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Do you want to help?

To mark National Volunteers' Week, we examine the different ways you can share your skills and experiences as a tax professional, page 22

PLUS Multiple dwellings relief – Loan arrangements – Freeholds – Corporate criminal offences

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President's page

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Peter Rayney

True colours

I hope you are all keeping safe and in good spirits. Although the weather certainly does not feel like it as I write this President's page, I am sure there are better days ahead and we will be on the path to some semblance of normality.

At the CIOT, life remains as busy as ever, as we find innovative ways of running all our various activities online. I am delighted to say that we finally implemented our important 'make-over' at the beginning of May.

Our Institute now has a totally revamped website and new modern branding. We have spent a considerable amount of time on this worthy project to ensure we got it right and we are all very excited to see its full launch.

New digital presence

Our new website still contains all the tax technical items and news we know you access and enjoy. But it now has some new features, including fresh case studies of CTAs and information videos. It is also refreshing to have clearer functional navigation to help you find what you need easily and quickly. And for those who enjoy gadgets, it also has *Tax Bot* where you can ask the site to find you the information you need!

If you haven't already been able to do so, please pay our new website a visit at www.tax.org.uk. When you arrive at the home page, you will see our new modernised visual branding.

New visual style

We started our rebrand 'journey' long before the first lockdown. This involved detailed consultations with different groups of our members over a six-month period. Whilst all these groups were fond of the 'owl' logo (as indeed am I), the newer generation of CTAs certainly felt that it was not representative of them and those following in their footsteps.

We also had to consider our international activities, both with our international tax qualification ADIT increasing its overseas presence and our licensing of other overseas tax bodies. In certain overseas jurisdictions, it was clear that the owl did not enjoy the same status of being a sign of wisdom as it does here. We were also advised that the owl logo was very cumbersome to use in the digital age and that the vast majority of businesses and organisations – including many professional membership bodies – had replaced their traditional, intricate logos with simpler modern-looking ones.

Chartered Institute of Taxation.

The CIOT Council therefore sought a new logo and branding which would be symbolic and future-proof. Because almost all of our communications are now delivered digitally, we needed a distinctive, simple and unfussy mark that would retain its clarity across all digital channels. However, we were clear that we needed to retain 'our' distinctive and historic blue colouring and that we had to respect the CIOT's heritage. Our Institute's work often involves analysing complex and technical matters in considerable detail. Our design agency therefore focused on the owl's eyes as being symbolic of vision, hence our new logo is a representation of the owl's eye.

We feel that building on our heritage in this way helps us to create a meaningful, modern visual identity which upholds our professional standing in the modern world. If your firm is interested in applying to use the new mark, please contact our Membership team. Those already registered will be notified and asked to reapply online shortly.

I would add that our owl still presides over the Institute's formal crest and remains an important symbol for us.

National Volunteers' Week

To coincide with National Volunteers' Week, I would like to draw your attention to our feature on volunteering on page 22. As a membership organisation, we rely heavily on our wonderful strong army of volunteers and, as I hope you will recall from my previous President's pages, I never miss an opportunity to thank them for their vital support and valuable work.

Keep safe and let's hope for good times ahead…

Peter Rayney
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"Our Institute now has a totally revamped website and new modern branding. We have spent a considerable amount of time on this worthy project.

ATT welcome

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Richard Todd

Necessity is the mother of invention

As I write this Welcome page, we are in the middle of our exam session for the May 2021 sitting.

This year our students will not travel to city centres to sit their exams, often leaving before the crack of dawn to ensure that they arrived on time. It is all a much more civilised affair, with students sitting the exams online, at a location of their choice, often in their own homes using a system called Exam4.

After the inevitable cancellation of the examination session in May 2020 because of the Covid-19 pandemic, we have worked hard to accelerate our plans to move the examinations online to ensure that our students can study, safe in the knowledge that they will have the opportunity to demonstrate what they have learned at the end of their courses. Our education team has done a fantastic job in ensuring that not only were the systems in place but that the exams have passed off smoothly, with 1,179 candidates sitting 2,354 papers in November and approximately 1,900 papers being sat at the May sitting.

With all exam preparation courses currently held online, our current students are in a unique position of being able to study and practice in the environment in which they will sit their real examination.

And as society begins the long transition back to normality, many students will continue with online courses, avoiding the need for long commutes and giving themselves more time to study. But some will prefer being together with other students and will return to a physical classroom environment.

The pandemic has forced many organisations to review the way they do things and to take risks to develop things that they would not have done in normal times. Many of those changes will bring enduring benefits – as Plato said, 'necessity is the mother of invention'.

My sincere gratitude to Simon Groom, our Vice President elect, for bringing me up to speed on how our exams have adapted in the face of the pandemic, and how they may also have been improved for our new students. And thank you too, to our education team for their continuing hard work.

If you missed it, there was a wonderful webinar on 13 May 'Connecting with Nature – mental health and well-being in the tax profession' to coincide with the UK's Mental Health Awareness Week. The matter of mental health is nothing new and the problems have always been bubbling below the surface before Covid-19. If anything, the pandemic may have helped bring this issue out in the open.

I recall an advert on television many years ago about this matter. It focused on a young person, out socialising with friends, playing sports and generally enjoying life. The advert ended with the young person arriving at their own home alone and removing their 'outside' face – they were pretending to the outside world that all was well with them.

The moral? We should not accept that anyone is OK at face value; we should check that they are genuinely coping with the complexities and difficulties of life. Who knows, maybe both parties would stand to gain from that interaction?

You will be aware that Members volunteer their time to ensure that ATT remains in a strong position to represent students and Members. We are always on the lookout for new volunteers, be they long established Members or recently qualified, who would be willing to bring their thoughts and experience (we are not saying that you need to have years of experience!) to help ATT. Those volunteers will help to shape the ATT of the future and ensure that ATT remains a highly respected professional tax qualification.

June sees Volunteers' Week 2021 and it would be wonderful if any Members could find a little bit of free time to devote to helping ATT. If you have any interest or inclination to volunteer, ordinarily I would recommend that you speak with the Chair of your local Branch. As all face-to-face meetings remain suspended, might I suggest you use the email address below? I can assure you that we do monitor it daily.

I will leave you on that note and wish you a wonderful (and safe) Summer break.

Richard Todd
ATT Deputy President
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"The pandemic has forced many organisations to review the way they do things and take risks they would not have done in normal times.

5 reasons to start digitalising your tax process

HMRC's digital tax strategy will demand greater reporting transparency and address the problem of "failure to take reasonable care". The good news is Making Tax Digital also provides a great opportunity to address tax productivity and accuracy. How can digitalisation help?

- Reduces compliance workloads by 70%
- Cuts errors associated with spreadsheet formulas and macros
- Allows earlier filing and increases time spent on review
- Lowers the costs of compliance reporting
- Proves your workings to HMRC via digital audit trails

To learn more about how you can benefit from tax digitalisation, contact us for a one-to-one technology review.

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Capital gains tax made easier?

Bill Dodwell considers the OTS's report on how to simplify capital gains tax by focusing on a range of practical, technical and administrative issues

In July 2020, Chancellor Rishi Sunak requested that the Office of Tax Simplification review capital gains tax:

> 'This review should identify opportunities relating to administrative and technical issues, as well as areas where the present rules can distort behaviour or do not meet their policy intent. In particular, I would be interested in any proposals from the OTS on the regime of allowances, exemptions, reliefs and the treatment of losses within CGT, and the interactions of how gains are taxed compared to other types of income.'

The first report, which covered policy principles, was published on 11 November. That report especially answered the chancellor's request to consider distortions and whether current rules meet their policy purpose.

The second report, 'OTS capital gains review: Simplifying practical, technical and administrative issues', was published on 20 May 2021, and answers the second part of the chancellor's request by covering technical and administrative simplification (see bit.ly/3bWxQSj).

The review is wide-ranging and recommendations cover issues relevant to individuals and to business. However, it did not consider partnerships, trusts, estates in administration, non-UK residence, non-UK domicile or complex international issues – or issues especially relevant to corporate groups. Many of these issues are worthy of a review in their own right.

The published report contains 14 recommendations for the chancellor, HM Treasury and HMRC to consider. The chancellor is required by the OTS legislation to respond to reports he has commissioned; typically, responses are given at fiscal events (mainly Budgets!).

Tax returns, administration and awareness

The report starts by looking at administration and awareness of the tax and filing requirements. In a typical tax year, about 250,000 individuals pay capital gains tax, but about 500,000 people are required to complete the capital gains part of the self assessment return. The reason for the difference is that some have losses to offset against gains, some make losses on disposals and others have gains below the annual exempt amount. Of those paying the tax, 70% do so only once in 11 years (or perhaps longer). This is partly why awareness is low, as most people pay the tax so infrequently – and, of course, the vast majority of adults never see a capital gain at all. However, it also means that each decade about 1.5 million people do pay the tax – so it is much more significant in numbers than, say, inheritance tax.

The report makes recommendations for integrating capital gains tax into the forthcoming Single Customer Account – which is part of HMRC's ten-year tax administration strategy and will take over from the current personal tax and business tax accounts. The Single Customer Account is an ambitious project and, in the view of the OTS, is a critical part of the future relationship between taxpayers and HMRC. It needs to become the capital gains tax hub, where data such as losses and main residence nominations are stored. It could also become the best way for many to report to HMRC, without needing to complete a full-blown self assessment return. Potentially as an interim measure, the OTS recommends that the current real time capital gains reporting service should become a proper return – and be opened up to tax agents. Currently, minimal use is made of this reporting service (just 1,670 people used it in 2018/19) and many more have to prepare the much longer self assessment return simply to report a capital gain.

The importance of data

One of the important benefits of an OTS review is that much more data on tax issues is published for the first time. This report has an entire appendix covering data sources used in the report. The report also recommends that HMRC should collect more data on capital gains, with less reliance on 'white space' entries.

Collecting better data would help with both better compliance analysis and better understanding of capital gains policy. This theme applies across many taxes. One current example is that HMRC has no information on dividends taken by a company owner from that company.

The UK property return

One of the areas where new data has been published covers the new 30 day reporting and the payment required on the sale of residential property where there is a taxable disposal. In a typical year, about 150,000 people sell taxable residential property and about 85,000 have a tax liability. We do not know whether 2020/21 will be a typical year, of course, but during the first nine months just over 50,000 individuals have reported disposals, with a third failing to make the 30 day deadline.

Evidence to the OTS from a wide range of bodies was clear that there is a general lack of awareness. There is also an important

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question on whether 30 days is long enough to prepare the necessary information. Responses to the OTS survey suggests that gathering information and calculating the base costs takes nearly 60% of the time needed to report a capital gain. Property disposals are likely to be complicated partly due to the length of ownership and partly due to enhancement expenditure.

These complexities led the OTS to recommend these alternatives: 'The government should consider extending the reporting and payment deadline for the UK property tax return to 60 days, or mandate estate agents or conveyancers to distribute HMRC provided information to clients about these requirements.' The 30 day policy brought in over £1 billion; increasing the reporting period to 60 days would cost about £105 million.

Main residence relief

The review did not examine the principle of main residence relief – which 'costs' about three times as much as capital gains tax raises – and is thought to benefit between 1.5 million and 2 million people every year.

It is estimated that just over 9,000 people paid capital gains tax on a property disposal that received only partial private residence relief in 2018/19. This is small in comparison with the 1.2 million property sales completed in that tax year. Some may consider that there could be under-reporting, aided no doubt by the complicated rules covering multiple residences and periods of absence.

The OTS put forward two recommendations, as well as calling for improved guidance in certain areas:

- The government should consider adjusting private residence relief to cover developments in a taxpayer's garden which the taxpayer subsequently occupies.
- The government should review the practical operation of private residence relief nominations, raise awareness of how the rules operate, and in time enable nominations to be captured through the Single Customer Account.

The system of nominations where an individual or married couple own two or more residences creates complexity, as a nomination must be filed within two years of first acquiring multiple residences (or can only take effect up to two years before the election is made).

There is insufficient awareness of the rules and HMRC does not provide a standard template for making a nomination. One of the areas where better guidance would be useful concerns lodgers, where the guidance revolves around the lodger eating meals with the owners.

The final recommendation for residential property concerns leases where the leaseholder owns a share of the freehold, typically through a flat management company. Current rules lead to capital gains arising in the company where the leaseholder extends their lease, even though there is no overall economic gain. 'The government should consider exploring ways of removing inappropriate corporation tax or capital gains tax charges where a freeholder is in effect only extending their own lease.'

Divorce and separation

As many will no doubt know, disposals between spouses and civil partners take place on a no gain, no loss basis. Where a couple separates, this rule extends to disposals in the year of separation. However, this period is too short to allow a couple to rearrange asset ownership fairly. Accordingly, the OTS recommends that:

> 'The government should extend the "no gains, no loss" window on separation to the later of:
> - the end of the tax year at least two years after the separation event; or
> - any reasonable time set for the transfer of assets in accordance with a financial agreement approved by a court or equivalent processes in Scotland.'

Business issues

The review put forward two specific business recommendations, intended to simplify tax issues on business sales by individuals. Firstly, the government should consider whether capital gains tax should be paid at the time the cash is received in situations where proceeds are deferred, such as on the sale of a business or land, while preserving eligibility to existing reliefs. The current situation where, in some cases, the right to receive future profits needs to be valued is confusing and adds administration for both taxpayers and HMRC.

Advisers will be aware that a taxable company bond – which enables deferral for a seller – must include a currency conversion clause (usually with a collar and cap to limit the economic effect), or the need to allow for additional bonds to be issued. These clauses typically have very limited commercial effect and are confusing. Accordingly, the OTS recommends that: 'The government should consider enabling an irrevocable provision in the documentation for a corporate bond to specify that it is subject to capital gains tax, and for the absence of such a provision to mean that it is exempt.' Simple!

The final business issue concerns rollover relief where land and buildings are acquired under compulsory purchase orders. The report recommends that the government should expand the specific rollover relief rules in this area.

Investor issues

The Enterprise Investment Scheme is a highly regarded relief to support equity investment in small trading companies. It is generous and inevitably there are a number of conditions to ensure the relief is properly targeted. However, there is evidence that companies which meet the policy intent sometimes fail due to procedural or administrative issues. The OTS recommends that the government should review the rules with a view to ensuring that such issues do not prevent their practical operation.

Finally, as more individuals own assets outside the UK the report recommends that: 'The government should consider whether gains or losses on foreign assets should be calculated in the relevant foreign currency and then converted into sterling.'

Nothing stands still

In the second of two articles on key employment tax changes, *Edmund Paul* and *Jonathan Berger* consider the representative occupier rules for accommodation and the cessation of grandfathering provisions for certain employer provided benefits

KEY POINTS

- **What is the issue?** The 2021/22 tax year sees the introduction of several significant employment tax legislative changes.
- **What does it mean for me?** Taken together, the changes will significantly increase the complexity, costs and challenges for businesses.
- **What can I take away?** Awareness and preparation are key in ensuring that businesses can comply with the new rules.

Several significant pieces of employment tax legislation have been updated and/or introduced effective from 6 April 2021. The first part of this article was published in the May issue of *Tax Adviser*, considering the off-payroll working rules and amendments to the Construction Industry Scheme. This month, we examine the representative occupier rules for accommodation, the cessation of grandfathering provisions for certain employer provided benefits caught by the optional remuneration arrangements legislation, and other changes of note.

Cessation of grandfathering provisions for certain employer provided benefits

With effect from 6 April 2017, the government introduced the optional remuneration arrangement (OpRA) legislation, to combat the perceived loss of income tax and NIC from salary sacrifice arrangements. Whilst the rules were originally designed to target salary sacrifice arrangements, the government widened the scope of the legislation to also counter arrangements where there is a cash alternative in lieu of the benefit.

When the rules were introduced, HMRC incorporated transitional rules which protected certain grandfathered benefits, such that employers could continue to calculate the benefit value based on the cash equivalent rules prescribed in legislation.

However, 6 April 2021 has seen the end of the final transition period for the remaining grandfathered benefits, being company cars (with CO2 emissions above 75g/km), living accommodation and school fees. Going forward, the taxable benefit in kind is based on the higher of the cash foregone on that benefit and the taxable benefit in kind value.

Key considerations for the 2021/22 tax year

Cost implications

The OpRA changes could result in higher benefit in kind values arising for these remaining grandfathered benefits, costing employees in receipt of these benefits more in tax and the employer more in NICs.

At a high level, this is because the OpRA rules require the benefit to be taxed at the higher of the cash value foregone in lieu of the benefit and the benefit value under the normal benefit in kind rules.

Reporting administration

Businesses need to review benefits on a per employee basis to determine whether the OpRA rules apply. To determine the correct benefit in kind value, employers need to consider:

- when the employee entered the arrangement;
- what allowances they are entitled to; for example, based on their contract or departmental handbooks;
- whether there is a right to choose between the cash allowance and the benefit in kind (either contractually or implied); and
- whether the cash alternative exceeds the modified cash equivalent of the benefit.

This will increase the time that a business must spend on administration, at least during the transition year. To reduce employee queries, communication is key so that employees can understand the potential impact on their tax codes and therefore their pay.

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Withdrawal of the representative occupier concession for employer provided living accommodation

HMRC had a long held extra statutory concession (ESC) under which certain roles would be exempted from income tax where living accommodation was provided to a 'representative occupier'. The ESC related to posts which existed before 6 April 1977 where:

- the employee lives in accommodation provided rent-free by the employer (or by a third party by reason of the employment);
- as a term of their employment contract, the employee must reside in that particular living accommodation and is not allowed to reside anywhere else; and
- the employee is reasonably required to reside in the accommodation for the better and more effective performance of their duties.

The changes could cost employees in receipt of these benefits more in tax and the employer more in NICs.

After a public call for evidence, the government confirmed that it would not legislate this ESC and it would be withdrawn with effect from 6 April 2021.

Key considerations for the 2021/22 tax year

Businesses which have been relying on this exemption for many years should review the basis on which accommodation has been exempted to determine employees impacted by this change. Whilst there are statutory exemptions for employer provided accommodation which may be utilised to exempt the accommodation going forward, not all representative occupiers will meet them. These exemptions include where accommodation is provided to an employee:

- where it is necessary for the proper performance of duties;
- for the better performance of the duties of employment and it is also customary for the employer to provide that accommodation; or
- where there is a special threat to the security of that employee and special security arrangements are in place which require that employee to reside in that accommodation.

The conditions that must be satisfied in order for the customary test to apply are significant, particularly given HMRC's view on the exemption stated within its December 2018 employer's bulletin. As such, careful consideration is needed to determine whether other statutory exemptions can apply. Otherwise, where the provision continues, the benefit in kind cost is likely to significantly increase, and this will be potentially further inflated by related benefits provided, such as furniture and the cost of utilities.

Other changes of note

Termination payments

The government has introduced two changes to the post employment notice pay legislation with effect from 6 April 2021.

The first change is that non-resident employees will be subject to income tax and NICs on their post employment notice pay, based on the proportion of their notice period that would have been served in the UK.

Secondly, the legislation also introduces a simplified calculation where the employee is paid on a monthly basis. This calculation applies when the employee's last pay period before the trigger date is a whole month, the employee is paid in equal monthly instalments and the notice period or post-employment notice period is not a whole month.

In this case, the legislation provides that 30.42 (being the mean average number of days in a month) may be required to be used as 'P' (the number of days in the pay period) in the post-employment notice period calculation.

Secondary class 1 contributions for employing ex-services personnel (veterans)

Employers are able to claim NICs relief on earnings paid to veterans they employ for their first 12 months of civilian employment up to the upper secondary threshold for NICs. A person qualifies as a veteran if they have served at least one day in the regular armed forces, including completing at least one day of basic training, with no age limit.

Employers can claim the relief if they employ a veteran during the qualifying period. Broadly, the qualifying period starts on the first day of the veteran's first civilian employment since leaving the regular armed forces and ends 12 months later (even if the employment began before 6 April 2021).

For the 2021/22 tax year, businesses will need to pay the secondary Class 1 NICs as normal and then claim it back retrospectively from 6 April 2022 onwards. From 6 April 2022 onwards, employers will be able to apply the relief in real time through PAYE.

Company car tax changes

The van benefit charge and fuel benefit charges for cars and vans is uprated by the Consumer Price Index from 6 April 2021.

The uprate for the charges takes effect as follows:

- Van benefit charge: from £3,490 to £3,500
- Car fuel benefit charge multiplier: from £24,500 to £24,600
- Van fuel benefit charge: from £666 to £669

In addition, the relevant percentages for the calculation of company car benefit in kind increase by 1% across all bands. The cap of 37% remains in place.

With effect from 6 April 2021, vans that produce zero carbon emissions have a nil van benefit charge.

Easement for employer-provided cycles exemption

Employees who joined a Cycle to Work scheme and were provided with a bicycle or cycling equipment on or before 20 December 2020 are permitted to an easement to the requirement to use the bicycle for the majority of time for commuting, and do not have to meet the 'qualifying journeys' condition until after 5 April 2022.

PAYE thresholds

The personal allowance and the basic rate limit increases to £12,570 and £37,700 respectively for the 2021/22 tax year. The higher rate threshold increases to £50,270 for 2021/22. (There are separate thresholds applicable to Wales and Scotland, set by the devolved assemblies.)

