue that the high wartime wages would be reduced after the war – and taxpayers might not have put money aside to pay their taxes.

An evolving system

That landmark decision set the path for the UK tax system that we have today. In 1975, national insurance was added to the PAYE system. In 2009, HMRC moved to a single National Insurance and PAYE System (NPS) where records are maintained on an individual employee basis, in place of the regional employer-based systems. The next big step was the introduction in April 2013 of real time information (RTI) for PAYE, where employers submit accurate data on each employee every pay period (instead of only at year-end). Finally, in 2017, HMRC completed the migration of the system to a new private cloud, involving the migration of 99 million accounts.

David Gauke, as Exchequer Secretary, noted in 2011 when writing about the introduction of RTI (see bit.ly/3oo258f):

> 'PAYE is essentially an opaque system which tries to get it right for the taxpayer with minimal taxpayer involvement... We still have the age-old problem of a 60 year old culture that shields most taxpayers from having to think about their tax, but perversely wants them to understand what is going on when it does not reconcile. So PAYE improvement does not stop here.
>
> 'I believe that HMRC need to think about how they can better communicate and get better understanding with taxpayers so they can help HMRC to get it right.'

The fundamental point about the PAYE system is that it is designed to collect the right amount of tax from most taxpayers – without them needing to file an annual tax return. About 47 million adults receive some taxable income and about 30-31 million pay income tax. For 2019/20, HMRC reported that 11.7 million returns were due (see bit.ly/36i97Fb) and it also received 363,000 unsolicited returns. This meant that about 25% of adults (or just under 40% of income tax payers) completed a return. HMRC has long expressed the ambition that it would be possible to reduce the number required to complete a tax return.

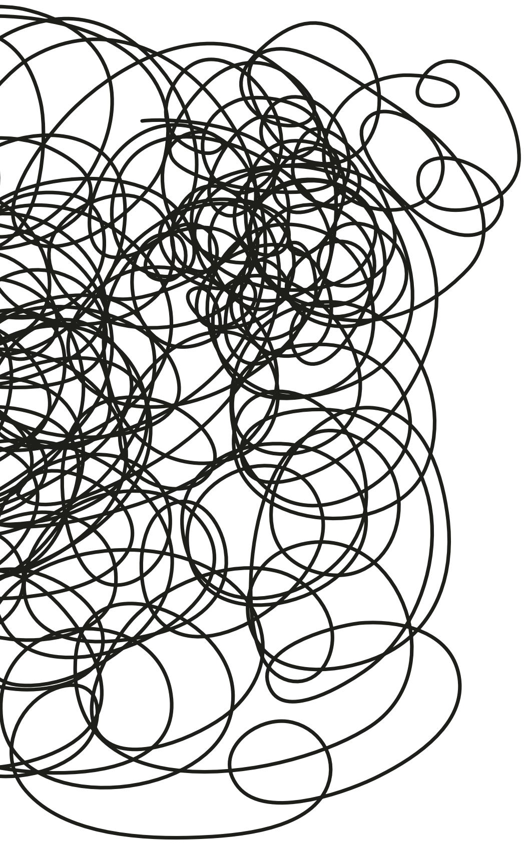
Alongside the PAYE system have been approaches to the taxation of savings income designed to remove further tax liabilities from basic rate taxpayers, and the need for them to make returns. For many years, basic rate income tax was deducted at source (or deemed to be deducted) from bank interest. Dividends came with a basic rate tax credit. When these credits and deductions were abolished, most basic rate taxpayers were still protected from paying additional tax by special allowances.

Smarter use of data

With this background – that we have a tax system in the UK that is designed to minimise the number of tax returns required – the Office of Tax Simplification has launched its latest review, which will look at smarter ways to use third party data (see bit.ly/2NAcjW9). The purpose of the review is not to find additional data for HMRC; rather it is to ask who would be best placed to provide existing data to HMRC.

The OTS will explore the opportunities set out in the government and HMRC's ten-year Tax Administration Strategy (see bit.ly/3a6nVb7) for 'smarter use of data on taxpayers and their activities – pre-population of tax returns, including with data from third-parties – to reduce the need for taxpayers and agents to submit additional information that HMRC either already holds or could verify itself'.

The review will look at the principles that should apply in relation to third-party data and taxpayers generally. It will also consider sources



of third-party data that it could be helpful to individuals for HMRC to receive, and how this can best be embedded into the next stage of HMRC's work on the single digital account and system design more generally. This is not a review about HMRC's auditing activities; rather, it is about pre-population of tax returns and digital tax accounts.

The review will include the key considerations, impacts and priorities that HMRC should focus on; any stages in which work might best proceed; and what realistic timescales would be.

Third-party data

The OTS has previously considered the potential for third party data in relation to self-employment and rental income in its Tax Reporting and Payments review (see bit.ly/3cefgWM). This review will focus on personal tax data, potentially including:

- bank and building society interest (building on the information already available);
- dividends from UK companies and distributions from authorised unit trusts;
- distributions from UK and overseas open-ended investment companies;
- pension contributions;
- gift aid payments to charities;
- data from investment and wealth managers, including information about chargeable gains, excess reportable income, interest, dividends and equalisation payments;
- insurance bond chargeable events; and
- royalties.

PROFILE

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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 objective of third party data reporting should be to relieve individuals of the burden of having to report information individually. Pension company PensionBee reported that over 80% of higher rate taxpayers were not claiming higher rate relief on their pension contributions (see bit.ly/3a5ieKB), thereby collectively missing out on over £800 million in tax relief.

If pension companies could notify HMRC of contributions made every month – and HMRC could process that information into the personal tax account – adjustments could be made to tax codes or in self assessment returns to give the correct relief. It could also be worth considering whether HMRC could advise pension companies when the individual was subject to the money purchase annual allowance restriction. This could mean that the individual could be advised not to make contributions over that limit, rather than HMRC needing to recover excess relief later.

Similar benefits could come in relation to Gift Aid and higher rate relief. Charities reclaiming Gift Aid need to notify HMRC of the name, address and amounts from each donor (subject to exceptions for small cash gifts). By adding a unique tax reference (such as the national insurance number), the information could be routed to the personal tax account and higher rate relief given. It might even be possible to find a way of optionally giving that additional tax relief as a further gift to the charity, as some have suggested.

Issues for consideration

There are a range of important areas to consider. Perhaps the first place to start is how individual data is to be reported to HMRC in a way that it can be immediately loaded into the digital tax account. A unique identifier will be needed, rather than attempting matching using name and address.

The national insurance number (NINO) has the best credentials for this. It is issued automatically to everyone at age 16 and almost everyone has one. It is used in our tax affairs already. However, there would need to be better processes for issuing NINOs to those arriving in the UK and it would need to move away from its current connection to national insurance contributions and benefits to become a generic tax reference.

There are a series of questions about trust and errors. HMRC needs to be able to trust data given to the Department by third parties. Individuals need to have trust that HMRC will process the data correctly and quickly. There would also need to be an easy process for correcting errors and thought given to how to deal with possible liabilities where something goes wrong.

There are also questions over whether third parties should be required to provide data, or should do so on a voluntary basis, authorised by the taxpayer. It is likely that if any new system goes ahead, reporting should be standardised across an industry sector. However, it is worth exploring the scope for voluntary reporting.

Wealth management is an interesting area where managers already report income information to their customers. Some may report capital gains information too, but not everyone has all the information to cover capital gains calculations. There are also a wide range of systems used, typically tailored to each manager. Yet anyone who has looked at statements will find it confusing to work out how to report each source for tax purposes – and to understand terms such as equalisation and excess reportable income. Managers might be able to report data to HMRC as well as to their clients and take away the burden of complexity that different sources bring.

The most obvious beneficiaries of third party reporting would be higher rate taxpayers and individuals who receive more than average amounts of savings income, such as pensioners.

In conclusion

Any new system of third party reporting will take some time to establish, as HMRC and data providers will need to agree a technical framework for the tagging and submission of data. Companies will need time to modify their systems and HMRC will need to ensure its systems have the functionality to receive data and process it quickly into self assessment and digital tax accounts. It is important that we start to consider these issues now to see whether and how they could improve tax reporting in coming years.

Please consider responding to our online survey for individual taxpayers and call for evidence, which can be found on the OTS home page.

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The gift of protection

John Bunker and *Kirstie Williamson* consider how to best advise your clients on their options to mitigate their exposure to inheritance tax

KEY POINTS

- **What is the issue?**
Lifetime giving should be one of the most straightforward and least contentious weapons in the planner's armoury but as the rules stand it can be surprisingly complex, with the rules and limits for each of the gift exemptions.
- **What does it mean for me?**
Will drafting is a major element in inheritance tax planning. The use of variations of estates or trusts within two years of death has become ever more important with changes to inheritance tax.
- **What can I take away?**
Clients need to be made aware of options and potential variations, with great opportunities for advisers to show they are adding value by illustrating benefits that could flow from an optimal arrangement.

In July 2019, the Office of Tax Simplification (OTS) released its second report on simplifying the design of inheritance tax (see bit.ly/3qe8jsA). The report explores the main complexities and technical issues that arise from the way the tax works, making recommendations which could streamline gift exemptions, change the way the tax works in relation to lifetime gifts to make it both simpler and more intuitive, and address distortions in the operation and scope of reliefs such as those for business property and agricultural property.

Whilst none of its recommendations have yet been implemented, with the disruption of Covid-19 preventing any tax changes, they cannot be overlooked when advising clients on their options to mitigate their exposure to the tax.

The two following articles by Kirstie Williamson and John Bunker aim to look at the current position with regard to some 'standard' available planning tools for the tax advisor, starting with lifetime gifting, and going on to will drafting, considering the impact of some of the OTS's proposed changes.

Lifetime gifts

Kirstie Williamson considers the rules relating to lifetime gifts

PROFILE

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Profile: Kirstie Williamson has 19 years' experience in a variety of tax roles. She now manages a specialist team dealing with tax compliance for a large number of trusts, and advises clients on planning for and mitigation of inheritance tax. She has contributed to the Law Society's new *Inheritance Tax Planning Handbook*, edited by John Bunker and Anthony Nixon.

Lifetime giving should be one of the most straightforward and least contentious weapons in the planner's armoury but as the rules stand it can be surprisingly complex, with the rules and limits for each of the gift exemptions.

The annual exemption is frozen at £3,000 per donor (i.e. per person), and making the gift is seemingly simple. However, this still causes frequent confusion amongst clients, who often take the exemption to be available per recipient. It is important that this is explained, along with the facility for any unused exemption to be carried forward one tax year only – meaning that a couple who have not previously used their exemptions could make gifts of up to £12,000 in a single tax year.

The OTS suggested increasing this exemption, as it has been frozen for nearly 40 years, making it far less valuable than in 1981 when the average annual wage in the UK was £6,000! The exemption is useful but makes little dent in the inheritance tax liability of many.

Gifting from income

Gifting from income (the normal expenditure out of income exemption) can be very beneficial for those who do not spend all their earnings or pension and whose surplus income would only augment their capital and thus their inheritance tax problem. This can be a very generous exemption, as it is effectively unlimited provided that two main requirements are met.

Maintaining records

The first requirement is that the donor keeps sufficient records to evidence the available surplus. In practice, giving clients form IHT403, with encouragement to keep records of income and (especially) expenditure by tax year, as required, can avoid problems for executors. Reconstructing expenditure can be extremely difficult, which is not helped by the fact that banks generally don't keep records for more than six years, making reconstructing the full seven year financial history very difficult.

Executors tasked with completing the form retrospectively can find this a frustrating and time intensive process, which may be for little gain if the donor has inadvertently gifted more than they intended and the gifts are ultimately disallowed. In particular, capital withdrawals from investment bonds (the so-called tax free 5%) are not regarded as 'income' by HMRC but as returns of capital. They therefore cannot be taken into account, catching out many clients who consider their monthly withdrawal from their bond to be 'income'.

Regularity of payments

The second requirement for the 'normal expenditure' exemption is showing the regularity of payments or the commitment to go on making the payments.

It helps to have a letter or note signed by the donor confirming their intention to continue payments of school fees, mortgage, the monthly allowance or other commitments. The amount gifted doesn't have to be the same each time, but the principle of paying will suffice (for example, a commitment to pay school fees each term).

Some clients can gift from cash bonuses, if they live off their monthly income and the bonus is entirely surplus; for example, if this is supported by a signed note committing your client to gift the full bonus each time. Gifting can be to a trust for grandchildren, in addition to the £325,000 nil rate band, without any tax charge if the figures are justified.

Potentially exempt transfers

Potentially exempt transfers (PETs) are a familiar way to make more substantial gifts, though again the rules surrounding them are often poorly understood by the tax paying public.

Many are not aware that the recipient pays the tax on 'failed' PETs when the donor dies within seven years of gifting. The taper relief rules are famously misunderstood. The taper reduces only any tax payable on the gift, not the amount of it, with no saving if the gift bears no tax because it is within the nil rate band.

Advisors often see cases of parents making similar sized gifts to two or more of their children a couple of years apart; for example, to fund a house purchase. However, if the parent dies within that seven year period, the nil rate band is applied entirely against the earliest gifts, allowing some gifts to be tax free whilst others are taxed in full. This is rarely the intention of the donor and is not expected by the recipient, and such eventualities can result in enormous family friction.

Lifetime giving should be one of the most straightforward and least contentious weapons in the planner's armoury but as the rules stand it can be surprisingly complex.

The OTS proposed simplifying the regime, abolishing some exemptions in return for an increased annual exemption, the abolition of taper relief and reducing the survivorship period from seven to five years to assist record keeping. Such changes would help people to understand the rules and make them less vulnerable to trip over their complexities. Meanwhile, make the most of the current exemptions while we have them, especially gifts from income that looks most vulnerable to change.

Tax planning through wills and variations

John Bunker examines how to use clear tax planning, rather than more questionable tax avoidance

PROFILE

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Will drafting is a major element in inheritance tax planning. The use of variations of estates (Inheritance Tax Act (IHTA) 1984 s 142) or trusts (s 144) within two years of death has become ever more important with changes to inheritance tax, especially the residence nil rate band, and many wills need review to make the most effective use of this. At a simple level, this includes trusts for grandchildren, which may operate as relevant property trusts because of a contingency such as attaining the age of 18 or 21, being varied by an advancement to an immediate post death interest trust or bare trust, read back under s 144.

Wills for spouses

Wills for spouses reach a more complex level of planning options, including variations, with the objective to offer clients the opportunity to optimise the use of these key elements of inheritance tax. (Clients are free to take up these options, or reject them if they don't wish to incur the greater costs.)

Spouse exemption: Spouse exemption, by an outright gift or immediate post death interest trust, is invaluable in the right circumstances; however, it will be better to consider using the nil rate band as set out below.

The OTS proposals (made in its July 2019 report, and repeated in its first Capital Gains Review in November 2020) to remove the capital gains tax 'uplift' on death where a full spouse exemption applies, would have potentially far-reaching effects requiring much reviewing of wills and variations.
In the meantime, consider keeping the will as flexible as possible. Give careful attention to the choice of executors and whether there is a place for an independent professional to weigh up the increasingly complex options within the wishes regarding beneficiaries left by the deceased.

Use of the nil rate band and transferable nil rate band: Consider the use of the nil rate band and transferable nil rate band (where unused by a deceased spouse), e.g. by a nil rate band discretionary trust. If any thresholds have not been fully used when the first person in a marriage or civil partnership dies, the unused part can go to the surviving partner. However, it is crucial to remember that you can only transfer 100% of a nil rate band even if the individual has had more than one spouse or civil partner, so often a transferable nil rate band is a 'use it or lose it' situation. Nil rate band discretionary trusts are one of the main forms of planning open to spouses who don't qualify for residence nil rate bands, as they do not have descendants, own their home or have an estate over the £2 million threshold.

However, a major use of the discretionary trust is also now to take assets out of the potential second spouse's estate, to avoid the loss of the residence nil rate band by the estate going over that £2 million threshold, to preserve one or two residence nil rate bands (£175,000 or £350,000 in 2020/21). This is a potential inheritance tax saving of £70,000 or £140,000 justifying some extra work and cost. Any gift to a nil rate band discretionary trust should include both any transferable nil rate band and any agricultural property relief or business property relief at 100% (and at 50% up to the maximum tax free amount).

Use of the residence nil rate band and transferable residence nil rate band: The residence nil rate band and transferable residence nil rate band, carried forward from a late spouse, carry the same maximum of 100% relief, so again use it or lose it. The classic use of the residence nil rate band is an immediate post-death interest trust for children or others who 'closely inherit' for residence nil rate band purposes. Immediate post-death interest trusts have a great role to play in securing this new relief, with great flexibility behind an initial interest that qualifies and with flexible powers that the trustees can exercise in time, guided (ideally) by a comprehensive and up-to-date letter of wishes.

A key element of planning on the death of spouse 1 is to ensure that the right ownership will apply for the residence nil rate band claim when spouse 2 dies. As the residence nil rate band is claimable on both a personal interest and an immediate post-death interest in one property, it can be crucial to get that right on the first death.

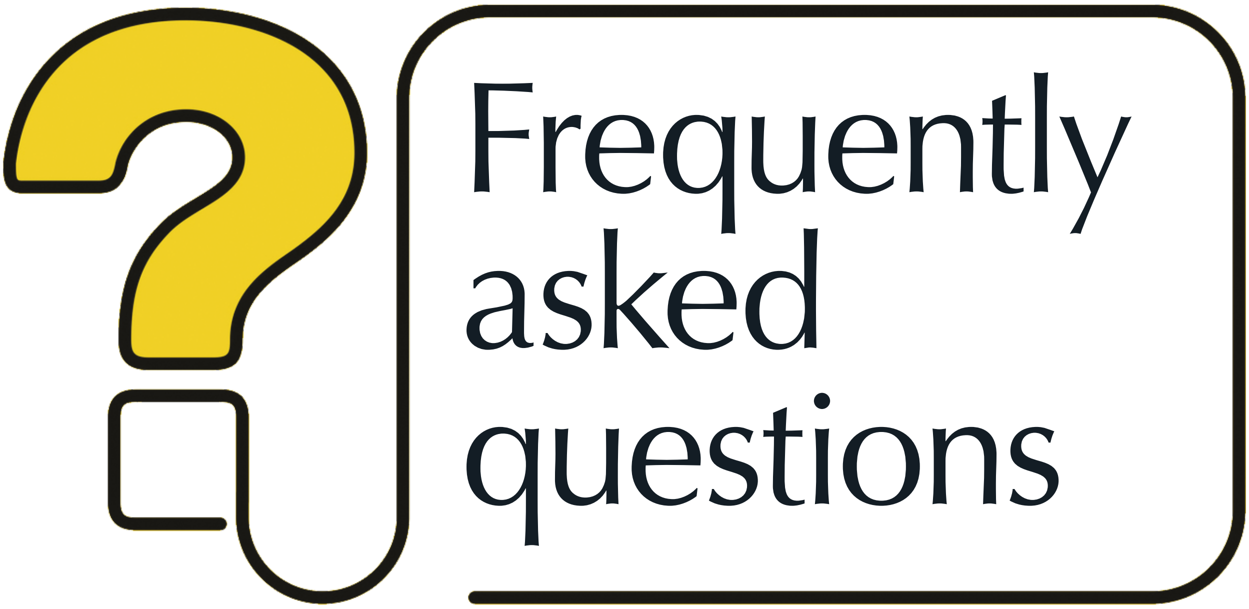
Agricultural property relief and business property relief: Agricultural property relief and business property relief deliver the potential to 'use' any 100% relief; e.g. by including in a nil rate band discretionary trust to maximise the relief on the first spouse's death. This might be especially valuable if there were a change in the law affecting eligibility for 100% relief or if the business/farm might be sold before the second death.

This is an area significantly impacted by the OTS report. Its proposals for farms and businesses are potentially huge in effect and, while the details are beyond our scope here, the potential change in the 'trading threshold' from at least 50% to over 80% could threaten the 100% business property relief claims of many. Suffice to say that, along with the potential loss of capital gains tax uplift where there is a full inheritance tax relief, this changes the dynamics of many farms and business owners about succession planning. Children and others who might be brought into a business can be helped by the more nuanced balance of tax issues, as opposed to the major disincentive to lifetime gifting that had applied for many years.

In conclusion

Clients need to be made aware of options in wills, and potential variations in estates and trusts, with great opportunities for advisers to show they are adding value by illustrating benefits that could flow from an optimal arrangement. It may be a consumer market but each must choose the service and cost mix they want.

The new Law Society IHT Planning Handbook, edited by John Bunker and Anthony Nixon, written with 14 Irwin Mitchell colleagues, seeks to cover all the mainstream elements of effective inheritance tax planning to help professionals in advising clients.



HMRC answers the most frequently asked questions on the HMRC Inheritance Tax Helpline

Has my form IHT421 been issued?

- HMRC now emails all IHT421s for grants in England and Wales directly to HM Courts and Tribunals Service. You can expect HMRC to do this within 15 working days of receiving your IHT400 or payment of the tax due on delivery of the account, whichever is later. If tax is due on the estate, HMRC will confirm that it has issued your IHT421 in writing once it has processed the account.
- If you want to check that HMRC has received your form IHT400, you should wait for at least 20 working days from the date you sent the form, before contacting HMRC.

Help needed to complete the IHT400 and IHT400 schedules

- You should read the guidance notes for completing form IHT400 (see bit.ly/38o6R0R) and the schedules before calling the Inheritance Tax Helpline.
- For more in-depth guidance for professional agents, there is an Inheritance Tax toolkit to help you complete the form IHT400 and schedules (see bit.ly/3s1ux2P).

Telling HMRC about amendments and claiming loss on sale relief

- If there are changes to the values in an estate after you've submitted your form IHT400, you must tell HMRC. Use the following methods:
  - Form IHT35 'Claim for relief – loss on sale of shares': to claim relief on shares sold at a loss within 12 months of the date of death.
  - Form IHT38 'Claim for relief – loss on sale of land': to claim relief on land or buildings sold at a loss within four years of the date of death.
  - Form C4 'Corrective Account' or form C4(S) 'Corrective inventory and account (Scotland)': to tell HMRC about any other amendments to the estate.

You may not always pay less tax by claiming a relief, so read the guidance carefully before you make a claim.

- For copies of the forms, go to www.gov.uk/government/collections/inheritance-tax-forms.
- HMRC expects agents to work out the amount of any additional tax due as a result of amendments, and place money on account if they wish to stop or reduce interest.

Completing form IHT35 'Claim for loss on sale of shares' and form IHT38 'Claim for relief – loss on sale of land'

- Make sure that you answer all the questions and give all the information asked for on the form.
- To avoid delays establishing whether the claim is provisional or final, make sure that the declaration is marked.
- HMRC will not be able to accept your claim unless it is signed by all the relevant people.

