July 2022

TAXADVISER

Chartered Institute of Taxation.

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En garde for the GAAR

What lessons can we learn from the cases that have gone to the General Anti-Abuse Rule panel since its inception?

Life after Brexit?

The changes to tax on importing and exporting goods after leaving the EU

Child benefit conundrums

The mismatch between the high child income benefit charge and child benefit

Charity income and VAT

The correct VAT position to establish no-strings attached giving

HELEN WHITEMAN
JANE ASHTON

Welcome
Readying ourselves for a fresh start

The summer months are finally upon us and we've enjoyed highlighting National Volunteers' week through a range of social media activity. If you studied our 2021 annual reports, you will have seen that around 18,150 hours for CIOT and around 6,000 hours for ATT were volunteered to both charities for which we continue to be extremely grateful and fortunate. We also marked the start of PRIDE and hope that those of you who will be celebrating this month have a terrific time. It will be fabulous to see the various street parties, events and processions return in person again after a hiatus.

You may recall earlier this year we invited an external company to undertake a Diversity and Inclusion survey of students and members. Thank you to the 3,042 who participated and provided really helpful feedback and suggestions which will be considered by the Joint EDI Committee with a view to refreshing and refocusing our EDI activities. We will publish a summary of the findings in the next issue.

We were delighted to welcome the new Presidential team at the CIOT's AGM on 31 May and soon for the ATT Leadership team at its forthcoming AGM on 14 July. Please do register to attend if you receive an email from Civica.

The CIOT was pleased to host its annual CTA Address on 7 June with Dame Margaret Hodge delivering the keynote address. Delivered in a hybrid format, Margaret was invited to present her views on what a responsible tax system looks like with panellist responses from John Whiting and Dan Neidle. You can access the recording and/or a blog of the debate on the CIOT website.

Making Tax Digital continues to be a key focus for our technical teams. We know that many members are concerned about the practicalities and timescale of MTD for ITSA, including how they can get themselves and their clients ready for 2024.

The ATT and CIOT are engaging with HMRC to share members' concerns and highlight key issues that need to be addressed. This includes attending two different standing HMRC groups – the MTD Advisory Forum and the MTD Digital Implementation Forum (which brings together professional bodies, HMRC and software developers). Special break-out groups have also been formed to take a 'deep dive' approach to specific problem areas (including how to 'teach' MTD, the agent–client relationship, and property/landlords). ATT volunteers will also be taking part in a series of HMRC roundtable events focusing on the concerns of 'high street agents'.

Outside of these main groups, we also have frequent ad hoc meetings and calls with HMRC. The technical teams are always interested in hearing from members about their experiences and concerns. You can contact them by emailing attechnical@att.org.uk or technical@ciot.org.uk. As we get more information from HMRC, we will continue to share this with members through our weekly newsletter and on our websites. We are also looking to host a joint ATT–CIOT MTD webinar in September – keep an eye out for more information in the coming months.

If you are finding opportunity for a summer break over the next couple of months, we hope you are able to make the most of that time with family, friends or to yourself. Whilst we wouldn't advocate unhealthy eating, perhaps the summer holiday staples can be enjoyed absent of any new salt and sugar tax. We will certainly be enjoying an ice-cream, or two!

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

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

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

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

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

ISSN NO: 1472-4502

ONLINE PICKS OF THE MONTH

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Overseas entities that acquire UK land
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SUSAN BALL
PRESIDENT

Tax is everyone's issue

> Education is key and as good citizens, as part of our social contract, we should recognise that we pay taxes for the benefit of all.

Last month, we celebrated the Queen's Jubilee. I am pretty sure that there won't be many of us who manage to clock up 70 years of work. What an amazing achievement. On less regal matters, my sister is slowly getting used to the idea that she has now made a cameo appearance in a taxation magazine, whilst my husband has acquired a new nickname as my 'first laddy'. For my part, I am relieved to have conquered some of my fears after the CTA Address.

Those of you that read my last page will know that standing up in public, and reading from a script, is not something I find easy. That said, I really do think that you must do things that scare you in order to move forward and knock down your own mental barriers. And it is true to say that it gets easier (never easy!) with experience.

So my first challenge in the 'standing up and speaking' stakes happened last month when I chaired the CTA address. The debate was wide ranging but one thing that particularly struck me was Dame Margaret Hodge's comment that 'tax is everyone's issue'. Education is key and as good citizens, as part of our social contract, we should recognise that we pay taxes for the benefit of all. Tax receipts pay for our health service, to protect us and to provide benefits for those less fortunate.

The debate was fascinating but illustrated the scale of the challenge we face as tax professionals. You can read a report on it on page 57 but, even better, it was recorded so if you missed it you can watch it at tinyurl.com/hodge22.

Over the days following the debate, I was reminded of a couple of past events. One was when Rob Ellerby (President at the time) and I went back to my old school to teach a lesson on the tax system. To encourage the class of teenagers to participate and calculate tax and National Insurance on some earnings, we had managed to persuade representatives from Ipswich Town Football Club to come along as well. We were asked lots of questions. I like to think that after our visit they had at least a slightly better understanding of the system than they did before, as well as understanding the importance of tax. I have had the greatest respect for teachers ever since!

The second event happened when I was out walking the dog with my son a few months ago. He suddenly started questioning me about non-domiciled status. He is an avid football fan. So, we ended up talking about footballers, their domicile status, image rights and taxes in much more detail than I'd ever had a conversation with him before about tax. And this conversation brought me back to the remarks made by our panel at the CTA Address about the importance of having a tax system that is transparent and easy to understand for the 'non-tax experts', as well as one that is fair.

Since I started working in tax, it's become increasingly difficult for people who are not represented to obtain help. Back then, HMRC had local tax offices which you could call into without an appointment to ask for advice. Now you must use web chat or phone a helpline staffed by employees who, quite often (and through no fault of their own) have had very little training or are reading from a script. Many people find this hard to engage with and this is where LITRG and the fundraising campaign 'Bridge the Gap' come in.

The campaign supports two tax charities – Tax Aid and Tax Help for Old People – in their provision of advice and support to those who can't afford to pay for expertise. It was good to hear more about them recently at the East Midlands Tax Conference.

The charities need both money (you can donate using the website www.bridge-the-gap.org.uk) and volunteer advisers, so if you can spare some time or want to find out more please get in touch with Tax Help for Older People (tinyurl.com/mr23utv4) or Tax Aid (tinyurl.com/2p8d8yxy).

Lastly, to those who have contacted me to wish me well in the role, to comment on my last page and who have attended recent events – thank you. It has been lovely to see, and hear, from both familiar faces and new ones!

Susan Ball
President
president@ciot.org.uk

Chartered Institute of Taxation.

RICHARD TODD

IMMEDIATE PAST ATT PRESIDENT

Bridge Over Troubled Water

> It was a privilege to have represented the Association for the past year.

Richard Todd
Immediate Past ATT President
page@att.org.uk

My time as President of your Association is now at an end. It was a privilege to have represented the Association for the past year.

July 2020 witnessed our first online Annual General Meeting. As a Council, I recall that we had always talked about moving our examinations online, but we never thought that we would have to move the AGM, Council Meetings and all our other meetings and events online. With the assistance of the staff working at Monck Street (or more correctly, working from home), we overcame the initial difficulties, and are now quite competent with that medium of communication. Although I do still have a problem with that 'mute' button because it is on when it should not be!

We continued to hold our Admissions' Ceremonies during the year, albeit online. I am glad to say that we managed to have our first face-to-face Admissions' Ceremony recently. I would not have enjoyed the year as much if I had been denied the opportunity to welcome our new members.

If you are a new member who attended that event, I trust you and your guest thoroughly enjoyed the experience. It is one of the highlights of the Presidential year because it is an opportunity to meet the new members who will drive the Association forward.

Even during the pandemic, the number of new members joining the Association continued to rise: in the past year we admitted over 500 new Members and over 380 new Fellows.

I regret that I did not get to meet our ATT members, new and existing, the length and breadth of the country because of the pandemic. It is easier and more satisfying in some ways to talk face-to-face than by email or online. I encourage you to speak with the incoming President David Bradshaw and his Deputy Simon Groom, who are both very approachable.

I give a special mention to Mark Kearsley and the Committee of the Merseyside Branch – in fact the whole of the Merseyside Branch. Thank you for making me feel so welcome at your Annual Dinner, and I wish you all the best in your career in tax.

Tax changes every year. On the tax technical side, we see the introduction of Making Tax Digital for Income Tax, coupled with the reform of the basis period – the tax rules that we have applied since 1997 are changing from 2024, with transition in 2023/24.

On a professional level, we need to keep an eye on the government's consultation on raising standards in the tax market. This has been bubbling along for several years in the background, but as an Association, we need to be in the right place at the right time, and clearly demonstrate our standards to attain Membership.

Our members, both new and established, need to stay up to date with what is happening in the world of tax. And by staying current, it demonstrates to the public and other professionals that the Members of the Association are committed and trustworthy tax professionals.

I have three closing remarks to make.

First, I wish David Bradshaw, Simon Groom and Senga Prior all the very best as they take hold of the reins of the Association and guide us through this decade. I hope and pray they do not have to deal with similar issues that Jeremy Coker and I have faced. I am looking forward to a return to 'normal' (whatever normal is nowadays).

Secondly, thank you Jane Ashton and Sue Fraser. It was an interesting year, and I am glad that I had the opportunity to represent the Association. I hope I responded to your requests within a reasonable timeframe, and that I did not make your work any more demanding than it currently is. I do not think I managed to break anything...

Finally, to the staff at Monck Street, I thank you. I understand that normally the incoming President has the opportunity to meet the staff at Monck Street. That privilege was denied to me because of Covid-19. During the past 12 months, I hope that you have felt how much I really do appreciate your hard work – I genuinely do.

My work here is done. I can sign off now.

'Elvis has left the building' (mic drops).

Life after Brexit
Trading goods and services

In the first of two articles, we examine the changes to tax on importing and exporting goods and services as a result of leaving the EU.

by Michael Steed

Key Points

What is the issue?
Since Brexit, movements of goods in and out of the UK have been subject to different rules. Other goods issues, such as B2B triangulation, also need to be understood. B2B services are largely unaffected, but B2C goods and services now look significantly different.

What does it mean to me?
As tax advisers, we need to be clear about the effect of Brexit and the implications for our clients for both customs duties and VAT.

What can I take away?
You need to understand how the post-Brexit rules work and that customs duties are now much more prominent in UK/EU27 trade.

Brexit introduced some important changes to the tax aspects of importing and exporting goods and to a lesser extent, services, in and out of the UK.

What I want to do, in these two back to basics article, is to explain the issues and how the processes have changed.

The first thing to understand is that since Brexit, for trading goods with the EU (now EU27) taxpayers now have to engage with customs duties again, as well as import VAT. Before Brexit, movements of goods between the UK and the rest of the EU, were intra-EU movements and no customs duties were in play – it was only acquisition VAT which was levied in the member state where the goods ended up. With trade in goods between the UK and countries outside of the EU, there has been no change and customs duties and import VAT have always been in point.

Before we look at some of the details, let me make a 'big picture' point. Under the World Trade Organisation (WTO) rules, no trading block (which may be a single state like the UK post Brexit, or a group of countries such as EU27) taxes goods on the way out. They all tax on the way in and this means (in order): customs duties first, then import VAT next (I'm not considering excise duties in these articles).

The Trade and Cooperation Agreement with the EU and the origin of goods

At the heart of Brexit is the free trade agreement that the UK now has with EU27. It is called the Trade and Cooperation Agreement (TCA) and this essentially covers customs duties relaxations between the two sides. It does not really deal with VAT issues. These are separate and in simple terms 'hang onto the coat-tails of the customs duties'.

So what does it do? The underlying principle of the TCA is that goods moving between the two parties (the UK and EU27) are not subject to either tariffs (the customs duties charge) or quotas (so many units can come in for free before duty is charged). I call this 'green channelling'.

There is, however, one incredibly important proviso. The goods must have the right origin; that is, they must come

from the right place to qualify. If they do not qualify, then standard customs duties charges apply.

So, goods going from the UK to EU27 must be UK origin goods in order to be 'green-channelled' and vice versa. This was very poorly understood by many businesses after Brexit, resulting in goods being held up at the borders whilst the correct duties were applied.

To gain origin, the goods must either be 'wholly obtained' (for example, agricultural goods) or 'substantially worked or processed' (for example, an imported computer chip being incorporated into an industrial controller and then sold).

So major UK retailers, selling, say, clothes to EU B2C consumers from their UK website would commonly source these garments from China. They would be shipped to the UK from China, where EU safety information and washing instructions would be sown into the garments before shipping them to the EU consumers on sale. Very soon after Brexit, these retailers found that these garments were not UK origin goods and that EU duties were due on arrival into the EU.

This is quite a specialist area and some traders may well conclude that outside help will be required from a freight forwarder or customs duties consultant.

Trading in and out of Northern Ireland

The political problems with the Northern Ireland Protocol are well-known and I will make only the necessary references to it for VAT and duties purposes.

In essence, Northern Ireland wears two hats. The first is that it is part of the UK, so supplies of goods and services between Northern Ireland and Great Britain (i.e. England, Scotland and Wales) are normal intra-UK supplies, and normal VAT applies.

However, when Northern Ireland trades in goods with the Republic of Ireland and other EU member states, it acts like a mini-EU member state. The VAT rules, as ever, relate to despatches and acquisitions, EC sales list and Intrastat reports. This is why up to nine boxes on a VAT return are used by Northern Ireland traders, but only six for traders in Great Britain (the three EU boxes 2, 8 and 9 are not required).

As is well known, the protocol demands that goods from Great Britain to Northern Ireland that are 'at risk' of slipping across the border to the Republic of Ireland will have EU duties imposed on arrival in Northern Ireland. This is the Irish Sea border in operation (despite what some politicians promised…).

Goods that are not at risk, so consumed in Northern Ireland, will not be subject to EU duties. Businesses that send goods to Northern Ireland from Great Britain will need to be clear about this process and how goods are declared on the declaration forms.

The relationship between customs duties and import VAT

To understand how this relationship works, let's look at an example.

A Ltd buys some goods in the USA costing £1,000 sterling equivalent. The cost of shipping the goods to the UK is £200.

The UK General Tariff (UKGT) tells us that the goods are subject to a 5% customs duty. So customs duties are calculated as:

5% of (£1,000 + £200) = £60

This is NOT recoverable. It is a cost to the project and will be either expensed or capitalised according to its accounting treatment.

The import VAT is calculated next. Assuming that this is a standard rated good, import VAT is calculated as:

20% of (£1,000 + £200 + £60) = £252

This is essentially double taxation.

The difference between customs duties and import VAT, however, is that whilst the customs duties are never recoverable, the import VAT is POTENTIALLY recoverable under the normal VAT recovery rules.

There's another post-Brexit point to make: for imports not exceeding £135 into the UK (or its equivalent of €150 going the other way into EU27), no customs duties are charged and only VAT is in point. Those thresholds are per consignment, not per individual item in the box, so the consignment value is key. This is a hugely important threshold and we shall see it in play when we talk about B2C movements of goods that are normally bought on the internet.

How are these taxes paid?

To understand this, you need to remind yourselves that customs duties are paid or at least secured at the border. The import agent or freight forwarder will normally deal with this, but larger businesses may well have their own customs experts on board. They will make the online customs declarations and work out how much customs duties are due.

Customs duties are commonly paid through a process called duty deferment, which allows the duty to be deferred for up to six weeks (depending on when the goods arrive in a month) and then paid, with what feels like a credit card number called the Deferment Approval Number (the DAN).

Before Brexit, import VAT was also covered by the deferment process. Since Brexit, however, a more streamlined and quicker system for the payment and recovery of import VAT has been available, called Postponed VAT Accounting (PVA). It is essentially a choice for taxpayers. The difference between the two systems is timing and cashflow.

Duty deferment

For duty deferment, both the customs duties and import VAT are secured (think paid) at the border. Remember that the customs duties are never recoverable, but the import VAT is potentially recoverable under the normal VAT rules.

To make this happen, HMRC issues paper copies of the monthly import VAT certificates (the C79) which shows what is potentially recoverable. These are the equivalent of invoices and allow the recovery (under the normal input tax recovery rules) on the next available VAT return. However, the importer has effectively lost the use of the cash value of the duties and VAT until the import VAT (but not the customs duties) is recovered on the next VAT return. This could take weeks. In simple overview, this is a pay now and reclaim later system.

Postponed VAT Accounting

Conversely, under Postponed VAT Accounting, no import VAT is secured at the border. The importer, having notified HMRC that Postponed VAT Accounting is being used on the import declaration, takes it all home and deals with the import VAT on the next available VAT return – both output tax liability and recoverable input tax on the same return.

There is no effective paper under Postponed VAT Accounting, but the importer will need to download the pdfs of the import statements on a monthly basis to support the VAT entries. These are:

- Box 7 for the net value of the import (so not including VAT);
- Box 1 for the import VAT on the net value (so output VAT due to HMRC); and
- Box 4 for the appropriate VAT recovery. In many cases, Box 1 and Box 4 will be the same, so this is just a compliance exercise.

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Postponed VAT Accounting: an example

B Ltd imports goods where the customs duties are zero (from the new UK General Tariff) and it is a standard rated good. Let's say that the invoice value is £100.

Postponed VAT Accounting requires three entries on the VAT return:

- The net value of the import (£100) is entered into Box 7 (net value of inputs).
- This is multiplied by 20% and the £20 is entered into Box 1 (output tax).
- Then the importer recovers as much of this £20 as he is entitled to under the normal input tax recovery rules in Box 4.

For many importers, Box 4 will countervail Box 1 and there will be a full VAT recovery on the return, so no effective VAT to pay.

Comparison of the two systems for import VAT

For duty deferment, there is no output tax charge on the VAT return. This is secured at the border (think paid) and the C79 allows the recovery leg to take place on the next VAT return, provided that the importer has the right paperwork (the C79) and the recovery is subject to the normal input tax recovery rules. As we have said, it is essentially a pay now and recover later system.

For Postponed VAT Accounting, both the output tax charge and the recovery are on the next VAT return. So there is a cashflow advantage and no need to wait for a C79.

For taxpayers on the flat rate scheme and who have adopted Postponed VAT Accounting, there is a recent change (from 1 June 2022) that requires the full import VAT to be entered in Box 1, rather than the flat rate percentage applied to the import VAT. Under the flat rate scheme, no input tax is generally recoverable, so no Box 4 countervailing entry is possible. This means that flat rate scheme importers will see a significant increase in their import VAT liabilities (see Customs Brief 3/2022).

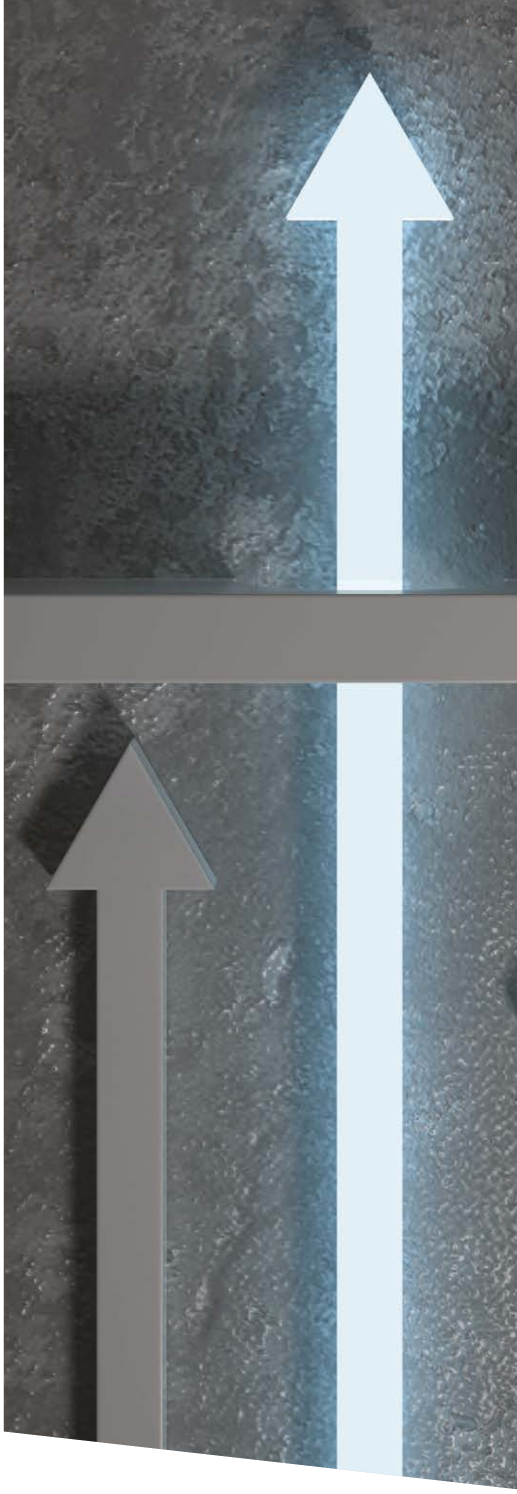
In the second part of this article, we will consider B2B triangulation for goods, and services; and B2C services, and goods (OSS and IOSS).

The limits of thresholds

Crossing new boundaries?

Tax thresholds play a significant part in our financial system. But how do they impact our behaviour and what would happen if we increase them?

by Bill Dodwell



One of the traditional means of apparently simplifying the tax system has always been to lift thresholds. The personal allowance is perhaps the best example of this, as it has virtually doubled since 2010/11. The result has been that several hundred thousand people no longer pay income tax, since incomes generally have grown by less than the growth in the personal allowance.

However, whatever its broader merits, this expensive policy hasn't proved to be the solution to simplifying income tax. Firstly, until the current year, the national insurance equivalent (which confusingly has two names) was thousands of pounds apart – so individuals remained part of the tax system. Secondly, those receiving benefits found that 63% of the personal allowance increase was clawed back (the clawback rate is 55% from 1 December 2021). Individuals may be better off – but their tax and benefits have not been simplified.

The VAT registration threshold

The VAT registration threshold was the subject of an Office of Tax Simplification review (see bit.ly/3OA2pOF), which reported in November 2017, shortly before that year's Budget. The UK has the highest registration threshold in Europe and in the OECD, which naturally reduces the number of VAT registered businesses.

However, the high threshold creates distortions. Chart 1 shows significant bunching just below the threshold, as businesses (especially individuals) are well aware that increasing turnover could reduce profit. Businesses not registered for VAT bear some VAT costs on their purchases, no doubt reflected in the prices they charge. The big difference, though, is that VAT is not charged on what is effectively the owner's labour. Consumer facing businesses would face a pricing challenge should they grow, meaning that the best policy would be to aim for significant growth to help avoid lower profits.

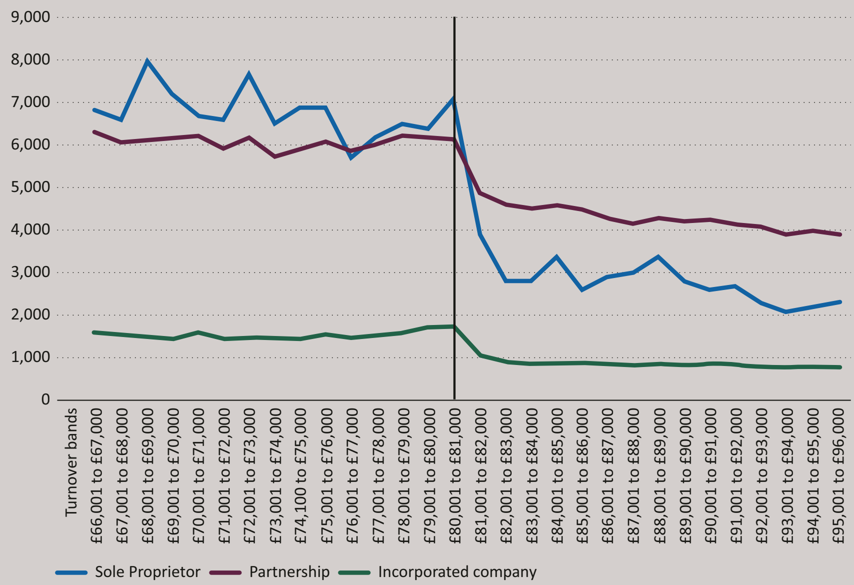
The 2017 report estimated that freezing the VAT threshold – which turned out to be the policy adopted by the government – would affect about 4,000 businesses annually and bring in about £10 million extra revenue. We are all very well aware of inflation today, though, and a continued freeze will mean that many more businesses will need to adopt a strategy to manage potential or actual VAT.

Changing the threshold?

The OTS also posed the question in 2017 whether there could be a significant reduction in the overall VAT threshold. It estimated that halving the threshold to £43,000 would impact between 400,000 and 600,000 businesses, raising between £1 billion and £1.5 billion a year. This would be significant, with a likely large drop in profits for these businesses and no straightforward way to help. The OTS also noted there would be 'impacts on economic growth and productivity, on pricing, and the impact of VAT on those in different income brackets.'