The NICs upper earnings limit remains aligned to the UK higher rate threshold at £50,270 for 2021/22.

Exemption for employer provided and employer reimbursed coronavirus antigen tests

Employees who are provided with, or reimbursed for the cost of, a relevant coronavirus antigen test by their employer will not be liable to an income tax or NICs charge for the 2021/22 (or 2020/21) tax year.

Exemption for home-office expenses

The government introduced a statutory exemption for the 2020/21 and 2021/22 tax years to remove a liability where employers reimburse employees for the costs of certain homeworking equipment used when working from home. This typically covers items such as desks, chairs and IT equipment, such as monitors. The following conditions must be met in order for the exemption to apply to employee use:

- The equipment is obtained by the employee for the sole purpose of enabling them to work from home as a result of the coronavirus outbreak.
- The provision of the equipment would have been exempt from income tax under the Income Tax (Earnings and Pensions) Act 2003 s 316 if it had been provided directly to the employee by or on behalf of the employer.

Nothing stands still in the tax world and employment tax in the 2021/22 tax year is no exception to that. Our articles do not cover every change taking place in the employment tax space, therefore businesses should ensure they take the time to understand how they might be impacted and what they might need to do in order to ensure continued compliance. Nothing is permanent but change itself.

comprehensive

/kɒmprɪˈhɛnsɪv/

adjective

1. marked by abundant detail or thoroughness, including everything that is necessary.

IR35 SHIELD

THE IR35 COMPLIANCE STANDARD

Two for the price of one?

Samara Goeieman considers the circumstances in which a property and its annexe will be eligible for multiple dwellings relief

KEY POINTS

- **What is the issue?**
The purpose of multiple dwellings relief is to reduce the rate of stamp duty land tax on the purchase of more than one dwelling, making it closer to the rate that would apply if the dwellings were purchased independently.
- **What does it mean for me?**
HMRC's guidance acknowledges that a wide range of factors must be considered when determining the number of dwellings. This article considers whether the configuration of a property and annexe qualifies as two separate dwellings.
- **What can I take away?**
Relevant case law emphasises the importance of assessing the functionality of the properties and questioning whether, practically, each property is mutually private and secure from the other.

Multiple dwellings relief is available for purchasers of residential property who acquire interests in more than one dwelling at the same time. The purpose of the relief is to reduce the rate of stamp duty land tax on the purchase of more than one dwelling, making it closer to the rate that would apply if the dwellings were purchased independently.

Where a transaction, scheme, arrangement or series of linked transactions includes multiple dwellings, the rate of tax charged in respect of those dwellings is determined by the mean consideration: that is, the total consideration attributable to the dwellings, divided by the number of dwellings. However, the relief cannot be such as to reduce the tax payable to less than 1% of the total consideration.

This article considers whether the configuration of a property qualifies as two separate dwellings under the stamp duty land tax legislation and HMRC guidance.

Example: one dwelling or two?

Mr Smith wants to purchase a property comprising a freehold property with an annexe.

The annexe, which can be accessed through the property, has a kitchen, bedroom, storage room and bathroom and its own separate access, but it does not have separate services or council tax.

The property prima facie comprises two separate dwellings for the purpose of multiple dwellings relief: the main house and the annexe. However, how can Mr Smith ensure that the property actually qualifies as two separate dwellings so that multiple dwellings relief can be claimed? We will return to this question later.

The definition of a 'dwelling'

A 'dwelling' is defined in Finance Act 2003 Sch 6B para 7(2). For the purposes of the relief, a building or part of a building that is used or suitable for use as a single dwelling (or is in the process of being constructed or adapted for such use) counts as a 'dwelling'.

The legal definition is therefore rather circular – 'a dwelling is a dwelling' – and there is no further assistance or expansion on this meaning in the legislation.

HMRC guidance confirms that 'dwelling' takes its everyday meaning: 'a building, or a part of a building that affords those who use it the facilities required for day-to-day private domestic existence and a sufficient degree of permanence' (see SDLTM00372).

HMRC's guidance acknowledges that a wide range of factors must be considered when determining the number of dwellings. A balanced judgment must be formed (see SDLTM00415). Matters that will be considered when making a judgment include whether a property:

- has separate access and privacy;
- has a separate postal address;
- has the facilities required for separate occupation (including a sleeping area, living area, bathroom and kitchen);
- has control of most or all of the utilities supplied to it; and
- is separately rated for council tax.

The emphasis is on whether the property is sufficiently self-contained to be considered as a 'single dwelling' (see

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SDLTM00410). The physical configuration of the property on the effective date is considered of prime importance:

> '"Physical configuration" in this context relates to the facilities of the dwelling, independent access to the dwelling and privacy from other dwellings. These aspects are considered to be of great importance and the lack of one of them would normally cast significant doubt on whether the area in question could be considered suitable for use as a separate "single dwelling".' (see SDLTM00420)

Recent case law

Fiander & Brower: need for privacy and security

Recent case law reveals that a pragmatic approach should be taken when determining whether a self-contained annexe may qualify for multiple dwellings relief.

In *Fiander & Brower v HMRC* [2020] UKFTT 190, the tribunal held that both the main house and the annexe could provide basic living needs, offering a space for sleeping, eating, cooking, washing and sanitary needs, alongside a place to relax. It was also held that occupants could carry on their daily lives without passing through common areas in the connected property, which each had separate main entrances.

Not much emphasis was placed on the council tax status of the annexe, or whether it had a separate utility meter and postal address, and a restrictive covenant. However, the fact that the main house and the annexe were connected via an open corridor meant that there was a lack of privacy and security in both parts of the property, and therefore neither were suitable for use as a single dwelling.

The taxpayers' claim for multiple dwellings relief was rejected. The tribunal said that the accommodation in both parts of the property needed to have 'a sufficient degree of privacy and security such that strangers could live in each part as a "stand-alone" dwelling'. The 'stand-alone' requirement followed from the word 'single' in the wording of the relief referring to 'single dwellings'.

Partridge: shared bathroom

A more recent case is *E & C Partridge v HMRC* [2021] UKFTT 6, where the taxpayers bought a cottage with an annexe. Their intention was to live in the cottage and for one of the occupant's parents to move into the annexe. They made a claim for multiple dwellings relief on the understanding that the main house and the annexe were separate dwellings.

The annexe had a separate main entrance and kitchen, and internal doors which when closed separate the annexe from the main residence. However, HMRC denied the claim on the basis that the dwellings were not independent of each other because the annexe did not have its own separate bathroom.

The First-tier Tribunal found that the burden of proof was with the claimants to show that the annexe was suitable for use as a single 'stand-alone' dwelling. A dwelling should accommodate the occupant's domestic living needs – to sleep, eat and wash – with a 'reasonable degree of privacy and security'.

The tribunal concluded that the living and bathing facilities of the annexe were not separate from the main house, so the two did not count as separate dwellings and the appeal was dismissed. To the eyes of 'an objective observer', the main house and the annexe would be regarded as a single dwelling when the purchase completed.

Ransom v Brewer Wallace Ltd: actual use

In 2018, in the unreported case in the Leeds County Court of *Ransom v Brewer Wallace Ltd*, a husband and wife made a claim against their professional advisors for failing to advise on the availability of multiple dwellings relief. They bought a residential property with an annexe, with the intention that the wife's mother would come and live with them.

The annexe had a dining room, a bedroom, a dressing room and its own utility supplies, but didn't have separate post or council tax billing. The planning permission stated: 'The annexe hereby approved shall only be occupied as an extension to and ancillary to the dwelling known as [the property] ... and shall not be used as a separate, independent unit of living accommodation.'

HMRC's SDLT Manual states that planning restrictions inhibiting use as a separate dwelling will be 'a factor' in considering suitability of use as a dwelling, although actual use will prove more helpful than theoretical use.

Mr and Mrs Ransom won the case, with the court concluding that had they made a claim for multiple dwellings relief, it would have been accepted. They were awarded damages equal to the difference between the stamp duty land tax paid and what would have been payable with a multiple dwellings relief claim.

The decision in *Ransom* differs from the decisions in *Fiander* and *Partridge* because the annexe could 'be accessed by doors entirely independent from the main home' and it was 'not possible to move internally between the two properties'.

Back to Mr Smith

Similar to the *Fiander* case, the property and the annexe of Mr Smith's freehold property are able to accommodate the basic domestic living needs of occupants, who can carry on their daily lives without passing through common areas in the connected property, with both having separate, exclusive entrances. However, although the property and the annexe have separate entrances, the annexe can be accessed via a common hallway, demonstrating a lack of separation.

This makes them too closely connected for the annexe to be suitable for use as a single dwelling and multiple dwellings relief is unlikely to be available on the purchase.

In the non-binding *Ransom* case, the Leeds County Court concluded that multiple dwellings relief could have been granted if claimed because it was 'not possible to move internally between the two properties'. If the internal access was permanently closed and sealed, then the annexe is likely to qualify as a single dwelling and multiple dwellings relief would be available. Closing an internal access must be done before the 'effective date' and the safest route is for the works to be completed by the vendor. This is because the effective date is the earlier of completion and occupation. If upwork is done by the buyer prior to completion then it could be argued that he has been granted occupation rights for the purposes of undertaking the works.

Conclusion

Stamp duty land tax is never a straightforward issue, and the application of the potential reliefs will be equally complex.

Case law emphasises the importance of assessing the functionality of the properties on the effective date when making a multiple dwellings relief claim and questioning whether, practically, each property is mutually private and secure from the other.

PROFILE

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It’s time to complete your 2020 Annual Return. Don’t get caught out. Stay compliant.

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

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

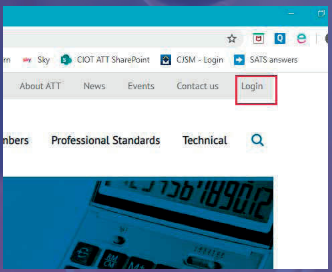
Please check that you have completed yours by logging on to the Members Portal (https://pilot-portal.tax.org.uk) then going to Secure area/Members Area/Compliance/Annual Return where you will be able to complete any outstanding form.

*Excludes those who are fully retired and students.

STEP BY STEP GUIDE TO COMPLETING YOUR 2020 ANNUAL RETURN

1. Login

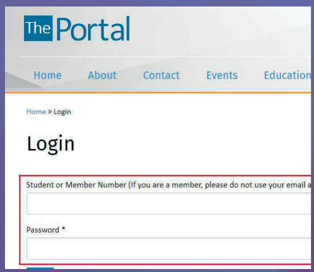
On the ATT website click login located in the top right.
On the CIOT home page please refer to the advert on the right hand side.



2. Portal

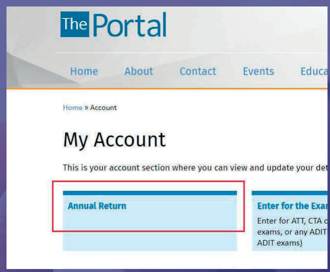
To access your account on the portal please use your:

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



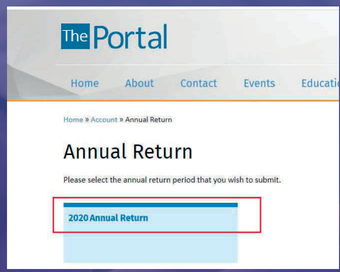
3. Account

Select Annual Return option



4. Period

Select 2020 Annual Return period



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

A new generation of freeports

Victoria Alford considers the objectives behind the government's new freeport policy and how the tax reliefs will be implemented

In February 2020, the government published a consultation on freeport policy outlining plans to introduce at least ten freeports in the United Kingdom following our departure from the European Union. During the Budget on 3 March, and following a competitive bidding process, the locations of eight of these new freeports were announced: East Midlands Airport, Felixstowe and Harwich, Humber, Liverpool City Region, Plymouth, Solent, Thames and Teesside.

Freeports are intended to play a large part in the government's policy to level up opportunities across the country and its Covid-19 crisis recovery plans, providing the opportunity to enhance trade and investment across the UK, boost growth and high-skilled jobs, and increase innovation and productivity in deprived port regions.

It is hoped that these new freeports will be up and running by late 2021, but what will they look like and how will they operate to achieve these objectives?

The new freeports model

Freeports are designated geographical areas, recognised in law, where businesses can benefit from more generous tax reliefs, customs benefits, simpler planning and wider government support. They are usually located around shipping ports and airports.

Freeports are not a new concept. The government is adopting a bespoke UK freeport model which it explains draws on international best practice and builds upon the previous UK freeport model which expired in 2012. These new freeports will have a primary customs site designated in or near a port of any mode – air, rail or sea – or at an inland location with an economic relationship to the port. The government is also allowing multiple additional customs sites (customs subzones).

Freeports will also include a single defined tax site in which freeport tax reliefs will apply. Interestingly, whilst the tax site may encompass all or part of the primary customs site and any subzones, they do not have to. Nonetheless, only customs sites located within the freeport tax site will benefit from specific freeport tax site reliefs.

The customs and tariff policies

The core customs and tariff benefits for businesses bringing goods into a freeport customs site include:

- Duty suspension: No tariffs, import VAT or excise duties are payable on goods brought into the freeport from overseas until they leave the freeport and enter the UK domestic market.
- Duty inversion: If the duty on a finished product is lower than that on the component parts, a business could import components duty free and manufacture the final product in the freeport, paying the duty at the rate of the finished product when it enters the UK domestic market.

KEY POINTS

- **What is the issue?**
Freeports are designated geographical areas, recognised in law, where businesses can benefit from more generous tax reliefs, customs benefits, simpler planning and wider government support.
- **What does it mean for me?**
In the March 2021 Budget, the government announced new tax reliefs for eight new freeport tax sites with the aim of incentivising business investment in capital assets, increasing employment and increasing productivity.
- **What can I take away?**
Whilst there are valid concerns surrounding this new generation of freeports, these must be balanced against the opportunities they could bring for the UK economy, businesses and port communities.

- Duty exemption for re-exports: This would allow a business to import components duty free, manufacture the final product in the freeport, and then pay no tariffs on the components when the final product is re-exported.
- There are also simplified customs procedures.

The tax site benefits

The government has announced the following tax reliefs for freeport tax sites with the aim of incentivising business investment in capital assets, increasing employment and increasing productivity:

- an enhanced capital allowance of 100% for company investment in plant and machinery for use in freeport tax sites in Great Britain;

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PROFILE

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Profile Victoria is a member of PKF Francis Clark's tax advisory team and provides advice to individuals and owner-managed businesses in respect of a wide range of tax matters. Victoria has a particular interest in property related taxes, including capital gains tax, stamp duty land tax and capital allowances.

- an enhanced 10% rate of structures and buildings allowance for constructing or renovating non-residential structures and buildings within freeport tax sites in Great Britain;
- full relief from stamp duty land tax on the purchase of land or property within freeport tax sites in England where it is purchased and used for a qualifying commercial purpose; and
- full business rates relief available to all new business and certain existing businesses that have expanded.

The government will also introduce NICs relief for eligible employees in all freeport tax sites, subject to parliamentary approval in a separate national insurance bill.

A closer look at the draft tax legislation

The Finance (No.2) Bill 2021 was published on 11 March and it is here that we can begin to understand how some of the reliefs outlined on Budget day will be implemented.

Capital allowances

The draft legislation provides for an enhanced 100% first year allowance for company investment in plant or machinery for use in a freeport tax site. This will provide businesses with a valuable tax-timing benefit. However, a number of conditions will need to be met for this enhanced relief:

- the plant or machinery must be for use primarily in an area which, at the time the expenditure is incurred, is a freeport tax site;
- the plant or machinery must be unused and cannot be second hand;
- the expenditure must be incurred for the purposes of a qualifying activity;
- the expenditure must be incurred on or before 30 September 2026; and
- the company must be within the charge to corporation tax.

In terms of the 'qualifying activity' criteria, the focus is on trade activity; notably, ordinary UK property business activities and the special leasing of plant or machinery are excluded.

As expected, there are anti-avoidance provisions to consider where the plant and machinery is intended to be used partly in an area that is not a freeport tax site. There will be complete removal of the first year allowance if it becomes primarily for use outside a freeport tax site within five years.

Finally, the standard first year allowance general exclusions apply, so 100% first year allowances will not be available; for instance, on expenditure incurred in the chargeable period in which the qualifying activity is permanently discontinued; on expenditure on plant and machinery for leasing (whether in the course of trade or otherwise); and on long life assets (with a useful economic life of 25 years or more).

Structures and buildings allowances

A 10% rate of structures and buildings allowance relief will be available for freeport qualifying expenditure. This will provide businesses with a valuable tax-timing benefit; specifically, investments will be fully relieved after 10 years compared with 33.33 years for properties in other locations which only achieve a 3% rate. Nonetheless, it should be remembered that claiming structures and buildings allowance does impact on the level of capital gain on any subsequent sale of the property.

Qualifying expenditure incurred on the construction or acquisition of a building or structure is 'freeport qualifying expenditure' where the construction begins in a freeport tax site. The structure must be brought into qualifying use and the expenditure incurred at a time when the area in which the building or structure is situated is a freeport tax site, and on or before 30 September 2026. Whilst only companies can qualify for 100% first year allowances under the draft freeport legislation, the structures and buildings allowance conditions provide that entities subject to corporation tax or income tax will be able to benefit from freeport structures and buildings allowance relief. An allowance statement must be made stating that the person wants the expenditure to be freeport qualifying expenditure.

Expenditure will need to be reasonably apportioned where a building or structure is only partly situated in a freeport tax site or only part of the building or structure is in use on or before 30 September 2026.

Stamp duty land tax

Relief from stamp duty land tax will be available for transactions involving 'qualifying freeport land' with an effective date on or before 30 September 2026. Relief must be claimed by way of a stamp duty land tax return or amended return.

To be 'qualifying freeport land', the land must be situated in a freeport tax site and intended to be used exclusively in a 'qualifying manner' by the purchaser or a connected person; i.e. the land will be:

- used in the course of a commercial trade or profession;
- developed or redeveloped for use by any person in the course of a commercial trade or profession; and/or
- exploited in the course of a commercial trade or profession, as a source of rents.

Notably, references to doing something in the course of a commercial trade or profession will include doing something in the course of a property rental business (as defined in the Income Tax (Trading and Other Income) Act 2005 Part 3 Chapter 2).

The relief will not be available in respect of residential property or if a purchaser is acquiring any interest in land for resale without development or redevelopment.

If the property acquired is a mixture of qualifying freeport land and other property but at least 90% of the consideration can be justly and reasonably apportioned to qualifying freeport land, relief from stamp duty land tax will be available in full. Where less than 10% of the consideration is attributable to qualifying freeport land, no freeport stamp duty land tax relief will be available. Where the consideration is between 10% and 90%, relief will be available on the qualifying proportion. The relief may be withdrawn if, within three years of acquiring the land, it is not being used exclusively in a qualifying manner.

Any problems for UK business?

Much of the concern surrounding the government's freeports policy is around the potential negative impact on port security, the environment, workers' rights, and the risk of freeports being used for tax evasion and money laundering. There is concern that freeports could give rise to economic displacement, as the tax reliefs and customs benefits will depend on whether the business is within a freeport. Businesses relocating into freeport sites could lead to job relocation rather than creation.

There may also be additional complexity to tax affairs. For a company investing in plant and machinery there may be a period of time until 31 March 2023 when it needs to consider each of the 130% super deduction, the 100% first year allowance and the annual investment allowance. However, these valid concerns must be balanced against the opportunities freeports could bring for the UK economy, businesses and port communities.

A matter of timing

Neil Warren considers important time limits and deadlines that apply to certain land and property deals

KEY POINTS

- **What is the issue?**
An option to tax election sent to HMRC needs to meet important time limits; e.g. notified within 30 days of the decision to opt being taken. Advisers should also be aware of the six month, six year and 20 year opportunities to revoke an election, so that future property income is VAT exempt again.
- **What does it mean for me?**
If a client changes their mind about a property project, meaning that intended taxable supplies will be exempt from VAT (or vice versa), the payback and clawback rules mean an input tax adjustment will be necessary for the previous six years.
- **What can I take away?**
Certain builder services on residential property qualify for 5% VAT, including work on a dwelling that has not been lived in for at least two years. But third-party evidence of the empty period must be given to the builder to support the reduced VAT charge.

Timing is everything. This is a much-used phrase in today's society and is often quoted in diverse subjects ranging from politics to sport. And tax, of course. A correct application of the VAT rules for land and property requires a UK business to get the timing right on many issues. I'll share practical examples in this article.

Option to tax election

There are two stages to making a correct option to tax election with HMRC:

- **Decision:** A landlord or business owner with an interest in a property has incurred a large amount of input tax, which would be blocked under partial exemption if he didn't opt to tax the building and charge 20% VAT on future supplies linked to the building; e.g. rental income or selling proceeds. He therefore decides that an option to tax election is necessary.
- **Notifying HMRC:** HMRC must be notified of the election in writing (usually by submitting form VAT1614A) within 30 days of the decision being made. But there is good news – this time period has been temporarily extended to 90 days due to the trading difficulties caused by Covid-19. HMRC will always acknowledge the election in writing, giving landlords an important document to support future VAT charged on either renting out or selling the building (see VAT Notice 742A para 4.1).

This leaves an obvious question, however. What happens if a landlord fails to carry out the above time deadlines correctly? Can HMRC be notified of an election retrospectively?