Completing form C4, 'Corrective account' or form C4(S), 'Corrective inventory and account (Scotland)'

- Make sure that the description of any assets and the original value matches the information that you gave on the form IHT400.
- To avoid delays, don't include amendments to property or shares sold at a loss on this form. Instead, use form IHT38 'Claim for relief – loss on sale of land' or form IHT35 'Claim for loss on sale of shares' to claim relief on these assets.
- Include any additional information to support an amendment with your form; e.g. a letter from an insurance company to explain why a policy is now not part of the estate. This will prevent HMRC having to request this later.

Applying for a reference number

- If there is tax to pay, you must get an Inheritance Tax reference number before sending your form IHT400 or IHT100 to HMRC. You don't need to get a reference number if there is no tax to pay.
- You should apply for your reference at least three weeks before you submit your IHT400 or IHT100.
- To avoid delays HMRC recommends that you apply online for a reference for a form IHT400 (see bit.ly/2XcxcIC).
- To apply for a reference for a form IHT100 you will need to complete a form IHT122 (see bit.ly/2LkNuMV).

Applying for a clearance certificate

- If you wish to apply for a formal clearance certificate, you should use form IHT30 'Application for a clearance certificate' to do this. Only do this when you are sure that there will be no further changes that

will affect the tax position on the estate.
- Because of Covid-19, HMRC is currently unable to issue a stamped and signed copy of your form IHT30. Instead, it will issue a letter, containing a unique code, that has the same effect as a stamped and signed copy of the IHT30.

Paying by instalments

- If you have elected to pay some of the inheritance tax due by instalments, you are responsible for making sure that each instalment is paid on time.
- You can use HMRC's online interest calculator at bit.ly/38joxL1 to calculate any interest due.

Checking receipt of payment

- HMRC is not able to send receipts for payment.
- Paying electronically is quicker, easier and more secure, and means that you can easily see what you have paid and when.
- HMRC is currently unable to accept cheques as a method of payment for inheritance tax.
- For more information on how to pay inheritance tax, go to www.gov.uk/paying-inheritance-tax.

GENERAL POINTS TO CONSIDER

- Read the notes on any forms and schedules you complete and make sure that all boxes are clearly marked. Make sure that any declarations are signed by all the relevant people.
- Don't assume that HMRC will understand the basis of a value. Make sure you provide any supporting evidence that you have at the same time you send in your forms.
- Always provide a copy of the will and any codicils with the form IHT400 to make sure that HMRC can properly consider any exemptions. Please do not send any originals to HMRC.
- HMRC is currently unable to issue or reissue calculations which show a nil balance of inheritance tax and interest to pay.
- For in-depth technical guidance you can consult HMRC's technical Inheritance Tax Manual. Go to www.gov.uk/hmrc-internal-manuals/inheritance-tax-manual and search for the subject you need help with.
- HMRC now has a new Webchat service. If you can't find the answer you need in HMRC's guidance, consider using this service before contacting the Inheritance Tax Helpline.
- You can download most inheritance tax forms at www.gov.uk/government/collections/inheritance-tax-forms and searching for the form you need.

Requesting a repayment

- HMRC is now making all repayments of inheritance tax by Faster payments. This means that you will get your repayment more quickly, once it has been processed. HMRC may need to write to ask for the bank account name, account number and sort code of the bank account you want the repayment to go to, if it doesn't have these details.
- HMRC aims to deal with all repayments within 15 working days of receiving your form or letter. You should allow 20 working days for HMRC to process your repayment and check your bank account before contacting HMRC.
- HMRC is currently unable to issue copies of inheritance tax repayment calculations, but will usually write to advise the amount to be repaid. If you believe the amount of your repayment is incorrect, contact the Inheritance Tax Helpline on 0300 123 1072.

A fresh look for construction

Neil Warren considers the new reverse charge rules for the construction industry and the practical VAT issues that will be relevant to builders who trade with other builders from 1 March 2021

KEY POINTS

- **What is the issue?**
Major VAT changes will take place on 1 March 2021 that will affect all VAT registered builders who work for construction industry clients. It is important that accounting procedures are adapted and that staff are clear about when the reverse charge will and will not apply.
- **What does it mean for me?**
If a builder fails to charge VAT on a sales invoice because he incorrectly thought the reverse charge applied, or a building business buying services incorrectly pays VAT to a supplier when the reverse charge should have been applied, HMRC will have the power to raise assessments to correct the errors made.
- **What can I take away?**
There is a clause in the latest legislation concerning a '5% disregard' when the reverse charge will not apply. This article considers what this means and how it will work in practice.

It will be a case of third time lucky when the new reverse charge rules for the construction industry are finally introduced on 1 March 2021. As many readers will know, previous introduction dates of 1 October 2019 and the same date in 2020 were delayed by HMRC for very good reasons, coronavirus being the reason for the second delay. In this article, I will focus on practical issues about how the rules will work in practice, including the new concept of a '5% disregard'.

Services covered by new rules

The reverse charge will only apply if the supplier and customer are both trading in the construction industry, and are both registered for VAT. A typical situation would be a subcontractor working for the main building contractor on a specific project. The customer must be registered for the Construction Industry Scheme (CIS) and the work in question must come within the scope of the CIS, e.g. decorating a room or laying bricks. The work must be subject to either 5% or 20% VAT.

However, the key condition is that the business receiving the supplies from the other builder must be making an onward supply of those services to another customer. See ***Plumber Pete: Reverse charge and plumbing services***, which also confirms the VAT return boxes that will be completed by both parties for a reverse charge deal.

Other important points are as follows:

- The reverse charge will extend to any materials supplied by the builder as part of his work.
- The customer receiving reverse charge invoices must use the invoice or payment date, whichever happens first.
- If builders supplying services use the flat rate scheme, reverse charge sales are completely excluded from the VAT return. In reality, it will be sensible in most cases for the builder to leave the scheme if reverse charge supplies are significant so he can claim input tax on his expenses.

End user and intermediary supplier

Consider this question: following on from the example above, will all of Plumber Pete's work for Main Contractor be subject to the new reverse charge rules? The answer is 'no' if Main Contractor is classed as either an 'end user' or 'intermediary supplier' for the services in question:

- **End user:** This would be relevant if the work being done by Pete is not relevant to an onward supply of construction services made by Main Contractor. For example, it might relate to building work carried out at its head office, or perhaps at a property it rents out to a tenant. In this situation, the onus is on Main Contractor to advise Pete that it is an 'end user' for this particular job. Pete will charge 20% VAT on his invoice in the same way.
- **Intermediary supplier:** This is a business that is registered for both CIS and VAT that is connected or linked to end users. The connection is based on Companies Act 2006 s 1161; i.e. the two entities are in the same corporate group or undertaking. A link exists if both the intermediary supplier and end user have a relevant interest in the same land where the building work is taking place, such as a landlord and tenant arrangement. So, even though the intermediary supplier is making an onward supply of construction services to the end user, the supplies it receives from other builders will be subject to normal VAT rules rather than the reverse charge.

PLUMBER PETE: REVERSE CHARGE AND PLUMBING SERVICES

Plumber Pete is VAT registered and working as a subcontractor for a construction business called Main Contractor, which is building a new office for a firm of solicitors. Main Contractor is VAT and CIS registered. Pete issues an invoice for £10,000 on 1 April 2021 and does not charge VAT because the supply is subject to the new reverse charge rules that took effect on 1 March 2021:

- Pete will declare the sale in Box 6 of his VAT return; i.e. the outputs box.
- Main Construction will account for output tax of £2,000 in Box 1 of its return because the work is standard rated. It will claim the same amount as input tax in Box 4 – there is no input tax restriction for on this supply for partial exemption or non-business issues. The net value of £10,000 is included in Box 7 (inputs).

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PROFILE

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

Customer responsibilities

The customer receiving building services must always notify the supplier in writing of an end user or intermediary supplier situation. A suggestion in the HMRC guidance is that the supplier should include a statement in the terms and conditions of a contract along the lines of: 'We will assume you are an end user or intermediary supplier unless you say you're not.' The builder supplying services is therefore adopting a cautious approach of charging VAT on all invoices unless the customer says otherwise. It is important that customers deal with this situation properly because if they are charged VAT on a 'reverse charge' supply, HMRC will have the power to assess output tax, leaving them with a double VAT hit. The customer must then ask the supplier for a VAT credit to balance the books again.

Invoice splitting

An accountant that I act for is very concerned that his builder clients will be badly affected by the adverse cash flow outcome of not collecting VAT from customers and keeping it in their bank accounts for up to three months before paying it to HMRC on a return; i.e. the loss of important working capital. This is relevant for many small builders. The accountant asked if a possible solution was for his clients to raise separate sales invoices for each job; namely, an invoice for the building materials (not subject to the reverse charge) and a separate invoice for labour (which would be subject to the reverse charge).

Unfortunately, this strategy will fail because the job is classed as a single supply of construction services with materials, and that outcome doesn't change by raising separate invoices. To quote from the HMRC guidance: 'If a customer places a single supply and fix order within the scope of the CIS with a supplier, the reverse charge will apply to the full value of the order even if the supplier issues separate invoices for the supply and fix elements.'

You might think that a possible solution is to raise two separate orders, one for materials and one for labour, but HMRC is ahead of the game here as well: 'If the works are to be provided at the same time and on the same site … they comprise a single supply for VAT purposes.'

For details about sales invoices, see ***Information to be included on a reverse charge invoice.***

Employment business

The reverse charge rules do not apply to an employment business. This is because they are deemed to be supplying 'staff' rather than 'construction services'. There have been many tribunal cases about whether a supply of services or staff is being made, particularly in the medical sector. However, the key issue is whether the builder being supplied to a construction business comes under the control and instruction of the agency or construction business.

If a construction business asks an agency for the services of, say, an electrician, with an hourly or daily rate being paid to the agency, this will almost certainly be a supply of staff. The construction business will tell the electrician what work to carry out, and it will monitor the quality of his output. There will be no comeback on the agency if, say, the electrician fits some wires the wrong way round.

The 5% disregard

A new concept has been added to the latest rules, which relates to the situation where only some of the work on an invoice is subject to the reverse charge but this amount is 5% or less than the total value of the invoice. The previous approach was that all of the invoice would be subject to the reverse charge, even if only £1 was relevant to reverse charge work. See ***Decorator Debbie: 5% disregard rule***.

INFORMATION TO BE INCLUDED ON A REVERSE CHARGE INVOICE

- The information is the same as for a normal sales invoice; i.e. the supplier's business name, address and VAT number, as well as the name and address of the customer. It should also include the VAT registration number of the customer.
- The invoice must make it clear that the reverse charge applies.
- The amount of VAT to be accounted for by the customer on their VAT returns should be clearly shown, either as a total figure of £X or the VAT rate that applies to the job. The latter approach is useful if an invoice includes work subject to different rates of VAT.
- Wording such as: 'Reverse charge – customer to pay the VAT to HMRC' should be prominently recorded on the invoice.

Note that some builders might use wording that quotes the VAT legislation; e.g. 'No VAT charged – Value Added Tax Act 1994 s 55A applies to this invoice'. This is fine but might confuse a purchase ledger clerk wondering what s 55A means.

DECORATOR DEBBIE: 5% DISREGARD RULE

Decorator Debbie has a contract with a construction industry client for two jobs. The first is to redecorate six rooms in the company's head office for a payment of £8,000. The client has confirmed it is an end user for this work. The second job is to decorate a room in a hotel, which relates to a contract being done by Debbie's client for a hotel chain for a payment of £400.

Debbie issues a single invoice for both jobs. The whole of the invoice would normally be subject to the reverse charge because it includes some reverse charge work; i.e. decorating the hotel. However, because the reverse charge work represents '5% or less' of the total invoice (£400 divided by £8,400 = 4.7%), normal VAT rules apply; i.e. Debbie charges £8,400 plus £1,680 VAT.

It's now time to act

Sally Jones and *Andy Bradford* consider the practicalities of implementing the UK-EU Trade and Cooperation Agreement

KEY POINTS

- **What is the issue?**
On 24 December, negotiations to conclude the UK-EU Trade and Cooperation Agreement (TCA) ended. The TCA will govern the UK and EU's economic and trading relationship now that the Brexit transition period has come to an end.
- **What does it mean for me?**
Businesses need to meet many of the new requirements imposed as a result of the UK leaving the EU's single market and customs union right now – including new customs documentation and procedures, VAT registrations and immigration changes.
- **What can I take away?**
Timing may be an ongoing challenge for many traders. Businesses will need to rapidly develop origin management programmes to avoid unnecessary short-term duty costs.

On 24 December, negotiations to conclude the UK-EU Trade and Cooperation Agreement (TCA) ended. The TCA will govern the UK and EU's economic and trading relationship now that the Brexit transition period has come to an end.

The TCA (or the avoidance of a no deal outcome) does not remove the need for businesses to make changes to their operations – far from it – but it does bring some certainty on many of the new trading rules that will apply after the end of the transition period, most notably tariffs.

However, Brexit is not done. The first task for both the UK and the EU is to implement the TCA across the broad range of issues and trade covered. The TCA is also not envisioned to be a static position; instead, it sets the stage for future rounds of negotiations and discussions between the UK and EU on a host of issues.

There is no phase-in or grace period. Businesses need to meet many of the new requirements imposed as a result of the UK leaving the EU's single market and customs union right now – including new customs documentation and procedures, VAT registrations and immigration changes.

The TCA is also not envisioned to be a static position; instead, it sets the stage for future rounds of negotiations and discussions between the UK and EU on a host of issues. It includes a comprehensive governance structure with more than 20 new committees, councils and working groups in which the UK and EU will discuss their differences.

The outstanding issues fall into two categories: those issues where negotiators ran out of time to address them fully; and those issues where future cooperation would be desirable.

For trade, in the short term, businesses have been focused on two major issues:

- moving goods across the EU/UK border with all the necessary customs and duty documentation in place; and
- ensuring that any new or additional VAT compliance requirements are adhered to.

This article looks at the most common issues in these areas.

New customs obligations

As the UK emerged from the transition period on 1 January, new rules came into force regarding customs duties for goods moving across the UK/EU border. Stockpiling and the impact of the Covid-19 pandemic means that the current level of trade across the UK border is lower than normal, but even so we are already seeing an impact in the additional border formalities required, much of which relates to the 'origin' of the goods that are being transported. So, what does the UK-EU TCA mean for customs duties and origin?

Trade in goods

The CTA does not require a duty tariff or quota for goods movements between the EU and UK, subject to meeting the relevant rules of origin. Very broadly, only goods which originate in the EU or UK will be free of duties, as with other EU and UK Free Trade Agreements (FTAs). Indeed, the TCA has some progressive measures that should facilitate tariff free trade eventually; the limited time available to prepare means some face temporary duty costs.

The agreement contains a number of areas where the EU and UK will seek to cooperate in the future to reduce friction at the border but there is no change to the immediate customs clearance procedures businesses are facing.

Rules of origin

To qualify for the TCA there are general origin rules and also product specific origin rules based on a products tariff classification.

Whilst varied across the tariff, for most classifications there are two options for meeting the product specific origin rules:

- a difference in the tariff classification of the finished product and its non-originating materials at the heading or sub-heading level; or
- a maximum percentage value of non-originating materials (MaxNOM) in the finished product, most commonly 50%.

PROFILE

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Accurate tariff classification will be critical for businesses to determine the product specific rule of origin or in assessing qualification with the MaxNOM rule of origin.

Origin procedures

The origin procedures under the TCA are more facilitative than other comparable EU FTAs. Significantly, the agreement does not require the expense and effort of exporter registrations or obtaining certificates of origin. A claim by the importer for FTA preference showing UK or EU origin may be based on the importer's knowledge of where the goods originate or on a statement of where the goods are originating by the exporter.

The origin statement by the exporter is flexible in its application, allowing invoice wording or a separate document. Based on HMRC guidance, where the flow is from the EU to UK and above €6,000 it will be necessary provide the exporter's Registered Exporter (REX) number on the statement (and REX requires advanced registration). The flow from the UK to EU more simply needs the exporter's Economic Operator Registration and Identification (EORI) number, which all UK VAT registered businesses trading with the EU have already been issued with.

In both instances, there are specific evidential requirements to be followed, particularly where non-originating materials are used. Helpfully, there is an easement granted in both the EU and UK that the supplier origin statements do not need to be in place until 31 December 2021. Nevertheless, this documentation could be a material undertaking for many businesses, whether a supplier or exporter.

Timing

Timing may be an ongoing challenge for many traders. The facilitative nature of the origin procedures does allow for immediate use where the origin of the goods is known, and if the claim is not made at the time of import, the importer has up to three years from the date of import to make an evidenced claim for a refund. Nevertheless, businesses will need to rapidly develop origin management programmes to avoid unnecessary short-term duty costs.

Value added tax

The UK is free to adapt its own VAT rules going forward with the exception of Northern Ireland, which will operate a 'dual'/'mixed' VAT regime and, for the time being, follows EU VAT rules for goods and UK VAT rules for services. The quid pro quo is that this means that many UK businesses trading across the UK/EU border lost access to a number of the EU's VAT easements. There are now more VAT reporting and compliance requirements for businesses trading in the UK and the EU.

The TCA only mentions VAT some 40 times – and all in respects of cross-border tax fraud rather than in any way recognising and mitigating any of the new VAT obligations.

Some of the key VAT considerations businesses will need to understand are:

- Is a new VAT registration required in respect of goods owned and sold in the UK or the EU?
- If a new VAT registration is required in the EU, is a fiscal representative required?
- Are appropriate EORI numbers held allowing the movement of goods into and out of the UK and EU?
- If there is trade with or through Northern Ireland, do suppliers and customers have the necessary XI prefix information in order to move the goods VAT free?
- Where import VAT is due as goods move across the UK/EU border, is this being treated under the Postponed VAT Accounting regime and is it eligible for recovery in the hands of the importer of record? The latter point is already causing complications and potential cashflow issues for toll manufacturers and for goods imported for repair or processing.
- Is there an impact on the place of supply of services being provided or received across the UK/EU border as use and enjoyment rules kick in for trade with non-EU recipients (for services received from some EU member states and for some UK services supplied to EU based recipients)?
- Are systems and invoices being updated to take account of the VAT consequences of the UK not being part of the EU?
- Is the data flowing correctly through to the VAT return and Intrastat declarations?

These VAT matters are perhaps worthy of an article all of their own. Suffice to say that the dust may be settling on the political aspects of negotiating the deal but it is still swirling for the customs and VAT obligations that businesses face.

Complexity or chaos?

Dave Murray considers how we can keep tax multilateralism alive in an ever-changing world

KEY POINTS

- **What is the issue?**
In October, the OECD released a suite of documents outlining proposals to revolutionise the international tax framework, including two Blueprints (one on each 'Pillar' of its 'Digitalisation of the economy' project).
- **What does it mean for me?**
Among other things, Pillar One seeks to reallocate a portion of 'residual' profits of consumer and digital businesses to where consumers or users are located. Pillar Two seeks an effective global minimum tax to resolve continuing base erosion and profit shifting (BEPS) concerns.
- **What can I take away?**
The obvious challenge facing both Pillars is their enormity and complexity, and the corresponding risks of compliance overload and double taxation. The administrative burden is clear even where detailed technical questions remain unresolved.

In October, the OECD released a suite of documents outlining proposals to revolutionise the international tax framework, including two Blueprints (one on each 'Pillar' of its 'Digitalisation of the economy' project). The release was described by member countries of its Inclusive Framework as 'a solid foundation for developing a global, consensus-based solution to the tax challenges of the digitalisation of the economy'.

Despite the name, the proposals are not targeted solely at digitalised activities. The OECD explains that: 'Due to digitalisation, globalisation and new business models, many MNEs are able to make large profits in countries without necessarily booking these profits in these countries. This is [because] they may operate business without establishing any physical presence … [and] rules to allocate profits are no longer fit in a globalised, highly digitalised economy where value is concentrated on intangibles.'

Among other things, Pillar One seeks to reallocate a portion of 'residual' profits of consumer and digital businesses to where consumers or users are located. Pillar Two seeks an effective global minimum tax to resolve continuing base erosion and profit shifting (BEPS) concerns.

The proposals are extremely complex (nearly 500 pages, alongside another 300 pages in related documents) and by their nature will need further refinement, which is why the OECD is undertaking such extensive consultation. The proposals would (at least at first) only apply directly to large businesses. Businesses have been analysing the proposals in great detail and have been vocal about their concerns (more on this below).

The period for written consultations ran to 14 December, and a public consultation was held on 14 and 15 January. The OECD has indicated that a successful conclusion must be reached by 'mid 2021', and while this deadline has already moved, some countries are anxious to move forward and may not wait forever for an agreement before extending unilateral actions. Elements of the proposals lay groundwork for the future even if not agreed globally; they will either revolutionise or put pressure on an international framework that has remained comparatively unchanged for decades.

Background

Action 1 of the OECD BEPS Project concluded in 2015 that it was not possible to ringfence the 'digital economy'; that BEPS issues exacerbated by digitalisation would be curbed by the other BEPS recommendations; and that digitalisation posed broader challenges to the international tax system that would continue to be explored. Countries could introduce unilateral measures to safeguard against BEPS if they were consistent with their tax treaty obligations.

By 2017, the G20 had mandated that the OECD prepared an interim report by 2018 and a final report by 2020. While this work has continued, scepticism remained from some countries that an agreement could be reached. With a lack of consensus in 2019 for an EU-wide digital services tax (DST) (a levy on turnover based on the location of users of digital platforms), France, Italy, Spain and the UK implemented their own DSTs in lieu of an OECD agreement. Other EU countries opted for similar taxes on digital advertising.

Outside the EU, several countries (including India) implemented similar measures, and several (such as India, Taiwan and Hong Kong) implemented broader proposals to tax a wider range of businesses on deemed profits attributable to intangibles or digital services consumed or contributed to from their countries.

The US Trade Representative swiftly opened investigations, and has concluded those in relation to France, Italy, India and Turkey. Sanctions are being deferred while other investigations continue.

Meanwhile, at the OECD, four proposals were suggested for global reform. A global minimum tax was put forward by France and Germany (which has become Pillar Two), while the G24


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proposed formulary apportionment of profits, the UK proposed allocation of profits based on digital platform users' contributions, and the US proposed an allocation of profits to consumer countries based on marketing intangibles (which have combined into Pillar One).

Concurrently, the UN Tax Committee is debating changes to its Model Tax Convention (the UN Model). A new Article 12B will be included in the next UN Model which allows new withholding taxes and/or allocation of 30% of profits from automated digital service products to source countries. Further consideration will also be given to expanding the definition of royalties to include software payments.

It may be challenging to convince countries favouring the UN Model that the new OECD proposals would satisfy their interests. The G24 formulary apportionment proposal to the OECD is not the same as the UN Model changes under discussion, but it is even further from what is outlined below. The operation of Amount B under Pillar One (see below), the Subject to Tax Rule under Pillar Two (also below), and the ability for resource and capacity constrained tax administrations to administer the regime will be key in securing their endorsement.

The Pillar One Blueprint

The Pillar One Blueprint puts forward three changes to overlay the existing international tax framework through identifying new rules for two 'amounts'.

