Chartered Institute of Taxation
www.tax.org.uk
www.att.org.uk

Excellence in Taxation

May 2020

www.taxadvisermagazine.com


# TAX Adviser


# Tax and COVID-19: the wider picture

*Andrew Hubbard* reflects on some of the challenges facing the tax profession, page 6

**PLUS** Offpayroll working – Travel and subsistence – Professional negligence – VAT

## Welcomes



## Technical

From the Technical team



## Briefings

From 30 Monck Street



## Recruitment



## Features









# President's page

president@ciot.org.uk
Glyn Fullelove

## We do not live in normal times

Normally, the May edition of *Tax Adviser* carries the last 'Welcome' from a President in their year of office. However, we do not live in normal times. As you will be aware, the Institute's AGM has been postponed and, consequently, I will remain as President for a little while longer. At the time of writing, the arrangements for the AGM and the handover of the Presidency remain to be finalised, but members will be updated on these matters as soon as possible.

The first priority of the Institute as the scale of the spread of COVID-19 in the UK became apparent was the safety of staff and volunteers; I would like to reiterate my thanks to our chief executive, Helen Whiteman, and her counterpart at the ATT, Jane Ashton, on the speed and efficiency with which they moved all day to day operations online and to full out-of-office working. I would also like to thank all the staff at the CIOT for their hard work in ensuring that we continue to execute our charitable objectives and support our members.

We inevitably had to cancel a number of events, notably the Spring Residential Conference in Cambridge and the April CTA Admissions Ceremony, as well as the ADIT conference and admissions ceremony. However, those due to receive their certificates at these ceremonies will be able to do so at a future point in time.

A number of branch events have successfully moved to an online format, and have been open to members nationwide. These have been well subscribed and my thanks go to the speakers for helping us to continue our educational programme in this way.

Those due to sit CTA and ADIT papers in May and June will already be aware that, sadly, this will not be possible. We are supporting our CTA students with weekly emails on study techniques now there is more time to prepare. Student registration periods and existing passes are being extended so there is no impact on eligibility for membership.

In a wider context, thoughts are already turning to what life will be like after the restrictions we are living under are lifted. I am writing this in mid-April and it is not yet known when any restrictions will be eased; it looks likely it will be many months before life returns to 'normal'. What the new 'normal' will be remains something of a matter of conjecture. Some commentators have argued that there is an appetite for quite drastic changes in our way of life, others have suggested that we will drift back to something not that dissimilar to how we lived in 2019.

I think that there will be changes that will have very widespread support – changes that we will 'want to happen' may include more remote working and a much greater use of video-conferencing. Then there will be changes that 'have to happen'; the government has moved swiftly to support the economy, and the costs of this will have to be met in some form. I think we can expect significant changes in the tax system. The Chancellor has already hinted at what many will see as overdue reform to the National Insurance system.

Many contributions to the debate, though, suggest behavioural changes that commentators think 'should happen' – voluntarily or enforced. In terms of the tax profession, this will no doubt feed into the current consultation around raising standards in the tax advice market. The CIOT has been at the forefront of raising the already high standards of most tax professionals in recent years through the development of Professional Conduct in Relation to Taxation (PCRT). We have already gone on record to argue that building on the existing PCRT framework, rather than creating an entirely new regulatory arrangement, is the way forward. This is not to suggest no changes should be made; particularly around those agents who have no qualifications, and around areas where suppliers argue they are not providing tax services, changes are, in my view, definitely required. I suspect any changes may impinge on us all to some extent. In the meantime, I would reiterate that PCRT remains in full force during the current COVID-19 outbreak. No 'liberties' should be taken with the government's support schemes, and any tax adviser advising their clients to 'bend the rules' has no place in this Institute.

There are, of course, genuine technical questions arising as to how some of the government's support measures work in normal commercial operation, and the Institute is working with HMRC and HMT on a daily basis in this regard. With LITRG we have established advice pages relating to the government measures accessible from the COVID-19 hub page of our website. If you encounter a question not answered by the existing guidance, please email technical@tax.org.uk. We and the other professional bodies are collating questions for HMRC, which they greatly appreciate.

Finally, I wish you and all your families well at this time. Please stay safe.

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

> **"In a wider context, thoughts are already turning to what life will be like after the restrictions we are living under are lifted.**

# ATT welcome

**page@att.org.uk**
Richard Todd

## No understating the key message this Spring

I genuinely hope you are doing as well as expected under the current very difficult circumstances created by COVID-19.

I am writing this article two weeks before publication, so it may not reflect exactly what is happening when you read it. Certainly, the key message at this time is to 'Stay at home; Protect the NHS; Save lives.'

This year, I fear that the subject of COVID-19 will feature for several months, if not years, to come, in our work and our lives.

It is good to see that some announcements have been made by Chancellor Rishi Sunak to alleviate the problems from social distancing and self-isolation with regard to 'furloughing' of employees and making payments to those of us who are self-employed.

While the amount involved for each employee is based on actual earnings, the figure for the self-employed is based on average profits for the three preceding tax years ended 5 April 2019. I have heard already stories of how some traders are complaining because they understated their profits in some of those years, reducing the amount they could have claimed from the government. It is important as tax advisers that we follow PCRT and help clients to declare the right amount of profits.

Not only must we now consider the health of ourselves and our families, we should also consider how social distancing and self-isolation will affect our livelihood and that of our clients in the short term. I recently read a report that suggests the basic rate of income tax may need to increase after the pandemic has been dealt with, for example.

I am pleased to say that ATT's Jane Ashton and CIOT's Helen Whiteman played important roles to ensure that the staff at Monck Street were protected in the early days of the COVID-19 health crisis and to transition the staff into a new pattern of working from home. This means the staff and other volunteers continue to provide a service to members. With that in mind, I noticed that Branch CPD lectures are moving online. I would encourage you to log in and view those lectures. At some point in the future, I expect that we will return to work as tax professionals and may find the CPD lectures most useful.

I am not making light of the very difficult situation that we find ourselves in, but I would encourage you to use any 'down time' (i.e. time not spent working during normal office hours) to ensure that you have fully complied with Membership of the Association or Institute. This includes bringing your CPD record up to date, including any online lectures viewed, or filing an outstanding 2019 Annual Return.

I should also mention the UK Budget on 11 March. In that Budget, Northern Ireland was promised an extra £210 million for public services: £138 million on infrastructure and £77 million for 'day to day' spending. There was no mention of a reduction or abolition of air passenger duty (APD), especially in the wake of collapse of Flybe. Since the national Budget, Northern Ireland has received its local Budget on 31 March.

The Minister of Finance, Mr Conor Murphy MLA, has:

- set aside £370 million in grants to support some 30,000 businesses so they can continue to pay their employees;
- reduced business rates by 18%. This was not as a direct consequence of COVID-19 but may now be quite important to businesses, especially when coupled with a three month holiday; and
- frozen domestic rates, and coupled this with a similar three month payment holiday.

The three month payment holiday is very important; it gives businesses and individuals breathing space to manage their affairs before the government makes payments under the Job Retention Scheme for employees and the Self-employment Income Support Scheme for unincorporated businesses.

You may recall that changes to the treatment of 'off-payroll workers' was due to change with effect from 6 April 2020, but the implementation date was delayed by 12 months due to the ongoing COVID-19 crisis. I wonder if the introduction of the VAT domestic reverse charge (DRC) for businesses in the building and construction industry, which has already been deferred once to 1 October 2020, will be deferred again for another 12 months. By that date, businesses may be trying to build the economy again following these very difficult months.

It is important to repeat the message – Stay at home; Protect the NHS; Save lives.

I hope to see you all again soon.

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

> **"This year, I fear that the subject of COVID-19 will feature for several months, if not years, to come, in our work and our lives.**

# ATT ANNUAL CONFERENCE 2020

AT LEAST 6 HOURS OF CPD

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

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

All delegates registered on the existing conferences will be offered dates on the new live sessions.

REGISTER AT
WWW.ATT.ORG.UK/ATTCONF2020

*Topics will include:*

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

*Speakers include:*

**Michael Steed**

**ATT Technical Officers**

FOR MORE INFORMATION
EMAIL
EVENTS@ATT.ORG.UK

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

- **Tuesday 19 May**
- **Friday 5 June**
- **Tuesday 16 June**
- **Tuesday 23 June**

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

*Conference pricing:*

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

*Further information:*

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

**www.att.org.uk/attconf2020**


# Tax and COVID-19: the wider picture

*Andrew Hubbard* reflects on some of the challenges facing the tax profession

**KEY POINTS**

- **What is the issue?**
For advisers, one of the most difficult things to deal with has been that information on the various COVID-19 arrangements has inevitably emerged in a piecemeal fashion.
- **What does it mean to me?**
We have to do the best we can for our clients to help them receive the government support available, but we should resist calls to engineer artificially high levels of grant/subsidy.
- **What can I take away?**
Once things get back to normal, there will be huge amount of work for agents to do in getting their clients' affairs up to date.

It seems only a few days ago that the words furlough and COVID were known only to scrabble enthusiasts or cruciverbalists. Now they are among the most common search terms on the internet. Tax advisers are among those having to get to grips not only with new terminology but with what amounts to a wholly new regime.

My purpose in this article is not to give a complete account of all the tax changes – there are many places to find that including the CIOT's dedicated pages or the Tolley microsite (covid19.tolley.co.uk). Rather, I want to draw out some broader themes and reflect on what lessons can be learned for the future.

## What is fair?

In designing any new tax initiative one of the key questions is how fair it will be. If you ask the man or woman in the street (assuming that you can still find one…) whether a system should be fair they will say 'of course it should'. But fairness comes at a cost – complexity. We all, myself included, press governments to implement policies which are fair and simple, as if the two go hand in hand rather than, as often the case, represent polar opposites. So, where do the COVID measures sit on this spectrum?

If we look at the broader framework first, you could reasonably conclude that simplicity has been a higher priority than fairness. There is sometimes a fairly loose


© PIPPA FOWLES/DOWNING STREET/HANDOUT/EPA-EFE/Shutterstock

**PROFILE**

**Name:** Andrew Hubbard
**Position:** Tolley's editor-in-chief
**Email:** andrew.n.hubbard@lexisnexis.co.uk
**Profile:** Andrew is the editor-in-chief at Tolley, a former consultant at RSM and a past president of the Chartered Institute of Taxation.

correlation in these new measures between actual need and the support given. Mainly we have an objective set of rules which apply across the board. This can lead to resentment. You only have to read the headlines to see complaints that supermarket X, airline Y or fashion designer Z are getting support when they are rich enough to survive without it. Whether these views are right is a matter of opinion, but such outcomes are the inevitable consequence of policy decisions to keep eligibility criteria as simple as possible.

When we drill down into the detail the picture is more nuanced. Let's look at the two main schemes – the job retention scheme (JRS) and the self-employed support scheme (SES). The latter is a fairly blunt instrument. There is an upper limit on profits of £50,000 (which can be one year's or an average of three years): if you are within in you get support equal to 80% of profits up to a cap: if you are above it you get nothing. This makes things pretty simple but falling the wrong side of the line has severe consequences. On one online forum I saw an accountant had worked out that his client exceeded the cap by £27.50 and so would get nothing from the SES. He must have to have had a very difficult conversation with his client. Of course the SES could have been designed with a tapered withdrawal of benefit but that would have made it much more complex.

By contrast, the JRS does attempt a greater degree of precision. It attempts a precise match between the grant and 80% of salary (up to a cap) and consequently includes a set of highly complex rules to determine which elements of salary are taken into account. This does more closely meet the test of fairness but comes with a significant complexity cost: my heart sank when I saw HMRC's examples of how to do the calculations, with everything pro-rated down to a daily basis, although HMRC's online calculator does do much of the heavy lifting.

> **For advisers, one of the most difficult things to deal with has been that information on the various arrangements has emerged piecemeal.**

This is not, of course, a case of one approach being right and the other being wrong – different decisions have been taken on where the balance lies. This is undoubtedly related to the fact that the JRS depends on the employer making the calculation to support the claim whereas it will be HMRC which calculates the amount of the SES. It would presumably have been too burdensome for HMRC to have had to undertake anything more than broad brush calculations, whereas an employer might reasonably be expected to have access to more detailed information to enable a precise claim for JRS to be made.

### Hard cases make bad law?

There is a related issue here: how far it is reasonable to go to design a system which will support absolutely everybody it ought to? So, the SES scheme doesn't give any support to individuals who commenced trade on or after 6 April 2019; the JRS doesn't give employers support for individuals who commenced employment after 19 March 2020; owners of PSCs who rewarded themselves mainly through dividends largely fall into a gap between the two schemes.

Is this right? Those who are affected would certainly say that it is isn't and there is still lobbying going on to try to get changes. But the inevitable truth is that devising a scheme which would have accommodated all of these sorts of situations would have made them much more difficult to administer and, as I discuss below, open to manipulation and fraud. The imperative was for the government to get something up and running as soon as possible. I mean no disrespect to those caught in some of these traps, for whom I have every sympathy, but it is inevitable that any scheme introduced in these extraordinary circumstances is bound to have rough edges. The Chancellor has been commendably honest about this. On 24 March he told Parliament: 'despite the significant economic interventions we have put in place, we will not be able to protect every single job or save every single business.'

### Acting without an act

For advisers, one of the most difficult things to deal with has been that information on the various arrangements has emerged piecemeal in guidance and that legislative backing of any sort has followed later or, in some case, not at all. This is not a criticism of the approach which HMRC has taken. The pressure to get some information out must have been overwhelming and it clearly would have been wrong to publish reams and reams of what would for most people have been impenetrable legislation at the outset.

