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Time to share

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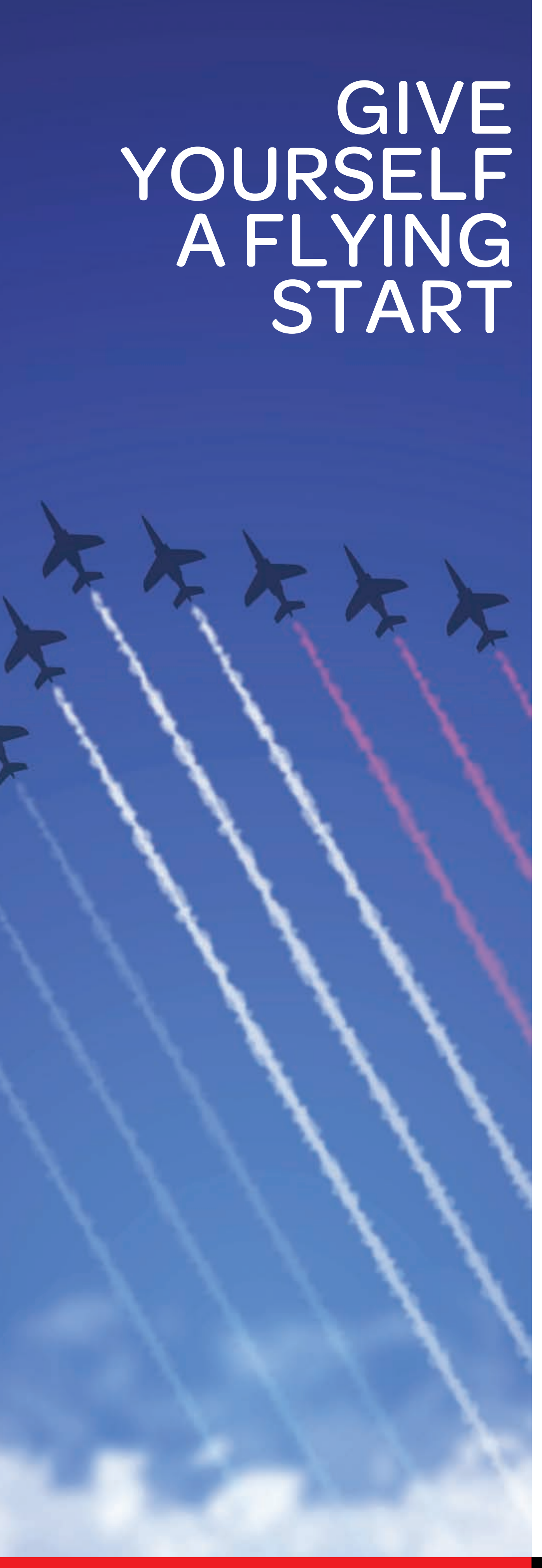

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President's page

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Glyn Fullelove

Welcome to 2020!

Happy New Year! January will be a very busy month for many of you with the 31st January Self Assessment deadline; and many of my colleagues in the 'in-house' community will be hard at work preparing tax figures for 31st December year ends. Publication deadlines mean I am writing this before the General Election, and the result may be making us all even busier than usual!

The CIOT Council Strategy Day in November focused on three topics. The first was the impact of technology on how tax is practised and managed, and what this means for educating the tax professionals of the future. The second was increasing regulatory pressures, and our response; and the third was how the voice of the profession can be better heard in the right places.

I would like to thank my fellow Council Members for all their help and contributions to the discussions. The outputs of the day are being analysed by the senior management team and, together with an assessment of how we can best advance our values in an international context, will form the basis of a Strategy Document to be presented to Council in March.

During an election campaign, contact with HMRC on most matters with a policy dimension is suspended or very limited. Coming on top of many initiatives being delayed due to Brexit preparations, this is somewhat frustrating and it feels that progress on many issues of concern to members, such as the conduct of tax enquiries, is very slow.

I am also concerned that in some specific cases, good tax administration is being compromised. Whatever your view on the 'Loan Charge', the uncertainty caused by the delay in publishing Sir Amyas Morse's review and the somewhat confusing position it leaves both taxpayers and HMRC in regarding the forthcoming January deadlines is unsatisfactory. Hopefully, by the time you read this, things may be clearer.

No such restrictions apply on the international front, though. The OECD published its 'Pillar Two' recommendations for the reform of the international corporate tax system. Both the earlier 'Pillar One' proposals and these new recommendations have also been the subject of public consultations to which the CIOT have contributed.

As I have noted before, taken together these proposals do represent a significant change in how multinationals will be taxed, and should ensure multinationals do pay tax on all of their profits. However, as the CIOT responses state, this is unlikely to be the end of the story. Debates about exactly who actually bears corporate income taxes and the base on which they should be levied are likely to continue.

We have also continued working with other partners. Our latest joint debate with the IFS on digital services taxes was very well attended, and in December we held a workshop with think-tank CoVi aimed at developing educational toolkits that can be used in schools, universities and civil society groups to explore the tax system.

Whilst, understandably, I have no branch visits in January, the diary for February and March shows many more opportunities for me to meet members – although it's not too late to fit some more in before May! During November, I visited the flourishing Northern Ireland branch and attended the Annual Dinner of ICAS (The Institute of Chartered accountants of Scotland) in Glasgow. Our relationship with ICAS has been strengthened by our Joint Programme agreed earlier this year and we have welcomed a number of new members as a result.

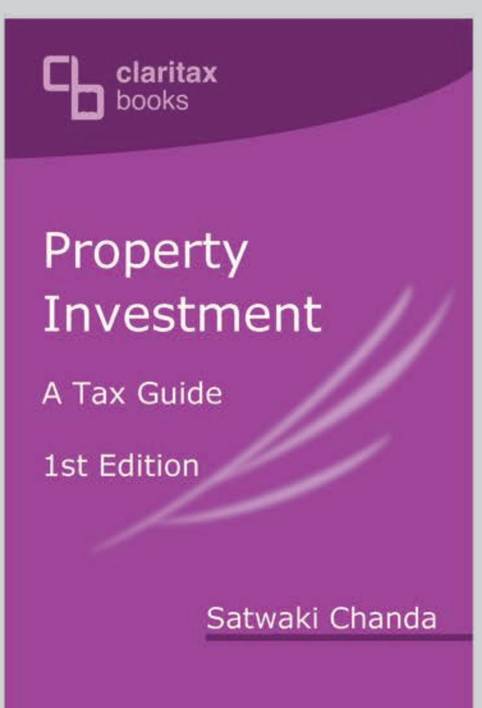
Our Finance and Operations Director, Paul Davies, retired in December. I would like to thank Paul for his significant contribution to the Institute. He was closely involved with the move to Monck Street and the modernisation of our IT systems; a necessary if sometimes thankless task! I would also like to welcome Karl Cerski to the CIOT as our new Chief Financial Officer.

I hope your busy season goes well, and best wishes for 2020.

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

"Progress on many issues of concern to members, such as the conduct of tax enquiries, is very slow. I am also concerned that in some specific cases, good tax administration is being compromised."

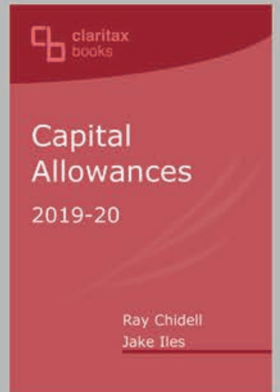
Tax titles from

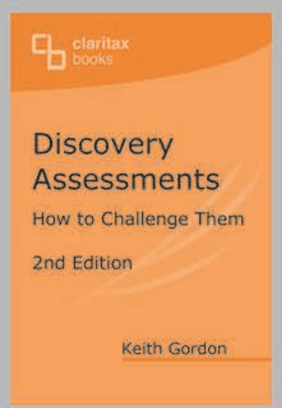


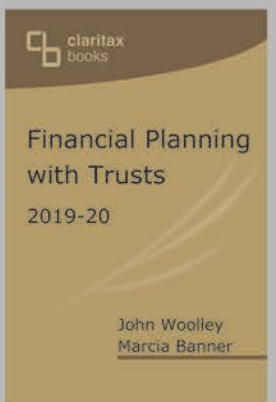
This major new title leads the reader through the lifecycle of property ownership, from acquisition to eventual disposal. At each stage, the tax issues are clearly explained and illustrated, with worked examples throughout.

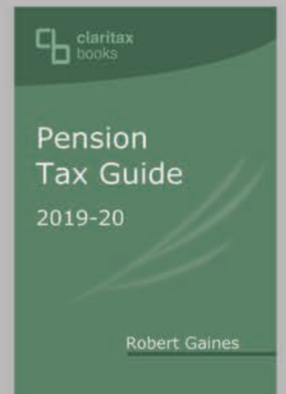
Invaluable for tax advisers with property-owning clients, the writing style is accessible, and the emphasis throughout is on addressing the real tax issues faced by owners and their professional advisers.

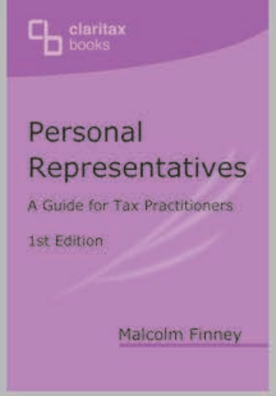
Satwaki Chanda is a tax lawyer and author, having qualified as a barrister in 1992. With more than 20 years of tax experience, he has worked for City law firms and a Big Four accountancy practice.











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ATT welcome

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Richard Todd

Self assessing the months ahead

Back to work after a break – an all too short break. The Christmas break seems to pass quicker each year. I have heard a lot of chat about New Year's Resolutions, but I have yet to hear (out loud at least) the one possibly most favoured by those of us working in personal tax: 'I am definitely not going to let this happen again next year!' Think positive thoughts – just one final push during our busiest time of the year and you will see the finishing line.

A new calendar year will lead swiftly into a new tax year. Once all those Self Assessment tax returns have been filed, we must look to the future (but not too far into the future – only two months) to see what tax changes come into effect. Some of these may not be immediately relevant to your workload, but it is always worth having a brief reminder. Some have already been legislated, some will be dependent on whatever comes out of a post-election Budget and others assume that the draft legislation from July 2019 will be enacted. And, of course, this is not a complete list, just the ones I find most interesting.

Loan interest relief as a direct deduction against UK residential lettings income will cease as we move out of the transition period. This restriction over the past number of years has led to a phased and sometimes surprising increase in income tax liabilities. I hope that whatever planning you wanted to put into place before April 2020 is all complete and reaping benefits.

For capital gains tax on the disposal of residential property, there are likely to be three important changes of general application. Item 1 has already been legislated for, items 2 and 3 were proposed in draft in July 2019:

For all UK residents who sell a UK residential property after 5 April 2020, details of a taxable disposal must be reported to HMRC within 30 days of completion. Payment of capital gains tax on such a disposal will be expected within that same 30 day window. There are more details on page 25.

The deemed period of qualifying occupation for the principal private residence (PPR) relief is expected to reduce from 18 months to just nine months. There is no transitional period so, where an individual vacated their home in July 2019, every month a sale is delayed after April 2020 increases the chances of having to pay some capital gains tax.

Lettings relief, which in the right circumstances could reduce a chargeable gain of less than £40,000 to nil, will be restricted to situations where the owner is in shared occupation with the tenant. Again, there is no transitional period so beware the cliff edge.

As regards business taxes, it appears that the planned reduction of corporation tax to 17% may no longer be implemented, and the Employment Allowance (the credit of £3,000 towards an employer's Class 1 secondary NI contributions) will be restricted to employers whose previous year's liability to secondary Class 1 NI was less than £100,000. A great explanation of this can be found at bit.ly/2OVTviq

Additionally, non-UK resident companies carrying on a rental business in the UK will no longer be liable to income tax on profits but rather corporation tax at 19%. At first glance, this appears to offer some small benefit, but the company could now be subject to the loss restriction or the interest restriction rules.

The personal allowance (currently £12,500) is to be indexed with the Consumer Price Index but we have to wait until April 2021 for that. In the meantime, there may be no increase for the 2020/21 tax year. But the inheritance tax residential nil rate band is set to increase to its target level of £175,000 for deaths occurring on or after 6 April 2020.

Of course, there is no better way to keep up to date with what is happening in the world of tax than through the ATT annual tax conferences. Dates and venues can be found at bit.ly/388FUvM, along with course joining instructions. These courses will provide you with relevant CPD.

And now news from Monck Street – the 2019 Annual Returns were issued in November 2019. If you have already completed and returned the form, thank you; if you have yet to return it, please do so as soon as possible – it makes everyone's work that little bit easier to manage.

And finally, for those students who will shortly receive the results from the November 2019 examination sittings, may I take this opportunity to wish you all the very best.

Richard

Richard Todd
ATT Deputy President
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> **"There is no better way to keep up to date with what is happening in the world of tax than through the ATT annual tax conferences."**

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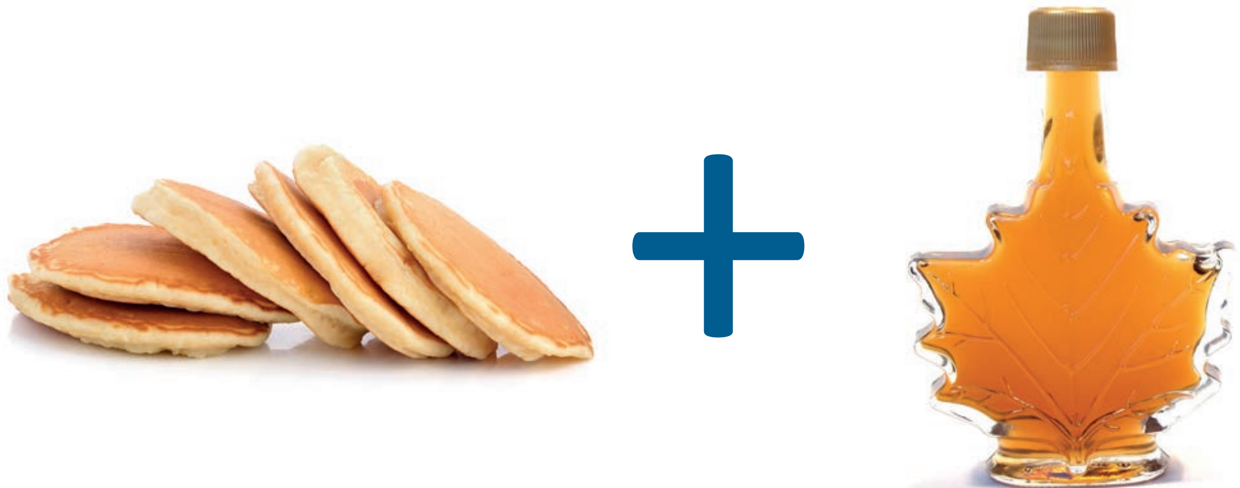

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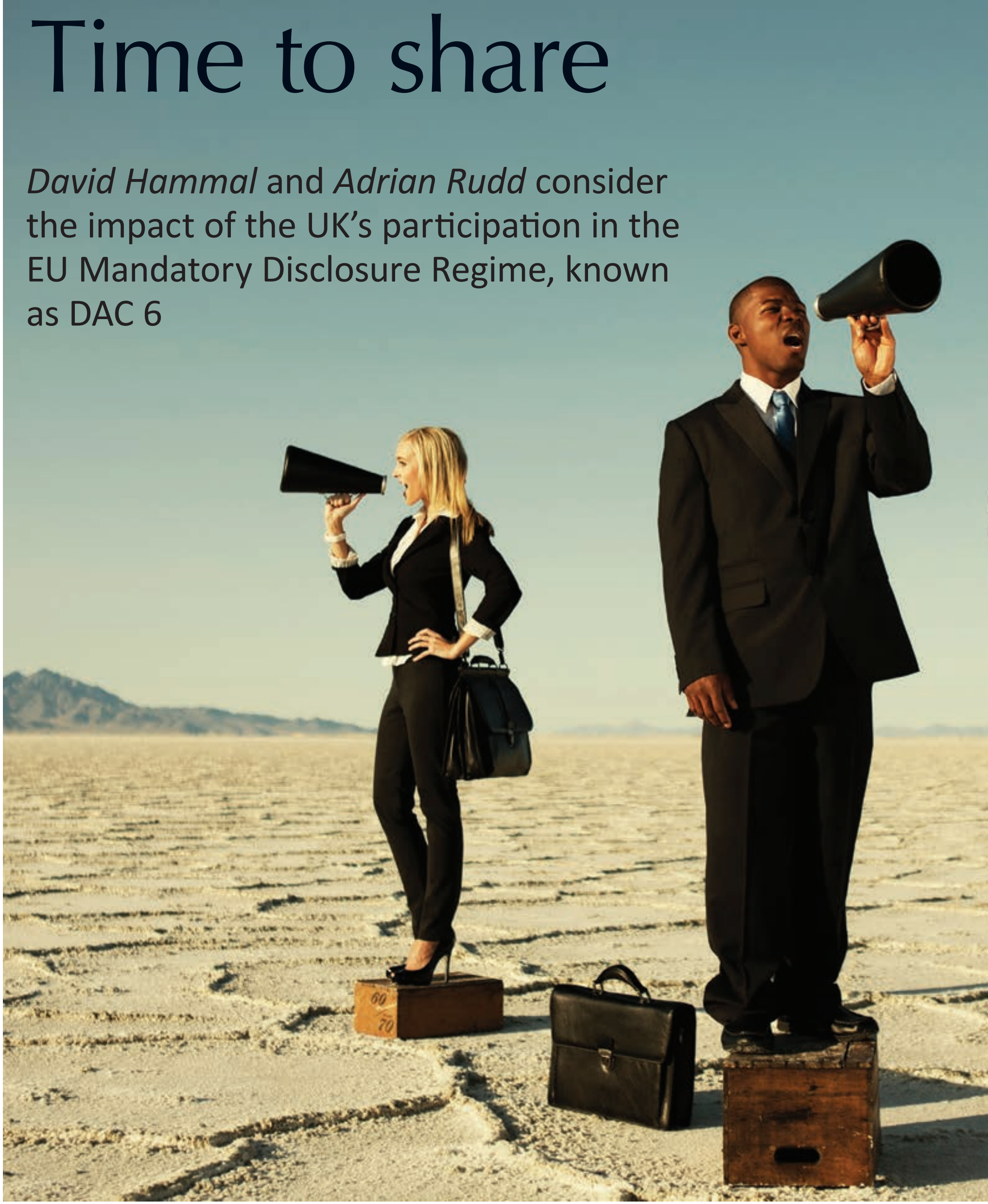
Time to share

David Hammal and *Adrian Rudd* consider the impact of the UK's participation in the EU Mandatory Disclosure Regime, known as DAC 6



KEY POINTS

- **What's the issue?**
The EU Mandatory Disclosure Regime requires intermediaries based in the EU and, in certain circumstances, taxpayers, to make disclosures of 'cross-border arrangements' satisfying one or more hallmarks to an EU tax authority, which must share the disclosed details around all other 27 member states on a quarterly basis.
- **What can I take away?**
The Directive starts from the principle that it is most appropriate for advisers ('intermediaries') to make disclosures. If there is more than one EU intermediary, then the Directive places the obligation to disclose on every such intermediary.
- **What does it mean to me?**
Identify a central team within the organisation to take ownership of getting ready for DAC6, and undertake an impact assessment to better identify parts of your business which could be most affected by the rules.

The EU Mandatory Disclosure Regime (MDR) (bit.ly/33CznGk), also known as DAC6, is an EU Directive implementing the recommendations of the OECD BEPS Action 12 (bit.ly/34MmL0M), as regards the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. It took effect on 25 June 2018 and was required to be implemented in all 28 member states by 31 December 2019.

In this article, we consider the Directive itself and the UK's draft regulations and consultation document released on 22 July 2019 (bit.ly/34GwJjZ). At the time of writing, the final regulations and any updated guidance have not been released by HMRC.

It is worth noting that the government is committed to international tax transparency and we expect that EU MDR will be implemented, notwithstanding Brexit. Accordingly, we have written this article on the assumption that EU MDR will apply in full in the UK and any necessary adjustments to accommodate Brexit are made.

EU MDR requires intermediaries based in the EU and, in certain circumstances, taxpayers, to make disclosures of 'cross-border arrangements' satisfying one or more hallmarks to an EU tax authority. It then requires the tax authority to share the disclosed details around all other 27 member states on a quarterly basis.

In this article, we will discuss some of the practical issues created by EU MDR, and will also briefly look at its implementation in Poland. Poland is the only member state to implement the full rules early (from 1 January 2019), and they are of relevance to UK practitioners and businesses. Poland has decided to make these rules extra-territorial and they apply equally to Polish and non-Polish advisers and businesses.

The Directive

DAC6 applies to 'arrangements' undertaken by taxpayers, or made available to taxpayers. 'Arrangements' are not defined in the Directive, other than to note that 'an arrangement shall also include a series of arrangements. An arrangement may comprise more than one step or part' (DAC6 Art 3 para 18). A relevant arrangement must be 'cross-border' and this requires that it 'concerns' more than one member state, or at least one member state and a third country.

Hallmarks

To be reportable, such a 'cross-border arrangement' must satisfy one or more of 19 hallmarks. Space does not permit a full consideration of all of these hallmarks, although we do discuss some of them later.

Nine of these hallmarks are subject to a 'main benefit test' which only requires disclosure if it can also be 'established that the main benefit or one of the main benefits … a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage' (DAC6 Annex 4 Part 1).

Whilst this approach will make the rules more targeted and therefore easier to apply, as the main benefit test does not apply to the other ten hallmarks many arrangements which do not produce any tax benefits will still be disclosable.

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Focus on intermediaries

The Directive starts from the principle that it is most appropriate for advisers ('intermediaries') to make disclosures, with this obligation transferring to taxpayers in certain circumstances – such as where there are no relevant EU intermediaries or where such EU intermediaries rely on 'professional secrecy' or legal professional privilege.

If there is more than one EU intermediary, then the Directive places the obligation to disclose on every such intermediary. It does provide for circumstances in which intermediaries can rely on another's disclosure, although in practice these may be difficult to rely on, as discussed further below.

To be an intermediary, you first have to have a relevant connection with a member state and be a person who either:

- designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement (commonly referred to as a 'promoter'); or
- knows or could be reasonably expected to know that they have undertaken to provide 'aid, assistance or advice' with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement (commonly referred to as a 'service provider').

These are clearly very broad definitions and there is no limitation to those providing tax advice. In the context of a typical transaction, this could include accountants, corporate tax advisers, management tax advisers, lawyers, banks, private equity investment professionals, valuation experts and others. In a multi-territory transaction involving a number of EU territories, the number of intermediaries could be eye-watering.

Timing of disclosures

Arrangements with the first step of implementation between 25 June 2018 and 30 June 2020 are required to be disclosed between 1 July 2020 and 31 August 2020. The full regime takes effect from 1 July 2020 and requires that arrangements are disclosed within 30 days of the earliest of a number of trigger events (e.g. the day after the arrangement is 'made available' by the promoter).

In addition, for 'service providers', there is a separate deadline of 30 days from the day after they provided the relevant 'aid, assistance or advice'.

UK draft regulations and consultation document

The draft regulations issued by HMRC on 22 July 2019 generally follow the Directive closely. There are, however, a few points to highlight.

Tax advantage

HMRC have made two extensions to the definition of 'tax advantage' in the Directive, one of which broadens and the other of which limits its potential reach.

Firstly, it applies to a tax advantage in any territory worldwide and not, for example, just UK or EU taxes. (The types of taxes in scope are those covered by the Directive generally, so direct taxes are in scope, but not indirect taxes, duties, etc.) Most other territories have limited the geographical reach of 'tax advantage' to EU taxes.

Secondly, the draft regulations limit tax advantages to tax benefits not consistent with the principles or the policy objectives of the relevant tax provisions. This approach will help focus the rules.

Hallmarks

HMRC have broadly left the hallmarks unchanged from the Directive. The one substantial difference relates to the 'E' hallmarks (specific hallmarks concerning transfer pricing). HMRC are proposing to exclude SMEs from the remit of these three hallmarks.

Legal professional privilege
HMRC are proposing to allow relevant intermediaries to rely on legal professional privilege (LPP). However, they have said that they consider LPP not to cover factual data such as names of taxpayers and other intermediaries, and a description of the transactions to be undertaken; and they expect lawyers to submit disclosures containing information of this nature. Whether that is a correct interpretation of LPP will surely be debated.

Penalties
The consultation paper proposes financial penalties of up to £600 per day (without limit) for failure to make a report. The initial penalty is imposed by the First-tier Tribunal, and if the daily penalty 'appears inappropriately low' then the tribunal can set the penalty of up to £1 million, 'as appears appropriate' having regard to the circumstances (draft Reg 15(5)).