Amount A

Amount A would allocate a portion of global residual profits from consumer facing businesses and automated digital services businesses away from wherever it is currently allocated, to where end consumers/users are respectively. This is not limited to businesses that interact directly with consumers and limited exclusions exist for some extractive and financial services activities.

- **Automated digital services** are defined by a positive list of activities, a negative list of activities, and a general definition. Broadly, where services provided by an electronic network require minimal human intervention to service individual users, they would be in scope.
- **Consumer facing businesses** are those that generate revenue from the sale of goods and services of a type commonly sold to consumers, including indirectly through intermediaries (e.g. franchising, licensing, third party distribution).

Global and 'in-scope' revenue thresholds would exist and may be phased, and there may be a threshold to exclude groups with minimal foreign income. Some groups will be able to segment their results based on hallmarks (e.g. those found in IAS 14). For in-scope revenues, groups will need to calculate their residual profits. (This is not agreed but, for example, could be, 20% of all profits over a 10% margin, or more for automated digital services if 'digital differentiator' factors are met.)

The reallocation of this portion of residual profit is complex. There would be 'nexus' thresholds to identify which jurisdictions should receive an Amount A allocation, but they would differ according to whether activities are automated digital services (low revenue threshold only) or consumer facing businesses (higher and possibly staggered revenue thresholds, plus other factors); and a safe-harbour may restrict the allocation where taxes are already paid there. Amount A would be taken from entities identified based on connectedness to the recipient jurisdictions and their residual profit levels.

A binding dispute prevention process could be applied for before tax adjustments are made by tax administrations. The process includes a review panel of relevant tax authorities. For in-scope businesses, mandatory binding resolution processes could be developed to assist with transfer pricing and permanent establishment disputes.

Amount B

Amount B (which is not limited to automated digital services and consumer facing businesses) seeks to simplify the returns for routine marketing and distribution activities to a fixed Return on Sales basis, although this is complicated somewhat by the many differentiating factors to be taken into account, such as industry, region and functional intensity.

The Pillar Two Blueprint

The Pillar Two Blueprint contains four rules to ensure that a globally agreed minimum tax is paid on profits for each jurisdiction. The minimum rate has not yet been agreed, although it is expected to be 10% to 15%. The rules will be designed to 'co-exist' with the US global intangible low-income tax regime (GILTI) rules.

1. The Income Inclusion Rule: This requires parent companies to top up the tax of their constituent entities where the cash tax paid ('covered taxes') divided by the accounting profit in the year (based on parent GAAP and subject to some adjustments) falls below the minimum rate. Blending will be permitted where multiple entities are in the same country. Covered taxes include some taxes suffered on profits in other countries, such as controlled foreign corporation charges, withholding tax on interest or royalties, and those imposed in lieu of income tax. Other adjustments seek to account for temporary differences on tangible assets (and some others), and accounting losses can be carried forward (and back in some cases). A mechanism to carry forward excess taxes will be included, but no carry back. Instead, a mechanism may allow cross-border utilisation of excess where (effectively) it would have resulted in a refund if carry-back was allowed. All these mechanisms would be time limited.

2. The Undertaxed Payments Rule: This acts as a backstop, allowing a denial of some tax deductions for intra-group payments made to low-taxed entities in a group that is parented in a jurisdiction that does not have an appropriate Income Inclusion Rule regime (or, presumably, a GILTI).

3. The Switch-over Rule: This requires each foreign subsidiary to allocate an appropriate portion of its income (together with the taxes on that income) to a permanent establishment that may be maintained in another jurisdiction.

4. The Subject to Tax Rule: This will be triggered when a payment (for interest, royalties and some others) is subject to a low nominal (or base-narrowed) tax rate in the recipient. While the Income Inclusion Rule is said to be the primary rule, the Subject to Tax Rule will in fact apply first, and Subject to Tax Rule tax paid will be taken into account in calculating Income Inclusion Rule or Undertaxed Payment Rule liabilities.

The Pillars form a package, and for agreement to be reached at the OECD, they need to be agreed together. Of course, this does not preclude unilateral adoption (of the elements that can be implemented unilaterally) in the absence of agreement.

Major challenges to come

The obvious challenge facing both Pillars is their enormity and complexity, and the corresponding risks of compliance overload and double taxation. The administrative burden is clear even where detailed technical questions remain unresolved. How to deal with nexus threshold where both automated digital services and customer facing business activities are undertaken? How to recognise existing substance and tax the market jurisdictions? What is 'connectedness' with a market? How to deal with losses? The list – as demonstrated by responses to the OECD – is extensive.

For Pillar One, the challenge requires a solution from multilateral mechanisms to give taxpayers advance certainty. Despite significant strides made by the OECD in recent years, many jurisdictions have neither the capacity nor inclination to enter into such mechanisms, but genuine and effective multilateral processes will be needed to allocate rather than multiply global taxing rights. Equally, effective double tax relief mechanisms will be needed to deal with the duplication of Amount A, such as from existing market taxing rights and withholding tax rights.

For Pillar Two, similar double taxation challenges will arise – particularly for businesses with significant timing differences over long investment cycles; for example, if transitional rules do not account for pre-regime losses, or where higher taxes paid later in the investment cycle cannot be smoothed via a carry-back or deferred tax solution. Not all timing differences will be included, yet they all interact (e.g. fixed asset timing differences can manifest as brought forward losses), and double taxation on a sufficient scale could impact investment decisions.

Another key challenge for businesses under both Pillars is in getting the relevant information to comply, especially where businesses engage with consumers but do not sell directly to them. Accounting systems often will not provide the relevant data for either Pillar One or Pillar Two. Simplification mechanisms (e.g. based on existing country by country reporting data) might limit the burden but realistically that requires risk-based simplification approaches rather than technical ones.

For Pillar Two, additional challenges arise with respect to GILTI co-existence at both a political and technical level. At a political level, non-US businesses and countries will question whether they are disadvantaged by GILTI's use of global blending (and surrounding US check the box) features, and by the asymmetries of Pillar Two imposing domestic effective tax rate constraints (e.g. via the Undertaxed Payments Rule), while GILTI imposes no US effective tax rate constraints. Whereas viewed in aggregate from jurisdictional rather than individual business profile perspectives, the GILTI and Pillar Two tax impacts may be broadly equivalent, trying to dovetail the operation of two differently imperfect regimes may prove very challenging. Indeed, at a technical level, non-US businesses investing in or through the US could find themselves subject to both Pillar Two and GILTI – and US law change would be required to address that.

Interested SMEs have also noted that if they are operating from high tax jurisdictions by selling into lower taxed market jurisdictions, despite the complexity they may well prefer to opt into Pillar One, which the Blueprint does not currently foresee.

Where are we headed?

The scale and ambition of the project cannot be overstated. The political challenges in reaching agreement seem as insurmountable as the technical challenges in bringing that agreement to fruition. However, many commentators said the same about the BEPS Project in 2013, and the OECD delivered a package in 2015 that met its mandate. The challenge here is greater – a wider range of countries are involved in agreeing wider reaching reforms which reallocate income between major economies with very different objectives.

Following President-elect Biden's victory, there is renewed optimism that a deal may be possible. However, even if the US were to agree to a minimum tax proposal that grandfathered GILTI, and to reform the broader allocation of residual profits for a suitable range of businesses, it is always a lengthy and challenging process to get even bilateral tax agreements through the US Senate. There is significant technical work that must be done before that could even start.

The proliferation of digital services taxes, the US's response, and the European Commission's 2020 Workplan confirming that it 'stands ready to act if no global agreement is reached' suggest that tax multilateralism will be under threat if the OECD negotiations falter. The pandemic raises additional political bandwidth and fiscal pressures.

Tax practitioners should consider the impact of these proposals – and of a failure of them – in terms of unilateral or regional measures. For example, if agreement could not be reached and the EU were to go ahead with France and Germany's preferred Pillar Two proposal, then unless other countries aligned they could find themselves subject to the Undertaxed Payment Rules. Or a proliferation of digital services taxes could provoke additional non-tax trading barriers with broader impacts. However complex the proposals are, a lack of agreement could spark tax chaos. It is not too late to engage but the window is closing fast.

See the CIOT's response to OECD Blueprints for Pillars One and Two on p49 of this issue.

incomparable

/ɪnˈkɒmp(ə)rəb(ə)l/

adjective

1. having no equal or rival for excellence or desirability.

IR35 SHIELD

THE IR35 COMPLIANCE STANDARD

Do you disagree?

HMRC's Solicitor's Office and Legal Services explain how statutory reviews can assist taxpayers who disagree with an HMRC decision

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KEY POINTS

- **What is the issue?**
The statutory reviews process is a fresh look at disputed decisions, as evidenced by over 12,000 decisions altered in 2019/20 and over 14,000 in 2018/19.
- **What does it mean for me?**
Requesting a statutory review costs nothing and it can be a cost-effective way to resolve a dispute.
- **What can I take away?**
In requesting a statutory review, the taxpayer's statutory rights are unaffected. You can still take your appeal to tribunal if you are unhappy with the review officer's conclusion.

Statutory reviews were introduced in 2009 as part of the Tribunals Reform programme. The reviews are aimed at customers who disagree with an HMRC decision. Statutory reviews are carried out within HMRC's Solicitor's Office and Legal Services department (SOLS). The review is conducted by officers who are entirely outside the management chain of those making the disputed decisions. Both the Office of Tax Simplification and the House of Lords have said that HMRC's Review function provides a valuable service to customers.

The benefits of a statutory review

Reviews are an opportunity to take a fresh look at disputed decisions. In 2019/20, SOLS carried out 22,649 reviews, of which 12,822 decisions were subsequently cancelled or varied. 9,356 of the reviews related to VAT penalty cases where, in most instances, reasonable excuse was a consideration, leading to 81% of those decisions being varied or cancelled.

A similar picture arose in 2018/19 with SOLS reviewing 28,068 decisions and cancelling or varying 14,278 decisions. (Again, 14,905 of the total reviews related to VAT penalty cases, and 66% of decisions were cancelled or varied.)

Following a review, the majority of cases do not proceed to tribunal. Reviews are therefore an effective way to settle a dispute.

The reviews process is rigorous; most conclusions are countersigned by an officer of a senior grade to the review officer. They are also a quick, easy and cost-effective way to settle a dispute. The statutory time limit for reviews is 45 days (or a longer agreed time period). Conversely, having the tribunal determine an appeal is time consuming.

Requesting a statutory review would normally only incur a monetary cost if the customer seeks representation. As three quarters of reviews do not go onto appeal, and costs are generally higher for appeals in time and money, it is often more cost effective to initially request a review.

The reviews process can avoid unnecessary litigation, cost and stress, but customers can still appeal to tribunal if they disagree with a review conclusion.

Process and timing

Reviews can only be carried out once an appealable decision is made. When a caseworker makes a decision, they will tell the customer if they can appeal against the decision and what to do if they disagree. Examples of these include closure notices following an enquiry, assessments and information notices.

For indirect taxes (for example, VAT, excise or customs duty), the decision letter will include an offer of a review. Customers will have 30 days from the date of the decision to accept the offer, but if they have new information or arguments it is possible to delay the start of the review just in case agreement can be reached.

For direct taxes (for example, corporation tax or income tax), customers will have 30 days from the date of the decision to appeal to HMRC. Either at that stage, or later, they may request a review or they may be offered one. Again, if they have new information or arguments, then it would be useful to provide these to the caseworker to consider before the review process begins, as this may resolve the dispute.

Purpose of a review

The purpose of the review is to look at the decision again, not to assess new facts or evidence that haven't been considered by the caseworker. However, the review officer will give customers the opportunity to send in further information during the review period. The review officer will then decide if the appealable decision is:

- legally and technically correct;
- consistent with HMRC's policy; and
- consistent with HMRC's Litigation and Settlement Strategy.

Some disputes involving a direct challenge on HMRC's interpretation of legislation may need to be determined by the courts, since a review officer cannot override HMRC policy. However, even in these cases a review can often help to clarify the facts and the understanding of both parties.

Outcomes of a review

At the end of the review, the review officer will conclude if the decision is upheld, varied or cancelled. The review officer will write to the customer to explain their conclusion, their reasons and the customer's next options. If the decision is upheld or varied, and the customer disagrees with the review officer's conclusion, they will have 30 days from the date of the review conclusion letter to appeal to the tribunal.

To help this process operate smoothly, it is important that you and/or your client clearly explain to the review officer what your client disagrees with and why. Did they rely on any case law or other evidence to form that view? Do they have any further information to support their case? Conversely, it is also useful to know what they agree with, as this will help focus the review to the key points in dispute.

More information about appeals and reviews can be found in the Appeals reviews and tribunal guidance manual at bit.ly/35lgvzj.

How to be an executor

Lauren Marlow provides a simple guide setting out how to be an executor, tackling the main concerns for those who have not undertaken the role before

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KEY POINTS

What is the issue?
An executor is someone named in a will who is under a duty to properly administer the estate of the deceased. Ten of the most typical questions relating to the undertaking are set out in this article.

What does it mean for me?
The role of an executor involves, but is not limited to, locating assets and liabilities, submitting details of the estate to HMRC, paying any tax due, obtaining the grant of probate and distributing the estate in accordance with the terms of the will.

What can I take away?
An executor takes on a number of responsibilities, including applying for a grant of probate or grant of letters of administration, paying any necessary inheritance tax, settling liabilities and making payments or transferring assets to beneficiaries.

If you are appointed as an executor when the appointment is unexpected or you have not carried out the role before, it is likely you will have a lot of questions. Ten of the most typical questions that I am asked are set out below with my response to provide a simple guide on how to be an executor. As each administration can differ greatly, this guide is not a substitute for legal advice on your specific circumstances.

1. What is an executor?

An executor is someone named in a will who is under a duty to properly administer the estate of the deceased. Their role involves, but is not limited to, locating assets and liabilities, submitting details of the estate to HMRC, paying any tax due, obtaining the grant of probate and distributing the estate in accordance with the terms of the will. The appointment usually lasts six to 12 months for a relatively straightforward matter but may last several years if the estate is complex.

2. Who can be an executor?

An executor must be 18 years or over and have mental capacity.

You can still benefit under a will if you are appointed as the executor. It is quite common for people to name their spouse, children or other family members. It is also possible to name professional executors, such as solicitors or accountants. This may be done where the estate is complex, the family dynamic is complicated or the testator simply does not want to burden family members with the responsibility.

A maximum of four executors can be named on the grant of probate. Having more than four executors named in the will can complicate the administration, but in the event that happens the executors need to agree amongst them who will make the application.

3. How do I become an executor?

An executor's powers derive from the will and are confirmed by the court when the grant of probate is issued.

If there is no will (or no valid appointment of executors within a will), then an administrator will be appointed by the court under the succession regulations. An administrator's powers do not exist until the grant of letters of administration has been issued.

4. Do I have to act?

Simply, no. Just because you have been named as an executor does not mean you have to act; however, there are a few options that you should consider.

You do not have to deal with the administration on your own. You can instruct a solicitor to deal with the administration for you. As the executor, you will need to approve and sign all the documents but the solicitor can complete all of the work on your behalf.

By reserving powers, an executor can refrain from playing an active role in the administration of the estate but can be reappointed in the future if required. This option may be used when someone doesn't want to act or for practical reasons; for example, if one of the executors lives abroad and does not want to cause any unnecessary delays obtaining signatures.

By renouncing powers, an executor is completely removed as if he or she had never been appointed. In the event that the acting executor loses capacity or dies during the administration period, the executor that had renounced would not be able to take up the position to finalise the administration.

You can appoint an attorney to obtain the grant on your behalf. This is a less common option but can be adopted, usually for practical reasons. If only one executor is named, for example, then reserving or renouncing may not give a desired outcome. By appointing an attorney, you can retain some involvement and control whilst not having to complete the process yourself. You should be careful about carrying out any actions before you have thought through whether you want to accept the position. If you 'intermeddle' in the deceased's estate, you will not be able to renounce.

5. Who is entitled to a copy of the will?

Once the grant is issued, the will (and codicils, if any) becomes a matter of public record. Until that point, the disclosure of the will is at the sole discretion of the executor.

6. Can I be paid?

A lay executor cannot charge for their time incurred in administering an estate. They are, however, entitled to be reimbursed for reasonable costs incurred, such as mileage for visiting a probate property or the cost of obtaining the death certificates.

Unlike a lay executor, a professional executor can charge for their time. The professional executor will have ensured that the will contains a specific clause allowing them to charge for their services.

7. What is a grant?

Generally, to liquidate or transfer assets to the beneficiaries, you will need to apply for a grant of probate or grant of letters of administration. (The type of grant depends on whether or not there is a will.) This is a formal document confirming your authority to collect in all of the assets, to pay outstanding liabilities and tax due, and to distribute the estate in accordance with the terms of the will or intestacy.

8. What are my responsibilities?

Pre-grant

To administer an estate, you must first obtain information about the value of all of the assets and liabilities in the estate as at the date of death, including any gifts made in the seven years (or potentially 14 years in certain circumstances) before their death.

It will be necessary to contact each financial provider and instruct professional valuers where necessary for assets such as properties, personal possessions and business. If any of the assets are income producing, not only will you require the capital value of the asset, but also the value of any interest accrued but not credited. You will also need to ensure that a final income tax return is prepared from 6 April last to the date of death.

You will need to complete the Revenue account with the information ascertained. The form required will depend on the size and complexity of the estate. Typically, for small estates under £1 million where no inheritance tax is payable, the form IHT205 can be used. The form IHT400 should be used in all other situations, even if no tax is payable.

To apply for the grant, you will need to satisfy HMRC by completing the Revenue account. You must also to satisfy the Probate Registry by completing its process; typically, this involves completing form PA1 and signing a legal statement. The form sets out various details about you, the deceased and the size and nature of the estate. The form also identifies the will and codicils (if any) and confirms that you will perform your duties in accordance with the law and are accountable to the court.

Paying tax

Inheritance tax can broadly be split into two categories: tax payable immediately; and tax payable by instalments. Where inheritance tax is payable immediately, it must be paid in order to obtain the grant. HMRC has to send confirmation to the Probate Registry that any inheritance tax due has been settled before the Probate Registry will issue the grant. Certain types of assets can benefit from the option to pay inheritance tax in 10 annual instalments.

Inheritance tax becomes due at the end of the sixth month after the month in which the deceased died. Interest will start to accrue from the first day of the seventh month. Interest will accrue on inheritance tax payable immediately if it is not paid in time, as well as on inheritance tax payable in instalments.

Certain institutions will release funds to settle inheritance tax. If there is insufficient liquidity in the estate or the assets are with providers unable to release in advance of receiving the grant, then you may need to obtain a loan to settle the tax.

Inheritance tax is due on the worldwide estate of a UK domiciled individual. This may cause issues where there are insufficient assets in the UK to settle the tax liability for the worldwide estate. Cross-border estate administrations have added complication and professional advice is recommended.

If the estate is considered 'complex' by HMRC, then it will need to be registered. You must also pay any income tax or capital gains tax that arises during the administration process.

PROFILE

Name: Lauren Marlow
Position: Associate
Firm: Taylor Vinters
Email: Lauren.Marlow@taylorvinters.com
Tel: +44 1223 225292
Profile: Lauren Marlow is an associate in the private client division of the Entrepreneurial Wealth team at Taylor Vinters. Lauren advises both UK nationals and internationals in relation to succession planning, issues of domicile, wills and trust creation, including the administration of those complex estates. Lauren is an affiliate member of The Society of Trust and Estate Practitioners.

Post-grant
Once you have the grant, you will be able to collect in the assets and start to wind up the estate by settling liabilities and making payments or transferring assets to beneficiaries. An executor must produce a set of estate accounts detailing the administration's full financial activity. The estate accounts are disclosable to the residuary beneficiaries. If any of the assets have increased in value between date of death and date of disposal, there will be a capital gains tax liability. You should consider ways to mitigate capital gains tax, such as appropriation.

If any further assets or liabilities have come to light since completing the Revenue account, then a corrective account should be filed with HMRC and any additional inheritance tax paid.

9. What am I liable for?

You are personally financially liable for any loss resulting from a breach of duty, even if the mistake was unintentional. The beneficiaries have the right to bring a claim against you to recover losses.

All liabilities must be met from the estate prior to beneficiaries' entitlement under the will being satisfied. You can be held liable for non-payment of debts if you distribute to beneficiaries and fail to satisfy all debts in full.

You have a duty to distribute the estate in accordance with the will. If you fail to correctly interpret the terms of the will, you may incorrectly distribute the will and therefore be liable to those who should have benefited.

A warning: you need to ensure that all inheritance tax is paid, even where you have chosen to pay by instalments before transferring assets to a beneficiary. In the recent case of *Harris v HMRC* [2018] UKFTT 204 (TC), it was found that the executor, Mr Harris, was liable for the remainder of the £340,000 inheritance tax liability even though he had transferred the assets to the beneficiary on the understanding that the beneficiary would be responsible for the annual instalments. The beneficiary promptly sold up and moved to Barbados and could not be contacted. HMRC successfully pursued Mr Harris when it was unable to pursue the beneficiary.

If the recipient of a lifetime gift on which inheritance tax becomes due fails to pay the tax after 12 months from the month the deceased died, HMRC may seek the unpaid tax and interest from you. Whilst you have the right of reimbursement from the recipient of the lifetime gift, there is no guarantee they will still have the funds to reimburse you, especially given they have failed to satisfy the tax liability.

10. Is there any protection available?

You have the option to use a statutory notice which should be placed in a local paper for each area that the deceased owned property, as well as the London Gazette, to inform any unknown creditors of the death.

By placing an advert in the relevant papers, you protect the executors from unknown creditors and beneficiaries, providing distribution is not made until the prescribed time has lapsed. If you do not place a notice and a creditor subsequently comes forward after the estate has been distributed, then you may have some personal liability for an unidentified debt. The notice will not prevent an unknown creditor from pursuing the residuary beneficiaries.

You also have the option to seek legal advice from a solicitor who specialises in the administration of estates in order to ensure that you carry out the process correctly.

As an executor, during the administration period you hold the estate on trust for the beneficiaries. You may also find that you have been named as a trustee of a will trust. The role of a trustee is different to that of an executor and I shall explore the role of a trustee in part 2 of this piece.

CHARTERED INSTITUTE OF TAXATION

Results and prizes

November 2020

The Chartered Institute of Taxation, the principal body in the United Kingdom concerned solely with taxation, announced on 28 January 2021 the results from its examinations taken by 1,396 candidates in November 2020. In addition, 885 Tax Pathway candidates sat a combination of ATT and CTA papers.

The Institute President, Peter Rayney, commenting on the results said:

"I would like to offer my congratulations to all the candidates who have made progress towards becoming a Chartered Tax Adviser as a result of passing one or more papers at the November 2020 examination, especially in this extraordinary time in both their professional and personal lives.

"308 candidates have now successfully completed all of the CTA examinations and we very much look forward to welcoming them as members of the Institute in the near future. Included in this figure are 77 candidates who were on the ACA CTA Joint Programme and 43 candidates who have now fully completed the ATT CTA Tax Pathway by passing the CTA element.