So the pattern has been to make broad announcements and gradually fill in the detail over the following days and weeks.

The problem for advisers in all of this is of course that guidance does not have the precision of language we are used to in legislation and so often creates more issues than it solves. Take as a simple example the postponement of the second payment of account. This was announced as part of a package of measures for the self-employed and there was some confusion about whether it applied just to self-employed income or to all income within self-assessment. Within our team we had a number of discussions about whether it would even be possible to calculate payments on accounts when excluding only self-employed income. Eventually HMRC confirmed that no payment on account was due in respect of any SA income. That then led to a further question about the status of trusts/trustees. Again, this prompted much discussion on how SA actually works for trusts/trustees. Finally, confirmation was given that trusts/trustees would not be required to make the second payment on account. I make these points not in criticism but to show just how different everything is at the moment where we are not working with legislation from the outset. There are many similar examples and we will no doubt be discovering fresh points as we delve deeper into the detail. Who would have thought, for example, that, as discussed in Bill Dodwell's article (at page 10), guidance on company residence would need to be revised as a result of the pandemic? Truly there is not a single aspect of our tax system which in some way has been unaffected by this emergency.

We do now have the Treasury Direction on the JRS which has helped to fill in many of the gaps. Constitutional scholars will derive great pleasure in debating the precise legal status of a direction of this nature: the rest of us can leave them to it and be thankful that at last we have something which at least looks and feels like legislation.

### We are all in this together – really?

A national crisis brings out the best in people – you only have to look what Captain Tom Moore has achieved: but it also brings out the worst. Our view of the blitz spirit which got us through the war ignores the fact that crime went up significantly during the war and many people used the cover of the conflict for nefarious activities – from minor fiddling of petrol coupons through to murder dressed up to look like the aftermath of a bombing raid.

Unfortunately some of those same behaviours (OK not murder as far as I know) have emerged in relation to the COVID-19 crisis. HMRC has already published a warning about scam emails (see bit.ly/2Ktjuuo) and there are known to be concerns that concerted attacks on HMRC systems could be attempted. One of the reasons that the SES is not open to people who commenced self-employment on or after 6 April 2019 is that such people won't yet be known to HMRC and thus fraudsters could have created fictitious identities of purported new self-employed people to cream money off the system.

**In the short term, everything I see tells me that the profession has responded magnificently to the crisis.**

On a less serious, but still concerning, note are various suggestions as to how to get round some of the rules in order to create higher levels of grant/subsidy. I've seen some pretty outrageous ideas out there, such as retrospectively making a spouse an employee, adjusting the pay records, and then putting him/her on furlough in order to obtain government support. Many of those ideas don't work anyhow, but personally I think that it is dangerous for people even to be thinking about them. These are not ordinary times and our profession risks a big backlash if we were being seen to use, shall I call them, creative techniques to give our clients a greater benefit than they would otherwise be entitled to. The CIOT and other professional bodies have already warned members about this and in my view they are right to do so. We have to do the best we can for our clients but not at any cost.

### It works!

Before I look to the future it is right that HMRC should be congratulated for what they have achieved in a very short period of time. To have devised two major schemes covering literally millions of people and to have got the first of them up and running within the timeframe which they announced is a hugely impressive achievement. There was much speculation in parts of the online community that the JRS website would crash as soon as it was launched but this was unfounded and over 140,000 employers used the site on the first day. It shows what can be done when backs are against the wall and bodes well for future HMRC IT developments, though I trust that they will never have to take place against the same background. Of course I could be forced to eat my own words if the site collapses five minutes before this article is published but I am pretty confident now that things are up and running smoothly for the foreseeable future.

### Where does that leave us?

So, what does that future look like? In the short term, everything I see tells me that the profession has responded magnificently to the crisis. Taxpayers needed support from their advisers in extraordinary circumstances and they have received it. Agents have been working tirelessly, often with no certainty that they will get paid, because that client service ethic is deeply embedded in what we all do. Some clients will go to the wall, which will be a tragedy for them, but those who are able to keep going will look back with huge appreciation for the support that their advisers gave them.

What is becoming clear to me, however, is that once things do start to get back to normal there will be a huge amount of work for agents to do in getting their clients' affairs up to date. Even more than usual, clients will not have been able to keep proper records of everything that they have done; what records there are likely to be fragmented because finance teams have been working at home and clients will want to concentrate on rebuilding their businesses rather than tidying up the past. So there will be real problems ahead for us and that is something we need to prepare for. Just take one example – the deferment of a quarter's VAT payment to the end of March 2021. What are the chances that money will actually be available to make that payment? Businesses will not have put the VAT payment safely in a bank account ready to be drawn on in March: they will almost certainly have used the money to keep afloat. Once they start to trade again they will be able to fund current VAT from current profits, but where is the money coming from to pay the deferred amount? It could take years for everything to catch up. Will clients want to pay advisers for doing that, and the many other tasks that will need to be done to get things up to date?

I didn't really want to end on a negative note, but there has to be sense of realism to all of this. Times are going to be tough for us all for a long time to come. There is an old saying 'after the Lord Mayor's show comes....' Look it up if you don't know how it ends: the editor of this magazine is far too polite to allow me to publish the full quote!


Run your practice from anywhere
You and your team make your practice what it is - not the walls around you. Being 'at work' no longer means being in the same place.
AccountancyManager allows you to run your practice from wherever you happen to be. Whether that's at home, in the office, on the road or with a client.
SOFTWAREexcellence
AWARD WINNER accountingWEB
WINNER
WINNER
Sign up now for your free 30-day trial at
AccountancyManager.co.uk or call 01926 355 366
ACCOUNTANCYMANAGER
Companies House
FreeAgent
xero
stripe
intuit quickbooks.
HM Revenue & Customs

# A helping hand

*Bill Dodwell* explains how HMRC is providing useful guidance to businesses and individuals.

© iStockphoto/Alfieri

**PROFILE**

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

I've been hugely impressed with everything HMRC has done since the start of the coronavirus pandemic. The Office of Tax Simplification effectively stopped going to the office from Tuesday 17 March, shortly before lockdown was declared, and we held a board meeting by video conference on Thursday 19 March. Everyone is working from home and we all have access to our file store and email from home. However, there are just a dozen or so in the OTS team.

It's a much greater endeavour to move tens of thousands of HMRC staff out of their offices and allow them to operate remotely. Remarkably, this has been achieved, alongside HMRC implementing the major new relief programmes for employers and the self-employed, to help reduce the financial impact to many millions of the pandemic.

## HMRC's guidance

Alongside the high-profile Coronavirus Jobs Retention Scheme, the Coronavirus Self-Employment Income Support scheme, and the deferral of VAT and Self Assessment payments, HMRC has also found time to issue new guidance on residence for individuals and companies.

The guidance is intended to help those who find themselves in different locations to those they'd expected, due to the impact of COVID-19 on travel.

The UK's statutory residence test applies from 6 April 2013 (see bit.ly/34Tp2I6). A key aspect of the law is that the individual must count the number of days spent in the UK and overseas. However, for many parts of the test (but not all), days spent in the UK may be ignored due to 'exceptional circumstances'. Up to 60 days spent in the UK due to exceptional circumstances may be ignored. HMRC's new guidance in its *Residence, Domicile and Remittance Basis Manual* (see bit.ly/3cxoDh8) states:

> 'The coronavirus (COVID-19) pandemic may impact your ability to move freely to and from the UK or, require you to remain unexpectedly in the UK.
>
> Whether days spent in the UK an be disregarded due to exceptional circumstances will always depend on the facts and circumstances of each individual case.
>
> However, if you:
>
> - are quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus
> - find yourself advised by official Government advice not to travel from the UK as a result of the virus
> - are unable to leave the UK as a result of the closure of international borders, or
> - are asked by your employer to return to the UK temporarily as a result of the virus
>
> the circumstances are considered as exceptional.'

Company residence is a harder topic, since it mainly depends on principles set out in case law and is of course a matter of fact. However, HMRC have sought to be helpful in their comments in its *International Manual* (see bit.ly/2S1emCe):

> 'We do not consider that a company will necessarily become resident in the UK because a few board meetings are held here, or because some decisions are taken in the UK over a short period of time. HMRC guidance makes it clear that we will take a holistic view of the facts and circumstances of each case.'

HMRC draw attention to double tax treaties, which typically have a tax residence tie breaker clause, where a company is regarded as resident in both territories under their domestic law. Newer, or amended UK treaties have a clause which allows the residence to be determined by the competent authorities; older ones allocate residence based on the place of effective management.

Of course, overseas companies could find that they create a UK taxable presence, or permanent establishment, without any change of corporate residence. HMRC is helpful here, too (see bit.ly/2Vqr3Zf):

> '...we consider that the current legislation, treaties and related guidance provides sufficient flexibility with regard to whether a permanent establishment has been created in the UK. In particular, s 1141(1) CTA 2010 requires either that a business is carried on through a fixed place of business in the UK, or that an agent acting on behalf of the company has and habitually exercises authority to carry out the company's business in the UK.
>
> As INTM264430 makes clear, HMRC considers that a non-resident company will not have a UK fixed place of business PE after a short period of time, as a degree of permanence is required. Similarly, whilst the habitual conclusion of contracts in the UK would also create a Dependant Agent PE in the UK, it is a matter of fact and degree as to whether that habitual condition is met. Furthermore, the existence of a UK PE does not in itself mean that a significant element of the profits of the non-resident company would be taxable in the UK. The attribution of profits to a UK PE would depend on the level of activity in the UK, and the relative value of that activity, in accordance with the guidance at INTM26700 onwards.'

This new guidance will help companies (and especially their advisers) from worrying too much about the corporate tax aspects of coronavirus limitations on travel or location. Naturally, at the same time those in business will need to pay attention to residence and taxable presence issues to make sure that overseas companies continue to minimise their UK presence in a sensible fashion.

# Eat in or take away?

**Michael Steed** returns to one of his favourite areas of tax and considers tax relief for 'food on the go'



## KEY POINTS

- **What is the issue?**
Food on the go is often raised as a deduction issue for both self-employed and employed taxpayers.
- **What does it mean to me?**
The travel and subsistence rules are not always clear.
- **What can I take away?**
Care is needed to correctly identify the rules and then to apply them.

*Editor's note: Since this article was written, our decisions about how and where we can eat and travel have been significantly impacted. We considered holding this article back until life starts to return to normal but, in a spirit of optimism, have decided to publish. We hope you don't find it too tantalising…*

One of the reasons that I signed up for tax is that some simple questions can have such complicated answers and food on the go is a good example! So, can I get tax relief for food on the go?

We need to break the problem into two areas: self-employed and employed. However, even this is complicated by the issue of workers in the gig economy, as the bipartite tax system does not accord with the tripartite employment law boxes of employed, self-employed and something in the middle (the worker or dependent contractor). (See the case of *Uber v Aslam* [2018] EWCA Civ 2748 about taxi driver employment rights.)

This doesn't readily resolve into tax clarity. So, to make this analysis fit into a reasonable space, I will park the gig economy workers until a later article and concentrate instead on the tax analysis of self-employed and employed.

As a practical tool, my starting point is a general statement that if the travel is good, the food is good; by which I mean that if we can obtain tax relief on the travel expenses in question, it is generally true that tax relief on the food and drink is also obtainable. The position for self-employed taxpayers is in ITTOIA 2005 s 57A. Employees are entitled to tax relief for the full costs they are obliged to incur when travelling in the performance of their duties or when travelling to or from a place they have to attend in the performance of their duties – as long as the journey is not ordinary commuting or private travel (ITEPA 2003 ss 337 and 338).

I'd also like to make clear that in my analysis food and drink go together. As advisers, you don't have to stand as moral guardians over your clients, worrying about the state of their livers. If you get tax relief for one, you get tax relief for the other. How many times at conferences have I heard advisers say: 'Oh, I never let them have alcohol!' Where did that one come from?

Let's review the two groups.

## 1. Self-employed taxpayers

The legislation is a bit sparse, but it is powerful: ITTOIA 2005 s 57A (see box 1).

Just to be clear, this provision was introduced in 2009 at the same time that the benchmark scale rates for employment were introduced into ITEPA 2003 (see below).

The provisions effectively replaced the longstanding decision in *Caillebotte v Quinn* [1975] 50 TC 222), where food on the go was held to offend the 'wholly and exclusively' provisions, now in ITTOIA 2005 s 34.

## But what does s 57A mean?

The first and obvious point is that the legislation only allows 'reasonable expenses on food and drink for consumption by the trader', so HMRC is unwilling to allow gluttonous excess (although gluttonous excess may be in order). We could spend all night debating the meaning of the word 'reasonable', but the clear message from the legislation and the guidance is that food *and* drink are allowable.

In practical terms, I would personally be comfortable defending a taxpayer's three course meal and a bottle of wine, say. How do I feel about a second bottle? I'm beginning to wince! This feels less reasonable (and I'm beginning to worry about liver problems…).

The second point, which is worth underlining, is that the section confirms the relationship between travel and subsistence: that if the travel is good to go for tax relief, the food and drink are also good to go.

### PROFILE

**Name** **Michael Steed**
**Position** Head of Tax
**Company** BPP Professional Development
**Tel** 020 3122 0103
**Email** MichaelSteed@BPP.com
**Profile** Michael is Head of Tax at BPP Professional Development.
He is a Past President and Co-Chair of the ATT's Technical Steering Group.