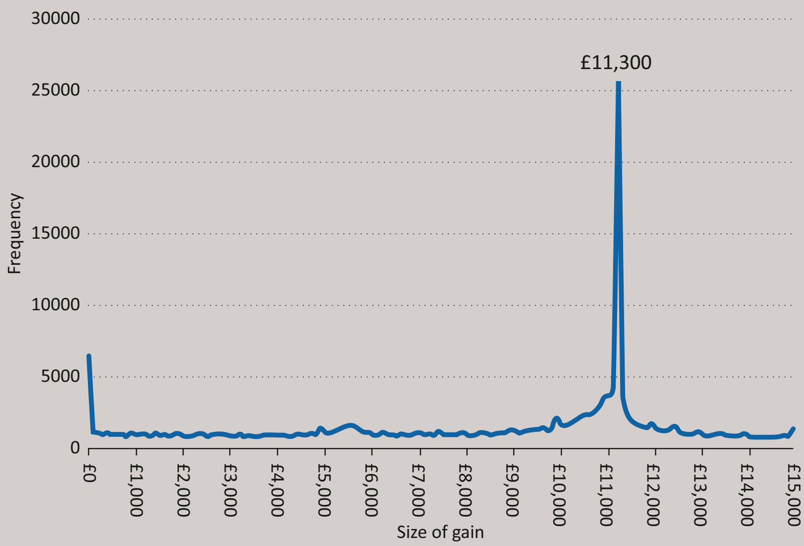
However, the high threshold continues to build in a price advantage for small businesses, which are able to undercut larger businesses. Following the Supreme Court's decision in *Uber v Aslam* [2021] UKSC 5 and the Administrative Court's decision on the implications for private hire licensing (see bit.ly/3NdpHc8), it became clear that operators of private hire businesses would need to charge VAT on fares, since they could not act as agents for individual drivers (who themselves did not need to charge VAT, as their sales were below the VAT threshold). The result is that parts of the taxi market charge VAT, whilst other parts do not. This is surely not a sensible policy; perhaps the UK might consider adopting

CHART 1: NUMBERS OF ENTITIES BY TURNOVER BAND AROUND THE REGISTRATION THRESHOLD



Source: HMRC data from 2014/15, when the threshold was £81,000[8]

CHART 2: FREQUENCY OF NET GAINS UP TO £15,000 FOR TAX YEAR 2017/18



Source: HMRC

the Australian policy of requiring that all taxi drivers must register and charge GST to avoid this market distortion and resulting complexity (see bit.ly/39HNzHe).

My final example of thresholds comes from capital gains tax (see Chart 2).

This chart from the OTS report (bit.ly/39KRTFz) shows that 25,000 individuals every year manage to sell assets with gains just below the annual exempt amount threshold. This spike looks like deliberate management of share/collective investment portfolios to 'rebase' every year, so as to use the annual exemption without turning the portfolio into cash.

Naturally there will also be some in this category who are spreading a sale over several years or sharing with a spouse. However, the chart does show how sensitive many of us are to thresholds – and we do our best to make use of them, rather than simply accepting them as a simplification. The question for governments is whether a lower threshold might still preserve some administrative simplicity whilst offering fewer (perhaps unintended) tax breaks.

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A donation for VAT purposes
No-strings attached giving

What conditions need to be met to ensure that a donation will not be subject to VAT?

by Neil Warren

There's an old saying that 'there's no such thing as a free lunch.' Fortunately, that is not always the case, and charities receive sizable no-strings attached donations from many benefactors and supporters. But sometimes a donation is not really a donation: 'I'll give you £1,000 as long as you agree to... etc.'

Key Points

What is the issue?
Income earned by a charity or other organisation is outside the scope of VAT if it relates to a genuine donation. It is also ignored as far as the VAT registration threshold is concerned. However, there can sometimes be areas of doubt when a close examination of a contract or agreement will be necessary to establish the correct VAT position.

What does it mean for me?
HMRC has the power to correct VAT errors going back four years, so it is important to ensure that records and supporting documents are kept to prove that a payment is a genuine donation. An acknowledgement of the donation on a website or annual report is not a benefit to the donor and can be ignored as being a possible supply of advertising or sponsorship.

What can I take away?
HMRC accepts in its guidance that some arrangements could be a part donation and part sponsorship arrangement. In such cases, the value of the sponsorship should be clearly determined based on the value of the benefits being provided to the sponsor and output tax apportioned on a fair and reasonable basis.

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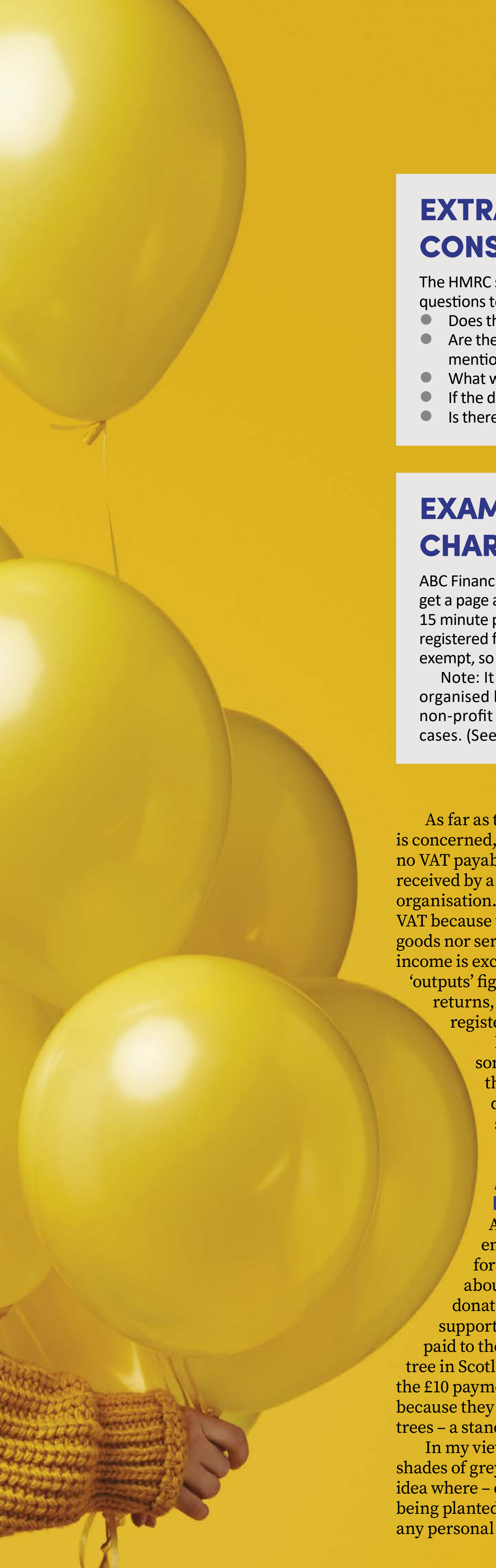

EXTRACT FROM HMRC SUPPLY AND CONSIDERATION MANUAL

The HMRC supply and consideration manual (VATSC56110) sets out a number of questions to consider when deciding if income is relevant to a 'donation':

- Does the donor receive anything in return for the payment?
- Are there any conditions attached to the payment that go beyond merely having to mention it in account statements?
- What will the payments be used for?
- If the donor does not benefit directly, does any third party receive a benefit?
- Is there a contract and what are the terms and conditions?

EXAMPLE: BUSINESS DONATION TO CHARITY

ABC Financial Services has paid £5,000 to Animal Charity, in return for which it will get a page advert in the charity's annual report, and one of the partners can also do a 15 minute presentation about its products at the charity's AGM. If Animal Charity is registered for VAT, the payment will be subject to VAT at 20%. ABC is likely to be partially exempt, so will not be able to fully claim input tax on the payment.

Note: It might be better for ABC to make a presentation at a fundraising event organised by the charity rather than its AGM. Income earned by a charity or non-profit making organisation from a fundraising event is exempt from VAT in most cases. (See VAT Notice 701/1 para 5.9.)

As far as the nation's favourite tax is concerned, we all know that there is no VAT payable on a genuine donation received by a charity or other organisation. It is outside the scope of VAT because there is neither a supply of goods nor services taking place. And the income is excluded from the Box 6 'outputs' figure on the recipient's VAT returns, assuming they are registered of course.

However, there can sometimes be grey areas on this issue: what exactly is a donation and might it be subject to VAT in some cases?

Are goods or services being supplied?

A number of years ago, an environmental charity I acted for was challenged by HMRC about the VAT liability of donations it received from its supporters. For each £10 payment paid to the charity, it would plant a tree in Scotland. The officer claimed that the £10 payments were standard rated because they related to the planting of trees – a standard rated activity.

In my view, this situation had no 'fifty shades of grey' about it. The donor had no idea where – or even if – the trees were being planted and certainly did not gain any personal benefit from the payment; it was not as if the trees were being planted in their back garden. The payments were outside the scope of VAT and not subject to output tax. This tale had a happy ending, with the officer accepting this outcome.

The starting point is to consider the helpful checklist produced by HMRC, where five important questions need to be considered for each arrangement. See ***Extract from HMRC supply and consideration manual.***

Case law examples

The HMRC guidance refers to a historic European Court of Justice case, which I always find amusing. To cut to the chase, the Dutch tax authorities assessed Mr Tolsma (Case C-16/93) for output tax on money he collected from passers-by on a public highway for entertaining them with his barrel organ. You can hopefully picture the scene.

The ECJ ruled in favour of the taxpayer, on the basis that the payments

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did not constitute a supply of services carried out for a consideration. There was no contract or agreement in place between any parties and the payments from the passers-by were voluntary donations. Hurrah!

In the case of *European Commission v Austria* (Case C-51/18), the CJEU considered the following arrangement:

- An artist sold a painting to a buyer.
- The buyer resold the painting in the future, and the artist was entitled to a royalty payment based on the resale value. The artist had no control in how much royalty he received.
- The Austrian tax authorities said that the royalty payment to the artist was subject to VAT but the European Commission disagreed as there was no supply of goods or services made by the artist. His only taxable supply had been made when he sold the painting.

The CJEU considered Article 2(1) of the Principal VAT Directive and ruled that a supply only existed where there was a 'consideration' that related to a legal relationship between the supplier and the customer which involved the supply of goods or services. There had to be a reciprocal performance, with the remuneration received by the supplier being linked to the value of goods or services supplied to the customer. In this situation, the royalty payment was to ensure the artist had a share of the 'economic success of the original work of art'. This was different to a payment for goods or services.

Commission or donation?

The donation or supply challenge can also affect a commercial business. Imagine that you are an overworked tax adviser and don't want to take on any new clients. However, you are keen to refer business leads to other advisers that you know will do a good job, which also encourages young businesses to prosper. One of the advisers that you recommend has kindly agreed to give you £500 for each successful lead, even though there is no obligation on her part to do this. Are the £500 payments subject to VAT, again assuming you are registered?

My view is that the payments are outside the scope of VAT because there is no legal or even verbal contract in place that defines the 'consideration' for this arrangement. The amount paid is totally out of your hands and wholly dependent on the generous response – or otherwise – of the adviser being given a lucrative client. The HMRC guidance I quoted above is very supportive of this conclusion in the opening sentence: 'If a monetary donation is freely given, it is not consideration for any supply and so is outside the scope of VAT. In this situation, the donation has to be unconditional.'

Donor expectations

To share another tale, a local rugby club – VAT registered because of its healthy income from bar and gate receipts – received a generous £10,000 payment each year from a national retailer. It was described as a donation but the reality was that the retailer received an entitlement to buy the club's allocation of international rugby tickets in return for its payment. The payment was not made in return for the tickets, only the right to buy them when they became available.

To be honest, I am not a fan of the oval ball but I understand that international rugby tickets at Twickenham are as popular as free beer at a stag party. The key question is as follows: if the retailer did not get the entitlement to the tickets, would they still make the annual payment? The answer is almost certainly 'no'. Their expectation is that they will be able to buy rugby tickets, so the £10,000 payment should be standard rated. This scenario scores none out of five as far as the key questions in HMRC's guidance is concerned.

Is it sponsorship?

To develop the arguments, there can sometimes be a fine dividing line between a donation and sponsorship arrangement.

For example, a number of years ago, a county cricket club charged members a fee of £120 for the member to have his or her name engraved on a brick outside the club's pavilion, with the name of their favourite player at the club – past or present – also being included. In my view, the fee is standard rated because the member is getting a clear and worthwhile benefit for their payment. If the member's name was spelt wrongly on the brick – or the wrong player was included – they would be justified in asking for a discount or refund because the 'service' they ordered has not been delivered.

For another practical situation, see ***Example: Business donation to charity***.

Note: there is further guidance in HMRC's policy note VATSC03560 in its supply and consideration manual.

Sponsorship and donation: dual purpose

HMRC updated its guidance a few years ago about when a payment to a charity could comprise two separate elements, with different VAT outcomes for each part. The updated guidance is contained in VAT Notice 701/41 para 2.3 and VAT Notice 701/1 para 5.9.6. The revised policy recognises that some charitable payments made by a business will consist of both a sponsorship benefit and a donation. For example, the £5,000 payment made by ABC in my example with Animal Charity might not be the going rate for sponsorship if only five people attend the charity's AGM!

The challenge is to ensure that any donation is completely separate from any sponsorship agreement. Ideally, a business should make two separate payments to the charity and only the sponsorship payment will be subject to VAT. The agreement between the two parties should make this clear and the value of the sponsorship should accurately reflect the VATable benefits received from the charity.

Conclusion

Overall, there are key issues to consider, which will hopefully lead to the correct VAT outcome in most cases:

- **What are the expectations of the payer when they part with their hard-earned cash?** Do they expect to receive worthwhile benefits for their payment and not just, say, a token of appreciation on the recipient's website?
- **Is the phrase 'donation' correct?** Be clear that the phrase 'minimum donation' is not a donation for VAT purposes and the phrase 'suggested donation' is only a donation if the word 'suggested' is what it says on the tin.

The GAAR so far

A key weapon in the armoury?

A brief review of cases that have gone to the GAAR panel since its inception, the common themes that they highlight and what we can learn from them.

by Helen McGhee

Key Points

What is the issue?
The purpose of the General Anti Abuse Rule is to act as an overarching deterrent to any scheme looking to exploit loopholes and implement planning at odds with the spirit of the legislation.

What does it mean for me?
Of the 19 published opinions we have seen, at least 80% relate to some form of contrived employment scheme.

What can I take away?
It might be useful to taxpayers and their advisers to have a broader range of opinions from the GAAR Advisory Panel to help them to understand how and when the GAAR will apply.

The UK General Anti Abuse Rule (GAAR) was introduced in April 2013 (and applies to arrangements entered into on or after 17 July 2013) in order to remove any tax advantages gained by an action that is deemed to be *abusive*.

Note that there are separate Scottish and Welsh GAAR regimes that apply to taxes devolved in Scotland and Wales. These GAARs are **not** the same as the UK GAAR and are beyond the scope of this review. Care is needed when dealing with transactions involving both devolved and reserved taxes or transactions that span more than one jurisdiction.

The UK-wide GAAR applies where tax arrangements are abusive with reference to the well-known 'double reasonableness test' which is set out in the GAAR legislation; i.e. any arrangements that 'cannot reasonably be regarded as a reasonable course of action, having regard to all the circumstances'.

When applying the 'double reasonableness' test, regard must be had as to whether the substantive results of the arrangement are consistent with the principles underlying the legislative provisions or if the arrangements are intended to exploit any shortcomings in those provisions. It is also important to identify whether there are any contrived or abnormal steps contributing to achieving the desired results.

The GAAR covers income tax, capital gains tax, inheritance tax, corporation tax, petroleum revenue tax, stamp duty land tax, annual tax on enveloped dwellings, diverted profits tax,

> **If the GAAR applies, then HMRC can make a just and reasonable tax adjustment to counteract the abusive tax advantage.**

apprenticeship levy and NICs, so there is no escaping its long reach. However, it does not apply to VAT.

The purpose of the GAAR is to act as an overarching deterrent to any scheme looking to exploit loopholes and implement planning at odds with the spirit of the legislation.

GAAR Advisory Panel

The GAAR Advisory Panel was established to review and approve HMRC's guidance on the GAAR and to provide opinions pertaining to the reasonableness of tax arrangements on cases referred to it, where HMRC considers that the GAAR may apply. Specific cases may be referred to the Panel or a generic referral may be made in respect of a set of tax arrangements. The Chair of the Advisory Panel appoints a sub-panel of three members of the Panel to consider any specific reference and to produce an opinion.

If the GAAR applies (and the burden of proof is on HMRC to show that arrangements are abusive), then HMRC can make a just and reasonable tax adjustment to counteract the abusive tax advantage (and recoup any lost revenue) that the taxpayer is seeking to obtain.

HMRC guidance

HMRC has devoted significant resources over the years to producing comprehensive guidance on the application of the GAAR. The guidance is updated as and when necessary, with the latest update being issued in July 2021 to incorporate the changes made by Finance Act 2021 bringing the taxation of partnerships within the regime.

The HMRC guidance gives numerous examples of scenarios where the taxpayer is entirely at liberty to exercise their freedom to pursue a commercial or personal choice without contravening the GAAR, making it clear that ordinary routine planning is not caught by the rule.

Panel opinions

Although there are specific rules relating to provisional and protective notices, broadly HMRC may not counteract tax advantages under the GAAR unless those arrangements (or their equivalent) have first been referred to the Advisory Panel for its opinion. In determining any issue in connection with the GAAR, a tribunal or court must take into account the opinion of the Panel, although it does not need to follow the opinion.

Any issued GAAR opinion will state the outcome that:

1. entering into the arrangements was a reasonable course of action;
2. it was not a reasonable course of action; or
3. it is not possible to reach a view on the information supplied to the Panel.

If the members of any sub-panel cannot agree, they may produce individual opinions. To date, a single opinion has always been issued.

The GAAR Advisory Panel opinions are published in redacted and anonymised form. The HMRC Guidance does make it clear that it may not always be possible to publish specific opinions if taxpayer confidentiality is put at risk by doing so. Clearly, one cannot know what has not been published (and so for the purposes of this article there are potentially inherent limitations to what we can learn from the operation of the GAAR). However, it should be noted that on 1 April 2019 in a Parliamentary written answer, Financial Secretary Mel Stride said: 'HMRC is actively using the GAAR [and] to date, all cases referred to the GAAR Advisory Panel have resulted in a Panel opinion in HMRC's favour.'

Since the GAAR was first introduced, we have seen a total of 19 published opinion notices.

In 2020/21, we saw just two published opinions compared with six in 2019/20 and four in 2018/19. It is clear that the GAAR is not a 'high volume' operation. However, according to the HMRC 2020/21 Annual Report, since the introduction of the GAAR HMRC has issued over 3,700 GAAR opinion notices applying opinions of the Advisory Panel. It would therefore be wrong to infer that the GAAR has been applied in just 19 cases. This demonstrates that HMRC has typically sought to apply the GAAR to marketed schemes.

Covid undoubtedly will have had an impact over the last couple of years and, of course, the appetite for tax risk is significantly lower than it ever has been, but is the usefulness of the GAAR dwindling and if so why?

Cases to date

Of the 19 published opinions we have seen, at least 80% relate to some form of contrived employment scheme. To provide a taster, a recent GAAR opinion, published in July 2021, examined a convoluted scheme around employee reward arrangements. The Panel concluded that it didn't believe Parliament intended loans to a person from a trust made out of funds deriving economic value earned by that person's activities as a director, to escape Income Tax (Earnings and Pensions) Act 2003 Part 7A – a result that would come as no real surprise to an experienced tax practitioner. Employment schemes have occupied an overwhelming majority of time incurred by the GAAR Panel.

What does this repetitive pattern of referrals with predictable outcomes tell us about how HMRC is using the GAAR Panel (except that maybe the Panel themselves are growing tired of the lack of variety)?

In a statement on Employee Reward Arrangements (published on 14 July 2021), the Panel states:

> 'A high proportion of the cases referred to the Panel have involved arrangements for the tax-free extraction of cash/value by an owner/director from their owner managed company. In each case, the relevant sub-Panel has come to the conclusion that the arrangements were contrived and not consistent with the principles of the legislation. We do not regard the arrangements in this case as exceptional and it should come as no surprise that we reach a similar conclusion to that reached in the earlier cases.'

It is certainly curious as to why so many similar schemes are going to the GAAR Panel, when one might consider that the outcome should be obvious with reference to a clear legal technical argument. In the realms of 'employment tax avoidance' cases, there is potentially a public policy argument underpinning the referrals. The legislation in this area is so complex and judicial outcomes unpredictable, with stakes so high (the risk that millions of moderately paid NHS workers or teachers are being sold schemes to take them out of the tax net) that a GAAR referral represents a reliable channel for counteraction for HMRC and additional security should the matter go to tribunal.

Of the 19 published opinions we have seen, at least 80% relate to some form of contrived employment scheme.

An interesting statement was made in the latest GAAR opinion notice issued 11 February 2022 at para 9.8:

> 'We are not concerned with the detailed technical provisions of the legislation – that is for HMRC and the taxpayer to consider and debate. What the Panel is concerned with is the principles underlying the legislation. It seems to us that the principles are all about imposing tax on value passing to a director from the company; the policy is that such value should be taxed. In this case we believe that [X] has received value from the company by way of the reduction in the balance of his overdrawn loan account. Accordingly, we consider that the policy behind Part 7A ITEPA 2003 is therefore in point.'

But what about for the taxpayer? Is this pattern of repetitive referrals a satisfactory use of the Panel's time and expertise? We can see clearly that employment schemes don't work but wouldn't it be helpful if we had more breadth of opinions in order that we could see a range of scenarios where the GAAR will bite? Given that any penalty for contravention is up to 60% for tax arrangements entered into on or after 15 September 2016 – what about taxpayers looking to exit film schemes – where might the parameters of the GAAR apply in such scenarios? The limited application so far certainly makes it more worrying for the taxpayer embroiled in schemes unclear as to how it will affect any outcome.

When the GAAR was first introduced, we all expected more variety in the cases that might come before it. During a speech at Oxford University, Patrick Mears, first Chair of the GAAR Advisory Panel, stated that he did not expect the Advisory Panel to give any opinions in the first 18 to 24 months while they bedded in and concentrated on the Guidance but specifically said except for stamp duty land tax matters, about which it may have to opine sooner. We are yet to see anything looking at stamp duty land tax. Arguably, the Supreme Court decision in *Project Blue* [2018] UKSC 30 mitigated the risk originally presented by stamp duty land tax avoidance schemes.

Conclusion

If the GAAR discourages the introduction of endless complex and lengthy anti-avoidance legislation, that has to be a good thing. The Panel are an esteemed group of experts in their field and any opinion they offer will be considered and of great interest. But there is little for taxpayers or the profession to take away going forward if each opinion is largely the same as the previous one.

The GAAR is a part of the general UK tax system and, as such, a taxpayer should take the GAAR into account when considering any form of tax planning, as well as filing his tax return (which is not a straightforward task for taxpayers or their advisers).

Given this, it might be useful to taxpayers and their advisers to have a broader range of opinions from the GAAR Advisory Panel to help them to understand how and when it will apply. Given that it is understood to be a key weapon in the armoury to fight tax avoidance, perhaps it is not used enough.

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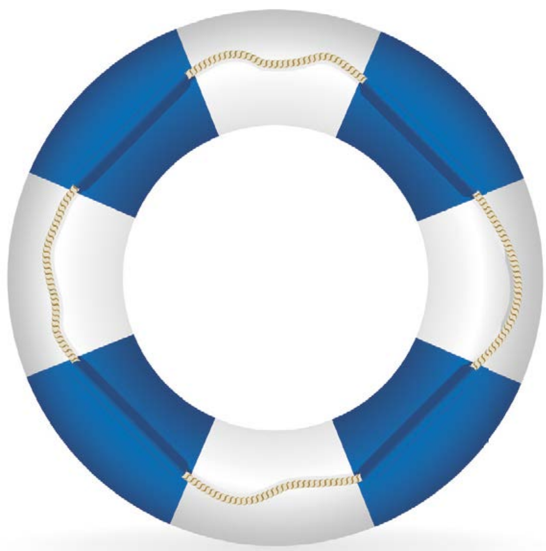

High income child benefit charge

Traps and opportunities

We examine how the high income child benefit charge can operate unexpectedly if there is a change of circumstances.

by Tom Henderson

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Broadly speaking, the high income child benefit charge applies where a taxpayer has adjusted net income of over £50,000 and either they or their partner claims child benefit.

Most advisers will be familiar with this basic premise, but if only life were so static. Incomes may rise and fall, relationships may begin and end, and child benefit payments may stop and start, or be backdated.

It can also be in a taxpayer's interests to opt out of receiving payments while still 'claiming' child benefit – a complexity in the system which, not surprisingly, HMRC has had an uphill struggle to communicate to the general public.

So where are the edges of the high income child benefit charge's scope? In this article, we answer this by looking at the key features of the rules. Then we apply these rules to some situations where there is a change in circumstances. Through these examples, we show that the charge can sometimes apply unexpectedly, or that it may sometimes be beneficial to backdate child benefit payments or continue claiming them.

Who needs to pay it?

The legislation for the high income child benefit charge is in the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 Part 10 Chapter 8 ss 681B to 681H. There are two broad conditions for the charge to apply to a taxpayer in a tax year: we call these the 'income' condition and the 'child benefit' condition.

The 'income' condition

This condition is met if a taxpayer's adjusted net income **for a tax year** exceeds £50,000.

This is always an annual test. Adjusted net income means a taxpayer's total taxable income less gross pension contributions, gross Gift Aid contributions and certain other tax reliefs (Income Tax Act 2007 s 58).

The 'child benefit' condition

The charge can be triggered by a child benefit claim, which is made by either the taxpayer, their partner, or in some cases, a third party.

The 'child benefit' condition is met where one (or more) of the following is true:

- The taxpayer claims child benefit for at least one **week** in the tax year (and in that week they do not have a partner who has a higher adjusted net income than them for that year); or
- There is at least one **week** in the tax year where the taxpayer has a partner who claims child benefit in that week (and that partner does not have a higher adjusted net income than the taxpayer for that year); or
- Someone else claims child benefit for a given **week** in the year on the basis that they are contributing towards the cost of providing for a child which lives with the taxpayer

Key Points

What is the issue?
The high income child benefit charge calculation always considers annual adjusted net income – but child benefit entitlement and the taxpayer's relationship status are considered weekly.

What does it mean for me?
The mismatch can mean the charge might operate unexpectedly if a taxpayer has a change of circumstances.

What can I take away?
If there is a change of circumstances, note that claiming child benefit and opting out of payment provides more flexibility than not claiming child benefit at all.