The level of penalties is greater than the vast majority of other member states and will be of concern to intermediaries and businesses, particularly those who are not tax specialists.

Problems with DAC6

We now turn to some of the concerns which we have with the Directive.

Broad scope applying to purely commercial transactions
As noted above, the lack of a main benefit test for ten of the hallmarks will mean that many everyday commercial transactions will be disclosable.

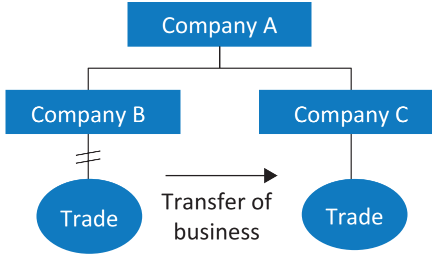
Example 1: E3 and business transfers

This hallmark applies to:

> 'An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50% of the projected annual EBIT of such transferor or transferors if the transfer had not been made.'

Consider the following facts:

- Company A (resident in territory A) owns Company B (resident in territory B) and Company C (resident in territory C).
- The corporate tax rate in territory C is higher than in territory B.
- Company B operates a profitable business, which is expected to continue to be profitable going forward.
- The business of Company B is transferred to Company C, following which Company B is dormant.



This would satisfy hallmark E3, as the forecasted EBIT of Company B has been reduced, notwithstanding the fact that it may result in a higher corporate tax liability.

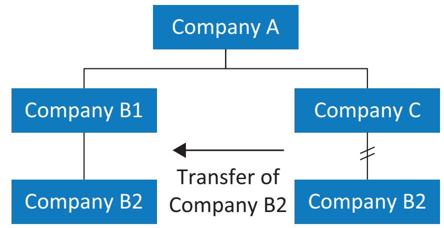
E3 could apply to many typical corporate simplification transactions. For example, a cross-border liquidation or merger where the company ceasing to exist was expected to have positive EBIT is likely to be disclosable.

Imprecise wording leading to unintended consequences
Many of the hallmarks seem to have been written with a particular mischief in mind, but have been widely drafted, and as a result more transactions will fall within scope than might be expected.

Example 2: E3 and shares

Let us again consider hallmark E3, but this time in the context of share transfers. The category E heading of 'Specific hallmarks concerning transfer pricing' and the focus on functions, assets and risks may make you think that this should be limited to transfers of operations or other assets producing operating income (e.g. a transfer of business as in Example 1). However, the drafting suggests that it could apply to the transfer of shares. Consider this example:

- Company A (territory A) owns Company B1 (territory B) and Company C (territory C).
- Company C is a sub-holding company, the only asset of which is shares in Company B2 (territory B).
- B2 is a profitable trading entity which pays substantial annual dividends and these dividends are anticipated to continue to be paid as Company A requires regular cash repatriation.
- Company C transfers the shares in Company B2 to Company B1 for intra-group debt.



Here we have an intragroup cross-border transfer of an asset (shares in Company B2). As a result, Company C goes from a position where it expected regular dividends (included in EBIT) but these are replaced by interest income (not included in EBIT). There are arguments that this transaction could satisfy E3 and therefore be disclosable.

If shares and dividends are within the scope of E3, then this would bring a very large number of ordinary corporate restructuring transactions within the scope of E3, regardless of the tax outcome of those transactions. In practice, however, the situations which are disclosable will be limited by the fact that it is rare that future dividends can be anticipated with sufficient certainty to be included in 'projected EBIT'. However, there will be cases, such as where there is a consistent history of regular dividend payments and a commercial requirement for the cash in the parent, where this will be satisfied.

Differences in enactment and interpretation between territories
There are also differences in how the rules are being enacted and interpreted around the EU. One example is the definition of tax advantage in the UK's draft regulations, which may result in arrangements not being disclosable in the UK which are disclosable elsewhere. Another relates to the UK's exclusion of SMEs from the E hallmarks.

Example 3: Hallmark E1 and SMEs

Hallmark E1 applies to: 'An arrangement which involves the use of unilateral safe harbour rules.'

As noted above, the UK has excluded SMEs from the E hallmarks in the draft regulations; hence, arrangements involving SMEs would not be disclosable in the UK under these hallmarks. This makes it clear that the UK's exemption of SMEs from the main transfer pricing rules is not a unilateral safe harbour, for the purposes of UK disclosures (OECD TP Guidelines 2017 s E2 (4.102).

However, if an EU intermediary based in another member state was providing relevant services in relation to such an arrangement, then they may consider that this is disclosable.

Applying the rules to non-tax specialists
Analysing arrangements against the hallmarks is hard enough if you are a tax specialist. Advisors who are not from a tax background find it even more difficult to do effectively. For example, even tax specialists will not find it easy to determine whether the intangible asset they have helped move was 'hard-to-value' or whether the loan they have helped implement is creating two levels of double tax relief. It will be

considerably more difficult for people who are not tax specialists to do this.

As a result, tax specialists may need to spend time developing procedures to help their non-tax colleagues comply with DAC6.

Poland

We conclude with a brief examination of the Polish implementation of EU MDR. These are of practical interest to UK practitioners and businesses. Poland has decided to make these rules extra-territorial, and as a result they can apply directly to non-Polish persons who are providing services which impact Poland.

Other concerning aspects to note:

- The rules are fully applicable now; i.e. the 30 day disclosure deadline has been in place since 1 January 2019.
- The Polish authorities interpret the DAC6 hallmarks very strictly and the Polish legislation have added four very broad hallmarks (in addition to the DAC6 hallmarks) with no main benefit test protection.
- The Polish rules primarily target individuals and the most severe penalties (criminal sanctions with fines up to about £4.5 million) apply to individuals.
- The Polish authorities consider that individuals working for non-Polish taxpayer group companies (e.g. tax and finance teams employed by a non-Polish head office) can be intermediaries and the obligations and potential sanctions in the Polish rules can apply to those individuals.

Given the above, we recommend that intermediaries and taxpayers adopt very strict protocols when providing any advice or services relating to Polish businesses or activities.

Discuss DAC6 with other parties involved in a transaction early in the process.

How to cope with DAC6?

Given these complexities, how should advisers and businesses deal with DAC6? Consider implementing the following actions, depending on what is reasonable in the context of their business and/or the risks they face:

- Identify a central team within the organisation to take ownership of getting ready for DAC6.
- Undertake an impact assessment to better identify parts of your business which could be most affected by the rules.
- Implement governance protocols to ensure that higher risk events are identified and reported to your central team.
- Depending on the complexity of your organisation, consider whether you would benefit from software to help you track and analyse cases, manage workflow and ultimately allow you to report disclosable events.

In addition, when you are involved in a transaction with a number of different parties, you should also undertake the following steps:

- Discuss DAC6 with other parties involved in a transaction early in the process.
- Make sure you understand what role each party is performing and who is likely to be an intermediary.
- Consider whether it would be beneficial to have one party coordinate/manage DAC6 issues – perhaps monitoring trigger points, producing a central analysis for others to review and potentially making a disclosure that other promoters can rely on (if that is possible).
- Keep DAC6 on the agenda so that trigger points are not missed and any disclosures are made on time.

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Home thoughts

Anthony Nixon explores complexities of the residence nil rate band and how you can maximise the relief

KEY POINTS

- **What is the issue?**
From 6 April 2020, some individuals will have £1m worth of inheritance tax allowances.
- **What does it mean to me?**
Do you know which of your clients will not qualify for the full reliefs? Or what action can be taken to maximise relief?
- **What can I take away?**
More knowledge, and some planning ideas, on this extraordinarily complex part of the inheritance tax legislation.

Attitudes to inheritance tax (IHT) vary hugely. The strong emotions it inspires must, at least partly, be linked to deaths of parents and the value of homes. George Osborne's 2015 announcement of a new '£1m IHT-free allowance' specifically addressed this with the creation of the residence nil rate band (RNRB).

Unfortunately, the narrow targeting of RNRB on parents passing on the family home makes it an extraordinarily complex relief at a time when we are also told that tax is supposed to be fair and simple.

RNRB is excellent for those who can take advantage of it, but full of traps for the unwary. It is all too easy to miss the opportunity to take full advantage, which sometimes needs to be done before death, but can sometimes be remedied in the two years following. This article sets out some ways of maximising relief.

The relief

The relief started on 6 April 2017 as an extra allowance of £100,000 when, on death, an interest in a home is inherited by descendants.

RNRB has increased by £25,000 in each of the following tax years. From 2020/21, RNRB is £175,000 and, as has been the case from the start, can be increased or doubled for the survivor of a married couple.

RNRB is additional to the standard £325,000 nil rate band, which can also be doubled when a widow or widower dies. This amounts to the potential for allowances of twice £325,000 and twice £175,000, which can take £1m out of IHT.

Just as with the standard £325,000, an extra RNRB is brought forward to the estate of a widow or widower to the extent that their late spouse did not use the allowance. Because RNRB did not exist until 6 April 2017, it cannot have been used by a spouse who died before then. So most widows and widowers

EXAMPLE 1: RNRB ON A MULTI-PROPERTY ESTATE

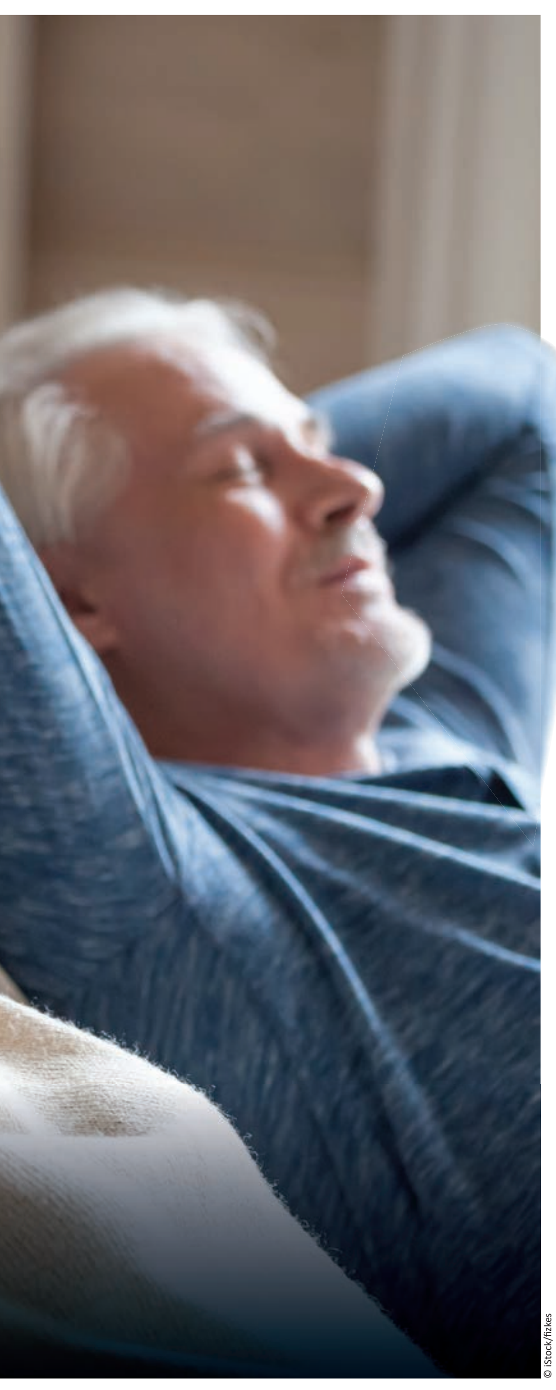
Mr Kilroy dies in June 2020. He has been widowed since his wife's death in 2011. She left him her whole estate, so his estate potentially has a double basic relief of £650,000 and double RNRB of £350,000.

Mr Kilroy leaves:

- his London flat (worth £500,000) to his son Sidney, subject to it bearing its own IHT;
- his Sussex cottage (worth £300,000) to his daughter Dora, again subject to IHT; and
- residue (worth £700,000) equally between Sidney and Dora.

His executors should elect for RNRB by reference to London flat, because the Sussex cottage will not use the potential £350,000 RNRB in full.

Both the double basic relief (£650,000) and the doubled RNRB (£350,000) are set against the whole £1.7m, leaving £700,000 taxable at 40% (£280,000). The £280,000 IHT is payable proportionately across the estate. Just because Sidney inherits the flat, on which RNRB is claimed, he does not pay less IHT than his sister; indeed, he pays more, because he has inherited the more valuable property.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EXAMPLE 2: RIGHTS TO RNRB

Mrs Jefferson, like Mr Kilroy, was widowed so that her estate has the potential to benefit from the full £1m NRB and RNRB allowances. The family home, Rose Lodge, is worth £1m and there are investments of £900,000. Her will gives cash of £1m, free of IHT, to her son Stephen and her residuary estate passes to charity.

HMRC do not accept that Mrs Jefferson's executors can qualify for RNRB by transferring Rose Lodge to Stephen to satisfy his cash legacy. As things stand, the charity has to pay the IHT (at the reduced 36% rate, because the charity gift is clearly well over the 10% threshold). With no RNRB, the gift to Stephen must be grossed up – this is £1,196,875, meaning the charity pays £196,875 IHT.

If, however, the charity and Stephen join in a deed of variation within the Inheritance Tax Act (IHTA) 1984 s 142 to give Rose Lodge to Stephen and residue above £1m to the charity, there will be no IHT to pay. It does not matter if Stephen does not want Rose Lodge; the crucial thing is to rewrite the will (for IHT) so that he is entitled to it. The house can be sold in just the same way it would have been if it had remained part of residue.

dying now have double RNRB. All I say in this article about married couples applies in the same way to those registered as civil partners.

Conditions for relief: qualifying residential interest

Unless the downsizing conditions can be satisfied (see below), the deceased must have died owning a qualifying residential interest (QRI). This is an interest in residential property that has, at some point during the deceased's ownership, been their residence.

There is no minimum period of ownership, and so long as they still own an interest at death, the deceased need not have lived in the property at death or, indeed, for many years past.

The test of what is a residence is similar to that for capital gains tax main residence relief. But the residence on which RNRB is claimed does not have to have been the deceased's main residence.

However, only one residence can qualify for RNRB. If an individual owned interests in more than one home, their personal representatives must choose which to base RNRB on. Because RNRB is a relief against the whole estate, not just against the value of the home that qualifies for relief, the personal representatives should always choose the most valuable property.

Conditions for relief: closely inherited

RNRB is only available if a QRI is 'closely inherited', which means that it must pass on death into the IHT ownership of a 'lineal descendant'. This includes not only children and grandchildren and so on but is extended to include:

- spouses and civil partners of children and grandchildren, etc.;
- widows, widowers and surviving civil partners of children or grandchildren, etc. (as long as they have not remarried); and
- adopted children, fostered children and stepchildren (and children and grandchildren etc., and widows etc. of any of these individuals).

Only one residence can qualify for RNRB. If an individual owned interests in more than one home, their personal representatives must choose which to base RNRB on.

However, there is no RNRB for:

- a life partner to whom the deceased was not married;
- any children, etc. of an unmarried partner; and
- any other class of relatives, even if they shared the deceased's home.

RNRB and trusts

Trusts, whether before or after death, add another level of complexity. The rule of thumb is as follows:

- If the QRI was in trust before death (it will have been in a qualifying interest in possession if it is liable to IHT on death), it must pass to descendants outright.
- If the QRI is given to a trust on death, RNRB will usually only be available if that trust is an immediate post-death interest; in other words, an interest in possession.

Bear in mind that a trust that takes effect on death can usually be varied to

EXAMPLE 3: A LIFETIME GIFT

Mr Ingoldsby, a widower with the potential to benefit from £1m of allowances, has a flat worth £700,000 and investments, with large unrealised gains, of £2m. If this £2.7m is the value of his net estate at death, there will be no RNRB at all, because the maximum £350,000 will have tapered away entirely. He is seriously ill and has been told he has only a few months to live.

A lifetime gift of £700,000, which could, literally, be made only a few days before his death, could unlock all £350,000 RNRB. The IHT saving could be as much as £140,000, even though the lifetime gift would not escape IHT on its own value.

But suppose Mr Ingoldsby cannot realise or give away much from his investments, because of capital gains tax. Thanks to downsizing relief, he could reduce his estate to no more than £2 million by giving away his flat and (to ensure he does not reserve a benefit) pay a market rent for his last months.

EXAMPLE 4: TAPERED RELIEF

Mrs Harris died in December 2014 with a net estate worth £2.1m. Her widower, Mr Harris, dies in June 2020 when his net estate is £2.3m and includes his £600,000 house, given to his children.

Because Mrs Harris's estate was over the £2m threshold, the amount brought forward and added to Mr Harris's RNRB is reduced by tapering. For deaths before RNRB started in April 2017, one has to use a deemed RNRB of £100,000. At £1 removed for every £2 over the threshold, this is treated as reduced to £50,000, 50% of the maximum, so 50% can be brought forward to Mr Harris's RNRB.

This makes the potential RNRB on Mr Harris's death £262,500 (his own £175,000 and an extra 50% – £87,500 – from Mrs Harris). Since his own estate is £300,000 over the threshold, that is reduced by £150,000 to make an actual RNRB of £112,500.

create an interest in possession. Under IHTA 1984 s 144, the interest is treated for IHT as if it arose on death, so can satisfy the RNRB conditions.

If there was an interest in possession in place during the deceased's lifetime, on the other hand, it is too late to make changes after death. RNRB will usually only be saved if the interests arising on death have been made absolute while the deceased was still alive.

£2m limit and tapered relief

RNRB is reduced when the net estate is worth more than £2m. For every £2 above £2m, £1 relief is withdrawn. The net estate for the £2m limit includes the value of assets in a trust in which the deceased had an interest in possession, any jointly owned assets, and any gifts in which the deceased had reserved a benefit. There is no reduction for any reliefs or exemptions, such as on gifts of business or agricultural property or to spouse or charity. On the other hand, the net estate does not include lifetime gifts, even those made only just before death.

As well as reducing the deceased's own RNRB, tapering may also reduce the RNRB that can be brought forward from a deceased spouse, if that spouse had an estate of more than £2m.

£2m is the real limit for RNRB

While it might seem that RNRB gives some benefit to those who die with assets worth more than £2m, the effect of tapering is a 60% rate of tax above the threshold. I prefer to plan for clients to own no more than £2m when they die.

Sometimes it makes sense to use the RNRB of the first to die, rather than letting it be carried forward to the survivor.

Downsizing provisions

While the general rule is that the RNRB is given only to estates including a QRI, individuals who have downsized or disposed of their home before death will, if conditions are met, still obtain RNRB with a 'downsizing addition'. It does not matter whether the disposal was a sale or a gift or whether it was of the whole or part of the property.

The details of the downsizing rules are horrendously complex, and there are so many possible scenarios that it is not possible to cover all of them here.

The method of calculating the downsizing addition attempts to mirror both the transferable nil rate band and the main RNRB rules by looking at the amount of RNRB lost at the time the former property interest is disposed of. A rather arbitrary formula is used to arrive at a percentage that is then applied to the RNRB potentially available at the deceased's death, providing assets of equivalent value are left to 'lineal descendants'. Sometimes, this provides the equivalent of a full £175,000 or £350,000 RNRB. But it will, for example, be worthless in the case of a widow whose home was always in her husband's sole ownership.

Tips for maximising RNRB: planning while both of a married couple are still alive

Try to ensure neither spouse dies with assets worth more than £2m. Arrange transfers between them to equalise what they own. A nil rate band discretionary trust in the will of the first spouse to die can take £325,000 out of the survivor's death estate, and so preserve RNRB. This is the best planning for any assets with business or agricultural relief owned by the first to die, even apart from the fact that those assets might take the survivor over the £2m threshold.

Sometimes it makes sense to use the RNRB of the first to die, rather than letting it be carried forward to the survivor. This will be the case if the survivor will definitely have more than £2m at death. Or it may make the difference between the survivor's estate being above or below the critical threshold.

A nil rate band discretionary trust is almost always worthwhile if either spouse has previously been widowed. This can give the couple £1.5m of allowances between them. If both spouses were widowed before marrying the other, £2m of allowances might be unlocked.

Tips for maximising RNRB: after the death of the first to die of a married couple

In the two years after the first death, redirect assets to take advantage of IHTA 1984 s 142 and/or s 144. This can correct or refine what has or has not been included in the will. At this time, it will usually be much easier to assess the likely value of the survivor's estate and plan accordingly.

To use the first spouse's RNRB over part of a home where the survivor is still living, consider giving children, etc. an immediate post-death interest (IPDI) in a fraction of the home.

Tips for maximising RNRB: unmarried couples or family or friends sharing

Remember that unmarried couples cannot:

- transfer RNRB between their estates; or
- obtain any RNRB on gifts to each other's children.

If the first to die has children of their own (or even stepchildren from a previous marriage), consider giving those children an IPDI in part of a property where the survivor continues to live.

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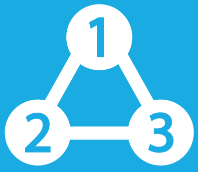

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Tax by numbers!

Bill Dodwell considers what the statistics can show us about our tax policy

One of the more important factors when looking at tax policy is to understand how many people could be affected by any possible change. HMRC now publish many more statistics than of old.

There are about 66 million people (and 52.4 million adults) in the UK, according to the Office for National Statistics (ONS). HMRC estimates that 48.2 million people use part or all of the personal allowance, with 31 million having a residual income tax liability. 35.5 million benefit from all or part of the equivalent for NICs (known as the lower earnings limit). The difference – some 12 million – roughly represents the pensioner population, including those who continue to work but are not liable for paying NICs. ONS figures suggest that there are about 1.2 million working pensioners.

Taxpayer numbers

In recent years, about 41% to 44% of adults don't pay income tax. This proportion has varied a little but is higher than it was before 2010 – when the personal allowance started to climb substantially above inflation. HMRC produces some data on the percentage of income paid in income tax by specimen families. In 2019/20, the average family has gross household income of £37,000 and pays 13.3% of that in income tax. It's a misleading statistic, since up to a further 9% is likely to go on NICs – meaning that a single earner family actually has an effective 22% tax rate on income and would have £29,000 left after income tax and NIC. The average household income for the 90th percentile is just over £61,000, with an effective income tax/NICs rate of 29.5%. It's not meaningful to calculate this for the top tenth, due to the wide range of incomes.

Some 5 million employees – more than one in six of income tax payers – claim income tax relief for work-related expenses borne personally, including flat rate allowances for certain occupations. The main categories are flat-rate expense1,400s, business travel, including mileage costs, and professional fees. HMRC have recently introduced the facility to claim flat-rate amounts and professional fees via the personal tax account, which makes lots of sense given the huge numbers of potential claims.

Business and capital taxes

HMRC note that there are about 2.2 million VAT registered traders. The total number of private sector employers is some 1.4 million. The total number of businesses registered for either or both PAYE and VAT is 2.67 million, which is 45% of all UK businesses. These businesses, most of which are companies, collect and pay over to HMRC over £140 billion in VAT and PAYE of over £300 billion. We can thus appreciate the importance to the exchequer of the UK's centralised tax collection system, where a relatively small number of businesses and public sector bodies collect so much tax every day.

Something like 1.5 million companies pay over £50 billion in corporation tax. What most of us probably won't realise is that there are about 1,400 traders registered for insurance premium tax (which brings in £6.2 billion) and a staggering 730 airlines registered for air passenger duty (which contributes £3.7 billion). 785 businesses are registered for aggregates levy.

After these major numbers, it's worth noting that the UK's two capital taxes affect very few people. HMRC's latest numbers suggest that about 22,000 estates and 5,000 individuals (taxable lifetime gifts) part with over £5 billion in inheritance tax. 260,000 individuals and 22,000 trusts pay a total of £8.8 billion in capital gains tax. It's thought that about 70% of those individuals get a capital gains tax (CGT) bill just once in 10 years or more, highlighting how uncommon it is for most of us to pay CGT.

Final thoughts…

What we can take from all this is the importance to all of us, and HMRC, of the systems which collect income tax, NICs and VAT. Investment in the PAYE system clearly justifies itself. It's much harder, for example, to make a strong case for investing in a digital system for inheritance tax. The vaunted £1.3 billion invested in the personal tax account and support systems also makes sense; its only £40 per income tax taxpayer.

All this data – and there is much more published by the ONS and by HMRC's Knowledge Intelligence and Analysis unit – makes it much easier for anyone involved in tax policy to get a better grasp of what matters in taxation. Of course, some small taxes remain important; CGT is argued to be necessary to ensure that individuals are not overly incentivised to turn taxable income into capital. Other taxes make different cases, such as the £22 billion collected in tobacco and alcohol duties, or the £12 billion collected in environmental levies.

Finally, the income tax tables do give a glimpse of a bit of history. Independent taxation was introduced some 30 years ago and there have been a number of events celebrating this anniversary. The last numbers for 1989/90 show 21.5 million taxpayers (men and single women) and 25 million people with taxable income.