### SECTION 57A: OCCASIONAL JOURNEYS

Section 57A, paraphrased by BIM 47705, provides as follows:

'**Occasional journeys outside the normal pattern and itinerant trades**

A deduction is allowable for reasonable expenses on food and drink for consumption by the trader either at a place to which the trader travels in the course of the trade or while travelling in the course of the trade, if certain conditions are satisfied.

A deduction must be allowable for the cost of travelling to the place, or would be if the trader incurred any such costs, and either:

- the trade is an itinerant trade at the time the expenses are incurred; or
- the trader does not travel to the place more than occasionally in the course of the trade and either:
  - the travel concerned is not part of the trader's normal pattern of travel in the course of the trade; or
  - the trader does not have such a normal pattern of travel.'

The third point is that the phrase 'whilst travelling in the course of the trade' allows us to conclude that, for example, a self-employed tax adviser, travelling to see a client will be allowed to claim tax relief on food and drink on the go. But note that this is qualified by the use of the word 'occasionally'. If you went to see the same client every week, then food and drink on the go would arguably not be allowed.

The fourth point, to my eye, is that if the taxpayer has an 'itinerant trade', then that is a good place to be as far as tax relief on subsistence is concerned.

The leading case on an itinerant trade for a self-employed taxpayer is *Horton v Young* [1971] 47 TC 60.

This is what BIM 37620 says about travel costs for an itinerant trader:

> 'Where an "itinerant" trader's base of operations is at their residence, you should allow the costs of travelling between the residence and the sites at which the trader works. An itinerant trader is one who travels from their home to a number of different locations for the purely temporary purpose at each such place of their completing a job of work, at the conclusion of which they attend at a different location. A typical example would be a jobbing builder.'

So, my practical conclusion, within the scope of this article, is that if the travel is good, the subsistence will also be good. As a group, therefore, itinerant traders should be able to claim for the reasonable costs of food and drink on the go.

**Overnight subsistence and accommodation expenses**

What happens when a taxpayer needs to spend a night or nights away on business? BIM37670 provides an answer:

> 'Where a business trip by a trader necessitates one or more nights away from home, the hotel accommodation and reasonable costs of overnight subsistence are deductible. The reasonable costs of meals taken in conjunction with overnight accommodation are allowable, whether or not paid on the same bill.
>
> The same treatment may be extended to traders who do not use hotels, for example, self-employed long distance lorry drivers who spend the night in their cabs rather than take overnight accommodation.'

The landscape is much more uncertain where taxpayers spend longer periods away from home on business; for example, a contractor who spends three months away on a contract. Cases such as *Prior v Saunders* [1993] 66 TC 210 (involving a self-employed sub-contractor away for several months at a time) do not readily assist us for subsistence, as they are pre s 57A cases and were decided on the *Caillebotte v Quinn* principle.

Case law does, however, address extreme examples. In *Hanlin v HMRC* [2011] UKFTT 213 (TC), the taxpayer claimed, inter alia, overnight accommodation costs of £4,800 for staying in Dungeness during the week (48 weeks, four nights each week, £25 per night) while maintaining a home in Coventry. The taxpayer had been working on a particular contract in Dungeness for some seven or eight years. Not surprisingly, the FTT found that the accommodation expenses were not deductible. The taxpayer had chosen to live away from his base of operation.

The conclusion that I draw here is that costs for food on the go (as well as accommodation and travel) are allowable until such times as the works makes a fresh base of operation. How long? Sadly, the legislation and the decided cases do not allow us to make a sharp distinction, but HMRC in BIM37675 gives us some guidance:

> 'The position is rather different where a subcontractor works at one or a very small number of different sites during the year. In such a case, it may be that the premises where the taxpayer carries on the business are, in fact, the business base. If this is so, the cost of travelling between the taxpayer's home and the business base should be disallowed.
>
> 'Following the decision in *Horton v Young* [1971] 47 TC 60, where a subcontractor works at two or more different sites during a year, travelling expenses between the taxpayer's home and those sites should normally be allowed.
>
> 'However, where the subcontractor works at a single site in the year and this is the normal pattern for the business, travelling expenditure (and hence subsistence costs) between the subcontractor's home and the single site should only be allowed if the home is, in some real sense, the centre or base of the business. That will depend on the facts of the case and specifically what business activities are carried out at home.'

**Would you like a patch test, sir?**

*Horton v Young* is also useful for addressing the area worker (otherwise known as a patch worker). If a worker has an area – for example, a chimney sweep, a window cleaner or a milkman – then the ITTOIA 2005 s 34 test (wholly and exclusively) will block the travel from his home to the edge of his patch. By inference, if the travel is not deductible until the worker reaches the patch, then the subsistence will also be disallowed (see BIM37620).

**2. Employed taxpayers**

Let's now look at our second group – employed taxpayers. Most employees will be reimbursed for actual travel and subsistence costs incurred. In this scenario, the employee will want to know if the payments received are taxable. If the reimbursed payments are within the scope of the rules, then no tax or NICs will be due.

If the employer won't reimburse the cost, the employee can make a claim to reduce their earnings and this is likely to lead to a tax rebate.

The legislation for travel expenses for employed taxpayers is in ITEPA 2003 s 337 et seq. and is covered extensively in HMRC Booklet 490.

The well-known fault line for employees is between a permanent workplace and a temporary workplace. Broadly, the test of a temporary workplace is whether the employee has spent, or is likely to spend, more than 40% of their working time at a particular workplace over a period that lasts or is likely to last no more than 24 months. It is worth mentioning that the 40% rule is not in the legislation, but is only in the guidance.

In the Subsistence section (5.4) of Booklet 490, it says:

> 'Travel expenses includes both the actual costs of travel together with any subsistence expenditure and other associated costs that are incurred in making the journey. This includes:
>
> - any necessary subsistence costs incurred in the course of the journey;
> - the cost of meals necessarily purchased whilst an employee is at a temporary workplace; and
> - the cost of the accommodation and any necessary meals where an overnight stay is needed – *this will be the case even where the employee stays away for some time*.' [italics mine]

HMRC gives an example in this same section:

> 'Michael is employed as a travelling salesman visiting customers across the UK throughout the day. He travels to his first customer direct from home and travels home directly from his last customer of the day. Each day he purchases and eats lunch whilst travelling between customers. Michael is travelling in the performance of his duties. Therefore, the costs of his travel both to and from home and between customers together with the cost of his meals incurred whilst en route will be allowable.'

In my view, the rules for employees on staying away for extended periods, are clearer than for self-employed taxpayers.

Booklet 490 gives the following example:

> 'Chris is required to spend three months working at the site of one of his employer's clients. He travels to the site each Monday morning, stays in a hotel close to the temporary workplace and travels home late each Friday evening, eating dinner on the way. During the week he takes some of his meals in the hotel and others at a nearby restaurant. The cost of the accommodation and all the meals are part of the cost of his business travel.'

But what about food on the go for employees on shift; say, an ambulance driver or a policeman? Sadly and not surprisingly, there are no tax reliefs for shift workers on the go.

## Reimbursed expenses

I want to finish this brief review by considering the reimbursement issue by employers.

The basic shape of this is that an employer will reimburse expenses (if they wish to do so), in one of three ways:

1. reimbursing actual qualifying expenses (including subsistence);
2. paying on the benchmark scale rates for subsistence under the Income Tax (Approved Expenses) Regulations 2016 (SI 2015/1948); and
3. paying on a bespoke and agreed scale rate (not considered here).

The benchmark scale rates are a way for employers to pay on a published rate for subsistence expenses. Payments within the rates are not reportable on P11Ds and are not taxable or subject to national insurance. Excess payments are reportable and they are taxable and subject to national insurance as earnings. Employees have to actually spend the amount and employers will need to check that the qualifying travel has actually taken place.

The current HMRC benchmark scale rates are: £5 for qualifying travel of 5 hours or more; £10 for qualifying travel of 10 hours or more; and £25 for qualifying travel of 15 hours or more.

Note that the over 15 hour rate for subsistence will almost always apply where an employee is required to stay away overnight, provided the cost of any meals is not also included in an accommodation payment. This £25 rate applies when an employee is still out at 8pm.

## Conclusion

The issue of tax deductibility for travel and subsistence costs is not going away and as advisers, we need to be able to carefully and accurately tease the strands of clients' questions apart, to be able to give them accurate advice.

# A dress rehearsal

© iStockphoto/EvgenyShkolenko

*Nicholas Yassukovich* examines the impact of the last minute delay to private sector off-payrolling legislation

## KEY POINTS

- **What is the issue?**
On 17 March, the government announced the deferral by a year of the private sector off-payrolling legislation that was due to come into force on 6 April, which was in just 19 days' time.
- **What does it mean for me?**
This article focuses on the core policy issues at the heart of the rules, the tensions between those issues and how both large businesses and tax advisers have reacted.
- **What can I take away?**
Whilst HMRC will consider the end result of off payrolling, when it happens, as a success, this will come from over compliance, and an imbalance in rights and obligations among the key stakeholders that the market will probably need to resolve.

Tuesday 17 March was a rare moment in tax. The words 'Fiscus Interruptus' came to mind when the government announced the deferral by a year of the private sector off-payrolling legislation that was due to come into force on 6 April, which was in just 19 days' time. Those involved in planning for this legislation must now treat the last six months as a dress rehearsal and look forward to a new launch date in April 2021. Many, but not all, contractors will be pleased with another year of managing their own taxes.

There are still many technical issues outstanding with the legislation and accompanying guidance. However, this article focuses on the core policy issues at the heart of the rules, the tensions between those issues and how both large businesses and tax advisers have reacted. It does so by looking at a specific part of the contractor population – broad based office workers – who often work alongside employees at their clients' offices in back office functions such as IT. It does not cover specialist roles, such as those in the medical and media sectors, or the special IR35 issues associated with consultancies and managed service providers.

## Background

The off-payrolling legislation changes the application of the existing 'IR35' legislation, where an individual providing services to a client via a qualifying intermediary – typically, a personal service company (PSC) – must decide whether they should pay tax as an employee or as a self-employed individual. This is a decision which impacts their net income, and the off-payrolling rules make the client responsible in place of the worker for what was seen by many as an emotive decision. The rules also make the client or their agent responsible for operating the PAYE and National Insurance payments that might be due if the client concludes the individual is an employee for tax purposes.

To many, this would appear to be a practical change, not least because it aligns the responsibility for determining employment status with all other forms of contractual arrangement between clients and workers. However, the underlying challenges with IR35 around the differences in employment status for tax and for employment law makes this issue far from straightforward in practice.

## Key factors in the market reaction

It became quickly apparent that this was not a tax issue. Rather, it was a workforce issue and an issue that presented businesses with competing risks around tax, finance and operations.

These risks stem from three key challenges:

1. The extreme subjectivity of the case law on employment status places every contractor somewhere on a spectrum between self-employment and employment (the spectrum

devised by EY involves a 200 point scale). Tension was always going to arise between the tax risk profile of large organisations and that of contractors, where two competing positions could both be acceptable within their respective attitudes to risk.

2. The contractor ecosystem involves frequently complex supply chains, often with a number of agencies or intermediaries between the client and the worker. These chains create a disconnect between the worker and the client, with the worker sometimes unable to discuss contractual terms with the client and the client potentially having no relationship with the organisation paying the PSC.

In response to these two risks, HMRC developed complex law to manage the issue. Most notably this involved the status determination statement (SDS), which the client had to ensure was passed down the chain to the fee payer, and the SDS appeals obligations.

3. The 30 year growth of the contractor market, and its approach to tax risk, allowed a broad compact among workers, their clients and society to develop. This is a compact with which most people were comfortable, and which is best defined by the formula:

| | | |
|---|---|---|
| career flexibility + self-employed tax status + higher daily rate | = | Lower job security + no benefits + no incentive pay |

The off-payrolling rules broke this compact by ignoring a profound difference in appetite for tax risk between the parties, effectively allowing the client to impose their approach to risk on the worker without granting the worker any additional rights in return.

These three challenges led directly to competing risks that have driven organisations' approaches to off-payrolling, particularly in the banking sector where I personally specialise.

1. Few employers have taken any form of employment tax risk since the demise of tax efficient remuneration schemes in the early 2000s. Appetite for risk was very low, and many organisations were reluctant to pay any contractor on a gross basis under the new rules. Many banks were also cautious about the operational tax risk that the SDS system presented.

## PROFILE

**Name:** **Nicholas Yassukovich**
**Position:** Employment Tax Partner
**Firm:** EY
**Tel:** 020 7951 9517
**Email:** nyassukovich@uk.ey.com
**Profile:** Nicholas Yassukovich is an Employment Tax Partner in EY's EMEIA Financial Services Office (FSO) based in London. He advises clients in the banking, insurance and asset management sector on employment and mobility tax issues in the UK and globally and has wider responsibility for tax quality across the FSO region.

2. Any decision to avoid employment tax risk generated immediate additional costs of between 13% and 15% as off-payrolling moves the NI liability to the fee payer from the PSC.
3. Decisions to pass the additional cost on to contractors via amended day rates increased the reduction in income the contractor faced if they had continued to assess themselves as outside IR35. 'Inside IR35' decisions also generated fear that their tax affairs prior to April 2020 would come under HMRC scrutiny.

Clients were initially concerned about a repeat of the contractor turnover that this tension between the risks created in the public sector in 2017, an anxiety later tempered by a realisation that during 2017 contractors had somewhere to go to maintain their tax position, namely the private sector.