"We will resume holding Admission Ceremonies when guidelines covering such large scale events permit."

CTA prizes and awards

The Institute Medal for the candidate with the best overall performance attempting the Awareness Paper and two Advanced Technical Papers (all at the same sitting).
The medal has been awarded to Sarah Rebecca Ling of London, where she is employed by Macfarlanes LLP.

The Gilbert Burr Medal for the candidate with the highest mark in the Advanced Technical Paper on Taxation of Owner-Managed Businesses.
The medal has been awarded to Hugo Kirby of East Leake who is employed by Blick Rothenberg Ltd in London.

The Victor Durkacz Medal for the candidate with the highest mark in the Advanced Technical Paper on Domestic Indirect Taxation.
The medal has been awarded to Sandeep Dey of Birmingham, where he is employed by Deloitte.

The Spofforth Medal for the candidate with the highest mark in the Advanced Technical Paper on Inheritance Tax, Trusts & Estates.
The medal has been awarded to Amy Jayne Brown of London where she is employed by Dixon Wilson Chartered Accountants.

The Ronald Ison Medal for the candidate with the highest mark in the Advanced Technical Paper on Taxation of Individuals.
The medal has been awarded to Thomas Andrew of Leeds.

The John Tiley Medal for the candidate with the highest mark in the Advanced Technical Paper on Taxation of Major Corporates.
The medal has been awarded to Charlotte Page of Cambridge, where she is employed by Price Bailey LLP.

The Wreford Voge Medal for the candidate with the highest mark in the Advanced Technical Paper on Cross-Border Indirect Taxation.
The medal has been jointly awarded to Joseph Oliver Eloi of Chorlton who is employed by EY in Manchester and Christopher Alexander Stones of Leigh who is employed by Grant Thornton UK LLP in Manchester.

The Ian Walker Medal for the candidate with the highest mark in the Awareness Paper.
The medal has been awarded to Nicholas Alexander Skidmore of Brierley Hill who is employed by Azets in Walsall.

The Avery Jones Medal for the candidate with the best performance in the Application and Professional Skills Paper.
The medal has been awarded to Patrick Boch of Swanscombe practising with Old Square Tax Chambers in London.

The Chris Jones Prize for the candidate with the highest total marks in two Advanced Technical Papers (taken at the same sitting).
The prize has been awarded to Hussein Afzal Bhaiji of Rochdale.

The Croner-I Prize for the candidate with the highest distinction mark in an Advanced Technical paper.
The prize has been awarded to Hugo Kirby, winner of the Gilbert Burr Medal.

The Medals, Prizes and Distinctions are awarded for each examination paper subject to the discretion of Council and the attainment of a satisfactory standard, regardless of whether the examination requirements for membership have been met.

The John Beattie Medal has not been awarded on this occasion.

CTA distinctions

Advanced Technical: Taxation of Owner-Managed Businesses
Hussein Afzal Bhaiji (Rochdale)
Emily Gould (Hillier Hopkins LLP, Watford)
Benjamin Kearns (EY, Manchester)
Hugo Kirby (Blick Rothenberg Ltd, London)
Nanki Kour (KPMG LLP, London)
Tanya Dawn Potter (Bishop Fleming LLP, Torquay)

Advanced Technical: Domestic Indirect Taxation
Sandeep Dey (Deloitte, Birmingham)

Advanced Technical: Inheritance Tax, Trusts & Estates
Veronika Boumova (Barnstaple)
Amy Jayne Brown (Dixon Wilson Chartered Accountants, London)
Courtney Jordan Childs (EY, Exeter)
Zoe Louise Fassam (BDO LLP, Manchester)
Rebecca Jones (Ensors Accountants LLP, Bury St Edmunds)
Ying Xi Tan (BDO LLP, London)

Advanced Technical: Taxation of Individuals
Thomas Andrew (Leeds)
Daniel Bayliss (Bury St Edmunds)
Hussein Afzal Bhaiji (Rochdale)
Kieran Hancock (PKF Francis Clark LLP, Plymouth)
Oliver Horrocks (Roffe Swayne, Godalming)
Harriet Alice Jones (PEM, Cambridge)
Melissa McKeon (Mazars LLP, Leeds)
Matt Salter (Wellden Turnbull LLP, Cobham)
Joanna Leigh Temple (EY, Bristol)
Max Turner (Rawlinson & Hunter, London)
Jade Varden (Magma Partners Ltd, Rugby)
Henry Winter (London)

Advanced Technical: Taxation of Major Corporates
Christopher Beevor (Berlin, Germany)
Lloyd Coulson (Forrest Brown Ltd, Bristol)
Charlotte Page (Price Bailey LLP, Cambridge)
Allison Christine Ramsay (EY, Glasgow)
Zain Siddiqui (BDO LLP, London)
Gemma Christiana Szlichta (KPMG LLP, Watford)
Tristan Andrew Tse (KPMG LLP, London)

Application and Professional Skills: Taxation of Individuals
Patrick Boch (Old Square Tax Chambers, London)

Application and Professional Skills: Human Capital Taxes
Megan McDonald (Anderson Anderson & Brown LLP, Aberdeen)
Xiao Yun Quay (EY, London)

Application and Professional Skills: Inheritance Tax, Trusts & Estates
Luke Bowyer (PKF Francis Clark LLP, Exeter)

Distinctions are awarded to candidates whose answers reflect an exceptional level in the Advanced Technical Papers and the Application and Professional Skills Papers. Distinctions are not awarded for the Awareness Paper.

CTA results

In addition to success in the required papers and Computer Based Examinations the criteria of experience must be satisfied to be eligible for membership of the Institute. The following candidates have met the examination requirements for membership.

The candidates denoted by an * have met the examination requirements for membership by passing their final Computer Based Examination(s), having previously passed the written papers from 1 July – 31 December 2020.

A
Aguiar S (Reading)
Alford H (Bristol)
Allan T P W (Fleet)
Andrews D (London)
Anwar S (London)*
Armitage S (Guildford)

B
Bahanova K (London)
Bain V (Inverness)
Barker R (London)
Barr T (London)
Barratt J (Hornchurch)
Barry J (Bristol)
Bartlett L (Wymondham)
Beevor C (Berlin, Germany)
Bhaiji H A (Rochdale)
Bhuiyan M (Tilbury)
Birdee D S (London)
Blakemore B (Rotherham)
Bong J (Birmingham)
Bradbury M (Flitwick)
Brailey L (London)
Brindley D (Selby)
Brooks R (London)
Brown A (London)
Bukalak A (Truro)
Bull C (Taunton)
Byers L (Worthing)

C
Card J (Braintree)
Chan J (Dartford)
Chan S (Hong Kong)
Charnock D (Liverpool)
Chau K (Shirehampton)
Cheng Klc (Edinburgh)
Childs C (Paignton)
Clarke S (Salford)
Clarke-Duguid J (Cheltenham)
Clothier J (Bristol)
Coates M (Westcliff On Sea)
Corbett A (Aberdeen)
Cornick R (Cardiff)
Cusack P (Worcester)

D
Daniels P (Walsall)
Davies J (St Helens)
Davies M (Birmingham)
Davies A (Llanelli)
Davies M (Hornchurch)
Denby M (Cambridge)
Devonald D (Gerrards Cross)
Dickinson J (Penrith)
Driver C (Scunthorpe)
Drummond M (Berwick-Upon-Tweed)
Dunne K (Nuneaton)

E
Eaglestone J (London)
Eastwood A (Tunbridge Wells)
Edwards G (Worcester)
Eveleigh J (Reading)

F
Fagan G (Waltham Cross)
Fassam Z L (Wallasey)
Field C (Pontypool)
Fletcher C M (Bristol)
Fox J (Beverley)
Franco M (London)
Freeborough D (Newbury)
Fry D (Leeds)

G
Gainham L (Kingswinford)*
Gammon C (Chislehurst)
Giles C E (Yeovil)
Gillan J (Belfast)
Ginnelly J (Newcastle Upon Tyne)
Godsave W (London)
Goeieman S (Sutton)
Gomez Gonzalez R (London)
Gordon A (Sittingbourne)
Gould E (Watford)
Grimley L (Armagh)

H
Halai V (London)
Halliwell R (Rossendale)
Hamilton L (Colchester)
Hardy K (Weymouth)
Harrington A J (Norwich)
Harris J (London)
Hart A (Norwich)
Heane B (Fleet)
Hedley A (London)
Henriksen C (Diss)
Herring C (London)
Hicks C (Lechlade)
Hill P (Eastbourne)
Hill H (Burnham-On-Sea)
Hobbs M (Derby)
Hollom F (Putney)*
Holton G (London)
Holyoake T (Peterborough)
Hotchen B (London)
Hughes S (Portsmouth)
Hume J (London)
Hutchins C (Bridgwater)

I
Ickowicz M (London)
Idrees M (Aldershot)
Ilderton B (Newcastle Upon Tyne)
Imir M (Twickenham)
Insley D (Colchester)
Ip K W H (Paisley)
Ivey J (Tonypandy)

J
Jackson D (Cardiff)
Jennings E (Sevenoaks)
Johnson S (Twickenham)*
Jones H (Ely)
Jordan S (London)
Jovanovic M (Cookhill)

K
Kaleel A (Rotherham)
Kearns B (Wigan)
King G (Reading)
Kundi A (Wolverhampton)

L
Landers C (Folkestone)
Lane G (Melrose)
Lecky A (Ballinamallard)*
Lee Y S (Ewell)
Liddiard S (Coventry)
Lim Cooper M Y (London)
Ling S (London)
Lynn L (Sunderland)
Lynn M (Leeds)

M
Madden M (Epsom)
Mainwaring E L M (Exeter)
Mansfield L (Armagh)
Marriage E (Edinburgh)
Mcatear J (Penrith)
Mccallum F P G (Edinburgh)
Mcdonald M (Aberdeen)
Mcgaw J (Newport)
Mchugh N (Stockport)
Mckeon M (Leeds)
Mclaughlin A (Londonderry)
Mee V (Leicester)
Meek S (Hamilton)
Meigh F T (Edinburgh)
Messruther S (Guildford)
Mills J (London)
Mills S (Colchester)
Mistry K (London)
Mitchell C (London)
Moore J (Cheshire)
Moran A (Sevenoaks)
Morgan D (Bristol)
Morrison S (Oxford)
Moss-Robins A (Wickford)
Mujtaba M (London)
Murrell G (Sutton Coldfield)

N
Nair S (Langley)
Nathu A K (London)
Nguyen T H P (Bristol)
Noad J (Birmingham)
Norris M (Stockport)

O
O'Boyle A (London)
O'Brien M (London)

P
Page C (Cambridge)
Papamarkidou M (London)
Parr A (Seaton)
Patel R (Pinner)
Paul R (Spalding)
Payne D (Southampton)
Payne S (Dunmow)
Perez-Durias P (Richmond)
Perrott A (Taunton)
Perry W (London)
Phillips R (Falmouth)
Pickles G (Poole)
Pigeon L (Newport)

Q
Quay X Y (London)
Quinn N (Belfast)

R
Ramsay A C (Glasgow)
Ranaldi C (Crawley)
Rees S (Caerphilly)
Reynolds J (Beverley)
Roberts V (London)
Roberts E N (Hereford)
Rocque N (London)
Romanelli L (London)
Rose D (Rayleigh)
Rossiter M (London)
Rowe A (Swindon)
Rowley L (Tamworth)
Russell E (Huddersfield)
Ryan S (Altrincham)

S
Saleh M (Milton Keynes)
Salter A (Bristol)
Sapsford H S (Lodon)
Shala G (London)*
Shaw G (Tunbridge Wells)
Simmons N (London)
Sivakumar T (London)
Sloane E (Preston)
Smith L (Coleford)
Smith I (Wymington)
Smith R (Kelso)
Smith L C D (London)
Smylie S (Belfast)
Smyth E (Harrogate)
Snape R (Ossett)
Spencer A (Falmouth)
Steele R (London)
Stoller A (Dagenham)
Sutherland A (London)
Sweeney M (Birmingham)
Symonds K (Torquay)

T
Tan Y X (London)
Taylor H (Cheltenham)
Taylor L (Margate)
Tello Tajdin Z (Hayes)
Thomas A (London)
Thompson G (Gateshead)
Trudgett R (Farnham)
Turner M (London)
Turner M (London)

U
Usifo O (London)

V
Vaghela P (London)
Varden J (Nuneaton)
Verlinden L (Newmarket)
Verner L (London)
Vora M (London)

W
Wahab S (Birmingham)
Ware C (Exeter)
Watson L A (London)
Wei W (London)
Wheeler O (Newton Aycliffe)
White M (Rushden)
Whitfield D (Shrewsbury)
Willbourne-Benfield W (Southampton)
Williams R H (Evesham)
Wilson A (London)
Winter H (London)
Wong Z (London)
Wong S L A (Milton Keynes)
Wood T (Preston)
Wood B (Northampton)

Y
Yee S W (Warrington)

The following candidates have met the ACA CTA Joint Programme examination requirements for the Chartered Institute of Taxation and The Institute of Chartered Accountants in England and Wales as a result of the November 2020 examination session and are eligible to apply for membership of both bodies subject to meeting the experience requirements.

A
Aldcroft C (Leigh)
Ames E (Rushden)
Andrew T (Leeds)
Aslam T (Altrincham)

B
Barnett-Mobbs A (Leicester)
Barron M (Ware)
Bates S J (London)
Bayliss D (Bury St Edmunds)
Bernstein M (Pinner)
Berry-Shaw C (Ashton Under Lyne)
Biggs J (Taunton)
Bignal L E (Watford)
Bosley S (Bicester)
Bush O (Wimbledon)

C
Calow A (Bolton)
Chelliah L M (London)
Clee M (Bristol)
Coffey N (Lincoln)
Collier S (Ibstock)
Cooper H (London)
Copp J (Fordingbridge)
Cunningham T (Manchester)

D
Doshi H (Ashford)
Downing W (London)
Drury D (Greenford)

E
Elliott L (London)

F
Fenwick K (London)
Finch J (Reading)

G
Gardner G (Longhope)
Good D (Bristol)
Goss M (Milton Keynes)
Griffiths N (Southampton)

H
Haughey C (London)
Hodgkinson N (Downham Market)
Hodgson M (Congleton)

J
Jhalla A (Worcester Park)
Jones D (Ivybridge)
Joshi S (London)

K
Karim R (Grimsby)
Keetley P (London)
Kent J (London)
Khushu A (Cambridge)
Knights H (Norwich)
Kruszewski K L (Billericay)

L
Langley J (Peterborough)
Letasi S (Birmingham)

M
Morrow C (London)

N
Nicolasora N (Havant)

P
Panjabi A (Reading)
Parry A (Wrexham)
Patel T (London)
Paull L (Bristol)
Procter D (Bishops Stortford)
Prothero S (Lewisham)

R
Rainford D (Hove)
Raza S (Birmingham)

S
Salter M (Oxted)
Seville J (Worcester Park)
Shirley N (Guildford)
Shorland J W P (Reading)
Smedley R (London)
Summerton H C (St. Albans)
Szlichta G C (Basingstoke)

T
Telford J L (Harrogate)
Tomlin R (Romsey)
Tse T A (London)
Tyers H (London)

W
Ward D (Lincoln)
Warrington R (Birmingham)
Waterfield H (London)
White O (London)
Wilcock N (Chester)
Williams J J (Chester)
Wingfield W (Sudbury)
Woodcock K (Leeds)

Y
Young W (Birmingham)
Yule A (Glasgow)

ASSOCIATION OF TAXATION TECHNICIANS

www.att.org.uk

Results and prizes

November 2020

The Association of Taxation Technicians, the oldest and largest body concerned solely with tax compliance, announced on 28 January 2021 the results of its examination taken by 1,179 candidates in November 2020. The Association reports that a high standard of performance was achieved by many candidates.

The Association President, Jeremy Coker, commenting upon the results said: "I am delighted to congratulate all the successful candidates from the November sitting of our exams especially in this extraordinary time in both their professional and personal lives. In total 2,354 papers were sat and 1,862 passes were achieved with 110 distinctions awarded for outstanding performance.

"It was the first time that our whole complement of papers was sat remotely and, while that posed particular challenges, I would like to commend mostly the candidates, but also employers and our examination team who displayed remarkable adaptability, resourcefulness and resilience to make this sitting a success.

"Our modular system means that candidates can study at their own pace, whether they are working towards full membership or simply wishing to obtain one or more Certificates of Competency in their specialist area. This flexibility continues to be popular.

"Even though we did have an online admission ceremony late last year, I look forward to meeting as many new members as possible at one of our admission ceremonies when it becomes safe to hold these again."

ATT prizes and awards

The Medals and Distinctions are awarded for each examination paper subject to the discretion of Council and the attainment of a satisfactory standard, regardless of whether the examination requirements for membership have been met (with the exception of the Association Medal).

The Association Medal

The Association Medal has been awarded to Sheena Patel of Croydon who is employed by Deloitte in London.

The Association Medal is awarded to the candidate taking three tax papers at one sitting obtaining the best overall result including having passed the Computer Based Examinations in Professional Responsibilities & Ethics, Law and Principles of Accounting.

The Ivison Medal

The Ivison Medal has been awarded to Meaghan Lily King of Hornchurch who is employed by PwC in London.

The Ivison Medal is awarded to the candidate with the highest mark in Paper 1 – Personal Taxation.

The Jennings Medal

The Jennings Medal has been awarded to Anrika Thinju of Greenford who is employed by EY in London.

The Jennings Medal is awarded to the candidate with the highest mark in Paper 2 – Business Taxation.

The Collingwood Medal

The Collingwood Medal has been awarded to Thomas Kenzo Prior of London, where he is employed by EY.

The Collingwood Medal is awarded to the candidate with the highest mark in Paper 3 – Business Compliance.

The Stary Medal

The Stary Medal has been awarded to Vikki-Louise Emery of Leicester, where she is employed by Newby Castleman LLP.

The Stary Medal is awarded to the candidate with the highest mark in Paper 4 – Corporate Taxation.

The Kimmer Medal

The Kimmer Medal has been awarded to Natalie Williamson of Radstock who is employed by Royds Withy King LLP in Bath.

The Kimmer Medal is awarded to the candidate with the highest mark in Paper 5 – Inheritance Tax, Trusts & Estates.

The Gravestock Medal

The Gravestock Medal has been awarded to Harris Bone of Leeds where he is employed by RSM UK Management.

The Gravestock Medal is awarded to the candidate with the highest mark in Paper 6 – VAT.

The Johnson Medal

The Johnson Medal has been awarded to Gunay Ahmadli of Manchester where she is employed by KPMG LLP.

The Johnson Medal is awarded to the candidate with the best overall performance when passing the Computer Based Examinations in Professional Responsibilities & Ethics, Law and Principles of Accounting within a six month period.

The Tolley Prize

The Tolley Prize has been awarded to Thomas Prior, winner of The Collingwood Medal.

The Tolley Prize is awarded to the candidate taking three tax papers at one sitting and obtaining the highest total marks on those three papers.

The President's Medal

The President's Medal has been jointly awarded to Jessica Ka-Wing Lam of London who is employed by Deloitte in Manchester and Jamie Symms of Basingstoke where he is employed by RSM UK Management.

The President's Medal is awarded at the discretion of the President to an outstanding candidate or candidates not otherwise eligible for a prize.

Prizes and Medals are only awarded provided the papers are of a sufficiently high standard.

Distinctions

Passes with Distinction for each Certificate paper are listed at the end of this document.

Distinctions are only awarded to candidates whose answers reflect an exceptional level in a paper.

ATT results

In addition to success in the required Certificate papers and Computer Based Examinations the criteria of experience must be satisfied to be eligible for membership of the Association.

The following candidates have met the examination requirements for membership, either by passing their final Certificate paper(s) in the November 2020 session or by passing their final Computer Based Examination(s), having previously passed the three required Certificate papers (denoted by an *) from 1 July – 31 December 2020.

