Chartered Institute of Taxation
www.tax.org.uk

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Excellence in Taxation

June 2020

www.taxadvisermagazine.com

TAXAdviser

The role of agents

Jim Harra shares his views on the role of agents in the tax system and HMRC's ongoing efforts to raise standards in the tax advice market, page 8

PLUS VAT challenges – Divorce – Commercial contracts – Transfer of assets abroad

International Tax Roles
Manchester or Leeds – £excellent + bens

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

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

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

VAT Manager
Leeds – part time – £excellent

This is a key role in a large Leeds based practice. It would suit an experienced VAT manager or senior manager who is looking for an interesting role but on a part time or flexible basis. At this firm, you will deal with indirect tax for a wide variety of clients including owner managed businesses, charities and large professional partnerships. You will help build and develop the practice, and there is scope for promotion as part of the reason for the vacancy is succession planning. Great flexible working and systems for homeworking. This is a lovely practice and a really good role. **Call Georgiana Ref 2953**

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

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

Corporate Tax Director
Manchester – flexible working

A Corporate Tax professional is sought by Big 4 firm for director role in their Manchester office. In this position, you'll act as a focal point for clients offering a full range of tax services, comprising both compliance and advisory work. You'll be working alongside specialists on a day-to-day basis to broaden your experience of different tax areas to help clients through planning, international tax, financial accounting, tax compliance and maintaining effective relationships with the tax authorities. Ultimately, this role will offer broad experience with significant exposure to senior stakeholders, responsibility in key decisions and a more varied portfolio to help you develop your career. **Call Georgiana Ref: 2951**

We all need a bit of light relief during Lockdown, so why not follow the adventures of Hetty the Newfoundland (*The Tax Hound*)?

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President's page

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Glyn Fullelove

Navigating in new waters

When I wrote the welcome to last month's *Tax Adviser*, the 'lockdown' was a relatively recent phenomenon. At the time of writing this column, the first very tentative steps to unwind the lockdown have been announced. By the time you read this, some further steps may have been taken, but it seems certain that it will be some considerable time before life resembles anything like what it was in February. It is very possible that we will not return to life exactly as it was, either as an Institute or more generally.

As far as the Institute is concerned, actions required by the pandemic have accelerated our plans in some areas. We will hold our first exam by remote invigilation shortly, and moves to online examinations more generally are being considered. We will, of course, strive to ensure that our exams remain at least as accessible as they were pre-pandemic; technology may actually help us improve accessibility to some groups.

Online CPD offerings have been a success. We are very likely to continue to offer online CPD lectures and conferences even after the pandemic has faded. However, the value of social and networking contact in branch meetings will remain important. Some CPD subjects will still appeal to some branches more than others. Presenting to a smaller audience can be helpful in developing skills and confidence in delivering CPD for those a little newer to the experience. Accordingly, the branch network will still have an important part to play in the future of the CIOT.

Our technical and LITRG teams, supported by many volunteers, have done a superb job in updating members and the public on the measures the UK government has introduced to mitigate the economic effects of Covid-19. My thanks, on behalf of you all, go to them. You may also have noticed a significant increase in our social media presence, especially on Twitter, as we disseminate information and direct readers to our webpages for more detail.

Ensuring the Institute's finances are secure has been a priority in recent weeks. There has been some belt tightening, and we have furloughed a modest number of staff. However, working remotely has demonstrated that there are sometimes more efficient ways of working than we had previously thought possible. I suspect many of you will also have been positively surprised about this in your own workplaces.

The Presidential Team – myself, Peter Rayney, Susan Ball, Ray McCann and our incoming Vice -President, Gary Ashford – are meeting over Webex on a weekly basis to review both internal and external developments. We intend to ensure that the strategy for the Institute that has been developing over the course of my Presidency reflects the impact and experience of the current crisis. There may also be lessons for how governance of the Institute, including the Council, is undertaken in future. When it comes to dealing with a crisis of this nature, tax skills are not the only ones required around the table. As we seek to broaden the diversity of Council, this is an important lesson.

Despite the pandemic, much activity continues. The OECD continues to lead negotiations on further reform of the taxation of multinational companies. The Institute continues dialogue with HMT and HMRC on this. The digital services tax is now in operation (even if the legislation governing it is still to be passed). The call for evidence on raising standards in the tax market has been issued. The CIOT is working on our response to this, in close co-operation with the ATT and the other PCRT bodies.

Personally, I remain convinced that, whatever the challenges ahead, being a tax adviser still provides you with a great career! Stay safe at work and home (which for most of you I expect is still the same location), continue to help your clients and colleagues navigate through the complexities of the current situation, and continue to believe in brighter days ahead!

STOP PRESS! At the Tolley Tax Awards, LITRG scored a hat trick of awards! Technical Officer Meredith McCammond won the Rising Star award, former Technical Director (and current volunteer) Robin Williamson won the Lifetime Achievement prize and the LITRG Team as a whole won the Best Specialist Team in a Public or Not for Profit Organisation award. Congratulations to the whole team, and Robin and Meri in particular!

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

"As far as the Institute is concerned, actions required by the pandemic have accelerated our plans in some areas.

ATT welcome

page@att.org.uk
Richard Todd

Easier to go into lockdown than get out

Lockdown continues but we have now a draft exit plan for the whole United Kingdom. I find it interesting that, although this is a United Kingdom, the three governments with devolved powers have decided that they are best placed to decide when the lockdown of their citizens should be eased. I suppose this reflects that NHS Scotland, for example, is organised and managed outside the remit of NHS England.

At the time of writing, the Stormont Assembly was planning to make an announcement on their plans to exit the lockdown. The expectation is that it will not be as relaxed as that in the other regions.

These announcements must mean that serious consideration is being given on how to bring us all out of the lockdown. While it was easy to join, it is unlikely to be just as easy to leave. And as tax practitioners, we must provide good tax advice to our clients during the transition period between full lockdown and the endgame. That means reviewing the different support packages and tax deferral options provided by HMRC.

I notice that clients are paying attention to the material distributed by HMRC. As a firm, we were able to calculate and successfully file the first claims for furloughed staff, and clients have shown their gratitude. In fact, some clients have already indicated that their staff will be furloughed for the months of May and very likely June, so we are well placed to help.

When the Coronavirus Job Retention Scheme was announced two months ago, the Belfast Telegraph newspaper reported that some 80% of the 250 businesses surveyed in Northern Ireland expected to claim under the scheme. Of those 80%, they expected to put around 58% of staff on furlough (as high as 93% in the retail sector). It is good that this assistance to employers is extended.

I have used the online tool to check that a client is eligible to make a claim under the Self-employed Income Support Scheme (SEISS). My first attempt was successful – the client was eligible to make a claim; the second attempt returned that the client was ineligible. If you are searching for a good source of information on this Scheme, use the ATT guidance at: https://www.att.org.uk/covid-19-self-employed-income-support-scheme, as there are several clear examples. By the time you read this article, I expect the first payments under the SEISS will have been made to eligible claimants.

It seems surreal. Ireland has relaxed some of its lockdown restrictions so that, for example, diners are allowed to visit local restaurants (subject to social distancing), whereas just 65 miles up the motorway in Newry (a city in Northern Ireland) all restaurants remain closed. There is a real fear in Northern Ireland that it will take quite some time before the restaurant and other entertainment trades fully recover.

Throughout all of this, we must still look after our own physical and mental health. It is with that in mind I must thank ATT's Rebecca Fuller for her session 'Managing your Mental Wellbeing' held in mid-May; I found it well worth the time spent.

But now a change – what about Brexit? All things being equal, it looks as though the transition period will terminate on 31 December 2020 as planned. We need to assume that date is not delayed into 2021 and use this time to review our original advices from 2019 and update them as appropriate.

While it is true that clients have other more pressing matters to consider, I believe we should be preparing for when we are inundated with requests for assistance later this year.

I hope you receive the various update emails from the ATT, especially in relation to the provision of online CPD. I find it useful to see what other branches have to offer rather than being restricted just to the local offering.

My closing words this month are like those last month – be safe and I hope to meet you when life returns to near normal in the future.

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

> **"As tax practitioners we must provide good tax advice to our clients during the transition period between full lockdown and the endgame.**

ATT ANNUAL CONFERENCE 2020

AT LEAST 6 HOURS OF CPD

Our first live session that was held on 19 May has been a great success!
Places still available for other our live sessions!
3 more dates available (see below)

As a result of the Coronavirus (COVID-19) situation, the ATT has transferred our Spring Conferences for 2020 to online events.

We are offering all the same material that you would have received on the conference days in a series of webinars with a mix of recorded and live-streamed sessions to ensure that you have the opportunity to interact with the presenters as well as enjoy flexible access to all content when it is convenient to you.

REGISTER AT WWW.ATT.ORG.UK/ ATTCONF2020

Topics will include:

- **Budget Update and COVID-19 issues**
- **Property tax review**
- **Capital tax issues in 2020**
- **Business tax update**
- **Employment taxes**
- **VAT, Customs Duties and Brexit - are we there yet?**
- **Professional Standards update and the impact of COVID-19 on your practice**

Speakers include:

Michael Steed

ATT Technical Officers

Jane Mellor (Professional Standards)

FOR MORE INFORMATION EMAIL EVENTS@ATT.ORG.UK

Live-Streaming dates for 'Budget Update and COVID-19 issues' session

- **Friday 5 June**
- **Tuesday 16 June**
- **Tuesday 23 June**

Sessions will be streamed from 10am -12 noon (with log in from 9:45am) and a recorded version of this session will be available for anyone who cannot attend any of the dates above.

Conference pricing:

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

Further information:

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

www.att.org.uk/attconf2020

An update from CIOT and ATT

Dear member,

How are you? We hope you are bearing up under the strain of Covid-19 and the accompanying restrictions on how we work and live. At time of writing, the government has just begun slowly easing restrictions but it seems it will be a long time before we get back to anything resembling normal life.

In line with the latest government advice, CIOT and ATT are continuing to operate remotely, with our office closed, staff working from home and all meetings and events taking place online. A small number of our staff have been temporarily furloughed but all departments are still operating, albeit that response times may sometimes be longer than usual.

Relevant contact details can be found at www.tax.org.uk/about-us/contact-us and www.att.org.uk/contact-us.

Covid-19 economic response guidance

We continue to work closely with HMRC and other professional bodies, sharing relevant information and providing feedback on the effectiveness of the various coronavirus economic response measures. Both the Coronavirus Job Retention Scheme (CJRS) and the Self-employment Income Support Scheme have been huge endeavours implemented at astonishing speed. While both inevitably have rough edges, it has been an undeniably impressive achievement to get them up and running at scale in the time available. HMRC deserve their Outstanding Contribution to Tax in 2019/20 Award in last month's Taxation Awards.

HMRC have made clear to us how grateful they are for your support, and that of other tax professionals, in ensuring that employers know what they can do to get ready to make their claims under the CJRS in particular. We recognise that this has not been easy. New information on the government's schemes – and other measures such as deferrals, relaxations and how to communicate with HMRC during the crisis – is being published daily. We will continue to do all we can to keep you up to date with announcements. As well as following developments and discussion on Twitter and LinkedIn, you can access our Covid-19 pages on both our websites which are updated daily. (See box for relevant links.)

Online CPD and webinars open to all members

Our Branches and Events teams continue to make available online webinars which can be found at www.tax.org.uk/online-branch-seminars.

In May, over 600 members joined our SEISS webinar delivered by CIOT's Margaret Curran and Richard Wild, and ATT's Emma Rawson. Over 1,700 people (and counting) have viewed the recording, which you can still view at bit.ly/3cJABoI.

There is still time to register for June's ATT Conferences at www.att.org.uk/news-events/events/att-annual-conference-2020. This will be fully online, with a mix of live and recorded content from our expert presenters.

As publicised in this edition of Tax Adviser, this year's CTA Address (2 July, 5pm–6.30pm) will be delivered online. For the first time ever we can extend an invitation to all our members – ATT as well as CIOT – to watch the Address and take part in the subsequent discussion. We are using this year's event to raise money for the tax advice charities – Tax Aid and Tax Help. Their work is needed now more than ever! Please do contribute, and join us for the debate.

Member support

We continue to be here for you, should you need support or have a query. Please email us at membership@ciot.org.uk or membership@att.org.uk and we will be happy to help. We welcome and encourage your feedback. We will be launching a short member survey in June to invite you to share your experiences and thoughts on the impact that the Covid-19 crisis is having on you/your business/your employer. Please do take part. We will, of course, share the results with you.

And finally, congratulations to LITRG, who won the award for 'Best specialist team in a public or not for profit organisation' category; to Meredith McCammond (a LITRG Technical Officer) who won 'Best Rising Star in Tax'; and to Robin Williamson MBE (former Technical Director of LITRG) who won the 'Lifetime Achievement' award. Well done to all three, as well as the CIOT Technical Committee, which was also shortlisted.

Best wishes,

Helen Whiteman
Chief Executive, CIOT

Jane Ashton
Chief Executive, ATT

Helen Whiteman
Chief Executive, CIOT

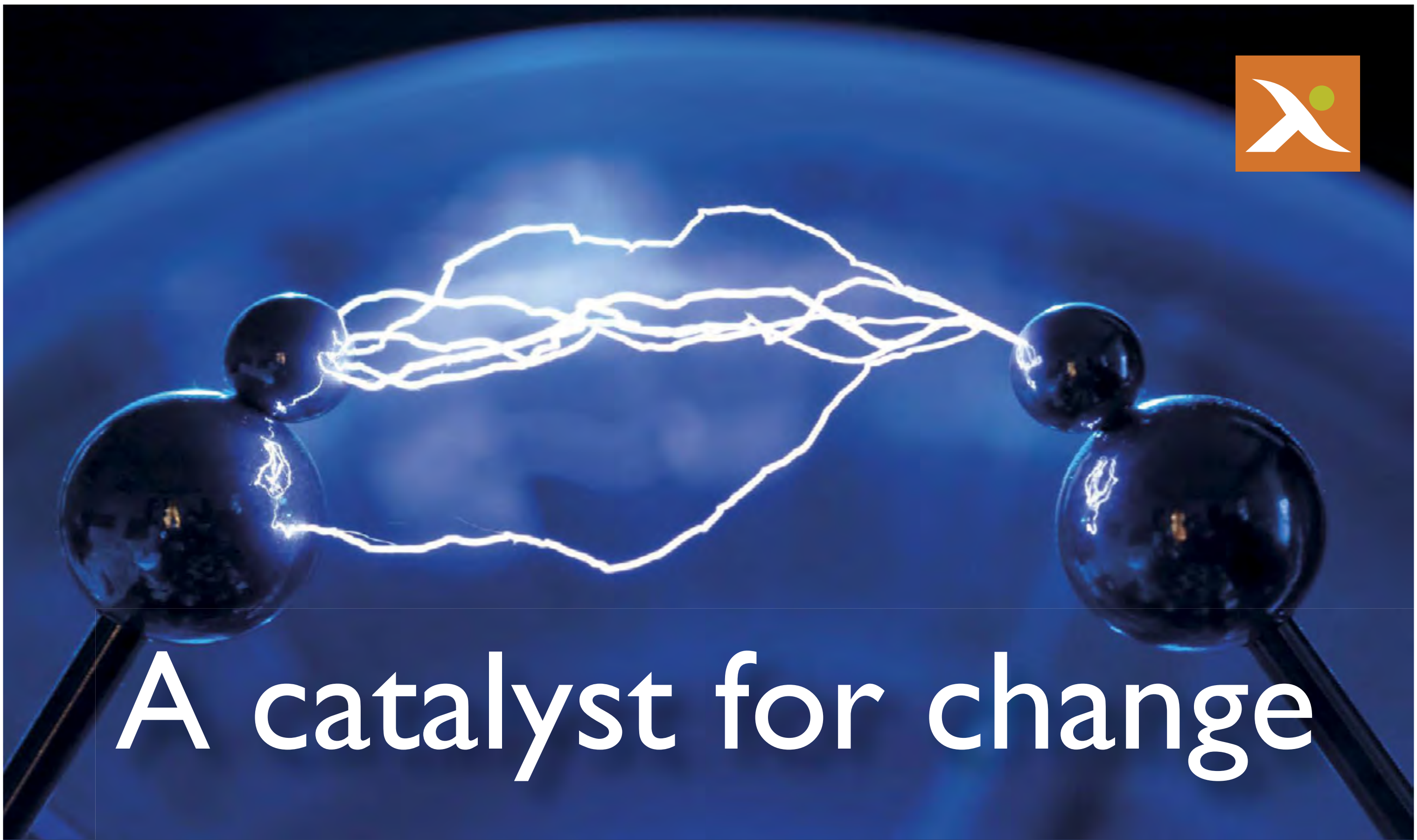
Jane Ashton
Chief Executive, ATT

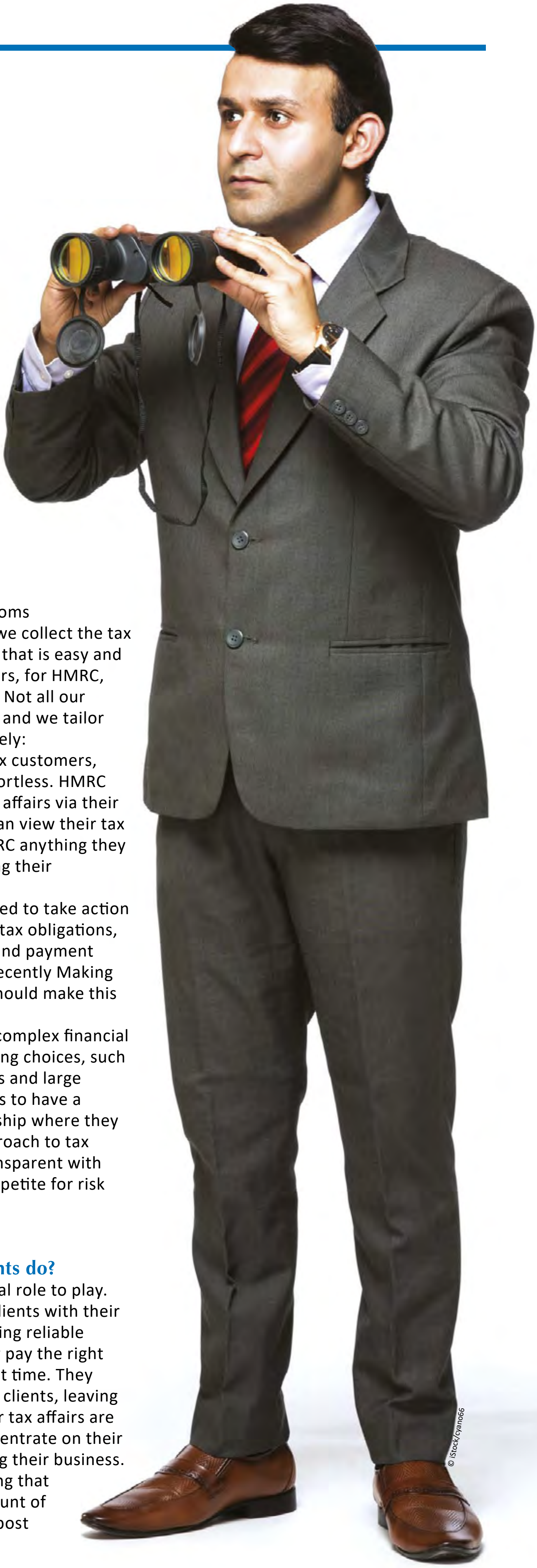
CIOT/ATT COVID-19 TAX TECHNICAL INFORMATION AND SOCIAL MEDIA

CIOT COVID-19 hub page:
www.tax.org.uk/policy-and-technical/covid-19-tax-technical-information
ATT COVID-19 portal:
www.att.org.uk/covid-19-latest-information-guidance-resources
LITRG COVID-19 hub page:
www.litrg.org.uk/tax-guides/coronavirus-guidance

CIOT on social media:
twitter.com/CIOTNews
twitter.com/CIOTCTAStudent
twitter.com/ADITtalk
www.linkedin.com/company/chartered-institute-of-taxation-ciot-
www.linkedin.com/groups/108458
(CIOT LinkedIn group)

ATT on social media:
twitter.com/ourATT
twitter.com/ATTStudent
www.facebook.com/ourATT
www.linkedin.com/groups/3930317
(ATT LinkedIn group)





The role of agents

Jim Harra comments on the role of agents in the tax system and HMRC's ongoing call for evidence on 'Raising standards in the tax advice market'

KEY POINTS

- **What's the issue?**
Tax advisers are one of the most significant intermediaries in the tax system. Having the right professional standards, and the right tools to enforce them, is crucial to the overall health of the UK tax system. There is still more that tax advisers can do to add value.
- **What can I take away?**
The government recently launched a call for evidence on raising standards in the tax advice market. Now is the time to get involved.
- **What does it mean to me?**
HMRC is keen to build on the good work many professional bodies already do that improves and maintains standards.

I set out in my appearance at the Treasury Select Committee at the start of April how HMRC is playing a vital role to deliver the latest government responses to the Covid-19 outbreak and at the same time continuing to deliver our existing service.

Currently, while perhaps our main focus at HMRC is the response to Covid-19, we have not lost sight of our 'business as usual' work. An example of this is our ongoing call for evidence on 'Raising standards in the tax advice market' (see bit.ly/35QqBqI).

Tax advisers play a key role in the administration of the tax system and many taxpayers choose to use the services of a tax adviser to help them with their tax compliance and planning. As Chief Executive of HMRC, I get to see at first hand the effect that both good and bad tax advisers have. HMRC is looking to secure higher standards of tax advice so that together we – HMRC and tax advisers – can work towards creating a modern, trusted tax system that is fit for the challenges and opportunities of the 21st century economy.

I want a tax and customs administration in which we collect the tax that is due both in a way that is easy and low cost for our customers, for HMRC, and which is seen as fair. Not all our customers are the same, and we tailor our approach appropriately:

- For most personal tax customers, tax compliance is effortless. HMRC administers their tax affairs via their employer and they can view their tax position and tell HMRC anything they need us to know using their online tax account.
- Where customers need to take action to comply with their tax obligations, our online tax filing and payment services, and more recently Making Tax Digital for VAT, should make this straightforward.
- For those who have complex financial affairs and tax planning choices, such as wealthy customers and large businesses, our aim is to have a cooperative relationship where they adopt a low-risk approach to tax planning and are transparent with HMRC about their appetite for risk and any contentious positions adopted.

So, what do good agents do?

Tax advisers have a crucial role to play. Good agents help their clients with their tax obligations by providing reliable advice and ensuring they pay the right amount of tax at the right time. They ease the burden on their clients, leaving them confident that their tax affairs are in order and free to concentrate on their priorities, such as running their business.

