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March 2021

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How to be a trustee

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President's page

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Peter Rayney

A Hard Day's Night

I hope you are keeping well and safe during the current lockdown. I am sure that none of us thought we would still be suffering social deprivation almost a year on. Of course, we have managed to enjoy virtual contact with our families, friends and colleagues thanks to the likes of Teams, Zoom and Skype.

This has also been a tremendous blessing and has even given us moments of exceptional hilarity. My particular favourite has been listening to Jackie Weaver hosting a Zoom meeting of the Handforth Parish Council – you can find it at tinyurl.com/1hgw0ac8 – and I can assure you that CIOT council meetings are nothing like this!

What have we done with the extra time saved by not having to travel? I suspect a large number of you would say that you have worked even harder! Music aficionados will appreciate that the idea for the hit song *A Hard Day's Night* came from an exhausted Ringo Starr following a filming session in March 1964. 'We went to do a job, and we'd worked all day and we happened to work all night ... so we came to *A Hard Day's Night*.'

In recent months, I have been praising the excellent hard work of some of the Institute's activities, which have included the Low Incomes Tax Reform Group (LITRG) and our Examinations Team. This month focuses on our great technical and tax policy work, which is driven by our public benefit objectives. As an Institute, we can be justly proud of our collective technical excellence on a wide range of tax areas, which we are able to harness for influencing the tax policy debate. Our technical work helps to ensure that proposed tax legislation and practice is clear, robust, efficient and works fairly.

Our technical committees

A tremendous amount of our technical input and critique comes from our many technical committees. To give you a proper appreciation of their wide coverage, I list each of them below:

- Private Client (UK)
- Private Client (International)
- Corporate Tax
- Employment Taxes
- Indirect taxes
- Management of taxes
- Digitalisation and Agent Services
- Property taxes
- International tax
- Owner Managed Businesses
- Scotland
- Wales
- EU and Human Rights Working Group
- Climate Change Working Group

Increased engagement with HMRC and the Treasury

We have worked very closely with HMRC during the Covid-19 disruption and it is heart-warming to see the strengthening of this key relationship. We have been able to put forward many constructive refinements to the government's financial support schemes and the various easements to relevant areas of tax, including the statutory residence test and the deferral of VAT liabilities and so on.

Some of our work is driven directly by our Technical Policy and Oversight Committee, either because it is of strategic importance or because it spans several technical committees. For example, we engage with HMRC at senior levels, work with HMRC and the Government Digital Service to secure improvements to HMRC's guidance, and are represented on the Charter Stakeholder Group.

We are particularly delighted with our increased technical engagement throughout the Covid-19 pandemic. This has been substantially assisted by the ability to hold virtual meetings (without the need to travel). This has resulted in an increased number of meetings and greater input from our network of expert technical volunteers. These factors have certainly increased the technical quality of our ideas and submissions.

Thank you

All this work is spearheaded by our great in-house technical and policy unit, which is headed up by John Cullinane (*Director of Public Policy*) and Richard Wild (*Head of Tax Technical*), who are ably supported by a diverse team of experts.

However, much of our technical effort would not be possible without our army of wonderful volunteers. On behalf of the CIOT, I thank each and every one of you. If you would like to get involved with this important work and join one of our technical committees, please contact us via our website at www.tax.org.uk/policy-technical/join-technical-sub-commitee.

International Women's Day

I draw your attention to the piece on page 16 of this edition – 'Choosing to challenge' – which shares the interesting experiences of four female tax practitioners and the challenges they each faced in building their careers. May I wish all our female members and readers a happy International Women's Day for 8 March.

Let's all keep safe and well. Hopefully we are at the beginning of the end!

Peter Rayney
President, CIOT
president@ciot.org.uk

> **"We can be justly proud of our collective technical excellence on a wide range of tax areas, which we are able to harness for influencing the tax policy debate.**

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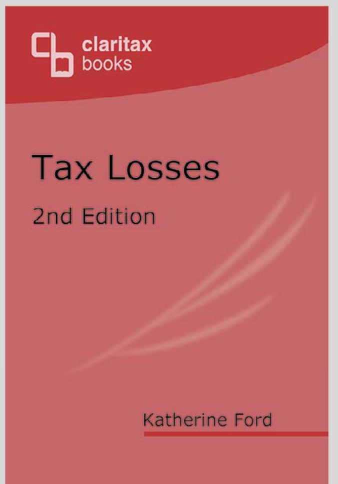
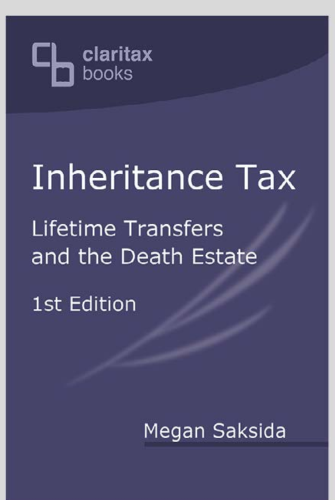


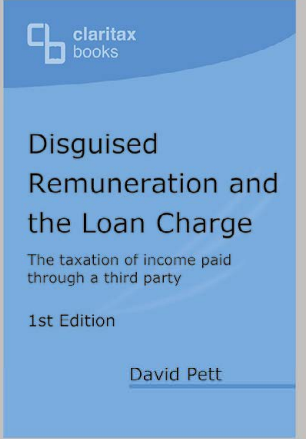
This book clearly explains how to make use of the various reliefs to ensure that all available tax benefits are given for losses incurred – by companies, partnerships and individuals – including property losses and capital losses as well as trading losses. The new edition has more than doubled in size, now with comprehensive coverage of the corporate loss regime. The in-depth text – fully cross referenced to legislation, case law and HMRC guidance – is clearly written and presented, and is illustrated with worked examples throughout.

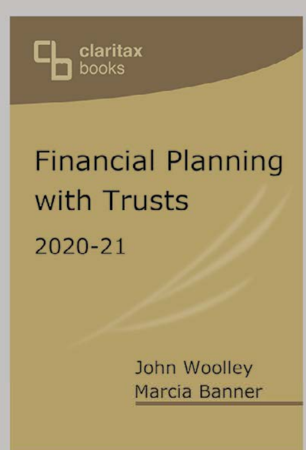
Katherine Ford BCom, FCCA, CTA is manager of the direct tax telephone advice team at Markel Tax.

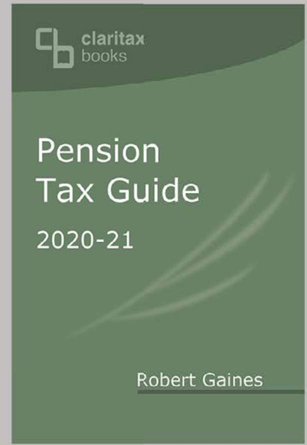


Essential for any tax practitioner or accountant dealing with inheritance tax, this comprehensive guide addresses all the issues faced in preparing lifetime transfer calculations, preparing the death estate and advising clients on related IHT issues. Written in clear concise language, the book is easy to understand by both seasoned practitioners and those new to the tax. The text is peppered with practical, understandable and relevant examples, and is fully cross referenced to legislation, case law and HMRC guidance.

Megan Saksida BA, FCA, CTA, TEP is a freelance tax lecturer and examiner.







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ATT welcome

page@att.org.uk
Jane Ashton

The promise of better times

Who would have imagined that a year on we would still be in lockdown and our daily lives still so disrupted by Covid-19? When we closed the office last March and set up all staff to work from home, we could not envisage that we would be working from home a year later and still with no clear timeframe on when it is safe for all staff to return to our office.

Despite all the anxiety, uncertainty and grief that Covid-19 has unfortunately caused, the past 12 months has not been without its occasional happier revelations: for example, everyone has been able to work from home, we can do the same things we do in the office and many people really like it because it gives them a better work/life balance. It has also been an opportunity to look at all the ways we did things and consider if there are better ways of doing them.

After the initial challenge of getting all staff set up from home and equipped to carry out their day-to-day duties, we started to consider how we would continue to meet our charitable objectives. How would we deliver our examinations which were held in venues up and down the country and how would we deliver our conferences that were also held in different locations throughout the UK?

Our long-term plan was to put our examinations online within three years – but we managed to do it in three months. We learned an awful lot from the first examination session in June where just one paper was available to sit. This enabled us to improve our systems and offer all our examinations online in November. Feedback is extremely positive and, although we will continue to make improvements to the examination experience, we will not be going back to handwritten examinations.

In a similar vein, we moved all our conferences online. We presented some sessions 'live' and encouraged delegate participation through the technology we used, and we recorded some sessions for delegates to watch in their own time. This has enabled members and non-members from all round the UK to participate in these events without the expense of travelling to venues or the stress of finding them. We will offer all our conferences online again this year and, even if we return to venues in the future, we will still offer an online alternative for people who for various reasons are unable to travel to the venues.

Our brilliant technical team has never been busier. They are working tirelessly to ensure that all visitors to our website have the latest information on the many and varied government initiatives that have been announced. On occasions we have updated the same pages twice in the same day to keep up with the announcements, with the result that we have had over 335,000 views of the pages in our dedicated Covid-19 hub. We have increased our engagement with HMRC to get answers to members' queries and have produced four free webinars together with CIOT colleagues that were viewed over 3,800 times. Alongside this, we have been writing articles and clarifying legislation on home offices, working from home and even 'virtual' Christmas parties.

What else can we look back on with pride from the past 12 months? We held our AGM online giving all our members the opportunity to attend without leaving their homes. We held our Steering Group and Council meetings online, cutting down the travelling time of our volunteers who come from around the country, not to mention reducing our carbon footprint. We will continue to offer online facilities for all our meetings even if we go back to some of them being face-to-face. Hopefully, this will enable and encourage more members to become volunteers and help their Association.

Looking ahead to the rest of 2021, no doubt the 'new normal' will look and feel different but we will continue to support our staff who are working with or without interruptions from family members or pets, and with or without home schooling and caring responsibilities. We will continue to support our members and students to ensure they have the skills to be the best possible tax technicians of the future and we will continue to provide timely up to date tax information for all via our website.

With the promise of better times on the horizon, keep well and stay safe.

Jane Ashton

Jane Ashton
Chief Executive
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> **Our long-term plan was to put our examinations online within three years – but we managed to do it in three months.**

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- Tax issues on separation and divorce
- Trusts – practical uses and 5MLD
- Consumer protection for taxpayers
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- Friday, 18 June 2021
- Thursday, 24 June 2021

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#FaceOfTax

The perfect storm

KEY POINTS

- **What is the issue?**
On any transfer of property from personal to corporate ownership, there are a number of deciding factors when applying for the available reliefs from capital gains tax, including whether the activity is classed as a business.
- **What does it mean for me?**
A major drawback of property partnerships is that it is very easy for the unwary to trigger stamp duty land tax charges under anti-avoidance rules contained within Finance Act 2003 Sch 15 para 17A.
- **What can I take away?**
HMRC is expected to look closely at any attempt to exploit the partnership rules to avoid a market value charge, with its first port of call to examine whether there is a *genuine* partnership in existence.

Simon Howley considers the legislation governing the transfer of property from personal to corporate ownership, including how this can trigger stamp duty land tax charges

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Back in the early 2000s, it used to be common practice to find property held within the trading company. As this was the main source of revenue, it was cheaper than extracting monies via dividends or salary, and then buying the property out of net income.

However, the downside to holding the property within the company was that the company paid corporation tax on any disposal, and then the individuals paid income tax on the extraction of the net proceeds. It felt like 'double taxation'.

With careful structuring of a transaction and clever use of the then stamp duty land tax (SDLT) rules, it was possible to extract the property from the company without triggering either a SDLT charge or a capital gain within the company. This was never a perfect solution, but clients were happy that any future capital growth in the value of the property (from date of the transfer) would only be taxed once as a capital gain on the individual partners.

Modern times

Roll forward to modern times, and every 'Tom, Dick and Harry' owning a garden shed wants to incorporate, mainly due to the restrictions on finance costs relating to dwellings related loans. Of course, there is nothing wrong with incorporating a property portfolio for the correct client, but many of the clients I see fall at the first hurdle. They simply do not qualify as a business. I do not have the space to explain the nuances of what is or isn't a 'business' in this article.

However, it is a deciding factor when applying for the available reliefs from capital gains tax, on any transfer of property from personal to corporate ownership, that the activity is classed as a business.

As there is no legislative guidance on the meaning of a business for tax purposes, we must refer closely to case law for guidance. The decision in *Ramsay* [2013] UKUT 226 is the most relevant in the context of incorporating a rental property business, as it was the first case to be heard on the subject of claiming incorporation relief from capital gain tax.

Another major consideration in the decision to incorporate a rental property business is the exposure to SDLT. However, special rules apply to partnerships, which can result in no charge arising on the transfer of property from a partnership to a new company, where each of the partners is connected with the new company.

The most common path to incorporation for clients is to form either a general partnership or a limited liability partnership. In this article, I will assume for the sake of simplicity that we are dealing with a general partnership.

Properties within a general partnership

The property portfolio will be introduced into the partnership as initial capital in the percentage shareholding it is currently held in. There will be no capital gain triggered on the formation of the partnership; due to the tax transparency of partnerships, we look straight through to the individual partners. With this being the case, the underlying beneficial ownership of the property portfolio introduced is unchanged. You cannot sell to yourself what you already own.

There should also be no SDLT triggered on the formation of the partnership, due to the reliefs offered within Finance Act 2003 Sch 15 para 10.

Holding the properties within the general partnership should also not disturb any current lending in place on the portfolio, nor should the client be required to notify their lenders of the partnership structure under their lender's terms and conditions.

This is because general partnerships, unlike limited liability partnerships, cannot own property in their own name. The individual partners own and hold the properties on trust as partnership property.

Many people take the view that a property portfolio which is jointly owned by a married couple, or by two individuals, is effectively a partnership and they always ask: 'Why do we need a formal partnership,

as we own the assets together anyway?' The simple answer is that HMRC does not view holding assets jointly as being *in partnership.* According to HMRC manuals, the definition of a partnership is: 'The relation which subsists between partners carrying on *a business* in common with a view to profit.' Legislation also says that 'joint property, common property, or part ownership does not of itself create a partnership' (Partnership Act 1890 s 2(1)).

Therefore, it is sensible to enter into a formal partnership agreement and then you must register the partnership for Self-Assessment with HMRC.

Anti-avoidance rules

However, a major drawback of property partnerships is that is very easy for the unwary to trigger SDLT charges under anti-avoidance rules contained within Finance Act 2003 Sch 15 para 17A.

Paragraph 17A imposes a charge to SDLT if, during the three years after a para 10 transfer of land to a partnership, the transferor or a partner connected with the transferor:

- makes a withdrawal of money or money's worth from the partnership (other than income profit);
- reduces their interest in the partnership share; or
- ceases to be a partner.

A withdrawal of money or money's worth would include the withdrawal of capital from the capital account and the repayment (to any extent) of a partner's loan.

Therefore, paragraph 17A potentially gives rise to double taxation where, for example:

- a property is transferred into a partnership (claiming relief under para 10);
- the partnership sells the property to a third party (on which SDLT is paid) *and* the partners withdraw the proceeds within a three-year period; or
- the withdrawal is treated as a land transaction and SDLT is due.

Some ask whether an incorporation wouldn't be treated as a 'withdrawal' for the purposes of para 17A? In my opinion, the answer is no.

A withdrawal is only a qualifying event if it is coupled with a partner withdrawing capital from his account, reducing his interest in the partnership, or exiting the partnership. It seems clear to me that this was intended to catch out partners who enter arrangements for the transferor partner to extract money or money's worth from the partnership, pursuant to arrangements that were in place at the time of the transfer of property to the partnership to avoid SDLT.

PROFILE

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Profile Simon Howley is the co-founder of Bell Howley Perrotton LLP with offices in London and Dublin. He has over 25 years of experience working within City law firms and accountancy practices, and oversees the firm's tax team. Simon sits on the Property Taxes Sub Committee of the CIOT's Technical Policy and Oversight Committee.

The above would clearly not be the case on an incorporation, as this would be viewed more as a distribution of assets on, or in connection with, an incorporation.

On an incorporation, all the conditions in Finance Act 2003 Sch 15 para 18 would be met on the transfer of properties to a NewCo, as a chargeable interest is being transferred from a partnership to a person who relates to one of the partners.

Therefore, on the face of it a para 18 charge should arise on the properties transferred but this charge should be nil where the partners as individuals are both connected for tax purposes with NewCo.

In my opinion, para 17A should not apply where para 18 does. The transaction should be taxed solely in accordance with the provisions of para 18, which takes precedence over para 17A.

The Office of Tax Simplification (OTS) published a report in January 2014 that suggests that para 17A is now effectively redundant due to anti-avoidance legislation contained in Finance Act 2003 s 75A.

Paragraph 17A is effectively an exit charge to the partnership with no time limit, but the OTS report notes that HMRC does not tend to apply the legislation, although it *potentially* can – which is why clients should be warned.

Another conflict exists between the SDLT partnership rules provision with Finance Act 2003 s 53, which imposes a market value charge on a transfer to a connected party. However, HMRC has confirmed that in this situation the partnerships rules take precedence.

Common misconceptions

Questions I get asked a lot are:

- *What is a safe period to wait before incorporating a property partnership?*
- *Will the incorporation effect my lending?*

These are good questions and I have heard, and seen on various social media platforms, many conflicting replies. Some are plain wrong, and some are borderline offences under the money laundering regulations.

One of the replies sometimes given is that you *must* wait three years from the date of the formation of the partnership before you can incorporate. This is wrong and stems from a misunderstanding of legislation and confusion with the three years rule relating to para 17A. As we have stated above, this rule should not apply in the case of a simple incorporation.

The actual answer to the first question is simple. There is no defined *'safe'* period.

Another very common misconception is that incorporations can be carried out without any consideration for refinancing or notification to the lender, by simply using a Deed of Declaration. Any tax planning must take into consideration the commercial aspects of what is being proposed. The terms and conditions of the lender must always be considered before any incorporation; and the vast majority of lenders (if not all) specially require notification of *any* proposed change in legal and/or beneficial ownership of a property. Many lenders' terms and conditions also now specifically prohibit the use of Deeds of Declaration.

The future of partnership rules

HMRC is expected to look closely at any attempt to exploit the partnership rules to avoid a market value charge, with its first port of call to examine whether there is a *genuine* partnership in existence. Common sense also dictates that forming a partnership for a brief period before transferring property into a company in order to obtain the exemptions will not survive HMRC scrutiny, and would be foolhardy by bringing the anti-avoidance rules under s 75A into play.

However, it is clear that a transfer of property from a well-established property partnership run by connected parties to a company owned by the same individuals will be exempt from SDLT.

It is also clear that changes are on the horizon with regards to capital gains tax, with the OTS soon to publish its second report to HM Treasury. When you combine these yet unannounced changes to capital gains tax with the now full effect of the income tax restrictions on interest relief on lending, it is helping to create a perfect storm of new incorporations, many of which fall foul of s 75A – and to unscrupulous tax scheme promoters who are already circling.

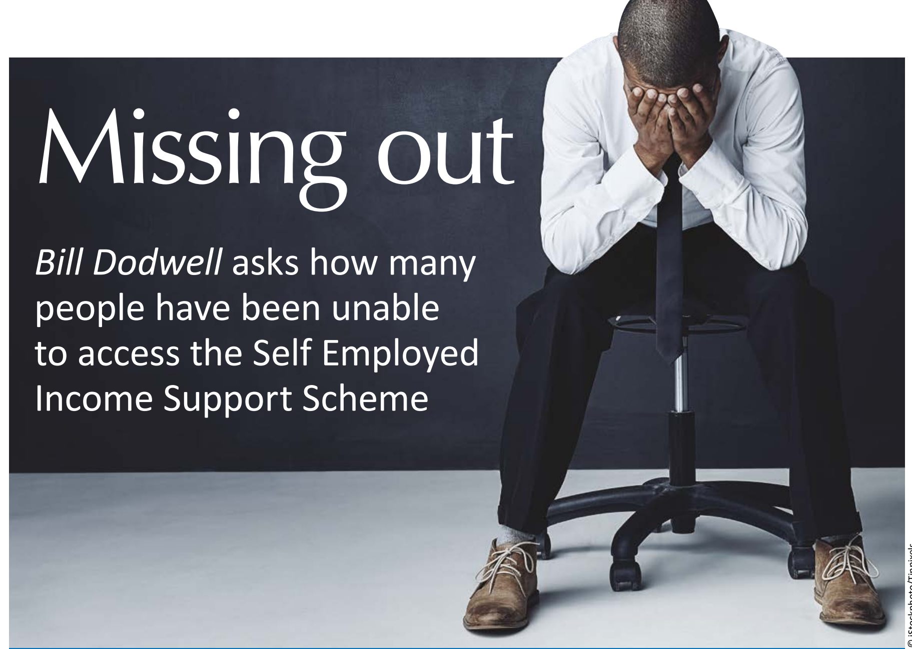
at the coalface

/at ðə ˈkəʊlfeɪs/

phrase

1. engaged in work at an active rather than theoretical level.

   e.g. IR35Shield.co.uk co-defends cases and attends tax tribunals



Missing out

Bill Dodwell asks how many people have been unable to access the Self Employed Income Support Scheme

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On 15 February, the Treasury Committee published its third report looking at the tax and economic effects of Coronavirus (see bit.ly/3bkqcAi). The paper urged the government to extend assistance to 'those missing out, including limited company directors and freelancers'.