There is good and bad news here. If the landlord has carried out the 'decision' stage correctly, and is charging VAT on rent and claiming input tax on expenses, but has just failed to notify HMRC, the situation can be rescued. A belated election will usually be accepted by HMRC as long as proof of the 'decision' date is given; e.g. copies of sales invoices charging VAT to the tenants (see VAT Notice 742A para 4.2.1).

Revoking an election

Here is a quick question: how many separate occasions are there when a business can revoke an option to tax election with HMRC, once it has been made? The answer is three – with six month, six year and 20 year opportunities.

The six month window is often referred to as the 'cooling off' period – where a landlord realises that an election is not in his best interests. There is a specific form for the revocation (VAT1614C) and strict conditions need to be met. See ***Landlord Larry: cooling off period***.

Imagine that you purchased a property on 1 January 2010 and opted to tax it, charging VAT on rental income and claiming input tax on expenses. You sold the property on 1 January 2013, charging VAT on the sale. It is now 1 January 2021 and you have decided to repurchase the same property. What are the VAT issues?

An important point with the option to tax rules is that elections made by taxpayers do not automatically end when they deregister or sell a property. Their election remains in place and this is important if a deregistered landlord sells the property in the future – he will need to re-register for VAT to ensure output tax is correctly charged. However, if the opter has not had an interest in the property for six years, the election is automatically revoked. In this case, the owner's election ended on 1 January 2019, six years after the initial sale. The merits of making a new election would therefore need to be considered when the property is repurchased in January 2021.

Twenty year rule

The option to tax rules were introduced on 1 August 1989, so the first revocations were possible on 1 August 2009 with the 20 year rule. That date is nearly 12 years ago, so there are many elections that can now be revoked by landlords. Future income from the property will then be exempt, rather than standard rated.

An important fact is that buyers will often have more interest than sellers in an election being revoked, and it should be considered on every property deal. Even if a buyer can fully claim input tax, he or she still has the cash flow challenge of paying

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VAT and waiting up to three months to reclaim it on a VAT return. And stamp duty land tax is charged to buyers on the VAT inclusive price of a property deal. See ***Dentist Donna: property purchase***.

Payback and clawback rules: six year window

Let me introduce you to Sally. She purchased a plot of land in Skegness in April 2016, with the intention of building a three-bed detached house to sell on the open market. This will be a zero-rated sale, so she registered for VAT straight away to claim input tax on building materials and professional fees. Builder services are zero-rated so there is no input tax to claim.

The certificate of completion was issued in April 2021 but Sally has now decided to rent out the house on a long-term basis, rather than sell it. What VAT problems does this create?

The answer is that her original input tax claims need to be adjusted with the 'payback and clawback' rules (see The VAT Regulations 1995 Regs 108-110):

- If input tax was claimed because of an intention to make taxable sales, it will need to be paid back to HMRC if the intention changes to the making of exempt supplies. Rental income from residential property is always exempt from VAT unless it relates to holiday lets. This is the 'clawback' rule and applies to Sally.
- If input tax was not claimed because of an intention to make exempt sales, it can be subsequently reclaimed if the intention changes to the making of taxable supplies. This is the 'payback' rule and the reverse of Sally's situation.
- The rules depend on the first supply that is made by the taxpayer, and input tax needs to be included on the return that includes the date when the intention changed.

In the VAT world, we are used to working with a four year period for past errors on VAT returns; however, a payback and clawback correction is not an error – it is an adjustment. A six year time window is relevant here, so Sally will need to repay all input tax claimed, going back to the initial costs incurred when she first registered in April 2016.

As a final issue, if Sally intended to temporarily rent out the house, perhaps waiting for an upturn in the property market, she can review her input tax over a ten year life of the property. So, for example, if she intends to rent out for two years and then sell, 20% of the input tax would relate to exempt supplies and the other 80% would still be taxable. For further details on this concession, which was introduced back in 2008 during the financial crisis, see VAT Notice 706 para 13.12.

Building supplies: two year empty period

The 5% VAT rate applies to some building services supplied on residential properties; e.g. work that converts a non-residential building into dwellings, such as an office block being converted into apartments. It also applies if a project results in a change in the number of residential units; e.g. a detached house is converted into two semi-detached houses, or vice versa. It also applies if a dwelling has not been lived in for at least two years when the work begins.

The property owner must provide evidence of the empty period to the builder. This must be third party documentation, such as council tax statements, electoral register or housing office records – it cannot be a signed statement from the property owner saying it has been unoccupied for more than two years. There is no need for the owner to issue any signed certificate to the builder, only the relevant evidence (see VAT Notice 708 s 8).

PROFILE

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

LANDLORD LARRY: COOLING OFF PERIOD

Larry purchased an office block for £200,000 on 1 January 2021 and no VAT was charged by the seller because they had not opted to tax. However, Larry decided to opt to tax the property in case he incurred VAT on property improvements in the coming years and could therefore claim input tax.

Before incurring any costs and claiming input tax, Larry signed a rental agreement on 28 March 2021 with an insurance company for rent of £30,000 per annum starting on 1 April 2021. An insurance company cannot claim input tax (exempt supplies), so Larry sent form VAT1614C to HMRC on 28 March to revoke the earlier election made in January. This is fine because it is within six months and he has not claimed input tax or charged output tax on any supplies.

VAT Notice 742A para 8.1

DENTIST DONNA: PROPERTY PURCHASE

Donna is VAT registered as a dentist but partly exempt with an 80% input tax restriction on her overhead costs. She would like to buy the freehold of a new trading property for £800,000 but the seller, Steve, made an option to tax election and wants to charge 20% VAT.

Before rejecting the chance to buy the property and finding alternative premises without an election in place (a VAT exempt purchase), Donna should ask Steve if he made his option to tax election with HMRC more than 20 years ago and it can therefore be revoked.

Note: Steve must submit form VAT1614J to HMRC before exchange of contracts – and he must meet certain anti-avoidance conditions. As long as these conditions are met, the form is a notification outcome and not seeking HMRC's permission to revoke.

VAT Notice 742A para 8.3

Do you want to help?

National Volunteers' Week takes place from 1 to 7 June to celebrate the invaluable contribution that volunteers make in all walks of life. *Tax Adviser* examines the different ways you can share your skills and experiences

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MY EXPERIENCES ON THE ATT COUNCIL

Richard Freeman
Senior Tax Professional at HMRC

As an ATT Council member, I'd like to share a few of my thoughts around my (positive!) experiences of volunteering for both ATT and CIOT.

I started volunteering for the West Midlands joint ATT/CIOT branch to get to know fellow members of the tax profession across all sectors and professions. Through organising numerous educational and social events, our committee worked well together and enabled many people to both keep up to date with CPD and build really strong networks.

I enjoyed chairing the branch for a number of years, and continue to act as chair of my current branch – HMRC. In 2015, I joined ATT Council and have sat on various Steering Groups in the last six years. Being part of this group is personally really satisfying. The ability to utilise and develop further skills is fantastic and a great addition to your CV.

I'm currently chair of our nominations committee, which is looking to appoint four new Council members – this is a great opportunity for members to get involved who can bring their skills to assist in the successful running of the organisation.

Over the course of my many years of volunteering, I've met many people and enjoyed being an integral part of the diverse tax community we have in the UK. There are endless opportunities to add value and feel valued, both helping the organisation for whom you are volunteering, and also helping you to practise and develop other skills which are transferable to your day job. I would most definitely recommend that you consider getting involved in your Association or Institute. Saying yes to opportunities is always a great way to learn and develop!

In 2020, there were at least 681 volunteers across CIOT and ATT Committees, Steering Groups and Councils who contributed at least 19,719 hours of their time. We are continually looking for volunteers to contribute to the success of the organisations.

If you want to help to shape the future of the CIOT or ATT and the tax profession, volunteering is a way to make a real difference.

CIOT and ATT's Council, Steering Groups and Committees and the branch network are all run by our members – volunteers who offer their time and expertise to provide essential direction, leadership, guidance and support to the organisations.

Volunteering is a great way to enhance and develop new skills, gain valuable experience and make a contribution to the wider profession, government and public as a whole.

Whether you are a student, newly qualified, a longstanding member or retired, it's never too early or too late in your career to volunteer. We have exciting opportunities for you to join our Branch and National Steering Groups, Council and Committees.

What does being a volunteer mean?

We offer a wide range of opportunities to suit all levels of skills and experience, both in the Branch network and Steering Groups and Committees of Council. The role and level of personal commitment will vary according to the activity and your other commitments but you should be prepared to:

- Attend meetings and contribute to the work of whichever Steering Group or Committee you join. Most of our Committees and Steering Groups meet four times a year at our Head Office in London but increasingly we are making use of online facilities.
- Contribute to the development of the group's activities by offering professional comment and advice on current issues and developments from your own perspective and sharing practical experiences.
- Read meeting papers in advance of meetings.

Benefits of volunteering

Volunteering has many benefits, both personal and professional. These include:

- gaining new skills and valuable experience;
- opportunities to establish professional relationships with the tax authorities and government departments;
- opportunities to exchange views and experiences with fellow tax professionals, further developing your personal and professional networks;
- early access to information on key developments and innovations in the field of taxation;
- excellent additional material for your CV; and
- opportunities for continuing professional development.

Next steps

Details of our Steering Groups and Committees are on our websites at www.tax.org.uk/networking and www.att.org.uk/about-us/steering-groups-committees

If you are interested in getting involved, please contact Jane Ashton (ATT) at jashton@att.org.uk or Emma Barklamb (CIOT) at ebarklamb@ciot.org.uk, who will give you any further information you need.

Once you know more and are happy with the commitment you will need to make, we will ask you to submit a brief CV so that we can learn a little more about you before we invite you to attend a meeting.

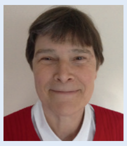
We look forward to hearing from you!

SUPPORTING TAX CHARITIES

Alice Devitt, Director of Fundraising at TaxAid and Tax Help for Older People, shares the benefits of getting involved with their valuable work.

As part of our Volunteers' Week celebrations, we want to recognise the extraordinary contribution made by tax professionals who volunteer. Expert volunteers enable TaxAid and Tax Help for Older People to reach thousands of vulnerable people with tax crises. Two tax professionals who have volunteered for us explain why they volunteer and why they think it's important.

TaxAid offers free, confidential advice on tax to those on low incomes and Tax Help for Older People provides free, independent and expert help and advice for older people on lower incomes. If you would like to learn more about their work, or find out how you can volunteer, please contact Alice at bridgethegap@taxvol.org.uk.



Jill Crawley

Jill volunteers for Tax Help for Older People. She is originally from Essex but went to university in Manchester and didn't 'go home'. She now lives in Marple, Cheshire with her husband. They both work in the accountancy profession but actually met playing badminton.

I am a Chartered Accountant and Chartered Tax Advisor. I gained a wide variety of accounting and tax knowledge whilst employed by Big Four firms in Manchester. My focus, now that I run my own accounting and tax practice, is on owner managed companies and individual taxpayers.

I noticed an advertisement for volunteers to help at Tax Help for Older People in the technical press about 15 years ago and applied to become a volunteer. I had helped my parents with their tax affairs for a number of years and felt I should give something back to society and make use of my expertise.

I have a real sense of achievement and satisfaction when the clients I see are given impartial and practical assistance to resolve their tax issues. For so many, the burden of dealing with tax matters causes them to worry, and lifting that burden is really worthwhile.

Most of the problems arise from multiple sources of income, multiple tax codes, foreign pensions, brown envelope phobia and having to deal with such issues on an infrequent basis with little knowledge. I often deal with a widow or widower whose spouse had dealt with all the family's financial matters, so they are faced with both a knowledge and emotional challenge.

Impartial and compassionate advice is needed by older people who often had been taxed under PAYE. All of a sudden, in retirement they are faced with strange tax codes for pensions and no one to really ask, as any support that was given during employment has ceased in retirement.

If you enjoy working in tax, interacting with people and have time to spare 'off the clock' you will be amazed how much you learn and the peace of mind you give to those that need Tax Help for Older People.

Chris Moody

Chris volunteers for TaxAid. He trained and qualified as a chartered accountant many years ago with Spicer & Pegler (now Deloitte) and also took the CIOT exams. He lives in the Thames valley with his wife and a number of cats. He recently became a grandfather for the fourth time.

I first became a volunteer adviser at TaxAid 19 years ago when I was self-employed. I had always found the training that TaxAid offered very good value and I approached someone at a conference.

Our volunteer work gives us all a great sense of satisfaction when we can help someone to resolve a tax issue. Among other things, we're often called upon to help with situations where there is a backlog of tax returns to submit where the client has buried their head in the sand.

TaxAid is needed because the tax system is so wretchedly complicated. Increasingly, computers are taking over and I often struggle with the technology, as well as the law – even though I'm supposed to be an expert.

I would recommend anyone thinking of using their tax skills to volunteer to go for it. It is so rewarding.

Putting your skills into practice

Amy Lawton and *David Massey* explain how a team of students and tax professional volunteers ran a tax clinic to provide community support

When we last wrote about the North West Tax Clinic (NWTC) in *Tax Adviser* ('Opening our doors', October 2020), we were about to welcome a team of tax professional volunteers to support our students and their low-income clients. This was following a successful pilot of the project, between January and March 2020, where a small team of students from Lancaster University and the University of Central Lancashire helped to save taxpayers over £15,000 in tax repayments and waived penalties.

The NWTC ran again for the full 2020/21 academic year but we needed help. Clinic meetings are held with students from the universities, supervised by qualified tax professionals. They can assist clients with:

- completing their self-assessment tax returns;
- appealing against penalties for tax returns filed late;
- explaining PAYE codes and assisting clients to get them changed if they are incorrect;
- explaining tax calculations from HMRC and appealing against these if they are incorrect; and
- asking HMRC to cancel tax returns it has issued if clients do not meet the requirements to complete a tax return.

Our call for volunteers was met with positivity from the tax profession and the clinic is now supported by six professional tax advisers. The University of Manchester joined the NWTC in February 2021.

Our goal

Our professional and student volunteers have handled a variety of cases. Our clients are on a low-income and are quite often struggling with other things in their lives as well. To many of them, HMRC is a daunting prospect. The NWTC helps to demystify their tax obligations and liaise with HMRC on their behalf. The aim is to set them straight with their taxes and empower them to manage their own tax affairs in the future. Common client issues include PAYE tax codes, removing clients from the self-assessment system, and appealing penalties.

During 2020/21, our volunteers once again saved clients thousands of pounds in waived penalties and refunded tax, while also helping those who owed tax complete their returns to get their affairs up to date and guiding others through the SEISS rules.

Benefits of volunteering

Both our students and professional volunteers accomplished a lot during their time with the NWTC. For the students, having professional tax advisers to supervise their work is invaluable. They not only experienced the tax issues of real-life clients, but also had the opportunity to talk to professionals with years of experience in the field.

Our professional volunteers were exposed to tax issues that are a world apart from the fee-paying client and they gained experience of managing the students.

Here are the experiences of just some of our volunteers:

'I really enjoyed my time volunteering for the NWTC. I worked with a number of talented students who really showed an interest in the cases brought to the clinic and we managed to get some great results for the clients. It was great to be involved in the programme over the last 12 months and I hope to be involved again in the future.'

Sophie Chamberlain, Senior Manager, ETC Tax

'The students have shown a great deal of technical ability, tenacity and patience in dealing with their cases. I was beginning to wonder if it was a real scenario as so many obstacles were thrown in their way! Those skills will serve them well in whatever they do in the future. Hopefully, they will get an understanding that "real world" tax isn't about numbers, tax cases and right answers. It requires a flexible and open-minded approach backed up with a dash of common sense.'

Peter Bean, Director, PB Taxation Services

'It has been fantastic to be part of a project which gives back to our local community and supports the development of students.'

Simone Brown, Tax Manager, Rotherham Taylor Accountants

We would like to thank those volunteers (and Thomas Slipanczewski and McCloud Ng'onga) for the time they have given to the NWTC, as well as to Gail Mackie and her colleagues at TaxAid who have sponsored the NWTC and provided invaluable support to us. The NWTC will run again in October 2021. The project has grown, and the Scottish Tax Clinic plans to start at the same time (based in the University of Edinburgh). We hope that the growing tax clinics will be able to provide pro bono income tax advice to more people, and so give back to both our communities and our students.

If you would be interested in volunteering your time, please email alawton@ed.ac.uk (Scottish Tax Clinic) and diamassey@uclan.ac.uk (NWTC).

PROFILE

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Name: **David Massey**
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Profile: David joined the Inland Revenue as a Tax Officer (Higher Grade) in 1986. He worked as an investigator examining the accounts of small and medium-sized businesses and as a technical inspector dealing with the personal tax affairs of the members of the 'Big 4' accountancy firms and the 'Magic Circle' of City solicitors. He is now an independent tax adviser and part-time lecturer and researcher.

OTHER ROUTES TO VOLUNTEERING

Georgiana Head takes a look at some other ways you can use your skills and volunteer in the community.

I started my stint volunteering in schools as a school governor for a secondary school in Halifax. In 2019, I was asked whether I would chair a new governing body for a school in the same multi-academy trust called Trinity Academy Sowerby Bridge.

Trinity Sowerby Bridge had joined the trust in 2018 – and had previously been a failing school which had been put in special measures. By 2019, it had become one of the most transformed academy schools in the UK (among the top 1% of improved schools and one of the highest performing schools for progress in the Calderdale Local Authority). This was no mean feat when the school's catchment area is mainly from the lowest 3% of poverty in the UK. The key to the transformation is the aspiration of all the staff towards the pupils and their outcomes. They say it is about doing simple things well, all the time.

I've found that I have really bought into the ethos of the school. I'm proud of the governing board that we have grown and the work it does, including link governor visits, helping with 'last chance' turnaround meetings to try and get pupils off the track to exclusion (what we used to call expulsion), and formal exclusion meetings.

I've gained HR experience, employment law knowledge, a deeper understanding of risk management, safeguarding and Covid-19 safety and have learned a raft of education speak. I've also picked up some Slovak language skills to speak to Roma parents and buffed off my old finance skills to read and question budgets.

Although it has required considerable time commitment, it has been a deeply enjoyable experience. I've also found that the skills I have learned around chairing meetings and understanding how an educational establishment works has helped me in my other volunteering roles with ATT.

I would heartily recommend becoming a governor to any tax professional. Your day to day work skills – such as being able to analyse reports, read legislation and read accounts – make you highly valuable to schools. You may, though, spend several months bemused by educational acronyms (we now give new governors a crib sheet of common abbreviations in education).

A very topical undertaking

I think volunteering is a hot topic at the moment because of the hoards of people helping with the Covid-19 vaccination programme. When I had my first vaccination, I came out feeling rather misty-eyed at seeing how well run and slick the set up was and how enthusiastic the volunteers were.

I talked to Angela Ferguson, an employment taxes director at Saffery Champness who is a volunteer vaccinator. She was asked to participate having completed a St John Ambulance first aid course. As she explained: 'I looked at the different roles on offer and decided to train as a vaccinator, which meant a lot of online medical training and a day's face to face training, practising on artificial arms on a Saturday in January.'

On 26 February 2021, Angela undertook her very first shift at Chester racecourse. 'I was amongst medical professionals and other volunteers from St John's and the Fire Service. I was a little nervous but had an amazing nurse to help demonstrate and run through all the tasks and forms, and then she watched me vaccinate my first five people. The operation of the venue was fantastic, very slick and – most importantly – safe. And the excitement of most of the over 60s we were vaccinating was amazing to see. They were thrilled to be getting the chance to get back to some kind of normality.'

Angela added that it was 'was lovely to get out of the house and actually see and help people. It has been one of the most rewarding experiences I've had.' She looks forward to every shift and vaccinates some 65 people at a time.

How you can benefit

Volunteering enables you to use the skills you learn at work in a new way. It also helps you to gain new skills which you can transfer to your career. For me, most importantly, it gives the satisfaction of being able to give back to your community. As a recruiter, I can also assure you that it looks good on your CV.

If anyone in West Yorkshire wants to hear about opportunities on school boards, we are always looking for more governors. You can email me at georgiana@ghrtax.com.

Georgiana Head is a Director at Georgiana Head Recruitment specialising in recruiting tax professionals. She trained in tax and is an ATT Council Member. In her spare time she is a school governor.

A share in the freehold

Ray Magill considers the difficulties that may occur if a lessee chooses to extend their lease or purchase the freehold on their property

KEY POINTS

- **What is the issue?**
In England and Wales, the Leasehold Reform, Housing and Urban Development Act 1993 s 39 gives anyone who has been a 'qualifying tenant' of a flat for at least two years the right to a new lease expiring 90 years after the term date of their existing lease, in return for a premium.
- **What does it mean for me?**
An 'extension' involves the surrender of the existing lease as part of the consideration for the grant of a new lease, although normally due to the ESC D39 any gain to the leaseholder would be exempt from capital gains tax.
- **What can I take away?**
The lessees of flats rarely own 'a share in the freehold'. If lessees are made better aware of the tax effect of the current structure, they might consider exercising their right to buy the freehold. There are similar tax effects to those that arise when extending their leases.