In addition to ensuring that clients pay the right amount of tax, agents can also signpost them to the reliefs and

PROFILE

Name: **Jim Harra**
Position: Chief Executive and First Permanent Secretary
Firm: HMRC
Profile: Jim began his career in the Inland Revenue as an Inspector of Taxes in 1984. In January 2009, he was appointed Director of Corporation Tax and VAT, responsible for optimising the design and delivery of these business taxes. He became Director of Personal Tax Customer Operations in March 2011, and Director Personal Tax Operations in October 2011. He was appointed Director General Business Tax on 16 April 2012. Jim took up the post as HMRC's Second Permanent Secretary and Deputy Chief Executive on 1 January 2018. In October 2019, Jim was appointed by the Prime Minister as Chief Executive of HMRC.

allowances to which they are entitled. These benefits, combined with the extra reassurance they receive in knowing that their tax affairs are totally compliant, mean that many of our customers often prefer to use an agent. We know that customers with an agent tend to be more compliant than those who don't.

However, there is scope for agents to add more value. For example, even though the majority of small businesses (72% according to the 2018 Individuals, Small Businesses and Agents Customer Survey) use an agent, the small business tax gap remains stubbornly high at £14 billion (2017/18).

I also recognise the excellent work that professional bodies play in maintaining and promoting standards. In recent years, we saw the refresh of the Professional Conduct in Relation to Taxation (PCRT) standards in relation to tax planning, and updates to the HMRC Standard for Agents, both of which have supported agents in advising their clients to steer clear of tax avoidance. We are actively working with the professional bodies on enforcement of these standards; for example, by referring those suspected of misconduct to be considered for disciplinary action.

It is indisputable that good tax advisers have a positive impact on tax compliance and I recognise and value the partnership we have with them. However, there are times when HMRC feels that tax advisers aren't adding value. Such cases were reflected in Sir Amyas Morse's review of the loan charge, which identified that poor advice played a role in leaving many of our customers with large unexpected bills, with little recourse against those who previously advised them so badly.

Changing the behaviour of some agents

Unfortunately, a minority of tax agents don't provide a good service to their clients. Some are professionally competent but push the boundaries of tax planning or are actively dishonest, and some are not professionally competent or do not adhere to acceptable professional standards.

We still see some customers rely on professional advice which is later found to be incorrect, particularly in relation to tax avoidance schemes. Despite the fact that many tax agents have moved away from this, there are still individuals and firms that point their clients towards avoidance schemes that have little chance of achieving the tax effect they promise.

HMRC also sees evidence of agents making simple calculation errors, or sending in repayment claims on behalf of clients without checking that they are valid or correct. When routine work like this is done badly, it impacts on HMRC as we have to direct resource away from critical work. This is work that tax agents should be getting right – it is a fundamental part of their job.

In addition, some agents even fail to keep their own tax affairs up to date, and a small minority have acted criminally, defrauding HMRC and their clients. Our call for evidence includes more examples of the types of activity HMRC sees which we want to change.

Last autumn, I attended a Public Accounts Committee hearing where I gave evidence to this effect. I know some advisers found this uncomfortable and I have listened to that feedback in meetings with the Chartered Institute of Taxation (CIOT) and the Institute of Chartered Accountants in England and Wales (ICAEW).

Currently, when we find misconduct or poor professional standards by an agent who belongs to a professional body, we can report that agent to their body and ask them to consider taking appropriate action. We can also impose penalties and publish details of tax agents who have acted dishonestly. In the most extreme and severe cases, we can refuse to deal with an agent altogether.

For agents who are not members of a professional body, we are developing a range of actions in cases where there are clear breaches of the HMRC Standard for Agents. However, as noted in our policy paper, 'Tackling promoters of mass-market avoidance schemes' (see bit.ly/2yOoxUe), we recognise that promoters of mass market avoidance schemes are rarely members of a professional body.

Support for good agents and action against bad actors

In recognition of the important role agents play in the tax system, we work hard to support good agents. One of the ways in which we do this is by collaborating with professional bodies, such as CIOT and ICAEW. Sharing their expertise and working in partnership to improve guidance, such as that covering research and development tax credits, we are focusing on areas where the tax agent community has told us that they would like our advice to be clearer.

This is an approach we want to build on to provide certainty in the tax system. We want to work with agents to find ways of incentivising and rewarding tax services business models that add the most value to keeping taxpayers compliant.

We also provide ways for agents to interact with us digitally. Our aim is to allow software to do some of the more routine work so that agents have more time to add value by helping clients. We are working hard to develop and refine the Agent Services Account (ASA) and have already made improvements as a result of feedback. For example:

- Agents were facing delays in receiving their anti-money laundering (AML) supervisor details. We therefore amended the service to enable them to create their account on the basis of a pending AML supervision application.
- We introduced a checklist with a 'save and continue' function, so agents can obtain all the information required to complete the creation of their account over more than one session.
- We recognised that agents need confirmation that they have linked their Government Gateway account to their ASA, and we now display the number of clients that have been copied across. Agents can now also track authorisation requests that they have sent to their clients via their ASA.

We also have a range of interventions available to target poor behaviour by agents, including promoters, enablers and scammers. Some of these tools include:

- the 'HMRC Standard for Agents' (see bit.ly/2LyuxDv), published in 2016 and updated in 2018. These Standards apply to all individuals and business involved in professionally representing or advising taxpayers, located on or offshore;
- interventions to disrupt the activities of promoters, such as using DOTAS and POTAS, disrupting supply channels, collaborative work with agents and criminal prosecutions where appropriate;
- powers such as 'Dishonest tax agent penalties' (Finance Act 2012 Schedule 38) and 'Public interest disclosures' (Commissioners for Revenue and Customs Act s 20) – the latter a prime example of our ability to work in partnership with the agent professional bodies to tackle examples of misconduct by agents who are members;
- removal or suspension of the agent code, which allows access to HMRC online systems, where we have engaged with advisers to improve standards and those standards do not improve; and
- we will also work closely with other parts of government and local authorities, for example making referrals to the Advertising Standards Authority where we suspect an adviser of false advertising.

The call for evidence

The call for evidence gives us the opportunity to build on the work that good advisers already do. We hope it will further develop our work to improve standards, as well as the digital services we provide to our intermediaries and our ideas on how we can future proof the system that we all work in.

It takes an open and exploratory approach to examining the issues affecting the work of agents in the tax system and suggests a range of potential approaches to improve standards. These approaches range from a change to HMRC's use of its existing powers, through enhancing consumer information in relation to tax advice, to regulation of the market.

We are absolutely committed to continuing to work with tax agents and their professional bodies to maintain and improve standards. I want clients to be able to be confident that the advice they receive is correct and that they can trust their adviser to work in their best interests.

I would encourage agents to read the call for evidence and submit their views and evidence: it is critical that we hear from as many interested parties as possible in developing our future plans. We recognise that many sectors with an interest in this are affected by Covid-19 and we want to give as many of them as much time as possible to submit their views. Therefore, we have extended the consultation from the original date of 28 May to 28 August 2020.

In conclusion

At the time of writing, HMRC is working tirelessly to deliver the government's response to support the UK's economy in light of Covid-19 and I'd like to thank the range of tax professionals who have provided feedback and support to help us deliver these responses as quickly as we can.

Our role in collecting contributions to the UK's public services remains unaltered. We continue to recognise the positive role that the tax advisory profession can play in delivering a high quality experience for taxpayers, whilst recognising that there is work to do to improve standards. Ultimately, our fundamental aim remains the same: to run a trusted, modern tax and customs administration in partnership with a tax advisory profession that, through being professional and competent, adds value.

Responses to the pandemic

© iStockphoto/RomeoLu

Bill Dodwell considers the responses to Covid-19 offered through tax systems in the UK and overseas

For most of the last decade, the work of the OECD's tax team – the Centre for Tax Policy and Administration – has been focused on two main areas: enhanced transparency, such as automatic exchange of information; and changes to the international corporate tax rules, being the base erosion and profit shifting project and the latest work digital services. Nor should we ignore its other work, such as on a global VAT system and supporting developing countries.

The global Covid-19 pandemic has obviously impacted the global policy development programme. Pascal Saint-Amans recently confirmed that the secretariat is continuing to work on a global response to the taxation of digital services, but effectively acknowledged that it would be harder to complete the work to the original time frame.

The OECD secretariat has switched to monitoring the approaches taken by a wide range of countries to the Covid-19 pandemic, as well as offering guidance. Countries have introduced three types of support through the tax system (see the Report to the G20 finance ministers at bit.ly/3ebTEs1):

> 'Maintaining business cash flow has been a core goal of the fiscal policy measures that have been introduced, supported by monetary and financial policies. Measures have included extending deadlines for tax filing, the deferral of tax payments, the provision of faster tax refunds, more generous loss offset provisions, and some tax exemptions, including from social security contributions, payroll taxes or property taxes.
>
> 'Countries have also implemented wide-ranging measures to help businesses retain their workers through short-time work schemes or wage subsidies. There is evidence, from policies implemented in the wake of the global financial crisis, that keeping people in work through such schemes is an effective way of providing income support and limiting job losses...
>
> 'Income support to households has been extended in many countries, generally through targeted cash benefits rather than through tax cuts, given the need to deliver support quickly... Access to sick leave benefits has been eased and eligibility expanded, with several countries broadening the coverage of unemployment benefits to self-employed workers.'

PROFILE

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

The UK approach

If we compare the overall approach to that of the UK, we see that the UK has not extended filing deadlines but has offered relatively long extensions for paying VAT and the Self Assessment payment due on 31 July. Both may be deferred until 2021, without interest. HMRC continues to offer Time to Pay arrangements (covered by Chris Holmes and Jenny Jones on page 19).

The UK's furlough scheme supports the income of 8 million employees – about a third of the employed workforce. At the same time, the number of those claiming unemployment benefits has risen by almost 70% in April. The Office for National Statistics reported that about 856,500 people signed up for universal credit and jobseeker's allowance benefits (see bit.ly/2Zq4Lcy). The furlough scheme doesn't capture those not on a payroll by the end of February, reported to HMRC by 19 March, which is thought to include several hundred thousand hospitality workers, according to evidence given to the Treasury Select committee.

The Self Employed Income Support Scheme paid out to over 2 million claimants in May (though HMRC estimated that up to 3.5 million are entitled to claim). Despite this, those who started up after April 2019 are not included; nor are contractors who provide services via companies and pay themselves in dividends. Finally, the UK has increased access to universal credit and extended the amount paid. The digital claim system has enabled it to increase rapidly the delivery of benefit. The Exchequer has also just announced the statutory sick pay scheme, which reimburses businesses with up to 250 employees for the cost of sick pay claims.

Double tax treaties

The OECD has also produced some guidance on tax treaaty application in the pandemic. Like the UK guidance, the OECD covers changes to the taxable presence of companies (permanent establishment) due to employees of the group being in an unexpected location. It notes that 'the exceptional and temporary change of the location where employees exercise their employment ... such as working from home, should not create new permanent establishments'. Also, a home office needs to be 'at the disposal' of the employer to constitute a PE, which would not be the case in the majority of those cases.

Similar conclusions are reached on company and individual residence. The OECD also considers that furlough payments should be taxed in the country where employment was exercised. Given the global nature of the pandemic, it's valuable to share information on how countries are offering support.

How to keep cash flowing

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Kevin Hall and *Punnit Vyas* consider cash flow improvement during Covid-19, including bad debt relief and cash accounting

KEY POINTS

- **What is the issue?**
Businesses will need to do all they can in the economic downturn caused by Covid-19 not just to keep afloat, but to keep cash flowing through the business.
- **What does it mean for me?**
VAT, which normally amounts to a large and significant monetary figure within the business, can be reviewed in a number of ways to identify opportunities for VAT efficiencies and cash flow improvements.
- **What can I take away?**
As well as the government announcement of VAT deferral, bad debt relief and cash accounting are other opportunities for relief within the VAT system.

In these uncertain times, businesses will need to do all they can in the economic downturn caused by Covid-19 (however long that may last) not just to keep afloat, but to keep cash flowing through the business. After all, cash is king, and if the business can improve cash flow that might just make all the difference. This article explores how VAT, which normally amounts to a large and significant monetary figure within the business, could be reviewed in a number of ways to identify opportunities for VAT efficiencies and cash flow improvements.

Immediate relief: VAT deferral

So far in terms of Covid-19 support through the VAT system, the headline announcement that came in good time by the government has been the VAT deferral. That measure allows for VAT payments falling due between 20 March 2020 and 30 June 2020 to be deferred until 31 March 2021, with no interest or default surcharge payable. Businesses paying VAT by direct debit have been advised to cancel the debit at least seven days in advance, if they want to take advantage of the deferral, and then reinstate it for the next quarter. However, a number of other reliefs and opportunities that already exist within the VAT system could also help too, and a few of these are highlighted below.

Bad debt relief

Over the coming months, there is a distinct possibility that businesses will be unable to pay their suppliers, meaning that businesses having invoiced for goods and services supplied will not get paid. On an accruals basis, the business will have raised its invoice and accounted for it as output tax in the VAT return period in which the date of the invoice falls. A business making taxable supplies at the standard rate will have, at the point the VAT return was submitted, accounted for the amount as output tax to HMRC, but will not have received payment from their customer (and may never receive it).

Bad debt relief is the mechanism through which the taxpayer claws back from HMRC the VAT paid to it where the taxpayer has not been paid by the customer for six months, the debt has been written off and the amount placed in a bad debt relief account.

Taking a straightforward example, an accountancy firm issued an invoice for £1,000 plus VAT of £200 to a client with a due date of 1 August 2019. No payment whatsoever has been received and all of the conditions for claiming bad debt relief have been met (see **Box 1** for conditions). VAT bad debt relief of £200 could be claimed on the VAT return for the quarter covering February 2020 in relation to this invoice.

Process for claiming

The process for claiming VAT bad debt relief is automatic; i.e. it does not require a separate election or claim to HMRC. The method of claiming is to include the amount of the VAT in Box 4 of the VAT return for the period in which the conditions for making the claim are first met or in a later VAT return.

There may be more complex situations where, for example:

- there have been part payments;
- more than one VAT rate is involved;
- VAT only invoices are involved; or
- the debt subsequently is paid.

An interesting point arises regarding partially exempt businesses claiming bad debt relief, particularly those on the standard method or those on a turnover based method. Within partial exemption calculations, on an accruals basis the turnover would include the sale; however, although the bad debt relief 'reverses' the output VAT on the sale, it does not reverse the sale itself and would not directly impact on the recovery rate under the partial exemption method.

Interestingly, if the business was using cash accounting (see below), then turnover for partial exemption would be on the basis of the actual monies received and unpaid debts will affect the recovery rate.

Interaction with the VAT deferral

Another point arises from the recently announced VAT deferral, this time in its interaction with bad debt relief. The deferral was announced in the context of the government's rapid response to Covid-19 and support for businesses, and so it is not surprising that much of the detail was left to be determined by HMRC sometime after.

Currently, the first condition for claiming bad debt relief includes the words 'and paid to HMRC'. Therefore, any debts that go bad which originated in a VAT period that had its payment deferred between 20 March 2020 and 30 June 2020 (as per the deferral period) will not meet the payment condition and normally cannot therefore be claimed until such time as the VAT has been paid, which, according to the deferral scheme, will be 31 March 2021. We are aware of clients who have been informed by HMRC that bad debt relief will be honoured where the liability was included in VAT returns during the deferral period and are still unpaid after six months, which would be in the spirit of the government's aim of supporting businesses' cash flow during the Covid-19 economic pause. Watch for further announcements.

In the meantime, the optimal position for most businesses will be to ensure that they review bad debts over the last four years in order to ensure that no VAT bad debt relief is lost due to the four year cap. Timing of any VAT bad debt relief claim could be significant where net VAT return payments are deferred under Covid-19.

Cash accounting

Cash accounting provides automatic VAT bad debt relief, as output tax does not have to be accounted for until payment is received from the customer. It is therefore more efficient than being on an accruals basis and making VAT bad debt relief claims. In these challenging times, businesses might find they have a higher number of defaulters and, provided they meet the eligibility conditions for the cash accounting scheme (see **Box 2**), then this is definitely something to consider.

There is a note of caution in terms of the cash flow benefit, however. Although the scheme provides a neat solution to regular VAT bad debt relief claims, it does not benefit those who are regularly in a repayment position. Most businesses will find an overall cash flow benefit on cash accounting.

Process for claiming

Like bad debt relief, there is no formal process for applying to HMRC before beginning to use the scheme. If the conditions are met, you can use it and calculate your VAT return accordingly from the start of your next VAT return period (you cannot apply the scheme retrospectively to your business).

Other cash flow improvements

Certainly, along with the VAT deferral scheme, bad debt relief and cash accounting, there are other areas to consider. We briefly highlight a few of these below:

- Accelerated or deferred tax points: can invoices be issued later or earlier (to the extent permissible within the normal invoicing tax point rules) in order that cash flow for the business is improved?
- Can 'Time to Pay' be agreed with HMRC for any existing or new VAT or tax debts to HMRC?
- If you do not normally pay HMRC by direct debit, then consider this method of payment as businesses which pay by direct debit normally have a further three bank working days in which to pay.
- If you make payments on account to HMRC through the Payments on Account scheme or from the Annual Accounting Scheme, consider contacting HMRC to cancel or reduce these payments on account, as they may now be too high and could therefore create cash flow problems in the months ahead.

This is not intended to be an exhaustive list, but it could provide some much needed help to businesses' cash flow to assist them through the downturn and promote recovery to the health of their business.

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BOX 1: CONDITIONS FOR CLAIMING BAD DEBT RELIEF

1. You must already have accounted for the VAT on the supplies and paid it to HMRC.
2. You must have written off the debt in your day to day VAT accounts and transferred it to a separate bad debt account.
3. The value of the supply must not be more than the customary selling price.
4. The debt must not have been paid, sold or factored under a valid legal assignment.
5. The debt must have remained unpaid for a period of six months after the later of the time payment was due and payable and the date of the supply.

HMRC VAT public notice 700/18

BOX 2: CASH ACCOUNTING ELIGIBILITY CONDITIONS

You are eligible to start using the scheme if you meet the following conditions:

- you expect the value of your taxable supplies in the next year will be £1,350,000 or less;
- you have no VAT returns outstanding;
- you have not been convicted of a VAT offence in the last year;
- you have not accepted an offer to compound proceedings in connection with a VAT offence in the last year;
- you have not been assessed to a penalty for VAT evasion involving dishonest conduct in the last year;
- you do not owe HMRC any money or, if you do, you have made arrangements with it to clear the total amount of your outstanding VAT payments (including surcharges and penalties);
- HMRC has not written to you withdrawing use of the scheme during the last year;
- HMRC has not written to you and denied you access to the scheme; and
- you comply with the conditions set out in public notice 731.

HMRC VAT public notice 731

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No magic money tree

Giles Mooney shares his views on how the government can build a simple, fair tax system

KEY POINTS

- **What is the issue?**
As the world returns, gradually, to full time business on the other side of the Coronavirus pandemic and discovers the 'new normal', it will, for a range of reasons, be a very different environment to the one we left behind.
- **What does it mean for me?**
While it will be down to all those in business to rebuild the economy, the Treasury will have a big part to play in encouraging certain behaviours and implementing a clear, reliable and functioning tax system.
- **What can I take away?**
We have to accept that bills will go up, but efforts to raise revenues should bring greater simplicity and easier administration to our tax system.

As the world returns, gradually, to full time business on the other side of the Coronavirus pandemic and discovers the 'new normal', it will, for a range of reasons, be a very different environment to the one we left behind. While it will be down to all those in business to rebuild the economy, the Treasury will have a big part to play in encouraging certain behaviours and implementing a clear, reliable and functioning tax system.

If we are, as is predicted, facing the greatest economic downturn in a century, with the government borrowing beyond peacetime comparison, perhaps now is not the time to adjust or tinker. It may be the time to look at the tax code as a whole and make fundamental changes. Rather than just recouping the huge costs of the Coronavirus Job Retention Scheme and Self Employed Income Support Scheme, we should make the systems easier to use now and into the future.

Working from home

While many people have been crawling up the walls, desperate to get back to the office, many others have realised that working from home can be more productive, with huge advantages to family life. Add in the ongoing environmental pressure on driving, the new desire to reduce reliance on commuting via public transport and the pressure on rental values in town and city centres, and there is a clear need for the government to support homeworking more than it has previously.

The recent increase in the amount that can be claimed for working from home from £4 to £6 per week is a positive step, but is nowhere near representative of the actual costs of homeworking. An increase of two or three times that amount is needed to give a fair saving for the employee without unnecessary calculations and personal estimates. There will also be costs for the business in providing better IT equipment and more ergonomically designed workspaces to ensure the health of employees. While the Annual Investment Allowance would more than cover this for most businesses, an enhanced allowance, perhaps a deduction of 125% or 150% of costs, could encourage businesses to make the relocation decision.

Small business tax

The recent calculations of and entitlements to the Coronavirus Job Retention Scheme and Self Employed Income Support Scheme have reopened the arguments over taxation and national insurance for small businesses, especially the differences between limited and unlimited structures and the extraction of profit. In his speech launching the Self Employed Income Support Scheme, the chancellor Rishi Sunak said that those who would benefit must accept that, in the future, they would not be treated differently from the employed.

The wording of the Coronavirus Act 2020 gives Sunak the ability to increase NIC and it seems inevitable that this will happen in the very near future. He will use the regime to collect some of the vast costs incurred, with suggestions of a 2% or 3% increase in employee contributions matched with a 5% or 6% increase for the self-employed to bring the two in line. But would he be better to take the bull by the horns and merge the income tax and national insurance regimes?

A basic rate of 34% with a higher rate of 42% and an additional rate of 47% might be too difficult to sell politically. However, the posited rise in NIC could seem unfair if also extended to the 2% band when no one with profits over £50,000 can benefit from the Self Employed Income Support Scheme.

One additional benefit of this change would finally see the end of Class 2 NIC for the self-employed. It is an outdated system that the government has openly said it would like to see the back of. Perhaps the age of the 'stamp' should finally come to an end.

The change raises the question of contributory benefits and the state pension. I accept this is a difficult circle to square. Perhaps simply having paid a minimum level of tax in the UK in a number of years would cover us.

Rental income, savings and dividends

The personal savings allowance has worked well to create a 0% band for savings. Members of the public are able to understand how it works and HMRC is able to administer it. An increase to £2,000 to match up with the dividend allowance and an extension of the regime to cover rental income would keep many people outside of tax altogether while, with the raised tax rates detailed above, still raising significant tax revenues.

Many would like to see dividends taxed at the same rate as other income. I think it is important to recognise the risks taken by owners of businesses and, in return, the ability to enjoy the rewards. Many company owners have fought to keep their businesses alive and their staff paid in full in recent months. Any increases in corporate tax or employer's national insurance would seem inappropriate; but equally a cut in those rates is probably unaffordable at this time. Those businesses need certainty, not tax cuts.

That leaves us with the option of a preferential tax treatment for dividends.

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At the same time, the government is being encouraged to act to stop the low salary, high dividend route of extraction. Perhaps a slight increase in rates, similar to the increases suggested above, would be the answer. Dividend taxation at, say 25%, 35% and 40% would offer the reward (compared to my suggested merged rates above), while reducing the appeal of structuring deliberately to reduce tax liabilities.

Accuracy

One of the most important aspects of the suggestions made above is that they encourage behaviour – not by threatening action after the fact, but rather by keeping the rules simple and harder to circumvent, and by minimising the advantages of doing so.

Having a tax system which is understood and manageable is key to any future regime. There is a very simple improvement to the tax system which, for many years, we thought was already made.