### How did organisations react to these competing risks?

Organisations across different markets reacted very differently in terms of attitude to tax risk, which was driven by factors such as availability of talent, size and sector. It took some firms significant time to put a plan in place due to issues around responsibility within the organisation; whether it be the tax, HR or procurement functions. The larger organisations found it easier to form multi-function working parties to assess the impact of the new rules and provide information to key executives impacted by the changes and assess scenarios for resolution. In many cases, responsibility was then vested in project teams based in procurement/HR, with tax often becoming just a provider of technical expertise in key technical decisions.

Many firms quickly decided to move some long-term contractors into employment positions. However, delays in broader decision making occurred for a number of reasons, including a lack of information on how many contractors they had, and which used PSCs. A key issue was also a desire not to be an outlier in terms of policy decisions. This was particularly acute around the decision on whether to pass the cost of employer NI down to the contractor via reduction of day rate, and anecdotally, many organisations preferred the option of reducing day rates early on but were unsure when to confirm this position.

In the banking sector, the position taken was probably the most conservative, given its heightened approach to compliance. Tax risk trumped all, overriding any concerns about the operational risks. This approach was driven in part by a distortion in the supply and demand of contractors. Some of the larger banks had become overly reliant on contractor labour as way of managing their employee headcount and they took the proposed change as an opportunity to rethink this reliance on contractors with new or accelerated reductions in contractor numbers and shifts of work to consultancies. This allowed them to impose contractual arrangements on their remaining contractors that bypassed the off-payrolling rules entirely and ensured everyone was subject to PAYE as either an agency worker or an umbrella company employee. Moreover, they often did so without much regard to the question of whether an individual contractor was or was not inside IR35.

Other sectors and geographies adopted less conservative positions. Whilst still believing that broad-based back office contractors were more likely than not to be within IR35, some organisations accepted a greater exposure to tax risk and additional costs depending on the scarcity of the talent pool from which they were seeking to recruit contractors. Techniques used to manage the operational risks of disaffected contractor populations included:

1. case by case assessments of contractor status (an expensive and time-consuming process);
2. the use of third-party software in conjunction with CEST to demonstrate a willingness to take independent advice and in recognition of a number of CEST's limitations; and
3. countenancing other forms of contractual arrangement, such as Statements of Work or even LLPs.

4. Expanded use of agencies/MSPs to manage broader risks better.

### What did this mean for advisors?

The unique nature of this tax issue, and how best to advise on it, illustrated again the changing nature of the tax profession and the skills required. We are increasingly focused away from delivering technical advice or compliance and more on developing and maintaining tax risk control frameworks that impact on third parties such as the customers of our clients. Off-payrolling was a good example of this and a number of lessons worth learning in this regard include the following:

1. Consult widely and go to market with multidisciplinary teams. Identify the end game you want to achieve in terms of the contractual arrangements that would be supported and plan backwards. 'Plan Right to Left' was a phrase I learnt from my corporate tax colleagues.
2. Develop a point of view but flex it as thinking evolves. You need to do more than just articulate the issue and help work out a solution. You need to demonstrate a holistic understanding of how the issue manifests and what the solution is, then introduce the plan of action at the most opportune time.
3. Embrace simplicity: when an issue can be resolved by simplification, don't try to over complicate matters. The tax profession thrives on complexity, but advisers should not be afraid to embrace simplicity when it is needed.
4. Understand and use the basics of programme management: problem statements, design principles and agile working. This may seem like management consultant speak to tax technicians, but it can help speed up the process of finding a solution.

**The unique nature of this tax issue, and how best to advise on it, illustrated the changing nature of the tax profession and the skills required.**

### Where next?

Since 17 March, the market has been deciding how to change their IR35 compliance rules in light of the deferral. For those who had chosen to ban PSCs, there is an interesting dilemma as to whether to allow them again for a further year. This requires balancing a number of competing issues such as project cost, fairness and compliance risk, including the impact of the Corporate Criminal Offence regime. By now, many organisations will be looking forward to re-running the events of the past few months at the beginning of next year. Organisations may or may not decide to choose a different approach for April 2021, but we can expect that many more contractors will move onto PAYE arrangements at that time and the tension associated with the broken contractor compact above will increase.

However, to date, this particular tension has not been a factor in the wider and separate debates about employment rights in the gig economy and the differing NI rates between the employed and self-employed. It is possible that resolution of these two issues may now finally progress, given the extraordinary policy changes that COVID-19 has triggered. We can hope that we will see a better way to categorise workers, a better balance between rights and obligations for each category and, ideally, a better way to manage the difference between employment for tax purposes and legal employment.

However, if they are not resolved by public policy, then organisations that use contractors and oblige them to pay employee levels of taxation may have to address the tension in the contractor compact themselves.

# Evolution not revolution

*Edmund Paul* and *Mike Herdman* summarise the key changes in employment taxes in 2020 and the steps that businesses should be taking to prepare

The employment tax landscape is evolving with several changes being introduced that will increase the costs for businesses when providing benefits and engaging with workers.

## Taxation of company cars

**Cars registered from April 2020: changes to the measurement of $CO_2$ emissions**

When calculating the cash equivalent value of company cars, one of the key elements of the calculation is the $CO_2$ emissions of the vehicle. The higher the $CO_2$ emissions of the vehicle, the greater the appropriate percentage resulting in a higher cash equivalent of the car.

Previously, $CO_2$ emissions were measured on the New European Driving Cycle (NEDC) standards. However, the $CO_2$ emissions for cars (including bi-fuel cars) registered from April 2020 are based on the Worldwide Harmonised Light Vehicle Test Procedure (WLTP). The WLTP will better align reported $CO_2$ emissions measured in the laboratory with those that are achieved during real world driving conditions.

Initial evidence provided by manufacturers suggests there is a significant difference between the two metrics, with half of cars expected to see an increase from NEDC to WLTP of between 10% and 20%. As an example, the emissions of a Vauxhall Corsa 1.2 Turbo 100PS was 96g/km when tested under the NEDC; however, this increases by c. 33% to c. 128g/km when tested under the WLTP.

In recognition of the impact of these changes, the government has introduced new rates for the 2020/21 and 2021/22 tax years for cars where emissions will be measured by WLTP. These can be found in Annex A of the Review of WLTP and vehicle taxes at bit.ly/34oLNn8. Whilst this will partially offset the impact of these changes, taken collectively there will be an increased taxable benefit for all company cars with the exception of ultra-low emission vehicles (ULEVs).

**Cars registered prior to April 2020: changes to the relevant percentages**

The government's aim of incentivising low emission vehicles can also be found within changes to appropriate percentages for cars which remain in the NEDC regime.

Where an employee owns a car with $CO_2$ emissions of 85 g/km or less, there has been an overnight decrease in the taxable benefit value of the car from 6 April 2020. The appropriate percentages for cars with $CO_2$ emissions of above 95 g/km has risen by one percentage point up to a maximum of 37%.

A full list of rates for the upcoming tax year can be found in Annex A of the Review of WLTP and vehicle taxes at bit.ly/34oLNn8. In the 2020 Budget, the government also announced that the 2022/23 relevant percentages will remain in place for the next two tax years (i.e. the 2023/24 and 2024/25 tax years).

**What steps should businesses be taking?**

It is clear that the government has sought to incentivise the provision of ULEVs through a lower company car tax regime. Businesses should be reviewing the costs of existing fleets to determine whether the changes to the company car tax regime will mean that a shift of company car fleets towards ULEVs will result in lower overall costs.

Businesses should retain records of the registration date for vehicles in their company car fleets. This will ensure that the correct $CO_2$ metric is used when preparing relevant end of year returns. If businesses are payrolling the provision of company cars, then the car benefit should be recalculated as a matter of priority.

The changes in relevant percentages will also impact the private fuel benefits reported on Form P11D. In the main, we would expect fuel benefits to be reduced for most company cars, but care will need to be taken to ensure the correct values are reported. In addition, the changes to the cash equivalent of company cars could impact whether the optional remuneration arrangement (OpRA) legislation can apply. From our experience, companies offer a cash allowance in lieu of the provision of a company car. Businesses are required to report the modified cash equivalent of the company car or the cash allowance that would have been available in lieu of the benefit. Where the cash equivalent of a benefit decreases, there is increased risk that the cash allowance could be higher and needs to be reported. It is worth noting that there is a specific carve-out from the OpRA legislation for ULEVs, defined as cars with $CO_2$ emissions of 75 g/km or less.

© iStockphoto/Pict Rider


## PROFILE

**Name:** **Edmund Paul**
**Position:** Employment Tax Manager
**Company:** Grant Thornton UK LLP
**Tel:** 0118 955 9127
**Email:** Edmund.G.Paul@uk.gt.com
**Profile:** Edmund is a member of the Grant Thornton employment taxes team. He has worked with a variety of clients drawn from all industry sectors which range in size from large multinationals to OMBs. He focuses across all aspects of employment taxes, including Optional Remuneration Arrangements, the national minimum wage, employer compliance reviews and the Construction Industry Scheme.

**Name:** **Mike Herdman**
**Position:** Director, Employment Taxes Team
**Firm:** Grant Thornton
**Tel:** 0161 953 6489
**Email:** mike.herdman@uk.gt.com
**Profile:** Mike is a Director in the employment taxes team at Grant Thornton. Originally an Inspector with HMRC, Mike has more than 30 years of experience and has always favoured employment taxes, advising clients on a wide range of issues.


Finally, businesses should consider how the changes are communicated to employees ahead of enrolment windows to reduce the number of benefit queries.

## Class 1A payment on termination payments

Changes have been made to the national insurance treatment of termination payments following the introduction of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019.

From 6 April 2020, Class 1A NICs are due on termination payments caught under the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) s 402B. Broadly, this captures ex gratia payments exceeding £30,000.

The NIC charge will arise at the earlier of the payment date or entitlement date of the ex gratia payment. The payment will need to be included within relevant real time information (RTI) submissions and paid alongside income tax and Class 1 NICs due under PAYE.

If the ex gratia payment is solely non-cash benefits provided without transfer to the employee, then the Class 1A payment will be due alongside the Class 1A NIC payment for benefits in kind. In addition, HMRC also requires a statement of particulars containing the same information as a P11D(b).

Where the termination payment is a mixture of cash and non-cash benefits, the draft legislation mirrors the income tax legislation, meaning that the £30,000 exemption first applies to cash payments, then assets transferred to the former employee and finally assets not transferred to the employee.

These changes could potentially represent a significant additional cost for terminating employees going forwards.

### What steps should businesses be taking?

As a first step, employers may wish to consider whether ex gratia payments could be reduced going forwards to reflect the Class 1A NIC cost for businesses. This may also necessitate the need to review and renew redundancy policies and/or union agreements.

In addition, employers should ensure that their payroll software has been updated to allow the Class 1A NIC liability to be processed. We are aware of certain providers who have yet to include this within updated software.

Finally, these changes interact closely with the post employment notice pay (PENP) legislation previously introduced. Where a termination payment is made, employers should consider what element of the termination payment will constitute taxable PENP, which is subject to Class 1 NIC and income tax withholding. The remaining termination payment may then be exempt under ITEPA 2003 s 402(B), albeit where the payment is eligible for s 402(B), Class 1A NICs will arise to the extent the taxable component exceeds £30,000.

Employers should review internal processes to ensure that PENP is calculated correctly and, by extension, the correct amount is subject to Class 1A NIC.

## Class 1A NIC on sporting testimonials

Currently, where a sporting testimonial is made for an individual, the tax treatment will depend on the contract and traditions of the organisation, as well as the quantum of the testimonial payment.

Where the testimonial is contractual or it is the custom of the organisation to have a testimonial, then the payment made to the player will be deemed earnings, thereby subject to income tax and Class 1 NICs.

However, if the testimonial is non-customary and non-contractual, then ITEPA 2003 s 226E brings the testimonial proceeds into the charge of income tax. This broadly apples where a sporting testimonial is held (being a single event or a series) to collect donations from fans for a player in order to recognise their service to the club and the sport in general. These proceeds must not otherwise be caught as general earnings.

A limited tax exemption is available under ITEPA 2003 s 306B for testimonials taking place after 6 April 2017. Broadly, the exemption applies to the first £100,000 of testimonial proceeds where the following conditions are met:

- the organiser of the event is independent from both the player and employer;
- there has been no previous testimonial income to which the exemption applied; and
- the exemption applies to income received from relevant events held in a maximum period of 12 calendar months only. This begins with the date the first event is held in a 'testimonial year', even if that year covers more than one tax year.

The National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019 brings a Class 1A charge on the 'general earnings' received by the individual, which the government suggests is the amount subject to income tax under s 226E. The Class 1A NIC due is payable by the controller of the sporting testimonial (typically an independent committee). This new NICs charge is extended to any additional payment made by the controller to discharge any income tax liability on that recipient.

Where the employer is still making payments under PAYE, the Class 1A NICs due on the testimonial payment will need to be included within relevant real time information (RTI) submissions and paid alongside income tax and Class 1 NICs due under PAYE.

Otherwise, the Class 1A NICs payment will be due alongside the Class 1A NICs payment for the P11D(b). HMRC also requires a statement of particulars containing the same information as a P11D(b). For simplicity, employers may choose to report these costs within the P11D(b) and pay the associated Class 1A liability alongside this.

**What steps should businesses be taking?**
The taxation of testimonial matches is an area of complexity. In particular, the definition of 'customary' is vague – where a club has a practice of granting testimonials in certain circumstances (e.g. every five years), will that establish a practice of providing testimonials that captures all other circumstances (such as death or injury)?