A
Abad Algarra A (London)
Abbas W (Romford)
Abdon Moura Bahia Silva D (London)
Abraham N (Bedford)
Adnan S (Surrey)*
Ahmad H (Reading)
Ahmadli G (Manchester)*
Ahmed M M (London)
Ainley E J (Bradford)*
Akers K J (Swindon)*
Akhter F (London)*
Ali M (London)
Ali N B (London)*
Andreeva Z K (Croydon)*
Anson F (Newcastle Upon Tyne)*
Anwar S (London)*
Ashcroft M (Rugby)
Ashton M (Bideford)
Azizi S (London)*

B
Bairstow G (Salisbury)*
Balamurugan N (Bangalore, India)*
Balciute G (Bristol)
Bandey H (London)
Banks L (Cramlington)*
Bansal P (London)
Barras A (London)*
Barry J (Bristol)*
Bartholomew K (Leeds)
Batchelor G (Manchester)
Batelt P (Reading)
Bateson T (Reading)
Baulk J (York)*
Beams N (Stevenage)
Beckinsale T (Cardiff)*
Belford D (Birmingham)
Bell K (Selby)*
Belozorcika L (Epsom)*
Bennett A (Belfast)
Bennett A (London)
Bentley E (Whitley Bay)*
Bird A (Leicester)
Bloomfield L (Darlington)
Bolton O (Bristol)
Bowen T H (Merthyr Tydfil)*
Bowker K (Nottingham)*
Brassey S (Newport)
Braybrooke E (Ely)*
Brooke J (Abingdon)*
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Kurt M (Welwyn Garden City)

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Luo S (London)*

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Mariga L (Luton)*
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Martin-Luce A (Littleborough)*
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Pattani C (Pinner)*
Paul C (Buckingham)*
Paunas R (Manchester)*
Pecheanu L (Bramshott)
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Pointer B M (Romsey)*
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Powe H L (Leicester)
Power J R D (Southend-On-Sea)
Pratheepan Y (Ilford)*

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Rana U (Hayes)
Randhawa K K (Isleworth)
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Raval R (Bushey)
Reddish Sr (Devon)*
Redpath B (Wotton-Under-Edge)
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Round C (Birmingham)
Rudge S (Ruislip)*

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Scheffler M (Pinvin)*
Score E J (Yeovil)*
Scott C R (Worthing)
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Thorpe B (Cardiff)
Todorova L (Surbiton)*
Tollafield B (Exeter)*
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Tucker K (Reading)
Turner T (Buntingford)*

U
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Usmani A (Birmingham)*

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Veriah C (London)*
Volkovs M (London)

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Walker E (Bury St. Edmunds)
Walters J R E (Winsford)*
War K S (London)*
Watson H (Sherborne)
Watson A J (Appley Bridge)
Webb M (Romford)*
West L (Shrewsbury)*
West-Kelsey A (London)
Wheeler C E (Colchester)
Wilding L (London)*
Wilkinson A (Darlington)
Williams K (London)
Williamson J (Egham)*
Willis L A (Luton)
Wilson M (London)*
Woodcock B (Cambridge)*
Wright W O (Ware)
Wright M (Leeds)*
Wyatt T F (Manchester)*

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Paper 1 – Personal Taxation
Baker J (Pulborough)
Barker L (Leeds)
Barraclough B (Newcastle upon Tyne)
Blade M (London)
Braans M (London)
Camfield J (Aylesbury)
Chan E (Reading)
Cooper J (Leatherhead)
Corbett O (Barnet)
Dalgleish A (London)
Dhillon R (Hinckley)
Ellard S (Edgware)
Fuller G (Southampton)
Gao R (Sale)
Hartshorn M (Swindon)
Kanani Z (Morden)
Karim A (London)
Kehoe D (London)
King M (Hornchurch)
Kumar S (Grays)
Kyriacou R (London)
Lam J K (London)
Lane K (Richmond)
Lau Q (Hitchin)
Lindner W (Oxted)
Mather F (Gerrards Cross)
Mckenna N (Glasgow)
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Noble C (Bristol)
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Paul J J (London)
Perry J (Chesterfield)
Prior T (London)
Shaikh F (Wembley)
Sheridan C (Birmingham)
Smith S (Aberdeen)
Stewart R (Newtownabbey)
Symms J (Basingstoke)
Ta D (Reading)
Taylor L (Reading)
Ternavskaya V (London)
Thompson V (London)
Towes D (Newcastle upon Tyne)
Walker E (Bury St. Edmunds)
Ward J (Nottingham)
Wells H (London)
Whiteside H (Derby)

Paper 2 – Business Taxation
Blackman J (Birmingham)
Camfield J (Aylesbury)
Carroll B (Walsall)
Chan E (Reading)
Chapagain A (Woking)
Clark H T (Watford)
Crean C (London)
Dalgleish A (London)
Duggan L (St Helier, Jersey)
Hendon A (Barry)
Hendy J (Bristol)
Herrtage V (Northampton)
Hughes E (London)
Hunt D (Faversham)
Jackson L (Middlesbrough)
Khan A (Bradford)
Knight H (Ashford)
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Maw E R (Sunderland)
Newman H (Swindon)
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Spiers K (Newry)
Stewart R (Newtownabbey)
Symms J (Basingstoke)
Taylor L (Reading)
Ternavskaya V (London)
Thinju A (Greenford)

3 – Business Compliance
Cooper J (Leatherhead)
Hendon A (Barry)
Lindner W (Oxted)
Mather F (Gerrards Cross)
Patel S (Croydon)
Prior T (London)
Reakes-Williams E (London)
Riley-Lowe C C (Torquay)
Sykes J (Wetherby)
Ta D (Reading)

4 – Corporate Taxation
Camfield J (Aylesbury)
Emery V-L (Leicester)
Farthing A (Hassocks)
Knight H (Ashford)
McLewee N (Steyning)
Symms J (Basingstoke)
Tailor P (London)

5 – Inheritance Tax, Trusts and Estates
Argo W (Rickmansworth)
Hadley W (Winchester)
Hale P (Windsor)
Williamson N (Bath)
Wong A (London)

6 – VAT
Bone H (Leeds)
Lam J K (London)
Metcalfe L (Bristol)
Strisiver C (Manchester)
Woodward T (Teddington)

Back to the past

Keith Gordon looks at a case in which an unexpected capital gains tax bill led to a taxpayer suing her father

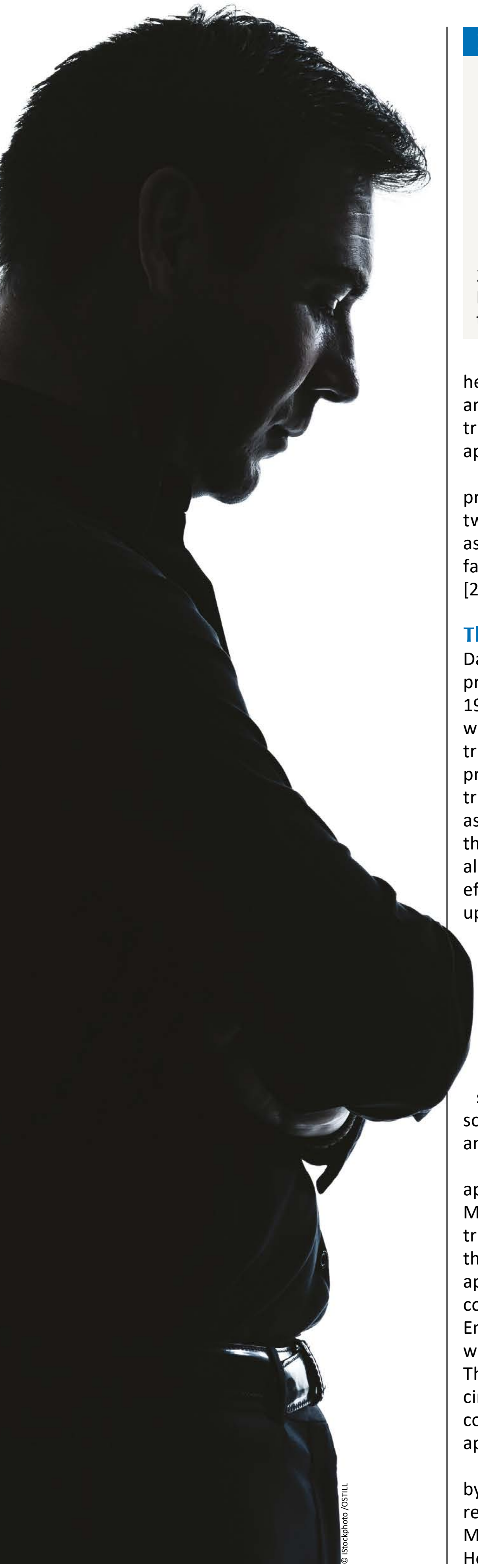
KEY POINTS

- **What is the issue?**
In the case of *Mackay v Wesley*, evidence before the court suggests that an individual was neither given any advice as to the nature of the documents she was signing nor to the consequences of her doing so.
- **What does it mean for me?**
Eight years later, a letter from HMRC advised her that, as a trustee, she was liable for any capital gains tax liability of the trust, a liability which HMRC believed to be in the region of £1 million plus interest.
- **What can I take away?**
Underlying this case is, of course, the salutary lesson of ensuring that one is aware of the nature and significance of the documents one is signing.

I should make it clear that this is a case with which I had some background involvement. In 2013, HMRC amended the tax return previously made by the Ellen Morris 1990 Settlement so as to assess approximately £1 million of capital gains tax. It was HMRC's case that the trust had participated in what is often known as the 'Round the World' tax scheme in the course of the 2002/03 tax year.

That scheme is discussed in my article, 'Around the world in 73 days' in the context of the *Smallwood* case in the September 2010 issue of *Tax Adviser.* In brief, the scheme sought to avoid capital gains tax by taking advantage of the then double tax agreement between the UK and Mauritius by ensuring that capital gains were realised whilst the trust was resident in Mauritius. However, to succeed, it was necessary for the trust to become UK-resident (by the appointment of UK trustees) before the end of the tax year in which the gains were realised.

Although HMRC considers that the *Smallwood* case (which proceeded to the Court of Appeal) demonstrates that the scheme is ineffective, it is generally recognised that each case will turn on its own facts. That point was the basis of the appeal against HMRC's amendment to the trust's 2002/03 tax return, which was



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heard by the First-tier Tribunal last January and, at the time of writing, where the tribunal's decision is still awaited. In that appeal, I represented the taxpayers.

This article, however, concerns parallel proceedings in the High Court, between two of the individuals identified by HMRC as the UK trustees, Nicola Mackay and her father, David Wesley (*Mackay v Wesley* [2020] EWHC 3400 (Ch)).

The facts of the case

David Wesley and his wife were the principal beneficiaries of the Ellen Morris 1990 Settlement ('the trust'). The trust was resident in the Isle of Man, with trustees on the island. As the trust was pregnant with capital gains, the Isle of Man trustees took advice from UK advisers to ascertain whether there was any planning that would allow these gains to be allocated to the beneficiaries in a tax-efficient fashion. The trustees decided upon the Round the World scheme and set the ball rolling during the 2002/03 tax year.

In due course, Mauritian trustees were appointed and the previous trustees retired. The Mauritian trustees subsequently realised the capital gains. Aware of the perceived benefits of the scheme, the Mauritian trustees then sought to retire later in the same tax year and be replaced by UK-resident trustees.

The natural candidates for appointment as UK trustees were Mr and Mrs Wesley and, perhaps, a professional trustee as well. Initially, it would seem that these three parties would indeed be appointed as trustees, the third being a corporate entity under the control of English solicitors. However, Mrs Wesley was in the latter stages of terminal cancer. The solicitors decided that under the circumstances it would be better for the couple's adult daughter, Mrs Mackay, to be appointed in her stead.

Paperwork was effected in March 2003 by which the Mauritian trustees would retire and be replaced by Mr Wesley, Mrs Mackay and the corporate trustee. However, as has subsequently become clear, Mrs Mackay's appointment was not completely straightforward and merited the intervention of the High Court.

Not only was Mrs Mackay having to cope with the imminent death of her mother, but she had recently suffered a particularly traumatic still birth of a daughter and, whilst her husband was out at work, also had primary care of the couple's other daughter, then a toddler.

Reflecting on her state of mind at the time, Mrs Mackay said she was 'consumed by grief and truthfully incapable of making any decisions'.

The evidence before the court suggests Mrs Mackay was neither given any advice as to the nature of the documents she was signing nor to the consequences of doing so.

The evidence before the court suggests that Mrs Mackay was neither given any advice as to the nature of the documents she was signing nor to the consequences of her doing so. In earlier discussions, Mr Wesley had remarked that he recalled no discussions with his daughter about the documents and that 'he simply asked [her] to sign them because that was what [the solicitors] wanted and in his mind it was a matter of process rather than choice'.

Mr Wesley also accepted that, at the time, he exerted influence over the family and that financial matters were generally left to him. The documents were presented to Mrs Mackay without advice from him or the solicitors and he simply asked her to sign them. In his mind, notwithstanding the trust structure, the money was his to do with as he wished.

This was consistent with other evidence from Mrs Mackay who commented that she was not presented with any choice but to follow her father's instructions. Mrs Mackay's sister (then aged 17) described the family dynamic as follows: 'Refusing him was simply never an option we felt we had at that time. Questioning him would result in our being shouted at and told "just do it".'

Mrs Mackay had no appreciation of what she had signed until September 2011 (i.e. eight and a half years later) when a letter from HMRC addressed to her advised her that, as a trustee, she was liable for any capital gains tax liability of the trust, a liability which HMRC believed to be in the region of £1 million, with what was then already nearly eight years' worth of interest

The subsequent nine years have proved to be an emotional rollercoaster for Mrs Mackay. Events included Mrs Mackay and her father being sidelined in the litigation of the trust's appeal against HMRC's amendment; finding out that the appeal had been struck out by the First-tier Tribunal; and Mrs Mackay facing enforcement action from HMRC in the County Court. However, I was able to ensure that the County Court proceedings would be put on hold and to get the appeal reinstated in the tribunal, with the full hearing eventually taking place early last year.

In the meantime, Mrs Mackay took steps in the High Court with a view to having her appointment as a trustee set aside. As the corporate trustee had been dissolved, the proceedings were commenced with Mrs Mackay as claimant and her father as the sole defendant.

Mrs Mackay advanced four lines of argument:

- the doctrine of *non est factum*, whereby the claimant argues that the document signed was of a materially different nature from that which she thought she was signing;
- lack of (mental) capacity;
- mistake (for which see my article 'One *Futter* in the grave for *Hastings-Bass*' in the July 2013 issue of *Tax Adviser*); and
- undue influence, by which Mrs Mackay argued that she signed the form only because of the undue influence exerted over her by her father.

Before a Chancery Master, Mrs Mackay failed on all four grounds. Furthermore, the Master held that there was insufficient evidence that rescinding Mrs Mackay's appointment would operate justly and fairly, although he would have allowed further evidence to be adduced if that had been the only hurdle (see *Mackay v Wesley* [2020] EWHC 1215 (Ch)).

Mrs Mackay was given permission to appeal to a High Court judge and to make a minor change to the nature of her claim. Rather than challenging her *appointment* as a trustee, Mrs Mackay reframed her claim so as to seek the rescission of her *acceptance* of that appointment. In the course of her appeal, Mrs Mackay pursued the arguments of mistake and undue influence, as well as challenging the Master's view that a rescission could not operate justly and fairly.

The court's decision

The case came before Mr Justice Meade. He accepted that the circumstances gave rise to undue influence, including the father's strong and controlling personality and the daughter's extremely traumatic health issues at the time.

The modest change of the nature of the claim meant that the court was no longer being asked to rescind the whole of the deed of appointment, which would have left the Mauritian trustees in place. Accordingly, the court's consideration of the practicalities and the overall fairness would be limited to considering the consequences of leaving the remaining UK trustee (Mr Wesley) as the sole trustee.

Underlying this case is the salutary lesson of ensuring that one is aware of the nature and significance of the documents one is signing.

By reference to earlier case law, the court recognised that the only practical issue was the matter of excising Mrs Mackay's signature from the deed of appointment as the remainder of the deed could remain intact. This, therefore, left only the question of fairness.

At the earlier hearing, the Master had held that Mr Wesley could not complain of unfairness, given that it was his undue influence that was the cause of Mrs Mackay's difficulty. So far as the corporate trustee was concerned, the Master considered the matter finely balanced and (but for his other concerns) would have required further evidence.

On the appeal, the judge, however, was presented with evidence to the effect that the corporate trustee was aware of the potential liabilities, had sought to withdraw from the appeal in the tribunal in 2016, had gone into liquidation and was now dissolved. Furthermore, there was no evidence that the corporate trustee had ever pursued or asserted a right to contribution from other trustees, whether before or after it went into liquidation.

In the circumstances, the judge considered that rescinding Mrs Mackay's acceptance of the appointment would not cause any unfairness to the corporate trustee.

The only other potentially interested party is HMRC, as the rescission of Mrs Mackay's acceptance of her appointment as trustee could (subject to the outcome of the tribunal proceedings) remove one possible target from any subsequent enforcement proceedings in the County Court. However, the judge made it clear that he did not consider that this amounted to any unfairness to HMRC.

For these reasons, the judge allowed Mrs Mackay's appeal and ordered that Mrs Mackay's acceptance of her appointment as trustee be rescinded.

Commentary

Underlying this case is, of course, the salutary lesson of ensuring that one is aware of the nature and significance of the documents one is signing.

However, it also serves as a reminder that the law of equity will occasionally intervene so as to avoid unfairness. When doing so, the court will not look only at the position of the claimant but will also consider the wider picture. I emphasise the word 'occasionally' – the court's intervention cannot be relied upon.

What makes this case particularly interesting is that one of the usual obstacles to the court's intervention – namely, delay – was not an issue, despite the claim being made about eight years after Mrs Mackay first became aware of the potential problem (and some 16 years after the events in question). That can be explained by the unusual facts of the case and should not be seen as a general invitation to commence proceedings after such a long period of time.

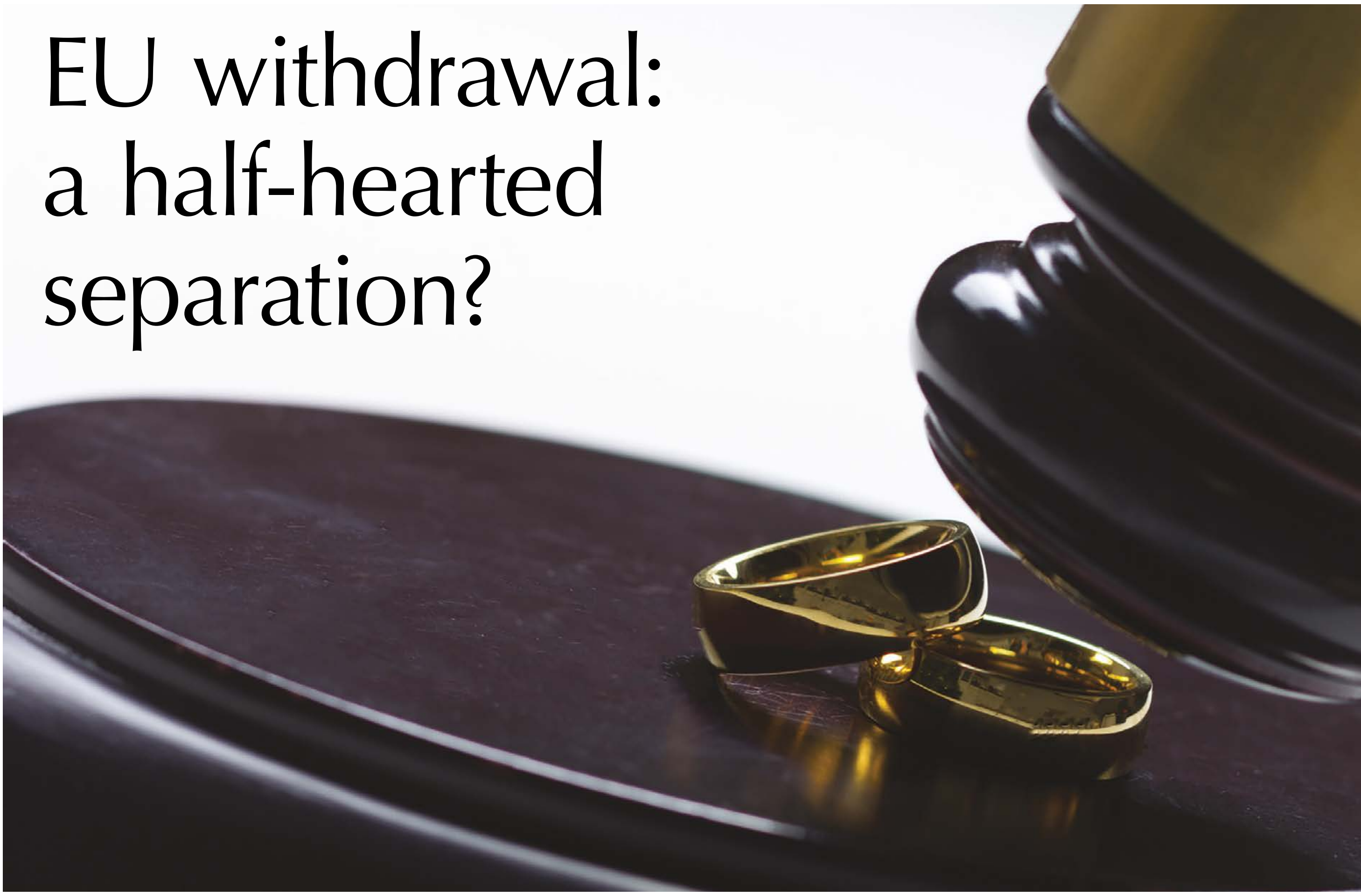
What to do next

As I have said, it will be only occasionally that the law can be deployed so as to rewrite history. However, in cases where equity can intervene, it can be a very useful tool. Most of the potential lines of attack were deployed before the Master (see above), two of which were not renewed before the judge.

Because the concept of fairness will usually take into account any delay by the claimant, seeking the court's intervention should not be considered as an afterthought. If you are in any doubt as to the appropriateness of a claim in the case of one of your clients, I would recommend that you take early legal advice.

I should record my appreciation to barristers Nicholas Le Poidevin QC and Thomas Chacko, together with Hugh Gunson and Tom Watts of Charles Russell Speechly, who all acted for Mrs Mackay on a pro bono basis.

EU withdrawal: a half-hearted separation?



Jeremy Woolf considers the continued relevance of European Union law to indirect taxes

KEY POINTS

- **What is the issue?**
EU law has not ceased to be of any relevance to UK indirect taxes, largely because of the European Union (Withdrawal) Act 2018, which is primarily responsible for the continued relevance of EU law going forward.
- **What does it mean for me?**
Although the basic philosophy of the European Union (Withdrawal) Act 2018 is to be commended, there are several features of the Act that make the snap-shot appear half-hearted and which may generate disputes going forward.
- **What can I take away?**
One of the surprising features of many of the changes made by the EU (Withdrawal) Act 2018 is their retroactive nature. Transitional savings should generally ensure that the changes made by the Act do not impact on proceedings commenced prior to 31 December 2020 but decided after it.

The transitional period under the Withdrawal Agreement between the United Kingdom and the European Union has now expired. Apart from Northern Ireland, where there are ongoing obligations under the Northern Ireland Protocol to the Withdrawal Agreement, there are no ongoing treaty obligations to continue applying EU law.

However, that does not mean that EU law has ceased to be of any relevance to indirect taxes. This is largely because of the European Union (Withdrawal) Act (EUWA) 2018. That Act was modified by the European Union (Withdrawal Agreement) Act 2020, which gives legal effect to the Withdrawal Agreement. Despite its name, EUWA 2018 sought to enact a 'snap-shot' of EU law and is therefore primarily responsible for the continued relevance of EU law going forward (see box opposite). However, particularly with customs duties and excise duties and to a lesser extent VAT, its impact has been limited by the Taxation (Cross-border Trade) Act (TCBTA) 2018.

A half-hearted snap-shot of EU law

Although the basic philosophy of EUWA 2018 is to be commended, there are several features of the Act that make the snap-shot appear half-hearted and which may generate disputes going forward.

1. Recognition of rights

EUWA 2018 includes the requirement that directives only confer rights if they are of a 'kind recognised by the European Court or any court or tribunal in the United Kingdom' on 31 December 2020. This in turn raises questions about how specific the recognition needs to be before a right is recognised. Paragraphs 96-97 of the explanatory notes to EUWA 2018 suggest that the recognition needs to be fairly specific. However, it is not entirely clear from the wording that this is correct. Especially if the loss is retroactive, it does not appear satisfactory that rights should be lost just because of the absence of a more specific decision when, in practice, there can be no serious dispute about the fact that the provisions would previously have had direct effect.