Limitations of the SEISS

The Institute for Fiscal Studies (IFS) published analysis of the Self Employed Income Support Scheme (SEISS) in April 2020 (see bit.ly/3uadg8r), revealing that 5.1 million people reported positive self-employment income in 2016/17 (the most recent year for which detailed data are available). The IFS stated: 'Among the 3.8 million people who receive more than half of their income from self-employment, we estimate that roughly 675,000 (18%) will be ineligible for the SEISS.'

An update by the IFS in January 2021 (see bit.ly/2OOvaxt) gave more detail on the groups of self-employed people who might be adversely affected by the pandemic but are not eligible for government support under SEISS:

'These groups are:

- people who have self-employment profits of more than £50,000 per year (around 225,000 people);
- self-employed people who have less than 50% of their income coming from self-employment (around 1.3 million);
- self-employed people who were making losses prior to the pandemic (around 500,000); and
- people who have entered self-employment since April 2019 (around 200,000).'

This latter group should have filed tax returns with HMRC by 31 January 2021, which might give them the potential to be included in future SEISS rounds.

The group with less than half their income from self-employment includes about 40% with employment income and about 20% with pension income as their main source. This will include people who are employed and self-employed at the same time, as well as some who switched to self-employment part way through the tax year. The IFS also estimates that 'more than half of them have personal incomes below £25,000 per year, meaning that extending SEISS to include this group would target many people on low and moderate incomes. The data also suggest that more than half of this group have profits of less than £5,000 per year.'

This data highlights the growing level of people who are both employed and self-employed, or who are supplementing pension income with self-employment.

PROFILE

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

The design of the SEISS can also mean that some self-employed people are better off. Unlike the employee scheme, which covers 80% of salary whilst employees are not working, the SEISS is not limited to income lost, no doubt as this would be impossible for HMRC to estimate. A self-employed person able to work, even at a reduced level, could receive more than 100% of normal income as SEISS automatically pays out 70% to 80% of previous earnings.

Company owner-managers

People who are company owner-managers are not eligible for the SEISS scheme. In limited cases, they might qualify for the Coronavirus Job Retention Scheme for employees. However, this would be based on their employment income and in most cases would be much lower than their total income. It is common for individuals in this position to pay a modest salary (either just below the national insurance threshold or at the minimum wage level) and top up their income with dividends. As national insurance contributions are not paid on dividends, this route reduces the effective tax cost to the owner-manager. It is estimated that there are about 700,000 companies with a sole director and a further 1.1 million with two directors.

The Treasury Select Committee heard from the ACCA about a Directors' Income Support Scheme, which it had developed with consultant Rebecca Seeley Harris (see bit.ly/3u6Aa0C). The scheme envisaged self-certification from the directors, combined with information held by HMRC on the company's profits using the CT600 corporation tax return. Permanent Secretary Sir Tom Scholar wrote to the Committee to say that: 'The government's assessment of the Directors' Income Support Scheme is that the scheme as proposed is unworkable, because it is intrinsically reliant on self-certification by owner-managers of companies. The effect of this reliance on self-certification is potentially to open the scheme up to an unacceptable level of fraud and abuse, and perhaps even criminal activity.'

Caroline Miskin from the ICAEW commented on the Directors' Income Support Scheme: 'We do not think that it would be possible for HMRC to identify those taxpayers who are potentially eligible for support, and to calculate the value of an associated grant, based solely on data held on HMRC's systems. While information from CT600 corporation tax returns is held, it cannot be readily linked to information about directors and shareholders which would be required to establish eligibility' (see bit.ly/3djnDRu).

Perhaps one of the lessons we can draw is that we need to think broadly when defining the information on tax returns. Maybe if the corporation tax return had included dividends and links to the directors and shareholders (persons of significant control), a workable scheme could have been devised.

VAT

MTD Phase 2: Are you prepared?

Concerned about your exposure to phase 2 of MTD? The compliance steps you need to take depend upon the type of VAT process you have. Do you…

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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:

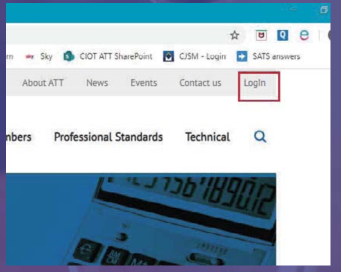
- **member number**
- **email address**

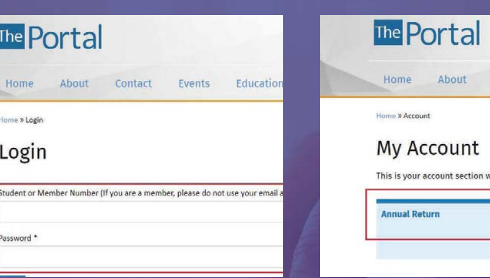
3. Account

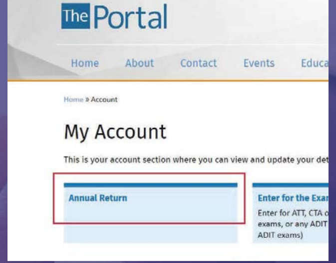
Select Annual Return option

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).

Keeping it in the family

KEY POINTS

- **What is the issue?**
Home loan schemes became a popular way of avoiding inheritance tax on the family home in the early 2000s. They were attractive to those who wanted to give away the value of their home but continue living there without a reservation of benefit problem and without losing main residence relief.
- **What does it mean for me?**
After apparent initial acceptance, HMRC decided to challenge home loan schemes. The case of *Shelford v HMRC* has brought no greater clarity on the inheritance tax issues. Instead, it has raised new property law problems.
- **What can I take away?**
In many cases the family of the deceased taxpayer will therefore have to choose between: claiming an inheritance tax deduction (the validity of which is disputed anyway at present by HMRC) and then suffering income tax or CGT on the loan when repaid; or avoiding income tax and possibly CGT by writing off the loan but then giving up any possibility of an inheritance tax deduction.

Emma Chamberlain examines the complexities involved in negotiating home loan arrangements and inheritance tax

The home loan scheme (or, as it is sometimes known, the 'double trust' scheme) became a popular way of avoiding inheritance tax on the family home in the early 2000s. It seemed a good alternative to *Ingram* schemes that had been closed down in 1999 (see Finance Act 1986 s 102A). Few home loan schemes were established after the introduction of stamp duty land tax in 2003 as it was no longer possible to defer payment of stamp duty. Despite their relatively short shelf life of about three years, it is believed that some 30,000 schemes were executed.

I last wrote about home loan schemes for *Tax Adviser* in 2013, by which time it had become clear that, after apparent initial acceptance, HMRC had decided to challenge them. It has taken seven years for a case to reach the courts in *Shelford v HMRC* [2020] UKFTT 53 (TC) but this has brought no greater clarity on the inheritance tax issues. Instead, it has raised new property law problems.

This article and a second one consider the impact of *Shelford* within the general context of home loan schemes, including the current

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approach of HMRC. Many taxpayers with a home loan scheme have now died and their relatives need to consider the most appropriate options. Reference should be made to the Inheritance Tax Manual where taxpayers wish to concede on home loan schemes (see bit.ly/2LBHhgc).

This first article will describe home loan schemes and the historic attack on them. A second article to be published next month will look at the four current challenges from HMRC to such arrangements, including the impact of *Shelford*.

PROFILE

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Profile Emma Chamberlain OBE is a barrister at Pump Court Tax Chambers and visiting professor of law at Oxford University. She is a member of the STEP technical committee, joint chair of the CIOT Private Client (International) Committee, a former council member and fellow of CIOT, a member of the GAAR Advisory Board and a member of the consultative committee for IHT set up by the OTS. She was also one of the co-authors of the report published in December 2020 on wealth taxes in the UK (see www.wealthandpolicy.com/wp/WealthTaxFinalReport_FAQ.pdf).

Structure of home loan scheme

There was no 'single' home loan scheme: they varied greatly in terms of documentation and particularly in relation to the loan. They were attractive to those who wanted to give away the value of their home but continue living there without a reservation of benefit problem and without losing main residence relief. An example home loan scheme is set out below.

Step 1: A life interest trust

Andrew is a widower aged 70 who owns a substantial property (worth £1.5 million with no outstanding mortgage). He would set up a life interest trust (House Trust) with £10 under the terms of which he was a life tenant with the right to enjoy the income of the trust and to enjoy the use of trust property. The trustees were given the usual modern flexible powers; for example, to advance capital to Andrew. (Often, Andrew would be one of the trustees.) The remainder beneficiaries of this trust were the adult children.

Importantly, this was a *qualifying* interest in possession (IIP) as it was set up prior to 22 March 2006; and therefore Andrew was treated for inheritance tax purposes as beneficially entitled to the property (see Inheritance Tax Act 1984 s 49). Hence, no inheritance tax arose either on setting up the trust or every ten years. However, on Andrew's death the trustees would be liable for any inheritance tax on the net value of the settled property in which he retained a qualifying IIP.

Step 2: Sale of the house

Andrew would then sell his house at market value to the trustees of House Trust. No gain would arise on the sale, as the house was his main residence; and no inheritance tax would arise as it was a sale, and a sale to a trust where Andrew had a qualifying IIP. The trustees did not have £1.5 million cash to pay for the house, so it was agreed that the purchase price would be satisfied by means of the issuance of a loan by House Trust. Alternatively, the contract simply stated that the purchase price could remain outstanding. (If a new house was being purchased, Andrew might lend cash to the trustees who would then purchase the new house.)

The sale of the house today would, of course, attract stamp duty land tax. Prior to 1 December 2003, stamp duty could be postponed by 'resting in contract'. Typically, the contract provided for the full purchase price to be paid over on exchange to the vendor as agent. Transfer of legal title was specified to be a long stop date in the future, e.g. 2025, and otherwise it was left to the purchaser to give notice.

> **There was no 'single' home loan scheme: they varied greatly in terms of documentation and in relation to the loan.**

If a contract of this sort was signed prior to 11 July 2003, no stamp duty was payable. However, in the event that the trustees are later registered with legal title, a stamp duty charge will arise based on the old rates and for the consideration specified then (4% if the consideration specified was over £500,000) (see Finance Act 2003 Sch 19 para 3). This assumes the contract is not varied or assigned. Where exchange and substantial performance was on or after 11 July 2003 and before 1 December 2003, then no stamp duty charge arose but stamp duty land tax was payable when transfer of the legal title occurs (see Sch 19 para 4).

Step 3: Treatment of the loan

Andrew would then give the loan away: either to the children outright or into a trust for their benefit ('Children's Trust') from which he would be excluded. The Children's Trust would also be IIP so the gift could take effect as a potentially exempt transfer (PET). If Andrew survived seven years, the intention was that the value of the loan would be outside his estate but the loan would be deductible against the value of his house in the House Trust on his later death. Obviously, any inheritance tax savings are not on the value of the whole house but limited to the value of the loan in respect of which it was hoped to claim a deduction.

The loan was usually expressed to be repayable only on Andrew's death, although the House Trustees could have the option to repay early. Sometimes it was interest free and sometimes indexed to the house prices index or the RPI. In some cases, the loan was (correctly) limited to the value of the assets in the House Trust, so that the trustees had no personal liability and could not distribute assets without first repaying the loan or notifying the creditor. In other cases, these protections were not inserted. The hope was that by indexing the loan a greater inheritance tax deduction could be claimed on the death of Andrew. Since the loan could not be called in before Andrew's death by the Children's Trust, there was no risk of the House Trustees being forced to sell.

Sometimes, the original vendor (Andrew) would want to downsize. In these circumstances, the House Trust would sell the first house and buy a second. They could then, if they wanted, repay some of the outstanding loan using any surplus proceeds. There is a continuing debate about whether such repayment constitutes a PET. HMRC argues that it is, though the point remains untested.

The historic attack on home loans

Over time, taxpayers who had entered into home loan schemes found themselves in an increasingly awkward position (although unlike the *Ingram* or

Eversden schemes, no specific targeted inheritance tax legislation was enacted).

First, pre-owned assets income tax (POAT) was introduced with effect from 6 April 2005. Although there were highly technical arguments to say that POAT did not apply at all to home loan schemes, nevertheless the intention was certainly that they should be caught. An annual income tax charge was levied on those who were still living in their homes – broadly equal to tax on the rental value. Every five years, a new valuation had to be obtained while (in our example) Andrew remained in occupation. To the extent that the house increased in value above the deductible loan, that excess was not subject to POAT. (For example, if the loan was £1.5 million and the house was worth £2 million, the taxable rental value under POAT would be 1.5/2 x market rent (see Finance Act 2004 Sch 15 para 11(1)).)

Secondly, from 22 March 2006 it was no longer possible to set up new qualifying IIP trusts during someone's lifetime or add to pre-2006 trusts. This did not affect existing home loan schemes but made unravelling them more awkward.

Thirdly, from about 2011 HMRC announced that it did not accept that the home loan scheme 'worked' for inheritance tax purposes (see IHT44104).

Finally, for deaths after 16 July 2013, in order to be deductible for inheritance tax purposes the loan (even if incurred before this date) actually has to be *discharged on death in money or money's worth* (see IHTA 1984 s 175A(1)). The house therefore has to be sold on Andrew's death and the sale proceeds used to repay the loan to the children or the Children's Trust.

The liability can only remain outstanding and be deductible if there is a real commercial reason for it not being discharged.

Depending on the terms of the loan, that repayment may itself trigger income tax (if the loan was structured as a relevant discounted security) or capital gains tax (if, as was often the case, it was a second hand debt). Prior to 2013, it had been hoped that the deduction would be claimed on death and later the loan would be written off by the Children's Trust (on the basis that the ultimate beneficiaries of the House Trust were the same), avoiding income tax charges. Writing off or releasing the debt is clearly not discharge for money's worth within s 175A and the loan will not then be deductible.

The liability can only remain outstanding and be deductible if there is a real commercial reason for it not being discharged, and securing a tax advantage is not a main purpose of leaving the liability undischarged (s 175A(2)). (One possible commercial reason might be that the debt had not fallen due for repayment on the first death because the debt is not repayable until the last of husband and wife, which might occur where a couple sells their jointly owned house to the House Trust and they have joint life interests.) In many cases the family of the deceased taxpayer will therefore have to choose between:

a) claiming an inheritance tax deduction (the validity of which is disputed anyway at present by HMRC) and then suffering income tax or capital gains tax on the loan when repaid; or
b) avoiding income tax and possibly capital gains tax by writing off the loan but then giving up any possibility of an inheritance tax deduction.

The second article next month will look at current HMRC arguments.

Spring Virtual Conference 2021

SAVE THE DATE

Wednesday 28 and Thursday 29 April 2021

Set over two half days the Spring Virtual Conference will offer a range of topical lectures presented by leading tax speakers and offers access to CPD opportunities from the comfort of your own home or the office.

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- Advising on redundancy and termination payments
- Practical IHT planning under COVID-19
- Pension planning in the post COVID-19 environment

Book online at www.tax.org.uk/svc2021

Choosing to challenge

Tax Adviser shares the experiences of four female tax practitioners, including the challenges they have faced and the skills and support that have helped them to build their career

International Women's Day is a global day celebrating the social, economic, cultural and political achievements of women. The day also marks a call to action for accelerating gender parity. Significant activity is witnessed worldwide as groups come together to celebrate women's achievements or rally for women's equality.

Marked annually on March 8th, International Women's Day is one of the most important days of the year to:

- celebrate women's achievements;
- raise awareness about women's equality;
- lobby for accelerated gender parity; and
- fundraise for female-focused charities.

Today, 87% of companies are highly committed to gender equality – a huge increase from 56% in 2012. A commitment to equality often comes from senior leaders, management and male employees.

Workplace culture is also becoming more diverse and inclusive. Thanks to company-wide initiatives and strategies, employees are benefiting from equal opportunities to grow and advance both personally and professionally. A diverse workplace is self-reinforcing. If women and minority groups feel welcomed in a workplace, that workplace will attract further candidates who can make their own unique and value-adding contributions to the company.

More employers realise that inflexible working environments are driving away talented women from their companies who need to balance careers with family care. Employers are therefore coming up with solutions that include job sharing, part-time jobs, remote working, affordable childcare, paid family leave, and flexible start and end times. Companies are also striving to close the gender pay gap by empowering women to speak out against unequal pay, making women more aware of higher-paid roles, pushing against the damaging stereotype of gendered jobs – and, of course, by simply paying women fairly.

International Women's Day

International Women's Day is a time for us to choose to challenge and call out gender bias and inequality, as well as seeking out and celebrating women's achievements.

Companies are also realising the value of having more women in leadership. There's been an increase in female representation at executive level, which means women now have greater influence in shaping the business and culture of their company – hopefully for the better!

Employees are setting up and leading groups within companies that help support women and create a connected community of like-minded people that can help one another succeed.

Training and networking opportunities also help women in the workplace, as do mentoring programmes. Mentors in particular can act as role models that inspire, offer skills and experience, and open up professional networks. Despite leaps in progress, women are still underrepresented in the workplace, particularly women of colour, women with disabilities and LGBTQ women.

Many companies still need to understand that women's experiences are diverse and reach beyond gender, which requires personalised approaches to issues preventing career advancement. Strategies like unconscious bias training, target setting or metrics sharing are needed to overcome this unequal representation. But beyond tangible solutions, global mindsets also need to change for women to succeed in the workplace.

Making a positive change

Helen Whiteman, Chief Executive at the CIOT, shares her thoughts on how the tax industry can celebrate the achievements of women and help them thrive

This year's theme for International Women's Day on 8 March is Challenge to Change. Jane Ashton and I are delighted that the ATT and CIOT are celebrating this day with our members, students, volunteers and partners.

In this feature, *Tax Adviser* showcases the stories of four inspirational women who share their experiences of professional life in international tax, the challenges they have faced and their reflections on what needs to change. Please look out for our social media activity and follow the hashtags #challengetochange and #eachforequal where you will learn more from other organisations and people who are celebrating this day, worldwide.

Here at the ATT and CIOT we are committed, amongst other things, to:

- challenging the representation on our volunteer committees and panels through our Equality, Diversity and Inclusion committee;
- flying the flag for female speakers on our branches and events programme;
- developing more case studies of female members who will inspire the next generation; and
- celebrating achievements through our networks and on social media.

I hope that by the time you have read this article, showcasing the contributions of four international women in tax, you will be motivated to challenge to change!

See www.internationalwomensday.com for more information and ideas.

Opportunities for change

There are opportunities for each of us to challenge ourselves to identify at least one positive change we can make in support of our female colleagues, friends and family members. You might consider the following, which are suggestions from the International Women's Day website:

- Call out when you see or hear gender stereotypes or bias.
- Question and challenge all-male speaker panels.
- Mentor a woman and help her build her networks.
- Fly the flag for women amongst family and friends.
- Listen more openly to everyone, all genders.
- Respect and embrace difference.
- Notice gender representation on senior leadership teams.
- Reflect on how fair and equal your actions and comments are.
- Value women's contributions and achievements more.
- Be aware of bias and question assumptions that you make about women.
- Keep an open mind about equality and inclusion.

Cognitive diversity

Dilpreet K. Dhanoa, Barrister, Field Court Tax Chambers

This year marks the 112th anniversary of Women's Day being observed, and the 111th anniversary of it being recognised globally (or so historians can broadly agree). It provides serious pause for reflection in considering how far women have come in levelling out the playing field.

Tax is a rigorous discipline. It does not exist in a social vacuum; far from it, it pervades every aspect of our lives. For that very reason, I would argue that intellectual (or cognitive) diversity is even more important than any other diversity. Women should not be counted for the sake of statistics, but rather because of their expertise and ability to bring a different perspective. As a profession, it is intellectual diversity we should be striving for. It transcends distinctions and celebrates individuals for the uniqueness, expertise and perspectives that they bring to their work.

Importantly, intellectual diversity blurs the distinction between the various labels. It transcends the gender, race and any other debate on diversity. Tax is blind to these things. Demographic diversity can bring certain perspectives, but there is little use in such diversity if the thinking of those around the table is aligned one way. Real diversity can be achieved when the individuals around a table are respectful of one another, and importantly, have intellectual diversity that pushes and challenges the boundaries of the issues at hand.

Tax requires cognitive diversity, and the tax profession is actually quite good at bringing a range of disciplines (and as a result intellectually diverse people) together – be they lawyers, economists, accountants or policy-makers. It is this diverse approach and thinking in tax which means that very often the traditional labels can be set to one side. As women, we do face challenges in the workplace but this is not unique to tax. We have wonderful role models in individuals such as Professor Judith Freedman, Professor Rita de la Feria, Professor Tsilly Dagan, Dr Anzhela Cédelle, Dr Alice Pirlot and Emma Chamberlain OBE (to name but a few) – all of whom I have been very fortunate to have been taught by, and each of whom have really paved the way for young women in tax. In addition to these formidable women, it would be remiss to forget their male colleagues – many of whom provide this intellectual diversity and challenge to young men and women entering the profession.

My own chambers is a prime example: there is extraordinary diversity within a relatively small group of individuals, and the open-mindedness amongst members regularly results in healthy debates ensuing – reflective of a world in which labels are not decisive of whether you have a proverbial place at the table. The only ticket is meritocracy, genuine intellectual curiosity and a passion for tax (of course!). It is often said that the only colour the tax practitioner recognises is green (the dollar) so it is inherently a subject which accepts diversity. It is that diversity of thought, challenging and being challenged, and pursuit of true intellectual rigour that allows for labels to be set aside – and in that vein for women to succeed in tax.

Tools for success

Joanne Clarke, Tax Director (VAT), Pinsent Masons LLP

At this stage in my career, I am thankful that I feel confident enough to say that I am a highly technical, commercial and trusted tax advisor, although the journey was not always easy or the path clear! Looking back, I see a few key reasons why I was able to progress the way I have as a woman in tax and at a reasonably quick pace too.