In this year's Budget, changes were made to bring certainty to the top slicing regime. While the clarification on claiming the personal allowance for the sliced gain was the big news for many, the allocation of income within the personal allowance was a positive first step to the way the whole income tax computation should work.

The ordering of taxation of earnings, then savings and then dividend income is well known. However, the ability to allocate within the personal allowance for maximum benefit has caused confusion and, in many cases, errors in the calculation of tax, especially when it comes to e-filing. If we are to create a new world of simplicity and comprehension, removing the personal allowance complexity and insisting that the earnings, savings, dividend rule is also included within the personal allowance would be a great first step.

As well as simplicity, it would help the accuracy of calculations, minimising the need for paper filing and the need for computations to be reviewed long after the January deadline.

Pensions

The taxation of pensions has never been, and is unlikely ever to be, simple. Various schemes and rates have been tried over the years to encourage people to save for their futures; and while each scheme benefits some, it hinders others.

As we enter a time when the government's reserves are challenged, we should expect further encouragement to invest and look after our own pensions rather than counting on the state. The current pension regime is filled with arbitrary cut offs and allowances. While the £40,000 annual allowance is very generous to most people, its reduction to £4,000 as people get wealthier makes little sense. It is so high for lower earners as to be a figure that can't be related to.

I would like to see a return to the old calculation with a percentage of net relevant earnings used to decide how much can be paid into an individual's pension. The increases in the percentages as people get closer to retirement make sense, as people look to put a higher share of their income into retirement planning. Equally, for younger people, the percentages act as a target to save. The same system applying to everyone irrespective of their wealth would, again, increase the simplicity of the regime. In one final simplification, by fixing relief at the basic rate for all contributions, the government would achieve its goal of encouraging basic rate taxpayers to take responsibility for their contributions at a greater rate than wealthier individuals.

The future

As we look to the 'new normal' post pandemic, we have to accept that bills will go up. We're often told there is no magic money tree and expecting tax and NIC rates to remain low is foolish. My suggestions to raise revenues are, I think, fair. Just as importantly, they bring greater simplicity and easier administration to our tax system. A simple, fair tax system.

What's not to like?

International ambitions

With the uncertainties plaguing the technology, media and telecommunications sector, *David Latief, Liam Smith* and *Tiffany Vaughan* ask if there has ever been a more challenging time for an indirect tax function

KEY POINTS

- **What is the issue?**
Businesses in the TMT sector are facing more challenges than ever right now, with the introduction of DSTs globally and the expansion of existing indirect tax regimes, which come at a time of wider economic and political uncertainty due to Brexit and the Covid-19 pandemic.
- **What does it mean for me?**
Businesses must continuously monitor global tax developments to ensure they are complying with their VAT obligations, which can be both a costly and time-intensive exercise, not only in terms of tax compliance, but also from a systems and process perspective.
- **What can I take away?**
As global tax policymakers seek new ways to tax the digital economy, businesses will have to continue to adapt and factor new digital tax policies into their wider business strategy.

Businesses within the technology, media and telecommunications (TMT) sector are at the forefront of driving the development and innovation taking place within the digital economy. The reaction of tax authorities to these developments is having a profound effect on the global indirect tax landscape, as tax policymakers seek to redefine global taxation principles that were first devised years before the inception of many of the companies that are leading the disruption taking place in the sector.

The pace and level of change to the international tax framework that businesses are faced with has never been greater. With the ever-expanding scope of existing indirect tax regimes and the introduction of new digital services taxes (DSTs), businesses are facing increased challenges in monitoring and complying with these global developments. This comes at a time of significant wider disruption and uncertainty due to external factors, including Brexit and the Covid-19 pandemic.

For years, Brexit has created significant uncertainty for businesses across all sectors as they are forced to adapt to a new economic environment and plan for the impact on future trading relationships. While some of the recent developments in terms of the Withdrawal Agreement have provided clarity around the position on trade in goods, there is still significant uncertainty around the position for service providers.

To compound this, the unprecedented global impact of the Covid-19 outbreak has obviously had a sweeping and unparalleled impact on businesses and individuals alike, as governments' strict lockdown measures have forced a distinct change in consumer habits.

The response to the pandemic has triggered a dramatic increase in consumers' use of digital services, with many people trying online services for the first time due to the crisis. New EY research on '7 Impacts of COVID-19 on the UK digital household', conducted on 2,000 UK households and exploring the impact of Covid-19 on TMT products and services, has found that video calling has shown the largest increase, with 18% of people trying this for the first time, followed by online shopping (9%) and consumption of catch-up TV (9%) (see go.ey.com/35KpqJi).

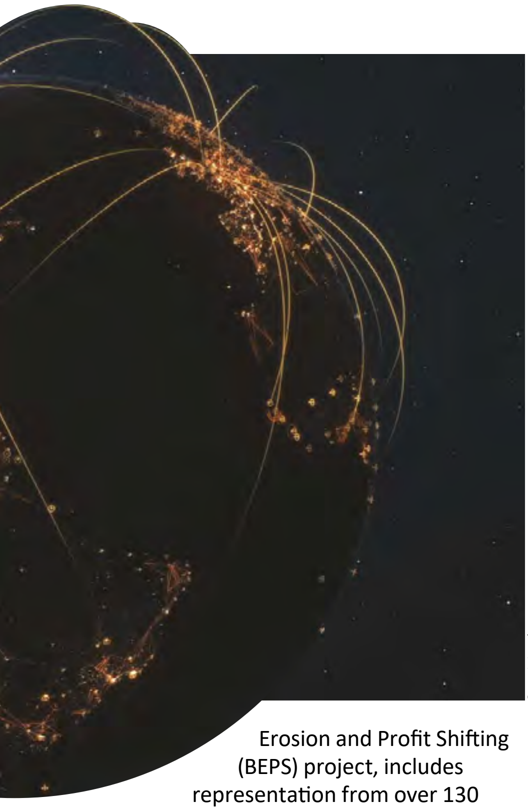
It seems that certain sub-sectors within the TMT sector overall are not negatively affected, putting them in contrast to many other industries that are unable to continue trading under the restrictions. Digital streaming services and gaming companies are experiencing particularly increased demand, with 37% of households saying their TV and content consumption habits will permanently change.

This article will address the ongoing developments to global tax measures that are impacting the TMT sector and the challenges that businesses are facing in a time of wider economic and political uncertainty. Specifically, we will focus on the introduction of new taxes in the form of DSTs, the continuing trend towards taxing the supply of digital services based on the 'destination principle' and a look at the future for e-commerce operators in the EU as a result of the 2021 changes.

Digital services taxes

For years, tax policymakers around the world have been trying to tackle the issue of whether and how to modernise an international tax framework that is over a century old and has been argued to no longer be fit for taxing some elements of globalised businesses. For digital businesses, the historic method of attributing taxing rights appears at odds with the place where value is created, as new business models have emerged which enable companies to derive income from user interaction in territories where the business has no physical presence. In short, the current rules are therefore no longer considered to work appropriately for all business models in an increasingly globalised world.

The OECD's Inclusive Framework (IF) group, set up as part of the OECD Base



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Erosion and Profit Shifting (BEPS) project, includes representation from over 130 countries and is leading the OECD's work on addressing the tax challenges of the digital economy to try and reach consensus on changes needed to the international tax system. The OECD's workplan consists of two 'Pillars': Pillar 1 proposes a 'Unified Approach' to profit allocation and nexus rules; and Pillar 2 proposes a global minimum tax to address tax avoidance.

Despite ongoing development of proposals, it would appear that progress towards a multilateral solution is not coming fast enough for some countries. Faced with a fast-tracked but nevertheless timely process at the OECD level and with the EU bloc-wide interim DST measure waiting on such progress, we are now seeing an acceleration in the adoption of unilateral digital services tax measures.

Among the OECD countries, Austria, France, Italy, Turkey and the UK have already implemented DSTs, with a number of others looking to follow suit. One of the key challenges facing businesses is tracking the introduction of these new taxes and assessing whether they may be caught. As individual countries are pursuing unilateral measures, there are significant differences in the scope of the taxes being introduced. These problems are often exacerbated by limited or unclear tax authority guidance on the matter.

While some EU territories, such as France and Italy, have opted to follow the EU's 'compromise text' by capturing digital intermediation and online advertising activities, the legislation in Turkey for its DST and in India with its Equalisation Levy has been drafted much more widely. The UK legislation, on the other hand, focuses specifically on whether the business provides one of three in scope activities: social media services; a search engine; or an online marketplace. A business that concludes it is not within the scope of the UK DST may not necessarily reach the same conclusion in Turkey. With limited consistency and no 'one size fits all' approach available, businesses must continuously monitor developments to determine whether they are caught by the new rules.

On top of this, there is a huge distortion between the applicable DST rates, ranging from 2% in the UK to 7.5% in Turkey, with scope for this to be extended up to 15%.

Businesses also face practical challenges from a systems and process perspective, in determining what solutions and data they have in place to identify user location and how to allocate revenue using a method that is in line with individual country requirements. Impacted businesses are therefore having to initiate complex and time intensive projects to calculate DST liabilities on a country by country basis. HMRC's published guidance on the UK DST states that any attribution method must be 'just and reasonable', which is sympathetic to the fact that each individual business will need to approach the calculation in different ways. However, this does not necessarily mean that an attribution method that is suitable for the UK DST will translate easily for use in another country.

So, what's next? Countries which have unilaterally implemented a DST have said that they will repeal the tax once international agreement is reached at the OECD level – which had an ambitious timetable to achieve a consensus-based solution by the end of 2020. However, due to the Covid-19 outbreak, progress has inevitably slowed. In the recent OECD Tax Talks webcast, Pascal Saint-Amans confirmed that the OECD still intends to deliver a consensus-based solution to digital taxation to the G20 in November; however, some elements may shift into 2021.

Therefore, the natural conclusion is that the existing DSTs in place may be around for longer than perhaps first intended, with many other countries seeking to introduce rules in the short to medium term.

VAT on digital services

The 2015 VAT 'place of supply' changes were amongst the most significant indirect tax compliance changes that businesses in the TMT sector had ever faced, with a shift towards taxing the supply of business to consumer (B2C) telecoms, broadcasting and electronic (TBE) services based on the 'destination principle'; i.e. where the recipient of the service is located. Five years on, the number of countries that are seeking to mirror this approach shows no sign of slowing down, with the compliance footprint of businesses that supply cross-border digital services growing year on year.

Across the EU, the VAT rules on TBE services are clearly defined, with a definition of 'electronically supplied services' fixed in statute alongside set instructions on determining customer location and status, and clear rules that shift the responsibility for VAT accounting on to larger 'online marketplace' platform operators.

While some territories such as the United Arab Emirates have recognised the relative success of the EU changes and closely aligned their respective regimes to the EU model, other recent and proposed implementations elsewhere have diverged in various aspects, where it is not uncommon for onerous local conditions to be coupled with unclear guidance. This can mean that in a practical sense, it is difficult and cumbersome for businesses to comply with new global indirect tax rules on e-services.

Typical issues that businesses face in navigating these include:

- the requirement to comply with local language requirements; i.e. for invoicing, return filing and liaison with the tax authority (e.g. Saudi Arabia);
- low/nil registration thresholds requiring local registration for low number of supplies (e.g. Russia);
- the requirement to appoint local fiscal representatives, where joint and several liability provisions make it difficult to identify businesses willing to take on this responsibility (e.g. Egypt);
- lack of clarity on marketplace provisions leading to commercial issues between app developers and marketplaces (e.g. Quebec); and
- an inability to register without a local permanent establishment (e.g. Tanzania).

In addition to some of these practical issues, an emerging trend in recent years has seen business to business supplies (B2B) also increasing included within the scope of local VAT when supplied cross-border. South Africa introduced rules in 2014 and, more recently, countries including Russia and Malaysia have followed suit, widening the net of businesses that are impacted by such measures and even requiring businesses to register in respect of intercompany supplies.

Another emerging trend is the growing number of countries, most notably in Latin America (LATAM), that are implementing measures to tax B2C supplies of digital services, albeit via a withholding mechanism. Under these rules, payment intermediaries (e.g. credit card companies and banks) are held responsible for withholding and remitting the VAT to the tax authorities. While the digital service provider may not have a registration requirement in this instance, it is still likely to impact pricing and margin decisions. Equally, uncertainty exists as to who the liability rests with where the payment processor fails to remit the VAT, adding to the complexity that businesses must now deal with when supplying customers in these countries.

Perhaps the biggest issue that TMT businesses face is how to monitor all of these developments and the nuances between each. While some countries announced rules with a significant lead in period (such as Australia and New Zealand), many other countries simply introduce rules with minimal warning; some with less than a month's notice.

With the number of countries introducing such rules increasing each year, and with the types of regimes being introduced changing in terms of the services covered and the local requirements, the need to continuously monitor these changes and react accordingly has never been greater. Businesses should now turn their attention to monitoring those key regions that are behind the curve in terms of implementing such regimes, principally LATAM and Africa where this is gathering momentum.

Although we expect the changes to minimise compliance burdens, businesses should not underestimate the cost of systems changes

2021 VAT e-commerce package

From 1 July 2021, a further suite of EU legislative changes will impact the way in which e-commerce operators are taxed in the EU and expand the current scope of the Mini One Stop Shop (MOSS). This was intended to take effect from 1 January 2021; however, this has been postponed in light of the Covid-19 outbreak, in order to give businesses more time to prepare. The changes come as part of the EU's VAT e-commerce package, designed to reflect the changing commercial landscape and create a level-playing field between EU and non-EU businesses, whilst minimising compliance burdens for suppliers.

The MOSS is a simplified system, introduced as part of the aforementioned 2015 changes, which allows businesses to declare and pay local VAT due across the EU on B2C supplies of TBE services via a single return in one EU country. From 2021, this will become a One Stop Shop (OSS), extended to include (depending on the scenario) B2C supplies of services other than TBE services, intra-EU distance sales of goods, certain domestic supplies of goods facilitated by electronic means and importations of consignments not exceeding €150.

In line with the commitment to apply the destination principle to VAT, the current distance sales thresholds will be abolished and will be replaced by the EU wide €10,000 threshold currently applicable to digital sales. This means that businesses' supplies will increasingly fall within the scope of VAT in overseas territories, requiring knowledge of individual VAT rates and requirements across all markets into which they sell – a level of detail that many businesses previously would not have required.

Another key change is that online marketplaces may in certain circumstances be deemed for VAT purposes to be the supplier where they facilitate the cross-border B2C supply of goods and will be responsible for collecting and paying the VAT. This has the potential to create significant additional VAT reporting obligations for platforms.

Although we expect the changes to minimise compliance burdens and result in significant compliance cost savings due to a smaller registration footprint, businesses should not underestimate the cost of implementing systems changes that will be required to reflect the new rules, and therefore the benefit of these 'improvements' may not be felt immediately.

All of these changes form part of the EU's overarching long-term goal of creating a 'single European VAT area'. However, with the end of the Brexit transition period looming on 31 December 2020, UK businesses' EU VAT footprint may look very different going forward. They will no longer be able to use the Union MOSS scheme via the UK and so will need to consider whether to transition to the non-Union scheme and register for MOSS in another EU member state (with Ireland being the popular choice amongst UK MOSS businesses for language reasons). With the 2021 changes on the horizon, the list of developments that businesses within the sector must address grows ever longer.

Conclusion

Summarising and reflecting on all of the key tax developments that businesses within the sector face poses the question: has there ever been a more challenging time for an indirect tax function? The combination of sector-specific developments with the introduction of DSTs and increasing number of countries applying VAT on supplies of digital services, in conjunction with the uncertainty posed by Covid-19 and Brexit, means that tax functions will need to be better equipped than ever to respond to change and help steer their organisations through this at pace. Some argue that the international tax system has failed to evolve at sufficient pace in response to the digital economy; businesses operating within the sector today will not be afforded the same luxury.

Dealing with tax debt

Chris Holmes and *Jennifer Jones* examine HMRC's approach to tax debt, and the best approach for taxpayers in difficulty

KEY POINTS

- **What is the issue?**
This article looks at the overriding principles when dealing with HMRC's Debt Management and Banking Unit and offers some practical tips for agreement of a Time to Pay Arrangement (TTPA) with HMRC.
- **What does it mean for me?**
If HMRC has no idea of the cause of debt, then the assumption is that a taxpayer is simply ignoring it and the full force of debt action follows.
- **What can I take away?**
When faced with a tax debt that the taxpayer believes they can settle over a period of time, the best option is to negotiate a TTPA with HMRC, which may incorporate funding from future income streams.

In response to the Covid-19 health pandemic, the UK government announced extra resources to assist those struggling to pay their tax liabilities due to financial distress. In March 2020, HMRC started suspending debt collection proceedings where Covid-19 is the reason for problems paying tax bills. In the early weeks of the Covid-19 lockdown, our experience showed that payment deferrals were agreed with HMRC following a relatively brief phone conversation.

However, from the start of May 2020, HMRC indicates that it will now take a tougher approach if taxpayers need Time to Pay Arrangements (TTPAs). HMRC is reverting back to its pre-Covid-19 position of expecting an informed conversation with evidence when TTPAs are requested. This article looks at the overriding principles when dealing with HMRC's Debt Management and Banking (DMB) Unit and offers some practical tips for agreement of a TTPA with HMRC.

Overriding principles for dealing with HMRC's Debt Management and Banking unit

Tax debt is unlike any other type of debt. The worst thing a taxpayer can do is ignore tax debt. Tax debt never goes out of time, as there is no statute bar. There are statutory deadlines for tax assessment, but not for the collection of tax. DMB officers want to see action being taken to address a tax debt. For them, silence or 'head in the sand' is the worst situation.

If HMRC has no idea of the cause, then the assumption is that a taxpayer is simply ignoring them and the full force of debt action follows:

1. DMB follows a debt collection process which escalates over time. Until the debt is paid or the file closed, the best that a taxpayer can expect is that the process is temporarily paused. DMB expects that everything is being done to deal with the debt in a timely manner.
2. It is important that a taxpayer, or their adviser, talks regularly with DMB until payment terms are agreed. There is a dedicated agent helpline for debt management. You should consider DMB as a separate arm of HMRC from its inspectors. If you are working with the inspectors to close a tax enquiry, you should nevertheless keep DMB informed, or they may continue the debt collection process.


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3. The speed with which DMB accelerates its collection process will vary on the nature of the tax being assessed. In general, where the taxpayer collects the tax from other people, e.g. PAYE and VAT, HMRC is far less sympathetic with its collection; it was never the taxpayer's money to spend elsewhere.
4. DMB can swiftly locate taxpayers (even those who do not give their latest address to HMRC!), due to its use of credit agencies. The first that a taxpayer knows about a tax debt can be when a DMB bailiff is on their doorstep.
5. DMB follows a strict policy set down for it by government. When looking at an individual case, its decisions can look uncommercial. However, the policy is to look at the general population and the total tax take – the knock-on impact of agreeing one case could lead to an overall fall in tax collection if DMB is known to 'do deals'.

The DMB's objective is twofold: to collect the tax; and to ensure that future tax is paid on a timely basis.

Is the tax debt correct and enforceable?

When presented with a tax bill, the first thing to do is to assess whether the debt is correct and enforceable.

To be enforceable, there must be a formal assessment. However, not everything is a formal assessment, and HMRC may need to do something to create a legally enforceable debt.

For example, for an individual with a small PAYE underpayment, HMRC may issue a form P800. This is essentially no more than a calculation of the tax underpaid, and a request for settlement will follow, either through adjusting the tax code for subsequent years, or by direct payment.

If the P800 liability remains unpaid, HMRC will need to formalise the liability, either by issuing a Simple Assessment or by issuing a notice to the taxpayer to complete a tax return. If the tax return is not then completed to self-assess the tax, HMRC can raise a determination notice.

HMRC's attitude to informal assessments is much more flexible, as they are not bound by legal process. It has greater capacity and willingness to 'forgive' a debt under its Powers and Management before a formal process commences. Hence, it is always better to speak to HMRC before a formal assessment process is issued.

Depending on the nature of the debt, you may be able to take formal action to reduce the liability:

- **Determinations:** Where tax is estimated through a determination, it may be possible to appeal the assessment by preparing and submitting a tax return, resulting in the estimated tax liability being replaced by an actual liability. However, for income tax and corporation tax, HMRC is unable to accept such returns if the year is closed (or if the determination was issued prior to the last 12 months). If it is too late, the sole option available is to seek Special Relief, but this is only available in exceptional circumstances and where it can be demonstrated that it would be unconscionable for HMRC to collect the tax. See SA Claims Manual SACM12220 onwards.
- **Errors:** If the tax liability arose from an error on a tax return, the taxpayer may be in time to amend the return or to claim overpayment relief – both of which have strict deadlines for claims.
- **Postponement:** If certain assessments are appealed, the tax remains enforceable unless it is formally postponed.
- **Claims and elections:** The taxpayer may be able to make claims or elections that could reduce the tax liability; for example, loss relief claims.
- **Reduce payments on account:** Where the amount sought by the DMB includes an individual's payments on account for the current year, it may be possible to reduce them. Use Form SA303 or the online Personal Tax Account.
- **Appeals:** HMRC, and the tribunals, may also consider late appeals where taxpayers have a 'reasonable excuse'. Similarly, if the debt includes penalties, there may be an opportunity to appeal these.

Options for settling the tax debt

Once it is confirmed that the tax debt is correct and enforceable, the taxpayer must determine how it can be paid. If a taxpayer cannot pay the tax debt immediately, they will most likely need to consider their ability to pay the debt from their future income. The taxpayer may also have other options for funding payments to DMB to settle the debt, including:

- **Sale of an asset:** If the taxpayer needs to sell an asset in order to raise funds to pay the tax, DMB is usually willing to pause collection proceedings, providing it can see a real attempt is being made to sell the asset. If proceeds from the sale will only partially repay the debt, DMB will look to collect the balance due prior to disposal.
- **Anticipated cash inflow:** Sometimes a taxpayer expects to receive a large sum of money at some time in the future from which they can pay the tax; for example, payment by a debtor or an inheritance. Although such promises give DMB an element of comfort, they carry inherent uncertainty. DMB may want documentary evidence to formally take them into account when considering repayment terms.
- **Charge on home:** In exceptional circumstances, a taxpayer may consider granting HMRC a secondary charge on their home as security. Such action must be considered very carefully and should only be done in conjunction with agreeing an achievable TTPA as a failure to pay any agreed instalments could lead to the loss of the home, without the need for HMRC to formally make the taxpayer bankrupt. It is also wise to seek legal advice.
- **Anticipated tax refund:** Clearly, this is an area where HMRC will have more certainty and greater control over the funds. It is therefore more likely to consider the use of anticipated tax refunds as part of the settlement process.
- **Third party finance:** The taxpayer could try to borrow funds commercially or personally to fund repayment of the debt, or to fill a temporary funding shortage.
- **Remission:** In very exceptional circumstances, HMRC may agree not to pursue the debt. Remission can apply where payment of the tax would cause a person severe hardship, they have no assets that could be sold to pay the tax, and their circumstances are such that they are unlikely ever to be in a position to pay the tax – usually due to severe illness or age. The tax debt is not formally written off, but collection proceedings are permanently put on hold. If the taxpayer's circumstances change, and they become able to pay the tax debt, it will be collected; for example, if they receive an inheritance. Generally, remission needs to be requested by the taxpayer.