PROFILE

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Reverse charge challenges

Neil Warren goes back to basics to explain how and when the reverse charge system applies in the UK VAT system

A radical reverse charge system was due to be introduced for the construction industry on 1 October 2019; however, it was cancelled at the eleventh hour to give businesses an extra 12 months to prepare for the new rules.

There is no doubt that many advisers find the principles of the reverse charge very difficult to grasp. I even remember sitting with one accountant during a cricket match who was trying to work the charge out by means of old-fashioned T-accounts!

Therefore, in this article I will consider some practical examples of how the reverse charge works in practice, and also the purpose behind these procedures, which are an important part of the UK VAT legislation.

Reasons for having a reverse charge system

The main outcome of the reverse charge process is that the customer does not pay VAT to the supplier but instead declares output tax on their own VAT return in Box 1. There are two main reasons why this procedure is adopted:

- **Services purchased from abroad:** If a UK customer buying taxable services from abroad accounts for output tax on a supply, it avoids overseas suppliers having to get UK VAT registration numbers, which would be a time consuming and unnecessary burden for the supplier.
- **Anti-fraud measure:** The logic in other reverse charge situations is simple: if a UK supplier is not paid 5% or 20% VAT in the first place by his

KEY POINTS

- **What is the issue?**
In order to accurately record reverse charge entries on VAT returns, an understanding of how and why the rules apply is very important. The article considers the mechanics of the reverse charge, helped by practical examples.
- **What does it mean to me?**
If you act for clients who only make exempt supplies, or who make taxable supplies below the VAT registration threshold, then the reverse charge rules on services purchased from abroad mean that they might need to register for VAT in some cases. It is important to understand how this process works in practice.
- **What can I take away?**
Don't forget that a reverse charge entry in Box 4 of a VAT return (input tax) must always consider whether any or all of the expense relates to exempt, private or non-business activities. If the answer is 'yes', then the input tax claimed must be blocked or reduced accordingly.

customer, and the customer declares the output tax on his own VAT return instead, the supplier cannot disappear into the wilderness without declaring and paying output tax to HMRC on a VAT return. The tax yield therefore increases as a result of the reverse charge mechanism. HMRC have introduced the reverse charge to trade sectors, where they consider missing trader VAT fraud to be a major problem.

Services purchased from abroad

An important opening tip is given in the subtitle, namely that the reverse charge applies to services received from abroad and not just from EU suppliers. To understand the workings of the process, see **Example 1: Reverse charge – bookkeeping services from India.**

The logical way to look at the figures in this example is to consider what VAT return entries would have been made if the legislation required the Indian bookkeeper to get a UK VAT number. The bookkeeper would charge and be paid £2,000 VAT from ABC and include this amount in Box 1 of its return, also recording the net sale in Box 6, i.e. £10,000.

A common myth is that the Box 4 entry for input tax is always the same as the Box 1 entry for output tax. It is not!

ABC would then claim input tax in Box 4, again £2,000, with the net purchase being included in Box 7. So, with the reverse charge system, the same boxes are being completed but the Box 1 and Box 6 entries move from the supplier to the customer. That is the reverse charge system in a nutshell.

VAT registration threshold

A twist to the tale that applies to services purchased from abroad but not in other reverse charge situations is that the payments made to overseas suppliers form part of the £85,000 VAT registration threshold for an unregistered UK business.

This assumes that the service in question would be VATable in accordance with UK legislation, i.e. not exempt from VAT. This outcome often causes a raising of the eyebrows: how can expenditure be included in a test that is always based on sales?

See **Example 2: VAT registration threshold for a UK business buying services from abroad.**

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EXAMPLE 1: REVERSE CHARGE – BOOKKEEPING SERVICES FROM INDIA

ABC Accountants is VAT registered in the UK and uses the services of an Indian bookkeeping business based in Delhi. An invoice for September 2019 has just been received for £10,000. The following entries will be made on the VAT return of ABC that coincides with the invoice date, or the payment date if ABC uses the cash accounting scheme:

- Box 1 (output tax): £2,000 (i.e. £10,000 x 20%)
- Box 4 (input tax): £2,000 (because ABC is a fully taxable business, i.e. not partly exempt – see 'Input tax' below)
- Box 6 (outputs): £10,000
- Box 7 (inputs): £10,000

Note that the reason why an entry is made in Box 6 is because if the Indian business had a UK VAT registration number, it would include £10,000 in Box 6 of its return, so ABC is doing this entry instead.

EXAMPLE 2: VAT REGISTRATION THRESHOLD FOR A UK BUSINESS BUYING SERVICES FROM ABROAD

DEF Accountants is not VAT registered. Its annual sales are £75,000 from accountancy services and £20,000 from renting out residential property. It also uses the services of an Indian based bookkeeper, paying the Indian business £15,000 each year.

DEF has a problem: although the exempt rental income is ignored as far as the £85,000 registration threshold is concerned, the £15,000 of payments to India are treated as part of DEF's own taxable turnover. The total taxable sales figure of £90,000 has exceeded the £85,000 threshold and DEF should have registered for VAT at some time in the past.

Note that when correcting a late VAT registration, HMRC has the power to go back up to 20 years.

The reason that this bizarre outcome forms such an important (and often underestimated) part of our VAT system is because it prevents exempt businesses from buying VAT free services from overseas suppliers, instead of paying a UK supplier 20% VAT that cannot be reclaimed. In other words, the rules help to ensure that a level playing field is achieved and the system does not work against UK suppliers. I will extend this principle in the next section about 'input tax'.

Input tax

A common myth (or misunderstanding) is that the Box 4 entry for input tax is always the same as the Box 1 entry for output tax. It is not!

When UK customers make reverse charge entries on their VAT returns, they must put the Box 4 entry through exactly the same tests as they would with the VAT on a domestic purchase invoice that has been received from a UK supplier:

- Does the supply include any non-business or private use element?
- Does it partly or wholly relate to exempt supplies?

If the answer to either of the above questions is 'yes', then input tax needs to be restricted. In other words, the Box 1 output tax declaration will exceed the Box 4 input tax claim, producing a net VAT payment to HMRC.

See **Example 3: Insurance company buying services from abroad.**

Anti-fraud reverse charge situations

Other reverse charge situations in the legislation focus on particular industries, with an anti-fraud motive being the reason for their introduction. The principles for domestic supplies captured by the reverse charge are mainly the same as for overseas services, the main outcome being that VAT is still declared by the customer and not the supplier. But an important difference is that the

EXAMPLE 3: INSURANCE COMPANY BUYING SERVICES FROM ABROAD

Insurance Company Ltd is VAT registered in the UK. Only 5% of its income is taxable, the other 95% being exempt from VAT under the insurance legislation. It has purchased software services from a supplier based in France which wholly relates to the exempt activity. The amount charged by the French supplier is £50,000. A separate invoice for £20,000 has been raised by an American supplier for an advert in an American newspaper which has promoted both parts of the business, i.e. exempt and taxable. How much VAT will Insurance Company Ltd pay on these supplies when it completes its next return?

Answer: The company will declare output tax of £14,000 in Box 1 under the reverse charge procedures, i.e. £50,000 + £20,000 x 20%. But it will claim no input tax in Box 4 for the software services (blocked by partial exemption). If it adopts the standard method for partial exemption, where the input tax on general overheads and mixed costs is based on the percentage of taxable sales compared to total sales, it will claim input tax of £200 in relation to the American advert, i.e. £20,000 x 20% x 5% taxable use. The net payment to HMRC is £13,800.

rules are only relevant if both the customer and supplier are VAT registered. The affected trade sectors for domestic reverse charge supplies are set out below:

- Suppliers of 'specified goods':
  (a) mobile phones and computer chips with effect from 1 June 2007; and
  (b) wholesale gas and wholesale electricity with effect from 1 July 2014.
- Suppliers of 'specified services':
  (a) emission allowances from 1 November 2010;
  (b) wholesale telecommunications from 1 February 2016;
  (c) renewable energy certificates from 14 June 2019; and
  (d) construction services between builders from 1 October 2020.

The suggested strategy if you have clients in the above sectors is to review HMRC's VAT Notice 735 and refer to the relevant section allocated for each category. For example, supplies involving mobile phones and computer chips are only subject to the reverse charge if the invoice value exceeds £5,000 excluding VAT (VAT Notice 735 s 6).

> **Suppliers need to check the VAT status of their UK customers to be properly satisfied that the customer is properly registered for VAT.**

Invoicing by suppliers

An important feature of reverse charge supplies made by UK suppliers is that suppliers need to check the VAT status of their UK customers, e.g. to be satisfied that the customer is properly registered for VAT with a genuine VAT number. In reality, it all comes down to knowing and understanding your customers. And the other important issue is that sales invoices raised by suppliers that are subject to the reverse charge should include a clear message to the customer to account for output tax under the reverse charge procedures.

Landmark Cases in Revenue Law

Date: 25th February 2020

Time: 5:45pm for 6pm start

Speakers: Professors Michael Braddick and Martin Daunton

Venue: 30 Monck Street, Westminster, London, SW1P 2AR

Cost: £20 for members of the Worshipful Company of Tax Advisers and their guests, £25 for non-members of the WCTA.

The event is open to everyone with an interest in the history of tax. For more information please visit www.taxadvisers.org.uk

Join us for our next history of tax event when we shall learn about two of the early cases from the recent book publication "Landmark Cases in Revenue Law".

Professor Michael Braddick will be speaking on the Case of Ship-Money (R v Hampden) *(1637): Prerogatival Discretion in Emergency Conditions;* and Professor Martin Daunton will be speaking on Thomas Gibson Bowles v Bank of England *(1913): A Modern John Hampden?*

After a break for wine and nibbles, the evening will conclude with a series of short presentations and then questions/comments from the floor on the book as a whole. The panel for this discussion will include Dr Peter Sloman, Churchill College Cambridge, and Ruth Hughes, Lincoln's Inn.

Please contact Karina Pomeranceva on adminwcta@ciot.org.uk to book your place

Gordon Buist considers the definition of a 'personal company' for the purposes of entrepreneurs' relief

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KEY POINTS

- **What is the issue?**
Entrepreneurs' relief (ER) on the disposal of shares has become more complex following changes introduced in FA 2019. A major amendment has been made to the definition of 'personal company', which has extended the 5% test.
- **What does it mean to me?**
The new economic interest tests are an added complexity when advising on the availability of ER in all but the most straightforward of disposals.
- **What can I take away?**
The use of seemingly straightforward terminology with highly prescriptive meanings for tax purposes highlights the importance of always considering the detailed legislation when advising clients on ER.

Entrepreneurs' relief (ER) was introduced by former chancellor Alistair Darling in 2008 as the replacement for business asset taper relief. In simple terms, ER now operates by applying an effective 10% rate of capital gains tax on gains arising on a qualifying disposal of business assets, subject to a lifetime limit of £10m.

The relief: a refresher?

ER is available on disposals of shares in a trading company if the conditions in TCGA 1992 ss169H-169SH are satisfied. In summary, an individual will qualify for ER in relation to shares in a trading company if, throughout the qualifying period of two years ending on the date of disposal:

a. the individual is an officer or employee of the company, or a company within the same group where the shares are in a holding company; and
b. the company is a 'personal company' in relation to the individual.

If the company has ceased to trade without continuing to be a member of a trading group, the two year qualifying period will end on the date when the trade ceases, provided the disposal of shares is within three years of the cessation date.

A 'personal company' in relation to an individual was broadly defined as a trading company, of which the individual held at least 5% of the ordinary share capital, which by virtue of that holding entitled them to at least 5% of the voting rights in the company (the '5% test'). I do not intend to consider the definition of a trading company in this article.

ORDINARY SHARES OR ORDINARY SHARE CAPITAL?

Confusingly, the meaning of 'ordinary shares' for the purposes of the 75% subsidiary test (based on ITA 2007 s 989) is not the same as that for equity holder purposes. The difference is that instead of excluding fixed rate preference shares, the equity holder tests exclude only 'restricted preference shares'. It is understood that this was specifically intended to allow banks that were subject to a takeover during the banking crisis of 2008 to be grouped with the acquiring company, notwithstanding the existence of shares created for regulatory purposes.

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Autumn Budget 2018

The Chancellor reaffirmed in his Autumn Budget speech that entrepreneurs' relief was here to stay, despite some calls for its abolition.

However, two important changes were announced. The minimum qualifying period for ER was increased from 12 months to two years. A second change was apparently intended to address an identified abuse in the initial draft but could have potentially precluded a claim for ER by the majority of family company owners.

Personal company: FA 2019 changes

A major amendment has been made to the definition of 'personal company', which has extended the 5% test. FA 2019 amended the legislation in TCGA 1992 s 169S(3), which now states that a company is a 'personal company' in relation to an individual if:

a. the individual holds at least 5% of the ordinary share capital of the company;
b. by virtue of that holding, at least 5% of the voting rights in the company are exercisable by the individual; and
c. either or both of the following conditions are met:
    i. by virtue of that holding, the individual is beneficially entitled to at least 5% of the profits available for distribution to equity holders and, on a winding up, would be beneficially entitled to at least 5% of assets so available; or
    ii. in the event of a disposal of the whole of the ordinary share capital of the company, the individual would be beneficially entitled to at least 5% of the proceeds.

The tests in s 169S(3)(c) are referred to as the 'economic interest' tests. In its original form, the 'economic interest' test was too complex and would have denied ER in many circumstances that were not within the stated policy intention. The problem was largely the result of importing the definition of 'equity holders' from the legislation defining a 'group' for the corporation tax group relief provisions. Many practitioners believe that the 'equity holder' concept is not fit for its newly intended purpose, nor easily applied in the context of a claim for ER by an individual. Thankfully, the test in s 169S(3)(c)(ii) was added into the Finance (No. 3) Bill 2018, following representations from the CIOT and all of the major professional bodies.

> **The chancellor reaffirmed in his 2018 Autumn Budget speech that entrepreneurs' relief was here to stay, despite some calls for its abolition. However, two important changes were announced.**

This article explores how the 'economic interest' test in TCGA 1992 s 169S(3)(c)(i) can apply in practice (the same test also applies in the substantial shareholdings exemption).

5% test: ordinary share capital

An individual must hold at least 5% of the ordinary share capital of the company. Ordinary share capital is defined in ITA 2007 s 989 as meaning 'all the company's "issued share capital" (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits'. It is nominal value that is relevant, rather than the number of shares in issue (*Canada Safeway v IRC* [1973] 1 CH 374).

HMRC recently published guidance on their interpretation of the meaning of 'ordinary share capital' in the Company Taxation Manual at paras CTM00509 to CTM00516, which includes examples of different types of preference shares and highlights those that might be regarded by HMRC as 'ordinary share capital' for tax purposes.

In practical terms, the fact that certain preference shares may be regarded as 'ordinary share capital' for tax purposes, but not for accounting purposes, creates uncertainty as they are often accounted for, and operate, as *de facto* debt instruments. It is also often unclear whether an individual holds the necessary 5% of ordinary share capital, particularly where a company has external investors that hold preference shares or complex loan notes.

Moreover, certain fixed rate preference shares may be treated as 'ordinary share capital' for CGT purposes; for example, a fixed rate preference share, where the coupon compounds if not paid could be treated as ordinary share capital. Similarly, if the coupon is calculated as a fixed percentage of the aggregate of subscription price and accrued unpaid dividends, rather than the nominal value of the preference shares, the preference shares will be treated as ordinary shares (see *S Warshaw v HMRC* [2019] UKFTT 268).

5% test: profits or assets available for distribution to 'equity holders'

From 29 October 2018, it is no longer sufficient for a shareholder to satisfy the 5% test in relation to only their holding of 'ordinary share capital'. The shareholder must now also satisfy the 5% 'economic interest' test, potentially against an entire pool of 'equity holders' in the company.

An equity holder is any person who holds 'ordinary shares' in the company or is a creditor of the company as regards any loan that is not a 'normal commercial loan'.

The starting point is that a company's 'equity holders' will include all of its ordinary shareholders. However, without carrying out a more thorough analysis, it is not possible to determine an individual's ER status without considering the 5% 'economic interest' test by reference to either the share of

NORMAL COMMERCIAL LOAN

Below are three typical cases where HMRC *is likely* to regard a loan as being a 'normal commercial loan':

- **An interest-free loan:** Note that s 162(3) refers to a situation where the return *exceeds a reasonable commercial return*, thus excluding cases where interest *is lower than* a reasonable commercial return.
- **Interest fluctuates depending on business performance:** A loan will still be a normal commercial loan if its terms provide for the interest rate to reduce if the results of the relevant company's business or any part of the business improves, or to be increased if such results worsen. Similarly, a loan will still be a normal commercial loan if the terms of the loan provide that the rate of interest is reduced if the value of any of the company's assets increases, or increases if the value of the company's assets decrease, as CTA 2010 s 163 provides an exclusion from CTA 2010 s 162(3) in such cases. It can reasonably be assumed that this is intended to reflect the commercial reality that lenders will typically increase the rate of interest when lending risk has increased (reduction in profits and/or increased loan-to-values) and reduce the rate of interest when lending risk has decreased (increase in profits, reduced loan-to-values).
- **Limited recourse loans to acquire land:** A loan will be a 'normal commercial loan' even if its terms only permit the lender to call for repayment by exercising security rights over the land purchased. The significance is that the *interest* does not depend on the performance of the business or value of the asset for the purposes of CTA 2010 s 162(3).

ILLUSTRATION OF TWO DIFFERENT RESULTS FROM STRUCTURES INVOLVING LOANS

Vanilla Ltd

- Vanilla Ltd has issued share capital of £100, which is held as to 20% by Mr A and 80% by an external investor. The external investor has provided a loan of £5m to fund the activities of Vanilla Ltd.
- An offer is received from a third party, who wishes to acquire Vanilla Ltd for consideration of £5.5m, including repayment of debt.
- Mr A will receive £100,000 on the sale of shares and the external investor will receive £5.4m.
- Mr A owns more than 5% of the ordinary shares, has more than 5% of the voting rights and more than 5% of the 'equity' for the purposes of the new 'equity holder' test.

ER is available to Mr A under the new equity holder test. We do not have to consider the entitlement to proceeds on sale.

Excotic Ltd

- Exotic Ltd has issued share capital of £100, which is held as to 20% by Mr B and 80% by a private equity investor. The investor has provided funding by way of a convertible debt instrument of £5m.
- Mr B owns more than 5% of the ordinary shares and has more than 5% of the voting rights, but under the 'equity holder' test, the convertible debt instrument is not a 'normal commercial loan' and must therefore be regarded as 'equity'.
- Mr B will receive £100,000 on the sale of shares and the investor will receive £5.4m.

ER is not available to Mr B as, although he has more than 5% of the ordinary share capital and 5% of the voting rights, he is not entitled to more than 5% of the assets available for distribution to equity holders. He is not saved by the relaxation to the equity holder rules as he is not entitled to at least 5% of the proceeds of sale.

proceeds on a hypothetical sale, or an entitlement to at least 5% of the profits or assets available for distribution to 'equity holders'.

Equity holders

An 'equity holder' includes any holder of convertible loan notes, warrants or other debt securities with 'equity like' features, as well as any person who is a loan creditor in respect of a loan that is not a 'normal commercial loan'.

The inclusion of loan creditors in respect of a loan that is not a 'normal commercial loan' would, *prima facie*, result in many company directors being treated as equity holders on the basis that they are often in the position of making loans on terms that are not particularly commercial, such as providing an interest-free loan to a company. However, a 'normal commercial loan' is defined in CTA 2010 s 162 as a loan of, or including new consideration:

1. which does not carry any *right to the acquisition of shares or securities*;
2. if the loan is convertible, it *can only convert into*:
   a. *restricted preference shares* which, if they are convertible, convert only into shares or securities in the company's quoted parent;
   b. *securities on normal commercial terms* which, if they are convertible, convert only into shares or securities in the company's quoted parent; or
   c. *shares or securities in the company's quoted parent*;
3. which does not entitle the loan creditor to any amount by way of interest which *depends to any extent on the results of the company's business or any part of it*, or *on the value of any of the company's assets*, or which *exceeds a reasonable commercial return* on the new consideration lent; and
4. in respect of which the loan creditor is entitled, on repayment, to an amount which either *does not exceed the new consideration lent* or is reasonably comparable with the amount generally repayable under the terms of issue of securities listed on a recognised stock exchange.

Conclusion

Readers must consider the 'economic interest' tests carefully when considering the availability of ER on a sale, particularly where the vendor will not receive 5% of the proceeds on a sale, in which case it is necessary to consider the 'economic interest' tests in TCGA 1992 s 169(3)(c) in more detail. Readers would be well advised to consult the legislation, particularly where terms that *prima facie* have a plain English meaning are actually prescriptively defined in legislation.

The new requirement in TCGA 1992 s 169S(3)(c) will be much more difficult to meet for entrepreneurs holding shares in companies that have issued complex financial instruments or preference shares, which may typically be the case following a management buyout or private equity investment in the company.

Shedding new light

Michelle Robinson considers some points of uncertainty in a round-up of recent cases tackling entrepreneurs' relief

KEY POINTS

- **What is the issue?**
The First-tier Tribunal (FTT) has recently heard three entrepreneurs' relief (ER) cases on different points of uncertainty.
- **What does it mean to me?**
These cases contained decisions concerning cumulative compounding preference shares, the minimum period over which a life interest needs to be in place in order for ER to be available on a trust disposal, and the position of a company that undertakes activities in an attempt to revive a 'paused' trade.
- **What can I take away?**
All three cases considered in this article provide more clarity on how the courts may interpret certain unclear elements of ER. However, FTT decisions are persuasive but do not legally bind the courts to reach the same conclusion in future cases.

After years of relatively stable legislation, Finance Act 2019 brought significant changes to the entrepreneurs' relief (ER) eligibility rules. These changes include doubling the minimum period over which the ER qualifying conditions must be met in order for relief to be available on material disposals (now two years instead of one). It also added an additional economic condition that must be met in order for ER to be available on company interests (referred to as the '5% test' in this article).

Despite these changes, much of the legislation remains as it was initially enacted by Finance Act 2008. Three recent First-tier Tribunal decisions have brought additional clarity to some longstanding areas of uncertainty.

It should be noted that as these are FTT decisions, the courts are not legally bound to follow the conclusions drawn when future cases are heard. The cases will, however, be persuasive in future FTT hearings, and legally binding precedent will be created if a higher court rules on the matters in dispute.

Of the cases considered in this article, the *Warshaw* and *Skinner* cases have been listed for appeal at the Upper Tribunal. Permission to appeal was granted in the *Potter* case considered in this article but, at the time of writing, no appeal has been listed at the Upper Tribunal.

All legislative references in this article are to TCGA 1992 unless otherwise stated.

Ordinary share capital: fixed compounding cumulative dividends

Warshaw v HMRC [2019] UKFTT 268 (TC) is the latest in a series of cases concerning the definition of ordinary share capital for ER purposes. *Warshaw* relates to a disposal that occurred before 6 April 2019. Mr Warshaw satisfied the 5% test if he owned at least 5% of ordinary share capital which conferred at least 5% of voting rights. Ordinary share capital for these purposes is defined in ITA 2007 s 989 as shares other than shares which carry a right to a dividend at a fixed rate but no other right to share in company profits. A different definition is relevant for the purposes of one limb of the new economic condition added to the 5% test by FA 2019, but was not considered in this case since it relates to a disposal that occurred before the new rule came into force.

Mr Warshaw held various classes of shares, including 'preference shares'. These shares entitled the holder to a 10% fixed cumulative dividend, calculated based on the subscription price for the preference shares plus any unpaid preference dividends from earlier periods. The preference shares carried no other right to share in company profits.

Mr Warshaw's shareholdings in the company were such that he only satisfied the 5% test if the preference shares were regarded as ordinary share capital.

Arguments and decision

HMRC's position was that the shares carried a fixed rate of return as the 10% rate is fixed, albeit the amount to which the 10% rate applies may fluctuate depending on the amount of any unpaid preference dividends.

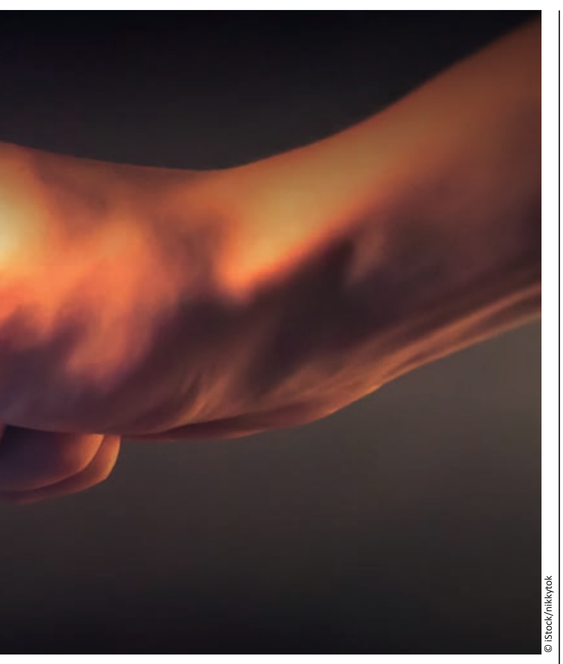
The case was, however, found in the taxpayer's favour, on the basis that both the dividend rate and the amount on which the dividend is calculated must be fixed in order for shares to be preference shares for ER purposes.