EXAMPLE 1: A REDUCTION IN INCOME

Sam's only income is a salary from PAYE employment and there are no adjustments to arrive at his adjusted net income for the year. His salary is £62,000 pa for the first nine months of 2022/23. He then moves to a part-time arrangement working three days a week and his new salary is £37,200 pa. His partner starts claiming child benefit at that point. Conceptually, Sam might think that he has avoided the charge – but no such luck. Sam's adjusted net income is £55,800 for the year, and he therefore needs to pay a high income child benefit charge equal to 58% of the child benefit received in the final three months. In fact, in this situation it would be worthwhile backdating the child benefit payments because the family would be able to effectively retain 42% of them, even for the weeks in the year Sam was earning over £60,000 pa. If Sam's partner had made a claim to child benefit but opted out of receiving payments, they would be able to backdate the payments to 6 April 2022. But if they had never made a claim to child benefit at all, they would only be able to backdate for three months.

In addition to backdating a child benefit claim, taxpayers who have a reduction in income should also consider the following:

- If the high income child benefit charge is being collected via PAYE based on a higher amount of income, does this need to be adjusted?
- Does the taxpayer still need to file a Self Assessment tax return, if they are no longer liable to the charge?
- Has the taxpayer's adjusted net income fallen below their partner's, such that it is now their partner who needs to pay the charge instead?

The Low Incomes Tax Reform Group (LITRG) publish more detailed guidance on the various possibilities (see tinyurl.com/2j8fep92).

(and neither that person nor their partner are liable for the charge themselves). This ensures that it is not possible for a taxpayer to avoid the charge simply by having their ex-partner claim the child benefit and pay them the money.

The amount of the child benefit used in the calculation of the charge is the total amount of child benefit payments for which this condition is met (we call these the 'relevant child benefit payments').

A taxpayer can be affected by the charge if their partner claims child benefit for a child which is not the taxpayer's (for example, if the partner has a child from a former relationship).

> **The high income child benefit charge is 1% of the relevant child benefit payments for each £100 of adjusted net income above £50,000.**

How much is the high income child benefit charge?

The high income child benefit charge calculation is set out in ITEPA 2003 s 681C. It is 1% of the relevant child benefit payments for each £100 of adjusted net income above £50,000. The amount of the high income child benefit charge is therefore 100% of relevant child benefit payments once adjusted net income reaches £60,000 for the year. In practice, the charge only applies when adjusted net income is £50,100 or more because of the rounding in the calculation.

Advisers should be aware of the effect of the high income child benefit charge on their client's marginal rate of tax in the £50,000 to £60,000 range for adjusted net income. The greater the number of children for whom child benefit is claimed, the greater the impact of the charge on a taxpayer's marginal rate.

Bringing down adjusted net income in this income range by making pension contributions or Gift Aid donations will reduce exposure to the charge as well as save 'normal' income tax. For example, suppose in 2022/23 I am affected by the charge with an adjusted net income of £55,000 and I claim child benefit for two children for

EXAMPLE 2: A RISE IN INCOME

Jessica works part-time and her income is £37,200 pa for the first three months of 2022/23. She then moves to a full-time arrangement and her new salary is £62,000 pa. Her adjusted net income for 2022/23 is, like Sam's in Example 1, £55,800.

In this case, it would be a mistake for Jessica or her partner to opt out of receiving child benefit payments when she starts working full time. The high income child benefit charge would be 58% of the total amount of the child benefit received in the year. So by continuing to receive child benefit until the end of 2022/23, as a family they can effectively retain 42% of the child benefit payments received for the whole year, including the payments received when Jessica is earning over £60,000.

EXAMPLE 3: CHANGES IN RELATIONSHIP STATUS

Nick and Kamala were married, but they permanently separated on 5 October 2021. Nick's only income up to the point they separate is his salary, which is £45,000 a year. Kamala's salary is £25,000. No adjustments are required to arrive at adjusted net income. Kamala claims child benefit in respect of their two children and she continues to do so after the separation. The children live with Kamala.

Neither Nick nor Kamala are liable to the high income child benefit charge for tax years prior to 2021/22 and neither of them file a Self Assessment tax return. However, after the separation Nick starts his own business alongside his employed work, earning profits of £10,000 in 2021/22. His adjusted net income in 2021/22 is £55,000.

For 2021/22, Nick is liable to high income child benefit charge based on his adjusted net income for the full year, £55,000. However, the child benefit which is used to calculate the charge will be restricted to the amount received for the first half of the year. Kamala received a total of £1,827.80 for the year. The amount relating to the part of the year Nick and Kamala were together is £913.90 (26 Mondays). Nick's high income child benefit charge for 2021/22 would therefore be £456.

This might come as a shock for Nick when he completes his 2021/22 tax return, as he may not expect that his self-employment profits earned *after* the separation could drive a high income child benefit charge based on the child benefit received by his ex-wife *before* the separation.

LITRG also publish detailed guidance on other issues to think about on separation (see tinyurl.com/33h2wamc).

the full year (£1,885.00). If I make a £1,000 gross pension contribution, this will cost me only £412 after 40% tax relief (£400) and 'high income child benefit charge relief' of £188. If I make the pension contribution via a salary sacrifice arrangement with my employer, the net cost after any NIC saving would be even lower.

Who is my partner?

This is explained in ITEPA 2003 s 681G. In this context, a taxpayer's 'partner' does not need to be a spouse or civil partner, but can also be someone with whom are living as either their spouse or their civil partner.

If the taxpayer is not married or in a civil partnership, and does not physically live with their partner they may be unlikely to be treated as partners for high income child benefit charge purposes. However, as discussed in a previous article in the context of tax credits ('Put a ring on it?', November 2021), in some situations where a couple have other very close connections, HMRC may interpret 'living together' more broadly and argue that the charge could apply.

If the taxpayer separates from their spouse or civil partner, then one should take the date of separation as the earlier of the date they are separated either:

a) under a court order; or
b) in circumstances likely to be permanent.

Opting out and backdating

If taxpayers are affected by the charge and they need to pay back 100% of the child benefit received, there are a few reasons why it is still beneficial to claim child benefit but to opt out of receiving payment rather than to not claim child benefit at all. These are:

- HMRC will issue the child with a National Insurance number automatically when they turn 16, without the need for the child to apply for one.
- The claimant will receive National Insurance credits, which can be useful if they do not otherwise accrue qualifying years towards their state pension (for example, if they do not work). If they are not required by the claimant, these credits can be transferred to a relative who provides care for the child (in which case they are known as Specified Adult Childcare credits).
- Having a 'live' benefit claim means that child benefit payments can be backdated by up to two years, if it transpires this would be beneficial. Otherwise, the claim can only be backdated by three months.

If the high income child benefit charge applies and claimants opt out of receiving payments, then rather than claiming the benefit and paying the charge they can also avoid having to file a Self Assessment tax return if they have no other reason to do so.

Changes in income or relationship status

Part of the complexity of the charge comes from the fact that taxpayers need to consider both the year and the week. This can lead to some counterintuitive results (see examples).

Conclusion

The high income child benefit charge is approaching its 10 year anniversary. Despite facing much criticism for the design of the policy, it appears to be with us for the foreseeable future. The government has resisted repeated calls to raise the £50,000 threshold, which since 6 April 2021 has been overtaken by the higher-rate threshold. Because of fiscal drag, the charge is affecting more taxpayers than ever before. It is therefore increasingly important to be aware of the traps and opportunities.

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On the road again

The temporary workplace

We consider what constitutes a temporary workplace and the significance that expectation plays in determining whether related expenses attract tax relief.

by Susan Ball and Lee Knight

Key Points

What is the issue?
If an employee attends, or expects to attend, a workplace for 40% or more of their working time at a particular workplace over a period of more than 24 months (the '40/24' test), it cannot qualify as a temporary workplace.

What does it mean for me?
Employers often feel that the intention or expectation test cannot be easily operated or proven in practice.

What can I take away?
Undertake a review and record where employees are based for the purposes of travel and subsistence, including any secondments or temporary assignments.

The travel and subsistence rules are complex and can be difficult for employers to apply on a consistent basis, particularly given the context of changing work patterns and mobility of workers.

As explained in our previous article, 'The long and winding road' (June 2022), a workplace that an employee attends for the purpose of performing a task of limited duration or for some other temporary purpose is potentially a temporary workplace under the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 s 339(3).

This and the associated criteria are all important points to consider because when a journey qualifies for tax relief, employees are also entitled to claim tax relief on subsistence expenditure that is incurred on that journey. This includes:

- any necessary subsistence costs incurred in the course of the journey;
- the cost of meals necessarily purchased whilst an employee is at a temporary workplace; and
- the cost of the accommodation and any necessary meals where an overnight stay is needed as part of the journey. This will be the case even where the employee stays away for some time.

In this article, we explore more on the 24-month rule at ITEPA 2003 s 339(5), which forms part of the test of whether a workplace is a temporary workplace. This could result in more challenges than normal following the Covid pandemic and the move to hybrid working patterns in the UK and international employment situations.

What is a temporary workplace?

Remember that the test which prevents a workplace from being a temporary workplace is where an employee attends it in the course of a period of continuous work that lasts more than 24 months, or where it is reasonable to assume that it will be in the course of such a period that will last more than 24 months. This is known as the 24-month rule or is often described as the detached duty rule. This means that where the employee has spent, or is likely to spend, 40% or more of their working time at that particular workplace over a period of more than 24 months (the '40/24 test'), it will be a permanent workplace.

In terms of the 40% rule, ITEPA 2003 s 339(6) states: 'For the purposes of sub-section (5), a period is a period of continuous work at a place if over the period the duties of the employment are performed to a significant extent at the place.' The word 'significant' is not defined in statute, but it is covered in HMRC's Employment Income Manual at EIM32080, which states that anything less than 40% is not significant.

The significance of expectation

One of the key problem areas is the words 'reasonable to assume'. Note that there is no reference to either the intent

Problems can arise where the outcome does not match the original intention.

of the employer or employee. Although this is often described as intention, it is also sometimes referred to as expectation.

The rule is not just about the amount of time being less than 24 months for relief to be given, but the intention or expectation of the parties at the time the period was originally agreed and at any time subsequently.

On first inspection therefore you would think that if an assignment or secondment to a different location was for less than 24 months, the employee would meet the temporary workplace conditions for that period. If the employer extends the assignment to more than 24 months, then the workplace is only temporary up until the date that the assignment is extended. If at the outset it is known that it was going to be for longer than 24 months, then relief is not due from the start.

Problems can arise where the outcome does not match the original intention. If a full-time assignment is expected to last more than 24 months (and is therefore not eligible for relief) but unexpectedly finishes early, no deduction is allowable even though ultimately the assignment lasted for less than 24 months. Because the initial expectation was that the assignment would meet the 40/24 test, the workplace would be considered to be permanent even though, in practice, that turned out not to be the case.

To further complicate matters, an employee does not need to have a permanent workplace to go back to in order to be entitled to tax relief for travel to a temporary workplace, if they meet the criteria.

More points to consider

It should also be remembered that a fixed term appointment or contract prevents a workplace being a temporary workplace where an employee attends, or is likely to attend, it in the course of a period of continuous work for all or almost all of the period that they're likely to hold the employment, as stated in ITEPA 2003 s 339(6). This adds a further layer of complexity:

- A period of continuous work for this purpose has the same meaning as it does for the 24 month rule – that is, it's a period during which the employee spends or is likely to spend more than 40% of their working time at a particular workplace. A period of continuous work can remain continuous even where there is a break in attendance (see HMRC guidance at EIM32108).
- For the purpose of determining a period as being all or almost all of the period that the employee is likely to hold the employment, HMRC considers that period is more than 80% of the likely duration of the employment.

This does not take into account that when the employment intermediaries travel expense provisions apply (ITEPA 2003 s 339A), it should be

EXAMPLE 1: THE IMPACT OF FURLOUGH

Jo, who is normally based in York, was seconded to the Leeds office for 22 months. However, after 20 months she was furloughed, and after three months of furlough, she returned to the Leeds office for a further three months.

As support was provided through the Coronavirus Job Retention Scheme, Jo remained employed throughout. Under the rules, HMRC treats employees who are furloughed as if they are working from home.

Jo worked in Leeds for 20 months, was then placed on furlough for three months, and worked in Leeds for a further three months. As this totalled a period which exceeds 24 months, Leeds ceases to be a temporary workplace from the date that the expectation changed. In this case, only travel and subsistence for the first 20 months would qualify for temporary workplace relief.

EXAMPLE 2: AN EXTENDED RELOCATION

Richard has worked for his employer for three years. He is sent to perform full-time duties at a different workplace for 18 months. After 10 months, the posting is extended to 28 months.

Tax relief is available for the full cost of travel to and from the workplace during the first 10 months (while his attendance is expected to be for less than 24 months). It is not available after that, when his attendance is expected to exceed 24 months.

EXAMPLE 3: A REDUCED RELOCATION

Sarah has worked for her employer for seven years and is sent to perform full-time duties at a different workplace for 28 months. After 10 months, the posting is shortened to 18 months.

No tax relief is available for the cost of travel to and from the workplace during the first 10 months, while her attendance is expected to exceed 24 months. However, tax relief is available for the full cost of travel during the final eight months, when her attendance is no longer expected to exceed 24 months.

EXAMPLE 4: LESS THAN 40% OF WORKING TIME

Edward lives and works in Portsmouth, where he is employed as an engineer. His employer sends him to work in Southampton for 1.5 days a week for 28 months. For the rest of the week, he continues to work in Portsmouth which remains a permanent workplace.

In considering whether Edward is entitled to tax relief for travel between home and Southampton, it is important to look at the proportion of time he expects to spend there each week and the duration of his work in Southampton.

Edward expects to be in Southampton for less than 40% of his working time, albeit over a period longer than 24 months, and he retains a permanent workplace in Portsmouth. Southampton is therefore a temporary workplace and Edward is entitled to tax relief for the cost of getting there and back.

EXAMPLE 5: WORKING IN PHASES

John is a labourer employed by a large construction company to work on the building of a new airport terminal. The building work is to be carried out in phases with the first phase expected to take 18 months to complete.

John attends the site for 18 months until the first phase is completed. He has no expectation of returning to that site. His employer then moves him to a different building project for six months, after which his employer asks him to return to the original site to complete the second phase of building work which lasts 12 months.

The purpose of John's attendance is to complete a task of limited duration. Therefore, during the first 18 months it will be a temporary workplace as John's attendance is for a period of less than 24 months.

However, when he returns to the airport site he expects to spend 30 out of 36 months working there, and expects to spend more than 40% of his working time there in a period lasting more than 24 months (18 + 6 + 12 = 36 months). This means that during the final 12 months the airport site will be a permanent workplace.

EXAMPLE 6: SIMILAR JOURNEYS

Melanie works for an employer who has a factory and an office site in the same town but not within the same premises. An employee attending one or other of the sites will not have a substantially different journey to work.

Melanie has worked for the employer for 10 years and normally works in the factory, but is asked by her employer to work on a temporary project at the office for 12 months. While she will be attending the office for a temporary reason and for a period that does not exceed 24 months, as her journey to work remains largely unchanged, the office will be regarded as a permanent workplace.

EXAMPLE 7: FIXED-TERM CONTRACT

Kamala is employed by an employer on a fixed-term contract for 12 months to work at the employer's offices in Canterbury. She will work wholly at the Canterbury office throughout the appointment.

As all of the period that Kamala is likely to hold the employment will be spent at her employer's Canterbury office, the Canterbury office will be regarded as a permanent workplace throughout the fixed-term contract.

remembered that each engagement will be treated as a separate employment for the purposes of the travel expenses rules (see ITEPA 2003 ss 338, 339 and 339A of ITEPA, and the corresponding NICs disregard in the Social Security (Contributions) Regulations 2001 Sch 3 Part 8 paras 3, 3ZA and 3ZB).

These rules and the interaction are often best illustrated by examples. We have detailed a few above.

The need to be alert

Employers often feel that the intention or expectation test cannot be easily operated or proven in practice. This is because the person who has to make the decision about whether or not to treat an expense payment as taxable is often a long way removed from the details of the individual's case and working arrangements. Mistakes can be made if the decision maker does not have access to any contracts or side agreement (such as visas or other official documents) which might help to demonstrate any argument that it is 'reasonable to assume' that the temporary workplace will be for less than 24 months.

There is therefore a danger that employers do not pick up expenses that should be liable to tax and NIC, either by placing them through the payroll where they are reimbursed, or on a P11D if arranged and paid directly and where there is no PAYE settlement agreement in place. If this issue is identified by HMRC or the employer at a late stage, it can be costly. As well as the tax and NIC that is due, the employer can also face interest and penalties.

We expect that HMRC will be looking carefully at these rules when undertaking compliance reviews over the next few years, due to the various changes to place of work as a result of the Covid pandemic.

How can employers get it right?

- Undertake a review and record where employees are based for the purposes of travel and subsistence, including any secondments or temporary assignments. Make sure to track any changes to these.
- Consider adding extra checks of expenses claims to pick up any patterns.
- Make sure that key people in the organisation understand the rules based on knowledge of their own workforces.
- Make sure that policies are clear on what employees can claim and that any individual agreements are tracked. Also, when any changes to the rules are made, make sure everyone understands the costs and payroll or P11D implications.
- Ensure that adequate information is provided when expenses forms are completed, so that the correct tax treatment can be applied.

> **Record where employees are based for the purposes of travel and subsistence, including any temporary assignments.**

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TAXADVISER
The rules on travel and subsistence: a long and winding road

Time for reflection

How do we see ourselves?

What can we do to strengthen our tax system? Perhaps the answer is to do less, but to do it better. We consider the role that improvements in training, customer services and technology could bring to HMRC strategy.

by Ray McCann

In 1786, Robert Burns wrote about the need 'to see ourselves as others see us'. If only we could all do the same, we might not act hastily and instead might make better decisions!

Leadership coaching typically places considerable emphasis upon gaining or developing greater self-awareness. This surely applies at corporate and institutional levels. We have seen numerous examples of individuals and businesses falling foul of criticism from customers, clients, government and the general public – including, in recent months, P&O and the power supply companies. In tax, criticism is no longer confined to Amazon and Google. The Chancellor and Health Secretary have both recently found themselves falling foul of the public's dislike of tax planning, in both cases over the rules applying to domicile. Arguably, it should have been anticipated that these issues would become matters of public concern.

Burns plainly did not have HMRC in mind in 1786, although he was at one point in his short life a 'taxman' so who knows? Had he been around today he might have had a lot to say about HMRC. Criticism of HMRC (constructive or otherwise) can seem more extensive than ever. Much of this appears on social media, so inevitably some filtering is required. Meanwhile, in the tax community we must temper what we say to HMRC to avoid relationships breaking down – which would not help anyone. So what would a leadership coach suggest to HMRC? And would it listen?

Focusing resources

Customer service and HMRC's compliance initiatives are the most common cause of complaints – in recent years, most obviously due to the loan charge and the high-income child benefit tax charge.

It is important, though, to ensure that any criticism is directed at the right place. I have no doubt that some of the tensions result from government policy decisions, which HMRC has then been left to implement. I am sure that HMRC could live without the high-income child benefit charge, which has dragged more and more individuals into the self-assessment system. In January 2022, HMRC put that number at 150,000.

Some of the lobby groups are also very vocal. The Tax Justice Network and others regularly call for HMRC to conduct more prosecutions, and for promoters of tax schemes to be subject to much more stringent sanctions. HMRC decisions on specific cases can also attract attention – most recently, the settlement agreed with General Electric. The Tax Justice Network's attempt to judicially review HMRC's decision was refused. For what it's worth, I think HMRC was right to settle and most likely it should not have pursued the matter in the first place.

Ministers have previously challenged HMRC to make better use of its existing resources. It has over 70,000 staff but only a relatively small number are deployed on front line duties. If more resources were given to HMRC, what would be the expected outcome?

In my experience, where HMRC's resources are limited, this results in less being done – not necessarily different things being done or the same things done in a more efficient way (which brings into question the government's current goal of streamlining the civil service). Assuming that there is no change in HMRC's strategy, the inevitable outcome would be more of the same.

But it is not obvious to me that any increased resources would be deployed where they are most needed to ensure that 'ordinary taxpayers' get the service they are entitled to. And without a change in strategy, the 100,000 open enquiries could as much as double, bringing the tribunal system – already feeling the strain with tens of thousands of appeals on its hands – under even greater pressure.

However, when judging HMRC's customer service levels, it is essential to remain in the real world. There was obviously a time in the past when customer service was better but it would be unfair to HMRC to suggest that there was a Golden Age once enjoyed by a typical taxpayer.

For example, the office I started in during the 1970s was subject to repeated criticism by the Scottish Press for error and delay. Back then, it weighed the mail, rather than counting it. And when a physical count was required, its various questionable practices resulted in low 'taxpayer post on hand' numbers being reported – despite the vast quantities of unanswered post everywhere to be seen!

In the 1980s, things got so bad that the Inland Revenue introduced a national scheme, 'Dealing with Post', which resulted in inspectors sometimes spending more time counting post than dealing with it, while a ludicrous traffic light system prioritised tasks by age rather than importance.

Since 2005, no doubt partly in response to public pressure, HMRC seems to have moved so many staff into anti-avoidance that, far from delays in answering the phone, it's a wonder anyone is available to answer the phone at all! Some of the wait times that tax advisers report are dreadful. I gave up on HMRC helplines years ago and, in truth, they are effective for only the most routine of queries, which we should really be able to resolve without HMRC intervention.

So, if giving HMRC extra resources would not improve customer service and compliance, what would?

A solution!

I have come up with a solution. Do less, but do what you do much better. It is a revolutionary thought!

When David Varney was appointed as HMRC's first Chief Executive, he started out determined to improve performance across the board. Strict targets were mooted but, very quickly, after some tetchy exchanges with the Public Accounts Committee, tackling tax avoidance became the main priority. It has since taken on even greater importance to HMRC.

In my view, it is convenient for HMRC to assume that avoidance activity levels remain very high but are they really anywhere near the levels seen 20 or even 10 years ago? More importantly, does tax avoidance justify the huge resource commitment (and new legislation) that HMRC currently gives to tackling that which remains, much of which is historic?

Look at almost any tribunal or court decision in recent years and you will find an issue that dates back years. As I see it, there are some key areas where HMRC could bring about significant improvement: better training of staff at all levels; better and greater use of technology; and a wholescale rethink of HMRC strategy, in particular the litigation strategy.

Training: learning to challenge

Take training. Tax is hard. HMRC says that 'tax does not need to be taxing' but the fact is that for millions it is. Too often, it's hard because HMRC makes it hard. I fully accept that I am no longer expert in the training that HMRC staff receive but I am very familiar with how HMRC officers operate. With few exceptions, the HMRC officers I have had contact with over the past several years have been determined, bright and at times pragmatic. Too many, however, appear constrained by a 'central bunker' approach from which they dare not deviate.

I would argue that you learn more from your mistakes and it is that determination to do better which develops highly effective practice and future leaders. I could list almost every major mistake I have ever made, and it would be a very long list. But too often, I have faced HMRC officers pursuing impossible points or pointless issues, where the law and sometimes their own guidance is against them, or any additional tax to be gained is low. And yet they can issue long lists of demands, over periods stretching for months or even years, with at times no regard for the expense to the taxpayer. The easy decision for HMRC is to keep a case open, rather than accept that it should be closed.

The litigation strategy pops up everywhere and it is clearly influencing HMRC's approach, so that needs to be reformed. There is nothing wrong with the strategy, but everything wrong with how widely it applies. HMRC must take a different approach to lower value issues. HMRC persisted with *Charlton*, *Tooth* and *Smith & Williamson* despite it being clear that failure was inevitable. And most of these cannot be justified on the grounds that they somehow bring clarity or improvement to the tax system.

Better training is not just about attending courses. It is even more important that a collegiate environment exists, where HMRC officers can challenge and be challenged by peers about their case selection and case strategy. You cannot do that when how you pursue an issue is wholly dictated to you from above. I would bet that easing the litigation and settlement strategy would result in thousands of open cases being closed, as well as a substantial amount of additional revenue. I would also bet that it would not have the slightest detrimental impact on the integrity of the tax system.

Customer services: better communication

On customer service, HMRC must evaluate the customer channels that are effective and discontinue those that are not. It seems clear that telephoning HMRC is just a cause of heartburn for many. If HMRC cannot provide an effective and efficient call system, it should discontinue general telephone contact completely and instead explore the expansion of online communication channels.

HMRC should do more to identify the issues that cause problems for its customers. With enquiries, it should provide clear contact information (both telephone and email) at the outset so that communication difficulties do not get in the way of progressing an enquiry. More importantly, unless necessary (and rarely will it be), HMRC should be upfront as to why an enquiry is being made. I have never understood this lack of transparency, when greater openness often leads to better compliance outcomes.

Technology: the extent of change

Then there is technology. The pace of change when it comes to tax seems glacial. Recently, I received a letter from a company that had carried out some maintenance on my house. It apologised for having to ask me for email and so on but said that 'HMRC was forcing it to go digital'. But this business should have gone digital years ago, and HMRC should have been in better shape to have ensured that it did.

Technology holds such promise to completely transform every aspect of our tax system. Given the rate of technological advance, the full extent of that change is not yet evident. But we seem to have been talking about making tax digital for ever, while many self-employed individuals and landlords are still not yet ready for the transition.

And yet...

And yet, recently I had to contact HMRC about an old client matter I thought had been settled years ago, which had involved many of the failings I have touched on here. Despite numerous appeals, an alternative dispute resolution process and a contract settlement, it seems that it had not been settled and HMRC once again started demanding penalties.

The HMRC officer (Mark) who took responsibility for it acted in a way that was frankly amazing. He listened, clarified the issues, discharged the incorrect penalties, issued a refund, and kept me informed of what he was doing throughout. Perhaps HMRC has, post-pandemic, turned a corner, and this approach may be seen more often. Indeed, perhaps HMRC has been reading Robert Burns!

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Key Points

What is the issue?
The concept of connected persons appears throughout the direct taxes legislation. This article focuses on how two individuals can be connected by virtue of being part of the same family.

What does it mean for me?
Families and tax law share a reputation for being complicated and so the provisions for connecting family members for tax purposes must be approached with caution.