2. Charter of Fundamental Rights

The Charter of Fundamental Rights is not incorporated (see EUWA 2018 s 5(4)). Despite this, however, s 5(5) provides that the underlying general principles may remain relevant. This exclusion may cause some uncertainty about the status of any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EUROPEAN UNION (WITHDRAWAL) ACT 2018: ENACTMENT OF A SNAP-SHOT OF EU LAW

The principal provisions of EUWA 2018 that give continued effect to some EU law are set out below:

- **Section 2** provides that 'EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day'. This section must be read together with EUWA 2018 s 5(2), which preserves the supremacy of EU law in relation to legislation enacted prior to 31 December 2020. These provisions preserve requirements of conforming interpretation in relation to the Value Added Taxes Act 1994, which in its current form is EU derived legislation for this purpose (see EUWA 2018 s 6(7)).
- **Section 3** enacts European Regulations; however, this section only has very limited application in the indirect tax context. This is because virtually all indirect tax regulations are disapplied by TCBTA 2018 ss 42 and 47 and Sch 7 para 1. The one limited exception is the VAT Implementing Regulation, which s 42 states generally ceases to have effect. However, it also provides that the Implementing Regulation remains relevant when the 'VAT Directive' remains part of retained EU law and is to be read in the light of the Implementing Regulation but ignoring such of its provisions as are excluded by Regulations made by the Treasury.
- **Section 4** gives effect to other rights that are 'recognised and available' on 31 December 2020. However, in the case of rights under directives, s 4(2) imposes an additional requirement that the rights must be of a 'kind recognised by the European Court or any court or tribunal in the United Kingdom' on that date. EUWA 2018 Sch 8 para 38 also permits account to be taken of rights recognised by UK courts' decisions taken after 31 December 2020 if the proceedings were commenced before that date. TCBTA 2018 Sch 7 para 1 means that this section has no application to customs duties going forward. However, unless the Treasury makes regulations overriding it or Parliament enacts legislation overriding it, it does mean that rights under directives may continue to arise in the VAT and excise duties contexts, provided they were sufficiently recognised on 31 December 2020.
- **Section 5(2)** states that the principle of supremacy of EU law continues to apply to legislation enacted prior to 31 December 2020. One implied exception relates to legislation intended to give effect to Brexit. Section 5(1) makes it clear that this ceases to apply to legislation passed after 31 December 2020. However, s 5(3) provides that EU law may remain relevant to amendments to pre-Brexit legislation if this is 'consistent with the intention of the modification'.

decisions that have placed reliance on the Charter of Fundamental Rights.

3. Incompatibility with general principles of EU law

There is 'no right of action in domestic law on or after [31 December 2020] based on a failure to comply with any of the general principles of EU law'. Also, the courts cannot 'disapply or quash any enactment or other rule of law' or 'quash any conduct' on the basis that it is 'incompatible with any general principles of EU law' (see EUWA 2018 Sch 1 para 3). This paragraph raises several issues:

- What is a 'general principle of EU law'? It is reasonable to infer that it is not intended to apply to issues such as the direct effect of provisions of directives, which are specifically dealt with elsewhere in the Act. It clearly does apply to general principles, such as proportionality, abuse and equal treatment, that otherwise run through EU law. Reflecting the 'snap-shot' approach of the legislation, EUWA 2018 Sch 1 para 2 states that general principles are only retained if recognised by the Court of Justice on 31 December 2020, although that recognition need not be in an essential part of the decision.
- What may be more open to question is whether this extends to directive specific principles, because it may be argued that they are not sufficiently 'general' to be 'general principles'. Examples may be the principle of neutrality in VAT, at least when it relates to rights to deduct input tax and therefore differs from the principle of equality. Another example may be the Kittel principle, restricting rights to deduct input tax when a person ought to have been aware of a fraud, insofar as it is wider than the principle of abuse, which is clearly a more general principle.
- If these principles are not 'general principles', then Sch 1 para 3 will presumably have no impact on their continued relevance. TCBTA 2018 s 42(4) explicitly states that the abuse principle and the Kittel principle continue to apply in accordance with EUWA 2018. However, since s 42(4) only applies 'in accordance with' the EUWA 2018, on its literal wording, it does not appear to add anything to the EUWA 2018.
- Although Sch 1 para 3 states that it is no longer possible to mount challenges to the validity of decisions and legislation relying on the general

principles of EU law, it is also clear that the general principles are intended to have some continued relevance. EUWA 2018 s 6(3) provides that 'any question as to the validity, meaning or effect of any retained EU law is to be decided … in accordance with any retained general principles of EU law'. Paragraph 210 of the Explanatory Notes states that this means that the courts are required to interpret retained EU law in accordance with the retained general principles.

While it is therefore clear that the general principles are intended to have some effect, how EUWA 2018 s 6(3) and Sch 1 para 3 are intended to interrelate is not entirely clear. It would appear that para 3 is intended to prevent freestanding challenges to legislation and decisions. However, it is possible that when the principles impact on the correct construction of the directive, then the directive when read with general principles may continue to have direct effect, so that the general principles may continue to have an impact on the validity of UK legislation for that reason.

If this is correct, it may continue to be possible to rely on decisions such as *J P Morgan Fleming Claverhouse Investment Trust v HMRC* (Case C-363/05), in which the Court of Justice considered that principles of neutrality meant that the fund management exemption in the Principal Directive art 135 1(g) applied to closed funds. That article gave member states a discretion to decide what funds were eligible for exemption. However, they were required to exercise that discretion in accordance with the principle of neutrality and could not seek to exclude closed funds for that reason.

However, there may be other cases where it may be more difficult for a party to rely on general principles going forward. One ironic example may be provided by the Supreme Court's decision in *Pendragon v HMRC* [2015] UKSC 37. That case related to the Cars Order. The Supreme Court accepted that the Order was not giving effect to any specific provision of the Principal Directive. However, the court considered that it was still open to HMRC to rely on the principle of abuse because the entire VAT code was giving effect to the Directive. It is therefore difficult to see why this should not be considered a freestanding challenge to the domestic provisions relying on general principles that is precluded by EUWA 2018 Sch 1 para 3. The recognition to the abuse principle in TCBTA 2018 s 42 probably does not impact on the position because the section just states that the principle has effect in accordance with EUWA 2018, and on its literal wording therefore adds nothing to that Act.

Another possible example is provided by attempts to challenge penalty provisions on the basis that they are disproportionate (see, for example, *HMRC v Trinity Mirror* [2015] UKUT 421). In these cases, decisions are being made against the backdrop of the Principal Directive including article 273, which confers a wide discretion to take measures to implement the Directive. There is therefore possibly a slightly stronger case for considering that there is a relevant directive provision requiring interpretation for that reason. However, if a proportionality challenge does remain possible in these circumstances for that reason, then EUWA 2018 Sch 1 para 3 will clearly have only a very limited application in practice.

4. Power to depart from Court of Justice decisions

EUWA 2018 s 6(4)– 6(5D) gives the Supreme Court and the High Court of the Justiciary and, if authorised by regulations, other courts, power to depart from decisions of the Court of Justice. Section 6(5) states that the Supreme Court and the High Court of the Justiciary are only to do so on grounds on which they depart from their own decisions. In the case of the Supreme Court, these are set out in a Practice Statement of 1968.

There was a consultation over the summer about which, if any, other courts should have the relevant power. It is possible that these provisions could result in attempts to relitigate the correctness of Court of Justice decisions. At least in relation to issues outside the transitional period, future decisions of the Court of Justice are just of persuasive significance (see EUWA 2018 s 6(1)-(2)). No references can be made after 31 December 2020 (see EUWA 2018 s 6(1)).

5. The Principle Directive

TCBTA 2018 s 42 just provides for the Implementing Regulations to remain relevant when the Principal Directive remains part of retained EU law. Section 4 arguably adopts a fairly restrictive approach to giving effect to rights under the Directive for the reasons explained above in **1. Recognition of rights**.

However, the Principal Directive probably remains relevant in a wider number of situations because of obligations of conforming interpretation, so the Principal Directive should hopefully remain part of retained EU law in a wider range of circumstances for that reason. If this is not considered to be the position, it is unfortunate that s 42 does not also make any specific reference to the Implementing Regulation continuing to be relevant to the interpretation of UK VAT legislation when it was previously relevant to its interpretation.

Transitional issues

One of the surprising features of many of the changes made by EUWA 2018 is their retroactive nature. Transitional savings should generally ensure that the changes made by the Act do not impact on proceedings commenced prior to 31 December 2020 but decided after it (see EUWA 2018 Sch 8 paras 38 and 39(3)). However, the same is only true to a more limited extent to proceedings commenced after 31 December 2020 but related to issues that arose on or prior to that date. There is an explicit two year window for bringing claims for *Francovich* damages, which are otherwise abolished (see EUWA 2018 Sch 8 para 39(7). There is also an explicit three year window for bringing claims for breach of the general principle of EU law.

However, such proceedings cannot seek the disapplication of an Act of Parliament or other rule of law of any other enactment that could not have been made differently (see EUWA 2018 Sch 8 para 39(5)).

The retroactive nature of the changes is also almost certainly inconsistent with articles 4 and 86 of the Withdrawal Agreement. Article 4 states that the agreement and the treaty rights conferred by it shall have the same legal effect as if the UK were a member state and also requires inconsistent legislation to be disregarded. Article 86 gives the Court of Justice jurisdiction against the UK in proceedings commenced in the court within the transitional period or referred during that period.

The European Union (Withdrawal Agreement) Act 2020 s 7A gives effect to such provisions except those relating to Part 4, which relate to the transitional period insofar as effect is given to them under the European Communities Act 1972 s 2(1). However, neither Articles 4 nor 86 of the Agreement are in Part 4, so legal effect is probably given to them by EUWA 2018 s 7A as amended. There may also be arguments that the apparent retroactive nature of the legislation is contrary to the European Convention of Human Rights. Unless the law is reviewed by the Supreme Court, decisions such as *R (oao Zeeman) v HMRC* [2020] EWHC 794 suggest this may only be the position when the legal position was fairly clearly established at the end of the transitional period.

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Welcome to the February Technical Newsdesk

I am going to show my age a little here (although I was very young) and reference 'Just Good Friends' – and the 'will they, won't they' saga involving the main characters Penny and Vince and whether they would get back together. We had a similar 'will they, won't they' saga in respect of the self-assessment deadline: whether HMRC would announce a deferral of the deadline itself, or an easement on penalties, or whether nothing would happen at all.

We did not call for the self-assessment deadline to be deferred. This was because we had received competing views from members on the desirability of this, as well as recognising the benefits of encouraging taxpayers to continue to file 'on time', thereby obtaining clarity over their tax liability. We also understand that deferring the deadline would be a complicated process.

We did ask HMRC to waive late filing penalties for returns filed before 1 March 2021, in order to avoid adding further costs or compliance burdens at an already difficult time, and we offered to work with HMRC as we recognised that it would be necessary to communicate this message carefully. Our first request was made mid-November. Recognising that circumstances would be even more difficult after the lockdown was announced early in the New Year, we repeated our request. Other professional bodies asked for similar easements.

The prospects of an easement did not look good. We have published the responses we have received from HMRC's Chief Executive, Jim Harra. The letters dated 18 December and 18 January did not provide us with much hope of an easement – although it was welcome that HMRC made it clear they will accept COVID related delays, even on the part of the agent, as a reasonable excuse. It was also reassuring that HMRC said they were looking to simplify the process for appealing against penalties to mitigate the disruption this would otherwise cause. But in those letters HMRC confirmed they would not defer the filing deadline, nor waive late filing penalties.

Part of the reason behind HMRC's decision making at that time was that filing rates were holding up well against previous years. As a former VAT specialist, I was largely immune from the self-assessment peak, save for sympathising with colleagues who were working long hours to ensure their clients' returns were filed on time. This commitment to client service is admirable in a 'normal' year. In the current climate it is heroic, and I have been receiving messages from agents working horrendously long hours, across evenings and weekends, both at home and at their office, in order to meet not only the self-assessment deadline, but the (now) shorter deadline for claims under the Coronavirus Job Retention Scheme.

As predicted, the lockdown and other pressures on businesses and agents began to take their toll and filing rates failed to keep pace with previous years. We were delighted, therefore, when on 25 January we were informed by HMRC that they would indeed be waiving late filing penalties for self-assessment returns filed before 1 March 2021.

Of course, that was just six days before the 31 January deadline, and for many this was too late to prevent the long hours and stresses of the previous weeks. Whilst we recognise that HMRC needed supporting evidence, the warning signs were there – at least eight professional bodies, with members representing probably millions of clients, had raised concerns with HMRC. As a customer-focused organisation, with charter promises such as 'being aware of your personal situation', the decision should have been taken sooner. But waiving penalties will certainly prevent lots of unnecessary work for taxpayers, agents and indeed HMRC themselves in issuing, appealing and cancelling late filing penalties. Now agents can continue to prioritise filing the remainder of their outstanding returns, and supporting their clients to obtain the COVID support to which they are entitled.

Beyond the self-assessment deadline, we seem to be slowly falling back into the more usual timetable for fiscal events that was interrupted by the pandemic last year. There are relatively few open consultations at the moment – although, as ever, we encourage you to keep an eye on our website for details of consultations that we are looking at (www.tax.org.uk/policy-technical/open-consultations).

We remain engaged with HMRC through various forums and meetings, as some of the articles below report, and there continues to be a broad variety of work going on. But, perhaps like the rest of the country, we are to a large extent looking forward to the spring for many reasons including, of course, from a tax perspective, the Budget on 3 March.

COVID-19: CIOT provides further comments to Treasury Committee inquiry into coronavirus support

GENERAL FEATURE

The CIOT has provided further written and oral evidence to the Treasury Committee's inquiry into the economic impact of coronavirus, more recently focusing on the gaps in government support.

In the spring of 2020, the CIOT provided written evidence to the Treasury Committee in relation to its inquiry into the economic impact of coronavirus (see tinyurl.com/y36map4u). The Committee published its report 'Economic impact of coronavirus: Gaps in support' in June, as well as the government's responses in July and September. The Committee invited further comments in relation to these gaps in support.

In our further written evidence, we commended HMT and HMRC for their rapid design and roll-out of the Self-Employment Income Support Scheme (SEISS) and the Coronavirus Job Retention Scheme (CJRS). However, we expressed concerned that large sections of the population are still excluded from either of these schemes, even though (at the time of writing) it was around nine months since the original announcements, and the fact that schemes will remain operational until April 2021. It appeared to us that, following the implementation of these schemes in the spring, the focus during the summer and early autumn was on winding down support in the expectation that we would be returning to some form of normality. In fact, the second peak in the pandemic caused a rather hurried response (for example, the Job Support Scheme was dropped the day before it was due to come into effect). Having extended both SEISS and CJRS until April 2021, those excluded from these schemes will have lost out on a year's worth of support. We expressed surprise that more is not now being done to address these inequities; especially considering that when the eligibility criteria for SEISS were extended in the summer, this was only to include new parents and military reservists. We also expressed concern at the lack of clear guidance on eligibility, particularly in relation to the third SEISS grant where the tests remain extremely subjective.

With regard to the CJRS, whilst we are conscious of the huge cost of the scheme and we support publishing data about CJRS claims within an employee's Personal Tax Account, we do not support the widespread publication of employer data. We do not think that public opinion and fear of adverse publicity should be determining factors in whether a business should claim its legal entitlements. If affordability or other criteria are relevant factors, then these should be incorporated into the design of the scheme. Whilst we recognise the benefits of transparency, any changes from the 'norm' (which is taxpayer confidentiality) should form part of a wider transparency strategy, supported by primary legislation following proper debate, rather than being implemented on an ad hoc basis using Treasury Directions.

We also provided oral evidence to the inquiry on 20 January and this can be watched on www.parliamentlive.tv/Commons.

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Changes to the stamp duty land tax return for the non-resident surcharge

PERSONAL TAX GENERAL FEATURE

HMRC consulted recently on changes to the SDLT1 form in advance of the introduction of the stamp duty land tax surcharge of 2% for non-residents.

The CIOT and the Stamp Taxes Practitioners Group considered the draft regulations that add new questions to the SDLT1 form, the form that must be completed to report land transactions in respect of which stamp duty land tax (SDLT) is payable. We are concerned that many of those completing a return will answer the new questions, such as 'are any of the purchasers a UK resident close company controlled directly or indirectly by a non-UK resident?', without reading the guidance in this complex area and are likely to answer the questions incorrectly.

Both the CIOT and the Stamp Taxes Practitioners Group, in their responses to the consultation on the substantive draft legislation for the non-resident surcharge, expressed strong concerns about the disproportionate complexity of the non-UK control test based on the close company legislation. Consequently, it will be essential that the SDLT return guidance adequately explains how that test is applied, as well as providing guidance on the simplified test of residence for individual purchasers.

It is also suggested that sections of the existing SDLT return guidance in respect of partnerships and trusts could be expanded for the introduction of the surcharge. There is a risk that system users who are not experienced in SDLT misunderstand who the purchaser is from a SDLT perspective. There can be confusion in how the return is completed when dealing with partnership or trust purchasers. This confusion may not have a material consequence now if the return is incorrect. However, where there are partnership or trust purchasers and the 2% surcharge is potentially applicable, it will be important that the purchaser information is accurately completed.

For trustees, we suggest the guidance needs expanding to make it clear when the trustee is, and is not, the purchaser from an SDLT perspective. (A non-UK resident individual who is the beneficiary of a bare trust with UK trustees would be the 'purchaser', whereas where a non-UK resident individual is the beneficiary of a settlement trust with UK trustees, the UK trustees will be the 'purchaser'.)

In relation to partnerships, the 'purchaser' guidance could be helpfully expanded to include a reminder that where the purchaser is a partnership, it is the partners' details which are needed, rather than say the details of a UK limited partnership (which could have non-resident partners).

The current SDLT return guidance is based on the paper SDLT return forms, not the online form. This makes the guidance difficult to follow as the online return does not match the paper return. Given that most SDLT returns are completed online, it would make completing the online form much easier if the guidance matched the online return.

The regulations are now in final form: SI 2021/13 The Stamp Duty Land Tax (Administration) (Amendment) Regulations 2021.

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Hybrid and other mismatches regime: proposed changes

INTERNATIONAL TAX LARGE CORPORATE TAX

The CIOT welcomed the changes to the hybrid and other mismatches regime for corporation tax announced by the government in November 2020, but sought further clarification around some of the changes announced for which draft legislation has not yet been published.

In November 2020, the government announced changes to the hybrids and other mismatches regime for corporation tax and published a Policy Paper, along with draft clauses for Finance Bill 2021 which will implement some of the changes.

In our response to the Policy Paper, the CIOT welcomed the changes, many of which were consulted on during summer 2020 (see www.tax.org.uk/ref660 for the consultation paper and the CIOT's response). Following this consultation, we welcomed the constructive approach that HMRC have taken, which is reflected in the Policy Paper and the draft Finance Bill clauses. In our view, the proposed changes will ensure that the hybrids rules better reflect the policy objectives of the regime and will provide greater certainty, so businesses can plan ahead with confidence.

We also welcomed that many of the changes are retrospective and will have effect from 1 January 2017, when the rules were introduced. However, this also means that unfortunately the amendments are being made some four years after the introduction of the legislation, which means that since the introduction of the rules, companies have had to take action based on legislation which does not now apply.

Our response said that it is important, therefore, that HMRC also introduce a simple mechanism for earlier years' computations to be amended: we are outside the normal 12 month time limit for 2017 and 2018 computations, and companies need a simple way to refile and obtain any repayments. We noted that this is particularly relevant for smaller UK companies who have suffered from issues around dual inclusion income, because they have a UK cost plus entity with a small number of employees.

Our response also set out some further queries with regard to changes proposed to the definition of foreign tax, the interaction of the loan relationship rules with the hybrid rules and the test around 'acting together'. The draft legislation for these changes has not yet been published and we said that we hope and assume that we will have an opportunity to comment further once we see all the draft legislation.

Our full response can be found here: www.tax.org.uk/ref755.

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OECD Blueprints for Pillars One and Two to address the challenges of digitalisation of the economy: CIOT response

INTERNATIONAL TAX

The CIOT responded to the reports published by the OECD on the Blueprints for Pillar One and Pillar Two, the proposals by the Inclusive Framework to address the challenges of the digitalisation of the economy. Whilst recognising the need for a global consensus, we explored the significant hurdles that remain in the path to political agreement.

The OECD published Reports on the Pillar One and Pillar Two Blueprints in October 2020, together with a public consultation document setting out questions for public consultation. These reports set out the progress made by the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), which is seeking to develop a solution to the tax challenges of the digitalisation of the economy which can result in a consensus-based, long term reform of the international tax system. The CIOT welcomed these reports and the progress that had been made. However, we also said that it is clear that significant hurdles remain and that there will be many challenges on the path to political agreement around the outstanding issues.

Our response emphasised that we remain supportive of this initiative and believe that reaching global consensus is important. We are increasingly facing an international tax landscape of unilateral measures (and retaliatory actions) being taken independently by countries, which lead to less alignment of tax bases globally, resulting in double taxation and a significant compliance burden for businesses and, consequently, stifling economic growth and innovation. Against the alternative, the CIOT support the work towards a multilateral solution which is based around a reallocation of taxing rights based on profits (Pillar One) and completion of the work addressing the issues identified by the G20/OECD BEPS project (Pillar Two). While the CIOT continue to believe that clearer policy principles need to be articulated, we recognise the need for a global consensus and support the work towards a multilateral solution.

Our response noted that it is also clear that the new rules will be immensely complicated. They will result in a very significant additional administration burden for tax administrations and a very substantial for all (and unprecedented for many) additional compliance burden for large multinational enterprises. With that in mind, we said that every opportunity should be taken to simplify the rules, and take out of scope those businesses which will not be significantly affected (that is to say the amount of additional tax payable will be zero or minimal) or directly targeted. It also remains as important as ever that the solutions address issues around double (or multiple levels of) taxation and contain robust and effective dispute resolution mechanisms.

Our response suggested that the further work required to reach an agreement of the rules for Pillar One and Pillar Two should focus on the practicalities of any agreed solution and ensure that the solutions result in a set of new rules which is proportionate to the intended objectives. We recognised that an objective of the new rules is to build an increased trust in the international tax system itself.

In addition, we explained in our response the significant demands that the proposals will place on the financial reporting and accounting systems of multinational enterprises. We said that the cost and complexity of adapting reporting and accounting systems to generate different figures from those produced for the purposes of the business should not be underestimated.

The intention is to reach agreement by mid-2021. We commented that the revised timeline still seems ambitious. We suggest that a phased approach is considered, whilst recognising that the time taken for implementation must be balanced against the large number of individual and jurisdiction-specific rules aimed at the digitalised economy which are increasingly being introduced and becoming effective in a number of countries.

Our full response can be found here: www.tax.org.uk/ref731.

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Double taxation treaties stakeholder review 2020/21: CIOT input

INTERNATIONAL TAX

The CIOT have taken part in HMRC's stakeholder consultation seeking input into their annual review of the priorities for the UK's network of double taxation agreements for the coming year.

The CIOT have responded to HMRC's request for input into their review of the priorities for the UK's network of double taxation agreements (DTAs) for the coming year. We submitted written comments in December 2020 and attended a virtual meeting with HMRC in January 2021.

We welcomed the confirmation from HMRC that, after the end of the transition period on 31 December 2020 and the UK leaving the EU, HMRC will prioritise renegotiation of European DTAs to try and replicate the benefits of the Interest and Royalty and Parent and Subsidiary Directives. HMRC confirmed that they would initially focus on the treaties with Germany and Italy during 2021. Our letter also noted that UK companies will also lose the benefit of the Merger Directive and would, therefore, benefit from a new addition to Article 13 of the OECD Model for treaties with EU/EEA members that would extend the Merger Directive bilaterally.

Our letter to HMRC also reiterated points that we have made in previous years' responses to the DTA review around how the mutual agreement procedure provisions in the UK's treaty network are being managed and how they can be improved. We encouraged the government to step up the UK's policy for seeking to negotiate mandatory binding arbitration provisions in its treaty network, to reflect the UK's support of such provisions in the discussions around Action 14 of the G20/OECD BEPS project and the changes to the DTA landscape as a result of the OECD Multilateral Instrument.