Summary

Warshaw adds further clarity to the definition of ordinary share capital for ER purposes, which has long been an area of uncertainty. The Upper Tribunal has listed the case for appeal.

Interest in possession trusts: duration of life interest

ER is available on trust gains where, broadly, an individual who is eligible for ER on assets they own personally has an interest in possession (IIP) in a trust which holds interests in the same business or company. HMRC's published view (in CG63985) differs from that of some industry practitioners, since HMRC consider that the IIP must have been in existence for at least two years (previously one year) pre-trust disposal in order for ER to be available.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This point was considered in *The Quentin Skinner 2005 Settlement L and others v HMRC* [2019] UKFTT 516. The judgment found for the taxpayer.

Key legislation
The key legislation considered was TCGA 1992 s 169J. Particular consideration was given to:

- s 169J(3), which requires a beneficiary to have an IIP otherwise than for a fixed term (a life interest would satisfy this point) in either the whole of the settled property, or in the part of the settled property on which ER is sought, and;
- s 169J(4), which is relevant on a disposal of shares or securities in a company, and states that 'throughout a period of two years [previously one year] ending not earlier than three years before the date of the disposal:
  (a) the company is the qualifying beneficiary's personal company and is either a trading company or the holding company of a trading group; and
  (b) the qualifying beneficiary is an officer or employee of the company'.

Arguments
A key element of HMRC's submission was that a plain reading of s 169J(4) is that the individual who is personally eligible for ER must be a qualifying beneficiary of the trust for the (then) one year ER eligibility period prior to disposal by the trustees.

By contrast, the taxpayers' case was that a plain reading of s 169J(4) imposes no such requirement. Instead, the structure of the ER legislation is to grant ER where an individual has an 'entrepreneurial connection' with a company. This entrepreneurial connection is determined using the 5% test. Section 169J(4) states that this entrepreneurial connection has to be in place throughout a one year period (under the pre-6 April 2019 time limits) ending no earlier than three years before the disposal by the trustees, but s 169J(4) does not make any reference to the length of time the IIP must be in place pre-disposal by the trustees.

Decision
It was held that, as there are no authorities for the words used in s 169J(4), the words used take their natural meaning which does not impute a minimum period for the interest in possession. This interpretation is consistent with the way that ER operates on assets held personally, since an individual is able to claim ER on business assets held for less than a day and sold as part of the disposal of a business if he or she otherwise satisfies the entrepreneurial connection requirement.

The decision also stated that this interpretation of the legislation is consistent with the clear intention of Parliament, as expressed in the Explanatory Notes to Finance Act 2008. This intention is, in essence, to impose an entrepreneurial connection requirement in order for ER to be available, albeit with somewhat different application in the context of trusts (the 'three year window').

Summary
The *Skinner* case provides welcome clarity with regards to the ER position of trusts, with the finding that there is no minimum period over which an interest in possession trust business assets must be in existence in order for ER to be available on trust gains, provided the ER conditions are met by the individual personally. The case has been appealed to the Upper Tribunal.

Date of trade cessation

The FTT found in favour of the taxpayer in *J Potter and N Potter v HMRC* [2019] UKFTT 554. This case focused on when a company ceased trading and, provided this was within three years of liquidation such that ER was relevant, whether or not the company had substantial non-trading activities.

While the facts in the case are unusual, the case is interesting because the company had not received trading income for six years before liquidation and its income and assets in this six year period were predominantly or entirely investment in nature.

The Potters were shareholder directors of Gatebright Ltd. Gatebright traded in the London Metal Exchange and brokered credit deals to provide clients with finance in order to engage in high-value trading at the Exchange. Gatebright was a successful business and had reserves of £1m at the time of the 2008/09 financial crisis, at which point the volume of trades decreased dramatically. Gatebright issued its last invoice in March 2009.

The company was liquidated on 11 November 2015. It was accepted that ER was available provided the company was trading in the year up to 12 November 2012 (three years before liquidation) and not carrying on substantial non-trading activities.

Arguments
HMRC's position was that the company ceased trading when it issued its last invoice in March 2009. HMRC's contention was that, even if the cessation was intended to be temporary, the fact that it became permanent means that March 2009 is the relevant date.

HMRC referred to the retirement relief case of *Marriott v Lane (HM Inspector of Taxes)* [1996] BTC 297, but the court distinguished this case from the *Potter* case, since there was no intention in the *Potter* case to cease trading, temporarily or otherwise, until 2014 at the earliest.

Mr Potter argued that the company had been actively engaged in activities with a view to carrying on a trade and resuming normal business throughout the period from March 2009 to June 2014. However, the financial crisis, his ill health and other challenging personal circumstances had resulted in a series of setbacks that had made it impossible for the company to regain its former health.

Decision
A company qualifies as a trading company if, among other conditions, it is either carrying on a trade or preparing to carry on a trade

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(s 165A). It was found that Mr Potter's activities were such that, until at least November 2012, the company was at the very least preparing to carry on a trade (i.e. resuming the old trade, which is described as having 'paused'), and so this element of the ER conditions was met.

The next point considered was whether the company was carrying on non-trading activities to a 'substantial' extent. 'Substantial' is not defined in the legislation, but is taken to mean more than 20% of a company's activities, determined using a balance of indicators, as summarised in HMRC's guidance in their CGT Manual at CG53116.

The judge noted that the company's activities must be determined by reference to activities undertaken 'in the round'.

In Gatebright's case, there were activities pointing in both directions. Between 2009 and 2015, the company's income and assets were predominantly or entirely non-trading. Approximately £800,000 of the company's aforementioned £1m reserves were invested in six year investment bonds that matured in November 2015. The remaining c. £200,000 was initially held in cash as working capital but was distributed between 2009 and 2015. Aside from '*trivial'* amounts of bank interest received in 2010 and 2011, the company's only income in this period was investment income from the bonds. On the other hand, the directors' time and the company's expenses related to attempting to revive the trade. It was noted that no activity could be undertaken in relation to the investment bonds once they were on long-term deposit.

It was decided that, in the round, the company's activities were more likely than not trading in nature, as the activity undertaken was 'directed at reviving the company's trade and putting it in a position to take advantage of the gradual improvement in global financial conditions'. Furthermore, it was found that the activity undertaken did not include non-trading activities to a substantial extent.

Evidence

The emphasis on activity and weight given to the time spent and expenses incurred is interesting. In practice, determining how employees and directors have spent their time may be one of the hardest factors to determine as limited records of time spent may be maintained.

In the *Potter* case, no documentary evidence was available with regards to Mr Potter's attempts to revive the company's trade. However, the court found Mr Potter to be a trustworthy and credible witness and the record of expenses in the financial accounts and facts set out in HMRC correspondence were consistent with his witness account. Furthermore, the length of time between the last sale in 2009 and HMRC enquiry following the 2015 liquidation meant that it 'was not surprising' that the company's informal records were no longer available.

Summary

Whilst limited evidence was available in this case, those advising clients may wish to recommend that clients maintain records to evidence time spent and other documentation to support the trading position, given that the burden of proof is on the taxpayer. It should also be noted that any decision in this area will be highly fact specific, having regard to all the facts and evidence available.

Conclusion

These decisions have added clarity to a range of unclear points. However, as the decisions are FTT decisions, they are persuasive but do not bind other tribunals in future hearings. The outcome of the Upper Tribunal hearing of the *Warshaw* and *Skinner* cases and any appeal heard on the *Potter* case will be important developments in this area.

Merseyside Branch

Annual Dinner

Thursday 27 February 2020 Crowne Plaza Hotel, Liverpool

This year is a momentous occasion for both the CIOT and the Merseyside Branch. 2020 marks the 90th Anniversary of the Institute and the 40th Anniversary for the Branch.

We would like the anniversary year to be the biggest yet and invite you to support the event by taking a seat, half a table or a full table.

We are delighted to announce our guest speaker is **Sir Ranulph Fiennes.**

If you would like a booking form, have any queries or requests regarding tables or sponsorship, then please contact our Chairman, Mark Kearsley at merseyside@tax.org.uk

Tickets for the evening cost £65 plus VAT and the dinner is open to all professionals, clients and contacts.

The event is kindly sponsored by Excello Law, Modus Wealth Management and Medicash.

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All change!

The payment and administration of capital gains tax is changing from April 2020, writes *Jacquelyn Kimber*. Are you ready?

KEY POINTS

- **What's the issue?**
The next round of changes to CGT are planned from April 2020. From 6 April 2020, where CGT is due on residential property disposals, a return will need to be filed, and the 'notional CGT' due must be paid within 30 days of the date of completion.
- **What can I take away?**
The relevant legislation in TCGA 1992 Sch 2 deals with both UK resident individuals and non-resident persons, but there are differences between these two categories of taxpayer and it is helpful to consider them separately.
- **What does it mean to me?**
To date, awareness amongst taxpayers appears to be low and undoubtedly some will be caught unawares.

The tax landscape for UK property has changed immeasurably over the last six years. First, in 2013 came the introduction of the annual tax on enveloped earnings (ATED) regime and ATED-related capital gains tax (CGT). This was followed by the extension of CGT to disposals of UK residential property by non-UK residents from 2015. Most recently was the extension of the non-UK resident CGT regime to all direct and indirect disposals of UK property, whether residential or commercial from April 2019, and the move back to non-resident companies being charged to corporation tax (not CGT) on property gains.

In this and a follow up article to be published in the February issue of *Tax Adviser*, we examine the next round of changes which are planned from April 2020. This article focuses on the technical nature of the changes (excluding rebasing for non-residents), and the next will look at some of the practical implications of the new regime.

A question of timing

The current self assessment system means that, depending on timing, CGT is due anywhere from 22 months to 10 months after the disposal. HMRC first announced in April 2015 that they intended to expedite payment of CGT in the case of disposals of residential property, and having delayed implementation once already, they are now pressing ahead with change.

From 6 April 2020, where CGT is due on a residential property disposal:

- a return will need to be filed (for the sake of brevity, I refer to this as a 'UK land return' although this is not the wording adopted in the legislation; and
- the 'notional CGT' due must be paid within 30 days of the date of completion (FA 2019 s 14 and Sch 2).

This is a major change to the administration of CGT for UK residents and some non-residents. Although the policy intention may be simple in outline, as ever the detailed position is much more complex.

The relevant legislation is in TCGA 1992 Sch 2. 'Residential property' is as defined in TCGA 1992 Sch 1B and therefore has the same definition as applied under the non-resident CGT regime. Where a property comprises residential and commercial parts, the gain arising must be apportioned on a just and reasonable basis. Only the residential element will be subject to the new reporting and payment requirements. There are other exclusions; for example, where the disposal is under a no gain/no loss transaction, or where the person making the disposal is a charity or pension fund (Sch 2 para 1(2)).

Schedule 2 deals with both UK resident individuals and non-resident persons, but there are differences between the two categories of taxpayer and it is helpful to consider them separately.

UK residents

For UK resident individuals and trustees (the changes don't apply to UK companies), a UK land return will need to be filed with HMRC where a disposal of residential property gives rise to a chargeable gain or an allowable loss (Sch 2 para 4). Where a gain is fully covered by a relief (such as private residence relief), there will be no requirement to file a UK land return. A return will also not be required where the gain is covered by the annual exemption, or a brought forward capital loss. Where there is no requirement to file a return, there is similarly no requirement to make a payment on account of CGT. (See Example 1.)

In any other case, the UK resident individual must complete a return, and pay any CGT due within 30 days of the completion date of the disposal. In the uncommon event that two disposals complete on the same day, a single return is required (Sch 2 para 3). No UK land return is required where the filing date for that return is after the individual's self assessment tax return has been or is due to be submitted (Sch 2 para 5). This will be relatively rare, but is feasible where there is a long delay between contracts being exchanged and the disposal being completed. (See Example 2.)

The UK land return requires the taxpayer to make 'reasonable estimates' of the tax payable on the disposal as if the tax year ended on the date of disposal (Sch 2 paras 7 and 14). The taxpayer will therefore need to estimate his/her income for the year so that

EXAMPLE 1: NO REQUIREMENT TO FILE A RETURN

On 8 November 2020, Pip enters into a contract to sell a house he inherited in April 2019. Completion is on 1 March 2021. He has never occupied the property as his main residence. Pip has made no other disposals during the tax year to date. A gain of £3,500 arises on the disposal.

Pip is not required to file a return showing details of the disposal by 31 March 2021 as the gain is covered by his annual CGT exemption. He should include the disposal on his 2020/21 self assessment tax return in the usual way.

EXAMPLE 2: DELAYED COMPLETION

Estella exchanges contract for the sale of her holiday home on 27 November 2020 and realises a gain of £120,000. Completion is delayed and does not take place until 31 July 2021.

Estella files her 2020/21 self assessment tax return showing the gain of £120,000 in May 2021. She does not need to file a UK land return by 30 August 2021. CGT on the gain is payable on 31 January 2022.

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the correct CGT rate of 18% or 28% may be applied, and also take into account any disposals of UK residential property which have already taken place. Gains on other assets are ignored in calculating the notional CGT due. Where an estimate changes, a further return may be filed correcting the estimate and, if appropriate, generating a repayment of tax (Sch 2 para 15).

Where a UK land return is submitted, there is no separate requirement for the taxpayer to notify HRMC of his chargeability to CGT (Sch 2 para 18).

Losses

A UK land return is not required where the disposal gives rise to a capital loss. However, if a return would have been required if a gain had arisen, the individual may make a return and make a repayment claim in respect of any notional CGT already paid in the tax year on an earlier disposal of UK land (Sch 2 para 9).

Realised capital losses, whether on UK residential property or other assets and whether brought forward or realised earlier in the tax year, may be taken into account when computing the notional CGT due. However, a loss arising later in the same tax year on another asset can only be taken into account in the individual's self assessment tax return for the year, unless there is another UK residential property disposal which takes place after the loss has arisen. It is this aspect of the rules which creates the most distortions and potentially leads to the greatest unfairness in cash flow for the taxpayer. (See Example 3.)

The timing of disposals is therefore crucial. These rules seem unnecessarily harsh and HMRC's response that any overpayment will carry repayment supplement somewhat inadequate, particularly where the disposal is by way of gift and there are no cash proceeds from which to pay the tax.

Claims and elections

In computing the notional CGT due, claims and elections are taken into account where it is reasonable to suppose that these will be made or given (Sch 2 para 14) but this does not remove the requirement to formally make the claim or election in a tax return, etc.

Reliefs (such as CGT deferral relief under EIS or SEIS) may be claimed in computing the notional CGT due where the conditions for the relief are met at the time payment is required. Otherwise, an amendment to the return will need to be made when the relevant conditions are met. Relief will, of course, also need to be claimed in the individual's self assessment tax return, if one is required to be filed.

UK LAND DISPOSALS 2019/20

	UK Resident			
	Individual / trustee	Company	Individual / trustee	
			In Self Assessment	
			Residential	Commercial
Reporting requirement	In SA return	CT return	In SA return	UK land return
Reporting deadline	31 Jan following tax year end	12 months from end of accounting period	31 Jan following tax year end	30 days from completion
Tax due date	31 Jan following tax year end	9 months 1 day from end of AP/QIP regime	31 Jan following tax year end	30 days from completion
Rate of tax	18% / 28%	19% (assumed)	18% / 28%	18% / 28%

UK LAND DISPOSALS FROM APRIL 2020

	UK Resident			
	Individual / trustee	Company	Individual / trustee	
			In Self Assessment	
			Residential	Commercial
Reporting requirement	UK land return	CT return	UK land return	UK land return
Reporting deadline	30 days from completion	12 months from end of accounting period	30 days from completion	30 days from completion
Tax due date	30 days from completion	9 months 1 day from end of AP/QIP regime	30 days from completion	30 days from completion
Rate of tax	18% / 28%	19% (assumed)	18% / 28%	18% / 28%

Non UK residents

Non-UK resident individuals, trustees and companies have been liable for CGT on disposals of UK residential property since April 2015. The non-resident is required to file a return and pay any CGT due within 30 days of completion, unless the disposal is by a taxpayer already within the scope of self assessment (for example, a non-resident landlord) or is subject to ATED charges.

From 6 April 2019, the scope of the non-resident CGT rules is expanded to apply to any disposal of UK land by a non-resident person, whether residential or commercial, and irrespective of whether the disposal is a direct disposal of UK land or an 'indirect' disposal of a 'property rich entity', i.e. one deriving 75% or more of its value from UK land (defined in TCGA 1992 Sch 1A). Certain exemptions, such as that for disposals by 'non-close' overseas companies, were also removed. But whilst the scope of the charge has changed, the exception from the requirement to file a return within 30 days and pay the CGT due in respect of **residential** property disposals remained for taxpayers within self assessment or liable to ATED charges. This exception will be removed from April 2020 and the position aligned with that applying to UK resident individuals, but with UK land returns and CGT payment being required for **any** direct disposal of UK land or indirect disposal of land-rich assets.

Unlike the position for UK residents, there is also no let out from the reporting requirements where no gain arises on the disposal or the gain is covered by reliefs or exemptions. This has been one of the more controversial aspects of the non-resident CGT regime and frequently gives rise to the imposition of late filing penalties, despite there being no tax liability. It is difficult to discern HMRC's rationale for insisting upon returns where no tax is due but they appear immovable. A summary of the filing requirements for UK residents and non-residents for residential and commercial property is shown in the table below.

From April 2019, non-resident companies have been required to register for corporation tax within three months of a disposal of UK land. For a one-off disposal, this will mean filing a corporation tax return for an accounting period of a single day. Corporation tax is payable within normal corporation tax time limits, generally nine months and one day from the end of the accounting period, although the quarterly instalment payment (QIP) regime may also apply.

Compliance

Broadly, a UK land return will be subject to the same provisions regarding amendments, enquiries, amendments during an enquiry and determinations as apply to a self assessment tax return (Sch 2 paras 19 to 22). An amendment to a UK land return relating to a disposal included in a tax return may only be made up to the earlier of the filing date for the tax return and the date it is filed. If no tax return is due to be filed, a UK land return may be amended up to one year after the 31 January following the tax year.

EXAMPLE 3: CAPITAL LOSSES

On 15 October 2020, Abel sells a residential property he has held as an investment for many years and realises a gain of £370,000. He has capital losses brought forward at 6 April 2020 of £23,000. He is a higher rate taxpayer. Abel must make a UK land return by 14 November 2020, and pay CGT on account of £97,160 ((£370,000 – £23,000) x 28%). (Annual CGT exemption has been ignored.)

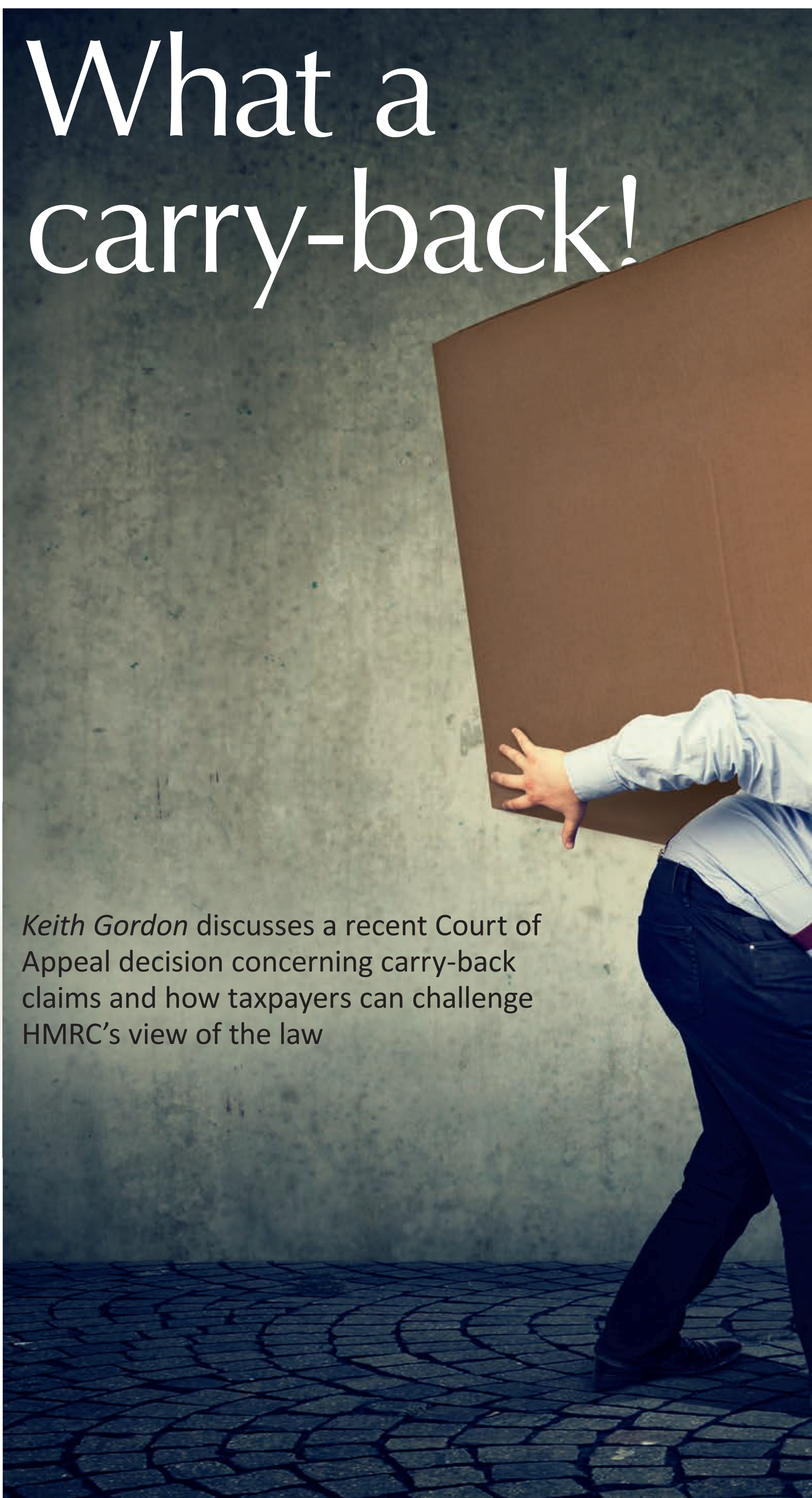
Abel realises a capital loss of £250,000 on the sale of a painting which turns out to have been a fake on 20 October 2020. He is unable to secure a repayment of £70,000 (£250,000 x 28%) of the tax paid on 14 November 2020 until he submits his 2020/21 tax return, unless he makes a further disposal of UK residential property before the end of the tax year.

Conclusion

HMRC said in their consultation response of July 2018 that they are committed to raising awareness of the impending changes to the CGT reporting regime. In the author's experience to date, awareness amongst taxpayers appears to be low and undoubtedly some will be caught unawares.

Non-UK Resident					
e		Company			
Not in Self Assessment		In Self Assessment		Not in Self Assessment	
Residential	Commercial	Residential	Commercial	Residential	Commercial
UK land return	UK land return	In SA return	UK land return	UK land return	UK land return
30 days from completion	30 days from completion	31 Jan following tax year end	30 days from completion	30 days from completion	30 days from completion
30 days from completion	30 days from completion	31 Jan following tax year end	30 days from completion	30 days from completion	30 days from completion
18% / 28%	18% / 28%	19% (assumed)	19% (assumed)	19% (assumed)	19% (assumed)

Non-UK Resident					
e		Company			
Not in Self Assessment		In Self Assessment		Not in Self Assessment	
Residential	Commercial	Residential	Commercial	Residential	Commercial
UK land return	UK land return	UK land return	UK land return	UK land return	UK land return
30 days from completion	30 days from completion	30 days from completion	30 days from completion	30 days from completion	30 days from completion
30 days from completion	30 days from completion	30 days from completion	30 days from completion	30 days from completion	30 days from completion
18% / 28%	18% / 28%	19% (assumed)	19% (assumed)	19% (assumed)	19% (assumed)



What a carry-back!

Keith Gordon discusses a recent Court of Appeal decision concerning carry-back claims and how taxpayers can challenge HMRC's view of the law

KEY POINTS

- **What's the issue?**
The process by which taxpayers carry back relief from one tax year to another has seen three Supreme Court decisions in the past six years, and has been recently reconsidered by the Court of Appeal in the case of *Knibbs and others v HMRC*.
- **What can I take away?**
The court considered the question of whether carry-backs to year 1 must be challenged through Sch 1A or whether HMRC can instead use the s 9A enquiry procedure into the returns for year 2, finding in HMRC's favour.
- **What does it mean to me?**
The court's decision on abuse of process serves as a reminder of the need to follow the correct procedures when challenging decisions taken by HMRC.