What can I take away?
The connected parties rules are starting to lose their appropriateness as the nuclear family declines in significance. With marriage and civil partnership at the heart of these rules, a number of family relationships are left outside of their purview.

Family connections
The ties that bind

The definition of connected persons is complicated, and becoming more so as our social norms evolve. With marriage and civil partnership at the heart of the rules, not all families fall neatly into the legal classifications.

by Sam Dewes

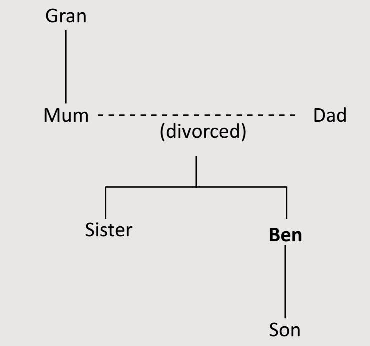
The concept of connected persons appears throughout the direct taxes legislation. Usually its purpose is to treat connected persons differently to unconnected persons on the basis that they may be able to work together to achieve an outcome that would not be possible in a normal commercial environment.

There are a number of ways that two persons can be connected, particularly in the context of companies and trusts. The focus here is solely on how two individuals can be connected by virtue of being part of the same family (hereafter called a 'family connection'). Families and tax law share a reputation for being complicated and so the provisions for connecting family members for tax purposes must be approached with caution.

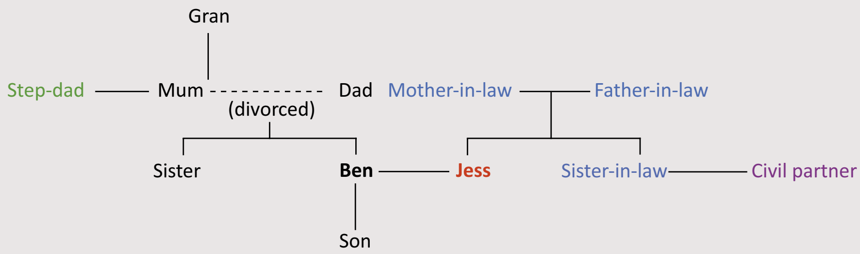
The general definitions of connected persons in the main direct taxing Acts are:

- Taxation of Capital Gains Act (TCGA) 1992 s 286 (the 'primary definition');
- Inheritance Tax Act (IHTA) 1984 s 270 (borrowed from the primary definition with a couple of extensions);
- Income Tax Act (ITA) 2007 ss 993 and 994 (the 'primary definition' but worded differently); and
- other definitions borrowed from ITA 2007 s 993, Income Tax (Earnings and Pensions) Act (ITEPA) 2003 s 718, Corporation Tax Act (CTA) 2009 s 843, CTA 2010 s 1122, and Income Tax

BOX A: 2021 FAMILY CONNECTIONS

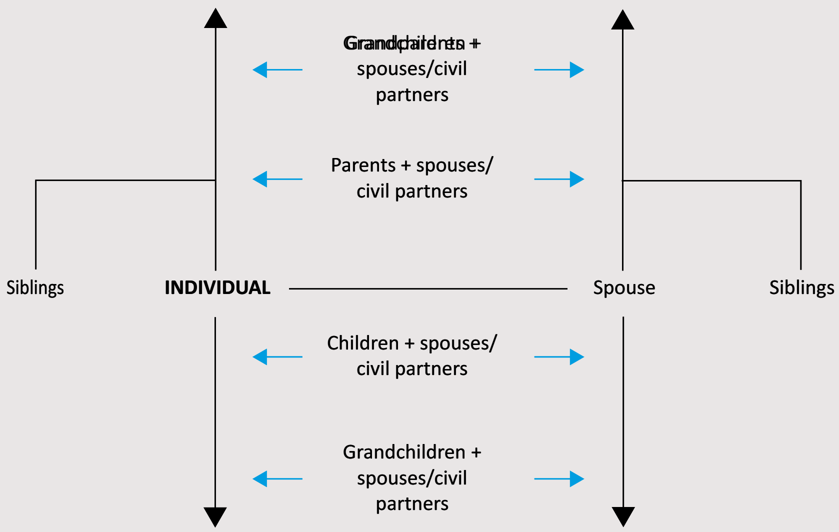


BOX B: 2022 FAMILY CONNECTIONS



BOX C: SUMMARY OF FAMILY CONNECTIONS

This is a chart based on the diagram in HMRC's manual CG13580. It summarises the different ways that family members can be connected with each other.



(Trading and Other Income) Act (ITTOIA) 2005 s 878(5).

These general definitions are, of course, subject to any specific definitions that apply for a particular purpose in the Act.

The primary definition

Under the primary definition of connected persons at TCGA 1992 s 286, an individual 'A' is connected with 'B' as a member of their family if A is:

1) B's spouse/civil partner; or
2) B's relative.

Pausing here, a relative is a sibling, ancestor (parents, grandparents, etc.) or lineal descendant (children, grandchildren, etc.). It is suggested that half-brothers and half-sisters are not siblings for this purpose (in ITTOIA 2005 s 804A(6) they have to be expressly included). Adopted children are lineal descendants of their adoptive parent(s) only under the Adoption and Children Act 2002 s 67. Then the list gets more complicated. The following groups are also connected with B:

3) relatives of B's spouse/civil partner;
4) the spouses/civil partners of B's relatives; and
5) the spouses/civil partners of the relatives of B's spouse/civil partner.

These types of relationship are easier to digest with an example and some pictures. Let's say person B here is Ben. Ben is unmarried, and has a son from a previous relationship. His immediate family in 2021 is shown in ***Box A: 2021 Family Connections***. They are all connected with him under group 2 above by virtue of being his relatives.

2022 is the year for long term commitments. Ben marries his new girlfriend Jess and his mum marries her boyfriend (making him Ben's step-father). Jess's sister enters into a civil partnership with her partner. Ben is now also connected with:

- Jess (under group 1);
- his mother-in-law, father-in-law and sister in-law (under group 3);
- his step-father (under group 4); and
- his sister-in-law's civil partner (under group 5).

This is shown in ***Box B: 2022 Family Connections***.

One may wonder which family members are *not* included under the primary definition. The most common examples are:

- aunts and uncles;
- nieces and nephews;
- cousins;
- partners of Ben and Jess's relatives who are not married or in a civil partnership; and
- ex-spouses or ex-civil partners of Ben and Jess's relatives, assuming that the marriage or civil partnership has legally ended.

The IHTA 1984 s 270 definition of connected parties extends the primary definition by including aunts, uncles, nieces and nephews in the meaning of a 'relative'. Step-families do not fall neatly into any of the groups that are included in, or excluded from, the primary definition and are dealt with separately below.

Step-families

Step-relationships are not generally included within the legal definition of a particular family relationship. For example, a step-child or a step-parent is not included in the meaning of the word 'child' or 'parent' where it appears in tax legislation unless it is explicitly stated otherwise, such as in IHTA 1984 s 8K(3).

Despite this, an individual is still connected with their step-children and

step-parents under the primary definition: step-children under group 3 as a relative of B's spouse, and step-parents under group 4 as a spouse of B's relative.

However, other types of step-relationship are not included. An individual is not connected with their step-brother or step-sister.

Confusingly, there is a mismatch in the treatment of step-relations when looking across three generations. An individual is connected with their parent's step-parent, but not their step-parent's parent. Viewed the other way around, an individual is connected with their step-child's child, but not their child's step-child.

This brainteaser is much easier to follow using the diagram in ***Box B: 2022 Family Connections***. Ben's son is connected with Ben's step-father but not with Jess's mother (and vice-versa).

To create a step-family there must be a marriage or civil partnership between two individuals, at least one of whom is a parent of a child not biologically related to the other. Many families exist where the relationship between the parents has not been formalised by marriage or civil partnership. For example, Ben may have raised his son with Jess acting as the second parent but without marrying her. Even if his son considered Jess to be his step-mother, they would not have a family connection for tax purposes without her marrying Ben. Similarly, if Ben and Jess had married but later divorced, the connection between Ben's son and Jess ends on the divorce.

If not already clear from the above, this highlights the critical importance of marriage and civil partnership to the concept of connected parties. This is reinforced by the continued connection between a couple who remain married or civil partners despite having been separated for many years.

Illegitimate children

Another family group that is defined in relation to marriage or civil partnership is illegitimate children.

This rather archaic term, which refers to children conceived and born outside of marriage, has been made largely redundant in UK tax law since the introduction of the Family Law Reform Act (FLRA) 1987 s 1. Since then, illegitimate children are included as lineal descendants of their parents under the primary definition of connected parties.

Although IHTA 1984 was enacted before FLRA 1987, this author's view is that illegitimate children will still be connected with their parents in IHTA 1984 because its definition is borrowed from TCGA 1992, which was written after FLRA 1987 came into force. In other parts of IHTA 1984, however, the meaning of the word 'child' has to be specifically extended to include illegitimate children where the law deems it appropriate to do so (see IHTA 1984 s 22(2) for example).

From the post-1987 direct taxing Acts, ITEPA 2003 is peculiar in that it specifically disapplies FLRA 1987 s 1 for references to a 'child' or 'children' in the Act (see ITEPA 2003 s 721(6)). Again, this author's view is that illegitimate children will still be connected with their parents in ITEPA 2003 because the connected parties definition is taken from an Act to which FLRA 1987 s 1 does apply, and that definition refers to lineal descendants rather than children. Furthermore, one would generally expect a court to avoid interpreting a statute such that illegitimate children are treated differently from legitimate children wherever possible.

It is worth highlighting, though, that the exclusion of illegitimate children from the meaning of the word 'child' in ITEPA 2003 does have major implications for other areas of the Act, such as the employment benefits code. In view of its inappropriateness to today's society, one would like to think that this provision will therefore be removed.

Comment

Having looked in detail at the types of family relationship that result in two individuals being connected with each other, it remains to take a step back and question whether the rules make sense to families in the UK today.

In recent decades, the number of traditional 'nuclear' families has fallen as attitudes to marriage and family law changes. A variety of other family models have become more common, creating a diverse picture across the UK. Although the majority of families with children in the UK still involve parents who are married or in a civil partnership, their share of all families in England and Wales has fallen from 69% to 61% in the past 25 years alone (see the Office of National Statistics report 'Families and households in the UK: 2021' at bit.ly/3vN8zDb).

Like many parts of the tax code, the connected parties rules may be starting to lose their appropriateness as the nuclear family declines in significance. With marriage and civil partnership at the heart of these rules, a number of family relationships are left outside of their purview.

In reality, the fact that two family members are not connected for tax purposes under the primary definition may come as good news to them. In the case of unmarried couples, it perhaps offsets some of the tax disadvantages they face by not being married. But clearly there is an issue for policy makers as they try to ensure that the connected party rules meet their intended aims without creating knots for those that do not wish to tie them.

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Key Points

What is the issue?
The case of *Richmond Hill Developments (Jersey) Ltd v HMRC* is very pertinent in calculating the future costs of redeveloping listed buildings.

What does it mean for me?
The First-tier Tribunal ruled that the redevelopment of a listed building that still retained its internal features did not amount to 'substantial reconstruction' and so did not qualify for VAT zero-rating.

What can I take away?
There appears to be a conflict between the national heritage rules and VAT legislation. Those faced with similar situations must seek professional VAT advice in relation to their development projects.

Reconstruction of a listed building

The conflict for heritage

The reconstruction of a listed building highlights the conflict between national heritage rules and complex VAT legislation.

by Julie Butler and Libby James

Work to listed buildings is complex with specialist buildings needing specialist tradesmen. Most repairs and renovation work to listed buildings require 'listed building consent' and failure to have this is a criminal offence as opposed to a civil offence. Many consider that all old buildings are 'living buildings' and understandably the costs of renovation are burdensome. The result of a recent VAT tribunal will therefore come as a disappointment.

The case was *Richmond Hill Developments (Jersey) Ltd v HMRC* [2021] UKFTT 290 (TC) and is very pertinent in calculating the future costs of redeveloping listed buildings. The First-tier Tribunal ruled that a reconstruction of a listed building did not qualify for zero-rating as the retained element of the existing building was not de minimis. The tribunal was of the view that the redevelopment of a listed building that still retained its internal features did not amount to 'substantial reconstruction'.

Richmond Hill converted the building into a series of flats with a communal swimming pool, gym and communal sitting and dining areas. After two and a half years of reconstruction, only the exterior walls, roof and several internal features remained to comply with the planning permission. However, this was deemed to be too much in the eyes of the tribunal, resulting in the redevelopment being classified as exempt from VAT, rather than qualifying for the advantageous zero-rating. The input tax incurred on the redevelopment therefore could not be claimed back under this status.

The relevant legislation is Value Added Tax Act 1994 Sch 8 Group 6 Item 1, which zero-rates the supply of dwellings that are the result of a 'substantial conversion' of a listed building. The caveat in Group 6 Item 1 is that zero-rating will not apply if anything more of the original building is left other than the external walls and any other external features of architectural or historical interest.

Richmond Hill argued that the internal features retained were required for structural integrity and were of a de minimis nature, requiring them to be ignored for the purposes qualifying for a zero-rated VAT status.

The facts

The listed building had previously been a care home before Richmond Hill acquired it. A major project was undertaken to convert the buildings into 86 flats with a wide range of facilities, retaining the external walls, the majority of the roof, the internal chapel, marble walls, staircase, internal structure support items and certain features of the King's Room and Queen's room. The preservation of these features was in accordance with the planning requirements.

The tribunal referred to a case called *HMRC v Zielinski Baker & Partners* [2004] UKHL 7. It observed that if VAT was to be zero-rated, the protection of national heritage is second to the housing objective of the VAT provisions. The tribunal found that in order for a building constructed from a listed building to be zero-rated, only external walls and features are to be retained and this ruling had to be applied stringently.

Retention of additional features

HMRC had argued that the retention of the additional features precluded zero-rating and the sale of the converted flats was exempt from VAT, thereby preventing VAT recovery on conversion costs.

Conversely, Richmond Hill argued that specific features were retained in order to maintain the structural integrity of the exterior of the property. It stated that features such as the chapel and marble staircase were de minimis and maintained that the EU principle of fiscal neutrality and proportionality should apply in its favour.

Group 6 Item 1 is an exception to the general rule in Group 5 that to gain zero-rating, a building would need to be demolished and rebuilt as a new building, with internal structural items being ignored if they formed part of the external walls and/or qualified as de minimis. The tribunal accepted that features which were attached to external walls and necessary for their stability formed part of these walls. However, given that the floor slabs provided flooring as well as support for the external walls, these did not. Similarly, the vertical steel truss supported both the external walls and the floor slabs and therefore qualified as an internal feature too. The retained features accounted for 7% of the floor space and therefore could not be deemed as trivial.

The tribunal also considered fiscal neutrality and proportionality and found that neither of these principles were breached and therefore dismissed the appeal by Richmond Hill.

In conclusion

All those who are involved in listed building projects will be disappointed by the decision, considering that ordinary language would imply that the development is substantial.

Unfortunately, there appears to be a conflict between the national heritage rules and VAT legislation and, as is often the case, it seems impossible to please everyone. Clearly all those faced with similar situations must seek professional VAT advice in relation to their development projects about what qualifies as zero-rated and what qualifies as exempt.

On a project of this size, a 'substantial conversion', it is essential to see what has to be retained to meet the requirements of various authorities. It can be argued that it is worth approaching the planning permission in a different way if zero-rating can be achieved and input VAT claimed back.

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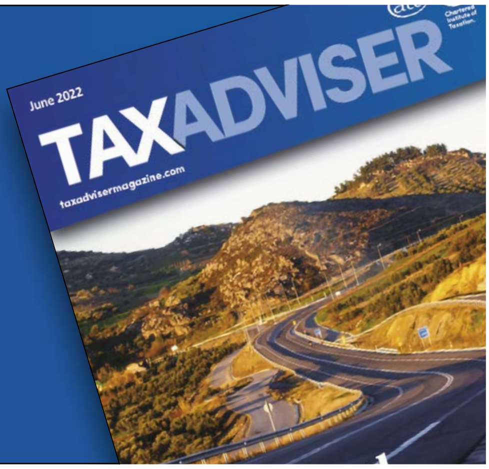

A tale of two sisters

A subjective decision

In the case of two twins with contrasting fortunes, the First-tier Tribunal considers the 'exceptional circumstances' rule in the statutory residence test.

by Keith Gordon

The circumstances underlying this case concern a series of family tragedies which I do not wish to belittle in any way.

Background

After a series of relatively high profile residence cases over the past 15 years, litigation in this field has generally shifted to domicile disputes following the introduction of the statutory residence test with effect from 6 April 2013.

Although the statutory residence test is intended to reduce the question of an individual's residence status to a more quantitative and less qualitative exercise, with the number of days spent in the UK at the heart of the rules, it was always known that there were still some subjective elements within the new test and also areas where the statutory wording might well lead to differing opinions.

The first published decision on the new rules has now appeared in the anonymised decision of *A Taxpayer v HMRC* [2022] UKFTT 133 (TC). It concerns the question of how to count the number of days spent by the individual in the UK in any one tax year. The ordinary rule is that a day is counted if the individual is present in the UK at midnight at the end of that day. However, if the individual is in the UK at midnight due to exceptional circumstances beyond his or her control that prevent them that individual from leaving the UK, then (for up to 60 such occasions in the year) the day is not counted.

The facts of the case

The two main characters at the heart of this case are twin sisters, described here as 'the taxpayer' and 'the twin sister'. However, it is fair to say that their contrasting fortunes could fit within the well-known phrase: it was the best of times, it was the worst of times.

The taxpayer's lifestyle could be described as luxurious, with access to a private jet and a husband who was due to retire within a couple of years. In the tax year in question (2015/16), the taxpayer had received £8 million in dividends from a shareholding that had been transferred to her by her husband

> **The case concerns the question of how to count the number of days spent by the individual in the UK in any one tax year.**

in September 2014, which was shortly before the taxpayer moved from the UK to Ireland. Her husband remained living in the UK, proposing to join his wife abroad once he had himself retired.

However, not everything had been easy. The taxpayer's childhood and that of her four siblings had involved physical and mental abuse at the hands of their father: although all five siblings forged a close emotional bond with each other, this was particularly the case in relation to the taxpayer and her twin sister. Furthermore, one of their brothers developed a history of drug misuse, addiction and mental health issues, before he took his own life in 1996, at the age of 29, whilst living in New York.

The twin sister was also living in New York at the time and had the task of identifying her brother's body. It was the taxpayer's view that this episode marked the beginning of her twin's own problems with alcohol and mental health issues. The twin's marriage broke down in 2010 and in 2011 she moved away from her home in the south of England to live closer to the taxpayer's family home in the Manchester area, together with her young children, who by the 2015/16 tax year were aged 11 and 13.

During that five-year period, the twin's mental and physical health gradually worsened, with suggestions of both alcohol and drug addiction.

Key Points

What is the issue?
The taxpayer would be treated as UK resident for the 2015/16 tax year if the day count exceeded 45 in the year. She had spent 44 nights in the UK, when the need to care for her suicidal sister meant that she exceeded the allowance.

What does it mean for me?
Although the tribunal dismissed the taxpayer's account of what happened, it recognised that the statutory conditions were met by her decision to remain in the UK in order to assist with her sister's children.

What can I take away?
The tribunal's firm rejection of HMRC's approach to the statutory words will be welcomed by many advisers as a much-wanted dose of common sense.


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In 2015, she became involved in an acrimonious custody dispute with her ex-husband over their two children. The taxpayer considered herself the only person who could and would provide the emotional support her twin sister needed. Although the twin sister lived close to the taxpayer's family home (where the taxpayer's husband still lived), the husband had his own crisis (resisting a criminal investigation, which was subsequently dropped) which took up all his available time.

By November 2015, the taxpayer had spent 44 nights in the UK. It was common ground that she would be treated as UK resident for the 2015/16 tax year if the day count exceeded 45 in the year. In December 2015 and February 2016, the taxpayer made two further visits to the UK, amounting to six days, prompted by telephone calls alerting her to a deterioration of her twin sister's condition. These visits would ordinarily take her over the 45-day limit and make her resident, thereby bringing the £8 million dividends into the scope of UK tax. However, the taxpayer argued that those days (strictly, the corresponding midnights) were spent in the UK because of exceptional circumstances, due to the need to care for her suicidal sister.

The case proceeded to the First-tier Tribunal. The case turned on whether at least five of six additional days spent in the UK could be disregarded.

The First-tier Tribunal's decision

The case was heard by Tribunal Judge Guy Brannan and Member Ann Christian.

The tribunal considered the two visits separately.

The December visit started on the Friday evening and the taxpayer returned on the Sunday night. The taxpayer used the private jet available to her and travelled both ways with her school-aged daughter. The tribunal noted that the prompt for the visit was apparently a worried call from her twin sister's solicitor (who was dealing with the custody dispute). However, that call took place in November, some three weeks earlier.

The tribunal also heard evidence about the taxpayer's lunch on the Saturday and Sunday and that, following the visit, she went skiing in the Alps, without having put in place any arrangements to ensure the wellbeing of her twin sister.

In February, whilst in Rome, the taxpayer received a call from her brother asking her to visit her twin sister, as he was worried that their sister was suicidal. The taxpayer explained to the tribunal that she was originally planning to return to Dublin via Manchester, so she could drop her husband off at home. However, the call from her brother caused her to change her plans.

The tribunal also heard that the taxpayer did not leave Rome any earlier than anticipated, enjoyed a lunch for £68 near Manchester and then (probably) visited a Vision Express near her sister's home.

The tribunal also had access to the twin sister's medical records, following her admission to The Priory Clinic in April 2016. Those records appear to dispel the suggestions that the twin sister had suicidal tendencies at that stage.

On the basis of the evidence before the tribunal, it felt that if the visits in December and February were occasioned by the need to care for the consequences of her twin sister's alcoholism and depression, then they did not constitute exceptional circumstances for the purposes of the statutory residence test. As the tribunal continued, 'there were a number of flaws in the appellant's evidence' and the tribunal 'did not find her evidence concerning the twin sister's threats to commit suicide credible'.

However, the tribunal did not stop there. Contrary to its general dismissal of the taxpayer's account of what had happened, the tribunal did accept the taxpayer's description of the state of the sister's home on her visits. As the tribunal concluded, 'she found a dysfunctional household in which her twin sister was drunk and incapable of caring for herself or her children, both her sister and her children were unkempt and in need of care ... the house was filthy ... there was nobody else who could provide the care needed'. In other words, the tribunal felt that the visits to the twin sister were not themselves as urgent as the taxpayer had argued. However, the situation encountered upon her two visits and the urgent care that the taxpayer needed to give to her sister and, in particular, the sister's two children did amount to exceptional circumstances that prevented the taxpayer from leaving the country.

For these reasons, the taxpayer's appeal was allowed.

Commentary

It was of little surprise that HMRC expressed some cynicism with the taxpayer's basic case. The taxpayer was, after all, giving the impression that she was on an urgent mercy mission to help her sister, whereas a close analysis of the timeline and the taxpayer's actual activities suggests a much more laissez-faire attitude. The tribunal's decision to reject the taxpayer's basic case was therefore unexpected.

However, the tribunal was clearly aware of the underlying personal tragedy affecting all members of the family and the taxpayer's desire to assist her twin and her twin's children in their desperate situation. Whilst it does not appear to reflect the taxpayer's main argument, the tribunal recognised that the statutory conditions were met by reference, not to the purpose of the taxpayer's visits to the UK, but by her decision to remain in the UK to assist with the children.

Given how hard HMRC fought this case, I can imagine that it will be disappointed by the outcome and will be considering whether or not to appeal. The tribunal's decision will be one of fact, against which appeals are notoriously difficult as they require the unsuccessful party to argue that the tribunal reached a decision which was unsustainable on the evidence before it.

Whilst I would not wish to give HMRC high odds of success, I do wonder whether it will try to argue that, once the tribunal had decided that the taxpayer's visits to her twin sister were planned and not emergency trips, the fact that the taxpayer then encountered reasons that justified her presence cannot give rise to an exceptional circumstance preventing the taxpayer from leaving the UK.

Indeed, particularly in relation to the December 2015 visit, I am somewhat doubtful as to whether the sister was ever planning to leave the UK on the day of arrival. Adding just those two midnights to the day count, would make all the difference. Furthermore, it might even be possible for HMRC to frame the question as one of law, which could make any procedural difficulties of any appeal somewhat easier to overcome.

It should at this stage be mentioned that much of the tribunal's decision was actually taken up with its firm rejection of HMRC's arguments as to how the exceptional circumstances test should operate.

HMRC had tried to argue that:

1. foreseeable circumstances could not be exceptional;
2. visits to fulfil a moral obligation or an obligation of conscience fell outside the scope of exceptional circumstances;
3. to be exceptional, a circumstance had to arise only once the individual was already in the UK; and
4. the rule had to be applied narrowly.

> **The tribunal's firm rejection of HMRC's approach to the statutory words will be welcomed as a much wanted dose of common sense.**

The tribunal responded to these arguments by describing HMRC's approach as one of rewriting rather than interpreting the statutory provisions, adding that it was 'entirely unjustified' and that this had 'infected HMRC's approach to [the case] from the outset'.

In relation to the fourth point, the tribunal did make clear that the legislation (in its use of certain examples) hinted that, as serious illnesses were mentioned, lesser ailments might fall outside the scope of the exceptional circumstances rule. Furthermore, the tribunal noted that the use of the word 'may', prefacing those examples, meant that even serious illnesses would not necessarily constitute exceptional circumstances. However, such general guidance can be taken only so far: each case must be considered on its own facts.

Furthermore, the tribunal emphasised that those statutory examples were just that: examples. They did not circumscribe the scope of the rule.

What to do next

The tribunal's firm rejection of HMRC's approach to the statutory words will be welcomed as a much-wanted dose of common sense. Even though the tribunal's decision is not binding, it would be surprising if any other judge were to take a different view as to the meaning of the paragraph 22(4) test. It must be hoped that HMRC will revise its approach in other cases.