When marketing a flat, estate agents will often say that the seller also has a share in the freehold. In practice, however, that is rarely so. The seller actually has a share in the company that owns the freehold. Typically, there will be one share for each flat's lessee(s) and the directors will be some or all of the lessees. The difference is very significant, especially for tax purposes.

In most cases, the company owning the freehold will collect service charges and meet the costs of providing services to a building. Generally, these amounts are held in trust under the Landlord and Tenant Act 1987 s 42. The company's own revenue should be confined to any ground rents payable.

Problems arise if a lessee wants to extend their lease. The remaining tenure of many flats built in the latter part of the 20th century is getting close to the 60 years that many lenders see as offering the minimum security.

Concession for qualifying tenants

In England and Wales, the Leasehold Reform, Housing and Urban Development Act 1993 s 39 gives anyone who has been a 'qualifying tenant' [one with a long lease] of a flat for at least two years the right to a new lease at a peppercorn rent expiring 90 years after the term date of his existing lease, in return for a premium determined by a formula set out in Sch 13 of that Act.

In England and Wales, at least, an 'extension' involves the surrender of the existing lease as part of the consideration for the grant of a new lease. However, the extra-statutory concession D39 will normally apply, so that there will be no capital gains tax consequences for the lessee of the disposal that the surrender represents. To benefit from the concession, the following conditions apply to the transaction:

- It must be on terms equivalent to those that would have been made between unconnected parties bargaining at arm's length.
- It must not be part of, or connected with, a larger scheme or series of transactions.
- The lessee must not receive a capital sum.
- The extent of the property in which the lessee has an interest under the new lease must not differ in any way from that to which the old lease related.
- The terms of the new lease (other than its duration and the amount of rent payable) must not differ from those of the old lease, ignoring trivial differences.

In many, if not most, cases, however, any gain would be exempt anyway, as a disposal of the lessee's only or main residence. Even so, there are circumstances where there could be an advantage in the concession *not* being applied.

Tax implications of lease extensions

Stamp duty land tax should only be payable on the monetary consideration for the new lease (Finance Act 2003 Sch 17A para 16).

An extra 90 years added to a lease with only 65 years to go might require a payment equal to 10% of the market value of the flat with an extended lease. That should be paid to the company as freeholder, and will represent a part disposal by the company, resulting in a chargeable gain and a liability thereon for corporation tax.

If all the lessees want to extend their leases at the same time, and the flats all have the same value, the outcome is straightforward. On the assumption that the lessees see no reason for the company to retain the amount paid for the lease extensions, net of tax and any expenses, they could either distribute it as a dividend or wind-up the company and distribute the assets to the lessees/shareholders. This would include the freehold, now much devalued, which the lessees would then hold as tenants in common.

The net result would be for the lessees as a group to recover much of their initial outlay, after allowing for the company's and their own tax liability. However, the amount distributed will not be split according to the value of each flat, but divided equally, as each share in the company owning the freehold will generally have the same value.

Proportional shares

One remedy might be for each lessee to have a number of shares in proportion to the value of their flat. Thus, if there are six flats, respectively valued at 10X, 11X, 12X, 13X, 15X and 17X, there might be 78 shares. The lessee of the most valuable flat would have 17 shares.

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PROFILE

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This approach works well if all the lessees want to extend their leases at the same time. Otherwise, problems arise. Suppose only one lessee extends his lease, paying £100,000, and the company is able to pay a dividend of £80,000. This will have to be shared by all the lessees, not just the one who has extended his lease.

Alphabet shares

An alternative remedy would be to have six different classes of share. The A share would be held by the lessee of the most valuable flat, with its value attributed only to that share and the reversion thereto, and the B share held by the lessee of the next most valuable flat, and so on.

If the 'alphabet share' idea is adopted instead, the extending lessee would receive the whole £80,000 as a dividend, virtually extinguishing the value of his share, which would now only reflect the value of the reversion to his new lease.

Purchasing the freehold

If the lessees are made better aware of the tax effect of the current structure, they (or a majority of them) might consider exercising their right to buy the freehold. To achieve this, there are similar tax effects to those that arise when extending their leases. Unless the amount involved is exceptionally large (when divided by the number of flats in the block), there should not be any stamp duty land tax payable (see Finance Act 2003 s 74).

The company will normally have a chargeable gain and a corporation tax liability, however. Having disposed of the freehold, the company can be wound up and its net assets distributed to the lessees/shareholders, who themselves will normally have a chargeable gain subject to capital gains tax at up to 20%. This distribution would be to all the lessees/shareholders, not just those involved in the purchase of the freehold. And, unless the 'alphabet share' idea has been followed, any distribution would be shared equally, not in proportion to the value of individual flats.

For example, the purchase might be made by the majority of the lessees – say, eight out of ten. The company's surplus after tax would then be distributed to all ten lessees/shareholders. Suppose the freehold is bought for £1 million and the company's chargeable gain is £900,000. Its corporation tax liability is 19%, amounting to £171,000. Expenses might be another £9,000, leaving £820,000 to be distributed to the shareholders in a winding-up, amounting to £82,000 for each. The eight lessees who now own the freehold as tenants in common can happily grant themselves longer leases for no consideration, but the other two would have to pay the same premium to their eight neighbours for any extension that they would have had to pay to the company.

Lessees might be tempted to suggest that these tax issues would disappear if the company retained the freehold and nothing were paid for such lease extensions – *'After all, we own the company, so why charge ourselves?'* If that happens, the tax problems become even greater.

For tax purposes, the open market value would be involved. The market values for tax purposes would be more than the price determined under the Leasehold Reform, Housing and Urban Development Act 1993, as that only applies to leaseholders of at least two years' standing and reflects a share in the 'marriage value'. Others would have to pay more.

The lessees would be treated as disposing of their existing leases at market value and acquiring the new leases at *their* greater value. The unpaid difference would be subject to income tax, either as a benefit in kind if they are directors, or treated as if it were a dividend under Corporation Tax Act 2010 s 1064. If the unpaid difference is treated as employment income, the company would have a liability for Class 1A NIC at 13.8%.

The company would have a liability for corporation tax anyway, with no cash available.

Other considerations

If this were after March 2023, the small profits rate of 19% might not be available. If the company is a 'close investment-holding company' (under Corporation Tax Act 2010 s 34), the corporation tax rate would be 25%. The company would be caught if it is 'connected' with the lessees (see s 34(3)).

An individual is 'connected' with a company if, together with those connected with him or her, such as relatives, etc., the individual controls the company (see Corporation Tax Act 2010 s 1122). Certainly, if most of the individual lessees of flats in a block owned by a company are related to one another, each lessee will 'control' the company and will therefore be connected. In addition, even if the lessees are not related, any two or more persons acting together to secure or exercise control of a company are connected with one another, and each is therefore connected with the company.

However, it is thought that HMRC doesn't take this as applying to the typical situation of a company owning the freehold of a block of flats, whose members are the lessees of those flats. In any case, the extra-statutory concession D39 would not be available, resulting in possible capital gains tax liabilities for the lessees. Clearly, this is not an advisable route.

Although it will rarely apply, one should also recognise the possible relevance of the annual tax on enveloped dwellings (ATED). Corporate lessees of flats of sufficient value should already be aware of any ATED responsibilities. Less obvious is the situation where an individual lessee is 'connected' with the company owning the freehold of his flat, as considered above.

ATED applies if the property is worth more than £2 million and the company's interest is worth more than £500,000 *or* the property is worth £2 million or less and the company's interest is worth more than £250,000. The values referred to are normally those at 1 April 2017 or subsequent acquisition (see Finance Act 2013 s 110).

Paradise lost; paradise regained

Keith Gordon takes a second look at a case concerning schemes where contractors were paid in loans

KEY POINTS

- **What is the issue?**

Hoey v HMRC is a lead case considering the effectiveness of HMRC's challenge to the many thousands of contractors whose work arrangements were channelled into schemes that ended up paying them the majority of their earnings in loans.

- **What does it mean for me?**

It was Mr Hoey's case that the PAYE regulations confer on employees a credit for any tax that should have been deducted under PAYE, reflecting the fact that HMRC's principal remedy in cases of PAYE non-compliance is pursuing the non-compliant employer and not the employee.

- **What can I take away?**

According to the findings of the Upper Tribunal, the taxpayer has a tax liability which will be cancelled (or at least substantially ameliorated) by the PAYE credit – meaning that HMRC will end up with no or little tax.

In the October 2019 issue of *Tax Adviser*, I considered the decision of the First-tier Tribunal in the case of *Hoey*. This has become a lead case considering the effectiveness of HMRC's challenge to the many thousands of contractors whose work arrangements were channelled into schemes that ended up paying them the majority of their earnings in loans. Readers will be aware that HMRC had hoped to avoid this litigation by introducing the loan charge, the principal purpose of which was to encourage taxpayers to abandon their appeals.

However, leaving aside the issue of the loan charge, in my view HMRC did not recognise that many contractors did not significantly benefit financially from the loan arrangements – a slice of the supposed tax savings was pocketed by the promoters in the form of ongoing arrangement fees. As a result, some contractors were not in a position to settle on the terms put forward by HMRC, leaving them with no choice but to continue fighting through the courts.

The facts of the case

The facts of *Hoey* are typical of such cases. At the previous hearing, the First-tier Tribunal expressly found that Mr Hoey's motivation for entering into the arrangements was not to save tax but to avoid the complexities of running his own company. Indeed, he did not understand the underlying tax structure.

Although many contractors were subject to enquiries (which were not actively pursued for many years, in many cases for over a decade), Mr Hoey's case concerns discovery assessments. As well as saying that the schemes were ineffective on ordinary principles, HMRC advanced an alternative argument by reference to the transfer of assets abroad legislation (discussed in another context in my article 'Terms of procurement' in the March issue of *Tax Adviser*).

In the light of the Supreme Court's decision in the earlier *Rangers* case [2017] UKSC 45, Mr Hoey accepted that the arrangements were ineffective and that tax should have been paid. However, as was made clear in *Rangers*, the taxable payment was not the advance of the loan (as previously argued by HMRC), but the earlier diversion of Mr Hoey's earnings into the trust that later made the loan to him. Accordingly, again as held in *Rangers*, it was that payment *into* the trust that attracted a liability to deduct tax under PAYE.

It was Mr Hoey's case that the PAYE regulations confer on employees a credit for any tax that should have been deducted under PAYE, reflecting the fact that HMRC's principal remedy in cases of PAYE non-compliance is pursuing the non-compliant employer and not the employee. HMRC did not dispute the fact that this credit usually arises. However, in the present case, it advanced the following two arguments:

1. The existence (or otherwise) of the credit PAYE is not a matter that the First-tier Tribunal can decide. Instead, if the appeal is not successful and the assessments are therefore upheld and Mr Hoey does not pay the tax demanded, it will be up to Mr Hoey to assert the existence of the PAYE credit as part of his defence in any subsequent enforcement proceedings (in the County Court).
2. In any event, HMRC had effectively withdrawn the credit by exercising its power under the Income Tax (Earnings and Pensions) Act 2003 s 684(7A)(b).

In the First-tier Tribunal, Mr Hoey's appeal failed for the following two reasons. First, the procedural challenges to the discovery assessment were dismissed. Secondly, the First-tier Tribunal considered that there was nothing in the legislation that prevented HMRC from removing the credit under s 684(7A)(b), even many years after the date on which the credit first arose.

The one consolation for Mr Hoey was that the First-tier Tribunal held that the

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transfer of assets abroad legislation was of little benefit to HMRC because the additional income assessable under those rules was nil (given that the income was already taxed as employment income).

Mr Hoey appealed to the Upper Tribunal.

The Upper Tribunal's decision

The case of *Hoey v HMRC* [2021] UKUT 82 (TCC) came before Mr Justice Adam Johnson and Judge Swami Raghavan. The Upper Tribunal distinguished between, on the one hand, the amount of an HMRC assessment (which would be justiciable in the First-tier Tribunal) and, on the other, the amount of tax payable as a result of the assessment (which is a matter for consideration in collection proceedings only, typically in the County Court).

In the present case, the Upper Tribunal held that the wording of the PAYE regulations conferring the credit put the case into the latter category. Accordingly, the question as to the availability of the credit was not something that the First-tier Tribunal could consider and would become live only if HMRC chased Mr Hoey for payment. Accordingly, the effectiveness or otherwise of HMRC's decision to remove the credit retrospectively was not something that the Upper Tribunal had to consider.

The Upper Tribunal also dismissed the taxpayer's appeal in relation to the validity of the discovery assessment. HMRC also clawed back some ground in relation to the legal points arising in respect of the transfer of assets abroad legislation. However, the Upper Tribunal upheld the First-tier Tribunal's decision on the more fundamental point, being that the taxable income arising under the transfer of assets abroad code is nil. Nevertheless, as a result of the earlier parts of the tribunal's decision, the Upper Tribunal upheld the assessments as made by HMRC.

Commentary

Taking a strict approach to the case, it is without doubt that the taxpayer lost and HMRC will technically be entitled to treat this as another HMRC victory in avoidance-related litigation. However, it is very likely to be a result which will have given far more pleasure to Mr Hoey (and the many other contractors who were eagerly awaiting the decision) than to HMRC.

As I have said, the Upper Tribunal did not have to consider the validity of HMRC's purported attempt to remove the PAYE credit under s 684(7A)(b). However, that did not stop the Upper Tribunal from considering it in some detail.

This is a very helpful step because, in my experience, County Court judges are usually very reluctant to get bogged down with difficult questions arising from the tax code (there is, after all, a specialist tribunal which is meant to deal with tax disputes). Of course, in the present case, the Upper Tribunal has decided that this is a question that must be addressed in the County Court and, therefore, it is likely that County Court judges will be grateful for the Upper Tribunal's analysis on the point, which considered earlier decisions on the point.

In the First-tier Tribunal, the Judge had said: 'I cannot escape the fact that the wording of s 684(7A) seems to give a very wide discretion to HMRC and effectively renders [the provisions that allow the credit to be removed but with greater protection given to taxpayers] otiose.'

In another similar case (*Higgs v HMRC* [2020] UKFTT 117 (TC)), the First-tier Tribunal held:

> 'In my view, the aims and applications of s 684(7A)(b) overlap with those of [those other provisions that expressly remove the PAYE credit]. It follows that they are not mutually exclusive ... I cannot agree … that giving s 684(7A)(b) a wide – including retrospective – interpretation "undermines the careful balance within the PAYE regulations": I consider that it was intended that HMRC should have both the discretion conferred by s 684(7A)(b) and the powers contained [elsewhere].
>
> 'I reject [the taxpayers'] primary submission that s 684(7A)(b) must operate prospectively only. On the contrary, I agree with [HMRC] that the converse is true: there is nothing in the statutory wording that cuts down the exercise of the discretion to a prospective application. In my view, so long as the discretion is properly exercised in accordance with the statutory requirement (that an officer of HMRC "is satisfied that it is unnecessary or not appropriate" that a person comply with the PAYE Regulations), then I see no difficulty with the decision having prospective and/or retrospective effect.'

On the other hand, in yet another case (*Lancashire v HMRC* [2020] UKFTT 407 (TC)), the First-tier Tribunal took a different view on the same point:

> 'In my view, it does not necessarily follow, as HMRC seemed to

> suggest, that the legislature must be taken to have intended that the retrospective disapplication of the payer's compliance obligation, where relevant, is to be read into regulations which determine the tax position of the relevant worker. It is one thing to disapply the PAYE regulations retrospectively to relieve the payer/employer from its own obligations under them for a tax year and another, in effect, to re-write the rules under which the employee/worker is required to calculate his tax liability for that tax year.'

In the present case, the Upper Tribunal took a similar view to that in *Lancashire*. As the tribunal held: '[T]he plain reading of the language is that it has prospective effect … If 7A were to have this retrospective effect one would expect clear words. In fact, the statutory language is consistent with prospective effect.'

In my view, the Upper Tribunal's decision on the question of retrospection cannot be faulted and that the first two decisions in the First-tier Tribunal (in *Hoey* and *Higgs*) were wrong – I should add for completeness that I represented Mr Higgs in the First-tier Tribunal.

Subject to any appeal (as to which see below), the result of the case is that:

1. The taxpayer has a tax liability which – in the non-binding view of the Upper Tribunal – will be cancelled (or at least substantially ameliorated) by the PAYE credit – meaning that HMRC will end up with no or little tax.
2. HMRC cannot engage the Transfer of Assets Abroad (TOAA) code in an attempt to get around the PAYE credit point. To be fair, I am not sure that, even if the TOAA code could be engaged by HMRC, it would cancel out the PAYE credit. However, that point was decided against the taxpayers in *Lancashire* (but might well be revisited on further appeal).

As I have said, this is a defeat that is likely to have caused the taxpayer little disappointment.

What to do next

Ordinarily, I use this section to suggest what advisers in other related cases might wish to consider doing. However, in the present case, the more pertinent question is what should Mr Hoey and HMRC do next?

Of course, the obvious answer (in my view) is that HMRC should recognise the fallacy of its arguments about s 684(7A)(b) being used retrospectively. The provision was never designed for such purposes and HMRC's own manuals disavowed any such power. Indeed, when HMRC's officer in the First-tier Tribunal responded to this point by suggesting that the guidance must have been wrong, when he was not even a PAYE expert, he undermined credibility in HMRC's ability or willingness to deal with taxpayers in a professional manner.

I fear, however, that that obvious way forward for HMRC is unlikely to be attractive to it and it might therefore now try to pursue the tax from Mr Hoey, who will then have to deploy the points articulated by the Upper Tribunal when asserting the existence of the PAYE credit. As I have said, the Upper Tribunal's analysis is likely to be readily followed in the County Court (or, even in the High Court, if the case is transferred there) and the matter might then have to be considered again at the Court of Appeal.

The taxpayer has a tax liability which will be cancelled (or at least substantially ameliorated) by the PAYE credit – meaning that HMRC will end up with no or little tax.

Of course, Mr Hoey could appeal against the Upper Tribunal's decision (remembering that he lost the appeal) to the Court of Appeal. Although he might persuade the tribunal to find that the discovery assessment is invalid or even knock out the TOAA line of attack, the real purpose of any further appeal would be to get the court's determination that the PAYE credit point can indeed be raised in the First-tier Tribunal. Whilst that would undoubtedly be a nice result to achieve, there is very little point in Mr Hoey pursuing the point to the Court of Appeal. This is because, absent such an appeal, the current state of the law is that the argument **must** be raised in the County Court.

Furthermore, HMRC could not turn round in Mr Hoey's case and argue that, actually, it was wrong after all and try to persuade a County Court that it does not have jurisdiction to hear the argument. That would amount to an abuse of process and possibly also fall foul of the res judicata principle. Therefore, even if (in another case) the courts were to decide that the Upper Tribunal was wrong on this point, Mr Hoey should still be fully entitled to run the PAYE credit argument in the County Court.

There is a theoretical possibility of HMRC itself pursuing some of these arguments to the Court of Appeal, even though it won in the Upper Tribunal. However, that is not something that it usually does and I do not expect it to do so in this case.

The Upper Tribunal decision refers to a stayed judicial review application made by Mr Hoey and that might be revisited in the light of the tribunal's decision. However, without any details as to what that claim entails, I cannot tell whether it is likely to be resurrected now. But for that possibility, the most likely course of action is that the case will now be transferred to the County Court, with HMRC fighting the PAYE credit point on the back foot.

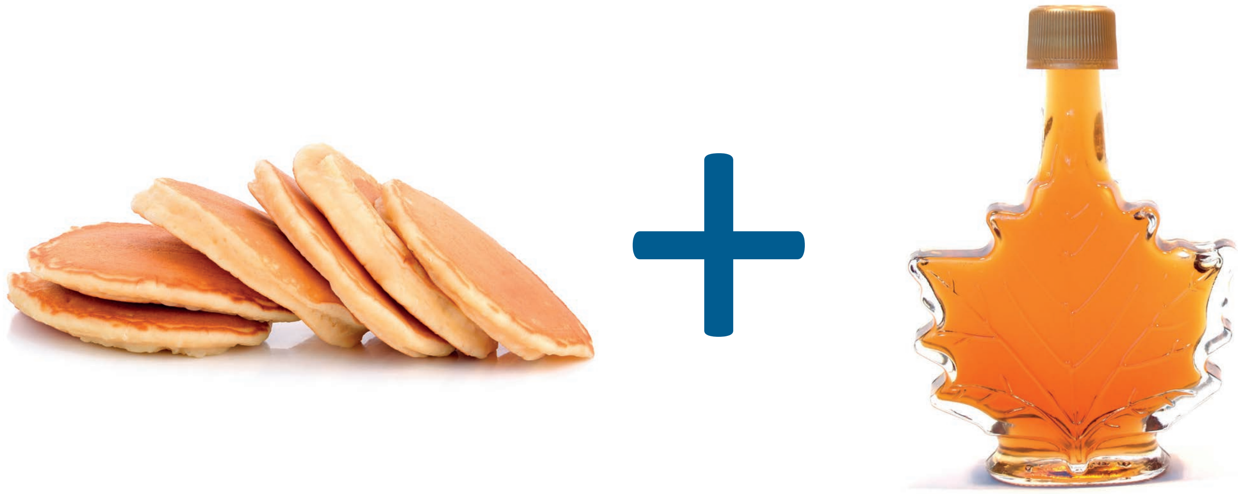
However, this then leaves the question as to what other taxpayers in a similar position should do. One obviously attractive (and cheap) option is to abandon any appeals and simply await enforcement proceedings in the County Court and then deploy the PAYE credit point. However, there is a real risk that HMRC would seek to argue that, by abandoning any appeal, the taxpayer has effectively accepted that the tax is due in full.