When working on the Tax Law Rewrite Project at the turn of the millennium, I was told that there had been a recent delegation to the Inland Revenue from the Japanese tax authority. According to the story I heard, the Japanese were asked how long it took for their country to get used to their self-assessment regime. On hearing that it took about 'four to five years', the UK hosts expressed considerable relief (given that Self Assessment had been introduced in the UK in April 1996). However, one of the Japanese visitors then clarified his answer: he had said '45 years'.

As we are now in the third decade of Self Assessment in the UK, it is possible that the Japanese experience is being repeated here. Of course, much of Self Assessment is working as intended and without too many hiccups. However, it appears that difficulties are cropping up in cases where something slightly out of the ordinary is happening.

In this context, 'out of the ordinary' does not necessarily mean exceptional or unusual. For example, it is widely known that opening an enquiry into a partnership (Taxes Management Act 1970 s 12AC) also deems there to be an enquiry into each partner of that partnership (s 12AC(6)). However, there is still no clarity as to the scope of such a deemed enquiry; indeed, this is something that the Upper Tribunal is due to consider later this month.

Another situation which keeps returning to the courts is the process by which taxpayers carry back relief from one tax year to another. That has already seen three Supreme Court decisions in the past six years, yet the matter is still not going away, with it being recently reconsidered by the Court of Appeal in the case of *Knibbs and others v HMRC* [2019] EWCA Civ 1719.

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PROFILE

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The facts of the case

Stated at its simplest, each of the taxpayers claimed to have sustained losses in one tax year (year 2), some or all of which they carried back to an earlier tax year (year 1).

The taxpayers consider that those carry-back claims did not form part of the tax return for year 2; and therefore, that any HMRC challenge to those claims should have been effected by way of enquiry under TMA 1970 Sch 1A, rather than under the normal enquiry procedures found in TMA 1970 s 9A. (The two different enquiry procedures are more or less identical in practice. However, they operate in parallel: s 9A for enquiries into tax returns themselves, including any claims made within the tax return; and Sch 1A for any claims made outside a tax return.) However, no Sch 1A enquiry was opened into the claims. As a result, the taxpayers consider that those carry-back claims must now be treated as final.

On the other hand, HMRC consider that they have the right to revisit these claims through the s 9A procedure, provided that they open such an enquiry into the taxpayers' tax returns for year 2. This is because the losses claimed related to year 2.

The point has already been determined in favour of HMRC by the Supreme Court in *R (oao De Silva) v HMRC* [2017] UKSC 74. However, a number of doubts have been expressed about the correctness of the Supreme Court's conclusion. The taxpayers therefore wanted an authoritative statement confirming the position. Accordingly, they made a claim direct to the High Court seeking a declaration as to the correct legal position.

Although there is a defined procedure for pure questions of law to be determined by the High Court, HMRC argued that it was not the appropriate forum for the taxpayers to have used in this case. They therefore asked the court to strike out the claims as an 'abuse of the court's process'.

The High Court agreed with HMRC both on the question of abuse and also on the substantive question; the taxpayers appealed against that decision to the Court of Appeal.

The court's decision

The case came before Lord Justices David Richards, Henderson and Moylan who gave a joint judgment.

Dealing with the abuse point first, the court noted that the starting point is that TMA 1970 contains a detailed code for challenging HMRC decisions (the appeals process). Accordingly, taxpayers trying to embark upon a different litigation strategy (such as the High Court claims in the present case) would be abusing the court's process. The taxpayers had tried to argue that there were exceptional circumstances permitting the court to depart from this conclusion – being that some of the taxpayers were now out of time to challenge closure notices issued by HMRC in relation to the s 9A enquiries into year 2. However, the court said that this fact emphasised the importance of following the statutory scheme and did not justify any departure therefrom.

In response to the taxpayers' arguments that the s 9A enquiries are themselves invalid, the court made the point that the taxpayers can raise that argument in the course of any appeal against the subsequent closure notices.

The taxpayers also argued that they needed to commence proceedings so as to avoid the risk of their challenges becoming time-barred under the Limitation Act 1980. However, the court dismissed this reason as well. The first reason given was that if tribunal proceedings led to HMRC learning that they had misunderstood the effects of a closure notice, it would be 'startling … that … HMRC would decline to give effect to the FTT's decision and refuse to pay the tax that HMRC had no right to retain'. The second reason given by the court was that, in any event, time would not start to run until the First-tier Tribunal's determination of the appeal.

For these reasons, the court considered that the taxpayers' claims had to be struck out as an abuse of the process of the court.

However, the court then proceeded to consider the substantive question as to whether the carry-backs to year 1 must be challenged through Sch 1A or whether HMRC can instead use the s 9A enquiry

procedure into the returns for year 2. The argument focused on the fact that (for some of the taxpayers at least) the cases concerned the years covered by the Income Tax Act 2007, where there was a more prescriptive set of rules determining the correct tax liability for a tax year, whereas the *De Silva* case concerned the pre-2007 code. However, the court considered that there was nothing in the rewrite process (that led to the 2007 Act) which would suggest that there was any intention to change the law from that, as since explained by the Supreme Court, in *De Silva*.

Furthermore, the court concluded that the *De Silva* approach remained correct and dismissed the taxpayers' appeals.

Commentary

In the course of their arguments, the taxpayers had identified a line of case law which showed that citizens do not need to take proactive action to challenge certain decisions by public authorities (i.e. by commencing judicial review). In short, the case law clearly demonstrates that (in the absence of any statutory appeals process) citizens are entitled to await enforcement action being commenced by the public authority and then make a collateral challenge against the public authority's decision in the course of their defence. The court considered that this line of cases was not relevant to the present cases. I am tempted to agree with the court on this point.

However, the court also added that none of those other cases had been in the context of tax. And that statement is wrong. The most obvious example of a tax case following that line of authorities is *Pawlowski (Collector of Taxes) v Dunnington* [1999] STC 550. (This concerns the transfer of an unpaid PAYE liability from employer to employee under what is now regulation 81 of the PAYE regulations – that case being heard at a time when the taxpayer could not appeal against such a decision.) However, the same point is also implicit in at least three cases concerning information notices (now of the sort given under the Finance Act 2008 Sch 36 where the tribunal has pre-authorised the notices), most notably *Kempton v Special Commissioners and IRC* [1992] STC 823.

So far as the substantive point is concerned, it is hardly surprising that the court followed the Supreme Court's decision in *De Silva*, as it would not have been permitted to depart from it unless it was convinced that the Supreme Court had got it wrong. Nevertheless, I was surprised that the Court of Appeal was so emphatic in the way that it upheld the *De Silva* approach. In particular, there still remain a number of questions as to the route taken by the courts to get to the current view of the law.

These questions boil down to just two words found in TMA 1970 Sch 1B. Schedule 1B was specifically written to deal with cases where claims concern two different tax years. In particular, para 2 deals with cases (such as the present) where relief arises in one tax year and is then carried back to an earlier tax year. Paragraph 2(6) explains how such relief should be given: 'Effect shall be given to the claim in relation to the later year, whether by repayment or set-off, or by an increase in the aggregate amount given by s 59B(1)(b) of this Act [effectively, by treating the tax relief as if it were a payment on account for the later year], ***or otherwise***.'

What was suggested by the Supreme Court in *De Silva* was that these words 'or otherwise' envisaged the claims being effected through an adjustment to the self-assessed tax liability for the later year. The Supreme Court then proceeded to say that these words also meant that HMRC were then fully entitled to amend a taxpayer's Self Assessment so as to correct any relief wrongly claimed.

In the present case, the Court of Appeal expressed surprise that, on the taxpayers' argument, the tax relief claimed need not feature in the tax return for the later year, given that the relief is statutorily stated to 'relate to' that later year. However, it is my view that this is not in fact so surprising. First, the words 'relate to' have a clear statutory purpose and this is to determine the time limits in Sch 1A for opening any enquiry into the claim. Secondly, that link to Sch 1A (which axiomatically concerns claims made *outside* a tax return) reinforces the view that Parliament was not actually expecting the claims to feature on the tax return at all. Thirdly, if inclusion on the tax return were envisaged, there would be no need to give effect to the claim as a deemed payment on account. Fourthly, one might have thought that such route to relief would have been stated slightly more explicitly than merely in a sweep-up phrase tagged at the end of a sentence. Indeed, it has long been HMRC's published view that those two words had no real meaning.

However, leaving aside these objections, there is yet a further reason why I am still not convinced by the court's conclusion. Paragraph 2(6) explains how effect is given to a claim made by a taxpayer. In other words, when a taxpayer makes such a claim, how does the taxpayer get the benefit of the tax relief being claimed? I am prepared to accept that the words 'or otherwise' are wide enough so as to allow the taxpayer to give effect to the claim through the Self Assessment machinery for year 2 (or arguably for any other year). But if a taxpayer has not actually claimed the relief in that way, it is my view that para 2(6) becomes irrelevant. That is because para 2(6) does not concern how HMRC may *correct* claims made by taxpayers. HMRC's methods of correction are dealt with in the various provisions concerning the conclusion of enquiries, etc. Furthermore, if a taxpayer has not claimed relief in a return, it cannot be possible for the return to be 'corrected' by the removal or amendment of the claim from or within the return.

In short, I remain unconvinced about the views expressed so far by the courts and hope that the matter can be revisited by the Supreme Court.

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What to do next

The court's decision on abuse of process serves as a reminder of the need to follow the correct procedures when challenging decisions taken by HMRC. As the court noted, 'both appeals to the FTT and applications for permission to pursue judicial review are subject to short time limits [and] it makes no sense at all' that such time limits can be sidestepped by taxpayers seeking to adopt an alternative route of challenge.

As far as the substantive issue is concerned, I suspect that the issue has not gone away for good. However, any taxpayer still wishing to run the argument will have to expect a long trawl through the courts in the hope that the Supreme Court will have an opportunity to reconsider its position as stated in *De Silva*. Because of the need for permission at each level of appeal, there is a possibility that a case will never get that far.

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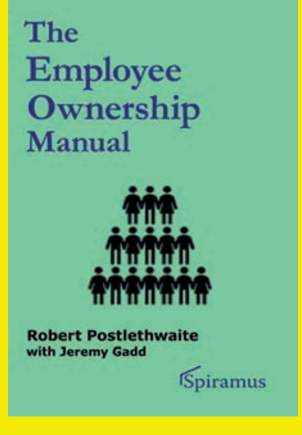

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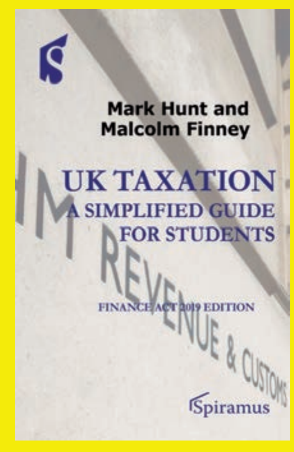

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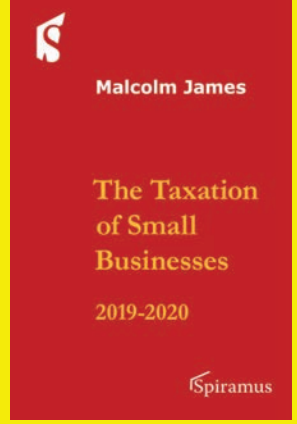

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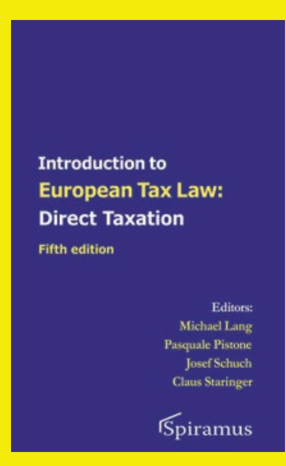

Unlocking tax on rental income

Caroline McCabe considers the impact of bringing non-resident companies into the charge to corporation tax on UK property rental income from 6 April 2020

KEY POINTS

- **What's the issue?**
Non-UK resident companies in receipt of UK property rental income will be subject to UK corporation tax on that income and related loan relationships/derivative contracts, instead of income tax, from 6 April 2020.
- **What can I take away?**
This change brings with it several additional complexities, requirements for extra information and new administrative tasks.
- **What does it mean to me?**
Affected companies and their advisers should focus on the changes before the new rules come into force to ensure a smooth transition to the new regime.

The past few years have seen significant changes to the way non-resident investors in UK properties are taxed, starting with narrowly targeted provisions such as the annual tax on enveloped dwellings (ATED) in April 2013 and the introduction of a non-resident capital gains tax (NRCGT) on disposals of UK residential property in April 2015. NRCGT was replaced in April 2019, widening the scope to include disposals of UK commercial property and 'indirect disposals' of UK property (broadly, where interests of at least 25% in entities deriving at least 75% of their value from UK property are disposed of). The 2019 changes were fundamental and have taken up substantial amounts of advisors' time.

With that backdrop, it is perhaps not surprising that the upcoming changes to the way corporate non-UK resident landlords (NRLs) will be taxed on their UK property business income have taken something of a back seat over the past year or so, even though they were announced before the new NRCGT rules. However, with only a few months left before the new rules take effect, it is vital that advisers and NRLs focus on this soon.

What is changing and what do the changes mean?

Corporate NRLs are currently subject to UK income tax on their UK property rental income, unless they are carrying on a trade through a UK permanent establishment. However, from 6 April 2020, they will instead be brought within the scope of UK corporation tax in respect of these profits.

There may be a difference in tax rates (the corporation tax rate is currently 19% and was expected to fall to 17% from April 2020 but this is now in doubt, compared to a 20% income tax rate). Regardless of the rates, there will definitely be some new rules to get used to under corporation tax, including additional restrictions on the deductibility of interest and restrictions on the amount of losses brought forward from earlier periods that can be offset.

Since under normal corporation tax rules, profits of a UK property business do not take into account debits or credits from loan relationships or derivative contracts, corporate NRLs will also be chargeable to corporation tax in respect of debits or credits arising from loan relationships or derivative contracts to which they are party for the purpose of the property rental business. Transitional provisions, amongst other things, ensure that there is:

- no disposal event for capital allowances purposes on the transition to corporation tax;
- no double counting of income or expenses; and
- 'grandfathering' of unused income tax property business losses that can be set against UK property business profits subject to corporation tax.

Interest deductibility

New corporation tax provisions restricting interest deductibility, which did not apply under income tax rules, will apply to NRLs from 6 April 2020.

Interest capping

Broadly, under income tax principles, interest is deductible against UK rental income to the extent that:

- it is wholly and exclusively related to the UK property rental business; and
- the debt is advanced on arm's length terms.

However, from 6 April 2020, under corporation tax principles, the corporate interest restriction (CIR) will apply. These are complex rules but, broadly, they cap interest deductions to 30% of 'tax EBITDA' (essentially, tax-adjusted profits before interest and capital allowances). There is also a £2m *de minimis* (across companies in a group which are subject to UK corporation tax) and the option of using an alternative group ratio or a public infrastructure exemption (if applicable), if this will provide a better result.

After applying the £2m *de minimis*, the deductions are also subject to the fixed ratio debt cap, which is broadly equal to the 'external' interest payable by the worldwide group. For CIR purposes, a group includes a company and any relevant subsidiaries that consolidate their financial statements together under IFRS 10 (or would do so if IFRS were applied).

In many cases, having to consider the application of these rules will increase the administrative burden for NRLs, even where there is in fact no restriction on interest deductibility. Some NRLs may even face difficulties in gathering the necessary information to determine which other entities are in the same group for CIR purposes.

Given the complexity of these rules and the reliefs available, it would be wise to review existing financing arrangements sooner rather than later.

Hybrid mismatches

UK hybrid mismatch rules have been effective from 1 January 2017 for UK corporation taxpayers and will apply to NRLs from 6 April 2020. These rules can deny interest relief completely where the NRL pays interest to a related party in certain circumstances; e.g. where, as a result of the way that different countries treat certain entities or instruments under domestic tax law, the recipient is not subject to tax on the receipt.

Losses

As a result of coming within the charge to corporation tax from 6 April 2020, corporate NRLs will be able to surrender or claim eligible corporation tax losses to/from other companies in the same group that are also subject to UK corporation tax. However, they will also be subject to the corporate loss restriction. This limits to 50% the amount of profits against which brought forward losses in excess of £5m can be offset. The £5m threshold will apply to income losses and capital losses (see below) in aggregate, and on a group-wide basis.

Existing unutilised income tax losses of an NRL will be available to carry forward and set against future UK property business profits (and relevant profits from loan relationships or derivative contracts) without restriction. However, these losses will not be available for offset against other types of income or to be surrendered as group relief.

As noted above, since 6 April 2019, gains accruing to non-UK tax resident companies on direct and certain indirect disposals of UK property are subject to UK corporation tax. A restriction on the relief of capital losses (for corporation tax purposes) is expected to be introduced from April 2020 so that companies realising chargeable gains will only be able to use carried forward capital losses to offset up to 50% of those gains, above the £5m limit referred to above.

Determining the 'group'

The transition to corporation tax means that the 'group' (if any), of which the NRL is part, must be established for various purposes. There are several different definitions of 'group' which may need to be considered, including for the purposes of the quarterly payment regime, the ability to group relieve losses and transfer properties between group members on a tax neutral basis, as well as various definitions of 'group' for the purposes of the interest capping provisions. Some of these definitions limit the group to those companies within the charge to UK corporation tax, while others do not.

Administration

Companies currently filing UK income tax NRL returns, which are not already within the charge to UK corporation tax (e.g. because they are trading through a UK permanent establishment) need to be registered for corporation tax purposes and obtain a corporation tax Unique Tax Reference (UTR). This process should happen automatically for these companies but new NRLs established on or after 6 April 2020 will need to register and notify HMRC of chargeability to UK corporation tax within three months of becoming chargeable.

Corporation tax returns will need to be completed and filed online within 12 months of the accounting period end (currently NRLs file paper returns on a tax-year basis by the 31 January following the end of the tax year). Accounts may also need to be submitted (and filed where appropriate) with the corporation tax return, another new requirement which was not necessary under income tax.

The corporation tax liability for the first accounting period will be due nine months and one day after the end of the accounting period. For subsequent periods, tax payment dates will depend on the company's taxable profits, the number of 51% group companies and the length of the period. Payments may be accelerated under the quarterly instalment payment rules, meaning that four instalment payments may be required, up to four of which may be due within the accounting period.

Where there are other companies in the group which are within the scope of UK corporation tax, it may be possible to enter into a 'group payment arrangement'. One of the companies is nominated to make the payments on behalf of all the companies within the arrangement.

As a result of coming within the charge to UK corporation tax, certain claims and elections may need to be made which were not previously required (or possible); e.g. various elections in relation to CIR, a 'disregard' election if there are derivative contracts (such as interest rate swaps) and appointing a nominated company for allocating the losses allowance and applying for simplified group relief arrangements.

Conclusion

NRLs and their advisers need to get to grips with the additional complexities that will come with the transition to corporation tax. Affected companies should review the implications of the transition to corporation tax as soon as possible, taking early action where necessary; e.g. gathering additional information required under the new rules.

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It's not just about status

Kate Upcraft considers the complexities involved in off-payroll working

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KEY POINTS

- **What is the issue?**
Operational questions relating to off-payroll working remain unanswered in respect to the withholding of tax and NI by the fee payer, as well as how to handle the payroll for the personal service company (PSC) when the director wants to withdraw salary.
- **What does it mean to me?**
An inside IR35 ruling applies where the engager has decided that the new legislation applies; i.e. if you stripped away the intermediary limited company or partnership, the engager has taken the view that the engagement has the hallmarks of employment.
- **What can I take away?**
Withholding has to commence immediately once an inside IR35 Status Determination Statement (SDS) is issued, even if the consultant appeals the ruling.

Off-payroll working has been with us in the public sector since April 2017. Yet surprisingly, after two and a half years there are still operational questions that remain unanswered, in respect to the withholding of tax and National Insurance (NI) by the fee payer, as well as how to handle the payroll for the personal service company (PSC) when the director wants to withdraw salary.

In this article, we'll focus on the operational angle to the reforms, exploring the things we know as well as the 'known unknowns'!

Business process

The first thing to say is that this move to include a new type of payee within a fee payer's payroll does not require any major software change to payroll systems. In fact, there is just one small change to real time information (RTI) from next April to support off-payroll working, which was requested by the ICAEW and supported by the student loan policy team in HMRC – more of that later.

There is no need for new functionality within payroll software, as all payroll software can withhold the correct amount of tax and NI! The challenge lies with managing the business processes to ensure that however the fee payer's payroll is run, the appropriate information is received at the right time to facilitate the operation of PAYE and NI and the onward reporting of that withholding.

The move to include a new type of payee within a fee payer's payroll does not require any major software changes to payroll systems.

Which payroll?

An inside IR35 ruling applies where the engager has decided that the new legislation applies; i.e. if you stripped away the intermediary limited company or partnership, the engager has taken the view that the engagement has the hallmarks of employment. It is useful at this point to clarify who the fee payer is, and therefore who will be doing the withholding. There are various scenarios:

- The director of the PSC (who we'll refer to as 'the consultant') is no longer operating through their limited company, insomuch that the fees from any engagements caught by IR35 are now processed via an umbrella PAYE scheme. This is run by an agency that will charge an admin fee for doing this work to either the engager or the consultant, as well as the employer's NIC (as this won't be borne by the umbrella operator).
- The engager sources its consultants through an agency, or agencies, which pay the consultants' invoices before charging the engager. Historically, such agencies would perhaps only have been charging an admin fee for procuring the consultant and handling payments. However, for inside IR35 rulings the final agency in the chain will now add the consultant to a PAYE scheme to withhold tax, Class 1 NIC (both primary and secondary) and apprenticeship levy (if applicable). The employer's NIC and levy will be charged back to the engager in addition to the current admin fee.
- The engager runs its payroll in-house and sources consultants directly without an agency. For inside IR35 rulings, these deemed employees must be added to their payroll for withholding to take place and for RTI reporting purposes. The employer's NIC and apprenticeship levy for consultants are simply part of the total liabilities of the PAYE scheme and will display as such on their Business Tax Account.
- The engager has outsourced their payroll, so for their direct consultant engagements they will have to ask their payroll agent to add them to the payroll for withholding and reporting purposes. The liabilities for the consultants are part of the amounts notified to the engager by the payroll agent.

What is the salary?

The consultant's fees from their invoice become the earnings which will be submitted in the Full Payment Submission (FPS) and subjected to tax, Class 1 NIC and the apprenticeship levy. The VAT and any allowable expenses on the invoice will still need to be paid gross to the PSC. Any 'allowable expenses' refers to the fact that only

those expenses that would be tax relieved for an employee will be tax relieved for a deemed employee. This will therefore exclude the tax-free payment of normal commuting costs to a permanent workplace, but would include, for example, expenses related to a training course that the consultant had been sent on by the engager.

PSC director to deemed employee

We are clear from the clauses that were in the Finance Act, before it fell away when parliament was dissolved, that withholding has to commence immediately once an inside IR35 Status Determination Statement (SDS) has been issued, even if the consultant appeals the ruling. If the appeal is upheld, then the payroll has to be reversed to remove the deemed employee from the payroll and recover the tax and Class 1 NIC that has been withheld incorrectly.

RTI reporting is geared to individual taxpayers, not corporate entities. The only time the system can be used to report a non-individual is where a corporate trustee is receiving a pension payment. We therefore have the challenge of turning the PSC into a ‘deemed employee’. The classification of ‘deemed employee’ is used because the only reason they are within RTI is to deduct and report the tax and NI; they have no employment rights as an actual employee would, for example to be auto-enrolled into a workplace pension or to any statutory payments. It is for their PSC to continue to provide these.

Setting up the payroll record

In order to be able to set up a payroll record, the fee payer needs the following personal information about the director of the PSC:

- forename and surname;
- date of birth;
- gender; and
- national insurance number or two lines of their address (the address must be their residential address, not a business address, in order for HRMC to be able to assess correctly whether they have Scottish or Welsh tax residence and to be able to issue the appropriate tax regime identifier with their tax code).

It therefore makes sense for the fee payer to create a deemed employee ‘starter checklist’ so this information can be captured as soon as an inside IR35 ruling is determined. As the fee payer will now be working to payroll deadlines rather than accounts payable deadlines, this has to be factored into discussions on business process changes as it will impact payment terms and conditions in respect to contracts. It may be that additional, more regular, payroll runs have to be introduced for consultants, with the additional associated costs. We are clear that the NIC table letter assigned to the consultant must follow the normal age driven rules:

- under 21: table letter M;
- 21 to state pension age: table letter A; and
- over state pension age: table letter C.

It would be possible for a consultant to apply for deferral but that would be a personal matter for them, as it is for any taxpayer.