Firstly, my technical ability. Instinctively, I would credit my CTA qualification for this as I feel it is a significant contributing factor for my success. However, my personal drive and amazing mentors were, without a doubt, key catalysts. My tax technical abilities often created opportunities for me to work on more interesting and complex projects and be given greater responsibilities. It also became apparent, as I relocated to the Middle East, that when you look at the tax profession as a whole globally, being a woman in tax with a professional tax qualification is a bit like Willy Wonka's Golden Ticket!

Secondly, a couple of years into my career in tax I learned that speaking up, having an opinion and sharing it was one of the greatest things that I could do to earn the respect of those around me, build trust and continue to develop my technical knowledge through healthy tax debates and discussions – even when my opinions challenged more senior colleagues' views or I was the only woman in the room! It is important to be seen and to be heard. I know this is not always an easy thing to do and my only words of wisdom would be to ensure that you have amazing people to support you and to give you the confidence you need.

Lastly, my emotional intelligence has served me well. Often, women can be perceived as 'too emotional' and therefore not acting professionally. While research does show that men and women are equally emotionally intelligent, women do tend to be better at emotional self-awareness, empathy, and so on. Personally, I was measured as highly emotional intelligent and I began to understand how important this was for a career in tax where relationships are of key importance to success. I have always tried to build trusted and respected relationships with others as I progressed through my career.

There have been many challenges I have faced along the way as a result of being a woman in tax – from 'boys clubs' and being the only woman in a room of 250 professionals, to realising that pay was not equal!

There are still a lot of steps to be taken to ensure equality in this industry, but I do feel that when we each individually put our own best foot forward and support each other, the obstacles are a little easier to push to one side to allow us progress!

Effort, dedication and support

Susana Bokobo, External Tax Expert, International Monetary Fund

When I started out 30 years ago in the world of taxes, and especially international taxation, I felt that I was stepping into an aggressive, competitive and male-dominated environment. In terms of inclusion of female professionals, it was certainly a difficult field to access for those who aspired to genuinely belong there while making a worthwhile and perhaps even lasting contribution. With the passage of time, however, many have managed to enter the profession, and some have left their mark. This is where my story begins.

I earned a Degree in Law from Universidad Autónoma de Madrid, where I also completed a PhD in Tax Law. As a tax law specialist, I later realised that I needed to increase my understanding of the economic aspects of taxation and so I obtained a Diploma in Accounting and Financial Management at the EAE School of Business.

After starting my career as a university lecturer, I took on a range of legal advisory roles in both the public and the private sector, first at the Ministry of Finance, then at the Supreme Court, and finally at a large multinational company.

The depth and breadth of this varied professional experience raised my professional profile to such a degree that I was appointed as a speaker and panellist at the United Nations and the OECD. But these achievements did not happen in a blink of an eye. They came after many ups and downs and, especially, as a result of great determination and never giving up. I should also mention the long working hours and frequent travel abroad (roughly 30 trips a year), which for a working mother can be somewhat problematic. Nevertheless, thanks to the unconditional support of my husband I was able to manage my domestic life and maintain a high performance at work without feeling (too) guilty.

This combination of effort, dedication and support led to my being appointed as a trusted tax advisor to the United Nations for the resolution of disputes and for natural resources in developing countries, and, most recently, joining the roster of the International Monetary Fund.

After all these years, if I had to describe my contribution in the international taxation arena, I would say there is a common thread running through the way I deal with people, situations and problems: seeking cooperation instead of confrontation and always offering a calm and balanced perspective to find the best solution for all concerned.

Capacity building in Africa

Belema Obuoforibo, Director, IBFD Knowledge Centre

I oversee IBFD's global editorial operations, covering our offices in Amsterdam, Beijing, Kuala Lumpur, and Washington. I am also a member of IBFD's Executive Board. I qualified as a Chartered Tax Adviser in 2004. Before joining IBFD in 2007, I worked for almost ten years at LexisNexis UK, where I was lead editor on the *Yellow and Orange Tax Handbooks*, and a tax writer on *Simon's Taxes*.

In addition to being a publisher of tax information, IBFD provides consultancy services to governments, particularly on tax treaties and domestic law reform. IBFD is frequently asked by governments to conduct capacity building training for staff of their tax authorities and finance ministries. Next to my current role at IBFD, I am involved in IBFD's capacity building work in Africa. I frequently lead teams to provide training to African government officials.

Over the past decade, African governments have increased their focus on tax policy and its role in economic development. Across the continent, governments have reduced their dependence on natural resources as their main source of revenue. Much attention has shifted instead to creating robust tax systems – old treaties are up for renegotiation, and domestic laws are being overhauled. This necessitates training in tax treaty policy, tax treaty interpretation and application, and domestic anti-avoidance rules. I have been privileged to play a role here, training tax officials from all over Africa.

My work in Africa gave me the idea of an annual Africa tax conference, targeted at African tax professionals, which would tackle cross-border tax issues from an African perspective. It would also be a vital platform for the African voice in the global debate on international tax reform.

And so, in 2015, IBFD launched the Africa Tax Symposium. The event has now become the premier African conference on international taxation. We host the Symposium annually in a different African country, and, so far, have held the event in five countries.

Through my work in Africa, I have seen up close the vital contribution that women make to the tax profession in Africa. For example, over the past 15 years, I have seen a marked increase in the number of women who are partners in law and accountancy firms. And, on the tax administration side, it is not uncommon to see women heading up large divisions of the revenue authorities. Some countries (Liberia, Nigeria, Uganda, Zimbabwe) have also appointed women as heads of their revenue bodies.

The story is not much different among the main thinktanks and policy making bodies on the continent. Women have played a key role in much of the influential policy work on African taxation, especially in current discussions on reforming international taxation. Our Africa Tax Symposium is notable for the high number of women experts on every panel.

I am impressed by these developments for women in Africa. I look forward to greater progress in the years ahead.

KEY POINTS

- **What is the issue?**
A trustee is the legal owner of assets in a trust fund, which they hold for the benefit of one or more individuals called beneficiaries. Ten of the most typical questions relating to the undertaking are set out below.
- **What does it mean for me?**
Legislation and case law set out the duties, responsibilities and powers of a trustee. Some of these can, however, be amended in the trust document, so you must be sure to read the trust instrument carefully and be sure you fully understand it.
- **What can I take away?**
As a trustee, you are responsible for reporting on and paying tax on behalf of the trust. You have to register the trust with HMRC once the trust becomes liable for tax and file annual returns.

How to be a trustee

Lauren Marlow and *Rachel Bevan* provide a simple guide setting out how to be a trustee

If you are appointed as a trustee, it is important to understand clearly the position you have accepted. Below we set out responses to ten typical questions that we are asked to provide a simple overview on how to be a trustee. This guide is not a substitute for legal advice on your specific circumstances.

1. What is a trustee and who can be one?

A trustee is the legal owner of assets in a trust fund, which they hold for the benefit of one or more individuals called beneficiaries. Trustees have a legal obligation to deal with the trust assets in accordance with the trust instrument.

In simple terms, anyone who has the capacity to hold property can be a trustee. It is possible to be both a beneficiary and a trustee, although this may not always be appropriate. A trust may have just professional trustees, just lay trustees or a combination of the two.

There are a few situations where people cannot act as trustees: a person who has been declared bankrupt; a person disqualified from acting as a company director; or a person convicted of any offence of dishonesty cannot be a trustee of a charity or pension fund. These individuals are not automatically excluded from acting in respect of a private trust but the appointment would be questionable as they may be deemed 'unfit'. In the event that the trust holds a British ship or an aircraft registered in the UK, then it would not be possible for a foreign national to be a trustee of that trust.

2. How do I become a trustee?

The initial trustees would typically be expressly appointed in the trust instrument and be a party to the deed. If the trust was established under a will, then the trustees may not necessarily be aware of the appointment in advance. It would be best practice for the testator to ask whether the individuals are willing to act at the time of making the will.

Subsequent trustees can be appointed by deed during the trust period. This may be required if a trustee dies, loses capacity or no longer wishes to act. It is also possible for the court to remove a trustee who fails to comply with their duties and responsibilities.

3. What should I do when I first become a trustee?

You should familiarise yourself with the trust and ensure that you have read and understand the trust documents. You should check whether any beneficial interests have changed and find out about the beneficiaries. You will also want to find out about the trust assets and confirm that they have been transferred to the trustees; this includes ensuring the ownership changes every time the trustees change. If the trust was in existence prior to your appointment, you will want to enquire as to whether there are any outstanding breaches by the existing trustees.

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4. What are my responsibilities?

Legislation and case law set out the duties, responsibilities and powers of a trustee. Some of these can, however, be amended in the trust document, so you must be sure to read the trust instrument carefully and be sure you fully understand it as you are under a duty to follow the trust instrument's terms.

It is important that you do not put yourself in a position where your own interests conflict, or there is a real possibility that they will conflict with those of a beneficiary. Likewise, you must act impartially between the beneficiaries and balance the competing interests, which may be particularly challenging when you have different beneficiaries entitled to capital and income.

You must keep clear and accurate accounts for the trust, as well as keeping records of the decisions taken. In making decisions, you must act unanimously unless the trust deed provides for decisions to be made by majority. If you disagree with other trustees in respect of the management of the trust, it may be necessary to apply to the court.

You owe a duty of care when exercising your powers as a trustee. This means that a trustee must exercise such care and skill as is reasonable in all the circumstances, having particular regard to any special knowledge or experience that you have. You also owe general duties of honesty, integrity and good faith to the beneficiaries.

This is by no means an exhaustive summary of your responsibilities.

5. What are my reporting obligations?

As a trustee, you are responsible for reporting on and paying tax on behalf of the trust. You have to register the trust with HMRC once the trust becomes liable for tax and file annual returns. The taxation of a trust is predominantly dictated by the structure of the trust but will also be affected by the decisions you make as a trustee. For example, if you decide to sell trust assets there may be a gain to declare or if you purchase property there will be stamp duty land tax to pay. In respect of a discretionary trust, there will be ongoing inheritance tax implications, including the need for the trust to be revalued every ten years; depending on the value of the trust, there will be a tax payment due.

As a trustee, you are personally liable for paying the tax and it is therefore vital that you ensure all the trust's tax obligations are complied with. You may wish to instruct an accountant to file the returns or a trust manager to ensure all requirements are met.

As a trustee, you are responsible for reporting on and paying tax on behalf of the trust. You have to register the trust with HMRC once it becomes liable for tax and file annual returns.

6. How should I handle requests from a beneficiary?

This will largely depend on what the request is for and who the beneficiary is.

If the trust is a discretionary trust, then no one within the class of beneficiaries has an absolute right to the trust fund; the distribution is solely at your discretion. This means that you can choose to appoint funds but can also quite rightly choose not to. You have a responsibility to consider the circumstances of each member of the class and you have a duty to act fairly but this does not mean that you have to treat each member of the class equally. On the other hand, it might be that the funds are held for a minor and you are approached

by the parent to fund school fees, for example, or the beneficiary may become entitled to the funds at 25 but has asked for money to purchase a house at 23. The decision there is whether the advancement of the funds is in the beneficiary's best interests as opposed to whether they should benefit at all.

If the request is for money, among other reasons you should consider:

- the reason for the request;
- whether there are sufficient funds to meet the request;
- whether such a request should be met from income or capital;
- what formalities are required; and
- the tax implications of giving the funds to the beneficiary.

A beneficiary may make a request for documents such as trustee meeting minutes, accounts, deeds or letters of wishes. Whether the document should be disclosed to the beneficiary largely depends on the type of document requested. If you receive a request from a beneficiary and are unsure whether you have to comply with it, it is important to seek legal advice.

7. What is a breach of trust?

A breach of trust will arise when you fail to comply with the duties imposed upon you. Typical situations include (but are not limited to):

- failing to invest trust funds appropriately;
- failing to distribute to the correct beneficiaries;
- making an unauthorised profit; and
- failing to take advice.

The position of trustee is one of personal liability and thus if you breach your duty the beneficiaries can sue you to restore the trust property or pay compensation for the breach. Being a trustee can be onerous but you can see why it is important to ensure that you act properly and seek professional advice when needed.

8. Will a trust feature in divorce proceedings?

When deciding how to exercise their discretion in order to achieve a fair outcome on divorce, the courts in England and Wales must consider 'the financial resources which either of the parties to the marriage has or is likely to have in the foreseeable future'. This will include trust interests, but exactly how the trust features will be fact specific.

A court will distinguish between absolute, contingent and discretionary entitlements. Be aware that with discretionary trusts, the court will look at how the trust has operated in practice, and how you, as trustees, have exercised your discretion in the past.

Irrespective of the nature of the trust interest, the provenance of the trust is key. Often, trusts are dynastic and pre-date the marriage, so (as with any gifted or inherited asset) will be considered 'non-marital' and therefore not subject to the 'sharing principle' in the same way that assets generated during a marriage are.

Where the court deems the trust to be a financial resource, on a practical level they might:

- make a 'judicious encouragement' order – an order that encourages the trustees to act in a certain way;
- offset: give the non-beneficiary spouse more of the non-trust assets; or
- adjourn the non-beneficiary spouse's capital claims, so they can make a claim at a later date.

A beneficiary may make a request for documents such as trustee meeting minutes, accounts, deeds or letters of wishes. If you are unsure whether you have to comply with a request, seek legal advice.

It follows that trustees need to be mindful during the operation of the trust as to how distributions are made. For instance, would it be better to loan funds to a beneficiary rather than advance them outright? If so, make sure the loan is properly documented and, ideally, secured.

It's common for spouses or future spouses to fall within a class of beneficiaries of a trust. Care needs to be taken not to create a 'nuptial settlement' which could then be prey to variation by the court. Variation might involve transferring assets out of the trust or changing the trustees. The definition of what constitutes a 'nuptial settlement' is not straightforward and advice should be taken.

9. As a trustee, what are my disclosure obligations in divorce proceedings?

Parties to divorce proceedings have a duty of full and frank disclosure when it comes to their finances. If one of those parties is a beneficiary under a trust, they will have a duty to disclose their interest to the other party and the court. The duty extends to information that is within their knowledge and control.

Trustees, on the other hand, are not parties to the marriage, nor (usually) to the divorce proceedings, and so are not duty bound to the court in the same way.

The rules regarding disclosure will be jurisdiction specific. For trusts in England and Wales, consider the following principles if you are faced with a disclosure request:

- As a trustee, you have a duty to all beneficiaries, not just the one getting divorced. Consider whether disclosure will impact upon any of them and weigh that into the balance.
- Being deliberately secretive might not ultimately help the beneficiaries. That could lead to the court making adverse inferences regarding the trust and the level of provision likely to be made from it.

If you do not co-operate with disclosure requests, the opposing spouse might seek a disclosure order or summon you as a witness. Alternatively, they might apply for you to be joined as a party to the proceedings (which would bring you under the jurisdiction of the court). Trustees should take independent advice on their positions before engaging with such requests.

If the trust is based offshore, it's vital to take local advice before acknowledging any correspondence from the English court or engaging in the proceedings in any way. In some jurisdictions, you will need to seek directions from the trust's local court before making any disclosure, to protect yourself against claims from the other beneficiaries.

10. I'm concerned about the beneficiary's spouse or partner making a claim against funds advanced from the trust. Is there a way to protect funds that have been distributed to a beneficiary?

Trusts are often used to protect wealth and can be used in conjunction with other wealth protection strategies. (A word of caution on this though: if the court deems that assets have been transferred into the trust with the main objective of defeating the other party's claims, it has the power to set aside the transaction.)

Before making distributions, always check the relationship status of the beneficiaries and take advice accordingly. Pre- or post-marital agreements can be a very effective way of ensuring that trust assets and other inherited wealth are protected from divorce. This process can take months to do properly, so early advice is key.

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Deferral of retirement benefits

Mike Bonner-Davies and *Seamus Murphy* consider some potential inheritance tax implications for FURBS and EFRBS following the *Parry* case

KEY POINTS

- **What is the issue?**
Funded unapproved retirement benefit schemes (FURBS) and funded employer-financed retirement benefit schemes (EFRBS) are unapproved pension schemes that were funded with employer contributions. The *Parry* case has raised some potential inheritance tax implications.
- **What does it mean for me?**
While the focus of this article is on FURBS and EFRBS, similar issues may arise for unfunded unapproved retirement benefit schemes (UURBS) and international pension plans (IPPs).
- **What can I take away?**
Individuals deferring retirement benefits from FURBS or EFRBS should give serious consideration to whether the application of the decision in *Parry* could see inheritance tax charged on the value of the pension fund when they die and, if so, what remedial action might be taken.

Funded unapproved retirement benefit schemes (FURBS) and funded employer-financed retirement benefit schemes (EFRBS) are unapproved pension schemes that were funded with employer contributions. Generally speaking, FURBS were funded prior to 6 April 2006 and EFRBS thereafter.

Both tend to be trust-based arrangements where the trust deed sets out the powers and obligations of the trustees and the plan rules set out the members' entitlement to benefits, the precise terms of which will be relevant to the ultimate inheritance tax position.

As we are focusing on inheritance tax, we have not delved into the nuances of how other taxes may apply to FURBS and EFRBS, most notably income tax, but suffice to say that the analysis can in some cases be complex. For present purposes, we adopt a very broad-brush approach:

- UK FURBS follow the taxed, taxed, exempt (TTE) approach. The member was most likely assessed to income tax on the employer contributions to the FURBS and the trust pays tax on its investment income and gains. This should allow a UK tax resident member to access retirement benefits as an income tax free lump sum (but retirement benefits structured as pensions remain chargeable to income tax).

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- UK funded EFRBS follow the exempt, taxed, taxed (ETT) approach. For employer contributions between 6 April 2006 and 5 April 2011, the member would probably not have been taxed on those contributions. The trust pays tax on its investment income and gains. A UK tax resident member would be chargeable to income tax on their retirement benefits at their marginal rate.

HMRC v Parry and others

In the case of *HMRC v Parry and others* [2020] UKSC 35, the facts were as follows. Shortly before her death, Mrs Staveley ('the deceased') transferred funds from her existing pension scheme to a personal pension. She did not take any retirement benefits from the personal pension during her life and so a death benefit became payable when she died. The deceased had nominated her two sons as beneficiaries, subject to the discretion of the pension scheme trustees, and after her death the death benefit was paid to them.

HMRC determined that inheritance tax was due, on the basis that both the transfer of funds to the personal pension, and Mrs Staveley's omission to draw any benefits from the plan before her death, were lifetime transfers of value within Inheritance Tax Act 1984 s 3.

In the case of the transfer of funds, the Supreme Court held that, on the facts, there was an absence of gratuitous intent which precluded an inheritance tax charge.

In the case of Mrs Staveley's omission to draw benefits before her death, however, the Supreme Court agreed with HMRC that Inheritance Tax Act 1984 s 3(3) was engaged and that inheritance tax was due.

Inheritance Tax Act 1984 s3(3)

By way of recap, s 3(3) applies when:

- there is an omission to exercise a right by a person;
- the value of that person's estate is diminished as a consequence; and
- the value of another person's estate (or settled property) is increased as a consequence;
- unless it is shown that the omission was not deliberate.

Where s 3(3) is engaged, the omission is treated as a disposition made at the very last moment at which the right in question could have been exercised. As s 3(3) treats an omission as a disposition, it appears – at least based on the discussion in *Parry* – that s 10 (dispositions not intended to confer gratuitous benefit) might apply if the relevant conditions are met.

In the *Parry* case, it was common ground (so not discussed on appeal and with only limited discussion at the First-tier Tribunal) that the omission to take benefits from the personal pension decreased Mrs Staveley's estate. The Supreme Court decided that the increases in the sons' estates (due to receipt of the death benefits) were a consequence of the omission. This was held to be so notwithstanding the discretion afforded the trustees regarding who would receive the funds. And as it was not shown that the omission was not deliberate, s 3(3) was therefore judged to have been engaged.

Section 10 was considered not to exclude the omission from being a transfer of value because the deceased had, as at least one motivating factor, the intention to increase the death benefits. As a consequence, inheritance tax was due.

What does this mean for FURBS and EFRBS?

As the discussion above sets out, the analysis of s 3(3) turns firstly on the rights involved. Therefore, it is critical to understand the rights under a FURBS or EFRBS and the points in time at which they crystallise.

FURBS and EFRBS are trust-based arrangements, often with bespoke plan rules which can vary from one scheme to the next. This means that the specifics of the rights involved vary from scheme to scheme and so it is necessary to consider each on its own merits.

That said, a not unusual example might be a right to a pension at retirement (as defined in the deed, which

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can vary) with the fund balance to provide death benefits, but with the option of exchanging the pension entirely for a lump sum (and probably nil balance for death benefits).

A member seeking to draw a smaller pension than stipulated (if allowed) or defer a pension, or opting not to elect for a lump sum, may wish to consider the risk of s 3(3) applying. Of course, the risk depends on a wide range of factors. Deferring benefits while still working at age 55 (say) might be distinguished from *Parry* in the event of an untimely death on the basis that the member intended to draw benefits at a later date and had no gratuitous intent towards another.

However, a continual deferral of benefits at age 80 (say) would, based on *Parry*, appear to be within s 3(3) and might carry a higher risk, depending on the facts. There might be reasons for such a deferral to engage s 10, but again it would turn on the facts and the evidence that could be provided to support those facts, which may in turn also be viewed with some element of hindsight.

Deferring retirement benefits specifically with the intention of increasing the death benefits payable could be problematic. As to the matter of intention, it is worth noting that in *Parry*, professional advice to the deceased was adduced as evidence to help establish what the deceased's intentions may have been in deferring benefits.