Accordingly, I think consideration should be given to pursuing the appeal on the basis of the PAYE credit and await HMRC's arguments in response. Only if HMRC then asserts that the argument should be deployed in the County Court might it be safe to abandon the appeal.

Of course, HMRC could make a public statement to the effect that (notwithstanding its views about the availability of the credit) it considers it to be a matter for the County Court and that it will not seek to argue that it should be raised in the course of tribunal proceedings. The advantage would be that unnecessary proceedings in the First-tier Tribunal could be averted to the advantage of taxpayers, HMRC and the tribunals.

However, it should also be noted that to the extent that a taxpayer wishes to challenge the validity of any discovery assessment (or closure notice), that is a matter that will have to be argued in the First-tier Tribunal. Therefore, appeals should not be abandoned if such arguments are still to be advanced.

Finally, this complexity lends support to the idea that a judicial review might prove to be the most effective way forward (even though that is not usually for the faint-hearted). If that course of action is to be pursued, I would recommend that legal advice be sought promptly.



For sale: the need for due diligence

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Kam Gill and *Dilpreet Dhanoa* consider the role that the corporate criminal offence has to play in the evolution of a business

KEY POINTS

- **What is the issue?**
Many businesses either acquire or merge with other entities, or sell a part or all of their trade or assets. Due diligence now ought to encompass consideration of a business's compliance with the corporate criminal offence (CCO) legislation.
- **What does it mean for me?**
The legislation states that corporate bodies and partnerships could be liable to a criminal conviction and an unlimited financial penalty where tax evasion is facilitated by associated persons.
- **What can I take away?**
A company which purchases an entity which did undertake fraudulent activity may likely have to participate in an HMRC investigation, highlighting the importance of thorough due diligence procedures from the outset.

Many businesses either acquire or merge with other entities, or sell a part or all of their trade or assets. Mergers and acquisitions do not only carry with them the opportunity for enhancing a business's activities; critically, from a risk perspective they can also add to its liabilities and potentially increase a business's exposure as to how it conducts its affairs.

Due diligence exercises are key to ensuring that the entity being acquired is appraised, verified and valued correctly; and their purpose and remit has become even more essential. Due diligence now ought to encompass consideration of a business's compliance with the corporate criminal offence (CCO) legislation.

Facilitation of tax evasion

The Criminal Finances Act 2017, which includes the CCO legislation, has been in force since 30 September 2017. The legislation is in four parts and five schedules.

Part 3 is entitled 'Corporate offences of failure to prevent facilitation of tax evasion'. In a nutshell, the legislation states that corporate bodies and partnerships ('relevant bodies') could be liable to a criminal conviction and an unlimited financial penalty where tax evasion is facilitated by its associated person(s), such as an employee, subcontractor or suppliers. Three elements are required for an offence: a tax evasion offence; the offence is criminally facilitated by a third party; and the facilitator is associated with the relevant body.

The question arises of how far the causal link (remoteness and causation) needs to be established between the act and the harm (the tax evasion) in order for a valid charge under this provision. The wording is broad and the words 'associated with' imply that a wide net can be cast.

A relevant body only has a statutory defence if it has undertaken a risk assessment and has implemented reasonable prevention procedures in light of the risks identified. English criminal law seeks to look at factual causation and applies the 'but for' test, requiring that the result must be caused by a culpable act with no intervening act that breaks the chain of causation. The offence under the CCO legislation appears, on the face of the statutory wording, not even to require a chain of causation but mere association. Even more concerning is that whilst criminal intent must be established with respect to the taxpayer and the facilitator, a relevant body can find themselves guilty of a CCO offence even without having any awareness of the tax evasion, merely by having failed to do anything to prevent it.

It is worth examining how the legislation defines 'association'. Section 44(4) states that employees, agents and anyone who performs services for and on behalf of a corporate body or partnership are included. For smaller businesses, this could amount to a significant number of entities; for multinationals, the number of associated entities could amount to several hundred.

Compliance with the CCO legislation

Compliance with the CCO legislation does not have a retroactive effect. This means that a business which has not considered the CCO legislation since 30 September 2017 has no statutory defence in place up until the point it undertakes a risk assessment and implements reasonable prevention procedures – and it cannot undertake a risk assessment retrospectively. Therefore, relevant bodies that have not yet complied with the CCO legislation continue to have an exposed period, which grows day by day.

This is of particular importance regarding business decisions to acquire or merge with other entities. For example, the acquiring entity could be impacted by the adverse repercussions of the target's potential CCO offence/liabilities (see **Example 1: Failure to undertake risk assessment** below). Also, the acquiring entity could itself, by virtue of acquiring the target, fall foul of its CCO obligations (see **Example 2: Tax evasion offence** below).

Example 1: Failure to undertake risk assessment

- A Ltd acquired the shares of B Ltd on 31 July 2019.
- B Ltd did not undertake a risk assessment or implement reasonable prevention procedures in respect of the CCO between 30 September 2017 and 31 July 2019.
- HMRC investigates a tax evasion offence which took place in March 2018, that involved an employee of B Ltd (who worked in finance) making payments to a UK based supplier into their offshore bank account, knowing that this would allow them to conceal this income from HMRC. (B Ltd did not benefit from this arrangement.)

The tax evasion offence in question took place in March 2018 – some nine months before A Ltd took over. B Ltd has retained its identity as a separate legal entity, irrespective of its change in ownership, and consequently it is exposed in respect of its failure of complying with the CCO legislation. The adverse reputation and financial damage are going to affect not only B Ltd but also, by association, A Ltd.

Note that in the event that B Ltd was wound up and dissolved after 31 July 2019 (with its trade and assets being transferred to A Ltd), HMRC has the power to reinstate B Ltd in order to investigate its tax affairs.

Example 2: Tax evasion offence

- C Ltd is acquiring the shares and/or assets of D Ltd.
- The step plan for the acquisition entails C Ltd paying the proceeds into the bank account of the recipients in a bank account located in a tax haven, allowing for the capital gain on disposal to be hidden from the tax authorities.
- C Ltd's employees are involved in completing this lucrative transaction and are aware of the aforementioned step plan and its implications.

In this example, the tax evasion offence has been committed by D Ltd or its shareholders, and C Ltd's employees (C Ltd's associated persons) have facilitated the evasion of tax. As a consequence, irrespective of whether assets and/or shares have been acquired by C Ltd, it may have fallen foul of its CCO obligations, exposing itself to a criminal conviction and an unlimited financial penalty.

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HMRC investigations

When considering the corporate criminal offence, HMRC and the relevant prosecuting bodies will consider whether the business, at the time, had a statutory defence; i.e. whether it had undertaken a risk assessment to identify the risks of the facilitation of tax evasion and implemented reasonable prevention procedures.

In Example 1, B Ltd ought to have implemented an additional due diligence process where a supplier asks for payments to be made to non-approved bank accounts. Ahead of the acquisition, A Ltd's due diligence should have captured whether B Ltd had implemented a range of reasonable prevention procedures in light of the risks of the facilitation of tax evasion.

In Example 2, a reasonable prevention procedure for D Ltd could have been the undertaking of an enhanced due diligence exercise by an experienced third party on every occasion that shares or assets are being acquired. If D Ltd had commissioned a vendor due diligence exercise, it could have recognised the repercussions of agreeing the payment into the offshore bank account.

If investigating a corporate criminal offence occurring after 30 September 2017, HMRC will take into account the prevention procedures and processes in place to combat the facilitation of tax evasion, as well as those planned. A due diligence exercise must seek to understand where a business is in respect of its CCO tax governance.

Points to bear in mind

The legislation and supporting guidance adopt a principles-based approach. There are six guiding principles:

1. risk assessment;
2. proportionality of risk-based prevention procedures;
3. top-level commitment;
4. due diligence;
5. communication (including training); and
6. monitoring and review.

Whilst HMRC's guidance recognises that it can be more difficult to hold large multinational corporates to account (owing to more decentralisation), it does not negate the need to ensure that robust monitoring and ongoing review procedures are in place to avoid entities from becoming associated with evaders and/or facilitators. Also bear in mind that tax evasion can be investigated by HMRC going back 20 years – something that is very common in the world of enquiries and disputes. The affairs of the supplier who evaded tax in Example 1 (in March 2018) could be enquired and investigated into through to 5 April 2038.

When a business is acquiring or merging with another, it needs clarity as to what liabilities and adverse risks it could be implicated by. From a CCO perspective, unlimited penalties could be imposed, with dire consequences on the viability of a business, as well as reputational damage. A company which purchases an entity that did undertake fraudulent activity will inevitably have to participate in the HMRC investigation, with all the cost of management time at the very least.

The CCO legislation is not new and HMRC expects businesses to have policies and procedures in place. It is pivotal that the target entity's compliance with the CCO is considered adequately at the due diligence stage. If it is considered not to be sufficient, adequate warranties and indemnities must be in place. Solely from an acquisitions perspective, compliance with the CCO is prudent – so that it is not a hold up for when a merger or acquisition takes place. The lack of an effective CCO policy and relevant training for office holders and staff members of the business looking to sell could have a far greater impact on that business's ability to sell than currently may seem relevant.

The CCO offence highlights the importance of ensuring that good governance is in place to identify and mitigate tax evasion facilitation risks.

KEY POINTS

- **What is the issue?**
Late payment penalties and late filing penalties are changing, with the details published in the 2021 Budget tax documents.
- **What does it mean to me?**
You need to be aware of the new penalty regime for late submissions and payments, as well as interest harmonisation, that could be more costly for clients who miss deadlines.
- **What can I take away?**
Taxpayers need to be encouraged to meet payment and filing deadlines now. They need to be aware the rules are changing, or the outcome could be costly.

Points make penalties

Anton Lane examines the new penalty rules due to be imposed for the late submission of tax returns and the late payment of taxes

Details of the new late submission penalties, late payment penalties and harmonised interest announcements were published, as anticipated, in the 2021 Budget tax related documents. Also included was the consultation outcome in respect of 'follower notices and penalties'.

The late submission and late payment penalties follow three consultations between August 2016 and March 2018, and the Policy Paper published on 6 July 2018. It was then proposed that the implementation will initially be for income tax self-assessment (ITSA) and VAT. Corporation tax currently remains outside the scope of the new late submission penalties, although the government has asserted that the new approach will apply in the future. The government estimates that the measures will raise £155 million per year by 2024/25.

The new penalty regime will apply to those taxpayers who persistently submit tax returns late and/or make payment of tax late, while at the same time being 'more lenient on those who make the occasional slip up'. HMRC estimates that about 4 million individuals within the ITSA regime will benefit from the replacement of flat rate penalties with a points-based regime.

The Finance Bill 2021 includes provisions introducing the new penalties for:

- VAT taxpayers for periods starting on or after 1 April 2022;
- ITSA taxpayers with business or property income over £10,000 per year (who are required to submit quarterly digital updates through Making Tax Digital for ITSA) for accounting periods beginning on or after 6 April 2023; and
- all other ITSA taxpayers or accounting periods beginning on or after 6 April 2024.

Late submission penalties

Existing penalties

For ITSA, a taxpayer currently receives a late submission penalty of £100 as soon as a return is late, with a £10 daily penalty if the return is still outstanding three months after the deadline. A penalty of £300 or 5% of the tax liability (whichever is greater) becomes chargeable where a return is outstanding six months after the deadline and again at 12 months. Together, these penalties should not exceed 100% of the tax due.

There is currently no standalone late submission penalty for VAT. The Default Surcharge is a combined late payment and late submission sanction.

New penalties

Under the new penalty scheme for late submission, a taxpayer who misses a submission deadline will be notified by HMRC that they have received a 'penalty point' (not an actual penalty). Points accrue separately for VAT and income tax self-assessment. If a taxpayer accumulates a threshold number of points, they will receive a fixed financial penalty of £200.

If the taxpayer who has been issued with a fixed penalty continues to miss submission deadlines, they will be liable for a further fixed penalty for each additional missed obligation, even if they have paid the fixed rate penalty.

In principle, this sounds simple; however, the mechanics may make it more difficult in practice. HMRC has to levy and monitor points within a timeframe, and points may alter according to events (such as leaving VAT groups). It also has to monitor the reduction of points following periods of good compliance. Breach of thresholds need to be identified and penalties assessed. HMRC has discretion and taxpayers may request reviews or appeal.

IT automation is likely to monitor the accrual of points, although the legislation may require an officer to make assessments.

Multiple submission obligations

If the taxpayer has more than one submission obligation – for example, they are required to provide an annual ITSA return and quarterly VAT returns – they will be operating under more than one point system.

Where two or more failings relate to the same submission obligation in the same month, the taxpayer will generally only incur a single point for that month to prevent the taxpayer reaching the points threshold too quickly to be able to improve their compliance. However, this rule will not apply if the taxpayer has different MTD for ITSA submission obligations, such as a regular update deadline, an end of period statement and a final declaration in the same month. If a taxpayer misses all three deadlines in a single month, they can incur three penalty points.

If a taxpayer with MTD for ITSA submission obligations has two or more businesses and is required to submit separate regular updates and end of

period statements (EOPS) for each business, they will have a one point total for each of those submissions across the different businesses.

For example, a taxpayer with three businesses who fails to meet an ITSA regular update deadline in the same quarter for one, two or three of those businesses will therefore only accrue one point. If that taxpayer also misses the EOPS deadline for any or all of those businesses in the same period, they will accrue an additional point; and a failure to provide a final declaration for any or all of those businesses would accrue another point.

Expiration of points

Points don't live forever. Generally, points will automatically expire after 24 months, calculated from the month after the failure occurred, provided that the taxpayer remains below the points threshold. If the taxpayer reaches the penalty threshold, all points will expire after the taxpayer has met their submission obligations for a set period of compliance; and the taxpayer has submitted all the submissions that were due within the preceding 24 months. The period of compliance is linked to the taxpayer's submission frequency (ranging from six months for monthly submissions to 24 months for annual submissions).

Additional information

HMRC can also levy points where it discovers previous submission obligations.

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Where a tribunal decision results in the cancellation of a point or a financial penalty, HMRC will have 12 months from the date of the tribunal decision to levy a point or financial penalty that would have accrued for failures that occurred but were not added to the points total because the taxpayer was at the penalty threshold.

HMRC will have 12 months to add additional points following the date of discovery or the date of the tribunal decision.

A discretionary power will allow HMRC not to levy a point or charge a penalty. This power will be exercised in line with published guidance.

Where points have already been levied, those taxpayers who wish to challenge the levy must use the reviews and appeals process: internal review and/or appeal to the First-tier Tribunal. The appeal process will follow that against assessments of tax. Grounds of reasonable excuse will remain relevant.

Taxpayers can request changes to how often they submit their VAT returns, and HMRC can ask a business to change the frequency of returns (for example, asking a business to report their VAT monthly or quarterly instead of annually). To avoid penalising those who change their filing frequency, the taxpayer's points will be adjusted according to the change they are making.

If changes are made to the taxpayer's points total, the oldest points will be removed first (although not to below zero), and relevant time limits will be calculated from the most recent points. If points are added to their total, the time limits will be calculated from their most recent points.

The following mechanism will be used for the adjustment:

Change	Adjustment to points
Annual to quarterly	+2 points
Annual to monthly	+3 points
Quarterly to annual	-2 points
Quarterly to monthly	+1 point
Monthly to annual	-3 points
Monthly to quarterly	-1 point

VAT groups

When the representative member of a VAT group is replaced, the new member will take over the points of the outgoing representative and the penalty points will not change.

However, where a group member leaves a VAT group and registers for VAT as a separate taxable person, they will start with zero points. Any previous penalties will remain with the original VAT group.

Upon forming a VAT group, any incurred penalty points accumulated by group members will not be transferred to the new group.

Non-standard accounting periods

Where submissions for non-standard accounting periods are agreed and periods are transitional, they will be excluded from the regime unless there is a deliberate failure to submit.

TIMING RESTRICTIONS

The table summarises the penalty threshold at which a fine will be imposed; the period of compliance required for points to be reset to zero; and the time limit within which HMRC can levy a point after any failure to comply. Note that HMRC will be able to assess the financial penalty up to two years after the failure giving rise to the penalty.

Submission frequency	Penalty threshold	Period of compliance	Time limit
Annual	2 points	24 months	48 weeks
Quarterly (including MTD for ITSA)	4 points	12 months	11 weeks
Monthly	5 points	6 months	2 weeks

Late payment penalties

Existing penalties

The current penalties for late payment of ITSA amount to 5% of the unpaid tax due after three months; a further 5% penalty of tax outstanding after six months; and a further 5% penalty of tax outstanding after 12 months. If the taxpayer makes a time to pay agreement with HMRC, the penalty is suspended. HMRC extended the period for taxpayers to pay ITSA in 2021 without incurring penalties because of the impact of Covid-19.

For late payment of VAT, the Default Surcharge is a combined late payment and late submission sanction.

New penalties

The new late payment penalties will apply both to VAT businesses and ITSA taxpayers. The penalty consists of a first penalty; and an additional penalty with an annualised penalty rate.

Under the new regime:

- A taxpayer will not incur a penalty if the outstanding tax is paid within the first 15 days after the due date.
- After Day 15: the penalty is set at 2% of the outstanding tax.
- After Day 30: the penalty is set at 4% of the outstanding tax.
- After Day 31: an additional penalty is set on outstanding tax which accrues on a daily basis at 4% of the outstanding amount. This will stop accruing when the taxpayer pays the tax due.

A taxpayer can request a time to pay arrangement from HMRC and agree a schedule to pay any outstanding tax. This will stop a penalty from accruing any further from the day the taxpayer approaches HMRC, as long as the taxpayer honours the terms of the time to pay arrangement.

A taxpayer can request a time to pay arrangement from HMRC and agree a schedule to pay any outstanding tax, which will stop a penalty accruing any further.

HMRC has stated that it will take a 'light-touch' approach to the first penalty in the first year of operation. HMRC will not assess the first penalty at 2% after 15 days, allowing taxpayers 30 days to make payment or enter a time to pay agreement. This is, however, subject to the caveat that a taxpayer is doing their best to comply with the arrangement! Therefore, the first penalty that is charged will be the 4% rate at day 30.

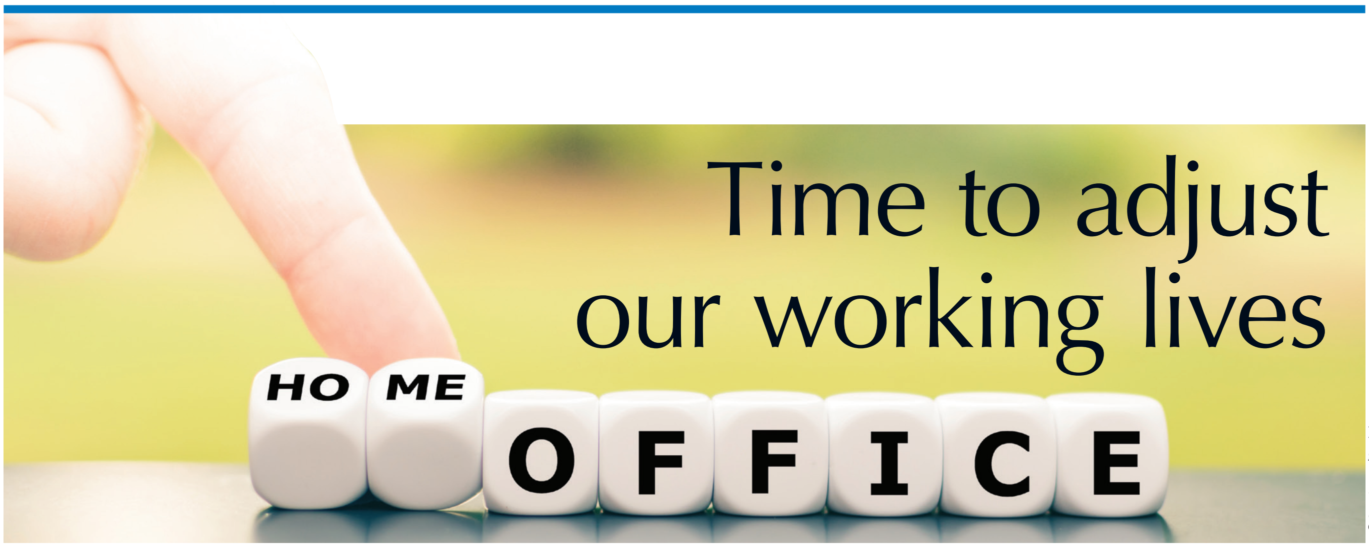
HMRC does retain its discretionary power to reduce or not charge a penalty. The circumstances giving rise to the late payment will be considered during this assessment. If HMRC considers that the circumstances do not amount to a reasonable excuse, the taxpayer may request a review and/or appeal to the First-tier Tribunal.

Interest harmonisation

HMRC will charge late payment interest on tax that is outstanding after the due date, irrespective of whether any late payment penalties have been charged. Late payment interest will accrue on unpaid taxes, including amounts subject to a time to pay arrangement.