Arguably, when faced with a tax debt that the taxpayer believes they can settle over a period of time, the best option is to negotiate a TTPA with HMRC. This may incorporate funding from future income streams, together with the other options noted above.

Time to Pay Arrangements

A TTPA may be negotiated with DMB to enable a taxpayer to defer payment of any taxes and duties, settling them by agreed instalments over a number of months. The benefits of obtaining a TTPA include the following:

- Certainty can be obtained over this aspect of a taxpayer's cash flow. The TTPA may also be entered into as part of an overall exercise to restructure a company's finance to enable it to continue trading or meet banking covenants.
- Paying taxes late often results in penalties but these may be avoided provided the TTP application is submitted before the due date and the payments are made under the TTPA terms.
- Entering into a dialogue leading to a TTPA means that HMRC is unlikely to use its debt collection power, such as direct recovery from bank accounts.
- Upon agreement of a TTPA, DMB will put further enforcement action on hold pending full settlement of the amount due. This can prevent an adverse impact on credit ratings.

The maximum period over which DMB will agree TTPAs depends largely on the quantum and nature of the debt, together with where the debt is in the collection process. For example, with Self-Assessment DMB will rarely agree a TTPA longer than two years, but for VAT and PAYE it is unlikely to be beyond 12 months. If the debt is in the latter stages of the process, DMB may only agree a TTPA covering a few months.

It is worth noting that as a result of the loan charge review, we have seen a general shift towards longer TTPAs, including five years minimum for those who met the criteria, and seven years minimum for the lowest earners (see bit.ly/3g03jn8).

It is therefore important that the taxpayer makes their 'best offer' to DMB within the parameters of what they can afford to avoid a hard rejection and escalation of debt within the enforcement process. When preparing the TTPA proposal to DMB, the following should be considered:

- For individuals, average monthly income/expenses will help to determine affordability. Future income projections are important, incorporating anticipated one-off income/capital receipts such as inheritance or proceeds from asset disposals. DMB may ask for details of an individual's monthly income and expense statement, in addition to a personal statement of assets and liabilities.
- For corporates, DMB may request cash flow forecasts to support any TTPA proposal, together with the latest management accounts and company cash reserves. DMB may also want taxpayers to demonstrate that they are taking steps to manage their costs (e.g. directors reducing their salaries).
- Whether the taxpayer has any assets that can be sold to realise funds to pay the tax debt.
- Whether any third-party financing can be sought to realise funds. This may include bank loans, cash injections from shareholders, and loans from friends or family.
- Repayment of other debts during the period covered by any TTPA.
- Payment of future tax liabilities when they fall due – HMRC expects future tax liabilities to be paid on a timely basis. The proposal should therefore include provision to put aside monies to pay future taxes.

Offering an upfront payment as part of the TTPA offer increases the chance the offer will be accepted.

If the taxpayer has the ability to make a part payment, it is generally better to include it in the TTPA offer than to first make the payment and then seek to agree a TTPA with HMRC for the balance. It is important that the taxpayer makes payments under the TTPA as they fall due and talks to HMRC if an instalment will be late or a direct debit is cancelled. If payments are repeatedly late or missed, HMRC will withdraw from the agreement and resume collection proceedings. Any late payment penalties or surcharges stood over will also come into charge.

HMRC will not always agree a TTPA. This may be because the period sought by the taxpayer to repay the debt is too long, a payment holiday is required or because the taxpayer previously had a TTPA for either the same or a different tax debt.

In the event that a formal TTPA cannot be agreed with DMB, the taxpayer may wish to make payments towards the tax debt on a voluntary basis, for an affordable amount. By doing this and thereby reducing the tax debt, hopefully repayment terms can be offered later in the collection process that meet DMB's requirements. As is generally the case when dealing with HMRC, a proactive approach is recommended to deal with debts prior to payment deadlines. Keep documentary evidence and records of action being taken to support payment, borrowings and fundraising. We must help taxpayers avoid the 'head in the sand' approach wherever possible.

From our practical experience during the Covid-19 pandemic, we recognise that many taxpayers have turned to the tax charities for support. Please donate to Bridge the Gap if you are able to at www.bridge-the-gap.org.uk.
BDO's online portal for all government measures on providing financial support is at www.bdo.co.uk/en-gb/covid-19.

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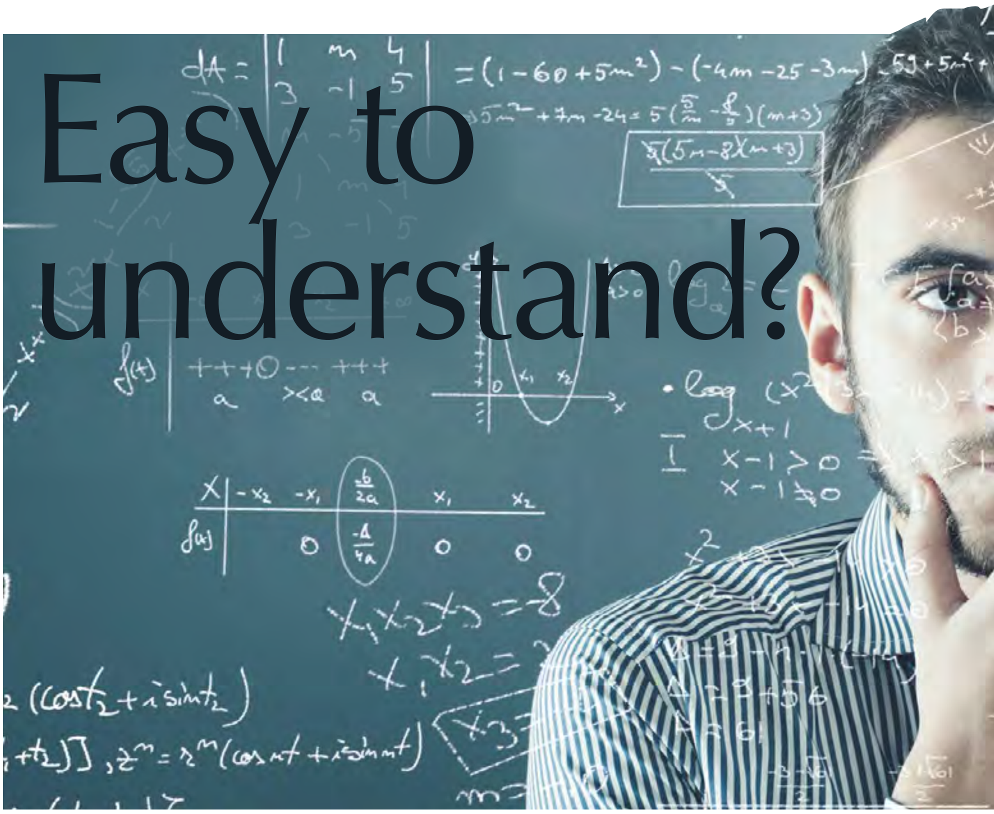
Easy to understand?



Andrew Brookes asks why so many businesses fall foul of the rules for the National Minimum Wage and the National Living Wage

KEY POINTS

- **What is the issue?**
While the premise behind the legislation for the National Minimum Wage is simple, the legislation and application of this is far from simple.
- **What does it mean for me?**
The rules need to apply to all the wide-ranging arrangements that employers have for engaging their employees. Anti-avoidance protection is built in to prevent businesses from manipulating the arrangements to reduce pay to the employee.
- **What can I take away?**
Care is essential to ensure that you understand the hours that must be paid for the category of worker, the pay that can be considered and the reductions that must be made to pay in determining whether NMW compliance is achieved.

The National Minimum Wage and the more recently introduced National Living Wage should be simple to understand and to apply, so why do so many businesses fall foul of the rules?

This article will set out the key points that employers need to understand, point out common causes of non-compliance and highlight recent changes. For ease, both the National Minimum Wage and the National Living Wage will be referred to collectively as NMW for the remainder of the article.

The premise of the regulations is simple. The government publishes minimum rates of hourly pay that employees must be paid for each hour of work they do. Businesses know the hours worked by employees and the rate of NMW applicable, and they pay at least the relevant NMW rate for all worked hours. What can possibly go wrong?

Sadly, the answer is – plenty! Obviously, some employers deliberately underpay their employees and these employers are at risk of serious consequences. However, this article is not aimed at the deliberate defaulters; it is aimed at employers that have no intention of underpaying employees but for whom NMW is sometimes not on the radar until it is too late, and at their professional advisers.

If the premise of the legislation is simple, then why do accountants need to worry about NMW compliance for their reputable clients? The main reason is that the legislation and its application is far from simple. This complexity is the combination of two factors:

- Firstly, the rules need to apply to all the wide-ranging arrangements that employers have for engaging their employees.
- Secondly, anti-avoidance protection is built in to prevent businesses from manipulating the arrangements to reduce pay to the employee. These combine to lay traps for the unsuspecting.

The consequences of errors

The consequences of getting NMW payments wrong can be extremely expensive and damaging for a business, consisting of:

1. making good underpayments to employees at the current NMW rate;
2. penalties of 200% of the unpaid wages (cap of £20,000 per employee but no overall limit); and
3. public naming and shaming.

The magnitude of settlements can have a significant effect on adviser/client relationships, as well as potential implications for audit reporting.

Where do businesses go wrong?

Ignoring the deliberate defaulters, the main reasons for non-compliance fall within the following areas:

- identifying the 'pay period';
- determining the working hours for NMW purposes;
- paying the right rate based on the employee's age;
- apprentices;
- provision of accommodation;
- clothing and equipment charges; and
- other charges to employees.

Pay period

A crucial step that is often overlooked is identifying the pay period. This is important because NMW payments apply to each pay period in isolation and the rules covering payments considered for the test differ based on the category of employee. You must know the pay period so you can ensure that the pay for that period is at least equal to the NMW obligation for that period. A pay period is a maximum of one month but is often shorter.

The main reason that businesses fall foul of this obligation is because they wrongly assume that the employee is classed as a salaried employee, with the assumption that if NMW is satisfied over the whole year on average then this is all that is required.

In order to be classed as a salaried worker, for NMW purposes certain conditions must be satisfied; and if they are not, the employee is not treated as salaried. If not salaried workers, the employee will be a worker undertaking time work, output (or piece) work or unmeasured work.

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Type of work

1. Salaried work

All the following conditions must apply for an employee to be treated as performing salaried hours for NMW purposes:

- They are paid under their contract for an ascertainable basic number of hours per year (the basic hours).
- They are entitled to an annual salary for those hours.
- They are entitled to no other payment for the ascertainable basic hours except a performance bonus and/or (from 6 April 2020) a salary premium.
- They are paid either in equal instalments which are:
  - monthly;
  - weekly;
  - two-weekly (from 6 April 2020);
  - four-weekly (from 6 April 2020);
  - other equal periods between a week and a month (from 6 April 2020); or
  - they are paid in varying monthly instalments resulting in the worker being entitled to be paid in equal amounts each quarter (from 6 April 2020).

If the conditions for salaried hours work are satisfied, it does not matter how many hours the worker works in a week, month or other period; whether all the basic annual hours are working hours; and whether the worker works extra hours in addition to the basic annual hours for which he receives his annual salary.

Salaried hours work can include workers who only work part of the year, such as term time workers, as long as they are paid in equal payments as described above throughout the year and the other conditions are satisfied. The recent changes will also benefit the retail industry, where many workers are paid hourly or per day and so have varying pay between periods.

2. Time work

This is work, other than salaried hours work, in respect of which a worker is entitled under their contract to be paid. There are three circumstances when work is time work:

1. The worker is paid under his contract solely according to the length of time worked.
2. The worker is paid under a contract according to the level of output over a certain period of time, e.g. an hour; and the worker is required to work for a set period of time, e.g. a piece worker in a factory. While being paid according to output per hour, he is regarded as doing 'time work' for NMW purposes because of the requirement to work for a set period each day.
3. A worker working in the circumstances of point 2 above is paid by the hour because he fails to reach the level of output per hour set by his contract. For example, a piece worker required to work for seven hours per day and produce five widgets per hour would normally be paid per widget. However, if he produces fewer than 35 widgets, he must still be paid for the full seven hours work at NMW rate.

A worker will be regarded as doing time work if pay relates to the amount of time worked, but they do not meet all the conditions to be regarded as salaried. This includes those who perform piece work with set hours; who are paid commission only with set hours; and who are simply paid for set hours.

For time workers, while the employer can pay based on productivity, the employer must ensure that they either agree a fair piece rate, using the rated output work system, or that the pay also meets the NMW for the time worked.

3. Output work

This is simply described in the regulations as not time work. Pay is based on the number of widgets or another measure (e.g. value of transactions). For example, such workers might be telesales staff, without set hours. The key differential from time work is that there is no set number of hours for output workers.

4. Unmeasured work

This is a 'catch all' for anyone that does not fall within the first three categories. These workers have no fixed hours but could still be paid based on the actual hours worked.

NMW working hours

For some employees this is very straightforward, as they work fixed hours at a single location; errors should be rare. The problems generally arise when either the location of the work changes, or the employer imposes obligations on the employees outside of the core time.

For travelling employees, the circumstances are key to determining the working hours. It will often be the case that these employees require payment for all time from starting work until they finish working, with the possible exception of a lunch break. This period could include travel time, waiting time and break time, as well as actual work performing time. There can be exceptions, but the starting point should be to consider the total length of the working day and then to consider what time, if any, the regulations will allow to be excluded from the calculations.

There can also be employer-imposed obligations at the start or end of the day. These could, for example, be clocking-in systems or security checks. Where these take place outside of normal working hours, the time spent waiting for and undertaking these tasks is 'working time' for NMW purposes. A five hour shift with a further 30 minutes for clocking on and security check time makes the shift length for NMW purposes five and a half hours.

Rate of NMW

Ignoring apprentices, there are set NMW rates that apply based on the age of the employee. Care is required to ensure that higher rates are applied as soon as applicable. For all employees, the rates change annually on 1 April (previously 1 October). This is not often overlooked because there is publicity around the change and it is expected.

The timing that can cause problems is birthdays; a birthday does not always trigger a change, but sometimes it does. If the business does not have adequate systems in place alerting it to the possibility of an increase in NMW rate, it can be missed resulting in non-compliance.

Apprentices

A significant percentage of the NMW defaults relate to apprentices because they add complications to the working hour and rate of pay issues.

The first trap is applying the reduced apprentice rate inappropriately. This reduced rate only applies to apprentices aged under 19 and to those aged over 19 but still in the first year of their apprenticeship. All other apprentices must be paid the full NMW rate based on their age.

The reduced apprentice rate is only applicable for those on approved apprenticeships, but some employers mistakenly apply it to apprentices that are not on an approved scheme who are entitled to the normal NMW rates.

The other common issue is failing to appreciate that training time is working time and that the apprentice must be paid at their NMW rate while training or attending college, in addition to working time.

Accommodation

Employers providing employees with accommodation are entitled to charge the employee for that accommodation. However, the amount of the charge in the NMW calculation is capped at £57.40 per week or £8.20 per day from April 2020. This charge includes services such as gas, electricity, laundry, etc., as well as furniture provided by the employer. The potential to recharge costs to employees is extremely limited and the cost to the employer of providing accommodation will often exceed the permitted reduction in pay. Consequently, in addition to increasing the possibility of NMW default, providing accommodation is often commercially undesirable.

Clothing

The NMW problems caused by clothing can be both direct and indirect. The direct clothing charge applies where an employer supplies the employee with clothing for work and applies a charge to the employee for this. If the pay was at NMW level before the clothing charge, the charge will cause a default.

Where the business imposes a dress requirement on the employee, e.g. a requirement to wear black shoes, this is an indirect cost that needs to be considered when calculating NMW. Again, paying at NMW level before considering the cost of the shoes will result in an NMW default.

Other charges

Care is required with other costs charged to employees, with any compulsory charges likely to cause an NMW default for those paid at or close to NMW before the charge is imposed; for example, an employee charged for a company provided mobile phone so they can perform their employment responsibilities.

Summary of recent changes

Salaried workers

As mentioned above, this category has been widened to include additional pay periods. This will be welcome news to businesses discovering that their previous arrangements did not meet the conditions of salaried workers for NMW purposes.

Salary premium

With effect from 6 April 2020, employers must ignore some premium payments for basic hours to workers performing salaried hours work for minimum wage purposes. These are payments for working:

- at certain times of the day;
- on a particular day (e.g. enhanced pay for public holidays);
- at a location;
- within a particular environment;
- on a particular task; and
- subject to a particular responsibility.

This enables employees to receive incentive or enhancement payments for some hours without falling outside of the salaried worker category.

Salary sacrifice

The NMW system has long been criticised for denying lower paid workers the opportunity of benefiting from salary sacrifice arrangements. This has now been addressed with the government deciding that employers offering salary sacrifice schemes will no longer be subject to financial penalties if the scheme brings payment below the NMW rate, providing strict conditions are met, including a requirement for the employee to willingly opt into the scheme. Charges for the provision of work clothing, equipment, etc. are outside of this concession.

Public naming and shaming

This is to be reintroduced with a small concession. The default limit to trigger naming and shaming is increased from £100 to £500. While this is a five-fold increase, it is unlikely that defaults will be below the new limit and all offenders are likely to be publicly identified as defaulters.

Additional support from HMRC

HMRC is to provide additional resources to help businesses comply with the regulations.

Conclusion

The HMRC budget for tackling NMW compliance has been more than doubled recently, demonstrating that HMRC is taking its enforcement responsibilities seriously. This article shows how easy it is to fall on the wrong side of the NMW line. Care is essential to ensure you understand the hours that must be paid for, the category of worker, the pay that can be considered and the reductions that must be made to pay in determining whether NMW compliance is achieved. Caution is especially recommended before any conditions are imposed on, or charges are made to, employees.

CHANGES TO RATES

The NMW rates increased significantly on 1 April 2020, achieving the target of the NMW top rate being equivalent to 60% of median earnings. The new rates are:

	Previous rate	Current rate (from 1 April 2020)	Increase
National Living Wage	£8.21	£8.72	6.2%
21-24 Year Old Rate	£7.70	£8.20	6.5%
18-20 Year Old Rate	£6.15	£6.45	4.9%
16-17 Year Old Rate	£4.35	£4.55	4.6%
Apprentice Rate	£3.90	£4.15	6.4%
Accommodation Offset	£7.55	£8.20	6.4%


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Terminator 2

Keith Gordon looks at a case which considers the tax treatment of payments made to terminate a commercial contract

KEY POINTS

- **What is the issue?**
The current Coronavirus crisis is likely to have caused (or will lead to) the early termination of many commercial relationships, and the terminator might well make a payment to the former supplier. The tax treatment of such a payment will have to be considered.
- **What does it mean to me?**
The taxation of termination payments is the subject of established case law and different tax treatments can arise in different cases.
- **What can I take away?**
Particularly in the current Coronavirus crisis, the legal concept of frustration might be the cause of the termination of a contract. Care should therefore be taken to consider carefully the basis of all termination payments.

Although always a business risk, the current Coronavirus crisis is likely to have caused (or will lead to) the early termination of many commercial relationships. In such cases, the terminator might well – for a variety of reasons, whether contractual or out of goodwill – make a payment to the former supplier. The question that will then have to be considered is the tax treatment of such a payment. This question lay at the heart of the recent case of *Looney v HMRC* [2020] UKUT 119 (TCC).

The facts of the case

Mr Looney was a partner in a firm (Kieran Looney & Associates) which provided management training to the senior management of a substantial commodities trading company, Trafigura Beheer (TB). Following the early termination of the contract, the partnership received £1 million, which Mr Looney sought to characterise as a capital receipt for the loss of a secret process in his proprietary performance management system. There was a further £3 million payment which Mr Looney sought to argue was attributable to entities that he owned separately from his interest in the partnership.

The contract with TB was entered into on 14 January 2009 and was to last for three years. Under the contract, the firm would receive £3 million each year, as well as a non-refundable £3 million deposit for certain training materials, which would remain in the partnership's ownership but able to be used by TB under licence. The contract also contained a termination clause. Under that clause, the contract could be terminated by TB on written notice to the partnership by 1 November 2009 and would lead to the payment of the deposit and a £1 million termination fee.

TB duly exercised the termination clause (and despite Mr Looney's attempts to persuade the High Court that the clause had not been validly exercised later failed). During the lifetime of the contract, almost £3 million had been paid by TB, not to the partnership but to the Swiss bank account of a Panamanian company owned by Mr Looney.

In the First-tier Tribunal (FTT) hearing, Mr Looney explained that the reason for seeking a £1 million payment in the termination clause was to compensate the partnership for the loss of proprietary materials which would inevitably become available to TB after the cessation of any contractual relationship between the parties (point 1). The FTT rejected this analysis. It also considered that the payments represented part of the partnership's trading income, rather than that of another entity (point 2).

Mr Looney appealed against both conclusions to the Upper Tribunal.

The Upper Tribunal's decision

The case came before Judges Swami Raghavan and Ashley Greenbank.

Point 1: capital or income

In respect of the first issue, the judges recognised that qualitative decisions such as this would be difficult to overturn, as the FTT's decision should rarely be interfered with unless clearly wrong as a matter of law. Mr Looney put particular emphasis on one House of Lords' decision, *Evans Medical Supplies Ltd v Moriarty (HM Inspector of Taxes)* (1957) 37 TC 540, which concerned secret processes, a payment in respect of which was held to be capital. In *Evans*, the House of Lords said that it was obvious that the parting of a secret process did not represent the provision of a service in the normal trading sense. However, in *Evans*, the company's disposal of its secret process effectively destroyed the company's ability to trade profitably, which was why the receipt was categorised as capital in nature.

In the FTT hearing, the tribunal had also noted that Mr Looney's contentions about the nature of the training materials were not readily consistent with the written terms of the contract and, in particular, the description of the termination payment itself. It also noted that the partnership's documents in the High Court proceedings did not suggest that the partnership was seeking compensation for the loss of a secret process. Furthermore, the FTT did not consider that divulging this material to TB had any serious impact on the partnership's ability to trade more broadly. Mr Looney argued, however, that the FTT had erred in its analysis.

Although the Upper Tribunal remarked that the FTT did not seem to have considered many of the authorities to which the Upper Tribunal had been referred, the Upper Tribunal considered the FTT had fully considered the facts of the case before it (which the authorities stated was paramount) and in particular the contract itself. The Upper Tribunal accepted that findings of the High Court judgment were not binding on the FTT (as the case there had involved different parties). However, the Upper Tribunal considered that the FTT did not actually rely upon the High Court's decision (besides drawing comfort from it).

Overall, the Upper Tribunal could not see any fault in the FTT's analysis and therefore it dismissed the appeal on this ground.

The taxation of termination payments is the subject of established case law and different tax treatments can arise in different cases.

Point 2: was the income that of the partnership or of a different entity?

The main argument before the FTT on this second point was that there had been a novation of the TB contract with the partnership and/or the assignment of the contractual benefits to a company owned by Mr Looney.