Finally, while UK registered pension schemes have been specifically protected from s 3(3) in recent years, HMRC's manuals explicitly make the point that FURBS and EFRBS remain within scope. (Generally, UK registered pension schemes, QNUPS or Section 615 schemes are not within the scope of the 'omission to exercise a right' test in IHTA 1984 s 3(3) as a result of s 12(2ZA) and s 12A inserted in 2011 and 2016 respectively. The Supreme Court's judgment in Parry does not change this.)

It might be argued that in the case of a trust-based arrangement, the increase in another's estate does not flow from any omission but from the trustees' discretion. A similar argument was advanced in *Parry* that the sons' estates were not increased by the omission but rather by the trustees' discretion in deciding to pay the death benefits to them. While practitioners may find this surprising, the Supreme Court ultimately found in HMRC's favour on this point, stating that it did 'not see the limited discretion of the scheme [trustee] as breaking the chain connecting the two events'; i.e. the omission and the [resulting] increase in the sons' estates.

In certain cases, it might be argued that a particular FURBS or EFRBS was distinguishable on the facts from those of *Parry*, and so the same reasoning should not necessarily follow. However, such an argument would be likely to require a tribunal hearing to resolve.

What should FURBS and EFRBS members think about?

There may be a perception that the accumulated pension fund in a FURBS or EFRBS is a long-term inheritance tax 'efficient' arrangement. However, the decisions that a member makes in respect of retirement benefits may mean that this is not so. In some cases, the whole fund may be challengeable under s 3(3).

A decision to defer benefits at age 55 (say) might be demonstrable to fall outwith *Parry* in the event of an untimely death. However, as time goes by, a continued decision to defer benefits may become less clear cut – and it is important to bear in mind that the facts will be viewed only after death and will be largely shaped by what can be evidenced. If a member dies at age 80 (say) having never drawn benefits, the obvious question is 'why not?'

Members may therefore feel it worthwhile to consider their long-term objectives and plans vis-a-vis any FURBS and EFRBS entitlements. If there is a possibility that benefits will be deferred indefinitely, then there may be other options for them aside from suffering the s 3(3) risk. If the death benefits were to go to adult children, for example, then thought might be given to withdrawing all the funds now (with potentially no income tax) and making lifetime gifts. If the member has philanthropic ambitions, the funds could be withdrawn and donated to charity. Or if there are business ventures of interest, it could be withdrawn and invested in a business which qualifies for business property relief.

The point is that there may be other life goals which can be achieved while at the same time removing any s 3(3) risk, so there is merit in thinking about it now. Naturally, these areas should be looked at in the round and inheritance tax will be only one consideration, but the important point following *Parry* is not to assume that the position will be straightforward.

It is also worthwhile exploring exactly what rights are conferred under any FURBS or EFRBS, which will usually involve reviewing the trust deed and plan rules. Some plan rules may be vague on certain points, such as when rights crystalise. For example, some deeds specify that the member cannot draw benefits until they have ceased to work but may not clarify whether that means working with the sponsoring employer or working more generally. It may be unclear whether remaining on as a part-time consultant would be sufficient. Some members may have rights which have already crystallised and of which they are unaware.

With all arrangements, it is necessary to look carefully at both the facts and the nature of the rights, and to consider carefully what could be within the scope of inheritance tax for both the individual and the trustees.

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Reasonable care and excuse

Kugan Panchalingam and *Justin Cobb* consider what the terms reasonable care and excuse mean in practice

KEY POINTS

- **What is the issue?**
HMRC has the right to assess penalties where an individual has failed to give notice of chargeability to tax or where a tax return already submitted contains an inaccuracy.
- **What does it mean for me?**
Penalties can be significant, especially for offshore failures. It is important to consider whether the taxpayer can successfully demonstrate that they have a reasonable excuse, or have not been careless, for their failure to disclose income and gains.
- **What can I take away?**
It may be in the best interest of the taxpayer to consider an independent review and alternative dispute resolution if appropriate. Each case should be reviewed on its own merits.

Since the introduction of the Requirement to Correct (RTC) legislation and the ongoing development of worldwide automatic exchange of information systems, advisers have been receiving unprecedented levels of enquiries from individuals.

Often, it is a simple case of the taxpayer not having reported bank interest. The figures tend to be insignificant in the taxpayer's overall context and cases are quickly disclosed and agreed. At times, however, the offshore structure and the history leading up to the non-compliance can be very complex.

Penalties as applied to onshore and offshore matters can be substantial. It is therefore important to consider whether the taxpayer can successfully demonstrate that they have a reasonable excuse, or have not been careless, for their failure to disclose income and gains, irrespective of whether this relates to offshore or onshore matters.

This article considers what exactly these terms mean and how they operate in practice.

The principles

Penalties may be assessed where an individual has failed to give notice of chargeability to tax or where a tax return contains an inaccuracy. In the case of a failure to notify, HMRC can assess up to 20 tax years, even if the behaviour that led to the delinquency was not deliberate or fraudulent. This is reduced to four tax years where the individual has a reasonable excuse for a failure to notify HMRC.

Where the individual has already been filing tax returns but those returns contain errors, HMRC's ability to assess tax is again driven by the behaviour of the client, and are as follows:

- Failure despite having taken reasonable care: four tax years;
- Carelessness: six tax years; and
- Deliberate and/or concealed: 20 tax years.

In relation to offshore matters, the failure to notify penalties, and penalties in respect of an inaccuracy can range from 0% up to 200% (depending on the country involved, the length of time that has elapsed and behaviour, etc.). Penalties can be limited to 0% and the time period can be reduced to four years where the taxpayer can prove a reasonable excuse for the failure to notify, or reasonable care in preparing tax returns.

Under the Requirement to Correct legislation, any delinquency in relation to the tax years 2015/16 and earlier involving offshore matters or transfers generate automatic penalties of 200%, which can be reduced to between 100% and 150% in some cases.

Although reasonable care and excuse appear to be very simple words, it has been found on many occasions that HMRC's interpretation can be narrow.

Reasonable excuse and care: HMRC's interpretation

The legislation does not define these terms, meaning they should be interpreted in plain English. HMRC in its Compliance Handbook (CH26340) provides its view:

> 'HMRC considers reasonable excuse to be something that stops a person from meeting a tax obligation despite them having taken reasonable care to meet that obligation. It is necessary to consider what a reasonable person, who wanted to meet their obligation, would have done in the same circumstances and decide if the action of the person met that standard as outlined by Judge Medd in *The Clean Car Company* (LON/90/138X).
>
> '"One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations

regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?"

'Whether a person has a reasonable excuse will depend on the particular circumstances in which the failure or obstruction occurred and the abilities of the person who has failed. What is a reasonable excuse for one person may not be a reasonable excuse for another person.'

HMRC's definition of 'carelessness' is the failure to take 'reasonable care'. HMRC guidance (CH81140) states:

> 'People do make mistakes. We do not expect perfection. We are simply seeking to establish whether the person has taken the care and attention that could be expected from a **reasonable person taking reasonable care in similar circumstances**, taking into account the **ability and circumstances of the person in question** at the time the irregularity was submitted to HMRC.' (author's emphasis)

Very wealthy individuals often rely on professionals to help them manage their affairs; for example, in wealth management and tax compliance. Their appointed advisors may have a deeper understanding of their clients' affairs than the clients themselves.

Errors can still occur, however. For example, in the case of a US Family Office managing the affairs of a wealthy American individual who resides in the UK. The tax returns may be prepared by a UK firm. Perhaps, due to the unfamiliarity in the US with the concept of remittance basis taxation, inadvertent remittances may occur either through direct remittance of tainted funds or accidental use of credit cards being paid from unremitted income and gains. The UK tax advisor may have failed to ask the right questions, leading to incorrect assumptions.

When an error has occurred, can it be said that the client has taken reasonable care by having relied on a third party? HMRC guidance says: 'A person cannot simply appoint an agent and deny responsibility for their tax affairs. The person still has a duty to take reasonable care, within their ability and competence, to make sure that what they are signing for is correct.' This point has not been tested before the tribunals, but clearly HMRC would not agree with complete reliance on others.

There is also a difference between HMRC's general guidance on reasonable care, and the Requirement to Correct guidance. This is because the law in this area specifically sets out circumstances which do not amount to a reasonable excuse. The law (and thus HMRC's guidance) states that reliance on any other person to do anything cannot be a reasonable excuse 'unless you took reasonable care to avoid the failure'.

HMRC's guidance states that it would treat each case on its own merits and take into account the experience, ability and background of the individual. In practice, we have rarely found this to be HMRC's approach.

Reasonable excuse and care: court interpretation

In some cases, HMRC's approach may appear to judge a taxpayer's actions based on how they perceive or expect an ordinary person would have acted. Factors such as age, background and proficiency appear to play very little importance.

In the case of *Perrin v HMRC* [2018] UKUT 156, HMRC contended that an 'unexpected or unusual event' is required before there can be a reasonable excuse. However, the Upper Tribunal judgment said: 'It is regrettably still the case that HMRC sometimes continues to argue that the law requires any reasonable excuse to be based on some "unforeseeable or inescapable" event... It is quite clear that the concept of "reasonable excuse" is far wider than those remarks implied might be the case.'

The Upper Tribunal established principles to determine whether a taxpayer has a reasonable excuse:

1. Establish the facts that the taxpayer asserts give rise to a reasonable excuse.
2. Decide which of those facts are proven.
3. Decide whether, viewed objectively, those proven facts do indeed amount to an *objectively* reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should consider the experience and other *relevant attributes* of the taxpayer and the *situation* in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question: 'Was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?'
4. Having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased).

Summary

Each case should be reviewed on its own merits. Fundamentally, HMRC should be requested to put itself in the taxpayer's shoes to assess reasonable excuse. Where appropriate, consideration should be given to an independent review and alternative dispute resolution. In a few cases, taxpayers may need to take their dispute to the tribunal.

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Re-sculpting the tax landscape

Rob Mander considers how e-commerce is transforming the global tax landscape and the real estate sector

KEY POINTS

- **What is the issue?**
The global e-commerce industry is expected to grow at an incredible rate over the next few years. The OECD has predicted that global business-to-consumer e-commerce sales would reach $4.5 trillion by 2021, a quarter of those being cross-border transactions.
- **What does it mean for me?**
We are already seeing several countries implement new tax initiatives to try to ensure a level playing field for businesses both inside and beyond their borders.
- **What can I take away?**
2021 will see these changes begin to solidify as the industry finds a new equilibrium and governments establish new systems and reform old processes to re-sculpt the current tax landscape.

Since the 1950s, international trade and travel have increasingly become a familiar part of our everyday lives, and innovations in technology have meant that borders are less of a barrier than ever. While the digitalisation of global commerce was already gathering pace, the Covid-19 pandemic has undeniably accelerated the shift from conventional brick and mortar businesses to online services. This comes as more consumers are now inclined to shop online to reduce their exposure to Covid-19.

Businesses that have been forced to close their physical shops due to national lockdowns and governmental restrictions have had to quickly adapt and move their services online to ensure continued sales. As a result, the global e-commerce industry is expected to grow at an incredible rate over the next few years. In fact, in 2019 the OECD predicted that global business-to-consumer e-commerce sales alone would reach $4.5 trillion by 2021, a quarter of those being cross-border transactions (see bit.ly/3akxymN). By 2022, the OECD forecast that approximately 2.2 billion individual consumers will buy goods and services online, close to a 40% increase from 2020 estimates.

An evolution of our high streets

While we are certainly going through a period of immense change, the retail sector is steeped in a history of 'creative destruction' which has made it incredibly resilient in times of upheaval. That said, several countries are arguably 'over-retailed', which has naturally led to an oversupply of stores and shopping centres in the retail real estate sector. Weak consumer demand and the complexities of innovating their online service to offer support to retail sales has seen the last decade take its toll on the retail sector.

In the UK, the first half of 2020 saw 11,120 store closures occur across the country, with even more on the horizon as the pandemic continues (see bit.ly/2MJOmvm). Meanwhile in the US, there were more than 5,800 closures in 2018 increasing to 9,300 in 2019, indicating the growing trend of moving away from bricks and mortar stores to online enterprises.

However, it is important to remember that diversified or omni-channel bricks and mortar businesses still hold their place in the market. While e-commerce growth is faster than retail, it still only constitutes just over 14% of total global retail sales and analysts only expect this to increase by 2% a year through to 2023. Recent findings from the OECD (see bit.ly/36vZGSy – October 2020) show that while the likes of Amazon thrived, there are indications that many other companies benefited from having large bricks and mortar stores that facilitated easy click and collect options and quick doorstep delivery.

As a result of the pressures of consumer demand, we can expect to see retail real estate gain momentum as it transforms to meet societal needs. Indeed, there are already examples in the US and Australia, where malls and empty shop spaces are being transformed into inner city warehouses and distribution centres to support the growing e-commerce industry. Meanwhile, in Japan the first steps have

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begun to transform an entire shopping mall into a hospital to meet the growing demand for hospital beds during the pandemic. It is this innovation, coupled with real need, that will see these spaces reimagined.

E-commerce: the impact on tax initiatives

With any large-scale economic change comes the question of how tax systems will react. We are already seeing several countries implement new tax initiatives to try to ensure a level playing field for businesses both inside and beyond their borders. At the same time, the past decade has seen governments considering the revenue produced by an increasingly digitalised economy, to ensure that digital corporations pay tax in regions where they conduct business but do not have a physical presence. The most notable examples of this are the EU's efforts to establish a new e-commerce VAT package, and the OECD's ongoing attempt to forge a universal global digital services tax initiative. However, the slow progress of international conversations, competing national interests and reluctance to compromise has seen many countries implement their own unilateral digital services tax, including the UK, Spain, Poland, Italy, France, Kenya and Australia. These unilateral taxes have prompted debate about incidence of tax – which constituency ends up bearing taxes levied on a corporation. Unsurprisingly, digital companies – like all others – will reflect taxes in their charges to consumers, advertisers and other content providers.

The added pressure of Covid-19 has served to delay global initiatives at a crucial moment, while also seeing the very firms they aim to target continue to grow their revenue. While the implementation of the EU's e-commerce VAT package has been delayed until July 2021, the OECD's discussions have also stalled until mid-2021, resulting in implementation being unlikely to occur before 2023. This paradoxical collision of global crisis and delays as digital services continue to surge in use will inevitably have a knock-on impact on the global economy for years to come.

The challenge therefore is to implement these initiatives in a way that will help to transform procedures and systems, allowing the digitalisation of our economies to continue to flourish while also providing opportunities for businesses with physical presence (often smaller and local) to compete with digitally focused enterprises, such as Amazon and Google.

VAT: EU cross-border e-commerce package

In a step to modernise VAT for cross-border e-commerce within Europe, the EU's new package promises to simplify the VAT process and reduce the administrative burden on EU businesses. When the initiative comes into effect in July 2021, businesses within the block will be able to report all distance sales of goods through a single one-stop shop (OSS) declaration, there will be no more thresholds, and the VAT exemption for suppliers outside the EU will be abolished in order to level the playing field.

Despite the changes being postponed for six months to ensure that all countries have ample opportunity to prepare, the increased digitalisation of the system and radical changes to a framework that has been thoroughly established over decades is likely to bring about protests from many over the coming months. The Netherlands and Germany have already indicated that their digital infrastructure will not be ready for these changes and have requested a further reprieve until 1 January 2022. Change was never going to be easy, but it is important that all EU countries best prepare themselves for the new rules by July.

Alongside tax reform, the EU also presented proposals in December 2020 outlining a new Digital Markets Act (see bit.ly/3aVdsj6). With this move, the EU is seeking to hold multinational businesses to account while boosting digital competition. Should these measures come to fruition, the digital platforms will have new obligations on their EU business, facing levies of up to 10% of their global revenues if they fail to comply.

Brexit: UK tax obligations are complex

Adding to these international issues, the UK's exit from the EU's Single Market and Customs Union on 1 January 2021 has created many additional challenges from an indirect tax perspective, particularly in the area of e-commerce. This comes as additional paperwork and customs declarations are required for goods being imported into the UK.

However, the UK government can be seen to have used Brexit as an opportunity to introduce new requirements to deal with VAT on goods sold to customers in the UK using online marketplaces. From January 2021, consignments of goods with a value of £135 or less that are from outside the UK and sold through an online marketplace to customers in England, Scotland and Wales will have UK VAT charged at the point of sale. The £135 limit will apply to the value of a total consignment that is imported, not the separate value of individual items that are in a consignment.

These measures will result in online marketplaces becoming liable for VAT on the goods sold on their platforms, with the exception that if these goods are being sold from Northern Ireland to a Northern Ireland customer the seller remains liable for VAT. Online marketplaces will also be liable for the VAT on goods of any value that are located in the UK at the point of sale and sold by an overseas business through an online marketplace.

For consignments valued at more than £135, import VAT will now apply to consignments arriving in the UK from the EU. To confuse matters even further, as Northern Ireland has remained in the EU Customs Union, the EU distance selling rules will continue to apply for ecommerce sales of goods from the EU to customers in Northern Ireland.

Leaving the EU has also significantly impacted UK online businesses selling to EU customers, with the additional paperwork and friction creating significant disruption and delay at the UK/EU borders. These new rules and requirements pose a major headache for both EU and non-EU operators of online marketplaces selling to consumers in the UK, with many operators now either having to register for VAT in the UK for the first time or, alternatively, closing their websites to UK customers to avoid the additional administration and compliance costs.

Conclusion

The last 12 months have seen the e-commerce sector experience a period of intense and sudden growth as businesses have sought to adapt in order to retain a sense of normality as the pandemic swept through communities across the world. Looking ahead, 2021 will see these changes begin to solidify as the industry finds a new equilibrium and governments establish new systems and reform old processes to re-sculpt the current tax landscape.

PROFILE

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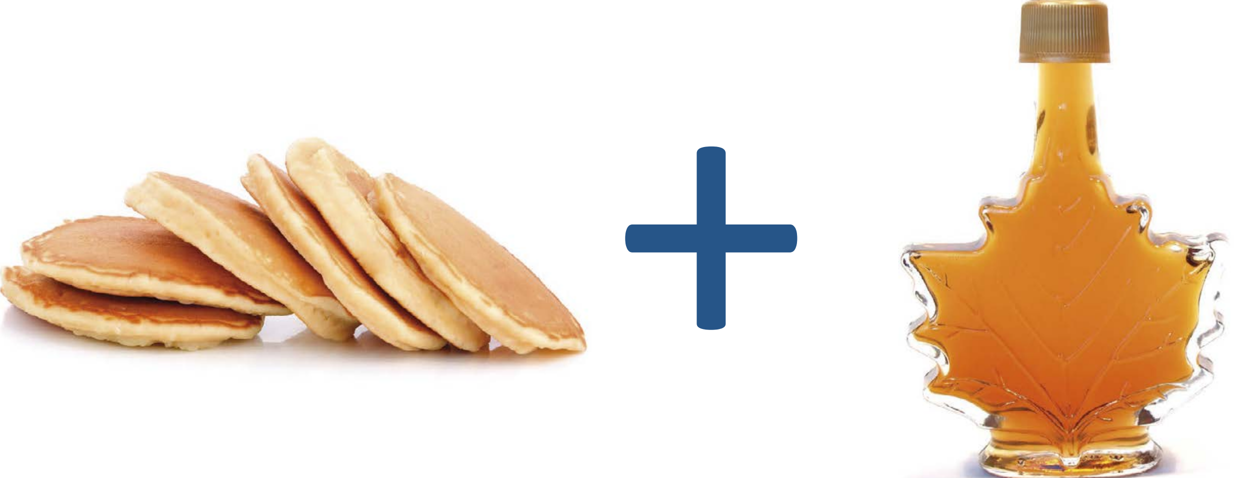
BETTER TOGETHER



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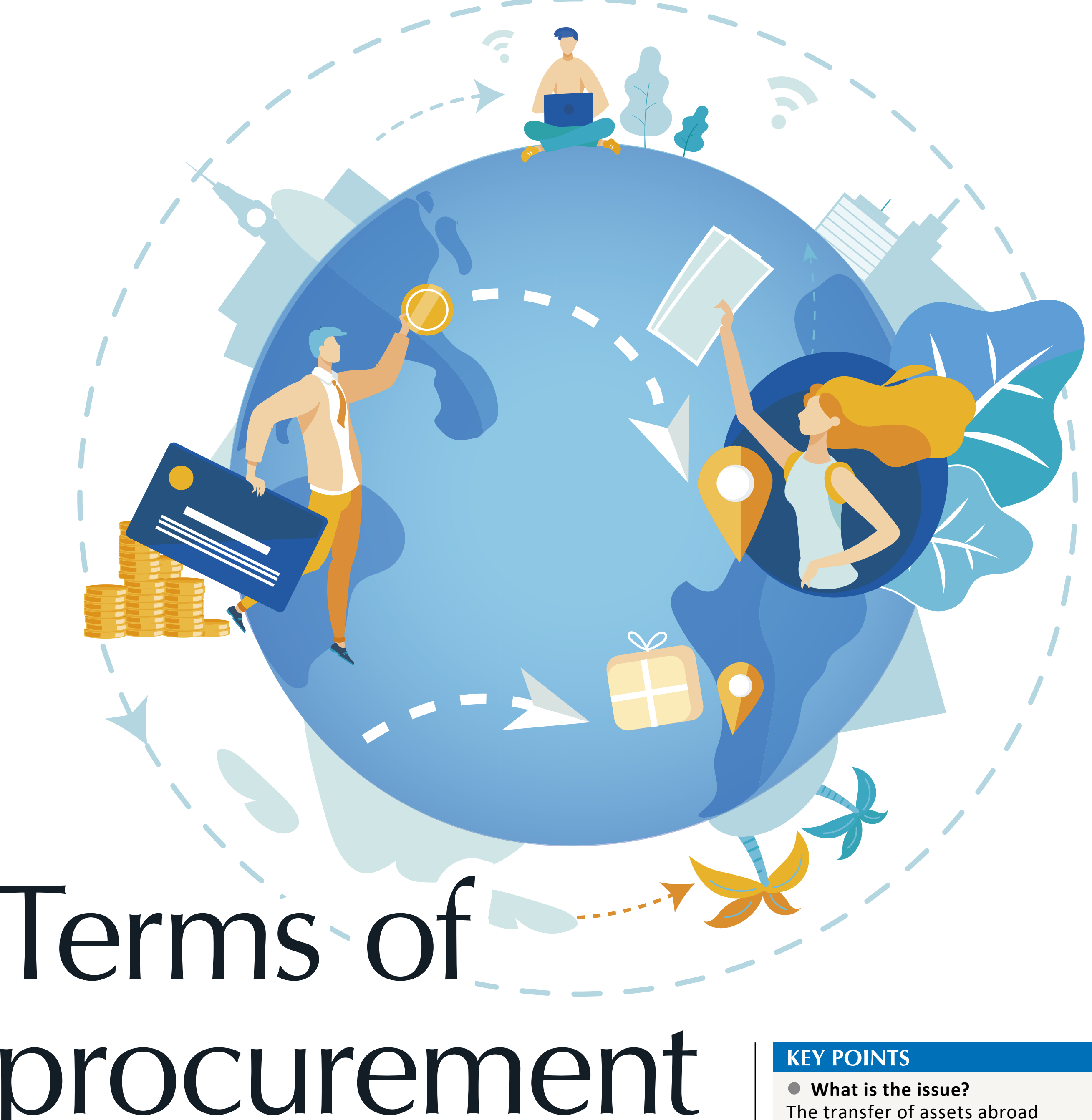

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Terms of procurement

Keith Gordon looks at a case which considers the scope of the transfer of assets abroad legislation

The transfer of assets abroad (TAA) legislation is one of those long-established anti-avoidance provisions that should never be overlooked. However, as it comes up quite rarely in practice, it is easy for advisers to lose sight of the rules.