We also commented on the ongoing work of the Inclusive Framework in Addressing the Tax Challenges of the Digitalisation of the Economy. As noted in the Technical Newsdesk article above, it is clear that changes to international tax law along the lines of Pillar One and Pillar Two will require enhanced dispute prevention and resolution mechanisms, and our strong view is that these should include mandatory, multilateral, binding arbitration. HMRC confirmed that the UK government's position in ongoing negotiations around these solutions is that Pillar One (at least) should include arbitration mechanisms. We understand that the UK government remains in favour of arbitration generally, not least because in the long run it is less resource intensive for tax authorities than a lack of it, because arbitration shortens disputes.

On a more practical level, we noted that HMRC's process for treaty clearance is still quite archaic, requiring a form to be printed, sent to an overseas tax authority and certified before being sent back to HMRC. Even if the Passport Scheme applies, the online form has to be printed and sent to an overseas authority (although in that case it may be possible to get the certificate of residence first). A similar issue arises the other way, with getting certificates of residence from HMRC.

We asked whether HMRC has considered moving these procedures to an online process. We recognised that there would be a cost to implementing a new online system, but working towards this would fit in with the overall aim of the government to modernise the tax system. We suggested that taxpayers would welcome an online system, which could be developed initially with a few key jurisdictions (including the US).

Our letter to HMRC can be read in full here: www.tax.org.uk/ref742.

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Appeals from the Upper Tribunal to the Court of Appeal

GENERAL FEATURE

The CIOT responded to the Ministry of Justice consultation on 'Reforms to arrangements for obtaining permission to appeal to the Court of Appeal'. The proposals are designed to limit the extent to which an unsuccessful litigant is able to ask the Court of Appeal to reconsider the decisions made in the Upper Tribunal in order to reduce resource pressures on the senior judiciary. If the Upper Tribunal refuses permission to appeal to the Court of Appeal, it is proposed that the losing party may only apply directly to the Court of Appeal for permission to appeal 'for reasons of exceptional public interest'.

We are concerned that the proposed stricter and narrower test of 'reasons of exceptional public interest' for applications to the Court of Appeal for permission to appeal from the Upper Tribunal will disproportionately affect taxpayers seeking to appeal HMRC decisions. Although the proposed test will apply equally to taxpayers and to HMRC where permission is sought to appeal, in practice HMRC will have access to data and government resources in making a case for exceptional public interest that is simply unavailable to taxpayers. The proposal has the potential to create an imbalance between the powers of tax collectors and the rights of taxpayers.

The evidence for resource pressure in the consultation document derives solely from the Immigration and Asylum Chamber. No data is provided for appeals from the Upper Tribunal Tax and Chancery Chamber. It is therefore unclear whether tax appeals follow the same pattern, in particular whether tax appeals have a greater percentage of success before the Court of Appeal or subsequently before the Supreme Court. It is not possible to evaluate the proposal without that data. We suggest the data is published for appeals from all four chambers of the Upper Tribunal.

Moreover, there are factors that distinguish tax appeals from the Tax and Chancery Chamber from other appeals from the Upper Tribunal Chambers. Firstly, there is no legal aid funding for tax appeals. Secondly, HMRC will usually require tax in dispute to be paid before the appeal is heard in all cases, subject to hardship, so there is no obvious benefit in tax litigation from appealing a weak case simply to delay the final determination. These factors already operate to reduce the possibility of applications for second appeals for cases that stand little prospect of success.

The proposed new test appears to be more stringent than the 'general public importance' test before the Supreme Court. That seems wrong in principle.

The full response is at: www.tax.org.uk/ref743.

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Call for evidence on VAT grouping: CIOT response

INDIRECT TAX

HM Treasury's call for evidence on VAT grouping (see tinyurl.com/y6cjk8y2) raised questions around business establishments, eligibility conditions and compulsory VAT grouping.

In advance of preparing our written submission (see tinyurl.com/yyfthknr), several volunteers from the CIOT's Indirect Taxes Committee attended a virtual meeting with representatives from HMT and HMRC to discuss examples experienced in practice. HMT stressed that at this initial stage of the consultation process, the questions in the call for evidence did not necessarily mean that the proposals would all be taken forward; this was a period to consider all options, including outcomes where some rules may remain the same.

Here are the main points that were raised in the CIOT's response:

Establishment: whole establishment provisions vs establishment provisions

The consultation set out the current rules in the UK that allow overseas branches of group members to still be part of the UK VAT group, called the 'whole establishment provisions'. The exception to this is where the overseas branch is already in a local VAT group with a connected party in that country (changed as a result of the Court of Justice of the European Union decision in *Skandia America Corporation* (Case C-7/13)). The alternative 'establishment' provisions' exclude any overseas fixed establishments from being included in the UK VAT group.

The CIOT's view on these alternatives was that although in principle the establishment provisions could simplify the position by having a single reverse charge rule for all businesses in the UK VAT group, this would be significantly outweighed by additional costs, increased bureaucracy and uncertainty, hence our preference for the current whole establishment provision rules.

Compulsory VAT grouping

In the virtual meeting, some of our volunteers had practical experience of similar rules for clients in Germany, and they were able to highlight that they can be complicated to administer not only for the group itself but for the tax authority, particularly for very large groups that have regular changes with share ownership.

The CIOT do not currently support a change to compulsory VAT grouping and would prefer that any avoidance identified by HMRC is targeted by changes to legislation to capture the small number of businesses behaving this way. The UK's mature VAT grouping rules provide certainty for the majority of compliant businesses, and certainty is one of the CIOT's core objectives for the tax system.

Eligibility to join a VAT group

The CIOT set out in their written submission that they would like to see the admission position considered for other types of legal entities; for example, trusts, joint ventures, local government and similar bodies listed in Value Added Tax Act 1994 s 33. However, it was noted that the joint and several liability position would have to be considered concurrently as there could be no access to client funds held by the entity to pay any group member debts. The CIOT are also cautious about the introduction of beneficial ownership tests.

Next steps

Once HMT has reviewed all submissions on this initial call for evidence, there will be further consultation on VAT grouping in due course.

Jayne Simpson
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New HMRC Construction and Small Business Technical Forums

OWNER MANAGED BUSINESS | EMPLOYMENT TAXES

HMRC have recently established two new forums, the Construction Forum, which will consider any tax-related issues affecting the construction sector, and the Small Business Technical forum, which will consider tax policy and related issues affecting the smallest unincorporated and incorporated businesses.

HMRC have recently established two new forums – the Construction Forum and the Small Business Technical Forum – both of which comprise members of agent professional bodies and HMRC. While much of their first meetings were taken up with agreeing the terms of reference of each forum, there was time for some technical discussions too.

Construction Forum

The Construction Forum will consider issues which exclusively, or disproportionately, affect the construction sector and will provide the means to discuss changes in taxation policy and other areas of legislative change affecting the construction sector. It will also provide an opportunity for us to raise examples of practical difficulties in the tax system. Matters for discussion will not be limited to the Construction Industry Scheme (CIS) but will include all taxes related to the construction sector.

The first meeting also included a discussion of the CIS legislative changes proposed for 6 April 2020, including changes to the materials deduction rules, deemed contractor rules and denying CIS credits in certain circumstances. Other matters discussed included the application of the CIS and VAT rules where landlords make payments to incoming tenants (reverse premiums), the VAT domestic reverse charge that is due to be implemented on 1 March, and online accounts for subcontractors.

Small Business Technical Forum

The Small Business Technical Forum will provide an opportunity to share insights and comments on potential changes to tax policy and legislation that affect how the smallest businesses compute their profits for trading income (for income tax and corporation tax purposes). We will also be able to share and develop ideas on making the tax system simpler for small businesses. The forum will consider tax policy and legislation in relation to trading income, small business income tax and corporation tax. It will not cover Making Tax Digital, VAT or tax administration issues (all of which are covered by other forums).

During the first meeting, HMRC confirmed that COVID-19 related grants received by companies should be included on their CT600 tax return as trading profits, except payments under the Eat Out to Help Out scheme which should be included in turnover. HMRC also confirmed that all Self Employed Income Support Scheme (SEISS) payments are taxable in 2020/21, including the fourth payment covering the period February to April 2021. Some concerns were raised over the tax treatment of other grants announced and/or received in March 2020. For example, where rights to grants arise in March 2020, accounting standards are likely to treat the whole amount as income at that point. It was understood that the tax timing of other grants is determined by accounting rules and is not overridden by legislation (except SEISS). SEISS payments are taxable in 2020/21 under FA 2020.

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HMRC Employment Taxes Forums

EMPLOYMENT TAXES

A round up of recent meetings of four of HMRC's employment taxes related consultation forums: the Employment and Payroll Group, the Expatriate Tax and NICs Forum, the IR35 Forum and the Collection of Student Loans Group.

In this article, we summarise meetings from four of HMRC's employment taxes related forums, which are attended by CIOT volunteers, from the final quarter of 2020. HMRC publishes the minutes of the meetings on GOV.UK.

Employment and Payroll Group

The group is the main HMRC forum for employment tax related matters and met on 8 December 2020. The forum is attended by representatives of CIOT and ATT and meets quarterly. Items of discussion included the new Off-Payroll Working rules legislated to take effect from April 2021, the newly extended Coronavirus Job Retention Scheme (including HMRC's work on checking grant claims), the EU withdrawal agreement and social security rules post Brexit, and general payroll software changes taking effect from April 2021. A separate meeting also took place to discuss various benefits-in-kind issues arising from the coronavirus, such as virtual parties, working from home, flu vaccinations, employee welfare, cycle to work schemes, etc.

Collection of Student Loans Consultation Group

The group met on 1 December and is attended by representatives of CIOT, LITRG and ATT. Issues discussed included the change being made to the student loan repayment threshold for Scottish borrowers, including a revised New Starter Checklist for use from April 2021 and change of plan type start notices being issued in March 2021, real time information data sharing by HMRC with the Student Loans Company, and self-assessment returns, including student loan payment exceptions.

Expatriate Tax Forum

The forum met on 10 December 2020 and discussions centred on social security coordination post Brexit. For example, having a certificate for social security coverage does not signal any immigration status and EU citizens living in the UK have to apply under the EU Settlement Scheme. Similarly, any UK nationals living in Europe may need to make applications for leave to remain under the law applying in the country of residence. Other matters discussed include coronavirus related issues, such as ITEPA 2003 s 41ZA apportionments of earnings, short term business visitor reporting, residence issues and treaty relief/double taxation issues.

IR35 Forum

The forum met on 20 November 2020 and discussions concentrated on the upcoming changes to the Off-Payroll Working rules, including HMRC's compliance strategy post April 2021 and amending ITEPA 2003 s 61O to ensure that the legislation does not apply more widely than intended. In addition, the group discussed set-offs for taxes already accounted for where a worker's status is changed after PAYE/NICs, corporation tax and income tax on dividends, etc. has been deducted or paid by the worker, their personal service company and/or a deemed employer. The group also discussed avoidance and the misuse of umbrella companies.

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Self-Employment Income Support Scheme/Construction Industry Scheme issues

OWNER MANAGED BUSINESS PERSONAL TAX

The Low Incomes Tax Reform Group has written to HMRC raising concerns on behalf of some Construction Industry Scheme workers who have missed out on Self-Employment Income Support Scheme grants

The Self-Employment Income Support Scheme (SEISS) was introduced to provide support during the coronavirus pandemic for the self-employed. So far, four grants have been announced. Grants 1 and 2 are no longer open for applications. Grant 3 covers the three-month period from 1 November 2020 to 29 January 2021 and the fourth grant will cover the period from 1 February 2021 to 30 April 2021. In order to claim the grants, a number of conditions must be met. Grants 3 and 4 have additional qualifying criteria.

After claims opened for the first grant, the Low Incomes Tax Reform Group (LITRG) received a number of reports of self-employed Construction Industry Scheme (CIS) workers, whose work had been affected by the pandemic, being told they were not eligible for SEISS grants. Upon closer inspection, this was because their income and CIS tax deductions were reported on the employment pages, rather than the self-employment pages, of their tax return.

Filling in the wrong supplementary pages in one's tax return is, of course, an unfortunate administrative error to make, but there are a number of longstanding and difficult issues, not least the structure of the CIS itself, which together mean that CIS workers are especially likely to make this mistake on their tax return. LITRG believe that some of these are arguably within HMRC's power to have fixed before now.

The working arrangements of many sub-contractors paid under CIS are very likely to have some of the hallmarks of employment. Some workers in this situation will think that they are being treated as – or even that they are – an employee due to the CIS tax deductions.

The confusion about employment status is compounded by the fact that workers receive a CIS monthly payment and deduction statement (a 'payslip') which contains a box for the 'employer's tax reference'. This monthly statement is a HMRC pro forma and the reference to 'employer' reinforces the erroneous message that the individual is an employee. Furthermore, the workers involved may be, *inter alia,* young, inexperienced, lacking literacy or numeracy skills or migrants whose first language is not English. They may not have the confidence or resources to ask HMRC or to seek professional advice about their tax position.

HMRC have the ability to amend tax returns where there is an obvious error. Even if HMRC do not believe such an error is obvious, at the very least they should be aware of the possibility that something is wrong and should enquire further. This is because the individual's tax return shows employment income for which there is no corresponding PAYE real-time information data and there is CIS data which has no corresponding entry in the Self Assessment system. This raises an important question – why did HMRC's systems not flag the mismatch between the data they held and the data returned by the taxpayer?

These taxpayers have tried to do the right thing by submitting their tax returns. It seems unduly harsh that they are now being told they do not qualify for SEISS grants based on a technicality when they clearly fall into the category of people SEISS is intended to help.

LITRG have written to HMRC asking them to exercise their discretion to allow SEISS claims in these very specific circumstances. We have also asked HMRC to take steps to ensure these errors are rectified going forward and that any historic tax and national insurance issues are properly dealt with and CIS workers provided with support. It is not clear at present what HMRC have done in this respect with those who have been refused a SEISS grant due to this underlying error. Finally, we have made a number of suggestions to HMRC of improvements to guidance and processes to try and ensure more people do not make this same mistake and that, where they do, HMRC pick it up at the earliest opportunity.

Victoria Todd
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Financial Sanctions: changes as a result of the end of the Brexit transition period

GENERAL FEATURE

Members need to be aware of the changes to the financial sanctions arising as a result of the end of the transition period and their impact on carrying out anti-money laundering client due diligence.

The UK's sanctions framework changed as from 11pm on 31 December 2020 when the transition period came to an end. Sanctions are now imposed through UK regulations (The Sanctions and Anti-Money Laundering Act 2018) rather than EU regulations.

The main change for members to be aware of is that those subject to sanctions will in some cases have changed. The Office of Financial Sanctions Implementation (OFSI) will continue to maintain the consolidated lists of financial sanctions targets (see tinyurl.com/y9zhkxla). OFSI updates its list of financial sanctions targets regularly. You can subscribe to its free email service (see tinyurl.com/ycwb63sj) to receive an alert each time the list is updated.

In addition to updates to the sanctions lists themselves, OFSI have also updated the guidance on their website (see tinyurl.com/lzosdjd).

CIOT and ATT expect their anti-money laundering supervised firms to check the sanctions list as part of client due diligence and ongoing monitoring requirements. Firms should therefore ensure they are checking the current list. Our understanding is that electronic identity checks will automatically check the sanctions lists and alert users where the client name matches someone who appears on the list. The member will then need to check further to determine whether the client is the same individual as appears on the list and if they are should take action as set out below.

Members should inform OFSI as soon as practicable if information is received in the course of business which leads them to know or reasonably suspect that a person is a designated person on the financial sanctions lists or has committed an offence under financial sanctions regulations. Members potentially need to cease to act and make a suspicious activity report to the NCA. Staff need to be made aware that they should report sanctions breaches to their money laundering reporting officer so they can take the necessary action. Note that financial sanctions reporting obligations are not met by the submission of a suspicious activity report and a report to OFSI must be made in addition.

Reports of frozen funds and economic resources, information regarding a designated person, and notifications of credits to frozen accounts should be emailed to: ofsi@hmtreasury.gov.uk.

Reports regarding suspected breaches should be submitted to OFSI using the form on GOV.UK (see tinyurl.com/y8lvnhvk).

Failure to comply with reporting obligations is an offence which may result in a criminal prosecution or a monetary penalty. If members have queries about financial sanctions or about anti money laundering requirements generally, they should contact the professional standards team by email (standards@ciot.org.uk or standards@att.org,uk)

Jane Mellor
jmellor@ciot.org.uk

CIOT	Date sent
VAT Grouping: Establishment, Eligibility and Registration www.tax.org.uk/ref723	07/12/2020
Reports on the Pillar One and Pillar Two Blueprints www.tax.org.uk/ref731	14/12/2020
Significant tax changes: March/April 2021 www.tax.org.uk/ref745	15/12/2020
Review of double taxation agreements (DTAs) 2020/21 www.tax.org.uk/ref742	21/12/2020
Reforms to arrangements for obtaining permission to the Court of Appeal www.tax.org.uk/ref743	11/01/2021
Amendments to the hybrid and other mismatches regime for Corporation Tax www.tax.org.uk/ref755	11/01/2021

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CIOT & ATT

The time for brand 'You' is now

TRAINING

Joanne Herman reveals your checklist about how to think of yourself from a personal branding perspective.

Welcome back to my second installment on personal branding in 2021. In my last instalment, we looked at two points: how personal branding will play a key part when we come to preparing ourselves for the new way of working; and why you should make your personal brand your New Year's resolution.

The main focus of this piece will be around how we need to think or regard ourselves from a personal branding perspective and why thinking of yourself as a 'company' will help you start to piece together your brand for the New World.

In my last take away, I mentioned: 'Forget B2B or B2C; today it's all about H2H – human to human. People prefer to do business with a person, rather than a logo.'

We are all CEOs of our brand

Many of us are representing the company we work for remotely, but what about YOU as a brand? People trust people, not adverts. People trust recommendations over brands. Think for a moment about your buying behaviour on Amazon? We look for the stars or customer reviews and trust recommendations from people we've never even met! Now think about how powerful your brand would be if you invested some time.

As we adapt to the third national lockdown, we have all learnt that it's the people behind the brand that matter. So now, more than ever, is the time to shine as a positive, credible and empathetic brand.

Historically, the term 'branding' used to be reserved for businesses. Business and product level branding has been an essential part of the economy. Yet with many large and small businesses on the brink of folding, we are seeing the ushering in of a new era: the personal brand.

It will be almost a year since customers have physically seen you, your offices or your logo. Instead of customers seeing a logo, your office and a design, they instantly see and feel your personality and begin to understand your values. Over time, they will discover your unique skills.

Having a strong personal brand is extremely beneficial to your business. Giving your customers a person to follow will significantly benefit your business. We are all CEOs of our own personal brand and the most important job for many of us right now is to be head of marketing for the company called YOU. Your personal brand is like looking at yourself in the mirror. It is all about YOU.

Brand 'You' checklist

Right now, you are an extension of the business you work for. If you work for yourself, then the same applies. Starting with 'You' is the best place to start.

Start by thinking of yourself as a company in your own right and what that means:

- Your face is your logo. It's what people see. Your visual identity.
- Your words and the language you use is your brand voice or tone of voice.
- Your ethical stance is comparable to your corporate social responsibility.
- Your authenticity is akin to the values you hold.
- Your LinkedIn recommendations and endorsements hold just as much credibility and authority as a company case study or review.
- Your sign off, catchphrase or personal quote is equivalent to a company brand promise.

Thinking of ourselves in this respect removes

the stigma around thinking that branding yourself is an egocentric exercise. You are standing outside yourself, looking in from a subjective stance. You will begin to build a personal enterprise that complements your business or employer, rather than building personal ego.

Similarly, this exercise will help those of us who are introverts to step outside our comfort zones and build a better version of ourselves.

Changing the Face of Tax

Would you like to be part of an exciting brand campaign later this year? #FaceofTax

Make a start today and join us as we build for the future of tax. We are creating a new website and a new logo. For more information about how you can get involved, contact me at jherman@ciot.org.uk.

If you enjoyed reading this article then please follow me: LinkedIn/com/in/joanneherman

KEY TAKEAWAY

Today, more than ever, our customers and clients are searching for the **real face behind the brand**. They seek the human touch and all of us lend this human side to a brand.

CIOT

Outgoing President's speech

EVENT

Handover by Glyn Fullelove, November 2020

Glyn Fullelove

Good afternoon. It is my honour and pleasure to address you as President of the Institute for a final time. I am pleased to say that, unlike some other Presidential handovers, this one has been agreed, smooth and co-operative, and I have no thought of any legal challenges to prevent it!

As well as the handover of the Presidency, this is an important day also for Gary Ashford who formally joins the Presidential Team as Vice-President; congratulations and welcome Gary; and for Susan Ball who steps up to become Deputy-President, and will now serve an 18 month term before becoming President in May 2022 – assuming no further pandemic or other external disruption to our timetable. Congratulations Susan! We also say thank you to Harbottle & Lewis and RSM for their support of Gary and Susan respectively.

We also say thank you to Ray McCann, who, after an extended term as Past President, now leaves the Presidential Team. Ray has given exemplary service to the Institute over the past four and a half years, and has been a particular source of assistance and advice to me over the last 18 months. I learned a lot about being President from watching him in that role; I hope I have also learned to be a good Past President. Ray will still be on Council and active in other Institute roles; we are not quite finished with him yet!

I would also like to thank the whole of Council for their support during my Presidency, and the constructive contributions members have made to our Council discussions, and the substantial amount of time Council members have invested on both Council matters and other CIOT duties. Quinton Quayle and Jane Brothwood, our two Council lay advisers, have provided invaluable advice and assistance, and I would thank them for their help in guiding us on diversity matters, expanding access to Council and the digital project in particular.

As I said in *Tax Adviser*, it has been a Presidency of two halves. I will always remember the major Presidential events that took place, and meeting members across the United Kingdom. However, when I reflect on my Presidency, I suspect it will be the second half that I particularly recall, and how the Institute rose to the challenge of the pandemic.

During the last 18 months, I believe that as an Institute we have made progress in a number of areas: on diversity and broadening access to Council; on improving the governance processes of the Institute, and strengthening its management and financial controls; and on developing a strategy for the Institute around the pillars of the role of technology in education, the challenge of regulation, and developing the Institute's voice.

On the last of those pillars, the Institute's voice, we must give the tax profession a voice that is clear, respected and, above all, listened to in public debate on tax matters. This voice must be in the public interest, in line with our Royal Charter and charitable objectives. This means we have a mission to explain rather than campaign. However, even a mission to explain will include providing context and interpretation, which may mean some think we are adopting positions and direct some criticism our way. We should not be afraid of that.

I have mentioned PCRT on numerous occasions over my Presidential term. It is fundamental to the CIOT brand, and it is important that we are seen not only not to disapprove of certain behaviours, but to actively act against them. I hope to be able to continue to work in this area in the future on the Institute's behalf.