In the FTT, the tribunal had noted that there was nothing in writing to support the existence of the alleged variation (despite written confirmation being required under the contract itself); nor was there any evidence of TB having agreed to it (let alone TB's reasons). For these reasons, the FTT rejected the oral evidence from Mr Looney that asserted that there had been such a variation.

In the Upper Tribunal, Mr Looney abandoned those arguments but suggested that there was an implicit multi-party contract and that the payments received were properly accounted for by parties other than the partnership. HMRC accepted that a multi-party contract was a possibility but one which was not supported by any evidence before the FTT. The Upper Tribunal agreed with that analysis.

As a result, Mr Looney's appeal was dismissed in its entirety.

Commentary

The case ultimately turned on its facts. However, the taxation of termination payments is the subject of established case law and, as the Upper Tribunal noted, different tax treatments can arise in different cases.

In my view, Mr Looney's case was not assisted by the fact that he was seemingly putting forward arguments that were not readily consistent with the documents before the tribunal (those documents being the contract itself and the correspondence arising from the High Court litigation).

From a personal perspective, I must also admit to raising an eyebrow when I read that payments were made not to the partnership but to the Swiss bank account of a Panamanian company owned by Mr Looney. In this respect, Mr Looney had received advice that 'to avoid any allegations of tax evasion' he ought to arrange for payments to be channelled through a UK company and that a UK company was subsequently incorporated for these purposes. Accordingly, there was no such allegation made in these proceedings and the tribunal reached its decision without such suggestions being made. Similarly, I make no suggestions of impropriety. Nevertheless, the set up is unusual and is unlikely to have helped initial perceptions of Mr Looney. For these reasons, such arrangements should be avoided wherever possible and, when it is not possible, it is essential that contemporaneous records are made to explain the reason for the set-up, with possibly clear, unprompted and upfront disclosure to HMRC.

What to do next

So far as the wider principles are concerned, it should be pointed out that, particularly in the current Coronavirus crisis, the legal concept of frustration might be the cause of the termination of a contract. That can cause the contractual analysis to change and this might well lead to a different tax treatment. Care should therefore be taken to consider carefully the basis of all termination payments.

PROFILE

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The true cost of a gift

Sofia Thomas explores the changes to gift relief when business assets are transferred in a divorce

When a couple gets divorced, assets are often transferred between them to satisfy financial claims. Tax reliefs help to mitigate much of the potential capital gains tax that would otherwise arise on the transfers. Transfers in the year of separation take place on the usual no gain, no loss basis between spouses. However, not everything can be agreed in time for this to apply. One valuable and frequently claimed relief in divorce is gift relief; however, HMRC's guidance has been updated, meaning that the availability of the relief is much reduced.

HMRC now refers to the case of *Haines v Hill* [2007] EWCA Civ 1284, where the judgment states that 'the ability of one spouse to apply to the court … is a right conferred and recognised by the law' and the right is equal to the value of the assets being transferred. Therefore, the spouse giving up the business asset is in fact receiving consideration equal to the value of the assets being transferred. If the deemed proceeds are equal to the market value of the transfer, the gain available for the relief is reduced to nil. The fact that business asset disposal relief (the replacement for entrepreneurs' relief) is now restricted to gains of £1 million exacerbates the numbers who may have hoped to rely on gift relief applying.

I have recently become aware of two divorce judgments where the Family Court judge has assumed that gift relief will be available on transfer of business assets. The fact that it may not be available drastically distorts the final position, as the tax liability shifts from the donee to the donor.

What is gift relief?

Briefly, gift relief is available to defer the gain on gifts of qualifying business assets. The relief is given under Taxation of Chargeable Gains Act s 165. The relief defers the gain to the donor by holding over the gain against the base cost of the shares in the hands of the donee. The amount of the gain eligible for relief is reduced by any consideration received for the gift.

What was the previous position?

To show the implications of the change, we will look at the implications of availability and removal of gift relief in the following scenario.

Bette and Tina married in 2014. They separated in March 2019 and have the assets of Yellow Ltd, Bette's trading company. Bette owns 100% of the shares and the business has been valued at £10 million. The judge has ordered Bette to transfer 40% of the shares in Yellow Ltd to Tina. The transfer is outside the tax year of separation.

The judge has assumed that gift relief will be available to Bette, thus meaning that the position is as follows:

- Bette has a gain equal to £4 million on the transfer of the shares but she can claim gift relief on the transfer to reduce her capital gains tax liability to nil. The held over gain will transfer to Tina.
- Tina has shares worth £4 million. When Tina sells the shares, her base cost will be effectively nil. She has a potential future capital gains tax liability of £800,000. Therefore, her net holding is £3.2 million.

Why have things changed?

As above, where consideration is received for a gift, the amount of consideration reduces the value of the gift eligible for gift relief. HMRC's guidance at CG66886 states:

> 'Where there is no recourse to the courts, such a disposal is usually made in exchange for a surrender by the donee of rights which they would otherwise have been able to exercise to obtain alternative financial provision. In these cases, the value of the rights surrendered represent actual consideration of an amount which may reduce the gain potentially eligible for hold-over relief to nil.'

If there is no court order, HMRC takes the view that Bette must have made the transfer of shares to Tina, and in exchange Tina is giving up rights which she would otherwise have been able to use to secure another financial provision. The rights that Tina gives up are equal to the value of the shares and is the deemed consideration that Bette is receiving.

KEY POINTS

- **What is the issue?**
Current guidance from HMRC suggests that gift relief is no longer available when business assets are transferred in a divorce.
- **What does it mean for me?**
If you are providing tax advice on the transfer of qualifying business assets and a court order is in place, gift relief is unlikely to be available. This could drastically re-shift the implications of the order.
- **What can I take away?**
You may need a much greater understanding of the order handed down by the courts or of how the gift was set up if there was no court order.

Where there is a court order, the CGT manual states:

> '...following *Haines v Hill [2007]* EWCA Civ 1284, the court's order quantifies the value of the applicant spouse's statutory right by reference to the value of the money or property ordered to be transferred by the respondent spouse. The value of the statutory right surrendered is actual consideration for the assets received, which may restrict or preclude the availability of hold-over relief on the transfer.'

This seems to say that in our case if a judge has ordered Bette to transfer 40% of her shares to Tina, then the court order establishes the value of the rights given up by Tina which are equal to the market value of the shares. In this case, the consideration again reduces the gain eligible for relief to nil, thereby making the whole gain taxable.

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What's the new position?

Applying these principles to Bette and Tina, the tax position of each after the transfer is:

- Bette has a taxable gain of £4 million. She will pay capital gains tax at 20% on the gain, amounting to tax due of £800,000 (ignoring business asset disposal relief).
- Tina has shares worth £4 million. When Tina sells the shares, her base cost will be £4 million and she will pay substantially lower capital gains tax at the point of disposal than she would have done had a gift relief claim been available. Her net holding is £4 million.
- Bette has a capital gains tax liability of £800,000 and Tina has effectively received a benefit of £800,000 by way of the base cost of her shares being uplifted to £4 million.
- There is therefore a swing of £800,000 and an immediate charge to capital gains tax.

The removal of gift relief on divorce is significant for many reasons:

- It creates a tax liability when there is potentially no cash available to settle the liability.
- As there is no cash, the transferor (Bette, in our case) cannot defer the capital gains tax by utilising rollover relief as they have no cash to invest.
- If it was assumed the relief would be available, the fact that it will not be creates a distortion in the order that was unintended. This could result in individuals lodging appeals against orders.
- With the reduction of entrepreneurs' relief and business asset disposal relief, more couples may be looking to gift relief to remove the immediate charge to capital gains tax.

Where, as advisers, we are instructed on cases in divorce, we should clearly articulate the change and the impact that this will have. In my experience, it is not the liability that is the main pain point but rather the fact that it is an immediate liability which they may not have the funds to meet.

What's an exceptional circumstance?

Further on in the guidance, HMRC comments that it does allow that 'exceptionally' it may be possible for gift relief to apply. Unfortunately, it does not go on to give an example. I surmise that the exceptional circumstance is therefore one where there is a true gift.

For example, Harry and Sally are married and own Blue Ltd, a trading company. Sally owns 30% of the company and Harry owns 70%. They have been separated for two years but still get on well. Sally has decided that she no longer wants to be as involved in the company and gifts 20% of the shares to Harry. Sally gets nothing in return for this gift. Harry does not sign any document saying that he forgoes the right to make a financial claim against Sally, etc. Harry and Sally both agree that gift relief is a sensible option for them and they make a joint claim. In a few more years, they formalise their divorce.

In this scenario, would gift relief apply? I would suggest it might, though I would been keen to hear others' views. And if the above scenario would apply, would you then open the floodgates for couples gifting shares outside of any informal or formal agreement to secure gift relief?

There are several things I hope this article draws attention to:

1. HMRC has changed its approach and now a donor is deemed to receive consideration equal to the value of the transfer of business assets on divorce.
2. If it is a genuine gift, then gift relief may be available.
3. With the restriction of entrepreneurs' relief or business asset disposal relief, we may see more couples hoping to rely on the gift relief concession. They will need to be advised early on in proceedings that this is unlikely to be an option.
4. Do we, as advisers, think that this approach is open to being challenged?

All bets are off

Rebecca Sheldon considers the role that the Transfer of Assets Abroad code plays in the sale of a UK telebetting business to a Gibraltar company

KEY POINTS

- **What is the issue?**
The case of *Fisher v HMRC* concerns the tax consequences of the sale and transfer in March 2000 of a telebetting business by a UK resident company to a Gibraltar company.
- **What does it mean to me?**
The Upper Tribunal found that the Transfer of Assets Abroad code could in theory be engaged even in a situation where the taxpayer was not seeking to avoid income tax by making the relevant transfer.
- **What can I take away?**
The decision gives significant guidance on the scope of the Transfer of Assets Abroad code and how it should be interpreted. It demonstrates that for the code to be engaged, it is not a requirement that there be avoidance of income tax specifically.

In *Fisher v HMRC* [2020] UKUT 62 (TCC), Philip Baker QC and Rory Mullan successfully represented taxpayers Stephen, Anne and Peter Fisher ('the taxpayers') on appeal from the decision of the First-tier Tribunal on 14 August 2014.

The case concerns the tax consequences of the sale and transfer in March 2000 of a telebetting business by a UK resident company called Stan James Abingdon Ltd (SJA) to a Gibraltar company named Stan James Gibraltar Ltd (SJG).

Factual summary

Stephen and Anne Fisher were resident in the UK during the relevant times, while Peter was resident in the UK until 2004. The family ran the Stan James Betting business.

Until 2001, general betting duty was charged under the Betting and Gaming Duties Act 1981 s 1 on any bet 'made with a bookmaker in the United Kingdom otherwise than by way of pool betting or coupon betting'.

In 1997, SJA decided to set up a branch office in Gibraltar. This was prompted by the acquisition of a loss-making postal betting operation which was taking bets on German football games. SJA decided the business might run profitably from a jurisdiction which charged little or no betting duty. Gibraltar was chosen because it had only 1% betting duty.

Stephen believed that UK sourced bets would need to be taken by a separate legal entity, rather than through a branch. On 15 July 1999, Peter Fisher resigned as a director of SJA. On 22 July 1999, SJG incorporated in Gibraltar on Peter's instructions. On 3 August 1999, the taxpayers and their daughter Dianne (a non-UK resident) acquired all the shares in SJG between them.

Initially, it was intended to just transfer the business conducted by the branch to SJG, but on 10 January 2000 it was decided that the remainder of SJA's existing telebetting operation and its other activities (except for its 12 shops) would also be transferred. It was decided this would be with effect from 29 February 2000. On 3 February 2000, Dianne Fisher resigned as a director of SJA and was then appointed as a director of SJG, as were several others who were not family members. Stephen Fisher resigned as a director of SJG with effect from 3 August 1999.

However, the Fisher family remained the sole shareholders. At the date of the transfer of the business, Stephen and Anne Fisher held almost 38% of the shares of SJA and Peter and Diane held just over 12%. Stephen and Anne each held 26% of the issued share capital of SJG and Peter and Dianne each held 24%.

The agreements for the sale and transfer of the businesses between SJA and SJG were signed in early March 2000 at market value. This included the telebetting operation located in Abingdon and the Gibraltarian branch. SJG paid all taxes due under Gibraltar law and from 2003 onwards developed internet betting and gaming platforms.

In 2003, SJG became the parent company of SJA, and in 2009 it was re-registered as Stan James Plc. SJA continued with its other business streams until October 2001, when the UK betting regime changed: it then became possible for UK bookmakers to compete with offshore bookmakers in taking telebets. After the change, SJA established its own UK telebetting operation.

HMRC assessed Anne, Stephen and Peter as liable to income tax on the profits of SJG for the years 2000/01 to 2007/08, on the basis of the Income and Corporation Taxes Act (ICTA) 1988 s 739 and the Income Tax Act 2007 s 720.

The findings of the First-tier Tribunal

The FTT found that the taxpayers (shareholders and/or directors of both companies) were quasi-transferors of the business, invoking the provisions of the Transfer of Assets Abroad code (the TOAA code). It was held that they were subject to a charge under ICTA 1988 s 739 on the profits of SJG. It was further held that the motive defence under s 741 was not available to the taxpayers because the main purpose of the transfer was to avoid liability to pay betting duty.

However, as Anne is an Irish national, the TOAA code restricted her freedom of establishment. Interpreting this in conformity with EU law, the legislation had to be interpreted as restricted to situations where tax was avoided by artificial means: as this was not the case here, Anne was able to use the motive defence and was not liable. Her husband and son, however, could not benefit from this narrower interpretation as English nationals.

In addition, Stephen Fisher's appeals for 2005/06 and 2006/07 were allowed on the basis that the discovery assessments were not validly made, and Peter Fisher's appeals for the period 2002/03 were allowed on the basis that the assessment for this year was out of time.

PROFILE

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The findings of the Upper Tribunal

The Honourable Mrs Justice Andrews DBE and Judge Kevin Poole, sitting in the Upper Tribunal, summarised the four key issues to consider as follows:

1. Was the TOAA code engaged?
2. Was the motive defence under ICTA 1988 s 741 available?
3. Does the TOAA code breach EU law?
4. Were the discovery assessments valid?

Was the TOAA engaged?

The Upper Tribunal firstly found that the TOAA code could in theory be engaged even in a situation where the taxpayer was not seeking to avoid income tax by making the relevant transfer (para 56 of the decision). This was because it was held that the intention behind ICTA 1998 s 739(1A)(b) was to head off the argument that avoiding income tax was a relevant condition, to ensure that the purposes of the transferor were only relevant and fully examined in the context of the motive defence in s 741.

However, it was held at para 95 that the language of s 739 did not allow the interpretation given to it by the decision in the FTT. The transfer in this case was made by SJA and not by any of its individual shareholders or directors, and 'there is no basis for treating any of them as the "real" transferor and SJA as merely an instrument by which they effected the transfer of assets'. The Upper Tribunal went on to hold that the FTT had erred in treating acts by SJA's directors as procuring SJA to do something when they were carried out for and on behalf of the company: it was 'not possible to impute the transfer to any of the taxpayers in this case as "quasi-transferors"'. The TOAA code was therefore not engaged at all.

Although this was sufficient to dispose of the appeal in favour of the taxpayers, the Upper Tribunal went on to consider the other issues. It firstly considered whether all of the income of SJG derived from the transfer of SJA, as s 739(2) treats any income of the non-resident transferee as if it were the income of the transferor where he has the power to enjoy 'by virtue of or in consequence of any such transfer, either alone or in conjunction with associated operations'.

The Upper Tribunal stated that if it were relevant, it would have found for HMRC on this issue. Mr Baker QC had contended that the statute could not apply to income derived from a wholly new commercial business developed by SJG after the transfer or, if not, to income generated in consequence of factors independent of the transfer. However, the Upper Tribunal agreed with the FTT's reasoning that 'associated operations' included indirect assets and income arising from assets whether directly or indirectly.

Was the motive defence available?

In summary, the FTT held that however clear it was that there was a non-tax avoidance motive, if avoidance of tax formed any part of the arrangements, it must be regarded as at least one of the purposes of the transaction. Both Stephen and Peter Fisher had the motive to avoid betting duty, and the first limb of the motive defence could therefore not apply. Anne Fisher, however, had no purpose in relation to the transfer.

Concerning the second limb of the motive defence, the FTT was satisfied that the transfer and associated operations were 'bona fide commercial transactions', but it considered that they were designed for the purpose of avoiding liability to taxation. The Upper Tribunal considered that the live issue was whether or not the transfer and any relevant associated operations were 'designed for the purpose of avoiding liability to taxation', i.e. the second limb of the motive defence.

It held that Parliament had legislated for two potential motive defences, with the second of these available where there are bona fide commercial transactions which were not designed for the purpose of avoidance. The existence of any tax avoidance purpose at all disqualifying a taxpayer from benefiting from the second limb of the defence 'cannot be right' (para 145). The fact that the main reason for the transfer was the survival of the business therefore meant that the FTT had fallen into error in reaching its conclusion that the motive defence was unavailable to Stephen and Peter in these circumstances.

Does the TOAA code breach EU law?

On the issue of whether the TOAA code breaches EU law, the Upper Tribunal held that the FTT was right to hold that the TOAA code restricted Anne Fisher's freedom of establishment, with the consequence that it must be interpreted in a manner that would make it compatible with EU law. However, the position for Stephen and Peter was 'more complex' (para 181).

The Upper Tribunal held at para 203 that although the negative tax treatment had no direct impact on Anne Fisher's own tax position, the connection between spouses may be regarded as 'sufficient to entitle an individual to rely upon the adverse measure affecting them, on the exercise of the Treaty freedoms of someone else'. Stephen Fisher was therefore entitled to rely on the Treaty of the Functioning of the EU (TFEU) Article 49. Peter Fisher's connection to his mother Anne as an independent adult was however insufficient, and so he could not rely on Article 49. However, the Upper Tribunal held that the conforming interpretation should not apply to persons whose situation does not fall within the scope of EU law, agreeing with the FTT.

Were the discovery assessments valid?

The final issue concerned the validity of assessments for 2005/06 and 2006/07 which were notified to Stephen and Anne Fisher. The FTT concluded that the hypothetical officer could have been reasonably expected, on the basis of information made available to her before the relevant time, to be aware of the situation mentioned in TMA 1970 s 29(1). However, the Upper Tribunal disagreed, holding that if it was wrong in relation to the other questions, the assessments for these years would be upheld. This was because the finding of the FTT required knowledge to be imputed from documents which had not been provided to the officer until after the enquiry window closed.

Analysis

The decision is a really important one in that it gives significant guidance on the scope of the TOAA code and how it should be interpreted. In particular, it clarifies that the motive defence can apply even if there is a saving of betting duty alongside the main purpose of transferring the business abroad in order to save it.

In terms of general scope, it also demonstrates that for the TOAA code to be engaged, it is not a requirement that there be avoidance of income tax specifically. Moreover, it clarifies how EU law can extend to the spouse of an EU national (but how the ties to an adult independent child were in this case insufficient to be included). It also, not unsurprisingly, confirms the view given previously in the FTT that the TOAA code is contrary to EU law.

However, the case is also significant in that it highlights the delays that can occur in tax proceedings. The case has been ongoing for well over a decade (and in part involves matters that happened 20 years ago). There is also of course the possibility that the case will go higher. Although this case appears to be a particularly severe example, it demonstrates that both tax advisers and their clients should be aware that challenging HMRC assessments may well take a significantly longer time than first anticipated.

The walls are crumbling

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Edward Hellier considers the case of *Union Castle*, and its impact on transfer pricing and equity transactions

KEY POINTS

- **What is the issue?**
The traditional approach to transfer pricing has been that it does not apply to equity transactions. However, the recent decisions in *Union Castle* have challenged that conventional wisdom.
- **What does it mean for me?**
The judgments provide a basis for revenue collection authorities to argue that transfer pricing rules apply to matters such as an issue of bonus shares or the payment of a dividend by a wholly owned subsidiary, and therefore merit careful consideration by advisers.
- **What can I take away?**
Advisers must be conscious of the potential for transfer pricing rules to apply to equity transactions, and certainly for HMRC or other Revenue authorities to argue that they do.

The traditional approach to transfer pricing has been that it does not apply to equity transactions, such as the payment of a dividend or the issue of bonus shares. However, the recent decisions of the Upper Tribunal and Court of Appeal in the *Union Castle* case have challenged that conventional wisdom (see *Union Castle Mail Steamship Company v HMRC* [2018] UKUT 316 (TCC) (‘*Union Castle UT*’) and *Union Castle Mail Steamship Company Ltd and others v HMRC* [2020] EWCA Civ 547 (‘*Union Castle CoA*’)).

In the case of *Union Castle UT*, the Upper Tribunal found that the transfer pricing provisions, which at the time of the relevant transactions were contained in Income and Corporation Taxes Act (ICTA) 1988 Sch 28AA, applied to an issue of bonus shares by a fully owned subsidiary to its parent. (These provisions are now contained in the Taxation (International and Other Provisions) Act (TIOPA) 2010 Part 4.)

The Court of Appeal did not hear argument on the transfer pricing issue but, like the lower tribunals, reached its decision on other grounds. Although the provisions have moved, the issues discussed in this article remain relevant.

Whilst the Upper Tribunal’s decision on transfer pricing was made in passing (and is thus not binding on other courts), it may provide a basis for revenue collection authorities to argue that transfer pricing rules apply to matters such as an issue of bonus shares or the payment of a dividend by a wholly owned subsidiary.

The background to the decisions

The case of *Union Castle* concerned a disallowed deduction claimed in respect of the derecognition, in Union Castle’s accounts, of cash flows from certain FTSE-based derivative contracts.

Union Castle was the wholly owned subsidiary of a publicly quoted investment trust, Caledonia Investments plc. In May 2007, the board of Caledonia was concerned about a possible fall in UK equity markets, and wanted to implement a hedging strategy by purchasing put options against a FTSE 100 index. However, the board was also concerned that purchasing such options might imperil Caledonia’s investment trust status. It was therefore decided that Union Castle would purchase the options, which it did between 20 June and 31 December 2007.

In July 2008, accounting guidance for investment trusts clarified that Caledonia could invest in derivatives without losing its investment trust status, so it appeared that Caledonia could in fact hold the put options in its own name.

During the financial year ending 31 March 2009, some of the put options were exercised and further put options were purchased. By October 2008, Union Castle held three put options and three put spreads (the 'Contracts').

In November 2008, Caledonia considered novating the Contracts from Union Castle to Caledonia but realised that this would lead to a tax charge to Union Castle. Instead, it was decided that Union Castle would make a bonus issue of 'A Shares' to Caledonia, which carried a right to receive a dividend equal to 95% of the cash flows arising from the close-out of the Contracts. The A Shares were added to Caledonia's investment ledger as a new security with no cost attributed, but were ascribed at fair value, reflecting the pass-through right to 95% of the future cash flows from the derivatives. As a consequence of issuing the A Shares, Union Castle had to derecognise 95% of the value of the Contracts for accounting purposes.