Interest will apply from the payment due date until the date received by HMRC. The interest rate will be 2.5% above the Bank of England base rate.

The rate of interest on overpaid tax is, of course, lower and is set at 1% less than the Bank of England base rate (with a minimum rate of 0.5%). Interest runs from the later of the last day the payment was due to be received or date received until date of repayment.



Time to adjust our working lives

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Patrick Cannon considers the opportunities and challenges facing the Tax Bar in the aftermath of a global pandemic, and how culture has impacted the level of success in digital adoption

Covid-19 has, without doubt, shone a light on some of the deeply entrenched traditional values and behavioural constraints of the legal profession – and especially the Bar. The seismic shift of the global pandemic left us with no choice but to adapt into 'new' ways of doing things. Now, however, one year down the line since Covid-19 forced the adoption of video hearings, we are left asking questions. Why didn't we take up the available technologies at a speedier pace?

In truth, the stubbornly slow uptake – particularly at the Bar – is largely due to culture. With hundreds of years of heritage, the culture of the British legal establishment is not easily altered, and has seemed to resist attempts at modernisation of its business model, communication and working methods. It is almost certain that the Bar will never fully return to its previous ways of working, meaning that legal leaders will have to pave the way for the next generation.

The short, sharp shock of the March 2020 lockdown meant that in-person court and tribunal appearances were no longer permitted. Online working became commonplace, and, in many cases, surprisingly seamlessly. It quickly became apparent that Zoom and other software systems were not only adequate, but were also driving efficiencies. Travel time, and costs, were dramatically slashed. Rapid technical advances were embraced, particularly by the Tax Bar, resulting in a number of productivity benefits:

- There has been a rapid shift by the courts and tribunals to online hearings. The use of electronic document bundles with such virtual hearings has been suggested by the First-tier Tax Tribunal as the default format for the future.
- Video conferences have taken place with clients, using screen share to review documents instead of traditional meetings.
- Mediations have been conducted seamlessly online with secure virtual break out rooms, avoiding the tension that can arise at in-person mediations.

I must pay tribute to the President of the First-tier Tax Tribunal, Judge Sinfield, for successfully arranging the smooth and rapid switch to online video hearings in the tax tribunals. Software providers have also rapidly developed their online offerings, supporting remote working and the UK broadband network has largely held up well.

There are also the human benefits: work-life balance is an obvious one. The specialised bars – particularly in areas such as tax and family law – have embraced virtual court and tribunal hearings, and these areas have not suffered nearly so much during the lockdowns.

Other areas have struggled, though. The Bar Council, which represents more than 16,500 barristers in England and Wales, acknowledged that many members of the profession had 'suffered a substantial drop in earnings' since the start of the pandemic, with 72% experiencing a significant reduction in new fee income.

Derek Sweeting QC, chair of the council, told the House of Commons Justice select committee in January 2021 that the criminal bar was being 'hollowed out', with mid-career barristers leaving after 10 years or so because it had become 'a low-paid job for many people now'. The question now is how, as a profession, we can leverage the changes that have been forced upon us, where rent has been our largest expense.

In January 2021, I founded Cannon Chambers as the first proper 'work from anywhere' (WFA) set of tax chambers. I believe the future of the Bar is one that is largely WFA and, whenever viable, tribunals, court hearings and client conferences will be attended by video. Extensive paper hearing bundles are being replaced by electronic versions. Intelligent and engaging websites, which showcase the talents of the members involved and are interactive in allowing clients to engage with barristers directly, will become prevalent. In short, the Bar will no longer have to pay for expensive real estate to house chambers and clerks and will be content with much-reduced physical hubs with a few meeting rooms in city centres.

When the first telephone lines were being installed in Central London, the Lord Chancellor's department asked the judges in the Royal Courts of Justice in the Strand if they would like telephones installed in their chambers. The judges replied that they did not require these new devices, as they already had messenger boys. I fear that those members of chambers resisting the move online will come to be seen as unrealistic as those judges were.

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Welcome to the June Technical Newsdesk

It is a long time ago now since I worked for HMRC – for five years from 2000 to 2005. Readers may recall that in the 1990s, VAT avoidance (perhaps all avoidance) was widespread, and so HMRC recruited their Anti-Avoidance Advisers, of which I was one. A case of poacher-turned-gamekeeper you might say, although to be fair I was not much of a poacher! I thoroughly enjoyed my time at HMRC, working with some intelligent, dedicated people and doing challenging work. My route into HMRC was an unusual one, having already qualified as a Chartered Accountant and a Chartered Tax Adviser, specialising (briefly) first in corporate tax, and then VAT. But over two-thirds of my 32 year career (started straight from school, I might add!) has been spent in private practice – and you never forget the demands and pressures that brings.

It is with mixed feelings therefore when I share that we have had to escalate to HMRC's senior staff our concerns around the Department's service levels.

We should not overlook the excellent job that HMRC have done to deliver the COVID-19 support schemes. But for a long time now, even since before the pandemic struck, HMRC were missing many of their published targets, and delays were being experienced within many service lines.

HMRC's responsiveness is not just a numbers game when reporting on whether phones are answered within five minutes, or post answered within 15 days of receipt; it is about the impact that not meeting these targets has on businesses and individuals – people who HMRC call their 'customers'. It might affect the corporation tax refund that a business has been relying on receiving, or the beneficiary of an estate who is due a significant tax refund on her spouse's pension. Real money, needed now. I know that HMRC are allocating resources to prioritise refunds, but these are just two examples of areas where delays and inefficiencies continue. I do not have to explain how that translates into wasted time and costs for agents, but the effects include difficulties in speaking to someone at HMRC, chasing progress, sending information for a second time (or more), and perhaps not being able to bill your client until the work is complete. Whilst most of us in the technical teams no longer work in practice, we have done so previously, and are acutely aware of the pressures this brings.

So, along with other professional bodies, CIOT and ATT are raising our concerns with HMRC at a meeting with their senior personnel on 14 June. We hope to do this constructively – we always aim to work with HMRC, rather than against them – setting out the impact these delays are having, and what might be done to improve service levels and the 'customer experience'. We cannot, of course, promise any immediate results, but you should know that we are not only focusing on the tax technical aspects of the tax system, such as consultations and the Finance Bill. We are also concerned with how the system is (or indeed is not) working on a practical level.

Finance Bill 2021: committee stage round-up

GENERAL FEATURE

Finance Bill 2021 concluded a relatively uneventful committee stage on 27 April after 14 and a half hours of debate. A number of government amendments to the Bill were passed, reflecting concerns raised by external stakeholders, including CIOT. A number of amendments suggested by ATT, CIOT and LITRG

were tabled and discussed. Votes took place on a number of contentious measures, though as usual most opposition amendments and new clauses were not pushed to a vote, recognising the inevitability of their defeat, absent a significant government rebellion. With their majority of 80, the government prevailed easily in all divisions.
Briefing notes provided by CIOT, ATT and LITRG once again proved helpful to MPs during the debates, assisting them in carrying out scrutiny of the legislation and (sometimes) obtaining answers and clarifications from ministers where these were needed.

Part 1: (i) Personal taxation
Part 1 of the Bill includes the freezing of the income tax personal allowance from next year (the only clause in the Bill opposed by the opposition parties), as well as a number of COVID-19 related economic support measures.

Among the latter is clause 26, which ensures that employees who are provided with or reimbursed for the cost of a coronavirus antigen test by their employer will not be liable to an income tax charge. SNP spokesperson Alison Thewliss proposed an amendment, suggested by CIOT, that the exemption should also be extended to cover *antibody* coronavirus tests. Financial Secretary to the Treasury (FST) Jesse Norman disagreed, arguing that 'antigen tests … are connected to employment, whereas antibody tests are not'.

A number of LITRG concerns relating to clause 31 (£500 payment to certain working households in receipt of tax credits) and clause 32 (which amends legislation on tax treatment of SEISS payments) were put to the minister by MPs. On clause 31, LITRG suggested an amendment, again tabled by the SNP, which would have ensured that the payment could only be recovered where it is obtained by fraud. On clause, 32 Jim Shannon (DUP) shared LITRG's concern that taxpayers who amend their self-assessment returns may be unaware that they may have to return a SEISS payment as a result, and face harsh penalties originally aimed at fraudulent claimants. He asked the minister if he had had any discussion with LITRG over these clauses. The minister replied that he maintains a strong dialogue with LITRG.

The SNP also tabled amendments responding to concerns from CIOT and others about changes to the Construction Industry Scheme. These included seeking to remove paragraphs 3 and 4 from Schedule 6, putting in place a de minimis amount of minor works to be disregarded in the operation of the scheme and delaying the changes by a year.

Part 1: (ii) Business taxation
Part 1 of the Bill also includes changes to corporation tax. Amendments considered in relation to the super-deduction included a number drafted by ATT. One sought to ensure that companies subject to the small profits rate received the same effective rate of tax relief on qualifying expenditure as companies with greater profits. Others would have avoided the additional complexity of a new definition of 'associated companies', using an existing definition instead. Both received short shrift from the FST, as did a proposal to amend the transitional provisions for the reversion of the annual investment allowance (AIA) to £200,000 to ensure smaller businesses are not caught by an AIA limit of significantly *less* than £200,000 for a period.

There was more positive news on hybrid mismatches, where schedule 7 amends the 2017 legislation to respond to concerns (including from CIOT) that sometimes the rules do not work as expected. Some of the changes are retrospective. In consultation responses, CIOT advocated a simple mechanism for earlier years' computations and returns to be amended. We are pleased that this has been dealt with by the introduction of a provision allowing a taxpayer to make an election to make the changes retrospective, and for the necessary administrative changes to reflect that position in relation to corporation tax returns, etc. to flow from that election. During committee stage, no fewer than 26 technical government amendments were passed to schedule 7, reflecting further representations made by stakeholders.

Extension of trading loss carry back is something CIOT had suggested a number of times over the past year, with the Institute's now President making the case for it while on a panel with the FST in October. Proposing clause 18, which implements the extension, the FST noted approvingly the CIOT's support for the measure. Both Alison Thewliss for the SNP and James Murray for Labour, while supporting the measure overall, highlighted LITRG concerns about the potential interaction of any tax refund under this provision with universal credit. The FST promised to listen to their concerns and respond accordingly.

On clause 20 (extension of social investment tax relief for further two years), James Murray (Lab) drew attention to CIOT concerns around complexity and SITR being less well-suited to loan investments. Murray also noted CIOT's view that extension of SITR for just two years might put off some long-term investors, prompting a Labour amendment suggesting a longer extension. Responding, the FST said the extension is limited to two years because all reliefs must show they are achieving their objectives.

Parts 2 and 3: Plastic packaging tax and VAT
Part 2 of the Bill implements the new plastic packaging tax. While supporting the tax, Shadow Exchequer Secretary Abena Oppong-Asare raised a number of points from CIOT's briefing, including the burdens that businesses may incur as a result of joint liability, the position of non-resident taxpayers, and a call for greater clarity around what constitutes an established place of business in future regulations. Exchequer Secretary Kemi Badenoch replied that the government does not believe that there will be a large number of businesses liable for the tax that do not already have a UK presence. But, she said, HMRC will take on board points raised.

One of the measures in Part 3 extends the duration of a reduced rate of VAT for the hospitality and tourism sectors. ATT noticed that the legislation gives HMT the power to increase or decrease the period for which a 12.5% rate applies with potentially little notice, reducing certainty and presenting potential practical issues. Amendment 64, drafted by ATT, proposed that the clause be amended to remove the ability for HMT to reduce the period. The minister argued against this, citing the need for flexibility.

Part 4: (i) Penalties
Debating the new penalties regime, MPs considered two ATT-drafted amendments. Amendment 24 would have reduced the time limit for assessment of a penalty for failure to make a return in the more common situations from two years to three months. The FST disagreed with the proposal, arguing that the two year time limit is longstanding and strikes a careful balance. Peter Grant (SNP) thought that if there were circumstances where two years were needed, they should be identified in the Bill.

Amendment 25 would have ensured that taxpayers who pay one instalment late under a Time to Pay arrangement with HMRC are not subject to excessively high penalties by being treated as if the TTP agreement had never existed. Proposing this, Peter Grant thought it unfair that someone who makes a TTP agreement but misses one payment by a short period, is treated the same as somebody who makes no attempt to pay on time. The FST, arguing against the amendment, claimed erroneously that it would remove *any* penalty for a taxpayer who fails to fulfil the terms of a TTP arrangement. Neither of the amendments was pressed to a vote.

Labour's shadow minister, James Murray, highlighted a number of LITRG concerns about the new regime, including that the legislation is far more complex than originally envisaged. Responding, the FST said a number of LITRG concerns have been taken on board during consultation, while CIOT had praised the initial light touch being given to the new regime.

Part 4: (ii) Other measures

Clause 116 of the Bill harmonises interest charges on repayment interest to bring VAT into line with other taxes. In response to CIOT representations, a government amendment was passed allowing for repayment interest to be paid for the period that the tax authority undertakes an enquiry.

On clause 122 (financial institution notices), shadow minister James Murray noted LITRG concerns that this represents the removal of important taxpayer safeguards. On clause 123 (collection of tax debts), Murray flagged up CIOT concern that the new notices are not restricted to cases involving tax years after the date this measure becomes law.

On freeports, Abena Oppong-Asare (Lab) drew heavily on questions identified by members of CIOT's Property Taxes Committee, including how freeport sites will be designated, the treatment of joint ventures where there is both commercial and residential development, and the issue of relief for subsequent non-qualifying activity. While there was little enlightenment on these matters, the minister was able to address another issue raised by a member of that committee, passing amendments to enable those using sharia compliant finance to benefit from a freeport SDLT tax break in the same way as those using conventional finance.

A longer version of this report can be read on the CIOT website at: www.tax.org.uk/FB2021.

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Self-Employment Income Support Scheme webinar

OMB MANAGEMENT OF TAXES

The ATT and CIOT held another of their popular webinars on the Self-Employment Income Support Scheme on 19 April, ahead of claims for the fourth round, which opened in late April.

The Self-Employment Income Support Scheme (SEISS) webinar held by the ATT and CIOT in April 2021 provided an update on the fourth grant, focusing on what has changed from the previous three grants, who qualifies for the fourth grant (and who doesn't) and the claims process. We also took a closer look at some compliance aspects, including how to report grants, important changes to the treatment of amended returns and HMRC's compliance activity, as well as taking a brief look ahead to the fifth grant.

The webinar proved to be very popular, being viewed by 586 people on the day. We were inundated with questions from viewers; apologies if we did not get round to answering yours on the day. If you did not manage to catch the webinar or would like to view it again, you can join the over 1,100 people who have since accessed the recording and slides on the ATT (tinyurl.com/87v8h82) and CIOT (www.tax.org.uk/SEISSwebinar190421) websites.

Given the success of this webinar, we will most likely hold one focusing on the fifth (and final?) grant later this year. Keep an eye out for more details.

In the meantime, the ATT, CIOT and LITRG continue to engage regularly with HMRC and HM Treasury on the SEISS scheme, including progress of claims with the fourth grant, compliance activity and the design and operation of the fifth grant.

All the latest information about the SEISS is on the ATT and CIOT websites. The CIOT pages (tinyurl.com/34vamd6s) are frequently updated as we receive more information, as are the ATT detailed guidance notes (tinyurl.com/y83kycjy) and accompanying FAQs (tinyurl.com/59py7kux).

Please continue to send your queries and feedback on the scheme to technical@ciot.org.uk or atttechncial@att.org.uk, and do keep an eye on our websites to receive all the latest information.

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Agents Digital Design and Advisory Group Update

GENERAL FEATURE

The Agents Digital Design and Advisory Group continues to meet regularly to discuss practical issues regarding agent online services.

The Agents Digital Design and Advisory Group (ADDAG) – which is intended as a bridge between tax policy and implementation – has met twice so far in 2021 with a slightly revised operating structure. Going forward, the group will be jointly chaired with a representative from HMRC and the professional bodies. The current representative body co-chair is ATT technical officer Helen Thornley.

A key topic for the group remains agent authorisation – how clients appoint their agent to act and what the agent, once appointed, can see and do for their client. The group is continuing to explore issues around the digital handshake which is being rolled out as the authorisation route for all new services (for example, the Trust Registration Service and UK Property Reporting service) and get to grips with HMRC's concerns around the continuing use of the 64-8. From the agent perspective, the 64-8 is a simple and effective solution to appointment, while the range of digital handshakes is cumbersome, challenging (to impossible!) for some clients and the requirement to gain multiple authorisations for different processes is unwieldy.

We are also looking to get a greater understanding of how agents should be using their (relatively) new Agent Services Account. For example, when should an agent with a number of different staff be creating additional users on this account and what authority will any such additional users have to access client details? Most agents will want to manage what client information their staff can access and it is very important that we can start to get to grips with – and influence – HMRC's thinking in this area.

The group has also started to engage with the Policy Driven Change (PDC) group. This group has responsibility for a rolling portfolio of projects that HMRC need to implement because of fiscal events such as the Budget. Accordingly, PDC can have a large number of projects that are a mix of rate changes, digital projects and changes to policy.

The PDC team are keen to understand how each new project will affect agents, and have asked the group to review the grading of a number of current projects. Each project is graded as having a very low to very high impact on agents. ADDAG is now able to input into this team, which will hopefully help HMRC to better prioritise the communications to and engagement with agents in respect of each of these projects.

The group is also looking at a range of other digital services offered to agents and is keen to get involved at an early stage wherever possible to maximise the benefit of our input.

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Feedback for the Charter Annual Report

GENERAL FEATURE

Members of the Charter Stakeholder Group, which includes representatives of the CIOT, ATT and LITRG, were asked for feedback on how HMRC are performing when compared to the standards of their new Charter, which was launched in November 2020. We were also asked to identify priority areas on which HMRC should focus in 2021/22.

LITRG feedback

Overall, LITRG considers that, so far, there has been a real drive and commitment to embed the new HMRC Charter (tinyurl.com/vpfnvsf9) and its standards in many areas of HMRC. For example, this can be seen in improvements to HMRC letters, including a more empathetic approach to debt correspondence, as well as through the work with the Customer Compliance Group in respect of customer experience.

LITRG understands that it has been a very challenging year for HMRC and the effects of this can be seen in some of the response times, particularly customer call wait times. We consider that improvements in guidance on GOV.UK are still required in some areas, such as the tax return tool. It is important that guidance helps everyone get things right, not just those with straightforward affairs. Whilst we appreciate that guidance cannot cover every scenario, at the very least any limitations must be made clear and people should be directed to seek information in other ways.

Also, there is more that can be done to embed the Charter by ensuring that any new policies and processes (such as Making Tax Digital for Income Tax) meet the Charter standards and that HMRC review existing processes to ensure they meet the Charter objectives and, where any fall short, to make necessary improvements.

ATT feedback

ATT's feedback highlighted the Charter's potential contribution to confidence in the integrity of the tax system, which will be vital in the post-pandemic recovery period, noting that whether the Charter will come to be seen in that way will depend on a number of factors. The most obvious of these will be the level of HMRC's ongoing commitment to translate the Charter's aspirations into actions (and, where necessary, culture change) at every level of the department.

Linked directly to that will be the continuing determination of external stakeholders to engage positively with HMRC – identifying areas which require improvement, suggesting solutions and persisting with challenges. ATT welcomes the creation of the Charter Stakeholder Group and recognises its key role in converting the aspirations into realities. However, it emphasised in its feedback that for the Charter to be at the heart of the tax system, enduring commitment to that process is required by everyone with an interest in the operation of the tax system.

On specific priority areas, ATT's response identified consideration of:

- whether the statutory review process has a part to play in fulfilling the Charter's promise of *Getting things right* or whether the existing legislation effectively excludes the application of this and other Charter principles;
- whether the recent inclusion in HMRC correspondence of the standard paragraph which invites taxpayers to self-identify *'any health or personal circumstances that may make it difficult for you to deal with us'* has contributed to the department's awareness of taxpayers' personal situations or whether (and what) more needs to be done; and
- the inevitable tension between the Charter's commitments of *'making things easy', 'keeping your data secure'* and *'recognising that someone can represent you'* and how the three principles can all be applied in the customer journey of appointing an agent.

CIOT feedback

CIOT's feedback recognised that 2020/21 was an exceptional year, predominantly due to the coronavirus pandemic, but also because of 'Brexit' and the end of the transition period on 31 December 2020.

We praised HMRC for doing an excellent job in delivering the COVID-19 response, particularly the Coronavirus Job Retention Scheme (CJRS) and Self-Employment Income Support Scheme (SEISS). Unfortunately, most of our remaining feedback was less positive, as other areas and key elements of HMRC's 'customer service' have been badly affected.

Our main area of concern was in relation to HMRC's compliance with its Charter commitment to be responsive. For example, call waiting times are well outside of target – even in more recent months when most organisations have embedded alternative arrangements. Post handling has also been sporadic, but again deteriorated significantly towards the end of 2020/21. The apparent lack of service levels across many areas of HMRC's work, such as compliance work, also causes stress and inconvenience.

We expressed concerns around the difficulties in appointing a representative. Again, some of these aspects relate to delays in handling authorisations, but also HMRC's systems – particularly the digital handshake – are proving problematic. We are pleased that HMRC's ten year tax administration strategy retains the commitment that agents should be able to see and do what their clients can, and that design of systems should include agent access from the outset, but there is a long way to go to make that a reality.