I would like to thank all my ATT colleagues for their support, and the ATT team, especially Jane Ashton. I would also like to thank Jeremy Coker for his friendship as we have travelled around together and been in the same virtual rooms so often. Good luck for the rest of your Presidency of the ATT, Jeremy.

My last word of thanks is to all the staff at the CIOT. I can't mention you all by name. However, without you, no President would be able to serve the Institute at all. In the last few months, you have worked wonders keeping the work of the Institute going, the events, the technical work and the exam programme. Under Helen Whiteman's leadership, which has already transformed the way the Institute operates, you have risen to an extraordinary challenge. Thank you all, and keep up the great work.

I said that was my last word of thanks. Well, not quite. The real last thank you is to my family, and especially my wife Helen, for their and her support over the last year. It has been especially difficult for Helen over the last few months, as I have disappeared into Zoom rooms for Institute business and events; at least before the pandemic we could do some things together, but she has never complained, and I could not have done this without her.

Finally, I should introduce my successor, although for many of you, he needs no introduction. Peter Rayney is a highly respected and well known independent tax consultant. His main specialisms are corporate tax, company reorganisations, corporate finance tax (including company sales and acquisitions) and all aspects of owner managed business taxation.

Peter also worked at BDO LLP for nearly 20 years and is a leading and award-winning tax author and lecturer. He regularly contributes to the professional press. He has served the Institute in a wide range of capacities, including on the Education Committee for many years, and he is currently the Chair of our Conferences Working Party, where he has overseen our transition to virtual conferences for the time being. Peter is also a leading figure in the ICAEW. If you don't already know, he is a committed supporter of West Ham United, and has a broad musical taste, although anyone who has attended his lectures will know that he seems to have a particular, and to me unfathomable, love of 1970s pop. Leaving that aside, I am convinced he is going to be a great President of the Institute.

It has been an honour to be your President. I wish you and your families and colleagues well. I know you will give Peter your full support. With that I formally handover the Presidency of the Chartered Institute of Taxation to Peter Rayney.

ATT

ATT Fellows

MEMBERSHIP

Council was delighted to admit the following ATT Fellows at its December 2020 meeting.

Please connect with our new LinkedIn ATT Fellows Group. We will be posting regular updates here and directing you to items we feel may be of interest to you as an ATT Fellow.

We are also including a 'Feature a Fellow' item in *Tax Adviser* during 2021 – see our first profile of James McBrearty below. Please contact us at page@att.org.uk if you are interested in featuring in this.

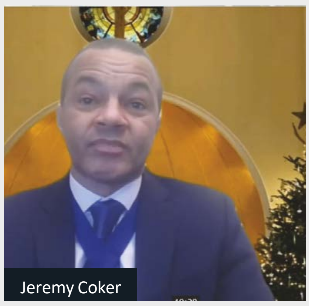
If you have 10 years' continuous ATT membership you can apply to become a Fellow. For more information please visit our website: www.att.org.uk/members/apply-become-att-fellow.

- Nurul Ali, London
- Neil Allcroft, Leamington Spa
- Claire Base, Gloucester
- Christopher Beauchamp, London
- James Boylan, Bishop's Stortford
- Alan Cadden, Glasgow
- Natalie Chamberlain, St Peter Port
- Wendy Cheung, Kilsyth
- Ramesh Devalia, Leicester
- James Driscoll, Stanford-le-Hope
- Simon Groom, High Wycombe
- Tina Hammond, Hailsham
- Scott Homewood, Staefa
- Hannah Hopkins, Willand
- Louise Mackie, Dundee
- Bilal Mahmood, London
- Rasmita Mistry, Walsall
- Rachel Naylor, London
- Eleanor Phelps, Chippenham
- Helen Ramsay, Melton Mowbray
- Nimesh Shah, London
- Sara Smith, Bideford
- Emma Taylor-Bunting, Cambridge
- Sarah Whyte, Tunbridge Wells
- Deborah Wilson, Dunstable
- Andrew Wood, Altrincham

CIOT & ATT

CIOT and ATT hold their first virtual carol service


Peter Rayney


Jeremy Coker

EVENT

Over 200 members and guests celebrated the festive season at the Joint CIOT/ATT Virtual Carol Service on Thursday 10 December 2020.

The Reverend Ralph Williamson conducted the virtual service from the candle-lit St Peter's Church, Eaton Square. Peter Rayney (CIOT President), Jeremy Coker (ATT President) and some of the CIOT and ATT members and staff read a total of five lessons.

Following the service, members and guests were encouraged to grab a mug of mulled wine and join a Virtual Christmas Reception.

ATT

Feature a Fellow: James McBrearty

PROFILE

James McBrearty ATT(Fellow) CAT tells us about his career in tax and how he has found ATT Fellowship useful.

Why did you pursue a career in tax?

I have always been interested in finance, starting my career initially in accounts and then moving to personal taxation. I founded my own practice in 2006 and over the last 14 years I have specialised in helping micro-businesses.

What are the highlights of your career?

There have been many highlights but these are the ones I am particularly proud of:

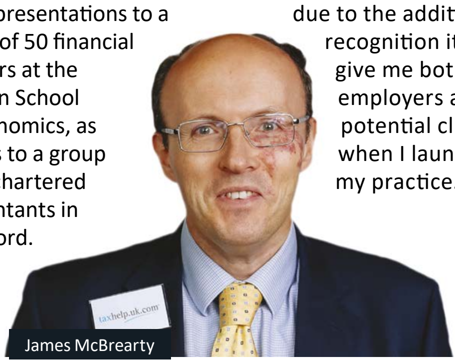
- I have been invited to Downing Street twice, thanks to being one of the Small Business Saturday alumni from 2014.
- I have written two books to help small businesses, both of which have been endorsed by a NY Times bestselling author.
- In 2016, I launched my online course to help people start a consultancy. I now have over 10,000 students enrolled, in over 150 countries.
- I was one of the early adopters of using social media for business and have won several awards for this. As a result, I have also travelled throughout the south east of the UK, as well as to Spain, to give presentations to small business owners. I have also given presentations to a group of 50 financial advisers at the London School of Economics, as well as to a group of 85 chartered accountants in Guildford.

Why is the ATT qualification important?

I chose the ATT qualification because of the additional knowledge and professional recognition it gave me. Running my own practice, it is important that clients know their adviser is professionally qualified and upholds the highest ethical standards. I am also registered with the ATT for anti-money laundering.

Why did you apply for Fellowship?

Having learned of the Fellowship scheme, I applied due to the additional recognition it would give me both to employers and to potential clients when I launched my practice.



James McBrearty

What advice would you give to new members starting in their career?

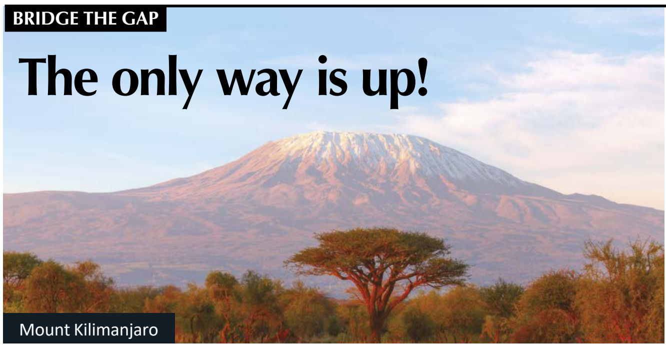
There is much support available online now to help people develop any skills they require, either at no cost or little cost. I would recommend that people invest time in taking advantage of this to further their careers.

I would also recommend that members make the most of their ATT membership through the opportunities that exist. Volunteering is something that members may want to consider. I have had great experiences from the time I spent volunteering on the Member Steering Group and on ATT Council, as well as on HMRC's Working Together Group in Tolworth, where I met with the then Chief Executive of HMRC, Lin Homer.

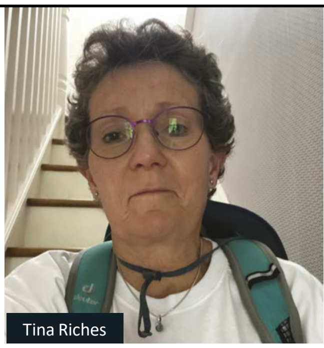
If any other ATT Fellows would like to feature in future editions of Tax Adviser, please contact us at page@att.org.uk.

BRIDGE THE GAP

The only way is up!



Mount Kilimanjaro



Tina Riches

CHARITY

One of the many casualties (though we hope, not fatal!) of the pandemic has been a sponsored climb of Mount Kilimanjaro, which should have taken place in September 2020. Fourteen intrepid tax advisers signed up with Action Challenge to climb this 5,892 metre mountain, the highest free-standing mountain in the world, with a view to raising £40,000 for Bridge the Gap, the fundraising campaign for the tax profession's own charities, TaxAid and Tax Help for Older People.

Alas, as Covid-19 began to tighten its grip, it soon became obvious that the chances of it happening were dismal. This did not deter Tina Riches, the organising mind behind the venture. She decided that she would raise funds by meeting the physical and mental challenges of the expedition in another way, which she badged 'not Kili'.

According to Fitbit, one flight of stairs represents a three metre vertical climb, and Tina calculated that she could replicate the trek from basecamp to the summit of Kilimanjaro by climbing her stairs 1,200 times. So that is what she did, wearing a backpack full of dumbbells that weighed 12 kilos, more than twice the weight of the day pack which she would have carried up the mountain. It took her a week. She then made the climb another four times. In total, her efforts were the equivalent of reaching the summit of Kilimanjaro five times or climbing over twice the height of Everest. Tina did not mention the downstairs part but she did say that she had to leave a gap of two weeks between each attempt because 'by the end of a week's climbing, I could feel my knees a bit'.

Tina is optimistic that she and the others will be able to climb Kilimanjaro for real between 16 and 26 September 2021. The group will take the Lemosho route, which approaches Kilimanjaro from the west. The 72 kilometre trek takes seven days: five up and two down again, with a maximum of ten hours' trekking a day. It starts in lush rainforest and makes its way up to the arctic conditions of the snow-covered summit via a variety of terrains. These include the rocky outcrop known as the Elephant's Spine; the vast Shira Plain; the high Alpine desert zone; the Lava Tower and its surrounding lunar landscape; the volcanic rock of the Barranco Wall; and a valley with its own micro-climate and unique flora. As the height increases so does the challenge of the altitude, as oxygen levels in the surrounding air reduce, but this is fully compensated by the views from the summit as you look out over the cradle of the earth.

There are still places for a few more hardy volunteers. If you are interested, and have an above average fitness level, can walk uphill (and down again) for up to 10 hours a day with a backpack weighing up to 6 kilos, and if you can find at least £2,000 in sponsorship, please contact Tina at tina@richestax.co.uk. You can also sponsor Tina and her intrepid colleagues at uk.virginmoneygiving.com/fund/tax2021kili. They have already secured sponsorship of over £8,000, including almost £3,000 raised by 'Not Kili' (see uk.virginmoneygiving.com/notKili2020). Because everyone will bear their own costs, all the sponsorship money will go to the charities, apart from the small administration fee charged by Virgin Giving.

If you are inspired by Tina's efforts, you can join the 'not Kili' challenge (please get in touch with Tina). Or if or you want to do something else for Bridge the Gap, please email Rose Over at Rose.Over@taxvol.org.uk.

There are many ways in which you can support TaxAid and Tax Help for Older People. These charities face the daily mountainous challenge of reaching all those vulnerable people who desperately need tax advice, cannot afford to pay for it and have nowhere else to turn.

Penny Hamilton
Chair, Tax help for Older People

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mr Peter Findlay

NOTIFICATION

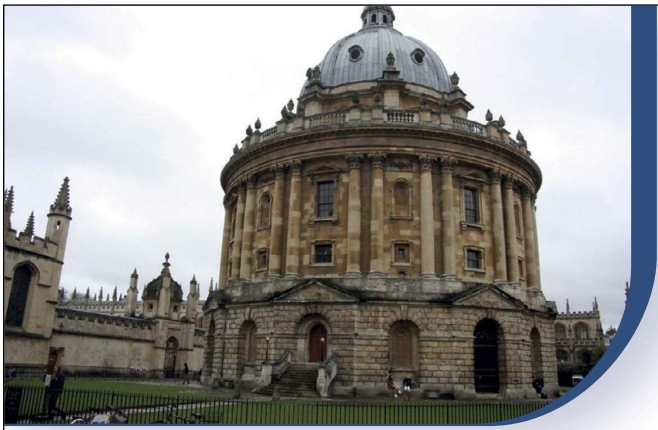
At its hearing on 20 November 2020, the Disciplinary Tribunal of the Taxation Disciplinary Board considered complaints raised by two clients of Mr Peter Findlay of Sidmouth, a member of The Chartered Institute of Taxation and the Association of Taxation Technicians.

The Tribunal determined that Mr Findlay was in breach of the Professional Rules and Practice Guidelines (PRPG) 2011 and 2018 in that he acted without the required level of integrity and/or professional behaviour in:

(a) failing to ensure his client's money was properly accounted for and/or maintained separately;
(b) withdrawing money from a client account without proper authorisation by the client;
(c) failing to maintain records to show clearly the money which was received on account of his clients and details of any other money dealt with by him through the client account;
(d) failing to act in an honest manner in his professional work;
(e) acting in a way that was likely to bring discredit to himself, the profession, the CIOT and the ATT;
(f) failing to provide a letter of disengagement which the Rules strongly advise a member should provide when ceasing to act for a client; and
(g) failing to provide necessary assistance and/or documentation in order to facilitate a handover from himself to a client when she was trying to engage the services of a new tax advisor.

The Tribunal determined that Mr Findlay be expelled from membership of the CIOT and the ATT and that he pay costs in the sum of £7,722.60.

A copy of the decision of the Tribunal can be found on the TDB website at www.Tax-Board.org.uk.



HMG LAW

Personal tax role in historic university city

Personal tax in Oxford

A long established Solicitor's practice has a vacancy in its central Oxford office for a personal tax specialist, preferably either CIOT or ATT qualified.

The role includes tax return preparation and tax planning for CGT and IHT. Our clients include family companies, trusts and high net worth individuals. A legal background would be an advantage but is not essential. The successful applicant will be expected to use their initiative and plan their work.

Training, including for additional qualifications, will be provided as necessary. Competitive salary dependent on experience.

Apply with CV to Frank Collingwood, HMG LAW LLP, 126 High Street, Oxford OX1 4DG.

www.hmg-law.co.uk

Georgiana Head Recruitment

MEET YOUR ADVISERS

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

ALISON TAIT

Director

Tel: 0113 426 6671
Mob: 07971627 304

alison@ghrtax.com

In-house Tax Manager
Stoke on Trent – c£60,000 + bonus + bens

Our client is a large international group that seeks an experienced, qualified individual to oversee tax for the UK and ROI. In this role, you will manage relationships with external advisors and HMRC, and build long term relationships with the business. You will be the key source for advice on tax within the business (both direct and indirect). Would suit someone with a background in a Big 4 or Top 20 firm and experience working in-house. Post=Covid it is envisaged that this role will be worked partly in the office and partly remotely. Classic Group Tax Manager position. **Call Georgiana Ref: 3037**

In-house VAT and Corporate Tax
Tolworth, SW London – £excellent

Major international group seeks a VAT Accountant and a Corporate Tax Manager to join their in-house team. Working remotely at present; post-Covid it is envisaged that you will work in the office. The VAT role requires someone with sound SAP and VAT accounting skills. The corporate tax role would suit a qualified manager (ideally ACA, CTA or ICAS) with experience from either a Big 4 firm/Top 20 or industry. Must have good large group experience including managing compliance, reporting and dealing with advisory work. German Language skills an advantage. **Call Georgiana Refs: 3038 and 3039**

Associate Director/Partner Designate
W Yorkshire – £70,000 to £90,000 + bens

Great role in the heart of 'Last of the Summer Wine' country. Would suit an ACA/CTA qualified corporate tax specialist who enjoys OMB work. Our client is looking for a partner designate who will run the tax team in Holmfirth and ultimately be an equity member of the overall firm. Could suit someone who is looking for a more local role and the opportunity to work and live in the Yorkshire Dales. Great client base and a growing progressive independent firm. In this role, you will be an all round trusted advisor to clients. This role is office based with travel to clients. **Call Georgiana Ref: 3009**

VAT Senior Manager/Associate Director
Leeds, Manchester or Liverpool

An experienced VAT professional is sought by Top 10 firm to help deliver indirect tax work across the North of England. This firm has plenty of work! They have a great client base which is genuinely dynamic. As a result, what they seek in this role is someone who can deliver work, so an efficient individual who can manage and motivate more junior staff, someone who can be a genuine confidant to clients, a trusted advisor who can cut through the red tape and help businesses to be compliant but also commercial.. **Call Georgiana Ref: 3029**

Corporate Tax Senior Manager
Manchester – £excellent

Our client is a Top 10 accountancy firm. They seek an experienced corporate tax professional to join a busy team. In this role, you will be involved in the delivery of a wide range of corporate tax work, from transaction support to compliance management. Great systems for home working, this practice is also a leader in flexible and part time working. Clients range from multinational groups through to dynamic OMBs. Currently working from home, it is envisaged that post-Covid the team will work 1 to 2 days from the office. To top it off, there are real promotion prospects. **Call Georgiana Ref: 3031**

In-house Corporate Tax Manager
Leeds – £excellent + car allowance

Major retailer seeks a qualified corporate tax professional for role which is focused on tax compliance and reporting but also offers some M&A and R&D work and the chance to get involved in other areas of advice. A classic position for a first move in-house, this role also has scope for promotion to senior manager in 2 to 3 years. Our client will consider applicants from industry or practice – the key thing is that you must have proven UK corporate tax experience. Good salary and benefits package including a car allowance and family healthcare make this a cracking opportunity. **Call Georgiana Ref: 3024**

www.georgianaheadrecruitment.com

Corporate Tax Senior Manager
North West based – to £60,000 + bens

You will be responsible for the provision of corporate tax compliance and advisory services for a portfolio of predominantly SMEs (of varying sizes) and their subsidiaries. Your main responsibilities will include corporate tax compliance and reporting, the delivery of advisory projects, dealing with HMRC enquiries, man management and marketing activities. You should be ACA/CTA qualified, with a thorough understanding of the corporate tax legislation. You can be based in various locations around the North West. **Call Alison Ref: 3025**

International Tax Manager
Newcastle or Leeds – to £54,000 + bens

You will help your clients to understand, plan and execute effective tax strategies. You will assist them in responding to new legislation in the UK along with ongoing international tax reforms at the OECD level and US tax changes. You will work on strategic tax advisory projects and corporate transactions, and will also assist clients with their evolving compliance and reporting obligations. Great move for an ACA/CTA qualified corporate tax specialist looking to move into international tax. **Call Alison Ref: 3044**

M&A Manager or Senior Manager
Manchester – to £74,000 + bens

You will provide M&A tax services to a diverse client base including UK listed, PE backed, inbound and family owned groups. This will include providing tax advisory services involving tax due diligence, structuring, international tax and other advisory work. You must be experienced at project management, enjoy building client relationships and coaching and developing junior team members. This is a friendly team that supports flexible working. You should be CTA/ACA qualified, with experience of dealing with M&A work. **Call Alison Ref: 3041**

Corporate Tax Assistant Manager
Manchester – to £40,000 + bens

Working in this busy team, you will do both corporate tax compliance and advisory work. Your client portfolio will include large international groups, OMBs and entrepreneurial fast growing businesses. Examples of advisory work that you will get exposure to include group reorganisations, giving shareholder advice, R&D, M&A work and international tax. You should be ACA/CTA qualified, with experience of working in the corporate tax team at a large accountancy firm. **Call Alison Ref: 3046**

Private Client Manager
Leeds – to £50,000

You will be responsible for the provision of high level tax planning advice to HNW individuals, including IHT planning, non-domicile and residence issues, the use of UK and offshore trusts and income tax planning. You will carry out IHT reviews/ estate planning work and deliver tax advice mainly around IHT, trust and succession planning. You will also have man management and business development responsibilities. You should be CTA/ACA/STEP qualified, with experience of managing advisory projects. **Call Alison Ref: 3033**

Business Tax Manager or Senior Manager
Leeds or York – £excellent

This is a client facing role a in a busy team. You must have experience of advising owner managed businesses, and should be able to deal with giving advice on technical areas like share option plans (EMI etc), (S)EIS, company reorganisations and demergers, succession planning and tax reliefs. Experience on property transactions, including capital allowances, would be advantageous. You will also be responsible for managing junior team members and liaising with other departments to identify any tax saving opportunities for your clients. **Call Alison Ref: 2978**

Churchill Tax Advisers

Churchill Tax is a fast growing and one of the leading specialist tax consultancies in the UK. Due to our increased market share via acquisitions and organic growth we are recruiting at senior levels to join our national team.

Senior Tax Investigations Manager/Director

Up to £85k plus bonus & partnership

- At least 8 years solid experience in handling and managing HMRC tax investigations
- Must be able to independently manage HMRC investigations and enquiries relating to VAT Income Tax, Corporation Tax, PAYE
- Solid experience of dealing with Code of Practice 8 and Code of Practice 9 investigations (tax fraud investigations)
- Experience of dealing with appeals in the Tax Tribunal and representing clients
- Solid/provable experience of negotiating with HMRC to reduce clients' tax liabilities
- Should have track record of defending clients in complex investigations
- Ability to communicate and correspond with HMRC
- Meetings with clients and HMRC
- Preferably ACCA/ACA/CTA qualified or ex-HMRC Inspector
- Strong written and verbal skills

In return for your commitment the successful Senior Tax Investigations Manager/Director will benefit from a quick route to partnership, a salary of up to £85k+ per annum PLUS bonus.

Senior Tax Advisory Manager/Director

Up to £100k plus bonus & partnership

The successful Senior Tax Advisory Senior Manager/Director will be responsible for:

- Meeting with new and prospective clients, onboarding and agreeing terms of business
- Providing advice on VAT and personal, inheritance, corporation tax
- Residence and domicile tax advice
- Providing in depth onshore/offshore tax advice
- Corporate restructuring, HMRC clearance, negotiations with HMRC
- Complex VAT and stamp duty tax advice to clients

To be successful in the role, it is essential that the Senior Tax Advisory Manager has the following experience:

- At least 10+ experience in a similar role
- A track record of developing bespoke tax planning strategies for clients
- Preferably CTA qualified or ACA/ACCA with strong tax advisory experience within a large firm
- Experience with tax advice to high net worth individuals and companies
- Strong written and verbal communication skills
- Ability to conduct meetings with new clients and HMRC independently

In return for your commitment the successful Senior Tax Advisory Manager/Director will benefit from a quick route to partnership, a salary of up to £100k+ per annum PLUS bonus.

These roles will be based around 80% on working from home with occasional visits to the London/regional offices to meet clients where necessary.

If you would like to apply, please send your CV to Andrew Edmond on **andrew@churchill-tax-advisers.co.uk** or call on **020 7998 1834**.