Between January and August 2009, Union Castle closed out the Contracts and paid dividends equal to 95% of the proceeds to Caledonia. In relation to the derecognition of the Contracts, Union Castle sought to claim a deduction. HMRC denied this claim and Union Castle appealed.

The appeal covered a number of issues; the relevant one for these purposes was whether the bonus issue of shares amounted to a 'provision' for the purposes of Sch 28AA. If it was a 'provision', then the transfer pricing rules would apply. As discussed below, the case was not decided on the transfer pricing issue, although both the FTT and UT expressed their views on the point.

The arguments of the taxpayer

Among the taxpayer's arguments in support of the position that transfer pricing rules do not apply to equity transactions were that:

- the established global understanding and practice was that transfer pricing rules do not extend to shareholder transactions; and
- the OECD Guidelines draw a clear distinction between shareholder activity and other activity, without contemplation that transfer pricing rules would apply to the former.

Indeed, even if the share issue was subject to transfer pricing rules, it was unclear on what basis the arm's length calculation would be made, and if it would produce a different result.

The global consensus

The starting point of the taxpayer's arguments was the global understanding that transfer pricing does not apply to shareholder transactions. In short,

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transfer pricing rules are concerned with trading or other business relationships, being the provision of goods and services by one party to another related party in the course of their trade or business. In contrast, a bonus issue of shares does not bear the character of making or imposing conditions in 'commercial and financial relations', as required by OECD Model Tax Convention Article 9 and the accompanying OECD Transfer Pricing Guidelines. A company issues shares or pays dividends as part of its shareholder relations and not part of its trade or business that forms the context of its commercial or financial relations.

This consensus, the taxpayer argued, was clear from both domestic case law (*Ametalco UK v IRC* [1996] STC (SCD) 399) and foreign case law (*Vodafone Services Pvt Ltd v Union of India and others* (2014) 17 ITLR 209).

Ametalco is a decision of the Special Commissioners concerning the earlier transfer pricing provisions contained in ICTA 1988 s 770. The case proceeded on the basis, accepted by both parties, that the UK's transfer pricing rules did not cover a subscription for shares in an associated company.

Vodafone is a decision of the High Court of Judicature at Mumbai, in which an Indian subsidiary issued shares to its non-Indian parent for a subscription price that was said to have been below market value. The Indian Revenue had advanced a transfer pricing argument that was rejected by the court, which held that the regime could not operate in relation to the amounts received on the issue of share capital.

OECD Guidance

The OECD Guidelines and OECD Model Convention are relevant to interpreting the domestic legislation, as the UK legislation provides for it to be construed in accordance with OECD principles.

The taxpayer pointed to the OECD Guidelines, which it said drew a clear distinction between shareholder activity and other activity. The taxpayer argued that what is contemplated when applying the transfer pricing rules is the identification of the characteristics of the property concerned or the nature of the services themselves, in order to arrive at an arm's length price for such goods or services. The Guidelines do not contemplate such an analysis applying to shareholder activity.

In the context of the global understanding that transfer pricing does not apply to equity transactions – bearing in mind that the preface to the OECD Guidelines emphasises the importance of an 'international consensus', and the distinction made between shareholder and non-shareholder activities – it was necessary to construe the UK legislation to respect the distinction made in the OECD Guidelines and not apply the UK transfer pricing rules to the bonus issue.

The FTT decision

The FTT determined the appeal on a different basis from that of the transfer pricing issue; however, the taxpayers won in relation to that issue and the FTT held that the bonus issue was not a 'provision' for the purposes of Sch 28AA. In short, the FTT agreed that the distinction in the OECD Guidelines between shareholder and non-shareholder transactions had to be given life in the construction of the domestic legislation, and saw nothing in the authorities cited to upset that conclusion.

The FTT accepted that were the transfer pricing rules to apply, it would be necessary to postulate a situation where Caledonia held shares in Union Castle but was not a controlling shareholder. In such circumstances, the FTT considered the issue of bonus shares to be an arm's length transaction.

The Upper Tribunal decision

The UT also determined the appeal on a different basis; however, it gave its conclusions on the transfer pricing issue. On that point, the UT overturned the decision of the FTT and held that the transfer pricing rules did apply to the bonus issue of shares. In particular, whilst the UT recognised that there is a distinction drawn by the OECD Guidelines between shareholder and non-shareholder activity, it held that the distinction does not operate as a blanket exclusion from the ambit of 'provision' in Sch 28AA of transactions concerning share capital between associated persons. The UT held that there was nothing in Sch 28AA itself that excludes from the ambit of transfer pricing an issue of shares such as the one in this case.

Although not wholeheartedly endorsing the decision of the FTT in *Abbey National Treasury Services plc v HMRC* [2015] UKFTT 341 (TC) (*ANTS*), which applied the transfer pricing rules to an issue of shares (a point which *Union Castle FTT* said was wrongly decided), the UT did specifically agree with the FTT's observations in *ANTS* that there was nothing in Sch 28AA or the OECD Model Convention or Guidance that took the issue of shares outside the transfer pricing rules, and neither the UK legislation nor the OECD Model Convention should be construed strictly so as to exclude such a transaction.

The UT drew no assistance from *Ametalco* or *Vodafone*. It stated that in *Ametalco,* the Crown had made a concession based on particular statutory language which HMRC had not made in this case; and held that the conclusion in *Vodafone* was not predicated on a principle that capital transactions such as the issue of shares must be outside the scope of transfer pricing, but on the basis that the relevant Indian statutory provision was confined to computations of income.

The UT did not determine what adjustment the application of the transfer pricing rules would have required.

The Court of Appeal

The Court of Appeal, having determined the appeal on a different basis, did not hear argument on the transfer pricing issue. The decision of the UT on this point was therefore undisturbed.

Practical implications

As a result of these decisions, the law is in a somewhat uncertain state when it comes to the question of whether, and how, transfer pricing rules apply to equity transactions. Against the backdrop of the orthodoxy that suggests that such transactions are outside the scope of the transfer pricing regime sits an obiter decision of the UT, undisturbed by the Court of Appeal, suggesting that orthodoxy is wrong. It is supported by an obiter observation of the FTT in *Abbey National* in a decision that was held to be wrongly decided in *Union Castle FTT* but endorsed by obiter statements in *Union Castle UT*.

The certainty for the adviser, however, is that HMRC, and other revenue authorities across the world, will see these decisions as supporting transfer pricing arguments in relation to shareholder transactions, and it will be necessary to meet those arguments. Indeed, certain foreign revenue authorities have already attempted to use *Union Castle UT* to argue that transfer pricing applies to shareholder transactions.

Conclusion

Until the transfer pricing issue has been decided in a way that is binding on other tribunals, there will not be legal certainty on the matter. However, the following points can be taken from the *Union Castle* litigation:

- Advisers must be conscious of the potential for transfer pricing rules to apply to equity transactions, and certainly for HMRC or other Revenue authorities to argue that they do.
- If transfer pricing rules do apply to an equity transaction, the basis for determining the correct arm's length price position, and so any adjustments that would be required, remains open for debate.
- Increasingly transfer pricing issues require an awareness, and analysis, of foreign case law.

Technical Team

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Welcome to the June Technical Newsdesk

As you might expect, this month's Technical Newsdesk is quite COVID-19 'heavy'. But I make no excuse for that – the pandemic has had a significant impact on our working lives, and we have been busy working with HMRC and other policymakers to try to keep the tax wheels turning and the new grant schemes up and running. Indeed, I would like to focus on the two main grant schemes, the Coronavirus Job Retention Scheme (CJRS) and the Self-employment Income Support Scheme (SEISS), both of which are being administered by HMRC.

In tax, we are used to a lengthy policy making cycle. Since the announcement at Autumn Statement 2016 that the government would hold a single fiscal event in the autumn each year, we have become accustomed to a period of up to two years from the initial consultation on a measure to its implementation in a Finance Act (see https://tinyurl.com/y8jd8wcb for an illustration and further details). Let's compare that to the CJRS and the SEISS. The CJRS was announced on 20 March 2020, with the government promising to pay up to 80% of a worker's wages, up to a total of £2,500 per worker each month, backdated to 1 March, so that employees would be able to keep their jobs. The CJRS went 'live' exactly a month later on 20 April 2020, with money received into employers' bank accounts by 28 April 2020. That is some achievement. In the intervening period, the government has announced that the CJRS would be extended until the end of October.

The SEISS was announced on 26 March 2020 and, with some similarities (but also some differences) to the CJRS, the government will provide a grant to the self-employed of up to £2,500 per month for at least three months. The SEISS went 'live' on 13 May, with money expected to be received into individuals' bank accounts by 25 May 2020 (or within six working days of making the claim). So the SEISS has been designed from scratch, and delivered, in less than two months.

Inevitably, when schemes are developed at such a pace there are some hard cut-offs and procedural oddities. Both schemes have strict cut-off dates, mainly to prevent fraudulent claims, and broadly only allow claims to be based on information held by HMRC at the time of the announcement of the schemes. For the CJRS, this means that some annually paid employees, and those recently employed but not paid through RTI before 19 March 2020, will not qualify. For the SEISS, eligibility is based on tax returns submitted on or before 26 March 2020 (with a small window to 23 April for any late 2018/19 tax returns), so the recently self-employed (2019/20 onwards) are one of the casualties of developing these schemes at pace. The claims processes can also be contrasted. Agents can make CJRS claims on behalf of their clients, although the amount of the grant must be calculated by or on behalf of the employer, and can involve some complexity. Only the self-employed individual can make their SEISS claim, but the process is simple and HMRC calculate the amount of the grant based on previously submitted tax returns.

But whatever the pros or cons of each scheme, it cannot be denied that they have delivered much needed financial support to millions of individuals in a remarkably short timeframe, and for that HMRC should be applauded. That might be an unusual sentiment for many people, especially if they themselves, or their clients, fall between the gaps in these two main schemes, or their work normally involves them defending clients from the actions of HMRC. We were, therefore, pleased to see HMRC recognised as winners of the award for the *Outstanding contribution to tax in 2019/20*, announced at the virtual award ceremony Tolley's Taxation Awards 2020 on 14 May. Equally pleasing was the win by the LITRG Team of the *Best specialist team in a public or not* *for profit organisation category* and by Meredith McCammond, a LITRG Technical Officer, as the *Best Rising Star in Tax*. The Lifetime achievement award also went to Robin Williamson OBE, the former Technical Director of LITRG. Congratulations to all.

Looking ahead, it will be interesting to see HMRC's approach where claims have been made in error. As indicated in my introduction last month, we are used to detailed legislation (which has been through a consultative process), guidance which supplements that legislation, and safeguards for taxpayers. The CJRS and the SEISS both have a short Treasury Direction and a number of pages of guidance, but detail is relatively scant. We know that HMRC will review some of these claims, and we hope they will do so in a sensitive and proportionate way, reflecting the availability of information at the time and the wider circumstances of the claimant.

COVID-19: Inheritance tax process changes

INHERITANCE TAX TRUSTS

In early April, HMRC announced some changes to inheritance tax processes and procedures as a result of the COVID-19 pandemic. On 9 April, HMRC shared with the professional bodies an update around various inheritance tax (IHT) processes to deal with the restrictions imposed as a result of the COVID-19 pandemic.

Cheque payments/repayments

HMRC will no longer be accepting cheques for IHT payments. Payments should be made by way of transfer from a bank account and further details are given on GOV.UK at https://tinyurl.com/y7lbcmf8. Equally, HMRC will no longer be issuing cheque repayments and will use 'Faster Payments' instead. If you are expecting a repayment of IHT for a client, then you can either wait for HMRC to contact you asking for bank details, or pre-empt this request by writing in with details of the bank account. Head your letter '*Repayment – further details'.*

Provided that the name of the account into which the repayment should be made matches the name given for cheque repayments (Box 23 or Box 17 on form IHT400), HMRC will accept a letter of instruction signed by the agent. If the account name does not match the information already supplied to HMRC, then a new payment authority is required which must be signed (proper 'wet' signatures are required) by the personal representatives or trustees. Full details can be found in the announcement (links below).

In due course, HMRC are hoping to update their forms to add new fields for the bank details.

Submitting IHT100s/IHT400s

With so many people, including HMRC, working from home and the impact of social distancing, getting IHT100/400 forms signed can be a challenge. Where an agent is acting, HMRC will accept printed signatures on these forms provided that the account also contains a clear statement that all the personal representatives/trustees have seen the account and agree to be bound by the declarations. The wording can be found on the IHT100/400 download pages on GOV.UK and in the announcement (links below).

Digital solutions

The next step in the process of adapting to current circumstances is to consider whether accounts need to be posted at all. HMRC are trialling digital solutions for the submission of IHT accounts and ATT and CIOT have been involved in these tests. No further information is available at the time of writing but HMRC have told us that outcomes will be shared in due course.

Full details of the announcement can be found on the ATT website at www.att.org.uk/IHTprocess and the CIOT's website at www.tax.org.uk/IHTprocess.

Payments on account

Unrelated to IHT, but also relevant to trustees, HMRC have confirmed that the general deferral of 31 July 2020 payments on account which has been offered to those in self-assessment will also apply to trusts. The tax will still ultimately need to be paid by 31 January 2021.

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COVID-19: Further updates for indirect tax

INDIRECT TAX

Further to the COVID-19 measures for indirect tax highlighted in our article in the May edition of *Tax Adviser* (www.taxadvisermagazine.com/COVID19ITX), we look at the further developments for VAT.

VAT payment deferral: payments on account

Interim and balancing payments of payments on account VAT due between 20 March 2020 and 30 June 2020 can be deferred until 31 March 2021 ('the deferment period'). We have received several queries about the impact of deferring interim payments when the balancing payment is due outside of the deferment period.

a) Payment VAT return

Where a taxpayer has deferred two interim payments (for example, 30 May and 30 June) and it has a payment due to HMRC for the balancing payment due on 31 July 2020, it should only pay the equivalent balance as if the deferred interim payments had been made. The amounts due for the deferred interim payments must be paid to HMRC by 31 March 2021.

b) Repayment VAT return

Where a taxpayer has deferred two interim payments (for example, 30 May and 30 June) and the quarterly VAT return due on 31 July 2020 results in a repayment due to the taxpayer, HMRC will only repay the VAT figure in Box 5 (that is to say, not Box 5 plus the two deferred interim payments).

The deferral balance will reduce to nil at the time of the submission of the VAT return and the taxpayer will have no deferred amount of VAT due by 31 March 2021.

Temporary zero rate VAT liability of personal protective equipment (PPE)

On 30 April, HMRC published Revenue and Customs Brief 4/20 (https://tinyurl.com/yb8uhrq9), which introduces a temporary VAT zero rate for the period from 1 May to 31 July 2020 for the supply of PPE goods recommended for use by Public Health England in its guidance dated 24 April 2020 (https://tinyurl.com/ycevjmeg), including:

- disposable gloves;
- disposable plastic aprons;
- disposable fluid-resistant coveralls or gowns;
- surgical masks, including fluid-resistant type IIR surgical masks;
- filtering face piece respirators; and
- eye and face protection, including single or reusable full face visors or goggles.

The temporary zero rate can also be applied to supplies made from existing stock. The legislation for the COVID-19 temporary easement can be found at https://tinyurl.com/y8vvsqdn.

Zero rate of VAT for certain electronic publications

The government announced on 30 April that the intended zero rating for specified supplies of electronic publications, due to take effect from 1 December 2020, has been brought forward to 1 May 2020. This is to assist people confined to their homes as a result of workplaces and schools being closed due to the pandemic lockdown measures. Full details are set out in the guidance (https://tinyurl.com/ya7bm9v6).

VAT liability of Small Business Grant Fund (SBGF) or Retail, Hospitality and Leisure Grant Fund (RHLG)

In April 2020, the Department of Business, Energy and Industrial Strategy announced two grant funding schemes for businesses: the Small Business Grant Fund; and the Retail, Hospitality and Leisure Grant Fund (https://tinyurl.com/ybxejhhz). In paragraph 24 of its guidance, the government mentions that grant income is subject to tax. However, for VAT purposes, as the grants are given without an expectation of anything in return and comply with state aid requirements, they are not classed as consideration for a supply and are not, therefore, subject to output VAT.

The receipt of grant funding does not automatically mean that an activity is not business or lead to an apportionment of input tax. Each grant-funded activity should be reviewed separately to consider whether or not the activity is business. Where grants are received to support business activities, the normal input VAT rules apply.

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COVID-19: High income child benefit charge: reductions in income

GENERAL FEATURE

LITRG looks at some of the impacts in respect of the high income child benefit charge on those entitled to child benefit who have seen their income reduce as a result of the coronavirus pandemic.

The coronavirus (COVID-19) pandemic is causing many people to see a reduction in their income. Consequently, liability to the high income child benefit charge (HICBC) may change or be eliminated completely. The HICBC applies where a child benefit claimant or their partner has adjusted net income of over £50,000 in a tax year. Those liable to the charge who do not already file self-assessment tax returns must register to do so by 5 October following the end of the tax year in which they become liable, otherwise HMRC may charge ‘failure to notify’ penalties.

The HICBC is an additional tax which is paid by the partner with the higher adjusted net income. The amount of the extra tax is equal to 1% of the child benefit received by them (or their partner) for each £100 above the £50,000 threshold.

Claiming child benefit or reinstatement of payments

As the value of the child benefit is fully clawed back by the tax charge once adjusted net income exceeds £60,000 in a tax year, those with income above this level might not have claimed child benefit, or might have claimed it but opted out of receiving payments. Where income subsequently falls, it is important to determine which of these situations the taxpayer is in. It is also important to appreciate that liability to the HICBC is assessed according to adjusted net income for the tax year, even though child benefit is a weekly benefit. This is illustrated in examples 1 and 2.

Example 1: child benefit not previously claimed

James earns £6,000 gross a month from employment and makes gross pension contributions of £500 a month. His adjusted net income would normally be £66,000 a year. He has a 5 year-old son with his partner, Sam, who earns £20,000 a year. They decided not to bother claiming child benefit because they thought they would just have to pay it all back via the HICBC. However, James lost his job on 1 February 2020 and they therefore decided to claim child benefit, backdated for three months (to 1 November 2019). James has no other income for the year.

James’s adjusted net income for the year is £55,000 (10 months at £5,500 a month). Even though the child benefit was claimed after James lost his job, he must still pay a HICBC equal to 50% of the child benefit received for the year.

From 1 November 2019 to 5 April 2020, they received £455.40 in child benefit. The tax charge is therefore £227 (rounded), so the net child benefit after HICBC is effectively £228.40.

Example 2: child benefit previously claimed but not paid (opted out)

Let’s assume the same scenario as James above, but with child benefit having been claimed throughout the 2019/20 tax year and the claimant partner of the couple having opted out of it being paid. In this case, it would be possible to reinstate the child benefit payments for up to the two previous tax years if there is a change in circumstances, compared with just three months for a backdated child benefit claim.

In the event of James losing his job, the child benefit could then have been reinstated back to 6 April 2019, meaning they would have received £1,076.40 in child benefit for the full year. The HICBC is still levied at 50%, so amounts to £538 (rounded), but this time the net child benefit after applying the charge is £538.40; i.e. £310 more than in example 1.

Unfortunately, the situation in example 1 cannot be remedied retrospectively. However, it is worth taxpayers noting for future the importance of claiming child benefit and opting out of payment even if they think their income is ‘safely’ above £60,000.

The other reason for claiming child benefit and opting out of payment in this scenario is so that a lower earning (or non-earning) spouse or partner might qualify for national insurance credits by reason of the child benefit claim. Even if the other partner does not need these credits, it is also worth noting that they would be available for transfer to other family members providing childcare, under the Specified Adult Childcare credit provisions (described in LITRG’s article here: www.litrg.org.uk/coronavirus-specified-adult-childcare-credit). Claiming child benefit also means the child is automatically issued with a National Insurance number when they turn 16, rather than potentially having to attend an evidence-of-identity interview.

A switch in liability?

Another scenario worth considering in these turbulent times is whether the HICBC liability might switch unexpectedly from one partner to the other. Liability to the charge rests with the partner with the higher adjusted net income. In households where both partners have adjusted income over the £50,000 threshold, it is important to understand with whom the liability sits.

Example 3: liability to HICBC moving from one partner to the other

Let’s say Elise and Sachie have a daughter. Elise earns £65,000 and Sachie earns £58,000. Elise was furloughed in late March 2020 and anticipates that, if her work resumes as normal on 1 July 2020, for 2020/21 her adjusted net income will be £56,250. Sachie's work continues unaffected throughout the pandemic.

It could well follow that liability to the charge will switch from Elise to Sachie. The couple should consider whether they need to reinstate payments (if they had opted out of receiving them) and Sachie might need to register for self-assessment by 5 October 2021 to pay the charge, if she does not already complete tax returns.

Liability to HICBC ceases

As a result of a reduction in adjusted net income to £50,000 or less for the year, liability to the HICBC will cease. Those in this situation would, as above, need to claim child benefit if they have not claimed it previously or reinstate payments if they have previously opted out. It may no longer be necessary for those in this situation to file a self-assessment tax return. HMRC may withdraw a return that has been issued if the taxpayer no longer meets the self-assessment criteria.

Further information can be found on this topic in LITRG's more extended article at www.litrg.org.uk/coronavirus-hicbc.

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COVID-19: Funds in childcare schemes: changes of circumstances

GENERAL FEATURE

The Low Incomes Tax Reform Group (LITRG) explains some points to take into account if taxpayers are thinking about accessing funds saved in childcare schemes.

Schools and nurseries have been closed due to the coronavirus pandemic. This has meant that childcare arrangements for many have changed. One consequence of this might be for people to ask whether or not they can get money back out of tax-incentivised childcare savings schemes.

Tax-free childcare

Help towards childcare costs can be obtained through a tax-free childcare (TFC) account. Money paid into TFC accounts attracts (subject to certain conditions) a government top-up. The account holder then makes payments to their childcare provider from the account.

TFC account holders are free to withdraw any money they have put into the account, but they should be made aware that any such amount withdrawn will be deducted from the total sum in the account that attracts the government top-up payment.

If the amount withdrawn has already had the TFC top-up, then the account holder will have to repay to HMRC the value of the top-up that corresponds to the amount of the withdrawal. For example, for every £8 withdrawn (that is not used to pay a childcare provider), HMRC will take back the government's £2 contribution.

Support can be obtained via the HMRC's Childcare Service helpline (0300 123 4097).

Childcare vouchers (Employer-supported childcare)

Employees within employer-supported childcare schemes are often part of a salary-sacrifice arrangement through which they agree to take less salary in exchange for childcare vouchers (or directly contracted childcare).

LITRG understands that it is usually not possible to get a refund on any excess childcare vouchers unless the employer allows it and adjustments would need to be made for the tax and NI savings given. Affected employees would need to speak to their childcare voucher company and employer to find out what is possible.

HMRC's guidance says:

> 'HMRC agrees that COVID-19 counts as a life event that could warrant changes to salary sacrifice arrangements, if the relevant employment contract is updated accordingly.'

Note the requirement to ensure the change is properly documented. Employees can ask to stop their salary sacrifice/receiving childcare vouchers or directly contracted childcare through their employer's scheme temporarily without having to leave the scheme, providing they restart taking vouchers (or workplace nursery option) within 52 weeks.