What is less clear is the appropriate tax code to allocate. Since 2017, the public sector has been told to allocate tax code BR and starter declaration C, on the basis that the consultant already has a primary employment with their PSC where their personal allowance is allocated. Representations have been made to HMRC that it would be more appropriate for tax code 0T/1 to be used, as it is unlikely that the consultant will ultimately be liable only to 20% tax on this source of income.

There is then the matter of the start date to attach to the consultant’s record. There will be many consultants who have been undertaking contracts prior to 6 April 2020 with the same engager, so should we use the start date when the contract first commenced? This could be uncomfortable for the consultant, as they may feel that a retrospective start date would trigger a retrospective status enquiry.

We were encouraged by HMRC’s statement on 22 October in their issues briefing (see bit.ly/2OvtF4u): ‘HMRC have taken the decision that they will only use information resulting from these changes to open a new enquiry into earlier years if there is reason to suspect fraud or criminal behaviour.’

However, there can be no cast iron guarantees, and in any event it is impossible to insert a start date that is more than seven years earlier than the start of the current tax year. We have therefore agreed with HMRC to use a start date of 6 April 2020 on the records of any deemed employees where there has been an ongoing engagement, or the start date of the contract in all other circumstances post-6 April 2020.

Finally, the ‘off payroll worker’ (OPW) marker, to be newly introduced from April 2020, must be set (it isn’t clear why it isn’t called the ‘deemed employee marker’!). We have lobbied for HMRC to introduce this in order for them to be able to inhibit the production of student loan start and stop notices. The collection of student loans remains with the consultant when they complete their self-assessment return.

It is sensible for fee payers to ask their payroll software provider if the OPW marker will be used within their own payroll/HR systems to suppress functionality related to auto-enrolment, statutory payments and reporting that should be restricted to actual headcount, such as gender pay gap statistics. It is important to note that if the OPW marker is inadvertently set against an actual employee’s record, even if it is removed by the fee payer in the next payroll run, it cannot be removed from their record by HMRC as is it is attached to this particular income source. The only solution would be for the affected employee to be resigned and for the employer to re-engage them.

The end of the contract

When the consultant’s contract is complete, a P45 should be provided; and if they are still on the payroll at the end of the tax year they should be given a P60. Within their personal tax account, the income from the engager will be shown with the tax and NI that has been paid.

Any salary or dividends withdrawn from the PSC will be tax and NI free up to the level of income that has already been taxed by the fee payer. Salary payments should be reported tax and NI free through RTI as normal. Any salary in excess of that which has already been subject to withholding should be treated as subject to tax and NI as normal.

PROFILE

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Personal property tax unlocked

Calculating SDLT rates on property purchases by individuals can be a complex business, explains *Jo White*

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KEY POINTS

- **What is the issue?**
Stamp duty land tax applies to property purchases by individuals on all transactions in England and Northern Ireland.
- **What does it mean to me?**
The introduction of a surcharge rate, multiple dwellings relief, first-time buyers' relief and issues related to mixed use mean that all elements must be considered before advising a client.
- **What can I take away?**
A good rule of thumb is to assume that the surcharge rate applies, unless you can prove otherwise.

TABLE 1: SDLT RATES FOR RESIDENTIAL PROPERTY

Part of relevant consideration	Normal rate	Surcharge rate
Not more than £125,000	0%	3%
More than £125,000 but not more than £250,000	2%	5%
More than £250,000 but not more than £925,000	5%	8%
More than £925,000 but not more than £1,500,000	10%	13%
The remainder (if any)	12%	15%

In my previous article, I considered the basic fundamentals of stamp duty land tax (SDLT). This article applies those principles to property purchases by individuals.

The default position for residential purchases is shown in Table 1, as featured in FA 2003 s 55. However, under FA 2003 Sch 4ZA, a new surcharge rate has been introduced for transactions with an effective date of 1 April 2016, with special provisions in place for properties which exchanged around 25 November 2015. Under the surcharge rate, SDLT is only payable where consideration is £40,000 or more. If consideration is at least this amount but less than £125,000, then SDLT is payable on the whole amount at 3%.

FA 2003 Sch 4ZA will not apply where one of the two exemptions are met, which are:

- The property purchased is not an additional dwelling.
- The property purchased is to replace the purchaser's main home. In this instance, the purchaser can have an interest in any number of other residential properties and still be exempt from the surcharge rate.

FA 2003 Sch 4ZA uses the terminology 'dwelling' in determining if the surcharge rate applies. For this purpose, 'dwelling' is not defined in the legislation but HMRC have included their interpretation of the term in their guidance:

'"Dwelling" takes its everyday meaning; that is a building, or a part of a building that affords those who use it the facilities required for day-to-day private domestic existence. In most cases, there should be little difficulty in deciding whether or not particular premises are a dwelling.' [SDLTM09750]

HMRC go on to say that a dwelling also includes buildings under construction that are being built or adapted for such use. Off-plan purchases can also count towards the definition of a dwelling. Some key points to note:

- An overseas property will be classed as an interest in a residential property for the purposes of this charge.
- A purchaser can look back up to three years from the effective date of transaction to see if a qualifying dwelling was sold and therefore the replacement home criteria has been met.

- A purchaser can claim a refund of the surcharge rate where they sell their former home within three years of the effective date of purchasing their new main residence.
- If the property is being acquired with another person, the surcharge rate could apply to the whole transaction when the second person owns an interest in another property and the main residence exemption does not apply to them.
- Spouses and civil partners are treated as one for this purpose. Therefore, even if one party to the relationship does not own another property, they will be treated as doing so if their spouse or civil partner does.
- Where properties are being acquired by trustees, the type of trust will have an impact on whether the surcharge rate will apply.
- There are special rules for spouses and civil partners purchasing property from one another.
- There are special rules of property transfers on divorce or the dissolution of a civil partnership.

In all of these circumstances, the rules set out within the legislation are very comprehensive. It is therefore important that all elements are considered before advising a client whether the surcharge rate does or does not apply. A good rule of thumb is to assume that the surcharge rate applies, unless you can prove otherwise.

Multiple dwellings relief

This is one of the more widely known reliefs, but it is not always considered at the time the transaction takes place. Where two or more residential properties are acquired in a single transaction (or linked transactions), then it is possible to apply an averaging calculation to determine what SDLT is payable. This is subject to a minimum rate of 1%.

FA 2003 Sch 6B sets the scene for this relief. Under s 2(2), to qualify the main subject matter must consist of:

- an interest in at least two dwellings; or
- an interest in at least two dwellings and another property.

Alternatively, the main subject matter could be an interest in a single dwelling, but forming part of a linked transaction with another (s 2(3)).

Para 7 of the same part defines 'dwelling' for this purpose. This is a similar definition to that of the surcharge rate but goes on to state:

- Land that is, or is to be, occupied or enjoyed with the dwelling, such as a garden or grounds (including any building or structure on such land), is taken to be part of the dwelling.
- Land that subsists, or is to subsist, for the benefit of the dwelling is taken to be part of the dwelling.

Where the transaction involves non-residential property, then multiple dwellings relief (MDR) will be calculated on the consideration attributable to the dwellings only. The apportionment would be applied on a just and reasonable basis.

The most common type of transaction I see in MDRs is when a property is acquired with an annex. In order for the annex to be considered, it must be a separate self-contained dwelling in which the residents can live independently of the rest of the building with individual access and domestic facilities such as a kitchen, bathroom, etc. In the context of the surcharge rates, HMRC confirm that this is also their opinion on this position (SDLTM09755).

Where an annex is purchased with another property, then the surcharge rate would not automatically apply providing it fits within the definition of a 'subsidiary dwelling'.

It is important to note that MDR can be withdrawn if, within three years of the effective date of transaction, the purchaser changes the number of dwellings previously acquired; e.g. if the purchaser knocked through two semi-detached houses to make a single larger one.

Where a property to which MDR has been claimed is sold to an unconnected party, then the three year 'clock' ends. If a property is sold to a connected party, then MDR can still be withdrawn if that connected party later alters it in any way within the three years from when the original person acquired it.

First-time buyers' relief

Introduced in November 2017 (in FA 2003 Sch 6ZA), first-time buyers' relief reduces the SDLT burden on qualifying purchases by qualifying individuals. In order for a property transaction to be eligible for the relief, the following conditions must be met (Part 1 paras 2 to 6):

- the main subject matter of the transaction consists of a major interest in a single dwelling;
- the relevant consideration (other than any consisting of rent) is not more than £500,000;
- the purchaser (or if more than one, each purchaser) is a first-time buyer who intends to occupy the purchased dwelling as their only or main residence; and
- the transaction is not linked to another land transaction, or if linked, is only done so if it is:
    - an interest in land that forms part of the garden or grounds of the dwelling; or
    - a right over land that subsists for the benefit of the purchased dwelling, or land that forms part of the garden or grounds of the dwelling.

First-time buyers' relief is not available where the chargeable transaction is a higher rate transaction for the purpose of Sch 4ZA para 1. Like with most SDLT reliefs, first-time buyers' relief can be withdrawn but only where a subsequent transaction is linked to this first.

Mixed use

As a firm, we are seeing more and more cases where HMRC are disagreeing that the non-residential rates of SDLT apply. Despite even their own guidance, their default position used to be that any transactions which involve residential property is subject to the residential rates, potentially therefore resulting in the surcharge rate applying.

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EXAMPLE: WHERE MDR CAN BE APPLIED

Jane purchased the freehold of a large five bedroom house, which also came with an annex, for a total of £2.5m. The annex had its own separate door and was capable of being lived in independently to the main house. It had a small area of garden which was intended for use by the occupant of the annex.

MDR was claimed on the basis that the purchase was for two individual dwellings. SDLT was therefore calculated as £137,500, compared to £213,750 had MDR not been available.

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EXAMPLE: DETERMINING MIXED USE

A client acquired a residential property to live in. The land acquired included the house, surrounding land and a substation which was leased to an electricity company. HMRC enquired as to whether the main subject matter of the transaction was that of residential property and therefore the residential rates of SDLT applied, by asking a series of questions and requesting further information.

We supported a claim of non-residential property on the grounds that the substation and the surrounding land did not form part of the grounds of the property, nor could it be used as residential property. The transaction therefore consists of land that is not residential property and as such should be charged to the non-residential rates of SDLT.

HMRC agreed with our assessment. If they had disagreed with this position, then the client would have had to pay a further £204,000.

FA 2003 s 55 states that 'Table B: Non-residential or mixed rates' apply 'if the relevant land consists of or includes land that is not residential property'. There is no definition as to the amount of non-residential land that needs to be included in the transaction before the Table B rates can apply. Purchasing a house with 40 acres of agricultural land should therefore fall within this definition; therefore, the lower rates of SDLT would apply to the whole transaction. However, despite HMRC's own guidance in their manuals, their previous approach seemed to be the opposite of this.

HMRC have issued enquiry letters on land transactions where they are asking questions which are not pertinent to the SDLT position. For example, they may ask for:

- an explanation of the non-residential activity the purchaser is to undertake on the land;
- copies of documentation supporting the mixed-use selection, including contracts for third party use before and immediately after the effective date of sale; and
- evidence of the vendor's non-residential use immediately prior to the effective date of sale and the purchaser's continuation of the same non-residential activity.

None of the above requests for evidence answer the questions HMRC needed to be asking when determining if the non-residential SDLT rate can apply. The legislation does not require there to be a non-residential activity on the land to qualify as non-residential. Furthermore, there is neither a third party use requirement, nor a requirement for the purchaser to continue the activity on the land after the transaction has completed. We would expect such questions from HMRC when they are considering other taxes, but not for SDLT.

It is always important that in cases like this you ensure that the questions being asked, and arguments being put forward by HMRC, are in line with the appropriate legislation. You should not simply take HMRC's challenge to any claim as being the final result.

New HMRC guidance on mixed use properties

On 1 October 2019, HMRC released some new guidance on their interpretation of the definition of mixed use properties. This is contained within SDLTM00360 to SDLTM00430.

The new guidance seeks to make it clearer as to what HMRC's view is on property transactions which are beyond your typical residential property purchases. It is important to bring to your attention at this time HMRC's other recent guidance (SDLTM00440 – SDLTM00480) in this context. This relates to what they consider to be 'gardens and grounds' for the purpose of identifying residential property as defined within FA 2003 s116.

TABLE 2: FIRST-TIME BUYERS' RELIEF RATES

Assuming the conditions are met, relief can be claimed such that the Table 1 rates for residential property are amended to be as follows:

Relevant consideration	Percentage
So much as does not exceed £300,000	0%
Any remainder (so far as not exceeding £500,000)	5%

What is interesting about HMRC's new guidance on mixed use properties is that it isn't significantly different to what we understood their position to be in the past. I am therefore hoping the level of questions based on future use reduce considerably in this respect. In SDLT00380, they state: 'Any future intention of the purchaser to use the dwelling for non-residential purposes is irrelevant for the purposes of s 116(1)(a).'

They do now break it down into two distinct categories: being used as a dwelling or suitable for use as a dwelling (Category 1); and in the process of being constructed or adapted for use as a dwelling (Category 2).

Key points to consider here are that just because it isn't a residence at the effective date does not mean it isn't suitable for use as a dwelling at the effective date of transaction. Longstanding past use will be considered. For example, if the last use was a dwelling, it is more likely their position is that the property is still suitable for the same use if the building is largely the same as it was. Other factors include whether there are any public or private legal conditions (such as planning permission) affecting the use of the property; for example, a holiday chalet that can only be used as a dwelling for short term visitors. Council tax and business rates will play a part in their review of suitability for use and if the property is no longer habitable then there is a clear argument it cannot be residential property. This latter part is worth considering in the context of the case *PN Bewley Ltd v HMRC* [2019] UKFTT 65.

HMRC have confirmed that 'in the process of being constructed' does mean it has to be physically underway for this category to apply; planning permission in its own right is not part of this process.

In light of *Hyman v HMRC* [2019] UKFTT 469, we may see more challenges on what is considered mixed use properties from HMRC. It is therefore important that the facts of the case are reviewed thoroughly before any claim for mixed use properties are made in this context.

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Welcome to the January Technical Newsdesk

by Richard Wild, Head of Tax Technical Team, CIOT

In previous introductions to Technical Newsdesk, I have mentioned the difficulties of having to write articles well in advance of their publication. This month is no exception; in fact, it is even more challenging as the Christmas period means that the deadlines for the January edition are even more advanced. I am not going to predict the outcome of the General Election, but I am going to roll the dice and open with a fact that you may find surprising: 2019 will be the first year in over 120 years that there has not been a Budget (provided that there is not a snap Budget in late December). That sounds rather amazing and you can find the details of previous years' Budgets in appendix A at https://tinyurl.com/v4k7yz5. I am sure readers will recognise many of the chancellors' names and remember some of their policies, though I would be amazed if that was the case for Sir Michael Hicks Beach!

Perhaps the lack of a Budget sums up what a tumultuous and frustrating year 2019 has been. Throughout 2019, preparations for Brexit have been HMRC's number one priority and, as they themselves recognise, this has come at the expense of other activities. We had a relatively modest number of measures in the draft Finance Bill published in July, and we finished 2019 with a General Election, which put paid to the 6 November Budget and subsequent publication of the Finance Bill. It also meant that our engagement with HMRC and other policymakers in November and December was reduced because of the limitations of the pre-election period.

These political and resourcing constraints took their toll on the tax policy making process. 2019 has seen a significant reduction in the number of proposals being consulted upon – although the phrase 'be careful what you wish for' springs to mind, when considering the proliferation of tax measures we have had in recent years. This reduction is, to some extent, reflected in the number of submissions that the technical teams of CIOT, ATT and LITRG made in 2019. We made around 120 submissions in 2019 which, whilst being a substantial number, is about two-thirds of those made in 2017 (a year of two Budgets and two Finance Acts). This is largely because most of our submissions are (or were typically) made in response to formal consultations issued by HMRC or other policymakers. As the number of consultations has reduced, so too have our submissions, although we are making an increasing number of proactive submissions in areas which we feel are worthy of attention.

But what does go from strength to strength is the 'human' interaction we have with HMRC and other policymakers – face to face meetings or regular skype/conference calls. We held around 430 such meetings in 2019, a significant increase over 2017 numbers, even considering the constraints around the pre-election period. It is this engagement which is particularly valuable, and is a testament not only to the efforts of the technical teams, and especially our volunteers, but also to the government's willingness to continue to engage. Though there is still plenty of room for improvement.

2020 will undoubtedly bring many changes, and we highlight some of them in this month's Technical Newsdesk. The OECD's work on addressing the tax challenges arising from the digitalisation of the economy continues, and we highlight our submission on 'Pillar One' and will summarise our submission on 'Pillar Two' next month. Of course, subject to Parliamentary

approval, the UK's digital services tax is expected to be introduced in April 2020. The challenges of reporting and paying capital gains tax within 30 days of completion, and registering a significant number of trusts, need to be overcome, and we set out some early steps to help facilitate that. In October 2020, the domestic reverse charge for construction services is due to be introduced, having been deferred from October 2019, and we report on what is being done in the meantime to help businesses prepare. I think our diaries will remain full in 2020.

Addressing the tax challenges of the digitalisation of the economy

INTERNATIONAL LARGE CORPORATE

The CIOT has responded to a consultation published by the Organisation for Economic Co-operation and Development (OECD) on addressing the tax challenges arising from the digitalisation of the economy, focusing on key points arising from the 'Unified Approach' suggested by the OECD's Secretariat.

The tax challenges arising from the digitalisation of the economy were identified as one of the main areas of focus of the Base Erosion and Profit Shifting (BEPS) Action Plan, becoming known as BEPS Action 1, in 2015. Since then policy discussion on those challenges has remained an important part of the international agenda. Following a mandate by G20 finance ministers in March 2017, the OECD/G20 Inclusive Framework has been working towards a consensus based global solution to these challenges. The OECD/G20 Inclusive Framework is a group of countries, coming together under the auspices of the OECD, and working together on an equal footing to implement the BEPS measures agreed in 2015; and, beyond that, considering new international tax rules as part of the fundamental discussions on how to address the tax challenges arising from digitalisation of the economy. The Inclusive Framework now has over 130 countries as members, including over 70% of non-OECD and non-G20 countries and jurisdictions from all geographic regions.

In January 2019, the Inclusive Framework issued a short Policy Note, which grouped the proposals under consideration in relation to the digitalisation of the economy into two pillars (https://tinyurl.com/y7xy5ht6). Pillar One focused on the allocation of taxing rights and sought to undertake a coherent and concurrent review of the profit allocation and nexus rules. The Policy Note considered three proposals under Pillar One: the 'user participation', 'marketing intangibles', and 'significant economic presence' proposals. The Policy Note stated that the Pillar One proposals would entail solutions that go beyond the arm's length principle. Pillar Two is concerned with the remaining BEPS issues.

In May 2019, the Inclusive Framework adopted a Programme of Work to develop the consensus solution to the tax challenges raised by the digitalisation of the economy (https://tinyurl.com/uodscet). The Programme of Work highlighted the commonalities of the three proposals under Pillar One, summarised in the January 2019 Policy Note, to facilitate a consensus solution on Pillar One. It also identified various technical issues that need to be addressed.

In October 2019, the OECD's Secretariat published a consultation document on the 'Secretariat Proposal for a "Unified Approach" under Pillar One' (https://tinyurl.com/y6pfrjkl). The Secretariat's proposal builds on the Pillar One proposals in accordance with the Programme of Work. In our response to this consultation, the CIOT welcomed it as progress in the conversation around the impact of the digitalisation of the economy and acknowledged that it was a continuation of the work towards a consensus-based, long term solution to the tax challenges raised.

In our response, we commented on the key points arising from the proposed Unified Approach, whilst noting that there is still much outstanding regarding how the work under Pillar One might coalesce around a political and policy consensus that addresses the various challenges that concern policy makers, which are a result of the impact of the digitalisation of the economy and globalisation of businesses generally on tax bases. We said that because there is so much outstanding, it is very difficult to comment on the technical and/or practical implications of the Unified Approach at the detailed level of some of the questions in the consultation document.

Whilst we did address the questions for public comments that were asked in the consultation document, the key points that we focused on in our response were that:

- the principles underlying the Unified Approach must be articulated;
- the practical challenges arising will require a bold solution;
- mandatory, multilateral, binding arbitration is paramount; and
- resourcing these changes by the OECD and national tax authorities will be key.

Principles underlying the Unified Approach must be articulated.

The Unified Approach to Pillar One presented in the consultation document (the proposal) contains some profound ideas which challenge the existing principles that underpin the current international fiscal philosophy and which, if adopted, would result in considerable upheaval within the international tax system. However, we said that the proposal does not set out a coherent vision of the principles underpinning the solution to address the challenges that have been identified. Before substantive progress can be made, we suggested that there must be clarity and consensus at a political level as to the how the challenges should be addressed, rather than seeking to address the impact of several different challenges simultaneously that are not underpinned by a unifying principle (and may not be pulling in the same direction). We also said that the temptation to move to a formulary (or partially formulary) system is understandable given the different challenges being addressed at the same time, but without a single underlying principle, a partial move will be inherently unstable.

The practical challenges arising will require a bold solution.

Notwithstanding these broader concerns regarding what it seeks to achieve, we welcomed the opportunity to comment on the actual proposal made by the Secretariat, as there are a number of design choices available with different trade-offs. The challenges involved in working through the proposal should not be underestimated: firstly, in order to achieve political agreement as to what is within scope, and agreeing the scale or amount of profits reallocation; and then translating the concepts into something that is practicable. Although the proposal seems in some respects conceptually simple, it is legally and technically complex, and a significant departure from the current international tax framework. Our response emphasised the very real technical and practical difficulties that will arise from implementing the proposal.

The CIOT said that in order to address the practical challenges, it may be necessary for the proposed solution to

include administrative systems and multilateral cooperation that are even bolder than currently envisaged. A fresh approach should be considered to solve the issues that have been identified, and we said that a radical change may be preferable to an attempt to shoe-horn a solution into existing concepts. We suggested several ways to meet the policy objectives and recognised the trade-offs of each that will need to be considered.

Mandatory, multilateral, binding arbitration is paramount. We welcomed the focus on dispute prevention as, while dispute resolution is necessary, it is not the best solution for business because of the time it takes; businesses need certainty from the outset. To achieve this, we said that the rules and definitions should be agreed and set out in an OECD publication, with limited room for states to adopt different, and potentially inconsistent, interpretations. It is inevitable that the fundamental changes proposed to the international tax system will give rise to disputes. It is our strong view that countries which sign up to the new taxing right that is proposed must also sign up to a new mandatory, multilateral and binding arbitration process.

Resourcing these changes by the OECD and national tax authorities will be key. Our response noted that it is also clear that the implementation of a proposal delivering these aims will require significant resource from the OECD and national tax authorities, as well, of course, from taxpayers. We said that countries should be encouraged to commit to providing the additional resource that will be required.

Our response can be found at: www.tax.org.uk/ref609.

Pillar Two is the subject of a second consultation published by the OECD in November 2019. At the time of writing, the CIOT is preparing its response to this, which will be reported on in February's Technical Newsdesk.

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Applying the agent lens to digital services

GENERAL FEATURE

A new group to bridge the gap between tax policy and implementation has been created and its first priority will be to look at the approach to agent authorisation for new digital services.

Understanding tax law is one thing, complying with it another and, after determining the client's tax obligations, the agent needs to communicate the result to HMRC. For a complete client service, this means that agents want to use HMRC's digital reporting routes efficiently and effectively. Following feedback from a number of bodies, and the expansion of HMRC's Agent Strategy team, a new group has been created to help bridge the gap between tax policy and implementation. The Agents Digital Design and Advisory Group (ADDAG) will look at the development of digital services from the agents' perspective.

ATT and CIOT representatives attended the first meeting in November to feed into the objectives and priorities of the group. The most pressing concern identified was the process of agent authorisation – how a taxpayer appoints an agent to act for them.

For new services, HMRC is developing digital authorisation routes in place of the current, paper-based, 64-8 process. While more efficient in many ways, digital routes require the taxpayer to create a Government Gateway account as part of the authorisation process, which can be a struggle – or simply impossible – for some taxpayers. Furthermore, because services are developed by different teams within HMRC, the steps taxpayers must follow to authorise their agent are not consistent.

From the ATT and CIOT perspective, it is crucial that *digitally challenged* taxpayers are able to appoint an agent easily and that all authorisation processes follow a clear and consistent approach.

From HMRC's perspective, the authorisation process needs to give their staff the confidence that they are sharing information with the correct agent and that they are protected from unintentionally breaching the general data protection rules.

Given the timescales involved, the group identified the development of the new 30 day capital gains tax reporting service and the existing Trust Registration Service as further priorities. The new standalone service for capital gains tax to enable taxpayers to report relevant property disposals within 30 days of completion needs to be in operation by April 2020, while a major increase in the number of trusts that will be required to register on the Trust Registration Service is also expected in 2020.