There are currently three strands to the TAA legislation:

- charging income accruing to persons abroad;
- charging the receipt of capital sums; and
- bringing benefits received from persons abroad into the charge to tax.

This article focuses on the first of those provisions, which lay at the centre of the recent case of *HMRC v Rialas* [2020] UKUT 367 (TCC).

This provision can be best explained by reference to an example of the mischief which the rules were designed to frustrate, although it must be emphasised that this is only an example and other scenarios fall squarely within the rules. The example is of a UK resident taxpayer who owns an income-generating asset. The UK resident is not in need of the income being generated and tries to take steps to avoid

KEY POINTS

- **What is the issue?**
The transfer of assets abroad (TAA) rules impose a charge in circumstances where an asset has been transferred and, as a result of the transfer, income has become payable to a person abroad.
- **What does it mean for me?**
The *Rialas* case considers the question of to what extent is it necessary for the individual who might be liable to income tax under the rules to be involved in the prerequisite transfer of assets.
- **What can I take away?**
The *Rialas* decision represents a welcome endorsement of a more limited scope of the TAA rules, contrary to the position currently being pursued by HMRC. However, we must await the Court of Appeal's consideration next year.

paying tax on this income. A simple strategy (blocked by the TAA rules) would be to transfer the asset to an offshore entity (say, a company), allowing the income to accrue overseas.

Such a strategy is rendered ineffective by the TAA rules. These will impose a charge on the income paid to a non-resident in circumstances where an asset has been transferred and, as a result of the transfer (and/or one or more associated operations), income has become payable to a person abroad. Where the legislation applies, the income actually arising to the person abroad is treated as accruing to a person who has 'power to enjoy' (as defined) that income. In the above example, being a shareholder in the overseas company can satisfy the 'power to enjoy' test and therefore potentially bring the income of the person abroad back into the charge to UK tax.

The *Rialas* case considers the question of to what extent is it necessary for the individual who might be liable to income tax under the rules to be involved in the prerequisite transfer of assets.

The facts of the case

At the relevant times, Mr Rialas was both resident and ordinarily resident in the UK. He was domiciled outside the UK.

Mr Rialas was the 50% shareholder in a company, Argo, that carried on business as a fund manager. The other 50% was owned by a Mr Cressman.

Mr Rialas and Mr Cressman were minded to sell Argo's business to a third-party purchaser. To reflect the purchaser's preferences, Mr Cressman agreed first to sell his shares in Argo to Mr Rialas, who would then effect a share-for-share transaction with the purchaser. This was in the end structured by Mr Rialas establishing a non-resident company, Farkland, which would be wholly owned by a Rialas family trust. Farkland would then purchase Mr Cressman's shares in Argo, together with those owned by Mr Rialas directly.

Mr Rialas was actively involved in the establishment of Farkland and, for example, in ensuring that Farkland was able to obtain funds to finance the purchase of Mr Cressman's shares.

Prior to the third party's purchase of the shares in Argo, Argo declared and paid an interim dividend, half of which went to Mr Rialas, with the other half being paid to Farkland (i.e. in accordance with the shareholdings at that date).

There was no dispute about Mr Rialas being liable to tax on the dividend income paid to him directly. However, HMRC took the view that Mr Rialas was also liable to tax on the dividend as paid to Farkland, such liability arising as a result of the Transfer of Assets Abroad legislation.

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On Mr Rialas's appeal to the First-tier Tribunal, the First-tier Tribunal concluded that Mr Rialas had not effected a relevant transfer of assets and was therefore not liable to tax under the rules. In other words, whilst there was undoubtedly a transfer of assets abroad (the sale of the Argo shares to Farkland), that transfer did not bring Mr Rialas within the scope of the rules. HMRC appealed against this decision to the Upper Tribunal.

> **The TAA rules will impose a charge on the income paid to a non-resident where an asset has been transferred and, as a result, income has become payable to a person abroad.**

The Upper Tribunal's decision

The case came before Mr Justice Meade and Judge Jonathan Richards.

HMRC put forward two arguments to support its position. First, although it acknowledged that it was Mr Cressman who was the immediate transferor of his Argo shares to Farkland, HMRC took the view that Mr Rialas's activities behind the scene meant that he was sufficiently involved in the process to be caught under the rules. HMRC's alternative argument was that the relevant transfer abroad was Mr Rialas's payment of the 10 Cypriot pounds (C£) used to establish the trust in the first place. HMRC argued that the subsequent incorporation of Farkland and its purchase of the Argo shares amounted to associated operations so as to bring Mr Rialas within the scope of the TAA rules.

The Upper Tribunal's analysis considered the main cases that have looked at these rules; in particular, the respective decisions of the House of Lords in *Congreve v IRC* (1948) 30 TC 163 and *Vestey v IRC* (1979) 54 TC 503. It was common ground that *Vestey* had partly reversed the effect of the *Congreve* case. The net effect of the two decisions is that the rules require the taxpayer to have been either:

1. the actual transferor; or
2. a person who procures the transfer abroad.

What amounts to 'procuring' for these purposes has been considered in subsequent cases, notably *IRC v Pratt* [1982] STC 756 and, most recently, *Fisher v HMRC* [2020] UKUT 62 (TCC). In *Pratt*, Walton J emphasised that procuring amounted to more than merely having a hand in, or being associated with, the transfer. In *Fisher*, the Upper Tribunal even queried the appropriateness of the term 'procure', given that it is not actually part of the statutory test. Ultimately, the Upper Tribunal (in *Fisher*) emphasised the importance of there being:

> 'some proper basis for ascribing the acts of the person transferring the assets to the individual concerned and treating him as being responsible for the transfer as if he had carried it out himself.'

Indeed, as the Upper Tribunal continued in *Fisher*:

> 'If the individual has no influence over what the actual transferor does with the assets, there is no good reason why he should be treated as the "real" transferor.'

In other words, merely playing some part in the transfer is not sufficient.

The Upper Tribunal in the present case recognised that the precise boundary remains unclear because of uncertainties as to the extent to which *Vestey* overruled *Congreve*. Nevertheless, it was content with the approach adopted in both *Pratt* and *Fisher*. This was particularly important because HMRC argued that Mr Rialas was the only serious contender for the purchase of Mr Cressman's shares and therefore he must have been, for want of a better word, the person procuring the transfer. However, the Upper Tribunal noted a finding of fact from the First-tier Tribunal's decision which made clear that 'Mr Rialas had no control over whether

Mr Cressman sold his shares'; and similarly decided that the First-tier Tribunal's findings did not support the suggestion that 'Mr Rialas was so responsible for Mr Cressman's transfer of shares so that he should be treated as if he had carried it out himself'. As a result, the Upper Tribunal rejected HMRC's first line of argument.

The Upper Tribunal rejected HMRC's second line of argument as well. The Upper Tribunal recognised that the establishment of the trust and the settlement of C£10 were necessary preconditions for Mr Cressman's sale of his shares to Farkland. However, as the Upper Tribunal succinctly noted, 'the establishment of the … Trust, and the acquisition of the subscriber shares in Farkland, did not themselves enable Farkland to receive dividends on the Argo shares'. What enabled income to become payable to a person abroad (Farkland) was Mr Cressman's decision to sell his shares to Farkland and Farkland agreeing to pay for them.

HMRC had sought to argue that Farkland's borrowing of funds, which enabled it to finance the purchase of the Argo shares, amounted to an associated operation. However, the Upper Tribunal noted that the associated operation has to be 'in relation to' the transfer of assets abroad and concluded that there was insufficient connection between the settlement of the C£10 and Farkland obtaining loan finance.

Commentary

The UK tax code does not generally tax individuals on income received by other persons. There are, of course, exceptions to this but, when these exceptions arise, the legislation makes it clear that this is the effect of the rules and also makes clear the scope of any such deeming. The TAA code, in contrast, does not. It is my view that the Upper Tribunal has clearly reached the correct conclusion in this case, as well as coming to a decision which accords with common sense.

As a result, one could then wonder why HMRC has started pursuing these cases in situations where a charge under the TAA rules would be a rather unfortunate outcome for the taxpayers involved. The difficulty for HMRC, however, is that common sense is not usually the best way of interpreting the scope of a taxing provision and, in the case of the TAA legislation, there are genuine question marks over the precise scope of the charge.

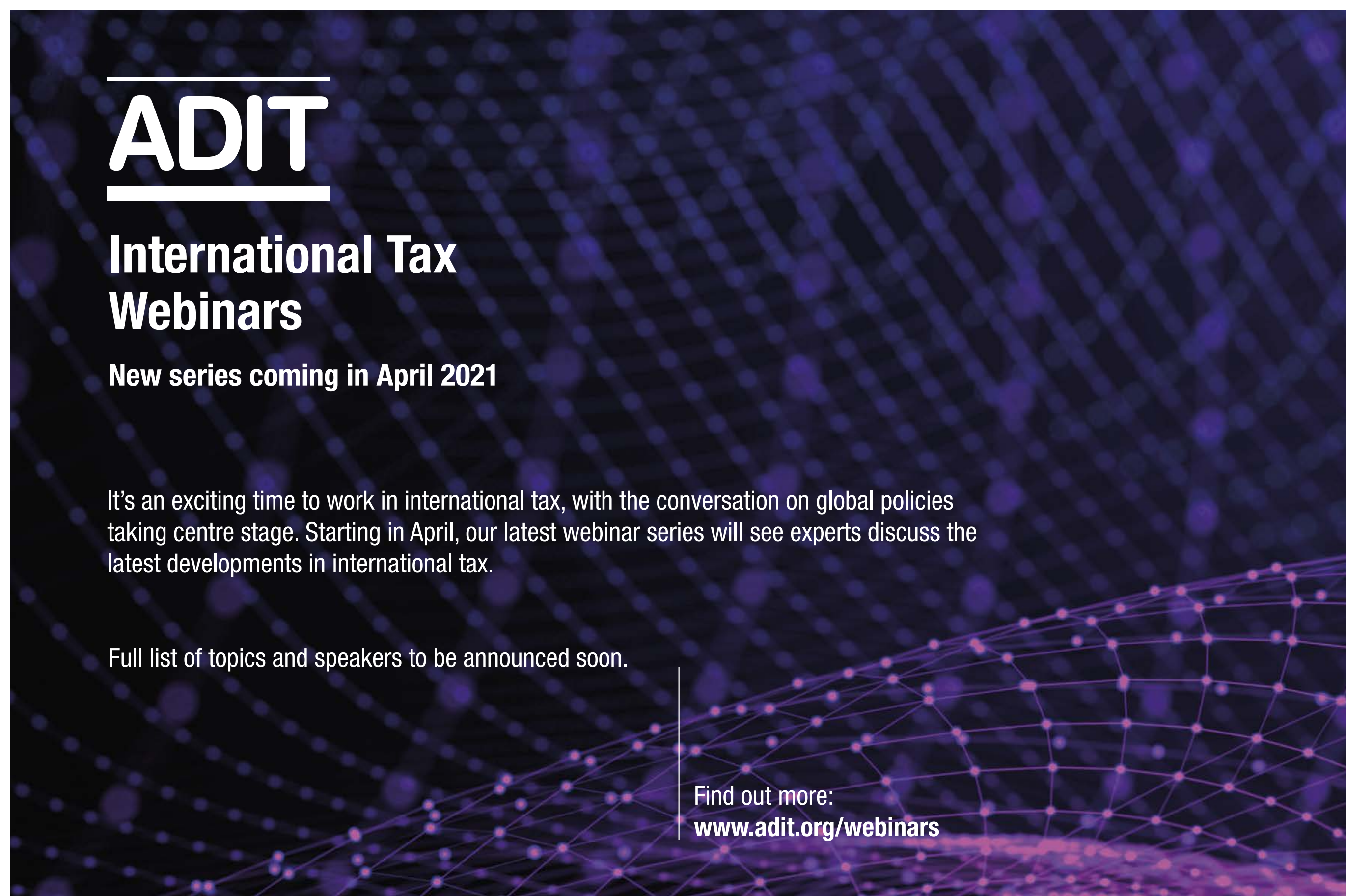
Indeed, the *Congreve* case held that the person liable to tax under the TAA rules did not need to be the transferor in any sense, whereas the *Vestey* case decided that *Congreve* had gone too far and the extension to non-transferors was far more limited. However, the precise scope of the *Vestey* decision is itself uncertain and the scope of the TAA rules would probably merit the consideration of the Supreme Court in due course.

The Upper Tribunal was also conscious that the *Fisher* case is itself proceeding to the Court of Appeal next year and that there is merit in ensuring that the *Fisher* and *Rialas* cases are co-ordinated with the potential of both cases being heard together. In addition, and because it dismissed HMRC's appeal, the Upper Tribunal did not need to address the EU law arguments that also arise in both cases.

What to do next

If one has a live TAA dispute, the *Rialas* decision represents a welcome endorsement of a more limited (and in my view more sensible) scope of the TAA rules, contrary to the position currently being pursued by HMRC.

However, it must be recalled that the uncertainties are not fully resolved and, for that, one will need to await the Court of Appeal's consideration next year and possibly the Supreme Court's musings in about 2024.



A matter of exceptional public interest

Hui Ling McCarthy QC considers the government proposals to restrict appeal rights and their potential impact on tax appeals

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KEY POINTS

- **What is the issue?**
On 30 November 2020, the Ministry of Justice published a consultation entitled 'Reforms to arrangements for obtaining permission to appeal from the Upper Tribunal to the Court of Appeal'.
- **What does it mean for me?**
The government's proposal is that if, in the case of a second appeal, the Upper Tribunal refuses permission to appeal to the Court of Appeal, the losing party may only apply directly to the Court of Appeal for permission to appeal *'for reasons of exceptional public interest'*.
- **What can I take away?**
It is hard to predict what the impact might be on tax appeals without a clear understanding of precisely what 'exceptional public interest' entails – and the consultation provides no indication of the criteria that might be applied.

On 30 November 2020, the Ministry of Justice published a consultation entitled 'Reforms to arrangements for obtaining permission to appeal from the Upper Tribunal to the Court of Appeal'. The Consultation addresses two specific matters:

- appeals in judicial review cases which have been deemed 'totally without merit'; and
- second appeals from the Upper Tribunal to the Court of Appeal.

The rationale for the proposals is apparently because of the amount of judicial time taken up with such appeals. The consultation identified that in 2019, only three out of 67 'totally without merit' applications to the Court of Appeal were granted permission, and none were successful overall. In the case of a second appeal, 561 permission to appeal applications were determined in the Immigration and Asylum Chamber of the Upper Tribunal, yet permission was granted in only 92 cases, of which only 27 succeeded.

On the face of it, it seemed that the consultation was intended to further the Home Secretary's desire expressed at the Conservative Party Conference at the start of October 2020 to 'stop [people] making endless legal claims to remain' in the UK.

Judicial reviews in tax cases are relatively rare and the data said to support the perceived problem with second appeals was limited to immigration and asylum cases. Tax professionals would therefore be forgiven for thinking that the consultation had little to do with them. After all, the word 'tax' appears nowhere in the paper.

Read further, however, and it becomes clear that the consultation was in fact intended to apply to all chambers of the Upper Tribunal, including the Tax and Chancery Chamber.

Judicial review proposals

All claims for judicial review in tax cases begin in the High Court. Before a claim for judicial review can be brought, the claimant must secure permission. Once permission has been obtained, tax judicial reviews:

- may be stayed behind statutory appeals;
- may be transferred to the Upper Tribunal (Tax and Chancery Chamber) – for example, if a level of technical tax expertise is required to get to the heart of the issue; or
- may simply proceed to a hearing before the High Court – for example, where the challenge centres on HMRC's conduct.

Permission is first considered 'on the papers' and, if refused, there is an automatic right to request a reconsideration at an oral hearing, save where the application is certified by the judge as totally without merit. In that scenario, there is no oral reconsideration and the claimant must appeal the refusal to the Court of Appeal.

The first proposal outlined in the consultation is to excise the Court of Appeal's involvement in totally without merit cases. Instead, the proposal is that the matter be referred to a different Upper Tribunal judge to reconsider the question of permission. This change is unlikely to have a material impact on tax disputes. In the rare case that a tax judicial review is deemed totally without merit, provided that there is opportunity for reconsideration by a

different judge, whether that judge sits in the Court of Appeal or the Upper Tribunal is unlikely to make much difference to the outcome.

Court of Appeal proposals

The proposals regarding second appeals from the Upper Tribunal to the Court of Appeal are not, however, so innocuous. At present, the losing party in an Upper Tribunal appeal can apply to the Upper Tribunal for permission to appeal; and may, if unsuccessful, renew their application to the Court of Appeal. The applicant must satisfy either the Upper Tribunal or the Court of Appeal that:

- the appeal would have a real prospect of success and raises an important point of principle or practice; or
- there is some other compelling reason for the Court of Appeal to hear it.

The government's proposal is that if, in the case of a second appeal, the Upper Tribunal refuses permission to appeal to the Court of Appeal, the losing party may only apply to the Court of Appeal for permission to appeal *'for reasons of exceptional public interest'*. If the Upper Tribunal is uncertain whether to grant or refuse permission to appeal, it may refer the application for permission to appeal for determination by the Court of Appeal (which will be determined in the usual way on the papers, unless the judge directs an oral hearing).

As mentioned, the impetus for this proposal is said by the government to be the high numbers of immigration and asylum appeals where permission is sought from the Court of Appeal but, as the numbers appear to indicate, rarely granted. The same, however, cannot be said of tax cases (and it is striking that tax appeals are not expressly considered in the impact assessment accompanying the consultation).

Tax appeals

According to HMRC's Annual Report for 2019/20 (see bit.ly/2MKpDr4), it is clear that there are far fewer Upper Tribunal (Tax and Chancery Chamber) decisions than there are from the Upper Tribunal (Immigration and Asylum Chamber): 59 in 2018/19 and only 49 in 2019/20. HMRC's data does not show the number of cases in which permission to appeal to the Court of Appeal was requested; or the identity of the appellant (and so whether it was the taxpayer or HMRC). It is nevertheless clear that a significant proportion of tax appeals are granted permission. In 2019/20, taxpayers and HMRC enjoyed equal success before the Court of Appeal and the Supreme Court – nine wins each!.

The Tax and Chancery Chamber register of cases records the progress of Upper Tribunal tax appeals, including information on Upper Tribunal permission decisions (see bit.ly/2N7e5hu). By cross-referring to the Court of Appeal's judgments on BAILII examples emerge of cases succeeding in the Court of Appeal, notwithstanding that the Upper Tribunal refused permission. For example, the Upper Tribunal dismissed the appeals in *Payne v HMRC* [2019] UKUT 90 (TCC), affirmed the decision of the First-tier Tribunal and refused permission to appeal; yet the Court of Appeal allowed HMRC's cross-appeal ([2020] EWCA Civ 889). The appeal in *NHS Lothian v HMRC* [2018] UKUT 218 (TCC) was dismissed by the Upper Tribunal and permission refused; yet the taxpayer succeeded before the Court of Session ([2020] CSIH 14).

It is also not uncommon for cases to 'flip-flop' as they make their way through the appeal courts (*HMRC v Fortyseven Park Street* [2019] EWCA Civ 849 is an example of this) or indeed for the taxpayer to prevail for the very first time before the Supreme Court (as in *Routier v HMRC* [2019] UKSC 43 and *John Mander Pension Trustees Ltd v HMRC* [2015] UKSC 56). It is, however, doubtful whether any of these cases could have overcome an 'exceptional public interest' test.