HMRC process millions of returns and calculations correctly each year, and for most 'routine' interactions with HMRC the processes work reasonably well. Customer satisfaction with HMRC's digital services also remained on target at around 85% during 2020/21. However, there are still too many errors being introduced by HMRC's own systems, which lead to otherwise avoidable contact by agents to get this corrected. Indeed, correcting HMRC errors is one of the main reasons why agents phone the Agent Dedicated Line. We also highlighted the many difficulties encountered with the new 30-day CGT reporting service, and the importance of considering the 'customer experience' when developing and implementing government policy.

We fed back on other aspects of the Charter, but in the interests of brevity our comments are not repeated here.

We recognised and welcomed the efforts that HMRC are making to embed the Charter, emphasising that the standards should be demonstrated not only by individual staff members, but also at an organisational level.

Looking ahead, we feel that HMRC need to prioritise bringing their performance back in line with key targets. This should include greater transparency about service levels, including what they are in different areas, current performance against those service levels, and (where performance is below target) what is causing the service issue and what HMRC are doing to improve matters. A simple traffic light system might be considered to illustrate performance. Indeed, our feedback illustrated the need for better communication by HMRC, whether in relation to general performance or in respect of progress on individual taxpayer affairs.

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The new residential property developer tax: HM Treasury consults on design, implementation and administration

GENERAL FEATURE CORPORATE TAX

HM Treasury's consultation on the new residential property developer tax has been published; the CIOT is responding and invites views.

The Treasury has published a consultation paper (closing on 22 July 2021) on the design, implementation and administration of a new tax, the residential property developer tax (RPDT). RPDT will apply to large residential property developers on profits that exceed an annual allowance of £25 million. The legislation will be included in the 2021/22 Finance Bill and will apply to profits from accounting periods ending on or after 1 April 2022. The rate will be set following the consultation. RPDT is stated to be time-limited and intended to raise at least £2 billion over a decade. The revenue raised will contribute to cladding remediation work as part of the government's plan 'to bring an end to unsafe cladding, provide reassurance to homeowners and support confidence in the housing market'.

A new Gateway 2 Levy will also be introduced as part of the Building Safety Bill applying to developers seeking permission to develop certain high-rise buildings (above 18 metres) in England. This will be the subject of a separate consultation, although the interaction of the tax and the levy, and their cumulative impact, is considered in the RPDT consultation.

The consultation paper proposes two alternative models to calculate profits subject to RPDT, asking for views on a company-based or an activity-based approach.

The corporation tax rules will provide a basis for the reporting and payment (including instalment payments) of RPDT. Companies liable to RPDT will self-assess either through their corporation tax return or via a new return.

We welcome views from members on the consultation to feed into both consultation meetings with the Treasury and to formulate our written response.

The consultation is at www.tax.org.uk/rpdtcondoc.

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Making Tax Digital for VAT

INDIRECT TAX

Representatives from the CIOT and ATT attended a recent Joint VAT Consultative Committee Making Tax Digital sub-group meeting to discuss the ongoing actions being performed by HMRC for Making Tax Digital for VAT.

'Nudges and prompts'

HMRC discussed the 'nudges and prompts' development work they are undertaking within Making Tax Digital (MTD) with the aim of encouraging compliance. There are currently several types of prompts:

- Static message: A basic message prompt appears on-screen when the page is launched.
- Pop-up message: A pop-up is prompted where inconsistent data is entered for a tax; for example, when the data is compared to earlier returns, whether that be an earlier quarter or the same quarter a year earlier and there are unexpected differences.
- Intelligent message: This is where the system compares the data to a previous submission or a submission for another tax; for example, it may compare the VAT and self-assessment turnovers for a sole proprietor. These are very new so there are not many currently.
- Specific to sector: These are specific prompts; for example, a prompt for the landlord sector could ask about numbers of properties held at the time of each submission. If more properties are held than at the last return, this could lead to a prompt about expenses on purchases; if fewer are held, this could lead to a prompt about accounting for VAT and capital gains tax on a disposal.

Over 50 nudges and prompts have been deployed so far within HMRC's own systems and HMRC are monitoring their effectiveness before adding new ones. Whilst there is no obligation for third party software developers to add nudges and prompts within their own MTD products, HMRC are carrying out development work in the sector with a sample of volunteer developers, though this is a long-term project.

Bulk migration and impact on direct debits

There are still some categories of VAT registered taxpayer whose data needs to be transferred from the legacy system to HMRC's new mainframe (ETMP). This population mainly consists of VAT registered taxpayers not yet mandated to join MTD but does include a small number of taxpayers who have already signed up. This migration work will not take place before July 2021 and will be carried out in phases over a period of months. Certain taxpayers' direct debits will be impacted when their data is migrated, unless a valid email address is held on HMRC's system (PTA/BTA); if not, the direct debit will be cancelled at the time of migration and the taxpayer must set up a new one if that happens. Agents should also receive a prompt to contact their client before the client data is migrated.

MTD non-compliance programme

HMRC are still carrying out work to pro-actively encourage those taxpayers that are mandated to use MTD but have still not signed up, and firmer reminder letters are currently being sent out. Starting in the summer, and only in certain notified cases, HMRC may close access to the VAT return filing function in the online portal so that the return must be filed via the MTD system. If these affected taxpayers still do not comply, a penalty may follow.

Updates to digital links guidance

Following feedback (including from CIOT and ATT) that some taxpayers were still confused about the digital links requirements, HMRC recently updated Section 8 of VAT Notice 700/22 (tinyurl.com/5ywb3xkk) with new detailed examples of digital record keeping and reporting options, illustrating where the information transfer must be digital (digital link) and where it need not be, and new narratives explaining how in each example the customer is compliant with the rules.

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Selling to EU consumers from 1 July 2021

INDIRECT TAX

From 1 July 2021, there are new EU VAT rules coming into effect for non-EU businesses that sell goods and/or certain digital services directly to EU consumers, which also includes online marketplaces that facilitate these types of transactions. UK businesses with these types of transaction should review their position now if they have not already taken preparatory steps already.

To assist international businesses, the European Commission has produced guidance (tinyurl.com/fka99a4u) on the new rules including its 'Guide to the VAT One Stop Shop' (tinyurl.com/jpumy747), which provides additional details concerning registration, VAT returns and payments for the three One Stop Shop (OSS) schemes. The OSS schemes will allow affected UK sellers to register in a single member state to declare/pay VAT on all distance sales of goods and cross-border supplies of services to EU non-business customers.

What supplies are affected?

Before the UK left the EU, UK businesses selling goods and certain digital services directly to EU consumers had to consider specific VAT rules:

- Goods: Sales of goods to consumers were covered by the distance selling rules: if the total turnover of sales in a particular EU country was less than the local threshold (€35,000 or €100,000), UK VAT applied; or if the threshold had been exceeded, the seller had to register in that EU country and charge local VAT instead. The terms of the Northern Ireland Protocol has allowed businesses in Northern Ireland (but not the rest of the UK) to continue to use the distance selling rules (tinyurl.com/vrun2v7). HMRC has recently published guidance in respect of how the new EU rules specifically impact the reporting of VAT for affected goods being shipped to or from Northern Ireland (tinyurl.com/wk2k7be4).
- Digital services: For sales of digital services to EU consumers, UK sellers could register for the VAT Mini One Stop Shop (MOSS) scheme, which allowed the business to collect, declare and pay VAT to the relevant tax authorities in the location of the EU consumer via a single portal. As services are not included in the Northern Ireland Protocol, all UK businesses had to stop using the MOSS scheme on 31 December 2020.

End of the low value consignment threshold for shipments to the EU

It is important to note that the current low value consignment threshold of €22 for sales of low value goods to EU consumers is being removed at the end of June 2021, meaning that all goods sold by non-EU suppliers to EU consumers will be subject to VAT in the EU from 1 July 2021. For UK businesses that were using this relief, this may mean that if they continue to sell low value goods to EU consumers, they will have EU VAT obligations for the first time if they are not using an online marketplace as an intermediary.

Import One Stop Shop

The Import One Stop Shop (IOSS) replaces the distance selling administrative obligations. For the first time, instead of having to register for VAT in every EU country where the UK seller has breached the local distance selling threshold, the IOSS allows UK and other non-EU sellers (and online marketplaces) to register for VAT in one EU country, and then collect, declare and pay the VAT for any EU countries' tax authorities via the central online IOSS portal. This reduces administration for both the seller and the buyer, as the seller now only has one VAT registration for all EU trading for the distance selling of goods to EU consumers, and the EU consumer no longer has to deal with any import VAT when the goods arrive in the EU (previously the case for products priced at over €22).

The IOSS can be used for distance selling transactions that do not exceed a value of €150. The European Commission's guidance has full details about the IOSS, including for online marketplaces (see tinyurl.com/c3u6zbha).

One Stop Shop (Non-Union Scheme)

The Non-Union OSS will be extended so that UK and non-EU sellers (and online marketplaces) are not only able to account for VAT on digital services to EU consumers, but also for other non-digital services including:

- accommodation services;
- admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions;
- transport services;
- services of valuation and work on movable tangible property;
- ancillary transport activities such as loading, unloading, handling or similar activities;
- services connected to immovable property;
- hiring of means of transport; and
- supply of restaurant and catering services for consumption on board ships, aircraft or trains, etc.

More information is available on the website (see tinyurl.com/3nbawz83).

One Stop Shop (Union Scheme)

The third OSS scheme is known as the Union Scheme as it is suitable for sellers that are established in the EU that are providing goods, digital and other services to EU consumers as listed in the non-union scheme above. Sellers may also benefit from the micro business threshold of €10,000 (see Table 5: place of supply threshold at tinyurl.com/4ndh7zv5).

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Umbrella companies

EMPLOYMENT TAXES

There has been a flurry of activity over umbrella companies during the past few months, including the release of LITRG's own research report. Here we give you a quick round up.

LITRG have recently released a research report (www.litrg.org.uk/ref2434) entitled 'Labour Market Intermediaries: a technical report outlining how umbrella companies and other intermediaries operate in the labour market and the implications for workers who use them'.

The report is an independent and objective report that seeks to draw together evidence from a range of sources, to help form an overall picture of the current umbrella marketplace. We wanted to contribute some facts and figures to the debate about umbrella companies – something over and above mere opinion or conjecture. The report not only looks at the complexities surrounding umbrella companies (including evidence of bad practice) but also looks at how compliant umbrella companies operate.

The report contains a discussion of disguised remuneration arrangements, such as loan schemes in which contractors and agency workers may become entangled. It is becoming increasingly clear that some workers were put into such schemes by the umbrella companies they were working through, without their full knowledge or understanding – often they had no understanding at all of the set-up. We reflected on our findings in an article written for

AccountingWeb entitled 'LITRG report sheds new light on disguised remuneration saga' (tinyurl.com/3482xwh8).

A few weeks later, the Loan Charge All Party Parliamentary Group (APPG) issued a report (tinyurl.com/jmz6cnnm) on their inquiry into 'How contracting should work', which covers much the same ground as the LITRG 'umbrella' report.

Although both reports were written entirely separately, it is interesting that both shine a light on the often remarkably opaque supply chain. Both reports also highlight potential issues relating to referral payments between umbrella companies and agencies, and comment on the extent to which this may have driven the operation of disguised remuneration schemes.

The APPG have used their report to support regulation of umbrella companies. Indeed, Ruth Cadbury MP, co-chair of the APPG, tried to get legislative changes during the course of the Finance (No 2) Bill 2021, to tackle some of the issues with umbrella companies and made various speeches including in the Second Reading (tinyurl.com/f2474frb) debate and at Committee stage.

LITRG used the passage of the Finance Bill to raise concerns about umbrella companies, via a briefing on clauses 117 and 119 (www.litrg.org.uk/ref2451) (which widen and strengthen HMRC's ability to sanction people for promoting or enabling certain forms of tax avoidance). The LITRG briefing focused on the nature of the disguised remuneration 'problem' shifting from being one mainly about people 'being in the market' for tax avoidance to something more complex about the exploitation of the economics of supply chains and the nature and scale of the temporary worker labour market.

We said that, assuming the nature of the problem has indeed shifted, alternative strategies should be explored by HMRC, beyond narrowly focusing on the promoters. There are other entities in the supply chain that have a role and some responsibility that HMRC could focus on (for example, umbrella companies which, as the employing entity, have a responsibility for operating PAYE correctly), which would be potentially quicker, easier and more effective at clamping down on the problem.

Although there seems to be a definite head of steam building up around umbrellas, it's hard to predict what will happen next. In the longer term, we may see more interest and discussion about possible regulation in this area. In the shorter term, one tangible, very welcome, result is that we have been working with HMRC on some GOV.UK guidance (tinyurl.com/38vjac7f) around umbrella companies for agency workers and contractors. Although we would still like to see further additions and improvements to the guidance, it is a small step in the right direction.

Meredith McCammond
mmccammond@litrg.org.uk

CIOT	URL	Date sent
VAT and value shifting	www.tax.org.uk/ref751	08/04/2021
Treasury Committee Inquiry into Budget 2021	www.tax.org.uk/ref767	12/04/2021
Finance Bill 2021 – Corporation Tax and the super-deduction	www.tax.org.uk/ref794	22/04/2021
Finance Bill 2021 – Reliefs for Business	www.tax.org.uk/ref795	22/04/2021
Finance Bill 2021 – Employment Taxes and Pensions	www.tax.org.uk/ref796	22/04/2021
Finance Bill 2021 – Construction industry scheme	www.tax.org.uk/ref797	22/04/2021
Finance Bill 2021 – Self-Employment Income Support Scheme	www.tax.org.uk/ref798	22/04/2021
Finance Bill 2021 – Hybrid and other mismatches	www.tax.org.uk/ref799	22/04/2021
Finance Bill 2021 – Plastic Packaging Tax	www.tax.org.uk/ref800	22/04/2021
Finance Bill 2021 – Stamp Duty Land Tax (SDLT) and Annual Tax on Enveloped Dwellings (ATED)	www.tax.org.uk/ref801	22/04/2021
Finance Bill 2021 – Freeports	www.tax.org.uk/ref802	22/04/2021
Finance Bill 2021 – Follower Notices	www.tax.org.uk/ref803	22/04/2021
Finance Bill 2021 – Tax Avoidance	www.tax.org.uk/ref804	22/04/2021
Finance Bill 2021 – Financial Information Notices Collection of Tax Debts and Miscellaneous Amendments to Sch 36 to FA 2008	www.tax.org.uk/ref805	22/04/2021
ATT		
Finance Bill 2021 – Penalties for failure to pay tax	www.att.org.uk/ref374	22/04/2021
Finance Bill 2021 – Penalties for failures to make returns etc	www.att.org.uk/ref375	22/04/2021
Finance Bill 2021 – Extension of temporary increase in annual investment allowance	www.att.org.uk/ref376	22/04/2021
Finance Bill 2021 – Extension of temporary 5% reduced rate for hospitality and tourism sectors	www.att.org.uk/ref377	22/04/2021
Finance Bill 2021 – Super-deduction and the interaction with the Small Profits Rate	www.att.org.uk/ref378	22/04/2021
Finance Bill 2021 – Exemption for coronavirus tests	www.att.org.uk/ref379	22/04/2021
Finance Bill 2021 – Small profits rate for non-ring fence profits	www.att.org.uk/ref380	22/04/2021
LITRG		
Increasing the normal minimum pension age consultation on implementation	www.litrg.org.uk/ref2440	12/04/2021
Finance Bill 2021 briefings	www.litrg.org.uk/ref2451	06/05/2021

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CIOT & ATT

HMRC says thank you

HMRC

HMRC has thanked ATT and CIOT members and staff for their help delivering coronavirus economic support schemes over the last year. In an open letter, the tax authority's Director General for Transformation, Joanna Rowland, says: 'Your help in designing and delivering what has been an unprecedented level of financial support across the United Kingdom has been greatly appreciated.'

The full letter is set out below.


Joanna Rowland

Dear all,

I wanted to take this opportunity to write an open letter to you, as part of the tax agent community, including members of the Association of Taxation Technicians and Chartered Institute of Taxation and readers of *Tax Adviser*, to say thank you. Thank you for your support in the last year, as we reach the anniversary of the launch of the Coronavirus Job Retention Scheme (CJRS) and Self-Employment Income Support Scheme (SEISS).

Your support has made a real difference, and I would like to pay tribute to CIOT, ATT and you, their members. Your help in designing and delivering what has been an unprecedented level of financial support across the United Kingdom has been greatly appreciated. I would also like to take time and reflect on the challenges we have faced together.

CIOT and ATT, along with other stakeholders, have been really involved with the economic support schemes, whether advising us on aspects of scheme deliverability, helping us to hone and improve our scheme guidance, or supporting clients. There is no doubt that the pandemic has resulted in HMRC working more closely with our trusted partners and stakeholders such as ATT and CIOT, allowing us to build on our longstanding relationships which we hope will continue well into the future.

Thanks to you and your members' continued support – whether you've been submitting CJRS claims on behalf of employers or advising your clients on SEISS grants – you've made a real difference and have allowed us to pay out the relevant grants to support individuals and employers and protect jobs. I know it's not been easy, with many of your members often juggling challenging circumstances at home and work as a result of the pandemic, but I hope you agree it's worth it. To date, over £61 billion has been paid through CJRS to 1.3 million employers, and over £19 billion as part of SEISS to 2.7 million individuals.

And there's still more to do now that extensions to the CJRS and SEISS have been put in place until the end of September 2021.

For the CJRS, until the end of June 2021 the UK government will continue to pay 80% of employees' usual wages for the hours not worked, up to a cap of £2,500 per month. For periods in July, CJRS grants will cover 70% of employees' usual wages for the hours not worked, up to a cap of £2,187.50. In August and September, this will then reduce to 60% of employees' usual wages up to a cap of £1,875.

Similarly, for SEISS, the UK government will pay a taxable grant which is calculated based on 80% of three months' average trading profits, paid out in a single payment and capped at £7,500 in total. The value of the grant is based on an average of trading profits for up to four tax years from 2016/17 to 2019/20.

The claims window for the fourth SEISS grant closed on 1 June. Latest information on the fifth SEISS grant can be found on GOV.UK by searching 'Self-Employment Income Support Scheme'.

I'm extremely proud of the way my colleagues in HMRC have risen to the challenge of delivering the schemes, and hugely grateful to CIOT and ATT members. I hope you are also proud of the contribution you have made. There is still much work for us all to do yet, and we value our strong working relationship with ATT and CIOT. We will continue to consult closely with you as we do all we can to support our customers.

Thanks once again,

Joanna Rowland
Director General for Transformation
HM Revenue and Customs

CIOT & ATT

Pitch perfect in 60 seconds

PERSONAL DEVELOPMENT

Joanne Herman considers how you can make the best first impression when meeting people for the first time – even if it's over Zoom!

Being unable to exchange business cards or share a friendly handshake since lockdown, we've all spent the last year awkwardly introducing ourselves on Zoom. What do you say? Is it consistent? Do you wish you had said something different? Or does your mind go blank? What is your 60 second pitch or elevator pitch? Fret not colleagues!

Help is at hand, thanks to our Branch Network Professional Skills Channel and the expert advice of our guest speakers: Angus Grady, the LinkedIn Unlocker, and Katrina Sargent, a founder of Business Buzz. They have kindly come together to share some very helpful tips which will be the focus on this blog article.

Last month, I uncovered a train of thought based around developing a proactive personal branding mind-set. I explored how to evolve your personal brand from one of blending in to one where you are comfortable to be perceived as different – and THIS is where your 60 second pitch can help.

In a recent Zoom workshop, Katrina and Angus explained that creating an engaging 60 second pitch can help you to feel confident, get your message across in a succinct way and make a good impression on the audience you are targeting or talking to.

What are the main things to remember when you prepare your pitch?

- Keep in mind your target audience.
- What is their pain point or biggest frustration?
- How are you different to others?
- What reason is there to engage you?

To craft your 60 second pitch, think about these four things:

- Adopt the 'help approach'. Make your introduction all about your clients. For example: '*I help to prepare composite tax returns from 200 overseas partners, giving the firm more time to serve other clients more effectively in other areas.*'
- Use some statistics because statistics are a great way to build credibility.
- Highlight the service you'd like to promote and try to include three key messages.
- Include a call to action. Be clear what you want your audience to do. Do you want them to LinkedIn with you or visit your website?

Katrina's tips

- Practise what you want to say and time yourself.
- Avoid using jargon or acronyms.
- Use bullet point notes to help with your recall.
- Be specific on who you are looking to meet or be introduced to.
- Stand up (or sit up straight) and smile – take a deep breath, and slow down your speech if you have a tendency to speak fast when under pressure.