Therefore, care must be taken in determining whether the payment falls into general earnings or into the remit of s 226E and the associated Class 1A NICs charge.

## Income tax treatment of expenses for voluntary office holders

Within civil society, there are numerous individuals who undertake unpaid voluntary work. In order to perform their duties, they are often reimbursed expenses incurred in performing their voluntary duties (e.g. travel costs).

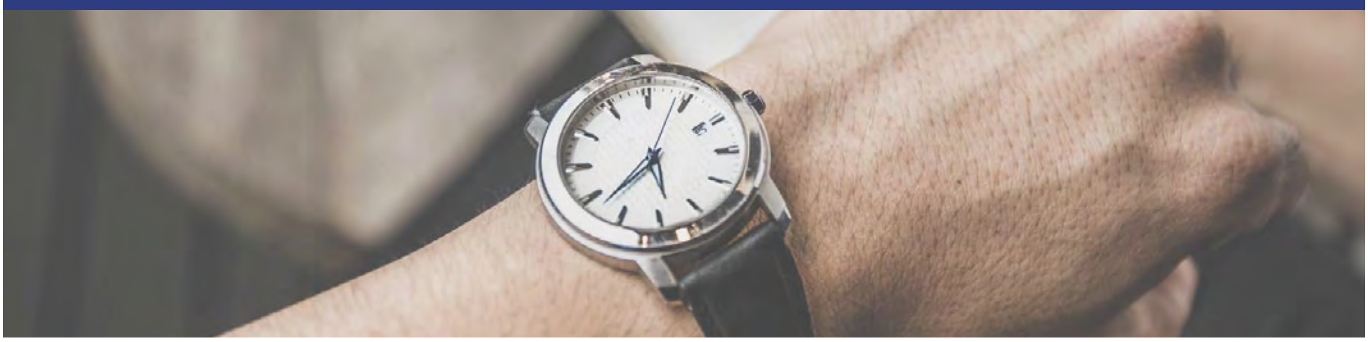
Many individuals who perform voluntary duties may hold an office at the voluntary organisation (e.g. magistrates). By concession, HMRC accepts that where the reimbursement does no more than compensate the individuals for expenses incurred by voluntary workers in doing the work of the organisation, no liability to tax will arise. The Finance Bill 2020 codifies this concession and a mirror NICs provision will be introduced by regulation.

## Homeworking expenses

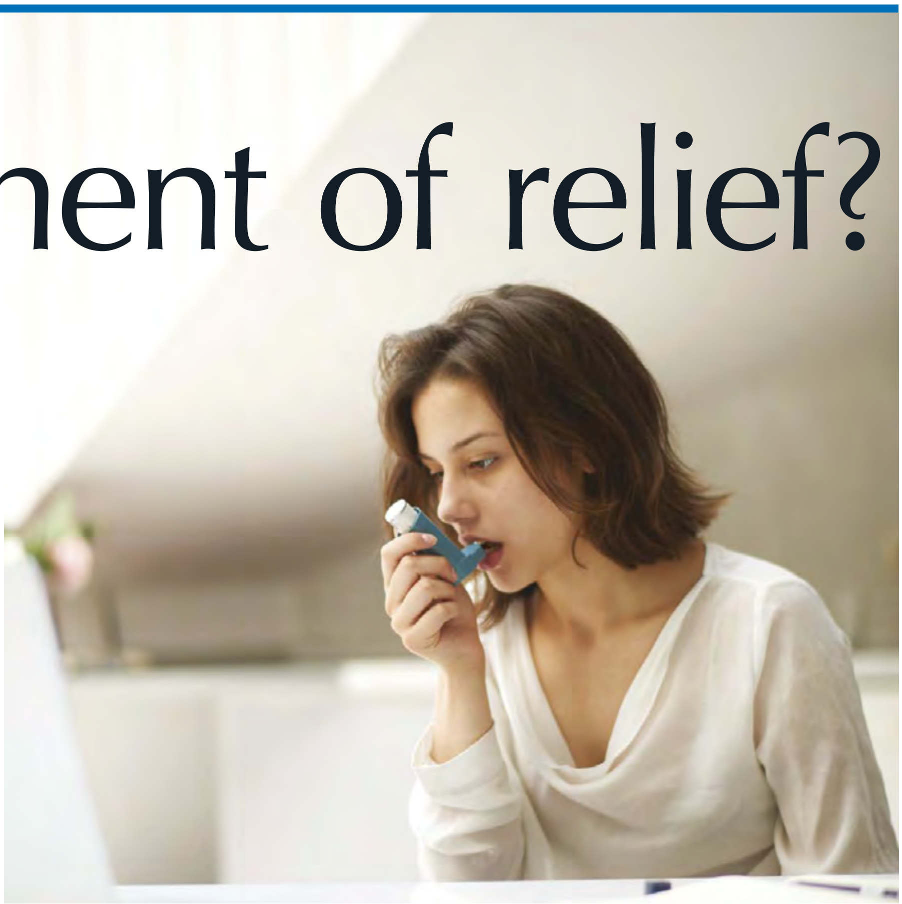
The maximum flat rate tax deduction available where employees incur additional household costs where they work at home under formal homeworking arrangements has increased from £4 per week to £6 per week. This is the rate at which employers can reimburse homeworking expenditure without the requirement for employees providing receipts evidencing the nature of the expenditure. This measure took effect as at April 2020.

In addition, HMRC has very recently issued further guidance on the treatment of equipment purchased for employees when they are working from home (see bit.ly/2Vh5dGi).





# A moment of relief?



© iStockphoto/ EXTREME-PHOTOGRAPHER

*Matthew Brown* explains the tax implications of working from home during the COVID-19 outbreak

## KEY POINTS

- **What is the issue?**
COVID-19 is having a huge impact in the way people work, with large numbers working from home for the first time.
- **What does it mean for me?**
We consider some of the common questions which arise where employees are, temporarily, permanently based at home in response to COVID-19.
- **What can I take away?**
Find out which employer-provided equipment, services or supplies are not taxable where an employee is working from home in response to COVID-19 and what payments employers can make to meet employees' additional costs when working from home.

COVID-19 is having a huge impact in the way people work, with large numbers working from home for the first time. For some it may only be temporary; for others they may find working from home becomes the new normal, either because it works for them or because their employers find that they don't need large business premises (and its associated costs), with everyone in one place, to function efficiently.

The changes, of course, lead to the question of who provides what – you or your employer – and what are the resulting tax implications? Below, we consider some of the common questions we've had where employees are, temporarily, permanently based at home in response to COVID-19.

### Employer payments towards additional household costs

Section 316A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) provides that no liability to income tax arises where an employer makes a payment to an employee in respect of the reasonable additional household expenses which the employee incurs in carrying out duties of the employment at home where a 'homeworking arrangement' exists.

A homeworking arrangement exists where two tests are met:

- there must be arrangements between the employer and the employee; and
- the employee must work at home regularly under those arrangements.

There is nothing in s 316A that requires homeworking arrangements to be in place for a particular period of time and HMRC has confirmed that 'in the current circumstances, with employers requiring their employees to work from home for a limited or even indefinite period of time as a result of a temporary closure of the business premises, then HMRC accepts that for the duration of that period these two tests would be met'.

HMRC has also said that: 'If not already working under homeworking arrangements, HMRC would agree that employees would be covered by the exemption when either the employer agreed they could work from home or from when government advice was announced.'

Consequently, an employer can make a tax-free payment to an employee of £6 per week (£4 per week up to 5 April 2020) (or £26 per month) while the employee is working from home in response to COVID-19.

The £6 per week is likely to be sufficient in most cases, particularly where the additional costs are only for heating and lighting the work area. However, greater amounts can be paid where the employee provides the employer with evidence to justify them and the employer agrees to pay that greater amount.

### Employees' un-reimbursed household costs

Of course, employers are not obliged to contribute to the additional household expenses an employee incurs when working from home and many will decide not to, especially where the employee is 'saving' on commuting costs.

In this case, can an employee make a claim to HMRC for tax relief for their unreimbursed expenses in working from home? The exemption under ITEPA 2003 s 316A for employer payments should not be confused with the deduction for an employee's homeworking expenses under s 336. The latter provides that a deduction from earnings is only allowed if:

- the employee is obliged to incur and pay it as holder of the employment; *and*
- the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

These conditions can be tough to meet and in HMRC's view they are met only where *all* the following circumstances apply (EIM32760):

- The duties that the employee performs at home are substantive duties of the employment. 'Substantive duties' are duties that an employee has to carry out and that represent all or part of the central duties of the employment.
- Those duties cannot be performed without the use of appropriate facilities.
- No such appropriate facilities are available to the employee on the employer's premises (or the nature of the job requires the employee to live so far from the employer's premises that it is unreasonable to expect him or her to travel to those premises on a daily basis).

- At no time either before or after the employment contract is drawn up is the employee able to choose between working at the employer's premises or elsewhere.

In consequence, HMRC is likely to accept that a homeworking arrangement exists for the purposes of a s 336 claim only where no facilities are available for the employee to work at the employer's business premises (for example, because the employer has closed the premises in response to COVID-19) and there was no choice available to the employee other than to work from home.

## Equipment, supplies and services

Generally, we would expect employers to provide employees with the equipment, supplies and services needed to carry out their job; for example, IT equipment like computers and printers, office supplies like stationery and stamps, and services like communications equipment. Where such assets are provided for use by the employee for the sole purpose of performing the duties of their employment, then they are likely to be exempt from a liability to tax under ITEPA 2003 Part 3 Chapter 10 (the benefits code) by virtue of ITEPA 2003 s 316.

For the s 316 exemption to apply, any private use of the assets must be 'not significant'. It is therefore best practice for employers to have a clearly stated policy as to when limited private use may be made of equipment, etc. and the consequences of not following the policy.

If assets are made available for private use by the employee, then a tax charge arises under the benefits code. Similarly, when the employee returns to work at the employer's premises, if the equipment supplied to work from home is not returned a tax charge will arise under the benefits code.

Where a single mobile phone and SIM card is provided, this is exempt from tax under ITEPA 2003 s 319 even where there is no restriction on private use.

If an employer pays or reimburses an employee's broadband or telephone line rental costs, this is taxable. However, if a broadband internet connection is needed to work from home and one was not already available, then the broadband fee can be paid or reimbursed tax free. Similarly, if a second line is installed and private use is prohibited, this is also likely to be exempt from tax. Otherwise, only out-of-contract excess charges arising from business use, e.g. business calls, can be claimed or reimbursed without a tax liability arising.

Where an employee purchases equipment to use while working from home and the employer reimburses the cost, it is HMRC's view that this is taxable. The tax can, however, be settled via the employer's PAYE Settlement Agreement (PSA). An unanswered question, at the time of writing, is whether an employee can purchase equipment as agent for his or her employer and be reimbursed tax free by the employer. Hence, to be safe it is likely to be better for the employer to purchase any equipment that the employee needs for work purposes and arrange delivery direct to the employee's home with the supplier.

**PROFILE**

**Name:** **Matthew Brown**
**Position:** Technical Officer
**Firm:** CIOT
**Tel:** 020 7340 2792
**Email:** matthewbrown@ciot.org.uk
**Profile:** Matthew Brown is a Technical Officer for the Employment Taxes and Owner Managed Business Committees of the Chartered Institute of Taxation (CIOT). Prior to joining the CIOT in 2006, he worked for Capita Assistance and Barclays.

## Company cars

A frequent question we have seen is whether a company car benefit-in-kind tax charge continues to accrue where an employee is either furloughed or is unable to work; for example, because they are self-isolating in response to COVID-19 and they cannot work from home.

HMRC's view on company car benefits during the current crisis is that the benefit charge applies where a car is made available for private use, whether or not it is so used. For example, a car kept on an employee's driveway during a period of furlough would still be considered to be made available. Neither will HMRC accept a Statutory Off Road Notification (SORN) declaration as proof of unavailability.

Ordinarily, HMRC would expect that the car is handed back to the employer so that it cannot be used. However, it is understood that HMRC recognises that under the current circumstances it may not be possible to hand the car itself back, so exceptionally it has said it will accept that where all the keys (or tabs) are in possession of the employer, and the employee does not have the authority to request the keys are returned to them, the car would be unavailable. This means employers will have to ask employees to post the keys back to the employer in order to comply with HMRC's view on whether a benefit has accrued or not. Also note that if the car was available both before and after the period in question, the period must last at least 30 consecutive days in order to count as a period of unavailability.

## Data security and remote working

With all the challenges that COVID-19 is creating, it's important to remember that employees and employers still need to protect data. Unfortunately, cyber criminals are taking advantage of the current situation all businesses find themselves in. With many organisations using video conferencing apps like Microsoft Teams, Zoom, Google Hangouts and Skype (to name just a few), or seeing increased used of emails flying within and outside organisations, and with employees now routinely remote connecting to employers' virtual sites, data security risks are significantly enhanced. Many of you may have seen questions over Zoom's data protection policies and trolls interrupting Zoom meetings or posting the meetings to YouTube. We can, no doubt, expect similar attempts to attack other platforms.

Consequently, while staying connected is obviously important when working from home, so is protecting sensitive data. The last thing you need while managing so many other problems is to suffer a data breach. The best place to start when it comes to staying secure is the General Data Protection Regulation (GDPR) (https://bit.ly/34nziYR).