It is hard to predict what the impact might be on tax appeals without a clear understanding of precisely what 'exceptional public interest' entails – and the consultation provides no indication of the criteria that might be applied. On any view, the proposed test looks stricter than the 'general public importance' test for appealing from the Court of Appeal to the Supreme Court (Supreme Court Practice Direction 3.3.3) and it is difficult to understand the justification for this.

Practical applications

The consultation suggests that some litigants 'misuse the system' and 'see an advantage in the delay caused by bringing hopeless challenges'. This does not, however, reflect my general experience of tax appeals, for a number of reasons:

1. There is no legal aid funding for tax appeals, meaning that taxpayers are at risk of adverse costs awards from the Upper Tribunal onwards.
2. HMRC can require the tax in dispute to be paid immediately following an unsuccessful First-tier Tribunal appeal, so there is no financial advantage to be gained by appealing a weak case simply to delay the final determination.
3. The advent of accelerated payment notices means that HMRC can require payment of tax upfront if it believes that a taxpayer has taken part in an avoidance scheme.

These factors already significantly reduce the prospect of applications for second appeals in tax cases that stand little chance of success. Indeed, the change to the Civil Procedural Rules in 2016 removing the automatic right to an oral permission hearing before the Court of Appeal was itself designed to address Court of Appeal resourcing issues.

Finally, the proposals risk creating a real inequality of arms between taxpayers and HMRC when it comes to securing permission to appeal. It is much easier for HMRC to demonstrate that a particular issue of law – and therefore a given appeal – is of 'exceptional public importance' since it will have access to the data that shows how many taxpayers it affects and how much tax is potentially at stake. On the other hand, taxpayers (or their representatives) would be unlikely to have access to the same information in all but the rarest of cases.

It is notable that the Impact Assessment is largely confined to cases in the Immigration and Asylum Chamber and there has been no apparent consideration of the impact on tax appeals whatsoever. One is therefore left wondering to what extent the government is committed to applying these proposals across the board. Indeed, a cynic might speculate that the consultation is a knee-jerk, political reaction to the current media attention on immigration and asylum claims. Whatever the reason, government proposals designed to reduce access to the courts are always of concern.

The CIOT has responded to the consultation. The full response can be found at bit.ly/2OdjOCJ.

PROFILE

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Profile Hui Ling McCarthy QC is a barrister and CEDR-accredited mediator at 11 New Square. She acts for corporate and private clients in all areas of tax law with an emphasis on corporate and international tax matters, VAT and SDLT, and has appeared in many of the leading cases in these areas in recent years. She chairs the CIOT's Dispute Resolution and Litigation Group and is a Fellow of the ATT.

Key post-Brexit tax and customs changes

A Tolley summary of the most significant Brexit changes – for VAT, customs and direct taxes

Amidst all the flurry of last minute Brexit negotiations and an 11th hour trade deal, it is easy to lose track of the main tax implications. This Tolley summary highlights what we consider to be the most significant Brexit changes – for VAT, customs and direct taxes.

VAT AND CUSTOMS

VAT area affected	Position
Moving goods to the UK from EU member states	Treated as imports. Import VAT will be due, and a customs declaration must be completed. Border controls are phased in between 1 January 2021 and 1 July 2021 which will reduce the compliance burden. Under the Free Trade Agreement, no customs duty should be payable on most goods imported from the EU.
EORI number	Businesses require a GB EORI number to import or export goods into Great Britain. An XI EORI number is required for imports and exports to or from Northern Ireland. This number must be quoted on the import customs declaration to ensure that any import VAT can be recovered.
Moving goods to EU member states	These are zero-rated exports for a UK supplier. Export declarations are required. Export licences and certificates may be required.
Movements of goods within the EU and holding stocks in the EU	The UK cannot take advantage of the Single Market simplifications. VAT registrations will be required within the EU.
Distance sales to the UK	Overseas sellers, supplying goods directly to UK consumers (B2C), where the consignment is less than £135, are required to register for UK VAT in order to account for VAT on those sales.
Distance sales to the UK via online marketplaces	If the consignment is less than £135 and the marketplace facilitates the sale to a private or non-business customer (B2C), then the marketplace is the deemed seller. Marketplaces are required to account for any VAT due regardless of whether they are established in the UK.
Trading with Northern Ireland	Northern Ireland is effectively treated as a member of the EU, so EU VAT rules apply to goods moved to or from Northern Ireland to EU member states. Goods moved from Great Britain to Northern Ireland are exports and imports when goods move from Northern Ireland to Great Britain.
Intrastat	Arrivals Intrastats are required for movements to the UK from member states during 2021.
Services	The UK has become a third country and cannot take advantage of any EU simplifications. Use and enjoyment provisions may result in a requirement to register for VAT.
Mini One-Stop-Shop (MOSS)	The UK scheme has been abolished and UK businesses must register for the non-Union MOSS scheme in a member state.
Postponed Import VAT Accounting (PIVA)	Businesses can use PIVA to account for import VAT due on goods imported into the UK. The import VAT due is accounted for via the importers UK VAT return.
EU VAT refunds	UK businesses need to use the paper based 13th Directive refund system to recover VAT incurred in the EU.
VAT representatives	UK resident businesses may need to appoint a tax representative to deal with VAT registrations in certain member states.

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DIRECT TAXES

Tax area affected	Position
Withholding taxes	The Parent-Subsidiary Directive and Interest and Royalties Directive cease to apply. This will have less of an impact for outgoing payments made from the UK to companies in the EU, as the directives have been implemented into UK law. The treatment of incoming payments is more complex and will largely depend on the terms of the double taxation treaty between the UK and the relevant EU jurisdiction.
Mergers	The Taxes (Amendments) (EU Exit) Regulations, SI 2019/689 make amendments to the UK legislation that implements the provisions of the EU Mergers Directive, so that the impact of the directive is preserved in the UK. However, while the UK position might be preserved, the merger may nonetheless trigger tax liabilities in the EU member state.
Tax avoidance	The UK has amended several areas of legislation recently to implement the Anti-Tax Avoidance Directive (ATAD), including adjustments to the controlled foreign companies legislation and the anti-hybrid rules. Under the terms of the draft EU-UK Trade and Cooperation Agreement (TCA) (Part II, Title XI, Article 5.2), the UK has committed to implementing BEPS deliverables and not to dilute the UK provisions on automatic exchange of information, interest limitation, controlled foreign companies and hybrid mismatches below the OECD minimum standards that were legislated as at IP completion day.
State aid	A number of tax incentivised regimes are restricted by the EU's state aid rules. The terms of the (draft) Trade and Cooperation Agreement allow Great Britain to set up its own subsidy-control regime and to not follow the EU's state aid regime or procedures from 1 January 2021. The UK has also made two sets of state aid related regulations that apply from IP completion day: the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020, SI 2020/1470, which revoke EU regulations, decisions and treaty rights which would otherwise become EU retained; and the Taxes (State Aid) (Amendments) (EU Exit) Regulations 2020, SI 2020/1499, which make consequential amendments to tax legislation to ensure that UK tax law continues to be fully operable from IP completion day.
International tax transparency	The directive for administrative co-operation (DAC), Directive 2011/16/EU, will no longer apply to the UK. However, the International Tax Compliance (Amendment) (No. 2) (EU Exit) Regulations, SI 2020/1300, remove references to the DAC from the UK's implementing regulations for DAC 2 on financial account information, as well as changing the source of certain definitions and to maintain the effect of certain dates set out in the DAC after IP completion day.
Cross-border tax arrangements	The International Tax Enforcement (Disclosable Arrangements) (Amendment) (No. 2) (EU Exit) Regulations 2020, SI 2020/1649, which took effect on IP completion day, significantly reduced the scope of the arrangements that need to reported in the UK under DAC 6, by effectively removing all the hallmarks other than those in category D. Further changes are expected as HMRC intends to completely repeal the DAC 6 legislation and replace it with new legislation to implement the OECD mandatory disclosure rules.
Mutual agreement procedures	SI 2020/51, which implemented EU Directive (Directive 2017/1852/EU) on Tax Dispute Resolution Mechanisms in the EU, has been revoked with effect from IP completion day. HMRC has confirmed that it will not accept new requests to access the EU directive after IP completion day, but it will continue working on cases where the requests were received prior to IP completion day.

Technical Team

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Welcome to the March Technical Newsdesk

It's nearly a year since the Chancellor announced, and HMRC implemented, some of the COVID-19 support schemes such as the Coronavirus Job Retention Scheme (CJRS) and the Self-Employment Income Support Scheme (SEISS). In my introduction to last June's Technical Newsdesk (www.taxadvisermagazine.com/TN202006), I explained how quickly these schemes had progressed from announcement to implementation, and compared that to the normal policy-making cycle. We also had to quickly get used to two other factors. First, the 'rules' of the schemes were largely being set out in HMRC's guidance, rather than in detailed legislation. Whilst we have a number of Treasury Directions, these are perhaps better described as the framework in which HMRC must deliver the schemes, rather than the minutiae of their operation. Second, and against this unfamiliar backdrop, was the concept of HMRC paying out significant sums of money in accordance with these schemes (well over £65 billion at the time of writing).

Perhaps understandably, we have also seen over recent months a much greater focus on seeking to ensure that these grants are only received by those who really need them. The third SEISS grant required a reasonable belief that there would be a significant reduction in trading profits, and the publishing of employer claims data will inevitably lead to potential CJRS claimants balancing the need for support against public opinion that 'they can afford it'.

We have also started seeing HMRC undertaking compliance activity in relation to both grants. Whilst it is reassuring that HMRC state they will not be actively looking for innocent errors in their compliance approach (re CJRS), it is inevitable that errors will have been made, or an interpretation taken of the then published guidance, which may or may not have been reasonable at the time.

If you raised an eyebrow at the comment 'the then published guidance', I suspect I know why – considering the number of times the guidance has been updated (particularly for CJRS), how on earth do you view 'the then published guidance'? Fortunately, near the top of each of the CJRS guidance pages on GOV.UK is the statement (containing an embedded link): 'You can read previous versions of this guidance on The National Archives.' Click that embedded link and, under the blue heading 'Archive Timeline', you will find green boxes of years and 'instances'. If you want to check the guidance as at 30 July 2020 (for example), click the arrow on the 2020 box, then the date in the blue box which corresponds to (or as closely before) 30 July. You will then be shown the guidance page as it was on GOV.UK on 30 July. We recognise that none of this is easy, and it has been difficult to keep pace with the many changes to published guidance.

In response to queries from members, the Professional Standards and Technical teams have published guidance as to what might constitute an error in a CJRS claim, and what (if any) corrective action is necessary by the employer. It also addresses the position for their agent if their client refuses to take the appropriate steps. The guidance has been reviewed by HMRC, and we are hoping to supplement this guidance with some examples, as well as extending it to SEISS claims (see tinyurl.com/k9kjxokj and tinyurl.com/4aos5vjx).

If you have any comments about our PCRT guidance, or examples you would like to share with us, please do email them to technical@ciot.org.uk or atttechnical@att.org.uk.

CIOT budget representations on corporate tax measures, property income for MTD and capital gains tax

LARGE CORPORATE TAX OWNER MANAGED BUSINESSES PERSONAL TAX

The Chartered Institute of Taxation has submitted a number of budget representations, suggesting changes to the tax system to offer support to businesses, with regard to the proposed extension of Making Tax Digital to property income and in response to the recent review of capital gains tax by the Office of Tax Simplification.

Changes to the tax rules affecting companies
The CIOT submitted a budget representation to the government setting out some suggestions as to how the tax system can offer support to businesses as the UK emerges from the pandemic and seeks to build a strong economic recovery. We suggested several measures that we think could promote recovery and growth.

Corporate tax losses: We suggested that government should allow businesses to benefit from a three-year carry back of corporation tax losses arising during the pandemic, saying that this would give a cash flow boost to businesses with a track record of paying tax that have been affected by the impact of COVID-19, because they will be able to claim a refund of corporation tax paid in the previous three years. The additional flexibility could be focused on losses arising because of the pandemic by limiting the extended carry back to trading losses arising in accounting periods overlapping, say, the year from 1 March 2020. We also suggested that the government should relax the rules around the recently introduced 50% loss relief restrictions so that all companies get full relief for losses arising because of the pandemic.

Capital allowances: We recommended that the government sets the level of the Annual Investment Allowance (AIA) on a long-term basis and have suggested £1 million per annum. We said that this would create certainty for businesses contemplating investment projects and avoid arbitrary cliff edges around dates, sometimes announced late in the day, that have been a too common occurrence over recent years due to fluctuations in the level of the AIA. We added that it would also send the message that the government recognises the overall benefit of capital expenditure and investment by businesses. Most businesses cite certainty as more important than the precise amount of relief available: putting the AIA on a more permanent footing would boost investor and business confidence at relatively modest cost to the Exchequer.

Rules that apply on changes in ownership of businesses: We asked for clarification around what will constitute a major change in the nature or conduct of a trade carried on by a company to reflect the circumstances that have arisen because of COVID-19. We said that we envisaged that there could be a significant amount of both changes in the nature or conduct of trades and changes in ownership because of the COVID-19 pandemic, as businesses work out new ways of operating or diversify and/or merge in order to remain viable. Noting that it has often been difficult in practice to determine whether there has been a major change in the nature or conduct of a trade, we suggested that consideration should be given to providing some assistance in this area.

Re-organisations of businesses more generally: Our budget representation commented on a number of areas where the existing rules and tax reliefs for schemes of reconstruction present problems for businesses. The existing rules often cause transactions to be made unnecessarily complicated in order to ensure that the reorganisation can meet the requirements of the various tax reliefs, so that unexpected tax charges do not arise. We suggested that this period of economic difficulty is an opportune time to consider amending or updating some of these rules in order to make them easier to operate for corporate businesses and their owners. Restructuring of businesses is likely to become more prevalent as businesses struggle to regroup and reorganise in order to put themselves in the best position to recover and grow. Our specific proposals were:

- ***Stamp duty***: to broaden the reliefs from stamp duty for reorganisations and reconstructions under FA 1986 ss 75 and 77 to more closely reflect the policy (apparent from other taxes) that such transactions should be tax neutral.
- ***Demergers***: to consult on changes to the exempt distributions regime, specifically whether any of the restrictions can be removed, with the aim of simplifying the rules so that demergers of businesses can be done tax neutrally.
- ***Clearances***: to amend the rules for obtaining a clearance for reorganisations to address the shortfalls in the legislation which can cause practical problems in commercial transactions.

UK to UK transfer pricing: We suggested that an opportunity arises following the UK leaving the EU for tax measures that were introduced solely to ensure the UK law complied with the then understanding of EU law to be repealed. UK to UK transfer pricing is one such measure that warrants consideration for repeal.

Our budget representation on corporate tax matters can be read here: www.tax.org.uk/ref688.

Making Tax Digital for property income
The CIOT has recommended that the government undertakes a stage one consultation in relation to the basis period for the taxation of property income generated by individuals for the purposes of Making Tax Digital (MTD). MTD for Income Tax Self-Assessment (ITSA) will become mandatory from April 2023. Self-employed businesses and landlords with annual business and/or property income above £10,000 will need to follow the rules for MTD for Income Tax from their next accounting period starting on or after 6 April 2023.

One of the complexities MTD for ITSA exacerbates is that property income is taxed on a tax year basis (6 April to 5 April), whereas trading income is taxed in relation to basis periods (this is usually the 12-month period ending with the accounting date in the tax year). This creates a mismatch in reporting obligations for taxpayers with trading businesses that do not prepare their accounts to 5 April, where the business owner also has property income. It quickly becomes apparent that, even in quite common circumstances, MTD could require individuals and businesses to submit quarterly and end of period updates with a frequency that will impose significant additional burdens on individuals and businesses compared to those under the current rules. Our budget representation included an illustration that shows that a VAT registered self-employed individual, with a buy to let property, could face up to 15 separate updates, most with a different deadline, within a 12 month period (compared to just five under the existing regime).

Our representation appreciated that this is a complex area, but said that it is one that requires prompt attention because mandation of MTD for ITSA is only just over two years' away.

Our budget representation on MTD for property income can be read here: www.tax.org.uk/ref758

Capital gains tax

Following the recent report published by the Office of Tax Simplification (OTS) on *Capital Gains Tax: Simplifying by design*, the CIOT has suggested that a wider consultation be undertaken about the future role and shape of capital gains tax (CGT) in our tax system, building on past research and analysis and including as many different perspectives as possible.

We suggested that a wide consultation on CGT should explicitly consider how to achieve the most revenue with the fewest adverse economic consequences, including potential impacts on risk taking, entrepreneurship and liquidity. It would also be appropriate to consider the implications for CGT policy of our departure from the EU and whether now is the time for fundamental reform.

In short, we suggested that the CGT consultation needs to be drawn much more widely than the OTS paper, given the OTS cannot appropriately look at broader tax policy issues.

Our budget representation on capital gains tax can be read here: www.tax.org.uk/ref757.

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ATT budget representation on COVID-19 Testing

PERSONAL TAX EMPLOYMENT TAXES

The Association of Taxation Technicians has submitted a budget representation calling for an extension to the temporary income tax and NIC exemptions for employer-provided COVID-19 antigen tests.

Coronavirus antigen tests determine whether an individual has an 'active' case of coronavirus. HMRC's view is that if the employer pays for such a test, they are providing a benefit equal to the cost of the test. This benefit is taxable when the employer bears the cost upfront, as HMRC considers none of the existing exemptions from the benefits legislation applies. It is similarly taxable if the employee incurs the cost and the employer reimburses it, as HMRC does not view such tests as *wholly, exclusively and necessarily* for the purpose of the employee's duties. Since the cost of a test is generally in excess of £50 (so that the trivial benefits rules do not apply), this could result in income tax/NIC consequences for employee and employer and additional administration for the employer.

In the final two months of 2020, the government published two policy papers to confirm that where an employer pays for or reimburses an employee for a coronavirus antigen test, this will not be treated as a benefit. However, these exemptions are temporary and only apply until 5 April 2021.

In the current situation, we consider that these income tax and NIC exemptions need to be extended to at least 5 April 2022 – and potentially beyond that. There is no public benefit in discouraging employers from paying for employees' tests.

In our budget representation, the ATT suggested the government could go further, and that there would be a public benefit in introducing a wider-ranging and enduring exception from taxable benefits for employers who fund employee testing for any highly transmissible disease.

The ATT's budget representation can be read at www.att.org.uk/ref367.

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LITRG budget representation on the high income child benefit charge

PERSONAL TAX

The Low Incomes Tax Reform Group has made a budget representation repeating its calls for the government to raise the £50,000 threshold for the high income child benefit charge to at least £60,000. It argues that the £50,000 threshold, which has applied since the introduction of the charge eight years ago, is no longer tenable once it is set to be overtaken by the higher-rate threshold from 6 April 2021.

The high income child benefit charge (HICBC) is controversial and complicated, and LITRG highlights that unrepresented taxpayers are especially liable to fall into its traps. This is evidenced by the number of cases in the First-tier Tribunal where taxpayers have faced payment demands of several thousand pounds in backdated HICBC assessments, as well as penalties for the failure to notify. Typically, these taxpayers were completely unaware of the charge; otherwise, they thought it did not apply to them because, for example, they did not realise that the £50,000 threshold tests total adjusted net income of the partner with the higher income and not simply the figure on their P60.

Taxpayers who are usually on a low income can also be brought within scope of the charge unexpectedly – for example, if they make large drawdowns from their pension or they receive some other one-off payment such as a redundancy package.

LITRG therefore argues for a number of changes to the HICBC, both to exclude from its scope taxpayers who were never intended to be affected, and to address some of the flaws for those who are.

First, in the Spending Review on 25 November 2020, it was confirmed that the government will increase the 2021/22 personal allowance and higher-rate threshold in line with the September 2020 CPI figure. As a result, the higher-rate threshold for 2021/22 is set to be £50,270. This means that basic-rate taxpayers, for the first time, will be affected by the HICBC (with effect from 2021/22), given the existing £50,000 threshold. This is directly contrary to the original policy intent of the HICBC announced in the Spending Review ten years earlier, which stated that the charge should only affect families with a higher-rate taxpayer.

Second, LITRG also recommends that the point at which child benefit is fully withdrawn should be increased from £60,000 to £75,000. This is because the greater the number of children for whom child benefit is claimed, the greater the impact on the effective marginal rate of a taxpayer between the applicable thresholds. For example, where the charge applies to withdraw a child benefit claim for two children, the taxpayer must pay £60 in tax and National Insurance for an additional £100 earned between £50,000 and £60,000. For three children, the rate increases to £67 for an additional £100 earned. The structure of the charge therefore appears to discriminate against larger families, which can be disproportionately represented within certain ethnic groups.

Finally, LITRG suggests that changes should be made to ensure that low-income taxpayers do not lose out on National Insurance credits because of not claiming child benefit where the charge is applicable. This is in line with a recommendation made by the Office of Tax Simplification in their *Taxation and life events* report. It argues that this particular issue is storing up problems for low-income taxpayers that will only come to light when they claim their state pension. By this point it may be too late to plug the gaps in their National Insurance record.

HMRC's solution for this group is for child benefit claimants to opt out of receiving payments. But LITRG points out that unrepresented taxpayers may not go as far as claiming child benefit in the first place because of the existence of the charge. It also says that the concept of opting out of payment is not intuitive, as claimants are likely to view claiming child benefit and receiving payment of it as the same.

LITRG's budget representation can be read here: www.litrg.org.uk/ref2391.