In the longer term, the intention is that the group should be involved in the early stages of the development of new digital services. By establishing a critical path for the development of future services with HMRC, it should be possible to identify the key points in development where the agent perspective is needed.

We are always happy to hear from members about their experiences of interacting with HMRC digitally. Please contact us directly on the email below or on atttechnical@att.org.uk or technical@ciot.org.uk.

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VAT: domestic reverse charge for construction and building services – what is happening during the deferral period?

INDIRECT TAX

HMRC announced in Revenue and Customs Brief 10/19 (https://tinyurl.com/yyqpdyjg) that there would be a one year deferral of the introduction of the domestic reverse charge on construction services, which will now commence from 1 October 2020. In the meantime, HMRC are focusing on raising business awareness and enhancing the guidance (https://tinyurl.com/y33aps5v). The CIOT, along with other professional bodies and industry, is represented on the stakeholder consultation group.

In the last stakeholder meeting with HMRC in November, attendees considered the arising action points:

Raising awareness

HMRC's awareness raising activities will include:

- Letters will be sent to around 250,000 VAT registered businesses identified as being likely to be affected by the new rules. They are anticipated to be sent out before the end of January;
- Running webinars: these had proven to be popular in the run up to the original launch date of 1 October 2019, so

the content will be updated and there will be a webinar programme running in 2020 up to 1 October 2020; and,
- Meeting with various building sector representative bodies to discuss preparedness and plans.

Guidance
It is anticipated that updated guidance will be available in early 2020. Stakeholders discussed several areas where they would like to see updates including:
- end users: helping people to understand what it means and the arising obligations;
- identifying whether the taxpayer is an intermediary or not;
- overseas contractors: information for international supply chains;
- definition of employment businesses and how to identify them; and
- ensuring that labour only supplies falling outside of the employment businesses rules are subject to the domestic reverse charge.

It was discussed whether specific sectors may require more targeted guidance (for example, local authorities, small businesses) and this will be given further consideration by HMRC.

Gov.uk
Representatives suggested that the landing page on gov.uk for the domestic reverse charge should have weblinks to relevant VAT and construction industry scheme (CIS) guidance to assist taxpayers with complying with the rules; for example, being able to check a CIS status and access VAT decision making flowcharts from the same starting point.

HMRC helpline
HMRC are considering how to channel queries received by the helpline as the taxpayer query may relate to CIS, VAT or a combination of both. Officers may need to transfer calls between departments.

Next steps
The next stakeholder meeting is likely to be in February or March. If you have feedback on raising awareness or guidance for the domestic reverse charge, please contact jsimpson@ciot.org.uk.

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Entrepreneurs' relief: personal company rules, dilution provisions and dilution on the day of sale

OMB

The CIOT wants to ascertain whether a change in HMRC's view about dilutions of shareholdings on the day of sale (which may prevent entrepreneurs' relief being available in certain circumstances) creates a problem; and if so, how big a problem it creates. Have you come across this in practice? We are asking members to contact us with their views.

FA 2019 introduced changes to the definition of an individual's 'personal company' for the purposes of determining the availability of entrepreneurs' relief on a disposal of shares in that company. There are additional requirements that must be satisfied for disposals made on or after 29 October 2018 which look at whether the individual shareholder has a sufficient economic interest in the company (TCGA 1992 ss 169S(3), (3A)and (3B) as substituted by FA 2019 Sch 16 para 2).

Before the FA 2019 changes, it was HMRC's view that dilution of an individual's shareholding by the exercise of options, or another share transaction, on the day of sale, which resulted in the shareholder owning less than 5% of the ordinary share capital, did not prevent entrepreneurs' relief being available. See CIOT Notice 'Entrepreneurs' Relief – Practical points' (example A7) (https://tinyurl.com/wyah7e5).

Following the FA 2019 changes, HMRC have changed their interpretation, as has been confirmed by their correspondence with the Institute of Chartered Accountants in England and Wales (see TAXguide 04/19 Example A5).

HMRC have also updated their guidance at CG63975 (see https://tinyurl.com/w5z7cdv), which now says: 'Up until 28 October 2018, Condition A would not be failed where another share transaction takes place earlier on the same day as the disposal which results in the 5% shareholding requirement not being met at the time of the disposal. From 29 October 2018, Condition A would be failed in those circumstances if the individual did not meet the economic interest requirement – see CG64051.'

Therefore, HMRC will no longer ignore share transactions earlier on the day of disposal; this is notwithstanding that the wording of Condition A in TCGA 1992 s 169I(6) has not changed. Condition A requires that, inter alia, the company is the individual's personal company (as defined by s 169S(6)) throughout the period of two years ending with the date of the disposal.

Since the wording of Condition A has not changed and this is the only time reference in the legislation, there may be doubts about whether there is any legislative basis for HMRC's change of interpretation, and indeed whether their interpretation is actually correct. We would be interested to hear readers' views on this.

A consequence of HMRC's revised interpretation is that it risks preventing genuine 'entrepreneurs' who have owned more than 5% of the ordinary shares for many years from obtaining entrepreneurs' relief on their disposal if their shareholding is diluted on the date of sale.

The individual whose shareholding is diluted may be able to elect to crystallise entrepreneurs' relief on the day of the sale using the new 'anti-dilution election', which allows relief on gains made before the individual's shareholding is diluted below the 5% threshold (TCGA 1992 ss 169SB–169SH (Pt 5 Ch 3A) inserted by FA 2019 Sch 16 para 3) but only if it is done in qualifying circumstances. There are conditions that the shares are issued for monetary consideration and are subscribed and issued for genuine commercial reasons, and not as part of arrangements to secure a tax advantage. HMRC's guidance at CG4053 (see https://tinyurl.com/r77t3tg) states that HMRC consider that the anti-avoidance rule would not normally apply where a tax advantage arises solely through the operation of an 'approved employee share scheme' but clearly, this would depend on the facts and circumstances of each specific case.

The CIOT would like to understand what issues HMRC's change of interpretation on date of sale dilutions is creating for taxpayers in practice and how widespread these are. Have members made anti-dilution elections in such cases and have they been accepted by HMRC? We are interested to hear from members who have encountered this in practice. Please respond to technical@ciot.org.uk.

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Corporate non-resident landlords: compliance letter to tenants

PERSONAL TAX

In a recent compliance initiative, HMRC have sent letters to tenants occupying residential property owned by non-resident corporate landlords.

The letter says that HMRC are writing because they have information that the recipient is living in a property which is legally owned by an overseas company, and that the person may need to deduct tax from their rent. It then goes on to explain when the person may need to deduct tax and asks them to complete a four page form to provide the information which will help HMRC to work out how much tax, if any, needs to be deducted. An example letter is on the CIOT website (see https://tinyurl.com/te6dkw4).

The CIOT put several questions to HMRC about the letter and we have collated the responses we received into a Q&A format. The Q&As can be found on our website (see www.tax.org.uk/compliance_letter).

If you have any comments about this mailing or other feedback on HMRC's approach, please email them to technical@ciot.org.uk.

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Offshore investment funds: HMRC letter to taxpayers

PERSONAL TAX

HMRC have recently sent out letters to taxpayers asking them to check that they have correctly declared money received from offshore investment funds.

HMRC carried out a bulk mailing of letters in early November 2019 to a subset of taxpayers whose tax affairs are dealt with by HMRC's Wealthy & Mid-Sized Business unit. The letters ask recipients to check that they have correctly declared money received from offshore (overseas) collective investment funds and include a factsheet that gives more details.

The tax reporting rules around disclosing income and gains from such funds can be complex, and, as such, it has been identified by HMRC as a high risk area for errors. The purpose of issuing the letters was primarily educational to prevent errors in the run up to the self-assessment tax return filing peak.

HMRC supplied us with a sample letter and a briefing containing some background information about the mailing, both of which we have posted on our website (see www.tax.org.uk/OCIF_letter).

In sharing this information with the CIOT and other stakeholders in the Wealthy External Forum, HMRC are hoping for early feedback about the mailing. They hope to be able to share further briefings and sample letters with us for similar mailing campaigns in the future. They are also interested in feedback generally about their approach and how beneficial we think these briefings/sample letters are.

If you have any comments about this mailing or other feedback on HMRC's approach, please email them to technical@ciot.org.uk.

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Help-to-Save scheme: are your clients missing out?

GENERAL FEATURE PERSONAL TAX

The Help-to-Save scheme was launched in September 2018 and enables individuals who receive tax credits or universal credit, subject to certain conditions, to earn a tax-free bonus of up to 50% of amounts saved. The account, which is delivered by NS&I and HMRC, has been introduced by the government in order to help those on low incomes build up their short-term savings and to encourage them to form a regular savings habit.

LITRG has been a member of HMRC's Help-to-Save Stakeholder Forum throughout the pilot phase and the launch of the account, helping to ensure that it best meets the government's aims. However, since the launch of the account over a year ago, take up among those eligible has been disappointing, with the latest statistics (published in August 2019) showing that only 132,000 accounts have been opened compared with some 3.5 million people the government claims could benefit.

It is clear that encouraging individuals on low incomes to start a savings habit was always going to be a challenge as it relies on people having some disposable income. Many of the people who contact LITRG already have debt problems and are unlikely to have much, if any, disposable income. Although the maximum that can be saved is £50 per month, it is possible to save as little as £1 at a time, and deposits can be made at any frequency to suit the individual.

However, lack of awareness has been identified as another key reason for the poor take up. Tax advisers potentially have a role to play here, if they have any clients who might be eligible or otherwise know anyone for whom the account would be suitable, just as they might mention the tax efficiency of other investments such as individual savings accounts. The Help-to-Save account's tax-free bonus of up to 50p per pound saved is extremely generous, so your clients might be grateful to you for highlighting its existence.

Given that tax credits and universal credit are both non-taxable benefits, it may not always be clear whether your clients are in receipt of them as you will not need details of such benefit claims in order to file a self-assessment tax return. However, depending on the individual's circumstances, your clients may be receiving either tax credits or universal credit despite being on a relatively high income.

Be aware also that if a claimant meets the conditions as part of a couple, then each member of that couple can apply for their own Help-to-Save account. Thus, if your client is eligible, so would be their partner.

LITRG has published detailed guidance on how the scheme operates, including eligibility criteria, at: www.litrg.org.uk/Help-to-Save.

You and your clients can also get a quick overview of the scheme by watching our video at: https://tinyurl.com/r4brlm6.

Of course, tax advisers must always be wary of the boundary between tax advice and regulated investment business. Members should be familiar with the CIOT's Professional Rules and Practice Guidelines (www.tax.org.uk/prpg), which provide more information on this subject.

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How advisers can appeal to lower income taxpayers

GENERAL FEATURE

There are lots of taxpayers who fall outside the remit of the tax charities who need, and are willing to pay for, good value professional tax advice and assistance.

The types of issues that the tax charities help with include P800 problems (including 'employer error' cases), late filing penalties (often for tax returns incorrectly issued) and determinations/special relief, preparing tax returns for those in low-paid self-employment, tax debt issues (including helping to arrange payment plans or remission) and, more recently, worldwide disclosure.

However, the tax charities cannot help everyone. And no matter how much LITRG try and help people 'self-serve' in many instances (particularly where an issue has several strands or has 'snowballed'), there can be no substitute for having a tax professional speak with HMRC on your behalf.

LITRG already have a website page on getting 'paid help' (www.litrg.org.uk/getting-help#paid). This encourages those who can afford to pay for their taxes to find professional assistance using the Find a CTA tool on the CIOT's website or the Find an ATT tool on the ATT's website. The guidance urges those seeking help to ask about the adviser's charges and whether they will have to pay anything for an initial discussion about their requirements. We will be giving some thought to what more we can do in this area during 2020.

In the meantime, there is clearly a need in the market and we are sure there are ATTs/CTAs out there who can help meet that need. If you are one of them, how can you make sure that, practically speaking, people can find you? We can offer you these top five tips:

- Make sure your details are up to date and displaying correctly in the 'Find an ATT/CTA tool'.
- Consider setting up a web presence if you do not have one already, so that people searching for information on the internet can find you.
- Put yourself in the shoes of someone on a lower income. Does your marketing/advertising material make you seem approachable/accessible?
- If you are happy to take on ad hoc, rather than recurring, work and/or can help individuals as well as businesses, tell people!
- Last but not least, it may be an obvious point (and indeed, is one covered by Professional Rules and Practice Guidelines), but people on lower incomes are likely to be price sensitive. Make sure your pricing structure is as clear as possible.

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CIOT	Date sent
Secretariat Proposal for a 'Unified Approach' under Pillar One www.tax.org.uk/ref609	11/11/2019

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Chartered Institute of Taxation

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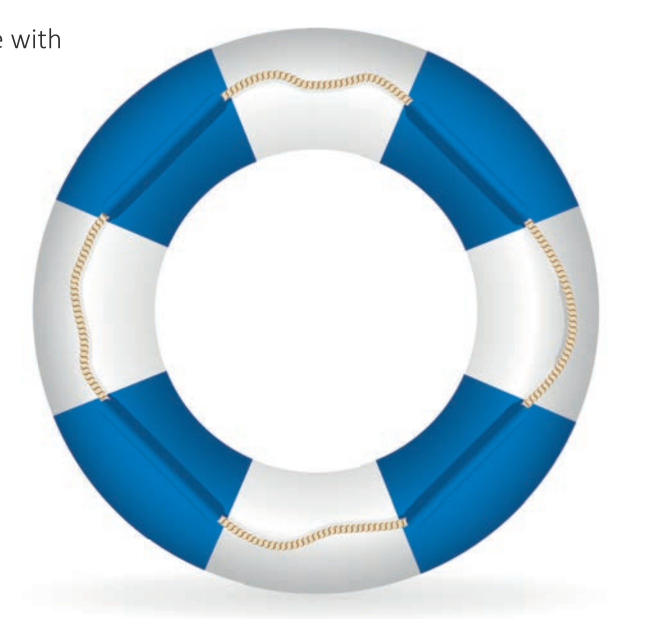

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Journal of The Chartered Institute of Taxation and The Association of Taxation Technicians

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tel: 020 7340 0550
The CIOT is a registered charity – No. 1037771; The ATT is a registered charity – No. 803480

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Offices LexisNexis, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS.
tel: 020 8686 9141
UK print subscription rate 2019: £103.00 for 12 issues
Europe print subscription rate 2019: £136.00 for 12 issues
O/S print subscription rate 2019: £136.00 for 12 issues

For *Tax Adviser* magazine subscription queries contact 0330 161 1234.
or email
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Printed by William Gibbons & Sons Ltd. West Midlands

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ISSN NO: 1472-4502

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CIOT

Planned UK DST fails to convince panel at CIOT/IFS debate

DEBATE

Glyn Fullelove, Ali Kennedy, Paul Johnson, Richard Collier and Mike Devereux

There was not much love for the government's digital services tax (DST) at the latest CIOT/IFS debate. The debate, chaired by IFS Director Paul Johnson, was held at the British Academy on 18 November 2019.

CIOT President Glyn Fullelove put the DST into historical perspective. There was a lot of corporate tax avoidance going in the UK ten years ago but HMRC were making progress on this in the courts, and bringing this to public attention, he said. This narrative was picked up by the UK media and the public, and applied, partly as a reaction to austerity, to a different kind of tax planning by multinationals. This was 'base erosion and profit shifting' (BEPS), which exploited differences between tax systems rather than seeking to avoid tax in any one system. This gave multinationals opportunities to reduce tax not open to other taxpayers, which was viewed as unfair – an early example being the furore over Starbucks. BEPS also became closely associated with large 'digital' companies. Closing his speech, Fullelove touched on the formulary apportionment proposed by Labour, which he said would present some challenges if gone ahead with unilaterally.

Richard Collier is a Senior Tax Advisor at the OECD. Although he and the OECD do not support the UK DST, he said he was not surprised at it, given the tax tensions in the international system. Collier counted 15 territories in Europe which have introduced or are considering a DST, plus seven in Asia, two in Africa and two in the Americas. He expects to see more skirmishes along the lines of that between France and the US. Collier said the OECD's 'Pillar One' is proposing the biggest change to the international tax system in 100 years: 'Part of the approach is to introduce a new group approach to allocation of income to replace in part or overlay on top of the single legal entity perspective for a taxing right.' The basis of this new taxing right is market and user jurisdiction, not traditional supply side analysis. There is also an overhaul of the bilateral dispute mechanism going on, he added.

The OECD is trying to build a new infrastructure for a new taxing right, explained Collier. This could mean using consolidated accounts in new ways and doing business line segmentation, for example. Then there is the challenge of integrating new taxing rights and new income allocation systems with the existing system (the arm's length principle (ALP) already taxes 100% of income from multinational groups). Collier said that, in the absence of an OECD approach, he was sceptical that those countries with or planning DSTs will magically see the error of their ways, and the next stop is 'tax wars' retaliation and counter-retaliation. If you do not like DSTs in the real world, you will need an alternative approach, he said.

Ali Kennedy, Vice President for Group Tax at Sophos Group, said the business community dislikes the UK's DST but supports the OECD's efforts. Under the DST, businesses will need to look at legislation that they have never had to apply before, with no precedent, and quickly decide if they are inside or outside the tax. There is then a challenge to identify users creating revenue streams where businesses will not have recorded them in the past, and when there is no other reason apart from the DST to do so.

Kennedy said that the UK risks alienating the technology industry. She is pleased to see the DST is out of the Senior Accounting Officer regime and thinks business should lobby for a specialist DST team at HMRC. Sophos is looking at increased costs in designing accounting systems to manage DST, asking if it is proportionate to expect business to do all this work for what is supposed to be a temporary tax. You can only track users who want to be tracked, she observed. She suspects reporting will be largely guesswork, with disputes rife.

Mike Devereux, Director of the Oxford University Centre for Business Taxation, suggested the rationale of DST is not to deal with unfair competition and is actually about raising incremental tax revenue. He described it as a 'Sutton Tax', after the robber who, when asked why he robbed banks, replied that it was because that was where the money was.

In contrast to Treasury claims, taxing where value is created is not the basis of the current tax system and has no intellectual coherence, Devereux said. The issues he has with DST are that it is based on revenue; arbitrarily ringfences social media platforms, internet search engines and online marketplaces; and will create distortions due to the limited tax base.

During a Q&A session, Devereux was asked if the UK would be winners or losers under a new system. In the event of a move to a pure destination-based tax it would depend on balance of trade, he said.

A video of the debate is at: https://youtu.be/f_t8imDvwFU

CIOT

The President, Glyn Fullelove, with Members who have reached 50 years of membership

The President, Glyn Fullelove, with new Chartered Tax Advisers

The President, Glyn Fullelove, with the prize-winners of the May 2019 sitting for the Chartered Tax Adviser (CTA) examination. From left to right. Front row: Tamara Shaw (Chris Jones Prize), Jessica Barnes (Annual Pat Cullinan Memorial Medal on behalf of KPMG), Louisa Lingard (Avery Jones Medal), Glyn Fullelove (CIOT President), Hannah Emmett (Wreford Voge Medal) and Marion Denby (Ronald Ison Medal and Croner-i Prize). Back row: Luke Hanratty (Ian Walker Medal), Erica White (Spofforth Medal), Florence Barnes (Institute Medal), Lewis McDonald (Gilbert Burr Medal) and Jacob Stokes (John Beattie Medal)

CIOT Admission Ceremony: Thursday 17 October

EVENT

The President and Council of the Institute were delighted to welcome new members and CTA examination prize-winners at the October Admission Ceremony, held as usual in the splendid surroundings of Drapers' Hall in the City of London. There were 83 new Associates and Members who have reached 50 years of membership in attendance to receive certificates and prizes.

The Institute holds two admission ceremonies each year for new members and their families; the next will take place on 23 April 2020.

ATT

Andy Pickering: 17 April 1949 – 5 November 2019

OBITUARY

ATT members and Head Office staff were deeply saddened to hear of Andy Pickering's death on 5 November 2019.

Andy grew up in north London with his two brothers. He was a keen sportsman at school and attended trials for the MCC Under 18 Team, before deciding that golf was his sport of choice. Andy married his childhood sweetheart, Barbara, in 1970 and they went on to have two daughters, Sarah and Alison. Andy was very much a family man, and his daughters and their families lived close to the family home, allowing Andy to spend a great deal of time with his five grandchildren. When he was not spending time with his family, he could be found on the golf course and had many happy holidays on the golf courses of Florida with his old school friends.

Andy was appointed Deputy Secretary of the ATT in 1993, after spending over 25 years at the Law Society. In 1994, he became the second ATT Company Secretary employed by the ATT and was appointed Executive Director in 2010, a position he held until his retirement in March 2016. He was frequently described as 'Mr ATT', and led the Association through its change from being very much a project of the CIOT to having its own individual identity. Although he provided continuity and an elephantine memory for what had been done before, Andy was willing to look forward and this meant many personal challenges for him as his role developed along with that of the Association. He oversaw the changing role of ATT both internally with IT administrative infrastructure developments and the introduction of statutory and self-regulation of members and students, and externally with changes in tax and charity law, EU Directives and HMRC tax agent strategy to name a few.

As well as supporting ATT Council, members and students and change management at ATT, in 2001 Andy was appointed the first Company Secretary of the independent Taxation Disciplinary Board (TDB) funded by CIOT and ATT. He worked with the TDB directors on the development of the disciplinary scheme and regulations that are in place today.

Andy was awarded Honorary Fellowship of the Association in 2016 in recognition of his support to ATT over 24 years.

Andy leaves two daughters, Sarah and Alison, and five grandchildren, Ben, Lewis, Isobel, Amelia and Arthur.

Our thoughts are with them at this very sad time.

Andy Pickering

ATT

ATT Admission Ceremony: Thursday 31 October

EVENT

ATT President, Jeremy Coker, with the new members

ATT President, Jeremy Coker, welcomed 78 new members and their guests to the ATT Admission Ceremony which was held in the Cholmondeley Room at the House of Lords. Lord McKenzie of Luton graciously hosted the evening.

New members had the opportunity to go on guided tours of both Houses of Parliament and to meet the Officers, members of Council and representatives from the Professional Staff.

ADIT

ADIT-ional reasons to be an Affiliate

MEMBERSHIP

People who achieve the ADIT qualification will enjoy new benefits if they join the Chartered Institute of Taxation (CIOT) as International Tax Affiliates.

The global ADIT community continues to grow since the first exams took place in 2004, with more than 1,100 international tax professionals holding the ADIT qualification. ADIT holders come from a range of professional backgrounds and work for organisations throughout the tax profession, including law firms, multinational corporations, accountancy firms small and large, fiscal authorities and universities.

The improved Affiliate package will include new features such as preferential access to CIOT's annual ADIT Conference and other regional CPD and networking opportunities, use of selected IBFD digital library services, ADIT-relevant online job portals, and a global code of conduct enabling Affiliates to demonstrate their commitment to ethical and best practice standards.

Regional events and opportunities will be co-ordinated by ADIT Champions, drawn from the existing community of ADIT holders and appointed in selected countries. They will help provide locally relevant services for the benefit of Affiliates and improve awareness of the Affiliate status among employers, clients and other tax professionals.

CIOT President Glyn Fullelove said: 'I am greatly excited to announce these additional features and services to Affiliates. We expect the new features to make a compelling case for subscribing as an Affiliate upon completion of one's ADIT studies.

'Alongside an improved range of material benefits, less tangible features such as the new code of conduct will also provide value to Affiliates – in particular those who do not work for a large employer and are not able to draw on the resources or international reputation of a large, global organisation.

'The new features will help to promote CPD take-up and commitment to best practice among international tax professionals and their organisations, in line with the CIOT's objective of leading the improvement of standards in the tax profession.'

To find out more about the new features available to International Tax Affiliates, visit www.adit.org/affiliate.

WCOTA

Recent events

UPDATE

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

History of Tax lecture

Caroline Turnbull-Hall (in a phrase allegedly coined either by Daniel Defoe or Benjamin Franklin) writes: 'Nothing is certain but death and taxes.' At the History of Tax talk on 8 October, Peter Allen (Assistant Professor of Accounting and Taxation at Nottingham University Business School) deftly combined the two in a fascinating session entitled 'A Quick History of Death Taxes'.

Peter took us right back to 10AD to the earliest known death tax. This was the Lex Julia de vicesima hereditatum (a 20th of inheritance law imposed by a member of Julius Caesar's family), initially imposed by the Emperor Augustus to provide retirement bonuses for retired soldiers. This tax was in force until sometime before the fall of the Roman Empire. The next recorded death tax came in at the time of the Norman Conquest. At this time, the basis of inheritance law was the common law – something which continued to 1925 – and tax on land estates was levied by means of 'feudal relief', which was enshrined in Magna Carta. Peter then gave us a whistle stop tour of some 12 further taxes on death that existed between 1215 and 1974, when capital transfer tax was introduced, although it was not levied on transfers on death until the following year.