Of course, there is always the possibility that HMRC will rerun the arguments in the course of an appeal; however, even if they were to challenge the tribunal's ultimate decision, I cannot see that it can seriously expect the Upper Tribunal to take a different view as to the interpretation of paragraph 22(4).

What I hope will not happen is that HMRC might choose not to appeal against the decision but then proceed without any change of policy, as if the First-tier Tribunal's decision can simply be ignored. If HMRC is unhappy with the outcome, there would be every good reason for it to take the case further.

If it doesn't, it is fair to assume that it (at least privately) concedes that its approach to the exceptional circumstances rule has previously been erroneous.

What would be particularly welcome, however, would be if HMRC were then to make a public statement making clear its revised approach. That would be a far, far better thing to do, than what has often happened in the past.

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Key Points

What is the issue?
For the managed service company legislation to apply, there first needs to be a managed service company provider involved in any arrangements.

What does it mean for me?
There are exemptions where the purported managed service company provider is providing legal or accountancy services in a professional capacity, in which case the managed service company legislation cannot apply.

What can I take away?
It's not unusual to find isolated errors which, if they become part of 'normal practice', could change the managed service company outcome, and seeking professional advice is recommended.

Managed service companies

The fact from the fiction

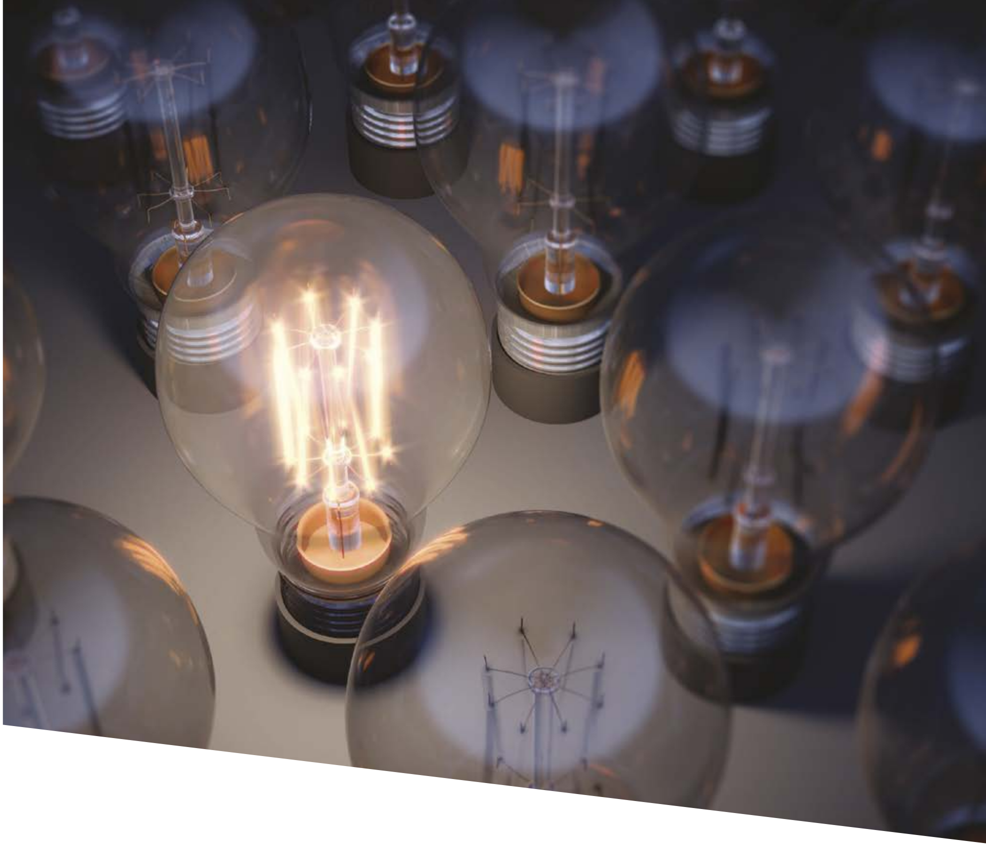
As HMRC increases the number of assessments made under the managed service company legislation, we consider what exemptions can apply to those offering advice and services to contractors.

by John Chaplin and Rob Woodward

There has been a significant amount of coverage in accountancy and contractor press and forums recently on managed service companies. This has largely been prompted by HMRC activity before the end of the 2021/22 tax year, which could be a major issue for the contracting sector if HMRC succeed.

As a starting point, it is useful to have a reminder of the legislation, especially the 'mischief' it purports to address. The legislation was introduced on 6 April 2007 as a response to the government perceiving a significant growth in arrangements to avoid PAYE, NIC and the existing IR35 legislation by providers setting up personal service companies for contractors who might otherwise have been taxed as employees.

The government noted that a whole industry had developed whereby providers were forcing contractors into managed personal service companies by taking on contractors and 'churning out' personal service companies simply to save tax.



How the legislation works

The aim of the legislation was not to focus on the contractors or their personal service companies. (The IR35 legislation already did that and was a time consuming and often fruitless process for HMRC). Instead, it focused on the providers (and any associates) putting the contractors through what HMRC felt was the personal service company 'sausage machine'.

For the managed service company legislation to apply, there first needs to be a managed service company provider involved in any arrangements. This is an organisation or person that 'carries on a business of promoting or facilitating the use of companies to provide the services of individuals'. The managed service company provider can:

- benefit financially on an ongoing basis from the provisions of services of the worker;
- influence or control those services;
- influence or control the way in which payments are made;
- influence or control the personal service company's finances or activities; or
- underwrite any tax loss suffered by the personal service company.

Within the legislation, there are exemptions where the potential managed service company provider is merely providing legal or accountancy services in a professional capacity, or is merely placing individuals at third parties (for example, employment businesses acting as an introductory agent). Where the exemptions apply, that business will not be considered a managed service company provider, such that the managed service company legislation would not apply.

Another key concept is that where the managed service company legislation applies, the assessment of income tax and NIC due will be raised by HMRC on the contractor. However, if the contractor is unable to settle the income tax and NIC due, then HMRC can transfer the debt to other parties, including the managed service company provider. There are limited grounds for the provider to appeal against the transfer of debt. In practice, the most effective appeal would be in tandem with the contractor's appeal that the tax and NIC was not due in the first place – something that will require careful management.

What has changed?

As far as the legislation itself, nothing has changed. However, there have been two important developments since 2007.

The first is the digitisation of accountancy services. Increasingly, accountants and their clients interact electronically, often via information uploaded through portals for the generation of electronic returns. Much of this has been driven by government requirements to file electronically; for example, iXBRL tagging, Real Time Information payroll filing and Making Tax Digital. This means that some accountancy practices operate differently to how they did in 2007.

The second development is that in 2016 HMRC won *Christianuyi Ltd & Others v HMRC*, the first managed service company case to appear before the tribunals. HMRC was also successful in subsequent appeals before the Upper Tribunal and Court of Appeal. Consequentially, HMRC started opening enquiries on the back of its success.

In early 2022, HMRC issued a number of tax assessments resulting from these enquiries. These were seemingly as a result of time limits for assessments needing to be issued by HMRC to protect its chance to collect tax if it was due, rather than necessarily being confirmation that tax was due. As the assessments under the managed service company legislation are raised on the contractors rather than the managed service company providers, the enquiries burst into the public arena when contractors started commenting in public forums about the assessments.

Does HMRC have a case?

Clearly, every case needs to be judged on its merits, which limits the value of some of the general comments made. However, it appears there are two key themes affecting HMRC thinking:

1. HMRC is trying to apply the judgment in *Christianuyi Ltd* more widely.
2. HMRC is seeking to argue that businesses relying on the exemption to being a managed service company provider by providing legal or accountancy services in a professional capacity cannot readily rely on that exemption.

On the first point, clearly no two cases are the same. Indeed, no two contractors or their relationships with their advisors are the same. In taking *Christianuyi Ltd* to the tribunal as the first managed service company case, HMRC clearly picked a case it was highly likely to win. In our view, the facts of that case are not a reflection of wider trends and, importantly, at no point did the purported managed service company provider in question seek to rely on the legal or accountancy services exemption.

The bigger concern relates to the legal and accountancy services exemption. In the run up to April 2007, many organisations undertook assessments to gauge their readiness for the managed service company legislation coming into force and took appropriate corrective action. This resulted in a number of organisations becoming or rebadging themselves as accountants (with, of course, adjustments to their operating

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model). Many of those providers hired and trained accountants and joined accountancy professional bodies, which included signing up to their codes of conduct and regulatory regimes. In other words, they operated as specialist accountancy firms, not businesses churning out personal service companies for no other reason than potential tax savings.

It has now been 15 years since the legislation went live and the way in which a typical accountancy provider operates is a world away from the mischief envisaged by the legislation.

There does appear to be a misunderstanding from HMRC on how accountants operate, particularly when the client is a contractor. Most contractors' accountants have a model that involves the accountant advising on appropriate models of operation and due to general accepted practice, most (but not all) contractors incorporate their business to both take advantage of potential tax breaks but also to ring-fence risks.

HMRC's rather narrow view is that by incorporating, and the contractor's accountant assisting with incorporation, then the accountant is influencing or controlling the way the worker is paid. It does not recognise that a well-run accountants will advise based on the client's position and, where circumstances are more appropriate, advise to not incorporate. Does this sound like a 'sausage machine'?

HMRC seems to have interpreted the standard operating model of contractors' accountants as something driven by tax rather than client service. The standard approach is that the contractor signs up for the services, which are paid for monthly in instalments via direct debit, in anticipation of the accountant filing their tax returns, annual accounts, running payroll, etc. The business rationale for this is to smooth out the costs to ease cashflow – there would be monthly payroll running costs but certain months (for example, January when tax returns are filed) would see larger fees if this smoothing didn't take place.

In HMRC's opinion, monthly billing is 'benefiting financially on an ongoing basis from the provision of services'. A key finding in *Christianuyi* was that flat rate fees in that case meant that the company fell within that provision, which no doubt is why HMRC is taking this position more widely. However, where the service provider is simply spreading the cost over a year, as may be modern commercial practices, our view is that the test is not met.

Another worrying position taken by HMRC emerges where access to the managed company services is via a portal. This allows the provider to receive the relevant information in electronic form to link in with relevant software to enable online filing of returns and perhaps reflects modern preference as well. HMRC's view is that this means the provider is controlling the personal service company's activities. Perhaps this is rooted in the Dickensian view of Bob Cratchit-like accountants on high backed chairs poring over paper ledgers!

HMRC's position is a concern because, if such views are ingrained, it may take a while to reappraise them. As assessment windows are closing, this means there could be further assessments each year until the matter is resolved. These assessments are particularly concerning because the target is the contractor's accountant; however, the assessments are made on the contractor with a subsequent transfer of debt but with no scope for the purported managed service company provider to appeal against the managed service company legislation applying.

What should contractors' accountants and contractors be doing?

The main point is to be vigilant and not rely on historic practice. Instead, accountants should review their position and take advice as necessary to ensure that they aren't getting close to HMRC's view of a managed service company provider. Contractors should ensure that their accountant looks and acts like an advisor and that the contractor makes all relevant decisions – albeit based on best practice advice received.

Changes made in 2007 intended to avoid the accountant being deemed as a managed service company provider may have evolved without the necessary reflection as to whether they undermine their case currently that they are not a managed service company provider. This is both a reminder and a good opportunity to reassess practices to determine whether the organisation is considered a managed service company provider.

Of course, if assessments are received by contractors, they should take advice and appeal within the 30-day time limit if they don't agree with the tax liability requested. Contractors' accountants should react accordingly, taking note of the fact that it will be the client who needs to appeal. However, due to the transfer of debt risk the accountant has a vested interest in those appeals being made in a timely manner and on sensible technical grounds.

Another key message is to keep abreast of developments. This is a current live issue and evolving rapidly (in tax terms anyway) so being flexible and adaptable is important to avoid getting into hot water.

For a contractor, the best question they can ask themselves is: 'Does it feel like I'm dealing with an accountant providing tailored advice to my individual circumstances or does it feel like I'm being sold a set product and expected to fit into their way of doing business?'

If contractors' accountants don't feel certain that they can answer this question comfortably or withstand any HMRC review, they should review the current arrangements to determine whether this presents a risk under the managed service company legislation. It's not unusual to find isolated errors which, if they become part of 'normal practice', could change the managed service company outcome, and seeking professional advice is recommended.

For businesses that have already received notification from HMRC that they are under enquiry, this should be taken extremely seriously. We've defended a number of these cases over the years. None of them are simple but the common theme was that early advice always helped. Contractors should not delay in asking for help if HMRC get in touch!

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Lost deposits
Wishing for the moon

We examine three recent cases on the capital gains tax treatment of lost deposits – *Hardy, Lloyd-Webber* and *Drake* – which discuss the failure of the relevant capital gains tax legislation to reflect economic reality.

by Simon McKie and Sharon McKie

Contracts for the sale of interests in land commonly provide for completion by the payment by the purchaser of the outstanding consideration and the transfer by the vendor of the land interest to the purchaser. Commonly, such 'completion contracts' provide for the purchaser to make one or more advance payments (or deposits), forming part of the consideration given by the purchaser, which the vendor may keep if the contract fails to complete due to the purchaser's fault.

Where the land interest is to be developed and the contract imposes an obligation on the vendor to transfer fully developed land on completion, the vendor is sometimes unable to fulfil this obligation and the transaction aborts. The vendor must then repay the deposit but may be unable to do so as a result of being insolvent. We call such transactions 'insolvent vendor transactions'.

Sometimes such contracts do not complete because, at the completion date, the purchaser has insufficient funds to meet the completion payment forfeiting the deposit. We call such transactions 'forfeited deposit transactions'.

An insolvent vendor transaction was considered in *Lloyd-Webber and another v HMRC* [2019] UKFTT 717 (TC). Forfeited deposit transactions were considered in *Hardy v HMRC* [2016] UKUT 332 (TCC) and *Drake v HMRC* [2022] UKFTT 25 (TC). All were concerned with whether an allowable capital gains tax loss arose to the purchasers and not with the capital gains tax treatment of the vendors.

In *Hardy*, the Upper Tribunal organised its decision by considering in turn three propositions put forward by HMRC's Counsel, which we adopt.

The First Issue: Did the purchaser acquire an asset on making the contract?

In *Hardy,* the Upper Tribunal cited the comment of Warner J in *Zim Properties Ltd v Proctor* [1985] STC 90 that 'not every right to a payment is an "asset" within the meaning of that term in the capital gains tax legislation. Perhaps the most obvious example of one that is not is the right of a seller of property to payment of its price. The relevant asset, then, is the property itself.' The Upper Tribunal's analysis concentrated on what it called the purchaser's right 'to obtain specific performance', which allowed it to ask: 'How then do the contractual rights upon which Mr Hardy now relies differ from his beneficial ownership of the property?' Mr Hardy's counsel ultimately accepted that there was no real distinction.

The answer to the tribunal's question, however, ought to have been clear. Contractual rights are rights enforceable specifically against a specific person or group and cannot confer 'beneficial ownership of the property'. The only equitable interest which the purchaser acquired on the contract being made is the very limited interest which arises to him under the doctrine of the estate contract (see *Jerome v Kelly* [2004] UKHL 25 paras 28 to 34).

Lloyd-Webber concerned an insolvent vendor transaction and was decided in favour of the taxpayer. It was accepted by the parties and the tribunal judge that the case of *Underwood v HMRC* [2008] EWCA Civ 1423 is authority for the proposition that an asset consisting of the rights under the contract is acquired by the purchaser when a completion contract is made. Therefore, the decision in *Hardy* on this issue was not binding on the First-tier Tribunal; and its decisions on the second and third issues (see below) were *obiter* and also not binding.

Key Points

What is the issue?
The capital gains tax system does not give tax relief for certain economic losses on capital transactions – and in some cases there is a mismatch with gains.

What does it mean for me?
It is clear that capital gains tax applies asymmetrically to a forfeited deposit transaction, providing no relief for the real economic loss suffered by the purchaser in being unable to recover the moneys he has paid by way of deposit.

What can I take away?
We need exhaustive and comprehensive statutory rules to determine what is an asset and when an asset is acquired for capital gains tax purposes, particularly in respect of completion contracts.

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In *Drake*, the First-tier Tribunal decision in favour of HMRC was primarily based on its conclusion that the relevant statements in *Underwood* were expressed only in a very tentative fashion, and the tribunal was therefore bound by the judgment in *Hardy*.

Drawing the line

There are contractual rights which might fall within the literal definition in the Taxation of Chargeable Gains Act 1992 s 21(1) which, on a purposive reading, would clearly not be assets for capital gains tax purposes; if they were, capital gains tax would simply not work.

But where must the line be drawn? It is likely to be drawn by reference to the coherence of the capital gains tax scheme. This coherence would be underminde by regarding the completion contract as involving an acquisition of the purchaser's rights for capital gains tax purposes. If the purchaser acquires an asset both on the contract being made (the purchaser's rights) and also on completion (the land interest), how is the consideration given by the purchaser to be dealt with?

As was noted in *Hardy,* to be deductible in calculating the gain or loss arising on the disposal of either asset, that expenditure must have been given 'wholly and exclusively for the acquisition of the asset'. Expenditure with a dual purpose may be allowable only if its main purpose is allowable, and any other purpose is incidental and ancillary.

If the purchaser's consideration under the completion contract is given both to acquire the purchaser's rights and to acquire the land interest, this would seem to have a dual purpose – neither of which could be said to be merely incidental and ancillary. It would only be allowable if it could be allocated in some way between two purposes. That would be a most unrealistic exercise.

In *Lloyd-Webber,* the taxpayers' counsel attempted to deal with this difficulty by reference to the provisions of Taxation of Capital Gains Act 1992 s 43 ('Assets derived from other assets'). He argued that the consideration under the completion contract was given for the purchaser's rights alone; but that on completion, they merged with the land interest. The result was that the land interest derived its value from the purchaser's rights, so satisfying the conditions of s 43.

However, in completion contracts the land interest will normally have existed before the purchaser's rights came into existence, the purchaser acquires his rights before he acquires the land interest which are their subject and, when that interest is acquired, the purchaser's rights cease to exist. The value of the land interest cannot therefore be a result of its acquisition by the purchaser for the interest is unchanged by that acquisition. How can it be, therefore, that 'the value of' the land interest 'is derived from' the purchaser's rights as s 43 requires?

In *Lloyd-Webber,* the First-tier Tribunal simply ignored these difficulties.

What conclusion can be drawn on the First Issue?

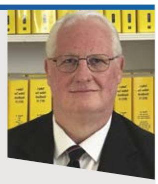
Capital gains tax was introduced some 57 years ago. One might expect that the nature of its basic concepts would be absolutely clear by now. In fact, neither the deposit cases nor any preceding case law provide clear authority on the First Issue which is fundamental to the operation of capital gains tax.

On balance, the difficulties posed to the coherence of capital gains tax if the purchaser did acquire an asset consisting of the purchaser's rights for capital gains tax purposes suggest that he does not do so.

The First Issue and the vendor

The capital gains tax scheme could not operate coherently if it were the case that a vendor acquires an asset for capital gains tax purposes when the contract is made. The vendor's rights under the contract consist primarily of the right to receive the consideration from the purchaser.

If it were true that the vendor acquired a capital gains tax asset on the contract being made, he would also make a disposal of that asset when the right to the payment terminated when the completion payment was made. There is no authority for that proposition and, in practice, neither HMRC nor tax agents act on the basis that there is such a disposal.



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The Second Issue: Assuming that an asset is acquired, is there a disposal of it?

If one assumes that the purchaser's rights are an asset for capital gains tax purposes, it is clear that when, under a forfeited deposit transaction, those rights cease to exist because they are forfeited, there will be a disposal of the asset.

The Taxation of Capital Gains Act 1992 s 144, however, provides comprehensive provisions relating to options, and in particular that the abandonment of most sorts of options is not a disposal by the purchaser of the option concerned.

If, on the contract being made, the purchaser acquires an asset (the purchaser's rights) for capital gains tax purposes and these rights are abandoned under a forfeited deposit transaction, then as the First-tier Tribunal accepted in *Hardy* and *Drake*, s 144(4) and (7) together prevent the forfeiture being a disposal of the purchaser's rights. In insolvent vendor transactions, the purchaser's rights will, in most circumstances, come to have a negligible value. If they are assets for capital gains tax purposes, the purchaser may therefore make a claim under the Taxation of Chargeable Gains Act 1992 s 24 for them be treated as the subject of a disposal. Section 147(7) will not apply to insolvent vendor transactions, because they do not involve a forfeited deposit and so will not prevent there being a disposal under s 24.

What conclusion can be drawn on the Second Issue?

In our view, the tribunals were correct in *Hardy* and *Drake* to decide that even if the purchaser's rights are an asset for capital gains tax purposes, s 144 prevents a forfeiture of the right to repayment of a deposit from being a disposal. We also consider that the First-tier Tribunal was correct to accept in *Lloyd-Webber* that s 144 has no application to insolvent vendor transactions.

The Second Issue and the vendor

Where a vendor becomes absolutely entitled to the deposit payment on the forfeit, a capital sum is derived from the vendor's rights, giving rise to a deemed disposal under Taxation of Chargeable Gains Act 1992 s 22.

In our view, the capital sum is derived from the land interest, although this does not appear to be accepted by HMRC. Therefore, when calculating any gain arising on the deemed disposal under s 22, you can deduct a portion of the vendor's expenditure on acquiring that interest.

The Third Issue: If the purchaser does acquire an asset and makes a disposal of it, does an allowable loss arise?

The UT concluded in *Hardy* that the deposit did not give rise to an allowable loss since it was not 'wholly and exclusively' incurred in acquiring the asset as required by the Taxation of Chargeable Gains Act 1992 s 38(1).

In *Lloyd-Webber*, the First-tier Tribunal disagreed with *Hardy*, finding that the consideration was given by the purchaser for his rights and subsequently merged with the land interest. We have already noted the difficulties which this view poses.

In *Drake*, the First-tier Tribunal followed the authority of *Underwood* in deciding for HMRC on all three issues.

What conclusion can be drawn on the Third Issue?

It is clear that the First and Third Issues are interdependent. In our view, a consideration of the coherence of the capital gains tax system results in the conclusion that, because the purchaser does not acquire an asset for capital gains tax purposes consisting of the purchaser's rights on a completion contract being made, no loss can arise on the termination of those rights under a forfeited deposit transaction – or, contrary to the decision in *Lloyd-Webber*, on their becoming of negligible value under an insolvent vendor transaction.

The Third Issue and the vendor

Whatever view one takes of the Third Issue, it is clear that in respect of forfeited deposit transactions the vendor receives a capital sum which, as we have said, derives from the land interest and gives rise to a deemed disposal under Taxation of Chargeable Gains 1992 s 22.

A need for legislative change?

Capital gains tax applies asymmetrically to a forfeited deposit transaction, providing no relief for the real economic loss suffered by the purchaser in being unable to recover the moneys he has paid by way of deposit. That is either because:

- as we consider most likely, the purchaser does not acquire an asset for capital gains tax purposes consisting of the purchaser's rights and therefore cannot make a disposal of them; or
- if he does, s 144(4) and (7) treat what would otherwise be a disposal as not being one.

In contrast, on the vendor becoming absolutely entitled to the moneys paid by way of deposit, he will be treated as making a disposal under s 22 and will be charged to capital gains tax on any resulting gain.

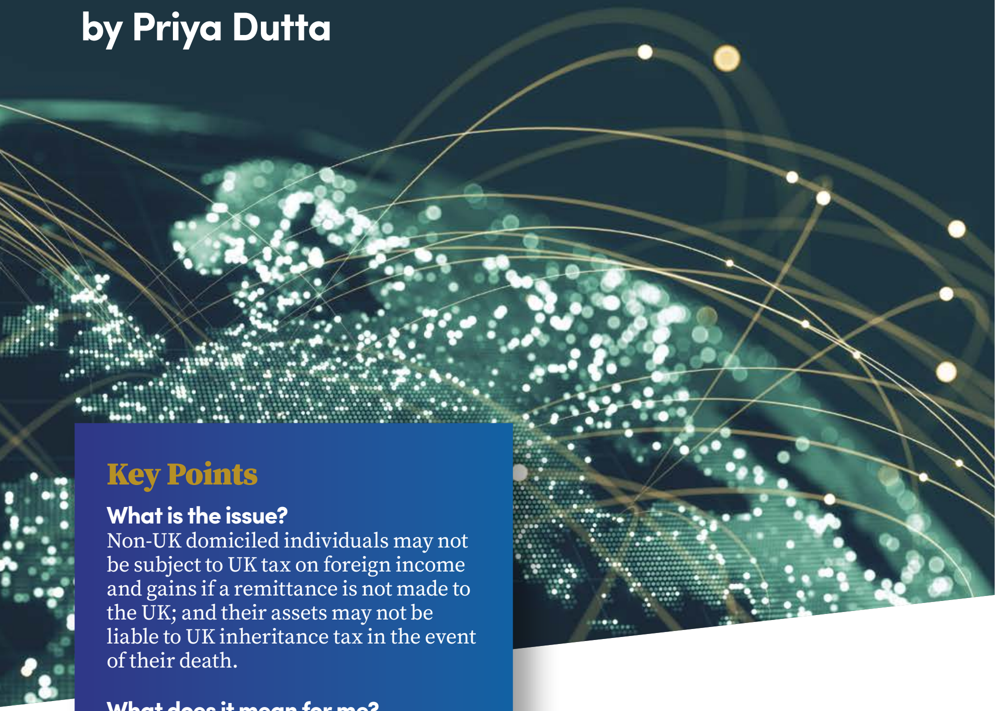
Plainly, the provisions of capital gains tax in respect of forfeited deposit transactions do not reflect economic reality and require amendment. More fundamentally, we need exhaustive and comprehensive statutory rules to determine what is an asset and when an asset is acquired for capital gains tax purposes, particularly in respect of completion contracts. Fifty seven years after the introduction of capital gains tax, that still feels like wishing for the moon.

The rules of domicile

Is home where the heart is?