There are a number of steps which business can take to minimise security risks should a criminal try to gain access to an employee's laptop, for example:

- setting strict access rights, e.g. making sure that devices are password protected and that passwords are regularly changed;
- restricting rights to install new software;
- setting software security updates to install automatically; and
- requiring all work to be saved to, for example, the business's SharePoint site, plus encrypting data before it is transferred.

Businesses are also advised to consider their policies on the extent to which employees can use company laptops and other IT for personal use.

## Other tax issues

Further information on the tax consequences of working from home in response to COVID-19 and other employment-related tax exemptions that may be relevant during this period can be found in the CIOT's introductory guide at www.tax.org.uk/policy-and-technical/covid-19/employment-tax. This is regularly updated as we get more information from HMRC in answer to questions raised with them and it builds on HMRC's guidance for employers which can be found at bit.ly/2RlEtU8.

**KEY POINTS**

- **What is the issue?**
The changes to the rules on VAT grouping, effective from 1 November 2019, have provided a range of new issues for advisers to consider, expanding planning opportunities but also adding to the numerous complex rules already in existence in the area of VAT grouping.
- **What does it mean for me?**
Non-corporate entities, such as individuals, partnerships and Scottish partnerships are now allowed to join VAT groups, provided they control all their corporate subsidiaries.
- **What can I take away?**
Advisers should be alert to any opportunities to form a VAT group that would utilise the natural advantages and benefits arising from that action.

# A fresh look at VAT groups

*Punnit Vyas* and *Kevin Hall* consider the impact of the recent changes to VAT for sole traders and partnerships.

The rules on VAT grouping recently underwent some changes as a result of legislation introduced in the Finance Act 2019, effective from 1 November 2019. These changes provided a further dimension for advisers to consider when advising their clients, expanding planning opportunities but also adding to the numerous complex rules already in existence in the area of VAT grouping. In this article, we will consider the impact of the recent changes for sole traders and partnerships and also take a look at the recent case of *Melford Capital*, which highlights the importance and complexities of VAT groups in the context of financial services.

## Extension of VAT grouping to unincorporated businesses

Non-corporate entities, such as individuals, partnerships and Scottish partnerships, are now allowed to join VAT groups, provided they control all their corporate subsidiaries. It should be noted that other types of unincorporated businesses, e.g. clubs and associations, are not included. The relevant legislation is VAT Act 1994 s 43A to D.

### The conditions

The pre-1 November 2019 rules allow corporate bodies to form a VAT group if:

- each is established or has a fixed establishment in the UK; and
- they are under common control.

There are some further conditions for 'specified bodies', applicable to larger groups (exceeding £10m turnover). Since 1 November, non-corporates can also join a VAT group if they meet these conditions in respect of control and establishments. A fixed establishment is any establishment which contains 'permanent human and technical resources' of the sole trader or partnership's business.

The control condition is that all members of the group are controlled by one entity, which can be a body corporate, an individual, a partnership or a Scottish partnership. The controlling entity does not have to be a member of the VAT group but now may be so, irrespective of whether or not it is an incorporated body.

This common control test relies on the Companies Act 2006 s 1159 and Sch 6 definitions, which define what is meant by a subsidiary and its holding company. These rules now also apply to an individual or individuals 'if he or they, were he or they a company, would be that body's holding company'. So, an individual as a sole trader or partnership can control a group member in the same way as a parent company of the group member within the definition in s 1159 and Sch 6 to the Companies Act 2006.

© iStockphoto/MicroStockHub

## PROFILE

**Name:** **Punnit Vyas**
**Position:** Senior Consultant – VAT
**Firm:** Markel Tax
**Tel:** 020 3815 8999
**Email:** punnit.vyas@markel.com
**Profile:** Punnit Vyas has been a VAT professional since 2003, and has gained VAT advisory experience within Top 20 and Mid-Tier accountancy firms, as well as with HMRC where he began his career in VAT. He advises clients across many sectors, including 'partially exempt' businesses, financial services, technology, retail and hospitality, international and cross-border supplies, land & property, not-for-profit and the public sector.

**Name:** **Kevin Hall**
**Position:** Assoicate Director – VAT
**Firm:** Markel Tax
**Tel:** 020 3805 7469
**Email:** kevin.hall@markel.com
**Profile:** Kevin Hall is an Associate Director with Markel Tax. He has specialised in VAT since 1998 and advises a wide variety of clients on VAT issues, including those related to property, international transactions, schemes for small businesses, financial services, yachts/aircraft, HMRC investigations and margin schemes. Kevin also writes and lectures on VAT and he has contributed to HMRC's VAT Manuals, specifically in relation to financial advisers.

It should be also noted that the introduced legislation does not permit a VAT group containing no corporate bodies at all to be formed, i.e. of only sole traders or partners. There is no such restriction on a VAT group containing only corporate bodies.

LLPs are considered to be a body corporate for VAT purposes and can be included in a VAT group. Where the LLP is the holding company and the individual partners of the LLP hold the shares in the subsidiaries of the LLP, this will not normally result in the subsidiary satisfying the control conditions, even if all the partners in the LLP are shareholders. What matters is the named shareholder of the subsidiary company and the exact entity that controls it. It must be the LLP itself that is the controlling body of the subsidiary and not the partners in their capacity as individuals.

**Benefits of VAT groups for unincorporated bodies**

Assuming the conditions outlined above can be satisfied, advisers should be alert to any opportunities to form a VAT group that would utilise the natural advantages and benefits arising from the formation of the VAT group. Supplies between the members within a VAT group are disregarded for VAT purposes, which is normally a clear benefit of forming a VAT group, particularly where input tax might not be fully recoverable.

However, the benefits arising from VAT group registration are only permissible, as HMRC states, so long as any revenue loss arising as a result of VAT grouping does not go beyond 'the normal operation of grouping'. Unfortunately, this term is not defined any further and so causes some difficulty, as HMRC may prevent a person joining a VAT group and/or remove an existing member from a VAT group where it considers there is revenue loss arising beyond the normal operation of VAT grouping.

There are also some more straightforward benefits of VAT grouping, such as the administrative easing from only having to compile a single VAT return for all the members of the group, although with today's sophisticated accounting software and procedures this might be no more than a marginal benefit.

Consideration of all the benefits of VAT grouping, including any natural VAT savings arising from the intra-group disregard, must be balanced by the disadvantages, potentially the most significant of which is the 'joint and several' liability for the debts of the VAT group. For a sole trader or partnership, the risk of joint and several liability applying to VAT debts may be comparatively greater than it would be for a corporate.

A sole trader or partner should not, however, be deterred from joining a VAT group if there is a clear commercial case for grouping and the 'natural advantages' do not infringe HMRC's perceived notion of revenue loss arising beyond the normal operation of grouping. Indeed, if there were no tangible advantages to the formation of a group, or joining an existing VAT group, VAT grouping for sole traders and partners (or for any other types of entity for that matter) would be a somewhat futile exercise. Below is an example of a scenario that could give rise to natural savings, where the benefits of VAT grouping potentially outweigh the risk. This is followed by a look at an example of VAT groups working in the financial services sector where, partial exemption notwithstanding, VAT grouping is often the most sensible approach.

## VAT grouping in practice

A sole trader (or partnership) may wish, at some point in the life of their business, to move the trade to a company. In doing this, there may be non-tax reasons to leave the property, from which the business trades, outside the company. It may be more practical for the sole trader business, and in planning succession of the business and for inheritance purposes, etc., that the ownership of the property is retained with the individual or individuals.

Normally, the transfer of the trade without the property to a new entity can still benefit from the transfer of a going concern rules, so that this is a VAT free transfer of the business assets and trade. This leaves the property needing to be dealt with outside the transfer of a going concern rules. If the corporate transferee is to trade from the same property, a supply is usually made separately of the property by the sole trader to the company by the supply of an interest in the property such as a lease of 21 years or less.

The sole trader would be making an exempt supply of the lease of the property to the company, unless it opts to tax, with the ensuing capital goods scheme input tax adjustments as applicable.

However, a preferable means could be to remove the question of VAT from these transactions and form a VAT group of the sole trader with the company, so that the supplies between the sole trader and the company are disregarded. This provides a more efficient means of extracting profits from the company and removes VAT from the value of the rental charges, without the sole trader personally being tied to a 20 year option to tax on the property. This approach is not without its risks and does need to be reviewed very carefully, as the movement of the property into the VAT group may cause a VAT charge or input tax clawback depending upon the circumstances. However, if handled correctly this could be a sensible and beneficial use for the new rules extending VAT grouping to non-corporates.

## *Melford Capital*: VAT groups in the context of financial services

The First-tier Tribunal case of *Melford Capital General Partner Ltd v HMRC* [2020] UKFTT 6 (TC) is interesting, not least because it reminds us of the question of input tax recovery within complex VAT group structures.

Fundamentally, costs bearing VAT which are irrecoverable before the introduction of a VAT group should not become recoverable simply by placing the entity in a VAT group. That certainly seems to be HMRC's guiding principle (or perhaps an unhelpful fixation?) in the approach to VAT grouping and input tax recovery. The *Melford Capital* decision seems to turn this on its head: input VAT that is recoverable outside a VAT group should not become irrecoverable simply by placing it in a VAT group. The VAT group is, essentially, a single entity after all.

The appellant, Melford Capital, was successful in this case in securing VAT recovery. The facts of the case and structure of the entities involved, and the two VAT groups which were involved in this case, are not straightforward. Essentially, one VAT group was supplying services to the other. The services supplied were akin to management services. The first of the VAT groups included Melford Capital (the general partner of a limited partnership) and the supplies it made were taxable to entities outside the VAT group; i.e. to the special purpose vehicles (SPVs) within the second VAT group.

Melford Capital successfully argued that there was recovery of VAT on the operating and set-up costs which related to the SPVs in the second VAT group but which were incurred by Melford Capital's VAT group. The VAT recovery was justified, to put it simply, on the fact that the Melford Capital's VAT group was providing taxable services externally. As Melford Capital's VAT group made only taxable supplies, it was entitled to full input tax recovery.

HMRC took a less simplistic and more myopic view, arguing in terms of 'cost components'. (This is a well-trodden and previously used argument, that appears to carry more weight in some circumstances and not others – see the recent decision in *University of Cambridge* (Case C-316/18), and particularly arguments contained in *Midland Bank* (Case C-98/98) *et al*.).

HMRC argued that the proper analysis of the VAT on the set-up costs and operating costs that Melford Capital was seeking to recover was to determine whether they were cost components of an economic activity, and not simply to analyse the status of the appellant as a single entity making external taxable supplies from the VAT group. Since Melford Capital also held shares in a holding company, that in turn owned the SPVs, which in turn held the investments, HMRC's view was that the supplies of Melford Capital to the holding company and SPVs (the second VAT group) were partly non-economic as Melford Capital also carried out investment activity, subscription of share capital and interest-free loans to the SPVs within the second VAT group. Input tax was therefore irrecoverable, as HMRC argued that certain costs were incurred by Melford Capital in relation to its purely passive role of holding investments. (See *Polysar* (Case C-60/90), where the court decided that a business, which did not charge for its involvement in the management of its subsidiaries, could not recover input tax on its costs.)

The tribunal judge disagreed with HMRC's analysis and did not see any separate non-economic activity arising from Melford Capital's activities. It therefore saw the attribution of the costs in question as possible only to the economic activity of the entire group, which took the form of the taxable services, essentially management charges, that Melford Capital's VAT group supplied to the other VAT group of 'subsidiary' entities. The situation in *Melford Capital* was akin to a holding company providing management services to its subsidiaries.

The holding company analogy was deployed in this case and useful to an extent for both the appellant and HMRC. However, Melford Capital, the representative member of the VAT group and general partner of the limited partnership, was not a holding company. The holding company in this case was a separate entity (HPH Ltd). Melford Capital in fact supplied its taxable services to the subsidiaries of the holding company (HPH Ltd, the representative member of the second VAT group). Neither Melford Capital nor its direct customers, the SPVs, were holding companies. Despite being an interesting comparison, the holding company analogy was perhaps not the best analysis to apply in this financial services context. Although the judgment contains interesting points from the significant and mounting body of case law on holding companies, it is perhaps misleading for financial structures, and unfortunately this case is unlikely to settle the debate on holding company VAT recovery either.

## Final thoughts

It seems that VAT grouping will never be entirely straightforward, particularly in the context of financial services and private equity, where VAT groups are often used in investment structures. Spare a thought too for when cross-border supplies are mixed with VAT groups. Further developments on this area are being awaited with the recent referral of questions to the CJEU in *Danske Bank*, which has reopened the *Skandia* debate on how the VAT grouping rules should apply in complex cross-border scenarios across the EU.

What is clear is that VAT grouping, holding companies, together with the extension of VAT grouping to non-corporates, will keep us all busy over the coming months, without even mentioning Brexit for a while!

© iStockphoto/DNY59

# VAT schemes for small businesses

*Neil Warren* considers how the three main VAT schemes can reduce VAT bills and help the cash flow of a small business

## KEY POINTS

- **What is the issue?**
The use of certain VAT schemes can produce cash flow benefits and, in some cases, a reduced VAT bill for some businesses. The article gives practical tips on each scheme, including pitfalls for certain transactions.
- **What does it mean to me?**
The flat rate scheme is less popular following the introduction of the limited cost trader category on 1 April 2017. But there are still situations where favourable rates could produce a VAT saving compared to normal VAT accounting calculations.
- **What can I take away?**
There are strict leaving thresholds with each scheme. The article considers how a business can account for VAT on closing debtors over a six-month transition period when it leaves the cash accounting scheme, and can also remain in the scheme in some cases if the threshold was exceeded because of one-off sales that will not be repeated.