For more information contact Katrina: linkedin.com/in/katrinasargent

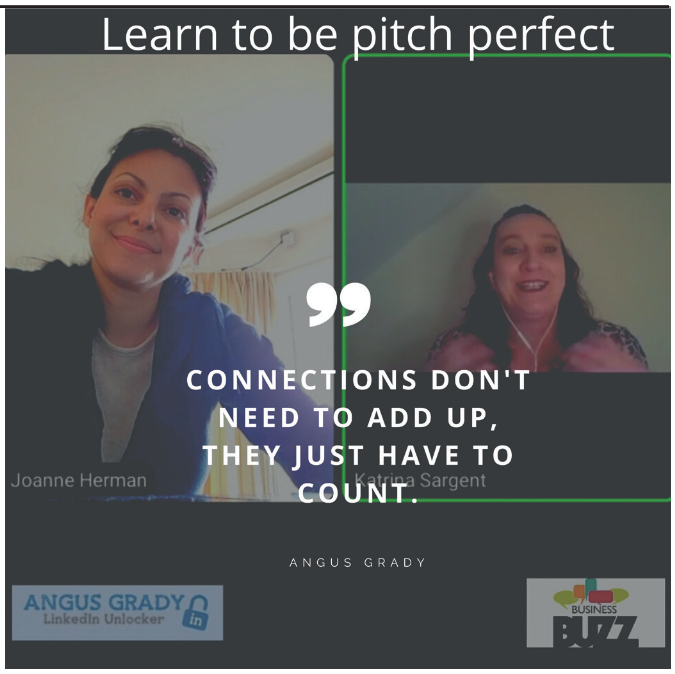
Katrina Sargent runs Business Buzz. Business Buzz has helped many small businesses to successfully build a valuable network unique to their needs. Buzz has helped them to grow a presence in their local business community and create meaningful relationships which in return generates organic referrals.

Angus's tips

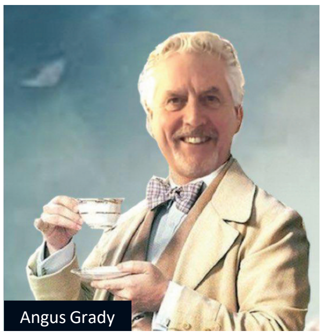
- Practise the introduction you would use at a networking event and make sure that your LinkedIn headline reflects that content.
- Your WHY should be running through everything you do.
- Identify who you are helping, what problem they have and how you can solve it.
- Make clear your history in having the experience to solve that problem and the Yield and Youtility of working with you.
- Keep your category always at the top of mind with clients and prospects.
- Follow up.

For more information contact Angus: linkedin.com/in/angusgrady

Angus Grady just does LinkedIn, unlocking profile potential to magnetise profiles to get sales. He is not a coach, not jumped from corporate, and has been around a long time with a B2B, Back to Basics approach to LinkedIn Training and marketing.




Katrina Sargent


Angus Grady

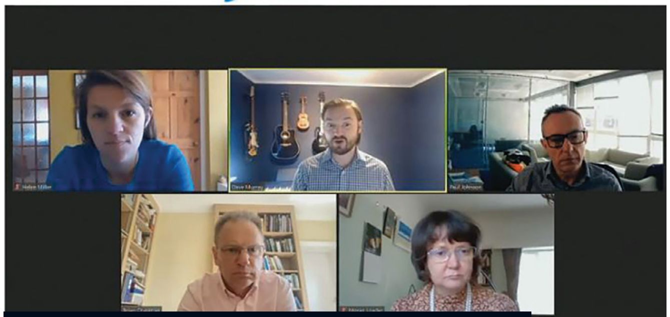
Use it or lose it

Remember, your 60 second pitch is your single biggest face-to-face marketing tool and it's not limited to Zoom calls. As we emerge from lockdown, now is the time to boost your USP and confidence. Use it at your appraisal, networking events, job interviews, meetings or even parties!

Last month, LinkedIn introduced a new feature: '30 second video introduction'. When you have access to the Cover Story feature, it will show up on your personal profile Introductory Card with this message: 'Introduce yourself with a 30-second video.' Check it out today!

CIOT

Corporate Tax Debate



(Top left to top right) Helen Miller, David Murray and Paul Johnson; (bottom left to bottom right) Brian Chapman and Morag Loader

EVENT

After the Chancellor announced a six-percentage point rise in corporation tax to a new 25% rate from 2023, CIOT and IFS asked a panel of tax experts how high the corporation tax rate should be, in their latest online debate.

CIOT President **Peter Rayney** opened the debate, saying that it was very topical given the changes to corporate taxes in the Budget. The Chair was **Paul Johnson**, Director of IFS, who said this is a hugely important question at the moment, which may explain why about 550 people had registered to watch the debate 'live'.

Helen Miller, Head of Tax at IFS, said the main headline rate of corporation tax is not all that matters because there are a range of corporate tax rates set by the UK government, such as on banks. The tax base also matters and determines 'effective' tax rates. We have seen a recent broadening of the tax base, observed Miller. She explained why a government should design a tax base so that the effective marginal tax rate – that is, the tax rate on a project is only just worthwhile – is 'zero'. Anything more and you discourage investment, she argued. Matters other than tax affect business decisions about where to locate, such as infrastructure and workforce skills. But Miller cited evidence that high statutory rates encourage profit shifting and that high average tax rates deter inward investment, although the exact effects will differ across firms and over time. 'There is no magic headline rate,' she advised politicians and civil servants.

On the super deduction announced in the Budget, Miller noted that for investments already subject to the annual investment allowance this is, mostly, not particularly 'super'. She also talked about some unpleasant side effects, such as a bias towards plant and machinery and the risk of tax avoidance and evasion. In a wide-ranging contribution, she said the small profits rate should not be reintroduced because, for example, this is not distributing anything from rich people to poor people.

Morag Loader is an infrastructure project finance tax specialist, until recently Finance Director and Head of Tax and Accounting at a City based infrastructure project finance consultancy. Loader opened her remarks by saying it is employment taxes rather than profit taxes which are the biggest burden to businesses, especially in labour intensive industries. Similar to Miller, Loader said tax is not the be all and end all for business location decisions – and that the rule of law, political stability, the ease of doing business, cultural facilities and other leisure amenities are important too.

Loader explained that many infrastructure projects are signed off within a 25 year tax context. This means that the UK's planned corporation tax rate rise is a big blow and the internal rate of return on some projects will take a hit. It also means an overseas company may be less likely to bid on a UK project in future, meaning less competition which pushes up the price for the government (and therefore the British taxpayer). On the super deduction, some capital intensive projects, such as waste processing plants, were actually worse off claiming it than with the current capital allowances regime due to loss set off rules. She asked whether the government should look at some kind of exemption for the infrastructure sector, perhaps relaxing the 50% profit restriction on the use of carried forward losses so that infrastructure projects can fully utilise the super deduction by the end of the project life.

Brian Chapman, former tax director for BAE Systems and Unilever, remarked upon the challenge of making policy when companies are so varied in their characteristics. A range of factors affect the impact of the change in corporation tax rates, he said, adding as an aside that some businesses are quite passive on tax planning, while others are far more active and aggressive. Like Miller and Loader, he said that businesses are affected by a range of factors of which tax is just one. The US, China and India are, he said, examples of large markets that companies want to be in and they have gone there despite fairly unattractive tax regimes. Most companies are run on pre-tax bases, in any case, he added.

David Murray, Tax Policy Principal at Anglo American, said the effective rate of tax is more important to businesses than the headline rate – but the increase to the UK's corporation tax rate will have a material impact on how UK plc is viewed and that non-tax factors are more important than small differences between rates. Companies will not be 'wowed' by the UK having the lowest rate in G7; rather he thought that they will look at 25% and say, 'That's a middle of the road European rate.' It will be factored in by more mobile businesses. But businesses do recognise that tax rises will be needed. Businesses (especially loss making ones) would rather have taxes on profits than on revenues or fixed costs.

Murray said that businesses would look beyond tax at the broad opportunities for their business in the UK and how our country is managed and governed, including how professionally HMRC are run. He welcomed the two-year advance warning of changes to UK corporation tax. He warned that while it is hard for many countries to justify a reduction in corporate tax rates because of their COVID-19 battered public finances, some countries will cut rates all the same.

For more on the question and answer session at this 22 April 2021 debate, visit: tinyurl.com/howhighct

ATT

ATT: Notice of Annual General Meeting

AGM

The Annual General Meeting of the Association of Taxation Technicians will be held on Thursday 8 July 2021 at 14.00.

Civica have been appointed as scrutineers for the ATT AGM 2021. 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 6 July 2021 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.

CIOT

2021 CTA Address: Green taxes in the spotlight

EVENT

Environmental taxation was the focus of the 2021 Chartered Tax Advisers' Address, which was delivered this year by Sir Dieter Helm, Professor of Economic Policy at the University of Oxford and the former independent chair of the UK government's Natural Capital Committee. Author of the book *Net zero: how we stop causing climate change*, Helm argues that the tax system provides a superior way of tackling environmental issues over other forms of state intervention.

Chaired by CIOT President Peter Rayney, the event included a panel discussion with Jill Rutter, Senior Fellow at the Institute for Government, and Jason Collins, Head of Tax at Pinsent Masons and chair of the CIOT's Climate Change Working Group.

(Top left to top right) Sir Dieter Helm and Jason Collins; (bottom left to bottom right) Peter Rayney and Jill Rutter

The climate challenge

Helm said that it was a 'fundamental but sad fact' that climate rhetoric has failed to be matched with climate action over the last three decades.

To illustrate this, he pointed out that the carbon concentration in the atmosphere had increased by 2 parts per million in each of the last 30 years – including during the global lockdown of 2020, when many would have expected a lack of economic activity (as with the 2007/08 financial crisis) to have resulted in a drop in carbon emissions.

Helm was also critical of the approach to setting climate policies. A preference for regulations and edicts had led to the creation of an inefficient market distorted in favour of polluters, reinforcing the need for action within the tax system to support national (and international) climate ambitions.

The case for the tax system

Helm argued that the tax system provides an efficient and equitable way of tackling climate issues.

He said that markets and prices provide a more efficient way of allocating resources by targeting those responsible for pollution. It is people – not businesses – who are ultimately responsible: 'Have no illusion, the polluters are you and me. Companies do things which are polluting on our behalf … [Oil companies] don't produce oil for the fun of it, they produce oil because you and me may put that in our car, in our heating systems and in many of the plastics and petrochemicals that we buy.'

Helm also argued that carbon taxes offer an equitable response to the climate challenge, saying that the tax system could ensure that 'those who cause harm … pay for the consequences of the harm they cause'.

He also pointed to the administrative benefits of using the tax system over other forms of direct government intervention, which he suggested made it easier for lobbyists to mobilise and bend regulations in favour of their sectors:

'One of the things lobbyists hate about environmental taxes is it's really hard to capture them and to distort them … A general carbon tax across the economy stops the game playing [between sectors].

'It makes everyone face the same terms and everyone has the weakness that they can't distort the common price in their own particular interest.'

Setting carbon taxes: better to be roughly right than perfectly wrong

Helm argued that there were two ways that governments could set carbon tax.


Sir Dieter Helm

He described the first – that would involve detailed studies and cost-benefit analyses – as ‘utterly hopeless, because part of the point [of prices and markets] is to use the information that comes through the way we behave, and we don’t know how people are going to behave in the future’.

His preference is for a system of taxing and adjusting, which would evolve alongside behavioural changes and government policy objectives: ‘You put a carbon tax in place. You see what happens … You vary your tax to keep yourself on the path to the objective you want to achieve.’

This approach – of being ‘roughly right, rather than perfectly wrong’ – would be a step change in our approach to taxing carbon.

How would we spend the money that we raise?

Helm said that while there were many who would argue for environmental taxes to be hypothecated, they had the potential to take up a lot of the total tax burden across the economy and that it would be for governments to decide how best to spend the money raised.

He explained: ‘It may well be that the government might raise a lot of money through carbon and other pollution taxes, and it may actually decide to spend a lot of that money on decarbonisation … But strictly, in principle, those decisions should be separable.’

Helm also said that it was ‘pretty delusional’ to think, as many do, that carbon taxes are regressive in comparison to income taxes.

‘Presumably Bill Gates’ private jet will be attracting quite a lot of carbon taxation in a way that someone of much more meagre means, who is consuming much less, might not,’ he said.

Ultimately, it was his view that governments will eventually turn their attention towards carbon taxation as a means of raising revenue, once they appreciate the scale of potential revenues available: ‘I think when they run out of all the other sources of money, government will find that this [carbon tax] is an attractive place to go.’

That said, he posited a note of caution for the longer term: ‘If we achieve net zero, then we won’t be doing any more polluting, and then the carbon tax will be falling back to zero … Once you’ve stopped doing the polluting, you don’t have any pollution taxes left.’

The response: Jill Rutter and Jason Collins

Responding to the points raised by Helm, Jill Rutter cautioned of the need for political realism when considering the role that carbon taxes could play in the future.

As a veteran of the Treasury, Downing Street and DEFRA, Rutter reflected on the steps taken by successive UK governments to develop carbon taxes, saying that policy setbacks – such as the decision in the early 1990s to introduce VAT on domestic fuel – had left officials and politicians reluctant to act, with those taxes that have been introduced brought in under the guise of ‘obligations’ or ‘commitments’. Indeed, many of these, she said, had subsequently failed in their objectives, the result of a lack of political commitment.

Jason Collins noted that in the absence of an overall climate change tax policy in UK politics, the percentage of total tax revenues attributable to environmental levies had fallen in the last decade from 8% to 6%.

Collins called for a more coherent and cross-departmental approach across government towards environmental policy, and said that discussions around carbon taxation should form part of this approach.

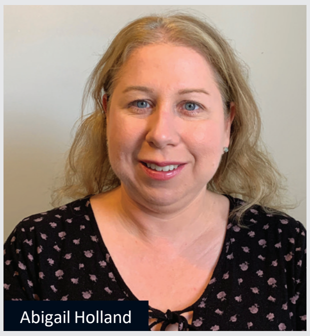
He said that some of the factors that needed to be considered included the role of tax exemptions in encouraging positive behavioural changes and the need to provide

ATT

Feature a Fellow: Abigail Holland

PROFILE

Abigail Holland tells us about the role the ATT has played in her career in tax.


Abigail Holland

After completing my Legal Practice Course (LPC), I took a job at HM Revenue and Customs, as a stop gap. I found that I enjoyed working in tax, so when I saw an advertisement for the Grant Thornton Tax Graduate Scheme, I decided to apply. My application was successful, and I started in June 2000. I have never looked back and love working as a tax professional.

The highlight of my career was joining the ATT Technical Steering Group in July 2018. I felt incredibly proud to join such a great committee and to be able to give something back to the ATT. I would encourage other members to volunteer with the ATT wherever they can.

The ATT qualification is perfect as it covers a wide range of taxes and is an excellent introduction to tax. It provides the building blocks for the next steps for a career in tax. I already had a law qualification (LPC) and felt it was important to complement this with a tax qualification. ATT was the obvious choice and it has opened so many doors to me.

I became a Fellow in 2020, as I felt it was a good way to mark my 20 years as a tax professional. I also felt that it showed my commitment to the ATT.

I would advise those starting off in their career to work hard and embrace all opportunities that come your way. And don’t worry if things don’t turn out the way you planned. You never know what opportunity is around the corner.

I have worked both in practice and industry, and both have provided me with fantastic opportunities to develop my career and tax knowledge.

certainty and stability for taxpayers.

The CIOT, he noted, had called on the UK government to set out a strategic roadmap for the tax system, including the potential role for carbon taxation.

Responding, Helm voiced some scepticism over the government's ability to think long term: 'Anyone who believes that the government is going to come up with a clear and coherent strategy is clearly not in the same policy world that I have been in.'

Q&A session

The first question in the short question and answer session that followed focused on the steps people could take to reduce their own carbon impact. Helm responded: 'Stop flying. Because if you really want to do one thing [to reduce your impact], why do you have to fly abroad to have a holiday?'

Jill Rutter, in response to a question about influencing politicians, said that she was optimistic that public opinion towards climate change was shifting and would impact political decision making.

She also cautioned that the government's reluctance to increase existing environmental taxes – such as fuel duty – served as an example of the political constraints that may be encountered.

The role of information communications technology (ICT) in driving up global emissions was also considered, as Helm urged us to pause and consider the prevalence of technology in our day-to-day lives. The design of future carbon taxes were also raised, with Collins calling for a global approach to maximise their impact.

You can view Sir Dieter Helm's slides at tinyurl.com/k3678y3.

You can watch the debate at tinyurl.com/52zb9xxc.

If you are interested in buying Helm's book, Net Zero, or want to find out more about it, see tinyurl.com/3fzs2yky.

ADIT

Join our International Tax Webinars

WEBINARS

As countries, businesses and individuals around the world contend with the international tax consequences of today's most pressing issues, there has never been a more exciting time to get involved in the latest international tax debate.

Whether it's the impact of the pandemic on public and company finances, the role of tax policy in the emerging green revolution, or Pillar Two and the future prospects for digital taxation, our ADIT International Tax Webinars are a great way to join the conversation.

Led by experts from government, industry and academia, these webinars will help you to keep up with the latest developments across a range of contemporary international tax topics. Each session features a deep dive into a different international tax topic, with speakers offering their individual perspectives and insights, answering your questions and exploring the likely future challenges and developments.

So far around 700 tax professionals have joined one of our webinar sessions, the most recent of which saw ADIT holders Constantinos Kounnis and Pedro Pestana examine the new EU e-commerce package and the indirect tax implications of Brexit for businesses across Europe.

In our next ADIT International Tax Webinar, taking place on Thursday 3 June, Alvaro Benavides and Bernd Regensburger will look at the current OECD Covid-19 guidance on transfer pricing and business restructuring.

Join the next webinar, or purchase a previous recording, at www.tax.org.uk/adit/events.

Each webinar costs £20, with free entry for International Tax Affiliates.

1–7 JUNE VOLUNTEERS' WEEK

att

Chartered Institute of Taxation.

A huge vote of thanks from us to you – our volunteer community!

Volunteers' Week is an annual national campaign. It takes place 1–7 June every year and gives us an opportunity to say thank you to our volunteers for their fantastic contribution.

Thank you to all our volunteers
From everyone on the CIOT and ATT Councils and teams, we truly appreciate and value the contribution that you make, especially during the Covid-19 pandemic.

We currently have over 600 volunteers who typically dedicate over 20,000 hours of their time across CIOT and ATT Councils, Committees, Branch activities and meetings.

Get Involved!
If you would like to find out more about how you can get involved at CIOT and ATT, visit:
www.tax.org.uk/networking and **www.att.org.uk/volunteering**

To get involved with your Local Branch today visit:
www.tax.org.uk/branches and **www.att.org.uk/branches**


Sharlene Botterill
Vice Chair
New Tax Professionals Committee


Jason Collins
Climate Change Working Group


Georgiana Head
ATT Council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Harrow & North London Branch


Justine Lutterodt
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Makayla White
New Tax Professionals Committee


Elizabeth Bagg
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New Tax Professionals Chair


Stephen Foulkes
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Tax Investigations Senior Manager or Director
Yorkshire or Manchester

This is a key hire for a highly regarded tax dispute resolution team, a great opportunity to deal with COP 8 and COP 9 work outside of a Big 4 firm. This team deals with high profile cases ranging from small businesses to large charities and corporates. Most of the team are ex-HMRC, but our client would also consider someone who has trained in practice. Key is that you actively enjoy contentious tax work and helping clients to resolve difficulties with their interactions with HMRC. Great prospects for future promotion and excellent quality work make this a fantastic opportunity. **Call Georgiana Ref: 3111**

Corporate Tax Assistant Manager
Newcastle – £excellent + bens

This large firm is looking for a CTA/ACA qualified corporate tax assistant manager. The role will be a mix of tax compliance and advisory work for clients including large OMBs, entrepreneurial companies and listed groups, some with international tax issues. You must have strong UK corporation tax knowledge. M&A tax or international tax experience would be an advantage but is not a prerequisite. Home and flexible working is possible. **Call Alison Ref: 3108**

Indirect Tax Manager
Liverpool – £excellent + bens

My client is looking for a VAT specialist who enjoys working in a small team, and can deal with issues that span the full range of VAT and indirect taxes. You must be able to provide high quality practical, commercial advice on complex VAT and other indirect tax issues, manage HMRC enquiries, assist with ADRs and prepare cases for First Tier Tribunals. You will also write articles for newsletters and press releases. Home and flexible working is possible. **Call Alison Ref: 2994**

VAT Senior Manager or Director Level
Leeds – £55,000 to £85,000

This is a key role in a large Leeds based independent practice. It would suit an experienced VAT professional who is looking for some autonomy and to effectively lead their own VAT practice. 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. **Call Georgiana Ref: 3005**

Private Client Senior Manager
Manchester – £excellent

Big 4 firm seeks an experienced private client specialist to join their Manchester office. This Associate Director/Senior Manager role is advisory focused but also involves overseeing the compliance for your portfolio. This job includes dealing with owner managers, and could suit someone with more of an OMB/mid tier background. It is a busy team that deals with HNW individuals, families and their businesses, including PE groups. Lots of really interesting high quality projects. Huge variety of flexible and agile working patterns available, and a great salary and benefits package. **Call Georgiana Ref: 3110**

Mixed Tax Senior
North West Leeds – £excellent + bens

This role is weighted towards personal tax, as you will manage a varied portfolio of circa 300 clients. However, you will also assist the tax manager with the preparation of corporation tax returns and the accompanying computations. In addition to the compliance work, you will get exposure to tax planning projects and will deal with HMRC enquiries, P11Ds and the provision of PAYE advice. Full or part time candidates welcome. **Call Alison Ref: 3100**

YOUR TAXATION RECRUITMENT SPECIALISTS