Domicile may determine not only how a person is taxed in the UK, but also how an individual's estate passes on death. How is domicile determined and what issues can impact an individual's tax status?

by Priya Dutta



Key Points

What is the issue?
Non-UK domiciled individuals may not be subject to UK tax on foreign income and gains if a remittance is not made to the UK; and their assets may not be liable to UK inheritance tax in the event of their death.

What does it mean for me?
There are three main types of domicile – domicile of origin, of dependence and of choice – and there are separate rules which deem an individual to be UK domiciled in certain circumstances.

What can I take away?
Point to watch in practice include losing deemed domiciled status for inheritance tax purposes under the three-year rule, and restriction of the inheritance tax nil rate band on a transfer from a UK domiciled individual to a non-UK domiciled spouse.

The concept of domicile links an individual to a particular jurisdiction. Domicile is a legal concept, which may determine not only how a person is taxed in the UK, but also how an individual's estate passes on death; whether a person has the legal capacity to marry; and whether a person is able to start certain legal proceedings in the English courts.

The concept of 'domicile' and the 'remittance basis' have been a part of the UK tax system for a very long time. When income tax was first introduced in 1799, UK residents were only subject to UK tax on their foreign income to the extent that it was 'remitted' to the UK. In 1914, the remittance basis was restricted only to those residents who were not domiciled in the UK or not ordinarily resident in the UK. Over the years, the rules around remittances and domicile have changed but the fundamental concept remains the same.

Non-UK domiciled residents may elect to be taxed on the remittance basis of taxation, so they are only taxed on foreign income or gains to the extent that they are remitted to the UK (Inheritance Tax Act 2007 s 809B). There is a charge of £30,000 for non-domiciled individuals who have been resident in the UK for at least seven of the previous nine tax years immediately before the relevant tax year, and £60,000 for those resident in the UK for at least 12 of the previous 14 tax years. Furthermore, non-UK domiciled individuals may not be subject to UK inheritance tax on their non-UK assets (Inheritance Tax Act 1984 s 6(1)). This is subject to a non-UK domiciled individual not also being UK 'deemed domiciled' for tax purposes (see below).

The law of domicile under general law

Usually, an individual is domiciled in the country that he or she considers to be their permanent home or homeland. Domicile is a more permanent concept than residence. Unlike residence, an individual can only have one domicile at a time. Every individual has domicile. It is not possible to have no domicile.

Domicile is a separate concept to nationality. Strictly, an individual is domiciled in a territory which has a single legal system. Consequently, an individual is not domiciled in the UK but in England and Wales, Scotland or Northern Ireland. A number of states are composed of several local territories. Common examples include the USA, Canada, Australia and Switzerland – an individual may be domiciled in Florida but not in the USA. For brevity, I will refer to UK domicile.

There are three main types of domicile:

- domicile of origin;
- domicile of dependence; and
- domicile of choice.

Domicile of origin

An individual acquires the domicile of origin at birth. In most cases, an individual's domicile of origin is the domicile of their father at the time of birth. However, where the individual's parents were not married at the time of birth, or the mother was widowed, the domicile of origin will follow where the

EXAMPLE: THE IMPACT OF RESIDENCE AND INTENTION

Dmitri and his younger brother Ivan were born in Russia with Russian domiciles of origin. Dmitri came to the UK to work in 2004 and has been living here ever since. During 2006, Dmitri called his brother Ivan to work in the UK with him. Together they set up a partnership.

Dmitri has a wife and child in Russia. He intends to work in the UK for ten years to save enough money to buy a small hotel in Russia to run with his wife. Dmitri does not acquire a domicile of choice in the UK.

Ivan marries a British woman in 2007. They agree to settle in the UK. Ivan plans to dissolve the partnership and remain in the UK after Dmitri returns to Russia. Ivan has acquired a domicile of choice in the UK.

mother was domiciled at the time of birth. The Adoption and Children Act 2002 provides that an adopted child is treated as having acquired a new domicile of origin from the relevant adoptive parents. Their domicile of origin will follow the domicile of the adoptive father (or if there is no adoptive father, the domicile of the adoptive mother at the time of his adoption.

Domicile of dependence

Where individual does not have legal capacity and is dependent on another, his or her domicile follows the domicile of the person on whom he is dependent. This is known as a domicile of dependence. The most obvious examples of a dependent individual are minor children and individuals who lack sufficient mental capacity. Historically, married women were also regarded as dependent persons. Although the rules changed in 1974, these rules may still apply to women who married before 1974.

The domicile of a minor child usually follows that of the person on whom they are legally dependent. Under current rules, the term minor means any individual under the age of 16. However, under previous rules the term minor referred to individuals under the ages of 18.

Usually, where a minor individual's parents were married at the time of his birth and their father changes his domicile, the minor loses his domicile of origin and acquires a new domicile of dependence. The domicile of dependence will match the father's new domicile of choice. If the individual's parents never married, the individual's domicile may follow that of the mother.

Domicile of choice

An individual with legal capacity can acquire a new domicile (a domicile of choice) in any country. In order to acquire a domicile of choice, a person must:

> **The domicile of a minor child usually follows that of the person on whom they are legally dependent.**

- be resident in that country ('the residence element'); and
- intend to remain there on a permanent or indefinite basis ('the intention element').

In the event, that an individual has the intention to acquire a new domicile but does not become resident in that new territory, their domicile remains unchanged.

Conversely, an individual may also lose their domicile of choice and either acquire a domicile of choice in a new country or revert to this domicile of origin. In order to lose their domicile of choice, a person must cease being resident in that country and cease to intend living there on a permanent or indefinite basis. It is not enough for an individual to simply stop wanting to live in a country on a permanent or indefinite basis: they must also stop residing there.

The residence element

In most cases the question of an individual's residence should not cause any difficulties. Where an individual is resident in more than one country, they will be treated as resident in the country in which their chief residence lies (*Plummer v IRC* [1987] STC 698).

The intention element

In order to acquire a domicile of choice in a new country, the individual must intend to remain there on a permanent or indefinite basis. Deciding the issue requires a review of 'the whole of the [person's] life, at what life has done to him and at what were his inferred intentions' (*Gaines-Cooper v HMRC* [2007] STC (SCD) 23.

Where, for example, an individual comes to the UK to work for a limited period of time and intends to return to his homeland at the end of that period, they would usually lack the required intention element to acquire a domicile of choice in the UK. Where, however, while living in the UK, the individual changes their intentions and intends to remain in the UK permanently or indefinitely, they would acquire a domicile of choice in the UK on the date intentions changed.

The key question is in what event would the individual leave the UK. If that event is definitive and precise – for example, in the event that a work contract comes to an end – they are likely to lack the required intention element to acquire a domicile of choice in the UK.

In contrast, if the timing of the event is vague, such as 'making my fortune in business', the contingency may be found to be imprecise and the individual may be found to have acquired a domicile of choice in the UK.

In practice, strong evidence is required to prove to HMRC that an individual has acquired the intention to live in the new country on a permanent or indefinite basis (*Cyganik v Agulian* [2006] EWCA Civ 129). Merely living in the new country for a long time is not sufficient; a person must also show that they have severed their ties with their country of origin.

While each case is determined on the facts, the following factors are normally considered:

- residence;
- nationality and citizenship;
- where any homes are;
- where family lives;
- where any business interests are;
- where any employment is held;
- where social connections are (e.g. club memberships and societies); and
- the law governing the individual's will.

Deemed domicile

For tax purposes, an individual may be deemed to be domiciled in the UK, even though for common law purposes they are not in fact domiciled in the UK. A deemed domiciled individual is taxable as a UK domiciled individual (Income Tax Act 2007 s 835BA(1)).

Until 5 April 2017, the concept of deemed domicile only applied to inheritance tax. Under these rules, an individual resident in the UK for 17 of the previous 20 tax years would be deemed to be domiciled in the UK and subject to inheritance tax on their worldwide assets. They would therefore be taxable to inheritance tax in the same as an individual domiciled in the UK.

From 6 April 2017, the domicile rules changed. The deemed domicile rules were extended to apply to *all* taxes. Under these new rules, an individual would become deemed UK domiciled if:

- they are UK resident, have a UK domicile of origin and were born in the UK ('formerly domiciled resident'); or
- they have been UK resident for more than 15 of the 20 previous tax years ('the 15/20 rule') (Income Tax Act 2007 s 853BA).

In addition, an individual may be treated as domiciled in the UK for the purposes of inheritance tax where:

- they were domiciled in the UK at any time three calendar years before the date of their death or the date of the relevant gift; or
- have a domiciled spouse and have made an election to be treated as UK domiciled under Inheritance Tax Act 1984 s 267ZA.

Points to watch in practice

Counting years: When counting how many tax years an individual has been UK resident for the purposes of the '15/20 deemed domicile rule' include all tax years and any split years the individual was resident in the UK even if under the age of 18 at the time.

Losing deemed domiciled status for inheritance tax purposes: An individual who is not domiciled in the UK under common law is deemed UK domiciled for the purposes of inheritance tax if domiciled in the UK within the three years immediately preceding the relevant time. The relevant time for this purpose is usually the date of death or date of gift. The 'three-year rule' applies to individuals who are actually domiciled in the UK and lose their UK domicile (Inheritance Tax Act 1984 s 267(1)(a)).

Domicile rulings: Prior to 2010, HMRC provided domicile rulings. It may be possible to rely on these old rulings to support that the individual did not have a UK domicile of origin and the individual did not acquire a UK domicile of choice before the date of HMRC ruling. However, it is possible that the individual acquired a domicile of choice in the UK after the date of the HMRC ruling.

Election by non-UK domiciled spouse: As a general rule, a transfer between spouses (or civil partners) is exempt from inheritance tax. There is an exception. Where a transfer is from a UK domiciled (or deemed domiciled) individual to a non-UK domiciled spouse (or civil partner), the exemption is restricted to the nil rate band that applies at the date of transfer (Inheritance Tax Act 1984 s 18(2)).

For example, Paul was married to Saskia. Paul was domiciled in the UK. Saskia is not UK-domiciled. In April 2017, Paul transferred a property worth £500,000 to Saskia. Paul died in March 2021. Of this transfer £325,000 is exempt under the spousal exemption (Inheritance Tax Act 1984 s 18(2)). The remaining £175,000 of value is chargeable on Paul's death.

Where the individual wants to qualify for the unrestricted inheritance tax spousal exemption, they may make an election to be treated as if they were UK domiciled for inheritance tax purposes. An individual may make such an election where: they were not domiciled in the UK; and they are or have been married or in a civil partnership with a UK domiciled individual (Inheritance Tax Act 1984 s 267ZA).

> **Strong evidence is required to prove to HMRC that an individual has acquired the intention to live in a new country on a permanent or indefinite basis.**

The election only applies to transfers or deaths made on or after 6 April 2013. An election is irrevocable. This means that from the date of the election the worldwide assets of the non-UK domiciled elector will be subject to inheritance tax. However, the election ceases to have effect where the elector is not resident in the UK for four successive tax years beginning with any time after the election is made.

Recent decisions

Recent decisions show us that domicile remains a hot topic. Two recent decisions are particularly noteworthy.

The first, *Henkes v HMRC* [2020] UKFTT 159 (TC), demonstrates that it is not sufficient to simply assert that you intend to leave the UK. The facts must support your assertion. In this case, the taxpayer claimed that he had not acquired a domicile of choice in the UK as he intended to leave the UK. The facts of the case contradicted this intention.

He was 76 with no current plans to retire. He had few links to his domicile of origin or any other country outside the UK – a Dutch passport and a holiday home in Spain. In contrast, he had lived for over 50 years in the UK, where his wife, children and grandchildren were settled. This decision is of limited importance. It does not change the fact that an individual has to intend to remain in the UK on a permanent or indefinite basis to acquire a domicile of choice. Furthermore, as an FTT decision, it is not binding.

The second is the Court of Appeal's decision in *Embiricos v HMRC* [2022] EWCA Civ 3 (see Keith Gordon's article '*Embiricos*: the scope of partial closure notices', *Tax Adviser*, March 2022). This case addressed the question of how much information HMRC needs to close a domicile enquiry – and in particular, whether it needs to know the amount of tax at stake before it decides whether an individual is domiciled outside the UK.

The Court of Appeal in *Embiricos* decided that: 'HMRC do not have the power to issue a [partial closure notice] in respect of Mr Embiricos' domicile and remittance basis claim without specifying (assessing) the increased tax due in consequence of that conclusion.' Tax practitioners should therefore be prepared to provide HMRC with the amount of tax at stake in the event that HMRC opens a domicile enquiry.

Final thoughts

Domicile has been a hot topic in more recent years, notwithstanding significant reform in 2008 and 2017. Each reform has resulted in more complex rules and increasing pitfalls for taxpayers. With current discussions about the domicile rules in the press and among the political parties, one can assume that these rules will continue to change and become more complex still.

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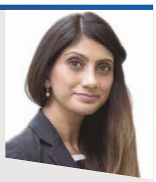

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WELCOME

July Technical newsdesk

This month's Technical Newsdesk covers a relatively small amount of topics, although they address some fundamental issues which affect us all. These represent just part of what the technical teams are currently focused on. We provide regular updates on all our work in the 'latest news from CIOT/ATT' emails, circulated on Tuesday afternoons. I would like to expand on a few other topics.

HMRC service levels

While performance has improved over recent months, for which HMRC deserve credit, contact from members shows that problems persist in many areas. Unfortunately, at the time of writing, very little recent HMRC performance data is available. The HMRC service dashboard (currently being trialled) has only been updated once in about four weeks, and the latest HMRC monthly performance report is for February 2022. Our regular meeting with HMRC senior staff, where we discuss performance issues, has also recently been deferred. My take on this is that HMRC are critically examining the processes for obtaining performance data, and its accuracy. We have encouraged HMRC's moves to improve transparency but such good intentions are undermined if the information provided is inaccurate.

In the meantime, we have been reviewing the suggestions provided by volunteers about where HMRC's systems could be improved. We are already in discussion with HMRC about some of the issues raised. We have also reviewed all the suggestions and are considering the appropriate next steps. If you have ideas of your own, please send them in.

Making Tax Digital

I cannot let a month pass without mentioning Making Tax Digital (MTD). Credit must go to the HMRC team responsible for its delivery, as they are 'reaching out' for our input more than ever.

However, what is becoming increasingly clear, and I think is finally being recognised by HMRC, is the scale of the task ahead – particularly the extension to Income Tax Self-Assessment (ITSA) – and hence the pressures on timescales. MTD for ITSA becomes compulsory in April 2024, yet many issues – such as the requirements for joint owners of properties, and multiple agents – are still to be resolved. The pilot is in very early stages, with HMRC carefully managing its expansion to ensure that it can adequately support those taking part. We continue to discuss the position internally, with volunteers and with other professional bodies, and will consider joint representations to HMRC and ministers where appropriate.

Covid compliance

For many members and their clients, the Covid support schemes are a thing of the past but for some they continue to bring challenges. For example, while the Coronavirus Job Retention Scheme (CJRS) ended on 30 September 2021, businesses are required to correct errors in their claims. This can put agents in a difficult position, such as where they uncover errors during reviews or audits, but the business is reluctant to accept this – after all, the scheme was complex, changed many times during its limited lifetime, and they did the best they could. We have already produced guidance for members in this area (tinyurl.com/2p9e5af7) and we continue to work with HMRC on additional guidance to clarify which calculations and methods give rise to errors that need correcting, and those which do not. We will publicise this when it becomes available.

NEWSDESK ARTICLES

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MANAGEMENT OF TAXES OMB

Basis period reform: correction of provisional figures

The ATT, CIOT and LITRG have engaged with HMRC on potential administrative easements around the use of provisional figures following basis period reform.

From April 2024, unincorporated businesses will be taxed on their profits arising in a tax year, regardless of their accounting period end. Businesses that already draw up their accounts to 5 April (or 31 March) will be unaffected by this change. However, businesses with an accounting period that does not coincide with the tax year will have to apportion their profit or loss from two accounting periods to each tax year. One practical complication arising from this is that businesses with an accounting date later in the tax year may not have drawn up their second set of accounts by the filing deadline for a particular tax year. Business falling into this situation will have to include provisional figures in their return, and subsequently correct these once the final set of accounts are available.

Currently, businesses that use provisional figures have to correct these by way of an amendment to their return as soon as possible once the actual figures are available. In April, HMRC released a technical paper looking at potential easements to reduce the administrative burdens associated with this process once basis period reform takes effect.

The technical paper outlined three potential easements for consideration:

- Option 1: allowing taxpayers to submit amendments up to 12 months after the filing date;
- Option 2: extending the filing deadline for certain groups of taxpayers; and
- Option 3: allowing taxpayers to 'true up' provisional figures in the following year's tax return.

An alternative option, combined with option 3, is the 'safe harbour' approach, which means imposing a de minimis and ignoring small differences. However, HMRC do not appear likely to accept this.

The ATT held a call with HMRC to discuss these options in May. We discussed how it was important to determine exactly how much information will need to be submitted in respect of provisional figures, as this will dictate the level of the administrative burden associated with correcting them. Whilst we agreed that option 1 appears to be the simplest solution, we expressed concerns that, even with this easement, there could be an increase in the need for overpayment relief claims and disclosures if accounts are amended after this extended deadline has expired.

We asked HMRC to consider the practical impacts of these issues further. Whilst we felt that option 2 potentially represented a significant simplification, this would not be the case if payment deadlines were not also extended, as some level of estimation would still be required. On option 3, we agreed there were issues around changes in tax rates and allowances between tax years. It was also not clear how averaging for farmers and the creative industries would work with such an approach.

The CIOT have also met with HMRC. We felt that as option 1 (amending a provisional figure at the same time as filing the return for the following tax year) would only require a change in guidance, it should be implemented even if it might not alleviate the problems of calculating provisional figures and then having to amend them. But we were concerned about potential penalties and the reasonableness test where the actual apportioned profits prove to be much higher than the estimated profits. We were also concerned about interest charges that would arise where a delayed amendment to the return (that is the amendment is done 12 months later rather than as soon as final figures are known) results in extra tax being due.

On option 2, while we agreed that it might represent a simplification for some taxpayers, the extension to the deadline required would vary for different groups of taxpayers, which could lead to confusion. It would also need a significant change in legislation to effect and would require other changes to be made, such as to payments dates. While option 3 has the benefit of not requiring an amendment to a previous return, there would be challenges around framing the legislation, anti-avoidance, etc.

We also queried HMRC's approach to penalties and interest in cases where large differences between provisional and actual profit arose, especially where tax rates and allowances have changed from one year to the next. We felt that if this option was implemented, then it should include an election for either the taxpayer or HMRC to opt for an actual basis (that is, requiring the previous return to be amended) to prevent manipulation of profits, etc. The position on calculating

GENERAL FEATURE

Take a look at the CIOT and ATT websites

The websites of the CIOT (www.tax.org.uk) and ATT (www.att.org.uk) have more information on them than you might expect. We invite you to take a look.

This is where you can find all our core technical work of responses to consultations by the UK government, devolved governments and other bodies, such as the OECD. These can be found under the 'Technical' tab on both websites. But there is much more besides our responses and submissions.

Both websites have pages dedicated to providing topical news updates, as well as the material that HMRC asks us to share to help them communicate information to our members. On the CIOT website, this is the 'Technical News' section within the Technical pages. The ATT website's News section is accessible from its home page, and also includes the ATT's press releases.

The CIOT's media activity is published under the 'Media Centre' tab, where you can also find all of our press releases and blogs on a variety of tax related topics and politics, such as comment on excise duty on spirits and beers, an explainer on UK domicile and non-doms, and comments around the recent Queen's Speech.

Both websites also host pages on specific areas of topical interest where there is significant material. Both websites have sections on Making Tax Digital (MTD) and Covid-19, so that you can find all the information relating to these issues in one place. The CIOT website also has pages dedicated to EU Exit.

Finally, both websites include information about how you can become involved in our technical activities. The CIOT has this information on the page providing information about our technical committees (www.tax.org.uk/our_tcs) and the ATT has a dedicated page about volunteering in our technical activities (www.att.org.uk/volunteer_technical), which provides more information.

So, please do take a look and explore our websites. And get in touch if you have any comments or want to become more involved.

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pension contributions, the high income child benefit charge, tapering of allowances, allocation of double tax relief (both in UK and overseas), etc. would also need reviewing.

LITRG responded to the technical paper by commenting on each of the options from the perspective of an unrepresented low-profit making business. We expressed the importance of considering the options alongside interactions with other areas of the tax and benefits systems. For example, options 2 and 3 in particular could affect student loan repayments, student finance applications and universal credit calculations. We have asked HMRC for clarification on the numbers of unrepresented taxpayers who have an accounting year end from September onwards and so could be affected by these changes. We have also asked HMRC to give further consideration to designing a simplified version of the options that could be used by small businesses; for example, those below a certain turnover/profit threshold.

Lastly, we understand that HMRC will make a decision about which approach or approaches to take by the autumn.

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INDIRECT TAX

Online sales tax

The CIOT, ATT and LITRG each responded to HM Treasury's call for evidence 'Online sales tax: Assessing an option to help rebalance taxation of the retail sector'.

Although no decision has been made on whether an online sales tax will be introduced, should the proposal be taken forward, the tax receipts generated by the tax would be used to fund relief to eligible retailers to relieve their business rates burden. High street retailers typically incur higher business rates on town centre retail properties. This is perceived to create a competitive disadvantage compared to online retailers, who are able to operate from lower value out of town commercial properties that have lower rateable values. This is because business rates are calculated based on the size, value and usage of the property occupied by the business.

In both the CIOT and the ATT's responses, the key point was that neither organisation supported a new tax being introduced solely to provide a funding solution to remedy issues of perceived unfairness in another tax, in this case business rates. However, both organisations also commented on the other questions and issues raised in the call for evidence (tinyurl.com/57m2x2yx) about design, scope and impact technical questions. These responses highlighted the potential complications that could arise if an online sales tax (OST) was introduced.

LITRG's key focus is to ensure that low-income businesses are not affected by an OST. It said that if an OST is to be introduced, this could be achieved by having a high OST registration threshold or an allowance of some form.

The CIOT's response

In May, the CIOT held a joint event with the Institute for Fiscal Studies on OST, allowing a debate between panellists with a variety of views that were both for and against the OST, as well as the opportunity for attendees to ask questions. The CIOT's blog summarising the event and a link of the recording can be found at www.tax.org.uk/shopping_basket_ost. CIOT representatives also attended a meeting with the OST policy team at HM Treasury to talk through the OST proposals from a policy perspective.

The CIOT's response to the call for evidence (www.tax.org.uk/ref932) leads with our principal view that an OST should not be introduced to fund relief to retailers in respect of business rates. If change is needed to business rates, the CIOT's view is that it would be preferable to make changes to the existing business rates system itself. The introduction of a new tax seems a disproportionate way of solving or funding the perceived issue. Alternatively, the CIOT said that we can see a case for adjustments to an existing tax to provide funding, subject to appropriate consultation. Thus discreet changes to the VAT system are considered in the CIOT's response as an alternative to a new OST, though it is acknowledged that this too comes with complexities.

HMT's call for evidence raises the concern that a decrease in business rates for eligible high value retail properties may be simply offset by an increase in the landlord's rent. We agree with this concern and note that it calls into question the whole premise of introducing OST on online sales to rebalance the tax burden on the business away from physical premises. The CIOT's response considers that an OST may instead result in the introduction of new burdens and distortions on businesses and their consumers, to the benefit of landlords, and asks whether this is intended. Our response says that the government should clarify where it intends the burden of the new tax to fall, and why. Without further clarity of the policy intentions, it is difficult to provide well-directed responses to the many complexities highlighted in the call for evidence document.

The outcome of the earlier business rates review (tinyurl.com/5yaeafsp) states that issues around avoidance of business rates will be reviewed in the future, with particular concerns around the misuse of empty property relief. It is not known whether the anticipated business rates revenues lost to avoidance and evasion are similar to the projected income from an OST. If they are, the CIOT questions whether additional revenues arising from targeting such avoidance and evasion would be a better source of funds for retailer reliefs than a brand new, unrelated tax.

As well as the technical questions around the scope and design of an OST for businesses, the call for evidence asked questions around environmental issues. The CIOT's response noted that the OST policy document does not include aims to either change customer behaviour to shop in a less polluting way or to impact businesses' net zero strategies. Businesses likely in scope of an OST will also be dealing with the recently introduced plastic packaging tax and face the new environmental consumer charge the 'deposit return scheme' on some product packaging, to be introduced in Scotland in August 2023 and anticipated for the rest of the UK sometime in 2025.

The ATT's response

In its response (www.att.org.uk/ref395), the ATT similarly says that it does not consider the introduction of an OST to be the best way to achieve fairness for the business rates retailer position. Its view is that trying to reduce an existing tax by introducing an entirely new, potentially highly complex tax is not appropriate. It would be an overly complex solution to an issue which is a reflection of changes in customer preferences and technological development over time.

The ATT highlights that the design of any OST would be complex due to issues with scope and boundary definitions, which may increase over time as technology and retail models evolve, so OST would also not be 'a simple tax' (as was optimistically said about VAT on its introduction in 1973). Also, the ATT said that an OST would not achieve the principles set out in the call for evidence document that tax policy should be 'applied fairly, reflecting the ability to pay; simple, with costs of compliance and

PERSONAL TAX MANAGEMENT OF TAXES

UK Property Reporting Service: ongoing issues

ATT and CIOT are continuing to meet with HMRC to raise concerns and issues affecting the UK Property Reporting Service.

In May, ATT and CIOT representatives met with HMRC to discuss ongoing issues with the operation of the UK Property Reporting Service. This is used for '60-day reporting' in which returns of certain property disposals are reported and the capital gains tax (CGT) is paid shortly after completion. Although the service went live in April 2020, there remain several matters that need to be addressed.

Interaction with self-assessment

For those in self-assessment, details of any gains reported in-year via the UK Property Reporting Service on a 'property return' – together with the amount of tax due – must be included on the self-assessment return to enable the taxpayer's CGT position for the year to be finalised. However, as the property service is a separate, standalone system, the interaction with self-assessment is not always seamless, with particular problems arising if the CGT paid in-year on a property return is subsequently found to be too great. This results in what is referred to in HMRC's manuals as an 'initial overpayment'.