Such a temporary break from the employer's scheme must not last more than 52 weeks, otherwise the employee will not be able to rejoin and may need to look for other types of support towards their childcare costs. The employee could, however, remain within the scheme and reduce the vouchers they are claiming to a minimal amount to avoid this issue. A reduced salary sacrifice and childcare vouchers claim might also be appropriate if, for example, employees are having to pay a retention fee to avoid losing their childcare place when childcare settings reopen.

For those who have been furloughed under the Coronavirus Job Retention Scheme, it is understood from HMRC guidance on GOV.UK (https://tinyurl.com/y8hc3scd and https://tinyurl.com/ya8vkzt9) that if an employee (a full-time or part-time regular salaried employee) switched out of a salary sacrifice scheme **on or before 19 March 2020**, the reinstated higher salary will form the basis of the calculation of the amount that employers can claim under that scheme.

It is our understanding that if an employee reduces their childcare vouchers (and consequent salary sacrifice) after 19 March, this will not affect their salary calculation under the Job Retention Scheme.

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COVID-19: Help-to-Save scheme: an opportunity for clients who need to claim universal credit

GENERAL FEATURE PERSONAL TAX

As many are forced to turn to the welfare benefit system for financial assistance in light of the coronavirus pandemic, the Low Incomes Tax Reform Group highlights that those who claim universal credit may also be able to open a Help to Save account and therefore access a tax-free bonus of up to 50% of amounts saved. The account, delivered by NS&I and HMRC, can be retained for up to four years, even if the account holder no longer claims universal credit.

The Help to Save account pays a tax-free bonus on the second and fourth anniversaries of the date the account was opened – but the amount which can be saved is limited to £50 per calendar month.

If an individual saves the maximum amount of £2,400 over the account's four year life without making any withdrawals, they will receive bonuses totalling £1,200.

Universal credit claimants must have earned income of at least 16 hours a week at the national living wage (from 1 April 2020, this is equivalent to £604.56 in a month) in their previous assessment period in order to be eligible for a Help to Save account. 'Earned income' includes payments made to furloughed employees under the Coronavirus Job Retention Scheme and traders under the Self-employment Income Support Scheme.

Importantly, eligibility for Help to Save is assessed only at the time of opening the account – it does not matter if you later cease to meet the criteria. More information about eligibility to claim universal credit itself can be found on LITRG's website for advisers: www.revenuebenefits.org.uk.

Be aware that if a claimant meets the conditions as part of a couple, then each member of that couple can apply for their own Help to Save account. Thus, if your client is eligible, their partner would be too. This could potentially double the bonuses received by a household.

LITRG has published detailed guidance on how the scheme operates, including eligibility criteria, at www.litrg.org.uk/help-to-save. You and your clients can also get a quick overview of the scheme by watching our two minute video at https://tinyurl.com/r4brlm6.

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

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Finance Bill 2020: business as usual

GENERAL FEATURE

The CIOT, ATT and LITRG are providing briefings to MPs on the Finance Bill as part of our organisations' objectives to advance public education in taxation, helping to make tax legislation more workable and the information available to taxpayers and their advisers clearer.

Once again, the CIOT, ATT and LITRG are providing briefing material to MPs considering the current Finance Bill. Our briefings on this Finance Bill focus, as usual, on a range of topics including digital services tax, private residence relief and off-payroll working.

Things are, however, a little different this year. When, during second reading debate, Scottish National Party spokesperson Alison Thewliss raised LITRG's concerns about a pensions tax injustice suffered by many low earners, she did so not from Parliament's familiar green leather benches but from her home in Glasgow, via video link.

There will be no Committee of Whole House stage for the Bill this year. The Finance Bill Committee will sit via a virtual meeting rather than in its usual place on the Palace of Westminster's committee corridor. And by the time the Finance Bill returns to the floor of the House for its report stage in late June or early July, provision for remote voting is expected to be in place.

But for all that Parliament is working in unusual ways, and attention is focused on the response to COVID-19, the need for effective legislative scrutiny remains, and CIOT, ATT and LITRG technical and external relations teams will work to support it.

Why do we do this?

First and foremost, we are pursuing our mission to advance public education in taxation. This is not just about providing an educational framework for tax professionals, it is also about increasing general understanding of tax matters by non-specialists and, in particular, being available for consultation by legislators whose feedback shows how much they appreciate our support. Not many bodies are in a position to provide accessible, tax technical briefing, so if we did not do this it would leave a big gap. Although a few of the clauses each year are highly political (we tend to take a step back from these), most are fairly technical and our briefings supplement the official explanatory notes in enabling MPs to understand what they are discussing.

Second, while it is rare that we get policy change at this late stage, we do often succeed in eliciting – via the 'probing questions' we suggest – clarifications from ministers that will be helpful in interpreting legislation; for example, putting it on the record that a particular measure is not intended to catch certain groups, or commitments to spell particular things out in guidance.

Third, there are sometimes occasions where, even if we do not get movement or clarification, it is helpful simply to put on the record the concerns that tax professionals have about particular measures – be it their complexity, their scope or our doubts about whether they will be effective in achieving the aims set out for them. At the very least, doing this shows government – ministers and civil servants – that we should be taken seriously. If they know that we are unhappy with a piece of legislation, the minister will get challenged about it by MPs and will be more likely to take our concerns seriously the next time we raise them.

All of this is done for the same reasons as the rest of our technical activity – in pursuit of a simpler, more workable system for taxpayers, with greater certainty and minimal administrative burdens, ensuring that the interests of both represented and unrepresented taxpayers are considered, and that there is a fair balance between the powers of tax collectors and the rights of taxpayers.

How do we do this?

Since 2014, we have been invited by the Finance Bill Committee to make formal submissions to the Committee, which are published along with other committee evidence. Additionally, we often provide less formal briefing – both oral and written – for MPs that want it. This year we held a virtual briefing for the new Labour Treasury Team at their request, at which a joint CIOT/ATT/LITRG team ran through the full contents of the Bill, highlighting areas of interest or concern and answering questions.

We are, of course, strictly politically neutral. Our briefing at this stage is primarily used by shadow ministers. But ministers and their civil servants will have been recipients of far more submissions from us (sometimes 200 plus in a year) during the earlier stages of the policy process. And we work hard to ensure that nothing we put in a briefing comes as a surprise to the government – most concerns will have been expressed in earlier consultations, or at least communicated to ministers at the same time as to other MPs.

Of course, not every briefing note we provide is cited, and not every point raised in discussions on the Bill receives the response we would hope for. Overall, however, the work put into supporting Finance Bill scrutiny by our technical officers, Committee Chairs and external relations team is worthwhile, not only raising the profile of the CIOT, ATT and LITRG but helping to improve the quality of parliamentary debate and ultimately, alongside our other technical work, helping to make tax legislation more workable and the information available to taxpayers and their advisers clearer.

Regular reports on the Finance Bill's progress appear on the CIOT website blog (www.tax.org.uk/media-centre/blog).

Our Finance Bill briefings will also be available on our websites as soon as they have been accepted into evidence by the Finance Bill Committee.

George Crozier
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Car fuel benefit charge for hybrid cars and the 'making good' rule

EMPLOYMENT TAXES

We look at the issue of what it means to make good the whole cost of fuel to escape a fuel benefit charge where the company car is a hybrid.

The CIOT's Employment Taxes Committee met (virtually) at the end of March and one discussion point was the full recovery of private fuel costs from an employee where a hybrid company car is provided. A car fuel charge arises where, in addition to being provided with a company car, an employee is provided with car fuel for private use. There is no reduction in the car fuel scale charge for a contribution to the cost of fuel for private journeys and to escape the fuel benefit charge an employee must reimburse the whole cost of private fuel to the employer (or pay for it in the first place). The reimbursement must be made by 6 July following the end of the tax year and the employee has to keep detailed records of business and private mileage to confirm that the amount reimbursed for private mileage is correct. While HMRC publishes Advisory Fuel Rates (AFRs) which an employer can use to recoup the cost of private mileage where the employer paid for the fuel, there are no separate rates for hybrid cars, and these are treated as pure petrol or diesel cars for AFR purposes.

The question that arises with a hybrid car is: how do the employer and employee determine whether the full cost of private mileage has been met by the employee when a car utilises both electric power (which is deemed not to be a fuel for car fuel benefit purposes) and petrol or diesel power?

For example, an employee is provided with an electric/petrol hybrid car and drives 20,000 miles in a tax year, of which 15,000 miles are business and 5,000 miles are private. The employer provides a fuel card for the purchase of petrol and has an electric charging station at the employer's workplace for the supply of electricity. Assume fuel costs are 14p per mile for the petrol and 4p per mile for the electricity, and that the employee drives 12,000 miles using petrol and 8,000 miles using electricity, albeit there is probably no real life way of ascertaining this!

How much should the employer recoup from the employee?

If all the private mileage was driven using petrol, the employer should have recovered £700 (5,000 miles x 14p per mile). However, if all the private mileage was driven using electricity, then the employer is not required to recover anything to avoid the fuel scale charge.

HMRC's guidance does not address what is accepted to be making good in full where the car is a hybrid car. It seems likely, however, that if the employer recovers from the employee the cost of petrol related to private journeys and bases this on the total petrol costs incurred ignoring the electricity provided, this probably makes good the whole cost of private fuel to the employer for fuel benefit charge purposes. Therefore, in the above example the employee would be charged £420 (12,000 miles x 14p per mile x 5,000/20,000). (In reality, the charge is likely to be an appropriate proportion of the total petrol costs met by the employer.) We would, of course, be interested in members' approach to this issue in practice, especially if you have agreed a method with HMRC.

A more detailed article which takes a wider look at electric car taxation for employees and businesses can be found on the ATT website at www.att.org.uk/ecartax.

Matthew Brown
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Employer-provided living accommodation: representative occupier concession withdrawn from April 2021

EMPLOYMENT TAXES

HMRC is withdrawing the 'representative occupier' exemption from the employer-provided accommodation benefit-in-kind charge with effect from April 2021.

HMRC has announced that the concession from the employer-provided accommodation benefit-in-kind tax charge exempting 'representative occupiers' will be withdrawn from April 2021.

HMRC has identified the current tax treatment of individuals provided by their employers or by reason of their employment with living accommodation as 'representative occupiers' as an extra statutory concession (ESC).

The concession for representative occupiers relates to posts which existed before 6 April 1977 where an employee:

- resides in living accommodation provided rent-free by the employer (or by a third party by reason of the employment);
- is required, as a condition of their contract of employment, to reside in that particular living accommodation and is not allowed to reside anywhere else; and
- occupies the house for the purpose of the employer, the nature of the employment being such that the employee is reasonably required to reside in it for the better and more effective performance of the duties.

In correspondence, it was noted that the call for evidence on employer-provided accommodation commented that there are a significant number of employers who are reliant on this exemption. It is particularly relevant to those employing staff undertaking household/domestic duties on estates or who work in an agricultural, farm businesses etc., where their work frequently requires them to work out of hours and where the position has existed prior to 1977.

In reply HMRC has said that:

> 'The types of employment mentioned were unexpected as our guidance clearly states that these categories of employee fall within the following statutory exemption:
>
> *[ITEPA 2003] s 99(1)*
> - *agricultural workers who live on farms or agricultural estates;*
> - *lock-gate and level crossing gatekeepers;*
> - *caretakers living on the premises (with a genuine full time caretaking job who are on call outside normal hours);*
> - *stewards and green-keepers (living on the premises);*

- *wardens of sheltered housing schemes (depending on whether they are on call outside normal working hours);*
- *in addition, managers of public houses were formerly recognised as falling within this category (though are now more likely to fall within the exemption in s 99(2).'*

HMRC also said that they may only use concessionary treatment which effectively provides a reduced tax liability if the concession is to deal with minor or transitory anomalies and meeting hardship at the margins. Unfortunately, in HMRC's opinion, the ESC on representative occupiers does not meet these conditions and is being withdrawn with effect from 6 April 2021.

HMRC were asked about the timing of the announcement on withdrawal of the representative occupier exemption and what had prompted the decision:

(i) to withdraw (and not legislate) the exemption;
(ii) to announce the decision at this point; and
(iii) to effect the change from 6 April 2021.

In response, HMRC said that:

> 'It is only in recent years (following publication of the Call for Evidence) that we have identified this long-standing practice as an extra statutory concession which is not compatible with our powers of collection and management. Once that position was established we had to take action – April 2021 was felt to be the longest extent that we could allow this concession to run on in its present form.
>
> We decided to withdraw it as legislating would enshrine unfair practices. For example, the representative occupier exemption would not apply to the stewards and green-keepers living on the premises of any golf course established after April 1977. The exemption relies on the actual post having been in existence at that point rather than looking at the type of employment. We think most would consider legislating on this basis is not fair and there is no wish to expand the scope of the concession.
>
> We would like to have given notice at an earlier point as we were aware that some employers may either need to make changes to contractual arrangements or wish to consult with us to confirm whether any other of the statutory exemptions apply and that this needed a period of at least 12 months. Therefore notification at the end of March 2020 was the latest point at which we could let you know of the change.'

HMRC believe that in announcing this policy change at the end of March, this should allow both employers and employees affected by the ESC's pending withdrawal to make the necessary contractual arrangements, and that it will also give time for employers to consult with HMRC on possible entitlement to existing statutory exemptions who may be affected by this change.

The current statutory exemptions from the employer-provided accommodation charge cover the following situations:

- the provision of accommodation is necessary for the proper performance of the employee's duties (ITEPA s 99(1) – EIM 11341 onwards);
- the accommodation is provided for the better performance of the duties of the employment, which is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees (ITEPA 2003 s 99(2) – EIM 11347 onwards);
- there is a special threat to security and the employee resides in the accommodation as part of special security arrangements (ITEPA 2003 s 100 – EIM 11362); or
- a local authority provides accommodation to an employee on the same basis as to an ordinary member of the public (ITEPA 2003 s 98).

The relevant guidance at EIM11336 onwards on representative occupiers has been amended to reflect this change. For those who will need to engage with HMRC on the withdrawal of the representative occupier exemption and whether one or other of the statutory exemptions may apply, HMRC has said that:

> 'Any queries should be addressed to your own HMRC Customer Compliance Manager if appropriate, or the Employer Helpline available at https://tinyurl.com/kxjgats. …These teams also have access to escalation routes if more detailed information is required to ensure that you get answers as quickly as possible.'

The CIOT would be interested to learn of members' experiences in relation to any engagement with HMRC by them or their clients as regards whether any other statutory exemption applies, and whether any particular problem areas arise.

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VAT: Call-off stock: updated HMRC guidance and administrative changes

INDIRECT TAX

The European Commission updated Article 17a of the Principal VAT Directive with effect from 1 January 2020 as part of its four quick fixes programme to simplify VAT in the EU. The updated legislation allows all EU member states to offer the simplification known as 'call-off stock'; this simplification prevents the overseas EU supplier having to register for VAT locally in the EU member state where the stock is held provided certain criteria is met.

The UK already had an existing call-off simplification for EU suppliers holding stock in the UK; however, legislation has been enacted so that UK businesses have the choice to account for VAT at the time of call-off instead of the existing time of arrival rules. HMRC updated its guidance with details of the new optional rules on 20 April.

What is call-off stock?

Call-off stock is the term used to describe the transfer of goods by a VAT registered supplier in one EU member state (including the UK during the transition period to 31 December 2020) to a customer in a different EU member state, and the transfer creates a stock of goods from which the EU customer can 'call-off' (and become the owner) at a later time as they require but within 12 months of arrival. The EU customer must be supplied with full details of the deliveries of goods that are stored in their country at the time of their arrival for which they have the right to 'call-off', although it is not essential that the goods are stored in premises operated by the customer.

New HMRC guidance: EU supplier and UK customer

Although the guidance for call-off stock has historically been found in VAT Notice 725 and HMRC's VAT manuals, there are now additional pages on GOV.UK (https://tinyurl.com/ycj4vshe plus related weblinks on this page) that set out how the quick fix legislation for call-off stock can change the time of accounting for UK VAT, should the UK business opt to do so.

Where an EU supplier creates a stock of goods in the UK for a UK customer to call-off, under the former rules the UK customer had to account for acquisition VAT at the time of the arrival of goods as a 'deemed transaction' and no further UK VAT accounting was required at the time that the goods were called-off.

Under the updated rules, UK customers have the choice to continue to use the above rules and account for the transaction at the time of transport or they can use the 'quick fix' rules that will allow them to defer the VAT accounting date to such time that they call-off the stock. For fully taxable businesses, this may not have much impact as the VAT accounting is a contra entry in the VAT return; however, for businesses subject to restricted VAT recovery, it can delay the tax point which can assist cashflow.

EC Sales List: UK supplier selling to EU customer

When a UK supplier sends stock on call-off terms to be stored by the EU customer prior to a later change in title, it is important that the correct indicator codes are used on the EC Sales List per below; the full details are published on GOV.UK (https://tinyurl.com/ycmo8fhu). As the default position for holding stock in an EU country for onward supply would normally result in an obligation for the UK supplier to register for VAT in that country, these indicator codes must be used correctly so that the tax authorities in other EU member states do not deem the UK supplier to be making domestic supplies in their country and pursue a local VAT registration, which may involve associated penalties and interest for failure to notify and account for local VAT.

The new EC Sales List indicator codes are:

- Indicator code 4: Time of transport of the goods (no value of sales required);
- Indicator code 5: Returned stock (no value required); and
- Indicator code 6: Change of intended acquirer.

Once the acquirer calls-off the stock, the UK business must report the sale in the EC Sales List again in the same way as a normal sale of goods (no indicator code and value of goods is required).

Brexit: Post-transition period

It should be noted that the call-off simplification rules are applicable to UK businesses while the UK is in the period of transition with the EU until 31 December 2020, after which time the UK will not be in the single market or customs union. UK businesses should take advice in EU countries where they hold stock to ensure that they meet local rules from 1 January 2021.

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Updated engagement letter guidance issued

GENERAL FEATURE

The joint professional bodies' engagement letters working party (AAT, ACCA, ATT, CIOT and STEP) issued the latest update to engagement letters guidance on 27 April 2020.

The engagement letter guidance has been updated to reflect technical changes since 2018 and a new separate draft agreement added for use by a practitioner acting as a subcontractor to a regulated firm engaged in public practice. It is important that members review the guidance and adapt and amend the documents to suit their own practice. The latest update and the subcontractor agreement have not been subject to review by legal counsel and important caveats are included at the start of each document.

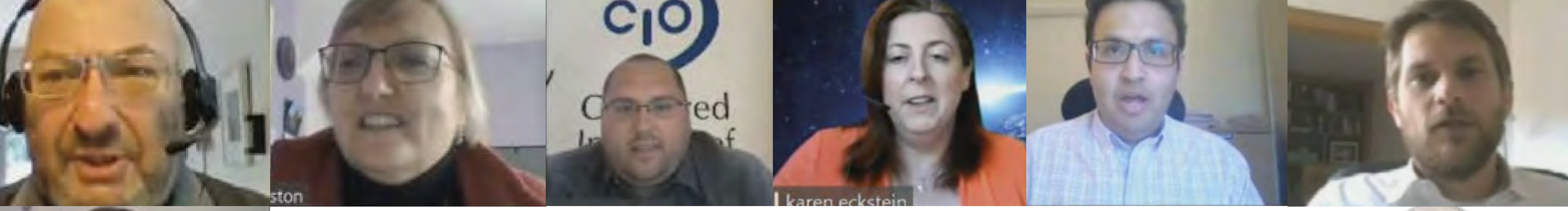
The update to the main guidance includes the following changes:

- The cash basis is now referred to in the sole trader/rental income schedule.
- In-year capital gains tax reporting is covered in the personal tax, sole trader/rental income, trusts and estates, partnership and LLP schedules.
- The MTD for VAT schedule is now included in the main guidance.
- VAT Moss paragraphs in all relevant schedules have been amended to remove references to registering 'in the UK' as a result of EU withdrawal.
- Off-payroll working changes are reflected *(deferred owing to COVID-19)*.
- The guidance and the covering letter have been amended in relation to acceptance of the agreement by electronic means or where no reply is received.
- The section of the covering letter relating to agent authorisation has been amended.
- Where fees are to be settled by a tax refund, suggested wording has been added to the fees schedule and additional guidance provided.
- The colour-coding of the document has been updated to make the guidance clearer for practitioners to amend.

The guidance does not include any aspects of the government support packages during the current COVID-19 pandemic. There is no expectation that members will refresh their engagement letters with all clients as a result of the current update. Instead, they can be used where new engagement letters are issued; e.g. when taking on a new client or providing new services from 27 April 2020. The guidance is available on the CIOT (www.tax.org.uk/engagement-letters) and ATT (www.att.org.uk/engagement-letters) websites. Members with queries should email standards@tax.org.uk or standards@att.org.uk.

Jane Mellor
jmellor@ciot.org.uk

CIOT	Date sent
Treasury Committee Inquiry into the 2020 Spring Budget www.tax.org.uk/ref659	18/03/2020
Welsh Revenue Authority guidance www.tax.org.uk/ref673	17/04/2020
FB2019-20 Clause 72 IHT: Excluded property www.tax.org.uk/ref677	05/05/2020
ATT	
Treasury Committee Inquiry into the 2020 Spring Budget www.att.org.uk/ref359	18/03/2020

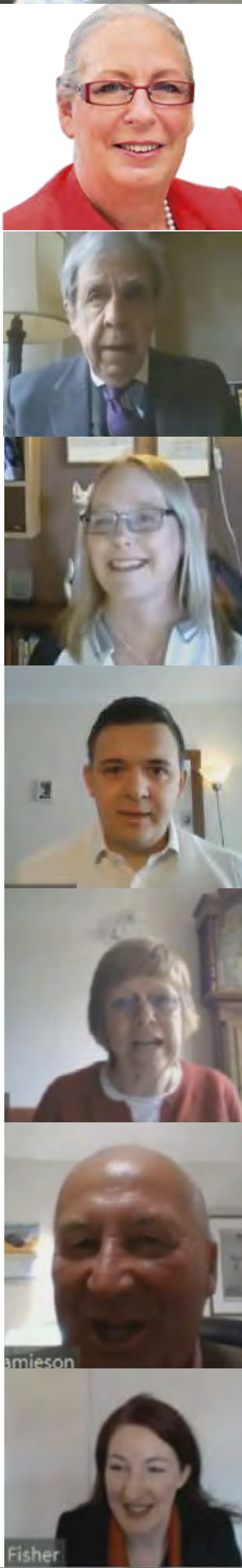


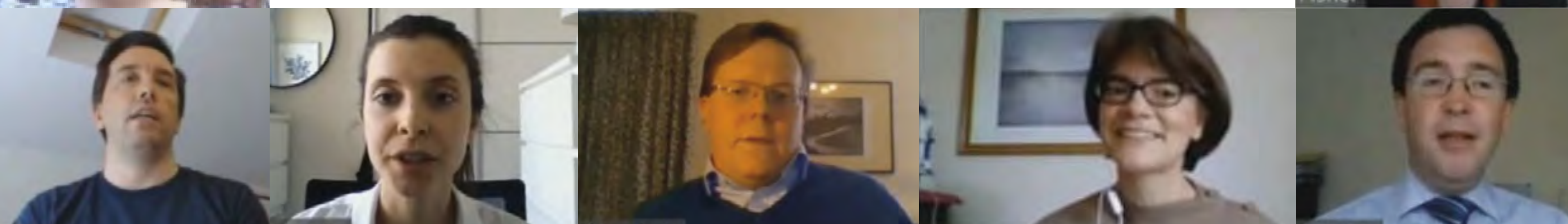
Thank you!