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Making Tax Digital: update on the administrative burden

GENERAL FEATURE

The CIOT and ATT have continued their engagement with HMRC to review their estimates of transitional and ongoing costs of compliance with Making Tax Digital.

Since its announcement in December 2015, Making Tax Digital (MTD) has been a controversial HMRC initiative which has suffered a number of criticisms and false starts (partly due to the lack of early consultation, but that is a different matter and for another day).

Whilst the use of digital tools can bring many benefits to businesses, one of the main criticisms of MTD has been in relation to the costs of compliance, and particularly the credibility of the figures published by HMRC. In March 2017 – when it was planned to implement MTD for income tax self-assessment first – HMRC's policy paper (see tinyurl.com/y8arvbbz) estimated that, on average, a business's transition costs would be around £280; although there would be ongoing savings once fully embedded.

Of course, the plans subsequently changed and VAT was the first tax mandated, for those businesses with taxable turnover above the VAT threshold. In December 2017, HMRC's technical note (see tinyurl.com/a6c8q0rb) provided revised estimates of business's costs. Transition costs were estimated to be around £109 on average, with ongoing costs of around £31 on average.

We have been concerned that the estimates of transition and ongoing costs were too low, and in late 2019/early 2020 you may recall that we undertook a member survey to obtain feedback on a number of matters, including transition costs. Less than 10% of respondents estimated their or their clients' transition costs at or below £109, with 45% of respondents estimating costs between £109 and £500, and some 12% estimating costs over £5,000. We shared that evidence with HMRC and subsequently with other interested parties, including the Public Accounts Committee (PAC) who quoted the findings from our survey in their October 2020 report on their inquiry 'Tackling the tax gap' (see tinyurl.com/zinebwgh).

Prior to the PAC publishing its report, we had already started further engagement with HMRC around their cost estimates, as HMRC were undertaking a programme of work to calculate the transition and ongoing costs for voluntary VAT registrations (mandated from April 2022) and income tax self-assessment (to be mandated from April 2023). We are pleased to say that this engagement has been constructive and we have held a number of meetings with the HMRC team, and provided commentary and further evidence for them to take into account. HMRC have also been engaging with other professional and representative bodies.

We expect new cost estimates to be published shortly – perhaps on or around Budget Day – and we do not know the final figures. Whilst HMRC do seem to have made a genuine attempt to produce credible figures, one of the potential 'bones of contention' is that HMRC are basing their estimates on the minimum activity needed in order to comply with the requirements of MTD; whereas in practice businesses might go further than this (for example, to ask their agent to undertake a review of the quarterly figures before making the income tax quarterly submission). Whatever the figures are, they will no doubt raise a few eyebrows when published.

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HMRC letters and 'certificates of tax position' to individuals with overseas assets, income or gains

MANAGEMENT OF TAXES

A reminder to members about the update on the CIOT's website that provides information about HMRC's letters and 'certificates of tax position' to individuals with offshore assets, income or gains. HMRC are continuing to send these letters out in response to data they are receiving under automatic exchange of information agreements. We understand that the latest batch of letters was issued in January 2021.

The CIOT's update includes some guidance to help members decide the most appropriate way to respond if a client receives one of the letters from HMRC. It also provides some background information about HMRC's campaign.

PDF copies of the standard wording for the letter to represented taxpayers, the letter to their agents and the letter to unrepresented taxpayers are available on our website alongside the update.

The CIOT's update along with the letters and certificates is at www.tax.org.uk/HMRCcertificateoftax

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DAC6 guidance for CIOT and ATT members and students

MANAGEMENT OF TAXES | EMPLOYMENT TAX | INTERNATIONAL TAX

We have recently published guidance on our websites to help our members and students understand when they might be classified as an 'intermediary' under the UK's regulations which bring into effect parts of DAC6 (see tinyurl.com/1j2jaldv) and when, as a possible consequence of that, they might be required to make a disclosure report to HMRC.

This situation may arise because they are registered as a member or student with the CIOT or ATT and is relevant to the minority of CIOT and ATT members and students who provide taxation services as employees or principals working in firms located outside the UK or EU.

A list of the categories of members and students affected is included in the guidance. Note that it also includes International Tax Affiliates of the CIOT holding the Advanced Diploma in International Tax (ADIT) qualification (but not ADIT students).

DAC6 provides for the mandatory disclosure of 'reportable cross-border arrangements' by intermediaries to national tax authorities and the mandatory automatic exchange of this information amongst

EU member states. Following the end of the Brexit transition period, and under the terms of the UK/EU Free Trade Agreement, reporting under DAC6 will still be required in the UK but only for arrangements which meet hallmarks under Category D, including for the period from 25 June 2018. The regulations implementing this change took effect from 11pm on 31 December 2020 (see tinyurl.com/xlh2kqjs).

The guidance is on our websites at the following links:
CIOT: www.tax.org.uk/DAC6-guidance
ATT: www.att.org.uk/DAC6-guidance

It is also on the ADIT support and guidance page: www.adit.org/affiliateguidance

If you have any questions about the guidance, please contact either technical@ciot.org.uk or atttechnical@att.org.uk.

Margaret Curran
mcurran@ciot.org.uk

ATT User Guides: Help us to stay up to date

PERSONAL TAXES INHERITANCE TAX

The Association of Taxation Technicians has prepared two 'How to' guides to help agents navigate the Trust Registration Service and UK Property Reporting Service. We would be grateful for your help to make sure they stay relevant to members.

Last year, the ATT created two 'user guides' to support agents dealing with the new UK property Reporting Service (used to report certain property disposals in 30 days) and the new update functionality on the Trust Registration Service (TRS). Both were created following feedback from members that suggested that the GOV.UK guidance on these topics was not sufficiently detailed.

The guide on how to update the trust register on the TRS has proved particularly popular, with our website statistics showing it received over 6,000 views in 2020, and that visitors spent on average 13 minutes reading it. The original version was also shared with other professional bodies, who have built their own guides using it as a foundation.

As the technical team do not have access to these two services themselves, the guides can only be developed thanks to huge amounts of help from members who contacted us with queries, questions and screenshots, and with support from HMRC. We are very grateful both to all the members who helped us last year and to HMRC staff for taking the time to comment on our efforts.

As far as possible, we would like to keep these guides updated and ensure that they remain a helpful resource for members. Therefore, we would be grateful if members could highlight any errors or omissions or solutions to problems that they have found and think would help other members. Please let us know on atttechnical@att.org.uk or direct to Helen Thornley.

It is also important that the GOV.UK guidance is as clear and helpful as possible, as this will be the first port of call for most people, and we continue to work with HMRC to suggest improvements. In an ideal world, we would not need these 'user guides' at all, but developing them does help to highlight the gaps in official guidance and provide a sticking plaster in the meantime.

The two guides can be found on the ATT website at:

- How to update the Trust Register: www.att.org.uk/how-update-trust-register
- UK Property Reporting Service – a user's guide: www.att.org.uk/uk-property-reporting-service-users-guide

Helen Thornley
hthornley@att.org.uk

Follower notices and penalties consultation: CIOT response

MANAGEMENT OF TAXES

The Chartered Institute of Taxation has responded to HMRC's recent consultation, which was seeking comments on proposed changes to penalties for failing to take corrective action in response to a follower notice.

A report (see tinyurl.com/2fnmvnb9) by the House of Lords' Economic Affairs Committee 'The Powers of HMRC: Treating Taxpayers Fairly' (in December 2018) had recommended that the follower notice (FN) legislation be amended to include a right of appeal to the tax tribunal and that the FN penalty regime be abolished. The government rejected the recommendation to abolish FN penalties because this would render the regime ineffective. However, it undertook to examine the possibility of providing greater judicial oversight of the FN safeguards but was unable to identify any options that would not re-introduce or worsen the delay in settlement, which the regime was designed to address. Therefore, HMRC's consultation document focused only on making changes to the FN penalty to try to place a stronger focus on penalising taxpayers with unmeritorious cases who choose to continue to pursue their dispute after receiving a FN, rather than considering wider 'access to justice' issues.

HMRC propose to reduce the standard rate of the penalty from 50% to 30%, but to maintain the higher rate for those taxpayers whose cases are without merit and whose continued refusal to settle with HMRC is deemed to be time wasting. The purpose behind the proposal to reduce the standard rate of the penalty to 30% is to provide a more genuine choice to those taxpayers who believe their own case is different and has a strong chance of success, and therefore who wish to continue to pursue their appeal, instead of taking corrective action.

In our response to the consultation document, the CIOT says that in general we agree with the proposals in the consultation document, in the absence of HMRC following the House of Lords' recommendations. We are aware that the high level of the current FN penalty (50%) can act as a disincentive for a taxpayer to continue with their appeal even if they consider that their case has a strong chance of success. However, even at a penalty level of 30% we would anticipate that the same issues will remain and that it will still act as a disincentive for a taxpayer who considers they have a strong case to continue with their appeal. In other words, it does not overcome the fundamental problem with the FN penalty regime, which is that it puts pressure on a taxpayer not to exercise their legal rights. We say that in our opinion the proposal to introduce a new 30%/20% penalty structure seems to us like a 'fudge' when what is actually needed is a more radical overhaul to overcome the rule of law problems presented by how the FN regime is formulated.

We go on to consider some alternative options, which might help to achieve a better balance between the objectives of FNs to discourage further litigation of points already settled with the rights of taxpayers to continue a genuine dispute. These include reducing the standard FN penalty to a figure below 30%, perhaps to 25%. A penalty at this lower level would be less of a disincentive for a taxpayer who considers they have a genuinely different case to those that have already been litigated to continue with their appeal. But, we suggested, they penalty would still be at a high enough level to encourage a taxpayer whose case is on all fours with the scheme that has been litigated to take the appropriate corrective action and settle their own case with HMRC, particularly with the threat of the new 20% penalty on top. Another option is that the FN does

not apply an immediate penalty, but rather puts the taxpayer on notice that if they do not succeed in the Tribunal, and if the Tribunal issues a costs order on the basis that the taxpayer has acted unreasonably in bringing the proceedings, then they will be liable for a x% penalty. Then, instead, what is penalised is behaviour that is objectively unreasonable (proceeding unreasonably) rather than behaviour that is not unreasonable (disagreeing with HMRC and seeking resolution of the dispute from the Tribunal).

Our response can be found on our website at: www.tax.org.uk/ref748.

Margaret Curran
mcurran@ciot.org.uk

HMRC's Guidance Strategy Forum

PERSONAL TAX GENERAL FEATURE

GOV.UK guidance structure, how updates to guidance are made and reliance on guidance were examined in HMRC's Guidance Strategy Forum in January.

CIOT and LITRG continued their longstanding engagement on guidance issues with HMRC and the Government Digital Service (GDS) at the second meeting of HMRC's Guidance Strategy Forum in January. The discussion focused on three areas.

Structure of guidance

GOV.UK guidance falls broadly into three management layers:

- mainstream content (GDS administrated);
- technical content for those with particular circumstances and/or previous knowledge of a subject (HMRC administered); and
- HMRC manuals (HMRC administered).

We have emphasised the need to link the different layers so a user can move seamlessly to more detail where needed and not be misled by a simplified position. Work is underway to improve the 'user journey' – making use of newer technologies such as interactive decision-based guidance and YouTube videos. HMRC are interested in views on how these are working.

How guidance is updated – 'change notes'

Updates to mainstream content are not displayed on the page. In the case of technical content and HMRC manuals, major changes to guidance are recorded via a 'change note' generated either by HMRC's content designers or by the 'owner' of the manual. Major changes are those that, for instance, add new information that means a user has to do something differently or tells a user something new, or removes guidance that is out of date or misleading. These changes are included in 'Daily update from GOV.UK' emails to alert users to the change.

HMRC welcome feedback on the process and/or the standard for writing change notes set out in the GOV.UK content design guidance at tinyurl.com/y2d8kjxy.

The CIOT are feeding back with examples of important changes that have not been identified as a major change to contribute towards a more consistent approach and ensure the system works as intended.

Reliance on guidance

HMRC pointed to the statement shown at: tinyurl.com/yz9s8wx7 and confirmed this is the public facing summary of legitimate expectation applying across HMRC guidance and any HMRC representation; for example, Self-Assessment notes, phone calls, etc.

The CIOT has suggested that this statement should be much more visible and easier to find. It is unlikely to be widely known to tax agents and advisers because there is no obvious route to finding it or even to coming across it as part of a search. The guidance was published some time ago (in March 2009) and does not appear to have been updated. Much of the document seem to be focused on clearances or rulings rather than wider guidance; there is little recognition of its application to the different types of guidance such as manuals, mainstream guidance, interactive guidance, webinars and answers to queries given by HMRC in webinars. In relation to the section on incorrect advice or information, the question of penalties and interest is not addressed. Links to related content is limited to VAT related content; we suggest the links need to be expanded to direct tax related content.

Please send any feedback on this page or the other aspects of the guidance on tax to technical@ciot.org.uk.

Kate Willis
kwillis@ciot.org.uk

Changes for Revenue & Customs Brief 12/20: VAT on early termination fees and compensation payments

INDIRECT TAX

HMRC published Revenue & Customs Brief 12/20: *VAT early termination fees and compensation* payments on 1 September 2020. This set out HMRC's revised view that most early termination, cancellation fees and damages were subject to VAT and that this change had retrospective effect. The CIOT has been engaging with HMRC on the scope of the new guidance to reflect this revised view.

Ongoing engagement by stakeholders

HMRC published Revenue & Customs Brief (RCB) 12/20: *VAT early termination fees and compensation* payments on 1 September 2020, which indicated that following judgments of the Court of Justice of the EU in *Meo* (Case C-295/17) (tinyurl.com/agmri91f) and *Vodafone Portugal* (Case C-43/19) (tinyurl.com/bmmf44t7), its revised view was that most early termination, cancellation fees and damages were subject to VAT and that this change had retrospective effect of up to four years even though, historically, these payments were deemed as outside the scope of VAT.

The Joint VAT Consultative Committee (JVCC), on which the CIOT is represented, set up a sub-group to look solely at the issues arising from RCB 12/20 (tinyurl.com/m5fuztuz), and the first meeting of this group was held in October. The discussion points at this meeting included:

- the validity of the four year retrospective effect;
- legitimate expectation where taxpayers had relied on HMRC's earlier guidance/trade body agreements indicating that compensation was outside the scope of VAT;
- clarity on the scope of RCB 12/20 when dealing with supplies that are not subject to VAT, for example exempt or zero-rated; and

- additional examples for particular types of transaction, including dilapidations payments.

As a result of this meeting, HMRC confirmed that it would engage with JVCC stakeholders by sharing their revised draft guidance so that feedback could be provided prior to its publication. HMRC also informed its frontline staff to cease in taking any recovery actions based on RCB 12/20 while the points raised were considered.

CIOT actions

The CIOT submitted its observations and recommendations on the revised draft guidance to HMRC in January, and simultaneously requested that RCB 12/20 be updated on GOV.UK with a 'health warning' to alert taxpayers that its position was changing. The CIOT also raised the health warning issue to the Guidance Strategy Forum, suggesting that there should be a consistent policy that alerts taxpayers (and its own frontline staff) of upcoming significant guidance changes to affected webpages in GOV.UK.

HMRC revised position

On 25 January, HMRC published (tinyurl.com/ypdgwotj) the good news that the updated VAT treatment stated in RCB 12/20 would only apply from a future date rather than having a four year retrospective effect, though the future date of application has yet to be confirmed at the time of writing.

Further, HMRC confirmed that revised guidance and a new RCB would be forthcoming, including guidance on what to do where taxpayers have changed the VAT treatment due to RCB 12/20 but subsequently need to make adjustments. Until the new RCB is published, taxpayers can revert to the earlier VAT accounting position of treating it as outside the scope or continue treating the income based on the VAT liability of the underlying supply. Note that there was no confirmation on whether any particular types of compensation would be excluded. It is anticipated that the JVCC stakeholders will be provided with a second version of the draft guidance before its publication and HMRC aim to have the new RCB and updated guidance published by 1 March 2021, or as soon as possible thereafter.

Jayne Simpson
jsimpson@ciot.org.uk

Powers of Attorney: request for evidence

GENERAL FEATURE

The Low Incomes Tax Reform Group has approached HMRC to seek an understanding of the way powers of attorney are dealt with by the department. HMRC have now asked us to provide evidence of any good or bad experiences in connection with powers of attorney.

In many cases, a power of attorney is activated at a time of crisis and LITRG is keen to ensure that any processes are as easy as possible. We had received some queries to the LITRG website where it was clear a power of attorney had been accepted for dealing with one part of a taxpayer's tax affairs, but not with another. This meant HMRC had asked for a power of attorney to be sent to them again. In addition, some of our querists believed that where a power of attorney had been accepted by the Department for Work and Pensions, for example, the two departments should have 'shared' the document.

Evidence

In order to respond to HMRC's request for evidence of how the department deals with powers of attorney, we would like to receive your suggestions, comments and any examples you choose to share, suitably anonymised. Feedback on good experiences, as well as bad, is very welcome. In particular, we would welcome responses to the following questions:

- HMRC look at each power of attorney separately to ensure that it confers on the attorney the necessary power to act. They distinguish between powers of attorney that are for a limited time or scope and those that are more wide-ranging. Have you or your clients experienced any issues in this area?
- Have you or your clients had to send multiple copies to HMRC? Were you provided with a rationale for that?
- How have you submitted powers of attorney – by posting to HMRC the original or a certified copy? Alternatively, have you been able to submit them electronically, for example by uploading a copy with an online tax return submission?
- After a power of attorney has been accepted, does all HMRC correspondence go to the attorney, or does some still go the individual for whom the power of attorney is in place? As agent, how do the procedures work for you?
- Would you support a scheme (similar to the Tell Us Once system in place when a person dies) where a power of attorney could be exhibited to one arm of government and then 'shared' with other departments on a 'need to know' basis?
- Have you experience of cases where a power of attorney has been rescinded?

Please send your comments to Gillian Wrigley.

Gillian Wrigley
gwrigley@litrg.org.uk

Members in Practice and professional indemnity insurance

GENERAL FEATURE

There has been a minor change to the Member in Practice definition which clarifies which members are within the scope of the Professional Indemnity Insurance Regulations. This change will be applied from 1 April 2021.

Currently, the CIOT and ATT Professional Rules and Practice Guidelines (www.tax.org.uk/prpg and www.att.org.uk/prpg) define a **Member in Practice** as 'a member (including students) who provides taxation services on a full-time or part-time basis as:

- a sole practitioner;
- a partner in a partnership;
- a member of a limited liability partnership;
- a proprietor of an unincorporated body; or
- a director of, or an employee of, a company providing taxation services in which they have a financial interest which represents 5% or more of the equity capital.'

The 5% of equity capital rule has caused some confusion with members and the decision has been taken to remove that clause along with the reference to employees.

This has implications as regards members' professional indemnity insurance (PII) obligations (www.tax.org.uk/PIIregs and www.att.org.uk/PIIregs). Every CIOT or ATT Member in Practice is required to ensure that 'PII is effected and maintained in respect of their firm' and that the PII cover complies with the CIOT and ATT's PII regulations. This change means that **employees** with 5% or more of the equity capital will no longer have to ensure PII is in place. Directors, however, will have to ensure the company has a compliant PII policy, irrespective of whether they are a shareholder or not.

We do not envisage this will have an impact on many members and their firms but the new rule will be applied from **1 April 2021**. If a member has any concerns as to whether they now come within the definition of a Member in Practice or whether PII is required, they should email the Professional Standards team (standards@ciot.org.uk or standards@att.org.uk).

Jane Mellor
jmellor@ciot.org.uk

CIOT	**Date sent**
Budget representations around recovery from COVID-19 (and other changes to CT rules) www.tax.org.uk/ref688	13/01/2021
Budget representation on capital gains tax www.tax.org.uk/ref757	13/01/2021
Budget representation on taxation of property income www.tax.org.uk/ref758	13/01/2021
Follower Notices and penalties www.tax.org.uk/ref748	26/01/2021
ATT	
Budget representation on employer-provided coronavirus antigen tests www.att.org.uk/ref367	07/01/2021
LITRG	
Budget representation 2021: high income child benefit charge www.litrg.org.uk/ref2391	14/01/2021
Finance Bill Sub-Committee: follow-up inquiry into the loan charge www.litrg.org.uk/ref2394	20/01/2021

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CIOT & ATT

How are you Changing the Face of Tax?

TRAINING

Joanne Herman welcomes you back to her third instalment on personal branding in 2021.

In my last article, the focus was based around thinking of yourself as the CEO of your own brand.

With many of us representing the company we work for remotely and being the face behind the brand, having a strong brand is both beneficial for you and your company.

This month, we are excited to announce that CIOT is celebrating the launch of a new website and logo. We have completely changed our shop window and our brand aspirations to reflect our aim of being at the cutting edge of taxation, as well as our ambition for the future.

As part of our launch campaign, called 'Changing the Face of Tax', #FaceofTax, we asked Kate Pace, Corporate Tax Professional at Bishop Fleming, how she has adapted to change over the past year and how building a brand alongside your professional brand is beneficial. Her interview is opposite.

Changing the Face of Tax

Would you like to be part of this exciting brand campaign that celebrates the launch of our new website and logo #FaceofTax? Fear not. There's still time. Contact me directly on jherman@ciot.org.uk

Make a start today and join us as we build for the new future of tax.

In my next blog, we'll start to look at shifting your mindset from the employee mindset to the personal brand mindset. For example, rather than being a 'company person' and merging your identity with your company values, you ought to be understanding how you and your personal brand fit in with your company's work culture.

For more information about how you can get involved, contact me at: jherman@ciot.org.uk.