The three main VAT schemes that are available to small and medium enterprises (SMEs) are:

- the flat rate scheme;
- the cash accounting scheme; and
- the annual accounting scheme.

The initial challenge is to establish which clients might be eligible to use the schemes. The joining thresholds for the annual and cash accounting schemes are the same; i.e. taxable sales in the next 12 months are expected to be less than £1.35m excluding VAT. The flat rate scheme threshold is much lower and expected taxable sales in the next 12 months must be less than £150,000 excluding VAT.

I am sometimes asked if there will be a problem with HMRC if a business gets its expectations wrong and exceeds the thresholds at the end of the first year. The answer is 'no' as long as the projections were based on sensible calculations. The threshold for all three schemes is based on 'taxable' sales; i.e. ignoring exempt and non-business income but including zero-rated sales.

## BOX 1: POSSIBLE FLAT RATE SCHEME SAVINGS

- **Advertising 11%:** If an advertising business has enough spending on goods to keep out of the limited cost trader category and does not have a lot of input tax on its other spending, 11% is potentially a good rate for any service business.
- **Computer repair services 10.5%:** The same logic as above.
- **Entertainment or journalism 12.5%:** The trick here might be for journalists to buy hard copy books rather than online publications. The books are zero-rated and the spending will also help them to reach the £250/2% limit for spending on goods to avoid the limited cost trader category.
- **Hotel or accommodation 10.5%:** The flat rate scheme might be good for a small B&B business. Proceed with caution, however. If a big repair bill hits the fan or building improvements are carried out, the gains could be lost because of the inability to claim input tax.
- **Repairing vehicles 8.5%:** An accountant I act for decided the scheme would be a winner for a car repair business but didn't realise that the rent for his garage was subject to VAT because the landlord had opted to tax the building. This extra input tax made the scheme a non-starter despite the favourable percentage.

### Flat rate scheme: still relevant?

I often hear agitated football supporters claim that a certain player in their favourite team has 'had his day' and many advisers have felt the same about the flat rate scheme since 31 March 2017. The reason is because a new category for 'limited cost traders' was introduced on 1 April 2017, with a draconian rate of 16.5%. The new rate applies to any scheme user that purchases 'relevant goods' of less than £250 in a VAT quarter or where the figure is less than 2% of VAT inclusive sales for the period in question. And as a further complication, the rules about what is classed as 'relevant goods' are very complicated (see HMRC Notice 731, para 4.6).

The main purpose of the flat rate scheme as far as HMRC is concerned is to save time with accounting issues. A scheme user only needs to record the gross value of its business takings and apply its relevant scheme percentage to this figure. However, the attraction for most business owners is the potential VAT savings that can often be enjoyed but are these still possible? See **Box 1: Possible flat rate scheme savings.** To complete the loop, see **Box 2: Flat rate scheme tips.**

## Cash accounting scheme

The main advantage of the cash accounting scheme is that output tax is not declared on a VAT return until payment has been made by a customer, rather than the earlier sales invoice date that is usually relevant. This outcome also means that bad debt relief is automatic for scheme users because output tax is never declared on unpaid sales invoices. The downside, though, is that users cannot claim input tax until suppliers are paid.

The scheme might not be suitable for a business that has a lot of zero-rated or exempt sales where there is no output tax liability, especially if it pays suppliers very slowly. Some businesses have sales where the VAT liability can fluctuate (e.g. builders who do some zero-rated work on new houses but standard rated work on commercial properties) so the scheme's cash flow benefits should be regularly checked.

## Leaving tip

As with the flat rate scheme, the exit threshold is higher than the joining figure. A business needs to leave the scheme at the end of a VAT period if total taxable sales have exceeded £1.6m excluding VAT in the previous 12 months. This means either:

- output tax needs to be accounted for on debtors in the VAT period when the business leaves and input tax claimed on creditors; or
- VAT can instead be dealt with on these invoices in the following two quarters on a transitional basis; i.e. when customers pay and suppliers are paid. (See HMRC Notice 731 para 6.4.)

When the six month period has expired, there might be scope to claim bad debt relief on any sales invoices that are still unpaid (HMRC Notice 700/18 para 2.2); i.e. avoiding the need to declare output tax on the next return.

The sales figure for the exit threshold includes any stock disposals or capital assets but the good news is that a business can remain in the scheme if it expects that its total taxable sales in the following 12 months will be less than the joining threshold of £1.35m excluding VAT (see **Example 1: Factory owner Fred**).

**Annual accounting scheme**

It is easy to dismiss the benefits of the annual accounting scheme, which basically means that only one VAT return is submitted each year instead of four or 12. Many clients like to know their VAT liability on a quarterly basis and advisers encourage this as well because it gives reassurance that records are being kept up to date. But there are worthwhile benefits that might be relevant for some clients:

- **Default surcharges:** If a business has regularly incurred default surcharges, the annual VAT return means only one instead of four potential surcharges. The annual return is also due two months after the end of the annual period.
- **Flat rate scheme users:** A business can use the flat rate scheme and annual accounting schemes at the same time. A flat rate scheme user will therefore only need to carry out the 'limited cost trader' test on an annual basis.
- **Annual accounts:** It makes sense for the annual VAT accounting year to coincide with the financial year. This will make it easy to check, for example, that declared sales in Box 6 of the VAT return (the outputs box) are compatible with the declared sales on the annual accounts of the business in question.

## Practical issues

A business that is registered for VAT as a group or part of a division cannot use the scheme. And once a business has left the scheme, it cannot rejoin for at least 12 months.

The other key issue is that scheme users must make monthly payments on account, which are based on the liability shown on the previous annual return. These payments can be made as nine monthly or three quarterly payments, and must be paid by direct debit, standing order or other electronic means. Each of the nine payments is equal to 10% of the previous year's annual VAT liability. The balance owed is payable two months after the end of the accounting year. If the payments on account are too high, the overpayment will be refunded by HMRC.

As a practical tip to help cash flow, if a business expects to pay less VAT in the current year compared to last year, which will be quite common in the current economic climate, it should write to HMRC to adjust the payments (HMRC Notice 732 para 4.7).

## PROFILE

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

## BOX 2: FLAT RATE SCHEME TIPS

- Pre-registration input tax can be claimed in the same way as for a non-scheme user if a business uses the flat rate scheme from its date of VAT registration. And input tax can be claimed in any period on capital goods costing more than £2,000 including VAT.
- Sales that are outside the scope of VAT are excluded from the calculations; e.g. most services supplied to non-UK business customers. However, exempt and zero-rated sales are both included, which is not good news for a grocer or insurance broker.
- Scheme users cannot use the cash accounting scheme but can instead adopt the 'cash based turnover method' which effectively gives the same end result; i.e. VAT is not included on a return until customers have paid their dues.
- The flat rate scheme exit threshold is much higher than the joining level and a business only needs to check its total VAT inclusive sales once a year, on the anniversary date of when it first joined the scheme. It must leave if this figure exceeded £230,000 in the previous 12 months but sales of capital assets are ignored.

## EXAMPLE 1: FACTORY OWNER FRED

Fred is VAT registered as a shoe manufacturer and uses the cash accounting scheme. In the year ending 31 March 2020, his sales were £1.8m excluding VAT but this included the sale of a machine for £100,000 plus VAT and the freehold sale of one of his factories for £500,000 plus VAT. Without these one-off asset sales, his turnover would have been £1.2m and if a similar figure is expected for the year ended 31 March 2021, he can remain in the scheme; i.e. because expected sales are less than £1.35m.
Note: Fred does not need HMRC's permission to remain in the scheme but he must keep a record of his decision making process.

(HMRC Notice 731 para 2.6)

# Oiling the cracks

© iStock/grandaded

## KEY POINTS

- **What is the issue?**
The 27 EU member states are mid-way through a hugely ambitious programme of VAT reforms, implementing over ten major measures being rolled out between 2018 and 2025.
- **What does it mean for me?**
Tough negotiations on the major elements – 2021 e-commerce and the 2022 Definitive VAT System – have still to be completed.
- **What can I take away?**
The cornerstone reform, the Definitive VAT System, has yet to be confirmed for a 2022 planned launch, and faces immovable objections. Many states are unwilling to trust each other with revenue collections.

*Richard Asquith* considers the challenges posed by the upcoming VAT reforms, especially in light of COVID-19

The EU VAT regime is creaking badly. The 27 member states are mid-way through a hugely ambitious programme of VAT reforms, designed to reboot the indirect tax regime for the challenges of billion Euro frauds and ballooning e-commerce. We are now almost half-way through implementing over ten major measures being rolled out between 2018 and 2025. But tough negotiations on the major elements – 2021 e-commerce and the 2022 Definitive VAT System – have still to be completed.

Both of them may now fall victim to the global COVID-19 crisis.

## EU VAT: time for change

Since the inception of the EU single market in 1993, the EU VAT regime has remained largely unchanged. Since then, two major forces have exposed the need for radical change:

1. Fraud and lost tax revenues caused by criminal gangs exploiting the current zero VAT rating of intra-community supplies between businesses. This ‘missing trader’ or ‘carousel’ fraud is estimated to cost EU member states €50 billion a year.
2. The explosive growth of e-commerce, which has reached over €550 billion a year in the EU, of which almost €100 billion is cross-border. These new digital businesses models expose loopholes and a lack of flexibility.

To adapt the regime for the 21st century, in 2016 the European Commission launched a hugely ambitious range of reforms – the ‘Action Plan on VAT’.

## Action plan on VAT faces challenges

The EU Commission has proposed a range of more than ten reforms to the EU VAT Directive. These reforms seek to close the VAT fraud loopholes and simplify e-commerce VAT. The ‘Four Quick Fixes’, clarifying B2B VAT rules, came into force in January 2020, following other simplifications to the digital VAT compliance rules.

The big changes start next year with the VAT e-commerce package, introducing a single pan-EU VAT return for online sellers of goods. In addition, marketplaces such as Amazon, eBay and Etsy will become responsible for the VAT on goods sold by online retailers from China, the US and other EU countries.

But the cornerstone reform, the Definitive VAT System, has yet to be confirmed for a 2022 planned launch, and faces immovable objections. Many states are unwilling to trust each other with revenue collections. It would replace the existing origin-based regime with the obligation to collect VAT in the country of the customer – a destination-based tax. One element of the reform, the ‘certified taxable person’, is now effectively dead.

Furthermore, with the COVID-19 crisis demanding emergency measures and intervention from global authorities, there is a chance that progress on the Action Plan beyond 2020 may be even further delayed.

The EU has already successfully passed a number of reforms as part of the Action Plan:

- 2018 Generalised reverse charge;
- 2018 Harmonising VAT rates for electronic publications;
- 2018 Simplification of e-services compliance;
- 2020 Co-operation between tax authorities on fraud; and
- 2020 Quick fixes for B2B supply chains to reduce compliance and fraud.

Below, we set out the years ahead, and some of the issues that remain unresolved. To start, 2021 brings in

**PROFILE**

**Name:** **Richard Asquith**
**Position:** VP, Global Indirect Tax
**Firm:** Avalara
**Tel:** 07977 723645
**Email:** Richard.Asquith@avalara.com
**Profile:** Richard Asquith is VP global tax at Avalara. His focus is helping companies going global understand and manage their VAT compliance obligations.

notable simplifications for e-commerce compliance, and a role for online marketplaces in tax collections. These may need further adjustment to tackle substantial elements of VAT evasion.

### 2021: Simplification for e-commerce compliance

Building on the success of the mini one-stop-shop (MOSS) single EU VAT return for pan-EU B2C sales of e-services, the extended one-stop-shop (OSS) reform will further simplify VAT compliance for hundreds of thousands of online sellers.

Rather than having to register in all the states of their consumers, OSS will mean that online merchants selling cross-border can opt to complete a single OSS return, declaring all their pan-EU sales.

OSS returns are to be filed on a quarterly basis, with the business's domestic VAT office, with the VAT for each transaction charged as per the customer's country of residence.

The OSS reform also benefits non-EU sellers, who will be required to register for VAT in one EU country of their choice (typically, the country they are importing goods into). Their OSS returns filed in that country will then cover their distance sales across the rest of the EU.

Simultaneously, the EU will withdraw the distance selling VAT threshold regime. Rather than immediately registering in other EU states where they have consumers, businesses will be able to charge their own country's VAT rate, declaring it to their national tax authorities.

Only once they pass the country of their customers' thresholds, will they have to locally register and charge the VAT rate of the consumer's state. The distance selling thresholds are set by the member states at either €35,000 or €100,000 per annum.

The current low-value consignment stock relief provides an exemption on import VAT for goods at or below €22 being sold from outside the EU to EU consumers, and provides an advantage to sellers from the US, China and elsewhere.

From 1 January 2021, the playing field will be levelled, bringing EU sellers (who currently must charge VAT on all EU sales) in line with the rest of the world. This happens through two new measures:

1. A new import VAT declaration scheme will be launched for goods at or below €150. For import sales at or below this amount, sellers will have to declare the VAT charged on imported packages in a new VAT declaration, the import one-stop-shop (IOSS). Imported goods above this value will have to be reported through a regular VAT return if the seller wishes to declare and recover the import VAT, which will be collected at customs, as is the current process.
2. Instead of VAT on out-of-EU shipments being collected at the point of import, it will be charged and collected by the seller at the point of sale (typically, online at the checkout process). All imported sales below €150 across the EU may be declared in the single IOSS. The VAT rate applied for each sales transaction should be based on the country of residence of the end consumer.