After feudal relief, the next tax on death was probate duty, introduced in 1694 to help fund the war with France (as is so often the case in the history of taxes). This was followed variously by inventory duty, administration duty, legacy duty, succession duty, estate duty and so on up until 1974. These early taxes were a combination of estate duties which were paid on the value of an estate at death and were stamp duties, and inheritance duties which were paid by a beneficiary on an inheritance. Confusingly, modern inheritance tax is correctly an estate duty.

Peter's review illustrated the development of modern inheritance tax, including exemption for spouses and gifts with reservation (introduced in Account Duty in 1881). Peter finished by reminding us that capital transfer tax was renamed inheritance tax in 1985.

The next History of Tax event is on 25 February 2020 and will cover various landmark cases on revenue law.

Lord Mayor's show

Lord Mayor's Show

The Lord Mayor's Show celebrates the appointment of a New Lord Mayor. This came about 800 years ago when King John was persuaded to let the City of London elect its own mayor, but only on the condition that the new mayor would travel from the City of Westminster to swear his loyalty to the Crown. The Lord Mayor will serve as a global ambassador for the UK-based financial and professional services industry from November.

This year's Mayor is the 692nd and was sworn in in a 'Silent Ceremony', which is held in the Guildhall and conducted almost entirely in silence. As the Master of the Worshipful Company of Tax Advisers takes part in the election of the Lord Mayor in Common Hall, it is appropriate that we, along with the other Livery Companies, have representatives in the Show.

A select band of us, including our youngest member, met in the splendid surroundings of the Ironmonger's Hall in the shadow of the Museum of London, and were then suitably 'robed' and joined the 'Modern Livery Companies' section. With about 7,000 people taking part, together with 150 floats, 200 horses and numerous marching bands, the noise, bustle and colours were very exciting. Our Beadle, Andy, was his usual effervescent self, asking kids, cadets, the Lord Mayor and his guests alike if they were enjoying themselves and evoking a noisy, enthusiastic response each time.

At the half-way mark, the procession 'parked' along the Embankment and after lunch and champagne on HQS Wellington we marched back to the Mansion House, somewhat foot-weary but happy. If anyone is interested in joining us next year, please get in touch.

For details of events past and future, or to join WCOTA, visit www.taxadvisers.org
Any further assistance from Stephen Henderson at clerk@taxadvisers.org.uk

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mrs Emma Cole

NOTIFICATION

At its hearing on 25 October 2019, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mrs Emma Cole of Anglesey, a member of the Association of Taxation Technicians, was guilty of breaches of the Professional Rules and Practice Guidelines 2011 and 2018 (PRPG) in that:

(1.1) She failed to inform the ATT promptly of the fact that on 9 November 2017 an order by consent was made between her and the AAT, in breach of Rule 2.10.1 of the PRPG 2011.

(1.2) She failed to inform the ATT promptly of the matter specified at 1.1 in breach of Rule 2.1 (professional behaviour) of the PRPG 2011 in that it was an action which brings discredit on the profession.

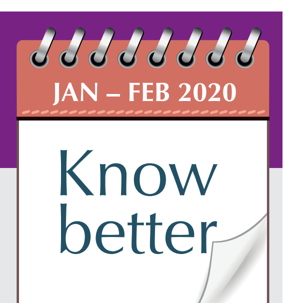
(2.1) She failed to respond within 30 days or at all to correspondence from the TDB dated 19 February 2019, in breach of Rules 2.13.2 of the PRPG 2018.

The tribunal determined that Mrs Cole be issued with a warning as to her future conduct and pay costs in the sum of £2,383.42.

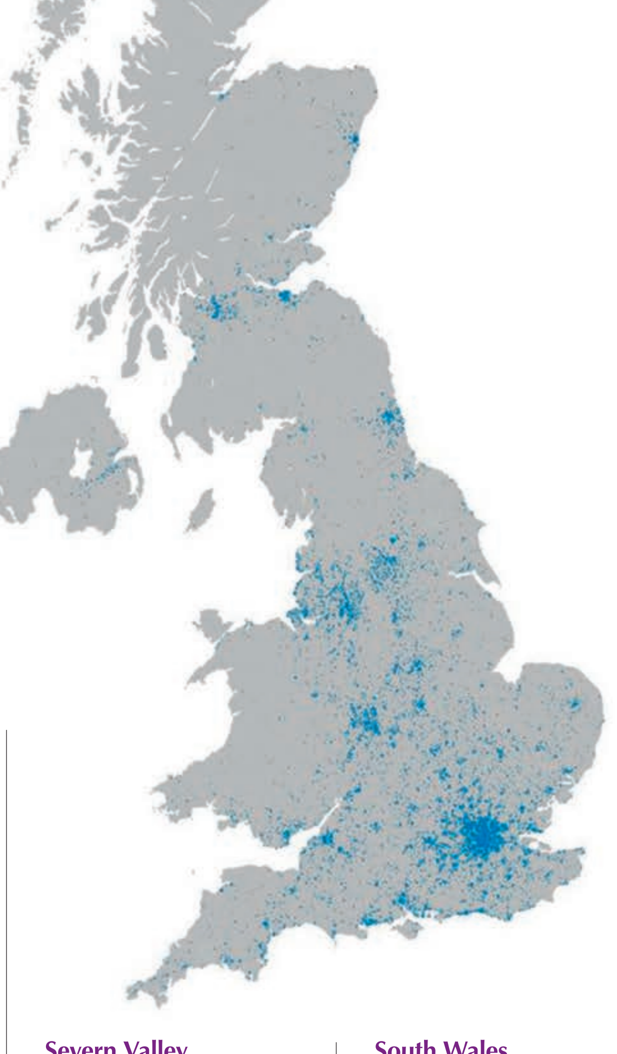
The decision of the Disciplinary Tribunal can be found on the TDB's website www.Tax-Board.org.uk.

Branch events

Where do you get your CPD?



Does your firm provide your CPD needs? Have you tried a local Branch event before? Would you like the opportunity to meet with CTAs, ATTs and other professionals in your local network? Why not go along to a local Branch event? Below we have listed branch events taking place up to 15 February 2020. However, please visit your local branch website as there may be some events which have been planned since this list was sent to print.



Aberdeen
Monday 3 February
Topical Update
12.30-13.45

Birmingham & W Midlands
Tuesday 11 February
Tax Investigations and working with HMRC update
Gary Ashford
18.00-20.00

Cumbria & SW Scotland
Thursday 6 February
Farming: Back to basics
Michael Steed
14.00-17.00

Glasgow
Tuesday 11 February
IHT and Family Wealth – thinking outside the box
Benjamin Jones
12.30-13.30

Hampshire
Thursday 13 February
Succession planning
Robert Jamieson
16.30-19.30

Harrow & North London
Thursday 6 February
Corporate Interest Restriction
Kiret Singh
18.45-20.15

Thursday 13 February
VAT Hot Topics
Neil Owen
17.30-20.30

Jersey
Thursday 9 January
Private Client update
Emma Chamberlain and Giles Clarke
11.30-14.30

Leeds
Tuesday 11 February
Managing risk – a guide for accountants and tax advisers
Karen Eckstein
12.30-13.30

London
Monday 20 January
Indirect Tax meeting
18.00-19.00

Wednesday 29 January
Corporate Tax update
18.00-19.00

Manchester
Monday 10 February
CT update including issues for the creative industries/ intangibles update, international tax for SMEs
Anne Fairpo
16.00-19.00

New Tax Professionals
Tuesday 11 February
Talking tax to the media
17.30-20.30

Northern Ireland
Wednesday 5 February
Important Corporation Tax Matters
Michael Steed
17.15-19.15

Severn Valley
Tuesday 11 February
VAT Update – Construction Industry
Nichola Ross Martin
14.15-17.15

Sheffield
Tuesday 4 February
Finance Act update
13.30-16.30

Somerset & Dorset
Thursday 13 February
Budget update
Jeremy Mindell
16.00-19.00

South Wales
Wednesday 5 February
Finance Act and Welcome to the CIOT President
Lakshmi Narain and Glyn Fullelove
14.00-17.00

South West England
Wednesday 12 February
MDT – now we are live!
Rebecca Benneyworth
15.45-19.00

Suffolk
Wednesday 12 February
Corporation Tax update
Emma Rawson
18.30-20.00

Thinking of joining Markel Tax?

Here's what we do

Markel Tax is one of the UK's leading providers of fee protection insurance and tax services to the accountancy profession. We provide them and their clients with insurance in the event of HMRC tax investigations. We also have highly experienced in-house tax consultants and advisors, who provide guidance on tax and VAT.

To set you up for success, all members of staff receive a comprehensive induction with full training on our products and services.

The trusted partner to over **2,500 UK accountancy practices**

Over **1/2 million UK businesses** benefit from the security of our insurance

In 2018, **97%** of our clients renewed with Markel Tax

140+ employees across our three offices in Rugby, Sheffield and London

More than 60 talented and highly experienced in-house tax and VAT specialists

One of the **UK's largest independent tax consultancy firms** to the accountancy profession

A reputation built on offering the **highest service standards** within the fee protection market

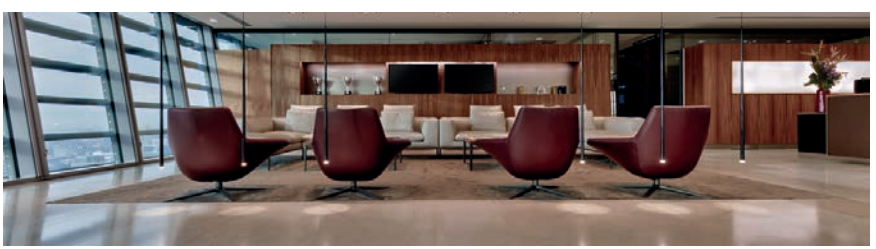
Successfully providing **fee protection expertise** to UK accountants since 1997

Tax Advisor role

As one of our trusted Tax Advisors, you will be vital to Markel Tax's success. You will bring your technical know-how, confident telephone manner, team-working skills, and attention to detail. In return, you'll receive an attractive salary, training and development, as well as joining a strong, collaborative and highly-regarded team.

Here's what you'll be doing:

- Handling a wide range of phone and email queries on UK taxation
- Researching queries and providing accurate answers – with guidance – to a varied client base
- Providing support and sharing ideas with other members of the team
- Identifying potential consultancy opportunities for the business
- Managing your own time and workload to ensure calls are dealt with promptly
- Maintaining and developing a broad knowledge of UK direct taxes



We are an organisation which is committed to five-star service. We are here for our clients every step of the way.

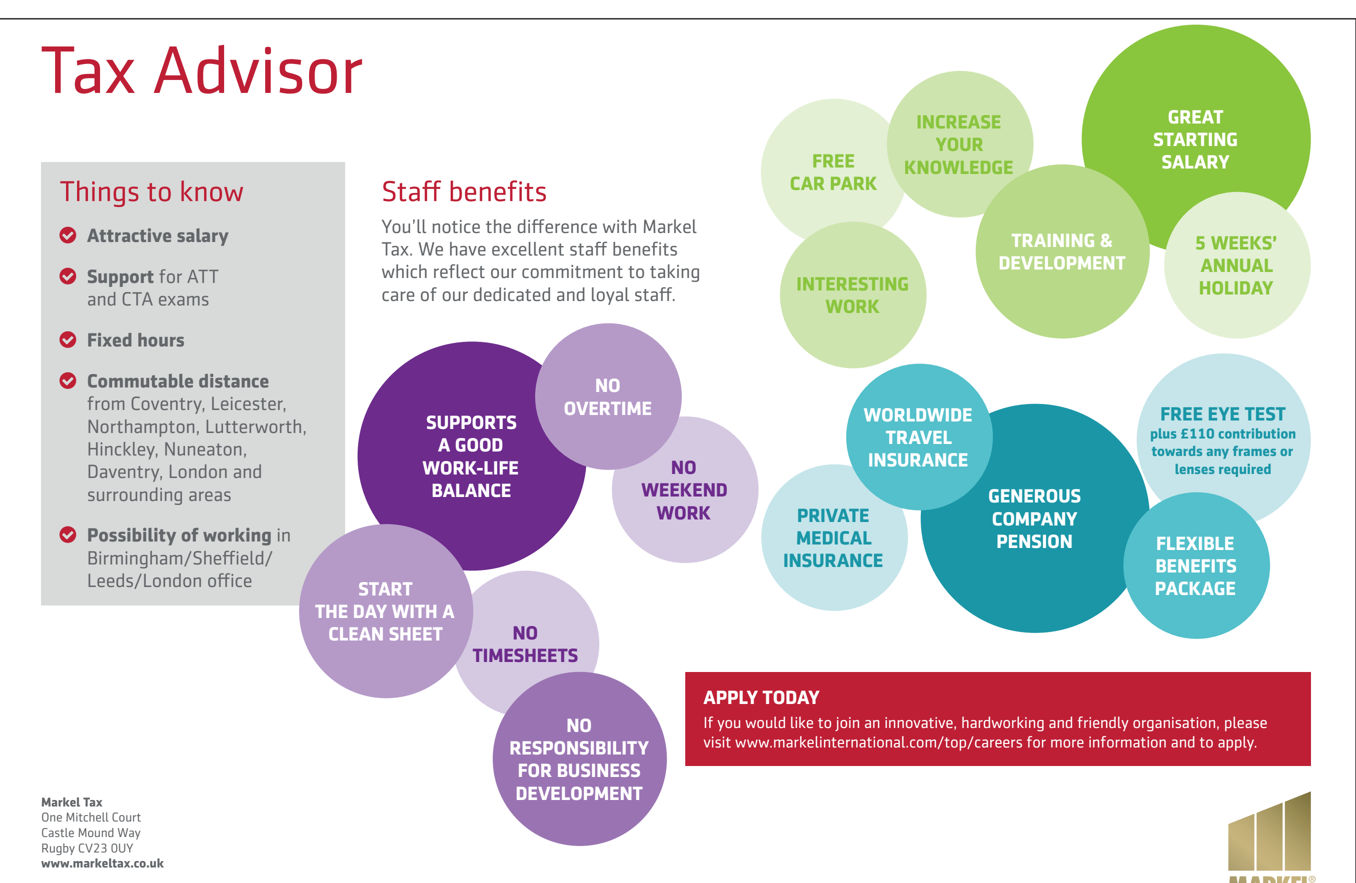
Tax Advisor

Things to know

- **Attractive salary**
- **Support** for ATT and CTA exams
- **Fixed hours**
- **Commutable distance** from Coventry, Leicester, Northampton, Lutterworth, Hinckley, Nuneaton, Daventry, London and surrounding areas
- **Possibility of working** in Birmingham/Sheffield/Leeds/London office

Staff benefits

You'll notice the difference with Markel Tax. We have excellent staff benefits which reflect our commitment to taking care of our dedicated and loyal staff.



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MAGNETIC NORTH

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

PRIVATE CLIENT SENIOR MANAGER

LEEDS Circa £70,000+ benefits

A leadership role with a mid-tier practice. This specialist position demands proven private client advisory credentials and an affinity for business development. You will be joining a forward thinking, personal touch type of firm that places people at the heart of everything they do. Undoubtedly an exciting opportunity for a CTA qualified tax professional, who perhaps is currently a manager but keen to move to the next level. **REF: S3040**

CORPORATE TAX MANAGER

MANCHESTER To £55,000 dep on exp

The local office of this national firm is going through an exciting period of growth and is winning lots of tax advisory work. As a result, it is looking to recruit an experienced corporate / OMB tax manager with broadly based tax advisory experience. This interesting role also offers the chance to help manage the growing team. Great long-term prospects. **REF: A3045**

MIXED TAX SENIOR

COUNTY DURHAM £competitive + benefits

Ideal opportunity for a newly qualified CTA, or professionally trained tax assistant to join an international firm. Full support provided for ongoing long-term career progression. Client base of OMBs, sole traders, limited companies and medical partnerships. This highly varied role includes completion and review of tax returns / computations, billing clients and delivering tax content for projects in areas such as transfer pricing, VAT and employment taxes. **REF: S3023**

IN HOUSE TAX ACCOUNTANT

MANCHESTER £45,000+ generous benefits and bonus

Our client is a global brand and one of the most recognisable names in worldwide sport. It is now looking to recruit a tax accountant. You will report to the head of tax and will be responsible for a range of tax activities including both tax compliance and reporting as well as projects such as MTD. The salary package includes a generous bonus. A great first move in-house if you are currently with a big 4 or national firm. **REF: R3050**

IN-HOUSE INDIRECT TAX S'NR M'GER

MANCHESTER Generous Salary + bonus and shares

Brand new role based in Manchester city centre focusing on UK VAT advisory projects. Gives a high level of independence, supporting the expanding group and covering a variety of topics e.g. movements of goods, due diligence re acquisitions, new product launches, dealing with local tax authorities and ad-hoc enquiries. This is a fast paced, dynamic business who require proactive individuals who can adapt to a changing environment and work effectively with the wider business. **REF: R3049**

TAX COMPLIANCE (CORP. OR PERSONAL TAX)

LIVERPOOL To £38,000

A great opportunity for those looking to work for a leading international practice focusing exclusively on the delivery of tax compliance services. You will primarily be responsible for reviewing tax returns and training / mentoring junior staff. Applicants who are qualified by experience are encouraged to apply. Part-time applicants will also be considered. **REF: A3006**

CORPORATE TAX SENIOR

MANCHESTER To £35,000 dep on exp

Are you looking for the right move to take your career to the next level? This is a rare opportunity for a part-qualified ATT or CTA to join this international firm in a role that will focus on providing corporate tax services to clients ranging from OMBs to large international groups. You will be joining a friendly and supportive team and an excellent package is on offer including study support. **REF: A3046**

R&D CONSULTANT

AGILE / HOME WORKING

To £32,000+ car & up to £12,000 annual bonus

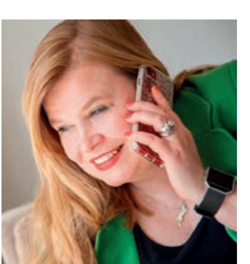
The role involves visiting clients across several sectors and analysing a diverse range of business projects and activities in relation to R&D tax relief. First class interpersonal skills and robust analytical and report writing abilities are essential. Whilst this is a cross-region role, candidates located in the **North East** are of particular interest. You will have a hybrid car provided and some overnight stays will be necessary. **REF: S3047**

Tel: 0333 939 0190 Web: www.taxrecruit.co.uk

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

Georgiana Head
Recruitment

MEET YOUR ADVISERS



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ALISON TAIT

Director

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Personal Tax
Stockport – £market rate

Great role for a personal tax senior to join a large independent firm which is growing rapidly. In this position, you will deal with an interesting portfolio of cases including HNW individuals, entrepreneurs, business owners and their families. You will handle both the compliance and advisory work arising from your portfolio. It is likely that you will be ATT qualified, and there is study support for CTA available. Would also consider someone from a general practice background who wants to specialise or someone more experienced who is looking for flexible or part-time working. Nice local vacancy. **Call Georgiana Ref; 2900**

Corporate Tax Manager
Manchester – £excellent

A qualified corporate tax specialist is sought by a Top 20 firm in Manchester. In this role, you will manage a portfolio and be involved with both the compliance and advisory work arising. The work is slanted towards clients with an international focus. Excellent quality work in a friendly and supportive team. Full-time, part-time or flexible hours considered. This firm is great at personal and professional development, and there is clear scope for future promotion.
Call Georgiana Ref: 2879

Tax Advisor
N. Leeds – £38,000 to £45,000 + bens

Qualified CTA is sought by a new and growing tax practice based in North Leeds. In this role, you will focus on advisory work including share schemes, incorporations, group reorganisations, mergers and demergers – in fact, all round transaction work, trust and estate planning for entrepreneurs and their families. It is likely that you will have a minimum of a year of post qualification experience. You will need a genuine interest in tax planning and advisory work. There is plenty of scope for development in the role and a good benefits package. **Call Georgiana Ref: 2885**

Transfer Pricing AM or Manager
Manchester, Liverpool or Birmingham – £excellent

A great opportunity for a TP specialist to work outside of the Big 4. This Top 20 practice offers considerable autonomy, client contact and promotion prospects. You may currently work in industry, and TP may be just one element of your role – this new vacancy could offer you the chance to specialise. Our client would consider someone looking to relocate back to the Midlands or the North. Full-time or part-time hours or flexible working considered for the right candidate. A variety of offices considered for this role, including Leeds, Manchester, Liverpool, Sheffield or Birmingham. **Call Georgiana Ref: 2866**

R&D Tax
Leeds – £excellent

New role for a manager or senior manager with an expertise in R&D tax reliefs. Our client is a Top 20 accountancy firm with a growing Leeds office. This firm seeks someone with both a sound technical background and the ability to win clients and get involved in business development. Would consider full-time or part-time appointment, and flexible working is also possible. This is a friendly team that works across the North of England and which is part of a national practice. Would consider a manager looking at an opportunity for senior manager promotion. **Call Georgiana Ref: 2851**

Tax Investigations
Manchester or Scotland – £competitive + bens

Large accountancy firm seeks tax investigations/tax disputes specialists. In these roles you will help clients through the challenges of planning financial accounting, tax compliance and maintaining effective relationships with the tax authorities. You will help clients mitigate risk and comply effectively with tax laws. You will help businesses to deal with enquiries from HMRC, and will be involved in alternative dispute resolution and tax litigation. It is likely that you be either an HMRC Inspector or an experienced tax practitioner. **Call Georgiana Ref: 2892**

www.georgianaheadrecruitment.com

R&D Tax Consultant
Homeworking – to £30,000 + car + bonus

This client facing role involves analysing businesses' projects/activities and expenditure in relation to R&D for tax relief purposes. You will then produce a detailed report based on your findings. You must therefore develop a strong understanding of government guidelines/legislation and HMRC guidance in regard to R&D activity. Previous experience of this is not required as training will be provided. You must have good analytical and communication skills. **Call Alison Ref: 2872**

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

This mid-tier firm has a growing team. They have a fantastic new opportunity for an experienced R&D Tax specialist to take the lead in developing the service offering to both existing and new clients across the North West. The role will include the preparation and delivery of R&D Tax Relief and Patent Box claims and you will also work closely with the marketing department to promote the R&D Tax offering. This is a fantastic opportunity for an ambitious senior manager.
Call Alison Ref: 2890

Mixed Tax Advisor
Manchester City Centre – to £45,000

You will manage a portfolio of corporate and personal tax compliance clients, and will also assist in a variety of interesting project work. Your work will have a personal tax bias. However, you will be an all-round business tax adviser managing work including succession planning, IHT advice., R&D and capital allowances. You will also assist in mentoring junior team members. You should be CTA/ACA qualified, with a minimum of 6 years' experience. **Call Alison Ref: 2876**

Private Client Compliance Manager
Chester – to £50,000 + benefits

This client-focussed role involves managing a portfolio of complex personal tax compliance clients including HNW individuals, non doms, partnerships and entrepreneurs. You will assist with coaching and developing the juniors, reviewing work and providing training where required, and there will also be the opportunity to get involved in advisory assignments during quieter periods. You must enjoy developing and building relationships with your clients, and will ideally be ATT/CTA qualified, with a minimum of 5 years' personal tax compliance experience. **Call Alison Ref: 2758**

Tax Planning Manager
Preston – £excellent

A fantastic opportunity for a tax specialist who enjoys dealing with the interaction of taxes to specialise in tax planning work. You will support the partners on a variety of tax planning projects, including company restructuring, employee share schemes, dividend planning, management buy outs, private client tax and year-end tax planning . You should be ATT, CTA, ACA or ACCA qualified, with mixed tax knowledge. You must enjoy working as part of a team. **Call Alison Ref: 2899**

Corporate Tax Assistant Manager or Manager
Leeds – £excellent

Whilst this role has a corporate tax bias, you will be expected to get involved in broader OMB type issues. You will therefore primarily be working on advisory projects such as succession planning for businesses, R&D, sales and acquisitions, group reorganisations, capital allowances planning, share schemes and IHT. You should be ACA/CTA qualified, with a minimum of 4 years' corporate tax experience. You must also be organised and able to manage a busy portfolio of clients.
Call Alison Ref: 2881

CHANCERY COURT
TAX CHAMBERS

OUR 2020 VISION FOR TAX

CCTC wishes to thank all our clients and wish them a prosperous new year as we celebrate our 2nd year and new offices in historic Gray's Inn Square.

The No.1 Boutique Tax Chambers is pleased to welcome new team members Daniel Howard (Senior Solicitor) and Adam Owens (CTA Consultant).

Daniel has over 14 years experience as a solicitor and joins CCTC to build on our cutting-edge private wealth structuring practice. Daniel brings his experience in company, trust and partnership matters, real estate, financial services and financial instruments.

Adam is a Chartered Tax Adviser with over 10 years experience in advising high and ultra-high net worth clients and owner managed businesses on all kinds of tax efficient structuring, succession and estate planning.

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