Remember, having a strong personal brand is extremely beneficial to you and the business you work for. Giving your customers a person to follow will significantly benefit your business.

Kate Pace: adapting to change

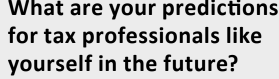
How are you changing the face of tax?
I feel as though I'm changing the face of tax in two respects.

Firstly, there's the misconception. I think there is still a misconception that a career in accountancy or taxation is boring, which I think is an opinion heavily formed on stereotypes and not true at all. My career so far has enabled me to work on some really interesting pieces of advisory work; learn about clients' exciting new project developments whilst working on R&D claims; and help clients at various stages in their business – from setting up a brand new company to helping them sell their business and plan for retirement.

Secondly, there's the need for the human touch. We have missed out on so much human interaction over the last 12 months due to the global pandemic. I think particularly at the moment it is so important to ensure that people see the real faces behind the brands and experience some human interaction.

Our firm is very client focused and I think it is so important that we are able to have human interactions with our clients, even if it's virtually for the time being. It's not just a case of 'sending in the tax return info' but also a chance to catch up, discuss what's happened in the last 12 months and what the plans are for the future, as well as discussing the joys of juggling working from home and home-schooling!

How would you describe yourself in three words?
Ambitious, Dependable and Dedicated.



What are your predictions for tax professionals like yourself in the future?
I think as the industry becomes more automated and digitalised, it's vitally important to ensure that we carefully plan for the future and that businesses remain nimble and adjust their strategic actions to adapt to market developments.

It's also very important to embrace new technologies to ensure that we move with the times and don't stand still in a fast-paced industry.

I think that remote working will play a larger part in everyone's lives even after the pandemic. I for one can't wait to get back into the office and work face to face with my colleagues again but remote working can also be a really useful tool and can provide more flexible, convenient and efficient ways of having client and internal meetings. It provides us with the opportunity to work with people from other offices who we may not have had the chance to work with before.

Do you think building your brand alongside the business brand is beneficial and why?
Yes, absolutely! I think it's essential. People engage and connect with other people. For me personally, if I have a personal connection with someone, have built up a relationship with them and have received good customer service from them, I am more likely to go back to them in the future and give them more work.

Particularly at the moment when face to face meetings are not possible, ensuring that your 'personal brand' online reflects how you are perceived in real life is even more important. It's a great way to highlight your strengths and attributes, establish a reputation and build trust.

Kate Pace

ATT

ATT Annual Conferences 2021

CONFERENCES

We are pleased to announce the 2021 series of the ATT Annual Conferences. The focus will be on topical issues with an emphasis on the practical issues faced by Taxation Technicians on a daily basis. As last year, the conferences will be fully online with a mix of live-streamed sessions and recorded sessions which you can access from the comfort of your home or office.

Our new format proved very popular last year, and this year we have increased the amount of live content to give you more opportunities to interact with the presenters. Conference fees will also remain at the 2020 rates.

To book your place, please visit www.att.org.uk/attconf2021

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mr Richard Bell

NOTIFICATION

At its hearing on 13 January 2021, the Disciplinary Tribunal of the Taxation Disciplinary Board considered complaints raised against Mr Richard Bell of Ipswich, a member of The Association of Taxation Technicians (ATT).

The tribunal determined that Mr Bell was guilty of the following charges:

1. In breach of his obligations under Regulation 5.3(a) MLR 2007, Rules 2.8.1 and/or 2.11 PRPG 2011, and/or Rules 2.10.1, 2.10.2 and/or 2.12.1 PRPG 2018, Mr Bell failed to provide a copy of his DBS (criminal history check) certificate along with his application for AML registration for the year 2018/19.
2. In breach of his obligations under Rules 2.12.1, 2.13.2 and/or 2.13.3 PRPG 2018, Mr Bell failed to respond to correspondence from the ATT and/or the TBD without unreasonable delay.

The Tribunal determined that Mr Bell should be suspended from membership of ATT until such time as he has supplied ATT with a clear DBS certificate. It was also ordered that he pay costs in the sum of £4,118.15. A copy of the decision of the Disciplinary Tribunal can be found on the TDB's website www.tax-board.org.uk.

Mr David Parker

NOTIFICATION

At hearings on 17 December 2020 and 13 January 2021, the Disciplinary Tribunal of the Taxation Disciplinary Board considered complaints raised by HMRC against Mr David Parker of Birmingham, a member of The Chartered Institute of Taxation (CIOT).

The tribunal determined that Mr Parker was guilty of the following charges:

Charge 1

In breach of Rules 2.6.1 and/or 2.6.2 of the PRPG 2011, Mr Parker:

(a) Failed:
  (i) to uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT; and/or
  (ii) to take due care in his professional conduct; and/or
  (iii) to take due care in his professional dealings;

(b) (i) Performed his professional work, or conducted his practice or business; or performed the duties of his employment improperly, inefficiently negligently; or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CIOT or to the tax profession; and/or
  (ii) breached the laws of the CIOT or ATT; and/or
  (iii) conducted himself in an unbefitting, unlawful or illegal manner, including in a personal, private capacity, which tends to bring discredit upon him and/or may harm the standing of the profession and/or the CIOT.

Charge 2 (the Disrepute Charge)

In breach of Rule 2.19 of the PCRT 2015, Mr Parker brought himself and his professional body into disrepute.

The tribunal determined that Mr Parker should be censured. It was also ordered that he pay costs in the sum of £8,295.94. The decision of the Disciplinary Tribunal can be found at www.tax-board.org.uk.

WCOTA

From strength to strength

MEMBERSHIP

The Worshipful Company of Tax Advisers celebrates its 25th birthday this year and has gone from strength to strength during its short life. It has always been a very proactive member of the City Livery movement and its energy and relative youth spring from the fact that most of its Freemen and Liverymen are actively engaged in the tax advisory profession. Its social gatherings during 2020 have been severely curtailed by the pandemic but it has been pursuing its charitable activities with vigour.

The Company is the trustee of two charitable trusts, the Tax Advisers' Charitable Trust (TACT) and the Tax Advisers' Benevolent Fund (TABF). The principal beneficiaries of TACT are Tax Aid and Tax Help for Older People, two organisations which concentrate on helping people with their tax affairs where there is no chance of the beneficiaries being able to afford to pay for such help.

Moreover TACT provides grants to charities connected with the City. It regularly supports the Lord Mayor's Appeal, the Priory Church of St Bartholomew the Great, the ABF Soldiers' Charity and the Magical Taxi Tour to EuroDisney for seriously ill children.

The Company also has a special relationship with St John Ambulance for whom it has purchased two defibrillators at a cost of £25,000. To fill the hole left by this donation, the members of the Company are now engaged in sponsored walks to raise this amount during this 25th anniversary year.

The Company is of course closely linked to the CIOT and the ATT. One of the most successful CIOT initiatives of recent years has been the launch of the Advanced Diploma in International Taxation (ADIT). This qualification is now much sought after in many parts of the world and is gained by sitting three separate examinations or sitting two examinations and writing one extended essay. The Company plays its part through TACT by awarding a bursary each year to an aspiring ADIT candidate in a developing country and has plans to expand this programme. It also awards a Worshipful Company of Tax Advisers Prize to the candidate who performs best in the ADIT thematic module element of the qualification.

The primary role envisaged for the TABF is to provide support for tax advisers and their families who have fallen on hard times, often because of ill health or personal tragedy. Up to now the pressure on its resources for this purpose has fortunately not been great. Its main function therefore has been to provide financial assistance to candidates for the ATT or CTA exams who are unable to afford the cost of the books they need to read, the courses they need to attend or the exams themselves.

You can find out more about the Company's charitable work from its Charity Review 2020 available from the Clerk Stephen Henderson, email: clerk@taxadvisers.org.uk.

John Dewhurst, Past Master

ATT Fellows: Latest developments

ATT

ATT Fellows

MEMBERSHIP

LinkedIn
Our new LinkedIn group specifically aimed at our ATT Fellows provides regular updates directing you to items we feel may be of interest to you as an ATT Fellow.

Feature a Fellow
This regular column allows you to tell all readers of Tax Adviser a little about yourself and your career to date, why you chose the ATT qualification and how it, and ATT Fellowship has helped you in your career in tax. It is a great way to promote yourself, your Fellowship status and the Association.

Please get in touch with us if you would like to feature in 'Feature a Fellow' in a future issue. You can contact us at page@att.org.uk

ATT Fellow's Webinar
A Live Webinar exclusive to Fellows of the Association will take place on Wednesday 21 April 2021. This free event will provide a unique opportunity for Fellows to enjoy the company of members of similar standing within the Association and participate in sessions run by our Technical Officers. The webinar will begin at 14.00 with a welcome from the President, Jeremy Coker. A Making Tax Digital session will follow along with breakout sessions covering sole practitioners, networking, greater regulation of the tax advice market and the future taxation of employment vs self-employment.

Please visit www.att.org.uk/attfellows2021 to register for the Live Webinar.

ATT

Volunteering for the ATT

VOLUNTEERING

We are currently looking for people to serve on our Steering Groups and Committees of Council. We offer a wide range of opportunities to suit all levels of skills and experience.

Volunteering has many benefits, both personal and professional – gaining new skills and experience, further developing your personal and professional networks, and excellent additional material for your CV. We have vacancies on the following Steering Groups:

- Business Development Steering Group
- Examination Steering Group
- Finance Steering Group
- Member Steering Group
- Professional Standards Committee
- Technical Steering Group

For further information please contact Jane Ashton at jashton@att.org.uk

ATT

Feature a Fellow: Sean Eastwood

PROFILE

Sean Eastwood ATT(Fellow) CTA, who works for Azets, tells us about his career in tax and how he has found ATT Fellowship useful.

Why did you pursue a career in tax?
When I first started my career, it appeared that the major decisions most businesses made over the short, medium and long term centred mainly around tax. Given the variety of taxes that any one business pays and how they all interact, I felt it would be a career that would be both engaging and interesting.

What are the highlights of your career?
Obtaining my ATT and CTA qualifications, and subsequently being admitted as a Fellow of the ATT.

Why is the ATT qualification important?
It provides a solid grounding in the fundamentals of the UK tax system and an excellent springboard to those wanting to push on and attempt the CTA qualification.

Why did you apply for Fellowship?
I believe it gives confidence to employers, colleagues and clients that you can show both competency and longevity in your chosen field.

Sean Eastwood

What advice would you give to new members starting in their career?
Try and get as much exposure early on to as many of the taxes as possible. Specialism is almost expected in this day and age given the vastness of the UK tax legislation, but improving your overall awareness will allow you to spot opportunities to help your clients and that is where you can add value. In addition, embrace the digitisation of tax as it is here to stay!

What do you specialise in?
I work as a Corporate Tax Manager for Azets. We are one of the UK's top ten firms, as well as being the largest regional accountancy and business advisers to the SME marketplace.

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

To place an advertisement contact:
advertisingsales@lexisnexis.co.uk

Professional Standards Officer

att
CIOT Chartered Institute of Taxation

Salary is dependent on experience

We are looking for a Professional Standards Officer to join our team. It is an interesting and varied role which involves regular interaction with members, HMRC and other government departments. You will be home based with occasional travel to Head Office (when it re-opens) and to carry out Anti-Money Laundering (AML) visits.

Key aspects of the role include:

- Assisting with Professional Standards policy and guidance work
- Preparing statistics and papers for meetings
- Assisting with Continuing Professional Development audit and Professional Indemnity Insurance checks
- Assisting with updating website material
- Research for consultation responses
- Participating in AML visits and in due course carrying out visits
- Assisting with writing reports eg HM Treasury AML report
- Assisting with clearing cases of non-compliance arising from the Annual return and AML return
- Answering member queries about professional standards and AML matters
- Setting up and attending working party meetings

You will have experience of working in tax, a basic understanding of and, ideally, a relevant professional qualification. Further details of the skills needed to fulfil the role are included in the job description which you can obtain by contacting our HR Officer, Rakhi Vora at rvora@ciot.org.uk. If you are interested in applying, please send your CV and Covering letter to Rakhi, by **19 March at 12pm**.

Advertise in the next issue of

TAXAdviser

Booking deadline:
Friday 19th March

Contact:
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UK Tax Opportunity Down Under

Fantastic opportunity for a skilled UK Private Client or Expatriate Tax Consultant/Manager, looking for a climate change and exciting new adventure in a growing business based in Australia's picturesque capital city, Canberra!

The Role

Nexia Australia has an exciting opportunity to join our rapidly growing UK and Australian tax advice business located in Canberra, Australia. The role is an excellent and rare opportunity for someone with strong UK tax experience to join a top-ten accountancy firm in Australia. Reporting to Naomi Smith, our UK/Australian Tax Consulting Partner, you will have the opportunity to develop your technical tax expertise. This role is perfect for candidates seeking an intellectually stimulating tax advisory role. Our work encompasses a large amount of joint UK and Australian tax advice projects for private clients. Your knowledge of UK income tax, capital gains tax, inheritance tax, residency and domicile rules, employment taxes, trust and companies will be fully utilised in this challenging role. The successful candidate will be trained to develop their knowledge in Australian tax law.

Our Ideal Candidate

The successful candidate will preferably be a UK Chartered Tax Adviser (CTA) and have at least 3 year's UK private client, expatriate or mixed tax experience. Other UK tax qualifications such as ATT/ACA/ACCA will be highly regarded. In addition, you will have exceptional written and communication skills, be well presented, proactive with a positive attitude, and be client focused.

About Us

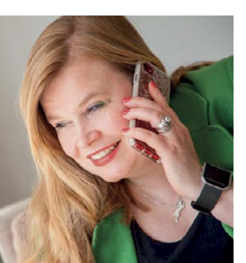
Nexia Canberra is amongst the Australian Capital Territory's premier mid-tier Chartered Accounting firms with a reputation for providing quality financial solutions. We are a full-service accounting firm with offices in 122 countries across the globe. We have one of the World's few UK/Australian cross-border tax teams and are registered with HMRC as a UK tax agent. We offer a fun and nurturing culture that emphasises career growth, professional development, an inclusive and collaborative environment with the opportunity to be part of our team's success. Canberra offers a pollution free, relaxed and an excellent quality of life.

Please email us at recruitment@nexiacanberra.com.au or see our TaxationJobs.co.uk advertisement to apply.

www.nexia.com.au

Georgiana Head Recruitment

MEET YOUR ADVISERS



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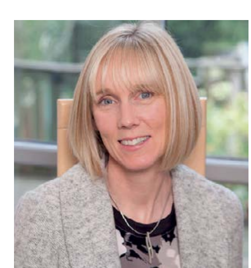

ALISON TAIT

Director

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Trust and Private Client Mgr or Senior Mgr Law firm, Leeds – £55,000 to £65,000

Bored of accountancy firms? Always wanted to work in a legal firm? Brilliant opportunity for a trust and personal tax specialist to work for a law firm, You'll be working within the STEP award winning Tax, Trusts and Estates team to provide personal tax advice to individuals, estates and trusts, particularly those with a business element. Your role will involve dealing with complex tax advice, (IHT, CGT, Income tax) personal tax returns and trust tax returns, HMRC enquiries as well as providing technical support to the rest of the team. **Call Georgiana Ref: 3049**

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

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

In-house VAT Advisor Role Alderley Edge – £35,000 to £45,000

Our client is a large Property Group and In line with their plans for growth they seek a commercial Indirect Tax Advisor to join their Finance Team in the Head Office in Alderley Edge. Reporting to the Group Tax Director, the Indirect Tax Advisor will have responsibility for robust VAT compliance process, including overseas jurisdictions in Spain, China and UAE. There will also be a significant amount of indirect tax advisory work across a variety of businesses. This is a friendly team with interesting work. You will need experience of VAT reporting. **Call Georgiana Ref: 3055**

Customs Assistant Manager Manchester – to £40,000 + bens

You will provide customs compliance and advisory services to your portfolio of clients. Acting as the first point of contact, you will take responsibility for the project delivery including identifying areas of risk and technical matters, liaising with HMRC and managing junior colleagues. You must have customs technical experience, with a minimum of 3 years from either industry, logistics, freight forwarding, HMRC or practice. You must also be able to build good relationships and have the confidence to lead projects. **Call Alison Ref: 3057**

Corporate Tax Advisory Role South Yorkshire – £excellent

Our client is a large independent accountancy firm which is part of an international network. This practice has a wide range of advisory corporate tax work including advising inbound and outbound companies on trading in the UK and abroad, transaction work, structuring, and ensuring businesses claim the right R&D reliefs. This busy team seek a corporate tax specialist, and will consider a hire at any level from part qualified through to senior manager – it is the team fit that is most important. Buckets of potential in this role in a business that truly 'punches above its weight'. **Call Georgiana Ref: 3063**

Shares Schemes Manager/Senior Manager Manchester/Leeds – £excellent + bens

This Big 4 Firm is looking for a share schemes specialist to join their team in the North. You must have a good understanding of the UK tax and legal issues that may arise in relation to long term and equity based incentive arrangements, and also have experience of drafting legal documentation and giving technical advice. You may therefore be an ACA/ICAS/CTA qualified tax advisor or a qualified solicitor looking for a change of working environment. Flexible and homeworking a possibility. **Call Alison Ref: 3008**

www.georgianaheadrecruitment.com

Corporate Tax Senior Manager
Manchester or Leeds – £excellent

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

Associate Director/Partner Designate
Cheshire or West Yorkshire + bens

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

Corporate Tax Senior Manager or Director
Leeds – £excellent

This large independent firm in Leeds is looking to fill a key role. They need a tax all rounder – someone to help them lead and further develop their tax practice in the Yorkshire market place. Someone who can help the partners with tax advisory work for their clients, most of whom are owner managers and their businesses. The role also involves man management and business development responsibilities. This is a great opportunity with no limit on career progression. **Call Alison Ref: 2983**

Private Client Adviser
Leeds/York – £excellent + study support

My client is looking for an ATT qualified private client advisor to manage a mixed portfolio of personal tax and trust clients. You will process and review personal and trust self assessment tax returns, assist with tax planning issues, build strong client and internal relationships and assist the senior management team in building the practice. You should be ATT qualified, with strong interpersonal and communication skills. Study support will be provided for the CTA qualification. **Call Alison Ref: 3035**

In-house Tax Manager
Stoke on Trent, Staffordshire

Major International Group is currently recruiting for an experienced and qualified Tax Manager based at their UK headquarters in Stoke-on-Trent. You will be responsible for managing tax affairs at a UK level for UK based group companies, providing leadership and strategic direction to the UK tax teams and developing the UK tax network. You will be responsible for tax policy, strategy, compliance, accounting, advisory (business partnering), and relationships with external stakeholders and HMRC.. Post Covid, it is envisaged that this role will be worked partly in the office and partly remotely. **Call Georgiana Ref: 3037**

Personal Tax Senior
Outskirts of Leeds – to £32,000

This independent firm is based on a business park on the outskirts of Leeds. They are looking for a tax senior to assist the tax manager with a portfolio of predominantly personal tax work. You will assist with the preparation and submission of the self assessment returns for a portfolio of clients, and will also be involved in ad-hoc tax advisory work. You should be AAT/ATT/CTA/ACA/ACCA qualified, with a minimum of 3 years' taxation experience. Flexible and part time working is available. **Call Alison Ref: 3020**

YOUR TAXATION RECRUITMENT SPECIALISTS

Associate Director, Private Client Tax
London – c.£85,000 + Bens

A great opportunity for a CTA qualified personal tax Senior Manager to join one of London's high-profile Private Client Tax teams. Perform a client-facing advisory role, undertaking income and capital taxes planning for new-money entrepreneurs, non doms, family offices and HNW business owners. Short pathway to Director grade and agile working options. **Ref 4843**

Personal Tax Manager
London – £60,000 to £65,000 + Bens

Our client has built a strong reputation for advising entrepreneurial HNWIs and their families. Their Private Client team now seeks a CTA Personal Tax Manager to oversee a portfolio of non doms, business owners and senior executives. Experience of CGT, IHT, trusts, domicile and remittance is therefore important. The role offers a short route to Senior Manager. **Ref 4874**

Manager, Personal Tax
Bristol – £48,000 to £58,000 + Bens

One of the region's leading Private Client teams is offering the opportunity for a CTA qualified Personal Tax Manager or Assistant Manager to join them and play a key role in their ongoing success. The incoming individual will take responsibility for a portfolio of HNW/UHNW private clients, their annual personal tax compliance and ad hoc planning. **Ref 4894**

Senior Manager, Personal Tax Advisory
Bath Area – £60,000 to £65,000 + Bens

An advisory-focused role with a growing personal tax planning team. Work closely with an experienced Partner on ad hoc projects covering IHT, CGT, domicile, residence and transactions. Play a high-profile role in a prominent firm. Assist with marketing and networking initiatives. Benefit from supported progression to Director, as well as flexible working. CTA essential. **Ref 4897**

Private Client Tax Manager
Winchester – £Excellent + Bens

Join a respected regional firm that is looking to bolster its impressive Private Client offering. Advise a broad range of new and old money HNWIs, including entrepreneurs, landed wealth and UK res non doms. Build a professional name for yourself across the region and benefit from a supported route to Senior Manager and Partner grades. CTA essential. **Ref 4902**

Tax Senior, HNW Private Clients
Guildford – £40,000 to £45,000

Are you CTA qualified and looking to build your career with a leading Private Client Tax team? Our client advises local, London and international HNWIs on all areas of their personal taxation. Performing a client-facing role, you will oversee their annual compliance, as well as assisting high-profile Partners with ad hoc personal tax planning projects. **Ref 4901**

For details of these and similar opportunities visit our website:

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