HMRC have made some changes to the 2021/22 self-assessment (SA) return, so that if on completion of the SA return, too much CGT was paid in-year via the property return, the 'initial overpayment' can first be offset against other SA liabilities. If there is still an overpayment remaining after that offset then, once the SA return has been submitted, the agent or taxpayer will still have to ring HMRC's helpline to arrange a refund of the overpaid CGT, as no refunds will be issued automatically via SA. Only those who are eligible to amend their property return (prior to submitting their SA return) will get an automatic refund of in-year initial overpayments – and even then only if they paid by direct debit. This is a modest improvement to 2020/21, when no offset at all was possible without contacting HMRC.

The other major concern, which we raised with HMRC in January, is what to do when a client has not filed the property return, but has reported the disposal via their SA return instead. HMRC confirmed in Agent Update 95 in April 2022 that the property return should be done (even if late) *before* an SA return is submitted. Where the property return is submitted late via the UK Property Reporting Service, it has been reported to us that late filing penalties will appear within 24 hours. However, it is still not clear what an agent should do when they come across taxpayers where only an SA return has been submitted, as the UK Property Reporting Service does not permit property returns to be filed after submission of the SA return, but the obligation to do so remains outstanding. Obviously, there needs to be fair treatment in respect of penalties but HMRC have not yet reached a conclusion on this point.

Agent Authority

Several members have asked for a separate authorisation section on the paper property return (form PPDCGT) for cases where they are not the main agent but only engaged for the 60-day CGT property service reporting. It is not possible to use a 64-8 in these circumstances, as this would replace the main agent's authority. HMRC are considering whether this might be possible.

New manual location and structure

At the end of last year, HMRC added some guidance to their CGT manuals as an appendix 18. This guidance has now been moved to a new home (tinyurl.com/2p8v9etk) and the sections split into separate pages, so that it is similar in form to the rest of the manuals. Some administrative changes will be made to the previous structure of appendix 18 to match the usual manual format, but we understand that the guidance itself is substantively unchanged.

We have raised a point of uncertainty in relation to brought forward capital losses. At paragraph 2.5.1 Enter losses and exemptions, which can be found on the new page CG-APP18-250, the guidance says: 'If the person has capital losses from an earlier year which have been notified to HMRC or are otherwise available, the user can bring those losses in here.' This might be read as saying that losses must be notified to claim them in the property return. However, under FA 2019 Schedule 2 para 14(2), claims are deemed to have been made if they are reasonably expected to be claimed so if the self-assessment return is still in progress and available losses are known, the legislation allows the losses to be taken into account even if not notified. It is understood that HMRC think this is recognised by the reference to 'otherwise available'.

Digitally excluded taxpayers

We are expecting news from HMRC of a route for digitally excluded taxpayers to be assisted via HMRC over the phone to set up an online UK Property Reporting Service account, to which the agent can then be granted access. We will update members via the usual routes when we hear more.

We are next meeting with HMRC on 20 July. If you have any comments or concerns you would like us to raise, please get in touch with us directly or via atttechnical@att.org.uk or technical@ciot.org.uk.

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collection kept to a minimum; and predictable, allowing businesses and individuals to plan for the future in a stable policy environment.'

As well as complications for businesses highlighted throughout the responses to the technical questions in the consultation document, the ATT raised concerns about the distributional impact on consumers, particularly consumers with disabilities, those who find it harder or impossible to shop in store, and people living in remoter areas, with the impact felt most severely by those individuals who are on fixed or low incomes.

LITRG's response

LITRG's response (www.litrg.org.uk/ref2635) highlighted that many small businesses will struggle to deal with any further changes on top of a difficult economic environment, the recent introduction of Making Tax Digital for VAT and, for some, the forthcoming Making Tax Digital for Income Tax. Therefore, if an OST is introduced, LITRG strongly agree with the suggestion of having a revenue threshold/allowance of £1million to £2 million before a business is required to implement any form of OST. If an amount substantially lower than this is being considered, then LITRG consider that an allowance may be preferable to a threshold. This would be more helpful to businesses which may have reasonably high turnover at levels at or around the threshold but earn low profits.

Next steps

HM Treasury will publish the results of the consultation exercise later this year. It is not yet known whether it will be confirmed at that stage if the OST will be taken forward or not.

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PERSONAL TAX GENERAL FEATURE

The Office of Tax Simplification review of the taxation of property income: CIOT, LITRG and ATT respond

The Office of Tax Simplification is reviewing aspects of property income taxation that are complex and hard to get right. CIOT, LITRG and ATT have responded to the call for evidence.

CIOT's response

The Office of Tax Simplification (OTS) joined the CIOT's Property Taxes Committee meeting in March to discuss the current regimes for the taxation of residential property held by individuals, partnerships and micro companies. The review's primary focus is on income received from property. We followed the discussion with a detailed written response (www.tax.org.uk/ref936).

The receipt of property income encompasses an extremely wide range of activities and provides its own complexities and distinctions that are not always present when considering income from other investments; for example, the dividing lines between various types of rental accommodation are quite fine and have become increasingly fluid.

We noted the restriction on deductibility of funding costs for individuals, partnerships of individuals and trustees, but not for corporates or corporate partnerships. This undermines the principle of neutrality, promoting one form over another for tax purposes and thereby potentially distorting the economic choice of structure. It is not clear whether the underlying policy behind the restriction on deductibility, broadly to promote owner-occupier purchasers in the long term, has been delivered as, in many cases, we understand that owners simply transferred their investment properties to corporate vehicles.

Furthermore the policy of promoting owner-occupation is not necessarily consistent across the different regimes; for example, the availability of a full deduction for loan interest under the furnished holiday lets (FHL) regime may favour investment in holiday lets in geographic areas in competition with owner-occupiers, including first-time buyers.

We do not think it is helpful in terms of consistency and ease of understanding that, between different taxes, HMRC consider that property letting can be a business for one purpose and not for another, or that what constitutes a property business as opposed to a passive investment is often a grey area.

We suggest that in view of the length of time that has elapsed since the introduction of the current FHL regime, and the wider societal changes that have occurred during that period, the current FHL regime should be reviewed by the government to ensure it is still meeting policy objectives. The FHL regime has complexities, particularly in the treatment of losses and capital allowances. However, the day-count test provides certainty of tax status, albeit that those tests do not align with the tests for holiday accommodation falling within business rates (instead of council tax) and therefore benefiting from small business rates relief.

For income tax purposes, spouses or civil partners living together are assessed on income from jointly held property ('the 50:50 rule'). In our response, we consider the question of whether there is still a need for this deeming provision for income tax purposes 30 years after independent taxation was introduced and 140 years after the Married Women's Property Act 1882.

In terms of assisting landlords in understanding their tax obligations, it may be feasible for letting agents, platform operators or holiday rental agencies to point to appropriate guidance on GOV.UK but there are several practical obstacles to letting agents and others providing data to HMRC. We remain concerned about lack of awareness of the start of Making Tax Digital for Income Tax in April 2024, particularly among 'accidental' landlords (a landlord who did not acquire the property with a view to letting; for example, on inheritance or because of the inability to sell a former residence following a change in circumstances) or landlords holding only one property.

We also pointed to a lack of understanding by some UK residents with overseas property income of what is declarable to the UK authorities and what deductions can be made for taxes paid overseas. The difference between the UK tax year and the tax year of the overseas state (more often than not the calendar year) exacerbates these issues.

We also noted that in the absence of an agent, a third party tenant wholly unconnected to the non-resident landlord may have no knowledge or means of establishing that deduction of tax is required, or even that their landlord is 'non-resident'. We suspect that few tenants, especially those who have no connection with the landlord beyond that of the landlord/tenant relationship, are likely to become aware of these obligations.

LITRG's response

The Low Incomes Tax Reform Group (LITRG) joined the CIOT in meeting with the OTS to discuss their call for evidence for their review of property income, highlighting the issues faced by unrepresented taxpayers. The discussion was followed up with a written submission.

In our submission, we point out that lower income taxpayers may receive property income for a variety of reasons and that property rental is not merely an income stream of the wealthy. For this lower income and/or unrepresented population, we have expressed concern that there is a lack of clear (yet suitably detailed) public-facing guidance on GOV.UK, even at a basic level; for example, on establishing Self Assessment registration requirements.

We feel this lack of effective guidance is made worse when considering that some areas of tax legislation related to property can be particularly complex in nature; for instance, the furnished holiday let regime, distinguishing between capital and revenue expenditure, and overseas tax interactions. Our response explains that these more complex areas are just as likely to touch lower income and unrepresented taxpayers. Our experience suggests that these taxpayers can be left feeling daunted and confused, which in turn can lead to instances of non-compliance and incorrect submissions.

As ever, we continue to insist that digital capabilities of unrepresented taxpayers must be borne in mind, and that taxpayers who are less digitally confident must be supported and, if necessary, provided with alternative methods to remain compliant.

LITRG's submission can be found here: www.litrg.org.uk/ref2640

ATT's response

The ATT met with the OTS on 8 June to discuss our response to the call for evidence. In common with CIOT, we expressed some concerns over the lack of clarity over the dividing line between business and investment and over the merits of continuing to provide tax-favoured status for FHLs. We also raised concerns about MTD and the challenges this will produce for less digitally confident landlords. There is no obvious benefit for them (and in fact a significant burden) in respect of quarterly reporting.

We raised additional concerns around specific areas such as the lack of understanding and/or the proper use of

Form 17 and questioned whether it remained relevant. We also flagged some unclear guidance on record keeping in respect of the property allowance. Interestingly, all of our volunteers in our meeting were in the process of correcting the affairs of individuals who had recently come to them having failed to report property income over a number of years, suggesting that there remain significant issues over registration and engagement with the tax system by some people with property income.

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GENERAL FEATURE

Scottish Carer's Assistance

LITRG responded to the Scottish Government's consultation on proposals for Scottish Carer's Assistance.

The Scottish Government has consulted on proposals for Scottish Carer's Assistance (tinyurl.com/2p98rw5a). This is a new Scottish benefit that will replace UK Carer's Allowance for eligible carers in Scotland. It will be delivered by Scotland's social security agency, Social Security Scotland.

The consultation covered three areas:

- how Scottish Carer's Assistance will work when it first launches;
- extra money for carers in Scotland, including Carer's Allowance Supplement and a proposed new payment for carers looking after more than one person in receipt of disability benefits; and
- changes to Scottish Carer's Assistance.

It is proposed that Scottish Carer's Assistance will be taxable and that it will be counted as income for the purposes of entitlement to tax credits and means-tested benefits. This means it will follow the treatment of UK Carer's Allowance.

LITRG stressed the importance of raising awareness of the status of the benefit for tax and benefits purposes. We also recommended the provision of clear information to claimants on the taxable amounts of Scottish Carer's Assistance they receive and the amounts they need to declare for the purposes of tax credits and means-tested benefits.

We noted the divergence in the treatment of Carer's Allowance Supplement and the proposed Scottish Carer's Assistance. Currently, carers living in Scotland who are in receipt of UK Carer's Allowance receive Carer's Allowance Supplement. It was introduced as a temporary measure to increase the support for carers in Scotland prior to the introduction of Scottish Carer's Assistance. Although Carer's Allowance Supplement is taxable, it is not taken into account for the purposes of entitlement to tax credits and means-tested benefits.

This is likely to be a potential source of confusion, and makes it even more important that our recommendations about the provision of clear information are acted upon.

LITRG also picked out other areas that would benefit from better guidance than is currently available in respect of UK Carer's Allowance. Examples include guidance on the eligibility of unpaid carers for council tax discounts and guidance on the deductions that carers can make from their earnings when carrying out calculations for the purposes of the earnings limit.

Our response also noted that the introduction of Scottish Carer's Assistance provides the Scottish government with the opportunity to ask HMRC to include the new benefit at Statements A and B of the Starter Checklist. This would help to ensure the correct tax treatment of Scottish claimants who start a new employment while claiming Scottish Carer's Assistance or after having claimed Scottish Carer's Assistance prior to starting the job. Unfortunately, UK Carer's Allowance is not included on the Starter Checklist, but as a taxable benefit, it would be helpful for it to be included.

The LITRG response can be found on the LITRG website: www.litrg.org.uk/ref2637

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Recent submissions

CIOT	Date sent
An Independent Customs Regime www.tax.org.uk/ref927	09/05/2022
Online Sales Tax www.tax.org.uk/ref932	19/05/2022
Review of Property Income www.tax.org.uk/ref936	31/05/2022
ATT	
Online Sales Tax www.att.org.uk/ref395	19/05/2022
LITRG	
Scottish Carer's Assistance www.litrg.org.uk/ref2637	19/05/2022
Online Sales Tax www.litrg.org.uk/ref2635	20/05/2022
Review of Property Income: call for evidence www.litrg.org.uk/ref2640	26/05/2022
Labour Market Enforcement Strategy 2023 to 2024: call for evidence www.litrg.org.uk/ref2641	27/05/2022

News from CIOT and ATT

Minister praises Scottish tax input

Scotland's tax minister praised the input of the tax profession in helping to shape the country's first framework for tax when he spoke at May's CIOT/ATT Joint Presidents' Lunch in Edinburgh.

Following a two-year hiatus, close to 100 guests from across Scotland's tax, accountancy, legal, media and political communities returned to Edinburgh's Signet Library to hear Tom Arthur MSP outline his ambition to improve awareness and understanding of Scotland's tax powers and set out the additional tax responsibilities that Scottish Ministers would like to see devolved to Holyrood when the way the Scottish Parliament is funded is reviewed later this year.

Arthur said that the expertise and advice offered by the tax profession had been integral in the development of Scotland's first Framework for Tax. But he expressed regret that levels of awareness and understanding of the devolved taxes were low, and suggested that more could be done to 'move the dial'. Putting tax into the school curriculum, developing public awareness campaigns and improving the quality of public debate around tax were all put forward as options for consideration.

Thanking Tom Arthur for his remarks, ATT President Richard Todd said that both ATT and CIOT appreciate the open and consultative approach taken to tax in Scotland, adding: 'We hope to be able to bring our knowledge, experience and expertise to bear on all parties looking to make Scotland's tax system work as well as it should for all.'

❶ Scotland's tax minister Tom Arthur was guest speaker at the CIOT/ATT lunch.

❷ CIOT chief executive Helen Whiteman and incoming president Susan Ball (both standing) welcomed Wilna de Bruyn and Keith Engel from the South African Institute of Taxation to the lunch, and hosted a formal signing of the recent agreement between the two bodies (see June's Tax Adviser).

ATT President Richard Todd recognised three outgoing committee members with certificates of appreciation in recognition of their invaluable support to ATT and CIOT in Scotland. These were presented to Sean Coburn (left) for his service as Chair of the Scotland Hub, Alan Dean (right) for his service as Treasurer of the Scotland Hub, and Alexander Garden (who was unable to attend) for his service as Chair of the CIOT Scottish Technical Committee and, prior to that, of the Scotland Hub.

Political update

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

In April, the Finance Committee of the Welsh Senedd (Parliament) published their report on a bill which changes how Welsh tax legislation can be amended, citing CIOT 24 times. This included highlighting the Institute's view that tax changes should be in primary legislation except in exceptional circumstances.

In May, CIOT/ATT Head of External Relations George Crozier attended the launch of the All Party Parliamentary Group for Responsible Tax and Anti-Corruption's Economic Crime Manifesto. The group have asked for our comments on the measures in the manifesto, which include requiring tax advisers to be signed up to a professional body, and an overhaul of anti-money laundering supervision.

CIOT comments have been cited twice in the House of Lords since the last update. Baroness Kramer (Lib Dem) drew attention to the Institute's scepticism over the impact Making Tax Digital would have on the tax gap, while Lord Harlech (Conservative) quoted from evidence the Institute provided to an all party group last year, noting that most farmers cannot access R&D tax relief as it is only available to limited companies.

In May, CIOT and LITRG met with Luke Fletcher, tax spokesperson for Plaid Cymru in the Welsh Senedd. After introducing the work of CIOT and LITRG, we discussed a range of issues including employee ownership, tourism tax and Welsh language software for Making Tax Digital.

Hodge sets out vision for a ‘responsible tax system’

Giving this year’s CTA Address – the first with an in-person audience since 2019 – Dame Margaret Hodge MP argued that a responsible tax system can restore public trust in the tax system and called on the tax profession to rise to the challenge of promoting better public understanding of tax.

The influential tax campaigner – who will stand down at the next General Election after a nearly 30-year parliamentary career – will be remembered by tax professionals as chair of the House of Commons Public Accounts Committee between 2010 and 2015, at a time when it took a heightened interest in the work of HMRC and the tax affairs of multinational companies.

Acknowledging that the last Labour government (of which she was a member) had failed to tackle tax reform seriously, Hodge described the current tax system as complex, opaque and unequal. She said it was littered with inefficient reliefs, many of which were either uncosted or their benefits unmeasured.

She told the audience that she found it ‘grossly unfair’ that wealth was taxed disproportionally less compared to income. As an alternative to the recent NICs increase, she argued for the equalisation of income and CGT rates so that income from a range of sources, such as rent, property and share gains, was taxed equally.

Hodge also called for stronger action to tackle economic crime, including reform of corporate liability law and the establishment of a joint Commons and Lords committee, modelled on the Joint Intelligence and Security Committee (JISC) of Parliament, to hold HMRC to account. This would be able to look at

HMRC papers relating to particular taxpayers in confidence, as the JISC does with security-sensitive papers.

Responding to Dame Margaret’s remarks were John Whiting CBE, the first tax director of the Office of Tax Simplification and current chair of the GAAR panel, and Dan Neidle, founder of Tax Policy Associates, a think-tank dedicated to promoting better understanding of tax.

Whiting said confidence in the tax system was two-way. Not only did it require taxpayers to meet their responsibilities, it also required a tax system accountable to those who use it.

Neidle warned of damaged public faith in the tax system, pointing to the challenges associated with international efforts to tax multinational companies more fairly, and to perceptions of unfairness within the inheritance tax regime that in turn may fuel political desires to abolish the levy.

Watch the address at tinyurl.com/hodge22 or read a fuller report at tinyurl.com/hodge22a

In the news

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

LITRG’s Joanne Walker appeared as an expert on the BBC Wales TV show X-Ray in relation to its investigation of ‘rogue’ tax refund companies.

30 May 2022

‘Gabby Donald, chair of the CIOT indirect taxes committee, said many questions are raised about the introduction of an online sales tax. These include the scope and design of the tax, around its implementation, its effectiveness and what it hopes to achieve.’

YourMoney.com, 11 May 2022

‘The Chartered Institute of Taxation’s Colin Ben Nathan called on the government to implement the Taylor Review, a 2018 report into work practices, which proposed a holistic approach to tax and employment.’

Financial Times, 13 May 2022

‘Tom Arthur told the Chartered Institute of Taxation and Association of Taxation Technician’s joint lunch in Edinburgh that the government wanted to work with tax professionals on refining the tax system and also appealed to them for help in improving public understanding of how it works.’

Daily Business, 28 May 2022

‘There have been multiple calls from thinktanks over the years to increase the High Income Child Benefit Charge threshold, with the Low Incomes Tax Reform Group calling for an increase to £60,000.’

Daily Express, 12 June 2022

CIOT President inaugural speech

Susan Ball: 'I want to be the "in the room" President'

New CIOT President Susan Ball gave her inaugural speech at the Annual General Meeting on 31 May 2022.

Susan began her speech by thanking her predecessor, Peter Rayney, and paying tribute to Her Majesty the Queen in the week of her Platinum Jubilee celebrations. She noted that she is just the fourth female president the Institute has had, but that as the new vice president, Charlotte Barbour is in place to become the fifth in two years' time.

Diversity and inclusion

The Institute takes diversity seriously. How can we represent our wonderfully diverse membership effectively if we do not reflect that at every level?

I am proud of the steps forward we are taking:

- the work of our Equality, Diversity and Inclusion Committee;
- the results of our New Speaker Programme and other efforts to improve the diversity of our panels; and
- our Council and senior management, more diverse than ever before, with Nik Mehta as the Council's EDI champion.

How can we represent our wonderfully diverse membership effectively if we do not reflect that at every level?

But we still have a long way to go, and continuing to make progress in this area is a priority.

Thanks to volunteers

I initially got actively involved in the Institute as a branch volunteer, when 15 years ago I was part of a small group of us who set up the Suffolk branch.

There are more than a thousand volunteers involved with the Institute in its branch and other committees.

We have a wonderful team of professional staff, but ultimately, we are our members. Without their work, insight and all-round contribution our branches couldn't run, our events would not succeed, and our representations would not be listened to. Thank you to all of you who contribute your time, your effort, and your expertise as Institute volunteers.

Embracing change

As we emerge from the pandemic, the Institute is determined to cater both for members keen to get back to face to face meetings and events, and those who want to continue to meet and get their CPD online – as well as those who want a mix of the two.

This hybrid approach will require some extra work and some extra cost, but it will enable us to reach many more members than before, and we are determined to deliver on it.

In this, as in so much else, technology is our friend.

Looking at the decade ahead, I see three big, ongoing trends which will reshape the tax system and we must consider the role *we* can play – embracing change to ensure we remain relevant and delivering on our public benefit obligations.

Technology is the first of these.

This means not just thinking about how we provide *our* services but about how technology will change how our members work and what kind of tax system they are advising on.

That's why an Institute Working Party has developed a syllabus for a new Diploma in Tax Technology. This qualification is aimed at both existing tax professionals who wish to enhance their awareness of tax technology, and at those outside the profession who might wish to work in this area. We aim to launch this new qualification by the end of the year.

And it's also why our technical committees and Low Incomes Tax Reform Group are looking closely at HMRC's plans for digitalisation and use of data. Of course, if technology can make HMRC more efficient that is a good thing, but there must be safeguards. Taxpayers who struggle with accessing services online must be protected. And those who wish to have an agent act for them must be able to retain that right in a digital world.

The second big factor shaping our world is climate change.

What does this mean for the Institute?

Well, first it means looking to our own actions, making sure we embed environmental awareness into our culture and practice. And, working with an external consultancy, we've already begun doing just that.

But it also means thinking about the role of tax in tackling climate change. That's why we set up our Climate Change Working Group, why we published our Climate Change Tax Policy Road Map last year, and why we held two separate debates last year exploring the role of tax in getting to net zero. We don't claim to have all the answers, but we can act as a gathering point for debate and provide a tax practitioner perspective on how different kinds of carbon pricing and other green incentives can be implemented effectively.

The third big factor is internationalisation.

Yes, there are ups and downs, trade disputes and sanctions. But the long-term trend is one of increased co-operation on matters such as tax. This is most obviously visible in the continuing work of the OECD around base erosion and profit shifting, including the plan for a global minimum corporate tax rate, but we also see it in improved information sharing between tax authorities and in efforts to combat climate change.

We continue to be concerned about the difficulties both advisers and taxpayers face getting timely responses and action from HMRC.

What does this mean for CIOT? Well, just as tax authorities are working together, so it makes sense for us to join with tax bodies elsewhere in the world – learning, sharing best practice. We continue to be one of the most active members of CFE Tax Advisers Europe. And we are continuing to build the international CTA community, announcing just two weeks ago the addition of the South African Institute of Taxation to the ranks of those bodies we license to use the designation Chartered Tax Adviser, recognising that, in their jurisdiction, they offer a standard of professional excellence equivalent to our own.

We also, of course, continue to grow our ADIT qualification, now being studied in around 120 countries by tax professionals keen to obtain the world's leading qualification in international tax.

The advance of technology. The fight against climate change. Internationalisation. Three big changes affecting our world, impacting on the tax system, and on which our Institute has a significant role to play.

Cost of living crisis

A more immediate issue right now is the cost of living crisis.

Last week's announcement of a temporary windfall tax on oil and gas companies will jar with some in the tax profession. We prefer our tax policy planned, stable and consulted on.

But with inflation at 9% and rising, and energy bills expected to double in just six months, these are exceptional times. And I think they justify exceptional measures.

The Institute is, of course, carefully politically neutral, but we do seek to enable debate and help policy-makers understand the practical implications of policies they are considering.

So at the autumn party conferences, when we join once again with IFS, the subject of our debates will be the role of tax in tackling the cost-of-living crisis.

As money gets tighter so the tax advice charities become even more crucial. I encourage anyone in a position to do so to support the Bridge the Gap campaign.

And in a similar vein, the role of our own Low Incomes Tax Reform Group becomes even more important, in providing guidance, and speaking up for taxpayers on low incomes.

As an employment tax specialist, I must briefly mention the debate on employment status, the lack of an Employment Bill and the new Matt Warman review into the future of work announced on 12 May.

It is now nearly five years since Matthew Taylor's Good Work report recommended that the level of NIC paid by employees and self-employed people should be moved closer together. More recently, the House of Lords expressed concerns on the lack of clarity around determining status. It is time we made progress on some of these matters.

Standards

Another issue which will occupy us during the next year is the regulation of the tax profession.

The government is considering various options for raising standards within the profession. We understand there will be a further consultation in the summer.

Our position is clear. Rather than creating a costly new government regulator, the most effective way forward in this area would be to build on the good work *already* being done by professional bodies such as CIOT.

Our PCRT rules *already* protect taxpayers and make clear that there is no place in the tax profession for those who devise, promote, or sell tax avoidance schemes.

HMRC service levels

Additionally, we continue to be concerned about the difficulties both advisers and taxpayers face getting timely responses and action from HMRC.

While we have seen improvements in recent months, targets have been missed and problems persist. We are looking at ways in which HMRC's processes and service levels might be improved and will be asking for your views on a range of ideas, including how taxpayers and agents could be allowed to do more themselves, thus easing the pressure on HMRC's resources.

Just as tax authorities are working together, so it makes sense for us to join with tax bodies elsewhere in the world.

Conclusion

So, in conclusion I just want to say how proud I am to be your president for the next 12 months.