CIOT and ATT would like to extend very warm thanks to our speakers and Branch Network volunteers for all their hard work which has enabled us to continue to deliver CPD to our members and students at this time.

We will continue to work together to bring you a national programme of technical CPD brought to you by your local Branch Network.

Thank you to our members for adapting to this change so quickly and positively – if there are any topics you would like covered, please let us know at branches@tax.org.uk





Your Branch Network Online Seminars

Keeping you up to date with your CPD

As a result of the pandemic and ongoing uncertainties around the lifting of lockdown measures, CIOT and ATT are delighted to continue to provide a national programme of technical CPD webinars for the tax community online, many of which are free.

We would like to extend our sincerest thanks to our Branch Network volunteers and speakers for their tireless efforts on behalf of CIOT and ATT members and students during these unprecedented times.

Do look out for one of our many upcoming seminars with popular speakers such as Robert Jamieson, Charlotte Barbour, Keith Gordon, Rebecca Benneyworth and Mark Morton to name a few, by adding branches@tax.org.uk to your address book to ensure you receive our weekly emailed communication.

Members, students and non-members are welcome to attend all our events, so check our online listing at:
www.tax.org.uk/online-branch-seminars
www.att.org.uk/branch-network

What our delegates say:

"Having recently passed my ATT exams this was a timely reminder of much of the knowledge I learnt and brought back the confidence which had shaded away."

"As a retired member whose a bit of a tax nerd it's great listening to experts. James was definitely an expert and I understood 99% and thought his addressing of questions was tops."

"I think the way I get regular emails from the CIOT now about webinars is great. That's an excellent way to support the members. Top marks."

"Excellent event, thank you for opening it up nationally. Would definitely like to attend further courses run this way."

Interested in speaking?

If you would like to share your expertise by broadcasting a Branch webinar, please get in touch with us at branches@tax.org.uk with some information about yourself and your topic.

Have a topic you would like to see on the programme?

If you have a topic in mind that you think would benefit our members and students, please email us at branches@tax.org.uk with your suggestions.

CIOT

Professor Stephen Mayson to give CTA Address

Professor Stephen Mayson

Professor Jane Frecknall-Hughes

Sir Edward Troup

EVENT

Professor Stephen Mayson is to give this year's Chartered Tax Advisers' Address on the subject of regulation. He will give a 30 minute keynote speech and then join a panel to respond to questions from the audience. The panel will include Professor Jane Frecknall-Hughes and Sir Edward Troup. Peter Rayney, CIOT Deputy President, will chair the debate.

Professor Stephen Mayson

Professor Stephen Mayson was called to the Bar in 1977 by Lincoln's Inn, of which he is now a Bencher and chairman of its Regulatory Panel, and started his career as a tax lawyer (including time with a leading City law firm). As well as more than 35 years' experience of advising law firms of all sizes around the world on matters of strategy, ownership and finance, Stephen has also advised barristers' chambers, and corporate and government legal departments, on strategic and organisational issues. He has held a number of professorships, and written books on revenue law, company law, and law firm strategy, valuation and management. Stephen has served as a non-executive director and chairman of a number of law firms and law-related businesses (including three Alternative Business Structures).

In July 2018, the Centre for Ethics and Law at University College London (where he has been an honorary professor since 2013) announced that Stephen would be carrying out an independent review of legal services regulation in England and Wales. The final report on a revised regulatory approach was submitted to the Lord Chancellor in June 2020.

Professor Jane Frecknall-Hughes

Professor Jane Frecknall-Hughes is Professor of Accounting and Taxation at Nottingham University Business School, which she joined on 1 November 2016, and where she is Head of the Accounting Division. After graduating from the University of Oxford, she became a chartered accountant and chartered tax consultant with KPMG, later joining academia. She holds a PhD (in Revenue Law and Tax Practice) and an LLM in Commercial Law, and is a Fellow of the Higher Education Academy. She has held several previous professorial posts in different subject areas (Accounting/Taxation, Law and Revenue Law).

Jane's research focuses on taxation, especially from an interdisciplinary perspective. She has written extensively on issues concerning the tax profession. She has gained an international reputation for her work in this area, which is reflected in her publication record. She has taught a wide range of subjects in the accounting and business law area, especially taxation, and her textbook, *The Theory, Principles and Management of Taxation: An Introduction*, was published by Routledge in October 2014.

Sir Edward Troup

Sir Edward Troup worked in tax for 40 years, both in the private sector, where he was a partner and head of the tax group at Simmons & Simmons, and in the public sector, where he held senior positions in HM Treasury and in HM Revenue & Customs.

Edward has been closely involved in tax policy and the tax profession throughout his career, working with the IFS, the CIOT, the Law Society's Tax Law Committee and the International Fiscal Association.

He currently comments and advises on the world of tax from a safe distance.

Raising funds for the tax charities

To help us raise funds for the tax charities, Tax Aid and Tax Help for Older People, we are asking for a contribution of £10 to attend this event. All proceeds will be donated to the Bridge the Gap appeal and will help the many vulnerable taxpayers who are in even greater need of the Charities' services during and after the COVID-19 crisis.

The virtual CTA Address will take place on Thursday 2 July 2020 from 17.00 to 18.30.

Please visit: www.tax.org.uk/ctaaddress2020 to register.

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mr Andrew Scott

NOTIFICATION

At its hearings on 25 February and 10 March 2020, the Disciplinary Tribunal of the Taxation Disciplinary Board considered a complaint raised by a client of Mr Andrew Scott of Hungerford, a member of The Chartered Institute of Taxation.

The Tribunal determined that Mr Scott was guilty of breaches of Rule 5.6.2 of the Professional Rules and Practice Guidelines (PRPG) 2006 and Rule 2.17 of the 2004 edition of Professional Conduct in Relation to Taxation (PCRT) in that, in 2007, he:

a. did not advise his client as to the risks of a tax avoidance scheme, failed to communicate clearly, in writing, that he was not giving tax advice as to the risks inherent in the scheme, and to expressly disclaim any responsibility in this respect, in breach of rule 5.6.2 of the PRPG; and
b. failed to consider carefully the merits of arrangements which may be considered artificial by the tax authority, in the light of his client's wider interests, in breach of rule 2.17 of the 2004 edition of the PCRT.

The Tribunal determined that Mr Scott be censured and pay costs in the sum of £36,325. The full decision of the Tribunal can be found on the TDB's website at www.tax-board.org.uk.

WCOTA

The inner workings of the Worshipful Company of Tax Advisers

UPDATE

Alison Lovejoy explains the workings of WCOTA.

This column usually has information about events organised by our Social Committee but unfortunately everything has had to be cancelled for the foreseeable future so there is nothing to report. Indeed, this is the case at the time of writing and since the situation changes daily, things may be different by the time you read this article!

However, whatever the current situation, the WCOTA still carries on, so I thought it would interest my reader to learn a little more about its workings. The 'ruling body' of the WCOTA is the Court of Assistants. I think I wrote about this previously but it's worth bringing you all up to date so I shall cover this in a future article. Our three committees carry out the day-to-day activities and I would like to cover these in this article as the committees are definitely something which members (or future members) can make a substantial contribution to.

The committees are the Social Committee (of which I am a member), the Charity Committee and the Membership Committee. Up until the Covid-19 outbreak, these committees met every three months at the Information Technologists' Hall in the City and we usually had a social event afterwards (many of which I have reported on), so that those who have travelled some distance don't just have work to look forward to on that day! The committees are made up partly of Court Members, partly of other Liverymen of the Company and the Master, Deputy Master, Wardens and Treasurer attend all committee meetings. New members are always welcome and anyone interested in joining any of the committees should contact the Clerk, the Master or a Court member.

Since the Covid-19 outbreak, these meetings have been held by Zoom and are well attended. It is not written in stone but they will almost certainly continue to be held by Zoom when the emergency is over. It is acknowledged that personal contact is still essential so there would probably be one physical meeting a year. This change will help members who live far away from London to be more involved as, for instance, these meetings could be held in the evening so it will not be necessary to take time off work.

Social Committee

The responsibility of the Social Committee is to decide on the programme of events during the year which coincides with the Master's Year, which runs from September to September, and to organise the events which do not come under the jurisdiction of the Clerk. I hope that most of you are aware of these as a result of my articles. We have had a broad range of activities and these have been facilitated by unique contacts and past experiences of committee members. For instance, our visit to the Henry VIII wine cellars would not have been possible without the personal contact of one of our committee members. The current Chairman of the Social Committee is Vaughan Robinson and we have 14 members. Due to my past editorial experience, I oversee the preparation of the events publicity (flyers). However, we would not be able to function without the administrative support from the CIOT. Karina Pomeranceva arranges the finalisation of the flyers and their distribution to our members. She also manages the bookings via the Cvent booking system and is the first point of contact for anyone who wishes to book a place at one of our events. Some events are open to non-members, such as our History of Tax lectures, which we also hope in future to record and distribute electronically.

Charity Committee

Mike Gibbons, the Chairman of the Charity Committee, writes that the Company supports two charities, the Tax Advisers Benevolent Fund (TABF) and the Tax Advisers Charitable Trust (TACT). The Committee consists of the Officers of the Company and around six members of the Company with differing backgrounds so that proper consideration is given to all applications, mainly at meetings but it also considers requests for support as and when. To give structure to the membership, roles considering our educational support, communication with members, researching support requests and the development of the Charities are allocated between the members of the committee.

The Tax Advisers Benevolent Fund supports members of the

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

30 Monck Street, London SW1P 2AP.
tel: 020 7340 0550
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tax profession both personally in times of hardship and in the advancement of tax education. Jonathan Crump has written in detail about this in the April *Tax Adviser*. The Tax Advisers Charitable Trust supports charities connected to the City of London and surrounding boroughs, the tax economy and other organisations to which it is affiliated. Some of the charities that have been supported are Hackney Quest, Keen London and Caritas Anchor House, as well as TaxAid, Bridge The Gap and Tax Help for Older People.

With the approach of the 25th anniversary of the Company and the onset of the Coronavirus crisis, the committee recently decided that the company should purchase equipment to support the response to the crisis. In view of the association between the Company and St John Ambulance and their support to the NHS, it was decided that two Zoll X Series monitor/defibrillators should be purchased by contributing £25,000 towards the £28,000 costs.

Membership Committee

Matthew Peppitt, Chairman of the Membership Committee, explains that the role of the Membership Committee is to communicate the many benefits of Company membership; to guide those wishing to join through the application process; and to help new members make the most of their membership. The Worshipful Company of Tax Advisers represents the tax profession in the City of London and adds a social, charitable and civic dimension to a career in tax. It provides opportunities to network across the profession at a wide range of events, both formal and informal. It promotes tax education and sponsors student bursaries and prizes to encourage new entrants to the profession; it supports and funds charitable and benevolent causes associated with taxation and the City of London; and participates in the business, governance and ceremony of the City. The Company also briefs the Lord Mayor (two of the Company's members have held this office) on taxation matters and plays an important role in the preservation of the history of tax.

Membership of the Company is open to Chartered Tax Advisers and individuals who are or were engaged in tax practice or tax administration and who satisfy criteria established by the Court of Assistants. New members join as Freemen of the Company and can progress, via Freedom of the City of London, to the status of Liveryman. The Company's Liverymen are entitled to participate in the City of London's Common Halls, the traditional gatherings at which the Lord Mayor and City Sheriffs are elected.

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

CIOT

CIOT: Notice of General Meeting

AGM

The Annual General Meeting of Members of the Chartered Institute of Taxation will be held on Tuesday 28 July 2020 at 16.45.

Civica Election Services (previously called Electoral Reform Services) have been appointed as scrutineers for the CIOT AGM 2020. Access to the AGM Notice, Annual Report and Statutory Accounts and information regarding those standing for election to Council will be provided through links in an email sent to Institute members by Civica from 23 June. The Civica proxy voting site will also be accessible via a link in that email.

If you prefer to receive a hard copy of the proxy form, please email: support@cesvotes.com or telephone: 0208 889 9203 and a form will be sent to you with a reply-paid envelope. You have until 26 July to return the form.

A copy of the AGM Notice and Annual Report and Statutory Accounts can be found on the Institute's website: www.tax.org.uk from 23 June 2020.

ATT

ATT: Notice of General Meeting

NOTICE

The Annual General Meeting of the Association of Taxation Technicians will be held on Thursday 9 July 2020, at 1400.

Civica have been appointed as scrutineers for the ATT AGM 2020. Access to the AGM Notice, Annual Report and Accounts and information regarding those standing for election to Council will be provided through links in an email sent to Association members by Civica in June. The CES proxy voting site will be accessible via a link in that email.

If you prefer to receive a hard copy of the proxy form, please email: Support@cesvotes.com or telephone 020 8889 9203 and a form will be sent to you with a reply-paid envelope. You have until 7 July 2020 to return the form. A copy of the AGM Notice and Annual Report and Accounts can be found on the Association's website: www.att.org.uk.

Your Branch Network Online Seminars

Thanks to the hard work of our Branch Network Volunteers, the CIOT/ATT are delighted to continue to provide a National Programme of Technical CPD for the Tax Community online.

Upcoming seminars for June include:

Capital Gains Tax
Presented by Robert Maas
4 June 2020

IR35 and Employment Taxes
Presented by Keith Gordon
9 June 2020

Stamp Duty Planning
Presented by Georgina West
11 June 2020

How Developments in Anti-Money Laundering affect your work as a Tax Professional
Presented by CIOT/ATT Professional Standards Team
17 June 2020

OMBs
Presented by Mark Morton
18 June 2020

IHT and Trusts Update
Presented by Robert Jamieson
19 June 2020

Property Taxes
23 June 2020
Presented by Caroline Fleet

...and more still being planned by your Branch Network!

Members, students and non-members are welcome to attend all our events, so check our online listing at www.tax.org.uk/online-branch-seminars and www.att.org.uk/branch-network

TAXATION-jobs.co.uk

YOUR CAREER IN TAX

A selection of jobs recently posted on Taxation-jobs

For further information and hundreds more jobs, go to **www.taxation-jobs.co.uk**

Manager International Tax – Financial Services Leeds Up to £58,000 + range of benefits	If you're a manager with an interest in Banking and/or Asset Management and want to further develop or build on your industry knowledge, this Tax Manager opportunity will provide you with unrivalled opportunities to work on a broad range of advisory opportunities from smaller inbound clients to huge multinationals. With a pipeline of exciting advisory projects ready and waiting, you will gain exposure to working alongside transaction tax colleagues and advise on the structuring aspects of some of the largest corporate M&A deals. To succeed you will need to hold a professional tax qualification, demonstrate expertise in international tax and enjoy leading and managing a team of juniors.
Apprenticeship Assessor – Professional Accounting / Taxation Technician Homebased – Nationwide Opportunities £competitive	NCFE is a leading provider of educational services with a strong heritage in learning having been at the forefront of technical and vocational education for over 170 years. Right now we are looking to expand our dedicated team to carry out assessments specifically for the Professional Accounting/Taxation Technician Apprenticeship Standard. In this role adopting a digital first approach, you will deliver end point assessments for apprentices, conduct retakes, and provide detailed feedback to apprentices. We would love to hear from you if you have had experience working within an Accounting and Taxation role within the last 5 years and hold a relevant qualification in the field of Accountancy/Taxation.
Senior Analyst – Digital Services Tax Bratislava £negotiable	A leading e-commerce / technology business have an exciting opportunity for an experienced Tax Professional to join their Digital Services tTax team in Bratislava. As well as an outstanding compensation and benefits package, this role would give someone with a proven track record in the Corporate Tax environment the opportunity to make a move into the emerging Digital Services Tax area. As part of the DST team you would be working as part of a relatively new and experimental team, and would work closely with stakeholders in finance, tax, accounting and legal services. This role would ideally suit a proactive and communicative profession with an inquisitive nature and the ability to keep up the pace in a fast-moving team.
Corporate Tax Manager Southampton £55,000 – £65,000 + partnership prospects	This high-profile accountancy firm has built a strong reputation for advising growing, entrepreneurial companies, OMBs and SMEs. Their clients include both domestic and international companies and groups. The firm continues to plan for growth this year and is keen to bolster its Corporate Tax offering with the appointment of an additional CTA/ACA Tax Manager. The incoming individual will take on a portfolio of dynamic businesses, operating across a range of sectors. The common element with these clients is that they are changing, developing and are in need of ongoing guidance and advice. The client base therefore offers exposure to a wide range of tax issues, both compliance and planning related.
Restructuring Tax Manager/SM/AD London £60,000 – 120,000 + excellent bonus	Keen to join a growing team offering a clear progression route? This client is building its restructuring tax team to support its market leading restructuring and financing business. The role will encompass working closely with these teams to assist UK and International clients with distressed restructurings, insolvency transaction issues including DDs and dealing with the tax implications of financing and refinancing. To be considered you must have good UK transaction tax or restructuring tax experience, ideally be ACA or CTA and be looking for a team with good career prospects.

www.taxation-jobs.co.uk

EMEA VAT Compliance Manager
London
Bonus & benefits

Pure

Work for a global Fortune500 in this exciting EMEA VAT compliance role. Our client is a leading multinational conglomerate with significant EMEA operations. Due to continued internal demand our client is currently looking to hire an experienced VAT compliance specialist to support the wider Indirect Tax function. Working closely with the wider VAT team and country tax managers, this is a role with significant international responsibility, including team management. You should have strong stakeholder management skills, knowledge of UK/European VAT compliance, strong communication skills and the ability to work well in a team.

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

THE CONSULTANCY GROUP

An International Media Group, leaders in their field, are looking to hire an Indirect Tax Senior Manager, based in London. They are seeking a commercially minded Senior Manager to lead the global Indirect Tax function during a time when the tax landscape is changing at an unprecedented rate. Reporting to the Group Head of Tax and supported a small Indirect tax team, the person will be responsible for delivering the global approach to indirect tax compliance and providing proactive and commercial indirect tax advice and technical support to the business.

R&D Tax Manager
Liverpool
£45,000 – £50,000

ct creative tax recruitment

An opportunity with a dynamic R&D tax team that does an excellent job of rewarding and promoting its people. The firm is a multi-office business that has grown dramatically over the last five years. The team is headed up by a dynamic and energetic professional with big plans for the future. The business has already achieved a high level of growth, possibly one the most impressive I have encountered, and all the signs are that this will business to grow, regardless of market conditions. If you are driven, enjoy dealing with clients, generating work, and want to make a direct impact on the business, this would be an excellent environment for you to thrive. Prospects to the Associate director are excellent. At your level and provide, you do the right things; you could achieve this in 2-4 years.

Indirect Tax Adviser
London
£negotiable

HAYS Recruiting experts in Taxation

A Global Bank is undertaking a review of it's partial exemption special method in the UK. The sucessful candidate will support the VAT advisory team in the delivery and day to day project management of the PESM project on a 9 month assignment. This role will entail collaboration with key stakeholders across the International Tax, Controllers and project teams across the business. You should have experience of UK VAT issues, preferably including partial exemption special methods or similar, strong project management skills and commercial understanding of the banking sector.

FTSE 100 – Tax Manager
London
£excellent + benefits & bonus

brewer morris
SPECIALIST SEARCH & RECRUITMENT

Working in the Head Office, this role will provide tax support on all issues facing a FTSE listed Group operating across the globe. You will take on responsibilities covering all aspects of tax reporting, compliance and advisory as required. You will have a recognised tax and/or accounting qualification, relevant tax compliance and reporting experience gained in either industry or the profession, and be organised and thorough in approach with attention to detail and accuracy You will also be able to work efficiently on own initiative and prioritise work to tight deadlines.

@TaxationJobs

Georgiana Head Recruitment

MEET YOUR ADVISERS

GEORGIANA HEAD

Director

Tel: 0113 426 6672
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georgiana@ghrtax.com

ALISON TAIT

Director

Tel: 0113 426 6671
Mob: 07971627 304

alison@ghrtax.com

Personal Tax Manager
Skipton, Yorkshire – £market rate

Our client is a small local independent firm in Skipton, North Yorkshire. They seek to hire an experienced personal tax specialist to take ownership of the compliance cycle for the practice for private clients and some business tax cases. This is ideally a full time role but the firm will consider a 4 day week or flexible working – the current crisis has meant that our client now has scope for home-working. Alongside compliance, you will provide high level technical advice to clients on a broad range of tax issues, focussing on income tax, capital gains and inheritance tax planning. You may be ATT qualified or qualified by experience. **Call Georgiana Ref: 2867**

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

International group seeks a Tax Manager to join a growing in-house tax team. Reporting to directors, you will be involved in a wide range of corporate tax and transfer pricing work. You will help launch new products in new territories, and will be actively involved in setting up new processes and procedures to help with the international growth of this large group. This role would suit someone who is ACA and CTA qualified, who has experience of working with large international groups – this may have been gained in practice or in industry. Part home working available. **Call Georgiana Ref: 2947**

Corporate Tax Manager
Southampton – circa £55,000 + bens

You will manage a portfolio of owner managed and private equity backed corporate clients with complex tax affairs. The role will involve working on a variety of advisory projects and technical assignments. In addition, you will take an active role in business development opportunities, proposals and networking events. Much of the advisory work centres on international group structuring, transfer pricing, tax due diligence and group financing. The role comes with very real career progression prospects. **Call Alison Ref: 2950**

Mixed Tax Manager
Manchester – to £45,000

You will manage a portfolio of corporate and personal tax compliance clients and will also assist the directors with a variety of project work. Your responsibilities will have a personal tax bias, but you will be an all round business tax adviser managing work including succession planning, IHT advice, R&D and capital allowances. You will also assist in mentoring junior team members. You should be CTA/ACA qualified. This role is based in Manchester city centre, and offers the opportunity for progression to the senior management team. **Call Alison Ref: 2876**

Tax Senior
Leeds – to £28,000

You will have a portfolio of circa 300 personal tax clients including HNW Individuals, company directors and partnerships. Work is a mix of compliance and advisory responsibilities including the completion of tax returns, dealing with client and HMRC queries, the preparation of P11Ds and PAYE settlement agreements and the provision of PAYE advice. You will also assist the manager with corporation tax compliance work. You should be ATT or CTA qualified, but candidates who are qualified by experience will also be considered. **Call Alison Ref: 2946**

Personal Tax Specialist – North Leeds
£28,000 – £34,000 + flexitime + parking

This small accountancy practice in North Leeds is looking for a personal tax specialist to manage the firm's portfolio of personal tax clients. Reporting directly to the partners, this is a predominantly compliance based role but will also involve some ad-hoc advisory work. Clients are predominantly HNW individuals and directors of local OMBs, so this role would suit someone currently working in a small or medium sized practice. This is a 35 hour week with flexitime and free onsite parking. **Call Alison Ref: 2952**