If Peter was, through circumstance, a 'Zoom President', I want to be as much as possible the 'in the room' President, meeting as many of you as I can.

Our Institute is just a little younger than Her Majesty. I like to think that, like her, we combine a respect for tradition with a willingness to adapt, with the ethos of public service running through everything that we do. As we celebrate *her* Platinum Jubilee this week let us remember *our* objects, as set out in the Royal Charter she granted to us:

- to advance public education in taxation;
- to prevent crime; and
- to promote the sound administration of the law for the public benefit.

These are goals to be proud of. With your help, I will do *my* best to pursue them with vigour and tenacity over the year ahead.

This speech has been slightly abridged for space reasons. The full speech can be read or viewed at tinyurl.com/ciotsusan

Event
ATT President's Reception

On Thursday 28 April 2022, ATT President Richard Todd hosted a reception at the Mail Rail Building at The Postal Museum.

More than 70 guests attended the evening, including representatives from other professional bodies, employers of ATT members and students and other stakeholders.

The reception provided an opportunity to say thank you to the many volunteers who give their time to assist the Association in its activities and we celebrated the many achievements of Committee members and Branch representatives.

The guests were given the opportunity to explore the museum and journey back in time through the original tunnels and station platforms of London's 100 year-old postal railway.

In his speech, Richard spoke about the challenges of taking all ATT examinations online during the pandemic and how the ultimately successful transition shows the ATT can adapt with the times to provide a good examination service to its prospective members.

Reflecting on his period as ATT President, which comes to an end on 14 July, Richard noted that his predecessor Jeremy Coker had likened the President's office to that of the Captain of a ship at sea: 'It is the elements of nature that are really in control, [but] it is the Captain's (or the President's) responsibility to navigate a safe path, no matter what is thrown in the way, and always with a purpose in mind. On arrival at the final destination, the Captain will hand over the keys to the successor, safe in the knowledge that he has handed over control of a seaworthy vessel to his replacement.'

Technical work
Spotlight on the CIOT's Private Client Committees

John Stockdale and Chris Thorpe take a look at the work of the CIOT's Private Client UK and International Committees.

The broad scope of the Committees' interests reflects that of private client practice. The UK Committee covers all aspects of capital gains, the income tax aspects of trusts and investment income generally, pre-owned assets tax and inheritance tax. The International Committee addresses all aspects of domicile and residence affecting those taxes for individuals and trusts.

The two technical officers operate closely. (Chris Thorpe has recently taken over the international element from Kate Willis.) These committees meet jointly as there is considerable overlap in their activities. The breadth of their work is shown by the variety of topics addressed over the past year.

The UK Committee provided evidence to the All Party Parliamentary Group on Rural Productivity, showing that capital tax considerations may act as a disincentive to the elderly farmer handing the business to a more entrepreneurial younger generation. We also worked with other representatives on the Capital Taxes Liaison Group to assist HMRC in the formulation of workable regulations to relax the reporting requirements for estates below the inheritance tax threshold which took effect from 1 January 2022. We are also responding to the consultation on extending the limited concession for small amounts of trust or estate income.

A huge amount of time and effort continues to be dedicated by Committee volunteers and staff on engaging with HMRC to ensure that the guidance in the Trust Registration Service manual is both accurate and practical, prior to the implementation of the Fifth Anti-Money Laundering Directive on 1 September 2022. Much of this is done through the Trusts and Estates Agents Advisory Group which meets regularly with HMRC.

The Committee engaged with the Office of Tax Simplification's review of capital gains tax in 2021 through written submissions and informal consultation and are in discussion with HMRC on implementing aspects of the review, including the CGT treatment of divorce.

The Finance Bill 2022 reflected our suggestions for a technical change to the legislation governing the CGT returns for disposals of UK land, the extended timescale for reporting such disposals and for related payments on account to 60 days (from 30 days) and the CGT treatment of assets applied to the expanded Dormant Assets Scheme. We also contributed to HMRC's consultation on full manual guidance for the 60-day CGT on UK property reporting regime.

The International Committee published a detailed technical note on the tax treatment of loan collateral for remittance basis users and compliance issues, following HMRC's change in approach in this area. We have also identified areas of uncertainty in the application of business investment relief with the aim of seeking clarification of HMRC's views in published guidance.

The Committee contributed to the CIOT's response and engagement with HMRC on two discussion documents: 'Helping taxpayers get offshore tax right' and 'Preventing and collecting international tax debt'.

Our engagement with HMRC over difficulties that became apparent over the Finance Act 2020 changes to IHT excluded property trusts resulted in our analysis being agreed in respect of the spouse exemption being applicable to gifts with a reservation of benefit, and the IHT manual guidance being revised accordingly. Efforts on other areas of difficulty continue.

Our volunteers contributed to the CIOT's representations on the Economic Crime (Transparency & Enforcement) Act 2022, highlighting the Act's shortcomings with respect to offshore entities owning UK property. We also fed into the CIOT's 2021 Budget representation 'Exchequer implications for the UK of a sustained behavioural shift to remote working abroad', a cross-committee initiative.

John Stockdale (UK) and Chris Thorpe (International) Technical Officers, CIOT:
jstockdale@ciot.org.uk
cthorpe@ciot.org.uk

ADIT
New Champion for the Gulf States

The six countries of the Gulf Co-operation Council (GCC) form a rapidly developing international tax environment, characterised by significant tax reforms. For tax professionals across the region, keeping up with the competition depends on the highest standards of technical expertise and continuous professional development.

Our newly recruited Champion for the Gulf States, Anas Salhieh, knows this, as an ADIT qualification holder and Tax Partner for MMJS Consulting. Of course, he also spreads the word about ADIT's benefits for fellow tax practitioners across the Gulf.

Reflecting on his student journey, Anas says: 'Studying for ADIT developed my understanding in international tax matters and gave me a competitive advantage as a tax practitioner. Further, it broadened my understanding on how the tax laws are read, treaties are used, and international tax actions are applied. It also developed my drafting skills, tax terminology, and tax planning knowledge.

'With the tax reforms that are happening in the Gulf states, my aim as an ADIT Champion is to motivate lawyers, accountants and tax professionals, whether in the private or governmental sector, to join the ADIT community and elevate their international tax knowledge, get ahead of the market and provide support to taxpayers within the region. I look forward to promoting the benefits of the ADIT qualification and Affiliate subscription to professionals across the Gulf states.'

This brings the number of ADIT Champions to seven worldwide. All seven have completed the ADIT exams and work in international tax, combining their personal insights with the technical knowledge that the qualification provides. The Champions play a crucial role in promoting ADIT learning in their countries, and in serving their respective ADIT communities.

To find out more, or to contact your nearest ADIT Champion, visit: www.tax.org.uk/adit/champions.

Join our LinkedIn community

Our global and regional ADIT LinkedIn groups offer a great way to debate emerging international tax issues and opportunities, or to discuss relevant tax subjects (including ADIT) in your area. Visit www.tax.org.uk/adit/social-media and join your local group today!

A MEMBER'S VIEW

Senga Prior

Tax senior manager, Johnston Carmichael

ATT Council member Senga Prior will take on the role of Vice President from 14 July 2022.

How long have you worked in tax?

I have been working in tax for over 20 years. Prior to that, I worked in the accounts departments of various firms. I dealt with everything from payroll and VAT returns to management accounts. I decided I wanted a change and joined the tax department of a small, local accountancy firm. After several years, I was given the opportunity to join my current employers, Johnston Carmichael. I deal mostly with private client compliance work and I help manage our team of over 50 compliance staff based in offices throughout Scotland.

As the incoming Vice President, what are your plans for 2022 and beyond?

The Vice President represents the ATT at various events when neither the President nor Deputy President are available. I will also attend the Leadership Group meetings with the Deputy President, President and two Past Presidents. In addition, I chair the Technical Steering Group of the ATT and represent the ATT on several other groups. We are entering an interesting period of change with the introduction of Making Tax Digital for Income Tax and basis period reform. It is important that we ensure our members are as well informed as possible.

What are you looking forward to in your new role?

The opportunity to represent our members and the ATT. It is important that we continue to be the voice of our members in the changing tax world. We must also remember our charitable objectives to educate not only our students and members but also the public at large.

In your career and as incoming Vice President, who influenced you?

The tax and accountancy worlds are still very male dominated but the ratio is improving all the time. I would consider the women I have been privileged to work with during my career and during my time as an ATT volunteer as my greatest influences.

How would you describe yourself in three words?

Empathetic, dedicated and determined.

What advice would you give to someone starting out in tax?

Take all the opportunities you can to experience all areas of tax before deciding on what you want to specialise in. There are so many diverse sectors so find the one that appeals to you most. Do not fear the unknown. Learn to embrace change.

What are your predictions for the tax industry in the future?

Covid lockdown has already changed the way we interact with more online meetings and the digital exchange of information. However, I see that as an exciting opportunity. The more we can encourage our clients to embrace the digital world, the more real-time information we will have access to and the better, more informed advice we will be able to provide.

Tell me something about yourself that may surprise others.

I am a granny to two lovely grandsons who I am very fortunate to live near and see often. The youngest one thinks you should know that his granny has fairies in her garden who bring chocolate!!

Senga joined Council in 2017 and chairs the Technical Steering Group. She is ATT's spokesperson for Scottish taxes and the ATT representative on the Issues Overview Group and the Scottish Devolved Taxes Collaborative. Senga became a Fellow of the ATT in 2017. She works as a tax senior manager for Johnston Carmichael specialising in personal tax.

Contact

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

International

CFE Tax Advisers Europe: our presence and focus

CFE Tax Advisers Europe met in Brussels over 12-13 May for a series of committee meetings and a General Assembly. The CIOT was represented at the General Assembly by Helen Whiteman, Chief Executive, alongside fellow UK member organisation, the ICAEW's Tax Faculty.

CIOT volunteers play a pivotal role on all of the CFE's technical committees.

CIOT volunteers play a pivotal role on all of the CFE's technical committees and special thanks are extended to:

- Julia Cockroft and Makayla White, members of CFE's New Tax Professionals committee;
- Jeremy Woolf, Chair of the Fiscal committee's Indirect Taxes sub-committee;
- Chris Lallemand, member of the Fiscal committee's Direct Taxes sub-committee;
- Ian Hayes, Chair of the Tax Technology committee (and CIOT Council member);
- Paul Aplin, member of the Tax Technology committee and Chair of its MTD Taskforce (and CIOT Council member);
- Alistair Cliffe and Head of Professional Standards Jane Mellor who represent CIOT on the Professional Affairs committe; and
- Gary Ashford who is one of CFE's Vice Presidents (and CIOT Deputy President).

A wide range of topics were covered at each of those meetings including:

- the draft directive in relation to Pillar 2;
- the proposed 'unshell' directive;
- drafting an opinion statement on the treatment of VAT on compensation payments;
- the taxation of cryptocurrencies;
- the regulation of tax advisers;
- findings from a CFE wide survey on Making Tax Digital; and
- the progress made by the respective administrations in each jurisdiction.

Jeremy Woolf, Chair of the Fiscal committee's Indirect Taxes sub-committee (far left), in panel discussion

Helen Whiteman, CIOT Chief Executive, and Nick Parker, Past president of ICAEW, at the General Assembly

Further information about CFE can be found at www.tax.org.uk/cfe-tax-advisers-europe, as well as the committee meeting discussions. To find out more about the CFE, its origins and our membership, please read our article in Tax Adviser magazine at www.taxadvisermagazine.com/cfe.

In September, CFE will meet to consider the election of a new CFE President, our role in the climate change agenda and a continuance of the tax technical committee discussions, consultations, opinions and sharing best practice across member jurisdictions.

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TAX SENIOR

This leading regional accountancy practice near East Grinstead is urgently looking for a qualified Senior Tax person to join the team.

The firm has built up a strong tax specialism over the years and the current workload needs a competent individual to take on a varied combination of personal tax and trust tax assignments as well as participating in the development of the practice going forward.

This is a senior role that will be well remunerated with exceptionally good early prospects.

The office is bright, friendly and in a country side location easy to get to. It has ample on-site parking and is a short walk to Forest Row village centre.

Please visit us at **www.dmcpartnership.com**
and send applications with your CV and a short covering letter to:
Estelle Sherlock at **estelle@dmcpartnership.com**

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Director

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Based in one of the strongest financial and legal communities outside London, Brown Butler is a leading independent firm of accountants in Leeds. The firm is valued by clients and trusted by fellow professionals. Formed in 1919, Brown Butler is the accountancy profession's best kept secret. It is among the very few accountancy firms in Britain to be part of the DFK International Association. With 457 partner offices in 100 countries worldwide, DFK and Brown Butler are the partner of choice for businesses and their entrepreneurial owners, providing an all-encompassing service to clients.

Bored with compliance? Want to get involved in a broader spread of advisory work? Then Brown Butler could have the ideal role for you.

Dealing with dynamic businesses including groups; this role has a clear corporate tax bias, but you will also get involved in broader OMB type issues such as shareholder planning and structuring. You will work alongside the Head of Tax. The role will involve an element of corporate tax compliance work for the firm's larger and more complex clients, but a large element will be work on advisory projects such as succession planning for businesses, R&D, sales and acquisitions, group reorganisations, capital allowances planning, share schemes and share valuations. This is a fantastic opportunity for someone who wants more exposure to advisory work.

You will shadow the Head of Tax and other specialists at client meetings and assist with the preparation of technical presentations and marketing material.

Brown Butler will consider a range of tax backgrounds from practice to HMRC to industry. The key requirements are a relevant qualification (ATT, ACCA, ICAS, ACA, CTA or Inspector) and some UK corporate tax experience. The firm is also happy to see part qualified candidates who are enthusiastic about working in this area of tax. This practice will also consider more experienced people – those for example in industry looking to return to a role with more variety of work. No matter your background, you must be organised, a good communicator and able to manage a busy portfolio of clients.

Brown Butler is happy to support hybrid working, and will consider candidates on a full time or 4 days a week basis. This is a fantastic opportunity to progress your career in a supportive and friendly environment with the very real prospect of career progression. It's a chance to learn from recognised tax experts.

Call Georgiana on 07957 842 402
or email her at georgiana@ghrtax.com

www.georgianaheadrecruitment.com

International Tax Advisor – In-house
Remote with travel to the North West
£45,000 to £50,000 + benefits

In-house role in a fast growing international group. As part of this in-house team, you will become involved in US tax compliance review (training provided), UK corporate tax compliance and broader ad-hoc international tax projects. Would suit someone with large group experience who is happy to learn about US tax. Can be mainly remote worked, but needs to be UK based as there is travel to Warrington, Manchester and Altrincham. You will join a friendly, fun and close-knit team who support and encourage excellence, whilst maintaining important work-life balance. **Call Georgiana Ref: 3259**

Share Schemes Director or Partner
Leeds, Manchester or Birmingham
£excellent

Our client is the rapidly growing Reward and Share Plans Team in a Top 20 firm. As part of their next stage of growth, they seek a director or partner to join their unit. You may be a share plans lawyer or a CTA qualified. You will need considerable technical experience dealing with a wide variety of types of share scheme work from set up of Employee Ownership Trusts, CSOP's, SIPS and EMI's to advising remuneration committees of PE backed businesses. This is an exciting opportunity for someone looking for a clear shot at partnership. Flexible, hybrid and part time working available. **Call Georgiana Ref: 3260**

Private Client Manager
Leeds
£45,000 to £55,000 + benefits

Our client is the private client arm of a Top 20 firm. They seek a personal tax manager for an advisory focused role. The ideal candidate is likely to be CTA qualified and interested in dealing with HNW individuals and families, often with an international focus and philanthropic leanings. This team has been growing by over 20% a year and there is plenty of scope for promotion. This firm really values private client work and has great systems and processes in place to allow you to focus on high value advisory projects. **Call Georgiana Ref: 326**

R&D Tax
Nationwide

The R&D Tax market is incredibly busy at present, and we are handling roles within a wide range of businesses from Big 4 to Top 20 to independent accountancy firms and R&D boutiques. Our clients are looking at every level from junior tax staff looking to specialise in research and development work to experienced senior managers and directors. Our clients are also looking for candidates with backgrounds in engineering, science and technology. They also have slots for business development specialists with experience of promoting R&D and incentive tax relief work. **Call Georgiana Ref: 5000**

International Tax and TP – In-house
Sheffield, Leeds or Manchester
£45,000 to £60,000

An excellent opportunity for a qualified tax professional (ACA, ACCA, CTA, ICAS or equivalent) to join a major international business. This in-house role is focused on international tax, and would suit someone with a background in either transfer pricing or corporate tax. This hire could be at Tax Accountant or Manager level. You will be joining an established in-house function where there is scope for progression. A key element of this role is business partnering with different functions and advisors in overseas jurisdictions, so sound communication skills are key. **Call Georgiana Ref: 3265**

Share Schemes staff
Country wide
£excellent

Our client is the rapidly growing Reward and Share Plans Team in a Top 20 firm. They seek a qualified tax professional (CTA, ICAS, Lawyer or Former Inspector of Taxes) to join their team. A variety of locations will be considered, with a preference towards Manchester, Birmingham, Leeds, Preston, Edinburgh or Bristol. This is an exciting opportunity in a team that has doubled in size in 3 years – there is plenty of scope for progression and a friendly supportive atmosphere. This firm offers flexible working and can offer a range of office, home and hybrid working. **Call Georgiana Ref: 3262**

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PERSONAL TAX

CTA Personal Tax Senior London £42,000 – £49,000 HOWELLS CONSULTING	If you are a personal tax CTA and looking to take the next step in your private client career, our client offers the opportunity to play a high-profile role, advising HNW entrepreneurs, non doms, family offices and wealthy families. Their team is growing and is keen to appoint a Tax Senior (or potentially an Assistant Manager), who can oversee a portfolio of clients, their annual personal tax compliance and ad hoc planning. Very much client and third-party facing, the incoming individual will require excellent communication and relationship management skills, as well as strong UK personal tax technical knowledge.
Personal Tax Senior Havant, Hampshire £38,000 – £42,000 CLARK WOOD	Our client is a successful firm of Chartered Accountants in Havant who are currently recruiting for a Personal Tax Senior. The successful candidate will be responsible for their own portfolio of Private Client/Personal tax clients, whilst also providing ad-hoc support to the partners on interesting advisory based projects. The role will primarily consist of providing tax compliance services to an interesting mix of clients and gaining greater exposure to advisory and consultancy work. The ideal candidate may be ATT Qualified or CTA Qualified or Part Qualified and will have had excellent experience of undertaking Private Client work within a practice environment.
Personal Tax Assistant Manager London £45,000 – £65,000 HAYS Recruiting experts in Taxation	Our client is a leading and award winning firm of Accountants and Business Advisers. As an Assistant Manager you will manage a portfolio of clients where experience of P11ds, IHT and personal tax compliance will be required. In order to enhance your own personal development, you will have the opportunity to lead, manage, motivate and coach other members of the team so supervisory experience would be a distinct advantage. You will be working with a great team of like-minded colleagues all focused on supporting each other to perform at their best. ATT or CTA are essential for this role. You will be provided with ongoing mentoring and coaching as you continue to develop personally.
Private Client Manager Greater Manchester To £60,000 dependent on experience longman tax recruitment	Our exclusive client is a specialist tax firm focused on providing Big 4 quality advice to Big 4 quality clients that include families, HNWIs and entrepreneurs. They are seeking a Private Client Manager to join their high calibre team to provide support on wide ranging private client advisory work, the quality of which is rarely seen outside of the large accounting firms. This role would suit someone who is CTA qualified currently working at a large firm, who wants to be part of something unique with great prospects for the future. You will also be highly motivated with excellent technical and client facing skills. Fully flexible working including remote working and a highly competitive package add to the attraction of this fantastic opportunity.
Personal Tax Manager Bristol Generous salary + benefits JPConnections	This role is new and is due to continued and sustained growth and will suit you if you are a Personal Tax professional seeking to focus more on compliance management along with ad hoc advisory. You will be CTA qualified (or equivalent) or qualified by experience, have previous personal tax experience gained in a practice environment, ideally with exposure to partnership tax compliance matters, and be fully aware and conversant with compliance standards imposed by the various regulatory authorities. The firm offers a supportive and flexible working environmentand hybrid working policies which are very flexible.

CORPORATE AND BUSINESS TAX

Senior Manager UK £75,000 – £102,000	Our client is looking for a Senior Manager to help them manage their existing portfolio of clients and to help them win additional work in the Regional Financial Services marketplace. The work required by the role would be varied and dynamic and requires a decent level of UK corporate tax knowledge and experience. The role will also require the candidate to be able to work as part of a team both with more senior and more junior staff. Ideally the candidate would have knowledge and experience of financial services however that is not essential and we would consider suitably qualified candidates who do not have financial services experience as training can be given as needed. The role is extremely flexible and we are open to full time or part time working. Our client is also open to home working, flexible working or a mix of both.
M&A Associate Director Or Director Manchester £75,000 – £120,000	Rapidly growing M&A practice in a large international accountancy firm seeks a hire at experienced senior manager or full director level. In this role you will provide advisory support to a wide range of businesses. You may have a Private Equity or Real Estate focus, FS (including funds) or be mainstream M&A. Will consider someone accountancy qualified (ACA, ICAS, CTA) or someone with a legal background. Great prospects – this firm has no ceiling for partner promotions. Hybrid working available.
Corporate Tax Manager London £negotiable dependent on experience	We are adding to our Corporate Team focusing on larger multinational clients. You will be responsible for providing tax advisory, tax auditing/accounting and some compliance services in support of the Tax Partner to a client portfolio focused on a small number of clients who are listed, household names or advisory focused. This position will also take responsibility for the management of a small number of high performance staff members, ensuring efficient production and quality levels are met and that staff are developed to achieve their full potential.
Corporate Tax specialists Manchester/North West To £80,000 dependent on experience	Demand for corporate tax professionals in Manchester and across the North West is incredibly high and we have some fantastic opportunities for qualified (ACA or CTA) candidates with or without prior corporate tax experience (if you have trained in audit for example) at firms ranging from the Big 4 through to local independents and industry roles. These roles include part-time and remote working and you can expect a fantastic remuneration package (including moving for promotions).
Corporate Tax Senior Manager London Dependent on experience	Our client are looking for an experienced Corporate Tax Specialist at Senior Manager level who has the potential to further develop the corporate tax offering. This is an opportunity to take control and grow an already significant portfolio of Corporate clients, OMBs & SMEs. The successful candidate will work towards taking overall responsibility for the day-to-day running of a team, growing business for the Corporate Tax offering, working closely with the other Partners; autonomy to help shape the team's growth strategy. The ideal candidate must have excellent technical skills and experience, and have a thorough understanding of UK corporate tax issues; The team deals with a broad range of tax issues, including R&D tax credits, patent box claims, capital allowances, group restructures, M&A, exit planning and succession planning.

Think Tax. Think Tolley.

INDIRECT TAX

Senior Manager
UK
£excellent

This exciting role will give you the opportunity to take your next career step within a top firm – focused on providing first-class indirect tax services to some amazing corporate clients. You will be surrounded by some of the best technical experts, who are unashamedly proactive and passionate about delivering value. Expect to be developing and managing relationships with different clients, providing quality VAT advice to a range of corporate clients across a real variety of sectors, implementing business development initiatives,creating new opportunities and solutions for clients and training and mentoring more junior colleagues on commercial/technical issues. You will be joining a team that is well connected between its national offices; the firm is open to applicants from either a UK VAT consulting or VAT in industry background.

Senior Manager (VAT) – Global
UK
£73,000 – £100,000

Join our client's fast growing Global Compliance and Reporting (GCR) team and you will have the opportunity to work on the firm's largest multi-country client engagements within their EMEIA Tax Center. They are particularly looking for individuals to support financial services clients. They deploy strong multi-skilled teams working seamlessly across countries and service lines, with major hubs in UK, Ireland, Belgium, Netherlands, Romania and Poland. You must have a minimum 8 years of relevant professional experience in EMEIA VAT compliance, either in industry or other service providers, basic understanding of other compliance activities such as statutory accounting and corporate tax compliance and of IT-systems and VAT/GST reporting solutions.

Indirect Tax Manager
London
£80,000 –£85,000

You will support and advise the Head of International & Indirect Tax, Partners and Fee Earners with VAT and Withholding Tax matters related to client invoicing and ensuring the firms' adherence to the Corporate Criminal Offence legislation. This role is to also support, train and develop the Indirect tax team within the law firm Delivery Service Centre in Warsaw who prepare the UK and ROI VAT returns. .You will have previous relevant VAT experience, preferably in an in-house role with VAT advisory and compliance responsibilities, in-depth VAT technical knowledge with experience advising on UK and international business transactions in professional services sector and experience of VAT (place of supply rules) and Withholding Tax.

VAT Senior Manager
Birmingham
£65000 – £75000 + benefits

A leading VAT and indirect tax firm want to add a director to its team. You'll be working within a high-growth department that emphasizes the quality of delivery and the development of more junior members of the organization. You will identify new opportunities within the existing contact base, working with other demographics to realize these opportunities. There are many opportunities to grow and develop within the firm. You will work alongside the partners to manage the interface between the firm and the clients, ensuring that clients' service, quality, and cost expectations are met, along with the firm's targets.

VAT Senior Manager
Birmingham
£55,000 – £75,000 + benefits

You will be responsible for a portfolio of clients and assist in the development of new clients. You will be responsible for providing technical and innovative solutions to clients' VAT issues. The successful VAT Senior Manager will have strong technical skills and the ability to build trust with clients. You will be confident in developing new business supporting the Firm's continued growth.


AVTR
RECRUITMENT
TAX · TECH · LEGAL
Treasure your time this summer, whilst we help you find your dream job.
Who wants to rush around in the heat looking for new roles? Let us do the hard work for you, and help you make a seamless transition to a happier, and better work-life balance. We look forward to hearing from you.
SCAN ME
Interested in finding your next opportunity?
Get in touch.
Email
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Phone
+44 (0)20 3926 7603
Website
www.andrewvinell.com
Social
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