These two measures combined will mean a more efficient and speedy clearance – 'green lane' – for low value imported goods through customs, providing a better experience for EU consumers and benefiting sellers.

### 2021: Marketplace changes

From 1 January 2021, the game is set to change for online marketplaces, as they become the 'deemed supplier' on certain imports and cross-border sales to consumers.

Rather than simply 'facilitating' the sale, becoming a deemed supplier will mean that marketplaces must first purchase the goods from the seller, and then make the sale to the consumer. The marketplace will then have to charge and report VAT under its own name. The new rules aim to reduce VAT fraud on cross-border e-commerce transactions, which the EU Commission estimates cost member states over €5bn in 2019, rising to €7bn by 2021.

However, this reform is still far from comprehensive. The main issue is that it will still be optional for marketplaces. While this means that large, well-resourced marketplaces will be unable to gain a compliance advantage, it could also encourage fraudulent sellers to switch platforms, and so may yet be revised. Questions also remain on the liability of marketplaces to any undeclared or missing VAT. Does the responsibility to provide accurate information lie with the marketplace or the seller?

A number of member states, including the Netherlands and Germany, had expressed doubts earlier this year about being ready for these reforms, claiming that adaptions to customs IT regimes were not progressed. However, there is little doubt the near seizure of tax authorities to manage day-to-day activities since the start of the COVID-19 epidemic in March means there is a high likelihood of this reform being pushed into 2022.

### 2022: Relaxing the rules around reduced rates

Current restrictions around the use of reduced VAT rates prevent distortions in the EU single market and keep the system simple to administer. This is set to change in 2022, when member states have provisionally agreed to loosen rules on the setting of reduced rates across goods and services.

The EU Commission has proposed that states would have more freedom to set their own VAT rates, including:

- the right to set reduced rates at any level for most goods and services;
- a proviso that their weighted rate for all taxable supplies remains at or above 12%; and
- a 'negative list' would restrict reduced rates on certain sensitive goods, such as firearms and alcohol.

Because the above measures are linked to the introduction of the controversial Definitive VAT System (see below), it remains unclear whether the planned 2022 implementation will still go ahead.

### 2022: EU Definitive VAT System

The EU Definitive VAT System is the ambitious plan to overhaul the existing origin-based EU VAT regime for B2B cross-border sales. The aim is to combat an estimated €50bn a year in VAT fraud.

It is a controversial proposal and has not yet gained unanimous support from the member states. The scheduled January 2022 launch has already been delayed until July 2022. Further deferment is almost certain as fundamental disagreements remain between member states on the potential disproportionate effects and unproven benefits of the plan. It is likely that the COVID-19 crisis will mean any further conversations on this reform will be delayed well into 2022, meaning the reforms will not see the light of day before 2023.

The existing origin-based VAT regime for B2B cross-border transactions was only ever supposed to be a temporary measure, introduced in 1993 as a short-term fix until a destination-based scheme could be agreed upon. However, several attempts over nearly 30 years have failed to achieve this.

The latest plan, the Definitive VAT System, would shift the charging and collecting VAT by the vendor to the country of residence of the customer, rather than that of the vendor. Collected VAT would then be remitted by the seller to its national tax authority and, in turn, distributed to the appropriate member states of its customers.

At a meeting of the EU member state finance ministers, ECOFIN, in December 2019, fundamental blockers to the Definitive VAT System were identified, including:

- the significant upheaval and burden on businesses and tax authorities, which would need to be justified in terms of the amount of VAT fraud reduced;
- the certified taxable person simplification, which would see trusted and certified taxpayers being exempted from charging VAT to reduce their compliance and payments processing burden. The majority of states are opposed;
- the withdrawal of recapitulative statements (e.g. Intrastat and EC Sales Listings; and
- the significant burden on the vendor charging and collecting taxes under the system. Most states feel this would create a major risk to the VAT Gap from new types of fraud and insolvencies.

### 2024: Payment providers VAT reporting obligations

The EU has agreed requirements for payment providers (credit cards issuers, wire transfer providers, etc.) to make available data on EU e-commerce transactions to help tax authorities identify VAT fraud.

The new obligations will mean that payment providers must report to tax authorities with quarterly data on cross-border e-commerce transactions, and this will apply only to payees receiving more than 25 payments per quarter. The measure also excludes domestic transactions. The data collected will then be provided to the anti-VAT fraud specialists at Eurofisc, the EU tax authorities' network for the multilateral exchange of early warning signals to fight VAT fraud. In turn, non-compliant sellers (both EU and non-EU) will be identifiable via a central electronic database of payment information ('CESOP'), which will be created for this purpose.

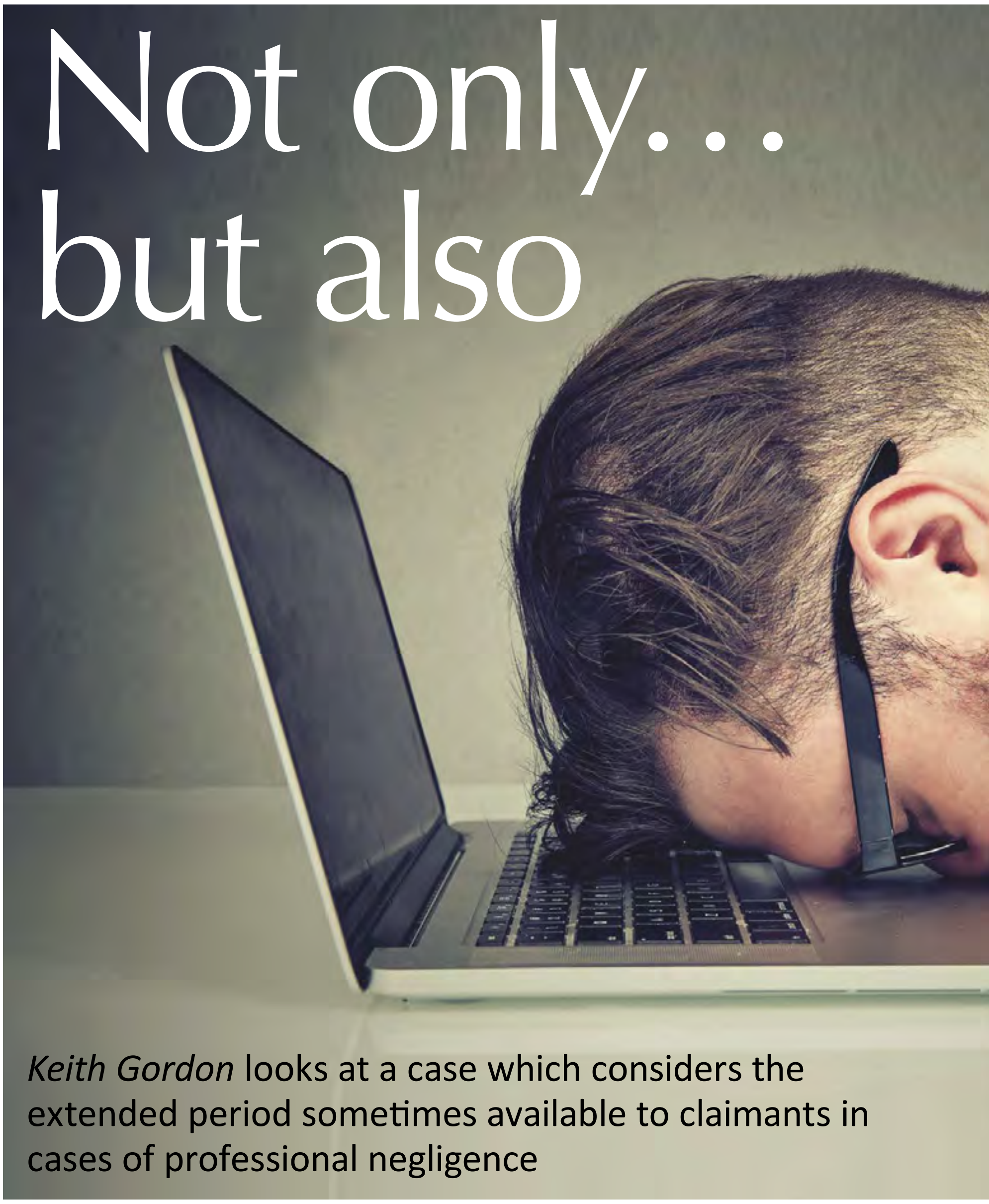
### 2025: VAT registration thresholds equivalence for foreign businesses

Currently, the zero thresholds enjoyed by foreign businesses selling into the EU place them at a competitive advantage and hinder the operation of the single market. From January 2025, small non-resident businesses will have the same VAT registration thresholds as domestic businesses, bringing them onto the same playing field when it comes to compliance costs.

EU states have agreed on a registration threshold not exceeding €85,000 a year for both foreign and domestic businesses. However, foreign companies can only benefit from this if their total pan-EU sales are €100,000 or below. This will prevent large enterprises benefiting from this new small company threshold.

Businesses will need to keep a watchful eye on the progress of these major VAT reforms, not least to ensure that systems are ready to adapt to changes.

# Not only... but also



*Keith Gordon* looks at a case which considers the extended period sometimes available to claimants in cases of professional negligence

**KEY POINTS**

- **What is the issue?**
Professional negligence claims should generally be commenced within six years, though the commencement of the six year period can differ. However, in many cases, the underlying negligence might remain unknown for many years.
- **What does it mean to me?**
Many disputes concern the question as to when the knowledge threshold is crossed, as shown in the case of *Gosden v Halliwell Landau*.
- **What can I take away?**
If a client is thinking of making a claim (for example, against an earlier adviser), it is important to keep time limits in mind. Appropriate legal advice should be taken promptly.

This article concerns a case which considered the Limitation Act 1980, which applies only in England and Wales. The article does not cover every aspect of the Limitation Act 1980; for example, the common practice of entering into stand-still agreements so as to avoid claims being rushed shortly before a time limit expires. Accordingly, even more so than usual, readers should treat the article as no more than an introduction to the subject.

It is generally known that professional negligence claims should generally be commenced within six years. The commencement of the six year period can differ depending on whether a claim is being made on the basis of contract law or the law of tort. However, in many cases, the distinction is of little comfort because the underlying negligence might remain unknown for many years. To address such cases (yet to ensure that prospective defendants have some finality), an extended period of up to 15 years is made available by the Limitation Act 1980 ss 14A and 14B.

For this extension to be available, a claim has to be commenced within three years of the prospective claimant having 'both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action'. As per s 14A(10), however, 'knowledge includes knowledge which [the claimant] might reasonably have been expected to acquire'.

Many disputes concern the question as to when the knowledge threshold is crossed. The recent Court of Appeal decision in *Gosden v Halliwell Landau* [2020] EWCA Civ 42 is a further example.

## The facts of the case

The claimants were Professor Gosden and his wife, Professor Kaye. The claim concerns Professor Gosden's late mother's home in South London.

In 2003, Professor Gosden's mother (Dr Weddell) decided that she wished to pass her home to Professor Gosden and his family on her death. To give effect to her wish, Dr Weddell entered into an arrangement which involved her selling the home to a trust, albeit with completion deferred until 2026 (long beyond Dr Weddell's life expectancy). The purpose of the arrangement was to allow Dr Weddell to continue living in the property until her death without triggering the gifts with reservation provisions. This was an essential part of the arrangements, as it ensured Dr Weddell's ability to continue residing in the property during her expected lifetime but also avoided the crystallisation of a stamp duty charge (this being several months before the introduction of SDLT).

Although the subsequent introduction of the pre-owned assets regime meant that the arrangements became less attractive than when first implemented, Dr Weddell opted to pay the annual income tax charge rather than forgo the planned-for inheritance tax savings.

The expectation in 2003 was that a restriction would be entered on the registered title of the property so as to prevent it being sold in the interim. However, the solicitors who implemented the scheme failed to carry out this step. Ordinarily, this would not necessarily matter in practice, but for a deterioration in the family relationships and a possible loss of Dr Weddell's mental capacity, leading to a sale of the property to a third party purchaser in October 2010 without the knowledge of the claimants. At the same time, Dr Weddell moved to the Isle of Wight, where she lived until her death in 2013 with a new partner, which presumably explains why the claimants were not alerted to the sale of the property.

It was in about 2015 when the claimants started to revisit the arrangements entered into by Dr Weddell. When doing so, they first found out that the property had been sold several years earlier.

© iStock/Sphotography

## PROFILE

**Name:** Keith Gordon
**Position:** Barrister, chartered accountant and tax adviser
**Company:** Temple Tax Chambers
**Tel:** 020 7353 7884
**Email:** clerks@templetax.com
**Profile:** Keith M Gordon MA (Oxon), FCA CTA (Fellow) is a barrister, chartered accountant and tax adviser and was the winner in the Chartered Tax Adviser of the Year category at the 2009 Tolley Taxation awards. He was also awarded Tax Writer of the Year at the 2013 awards, and Tolley's Outstanding Contribution to Taxation at the 2019 awards. He provides litigation support and advises on tax and related matters to accountants, tax advisers and lawyers.

The claimants then sued the solicitors for negligence as they were therefore unable to enjoy the benefit of the London house that had been promised to them.

In the High Court, however, the judge dismissed the claim on the basis that he thought that the claimants would have consented to the 2010 sale had they been alerted to it by Dr Weddell. The consequence of this finding was that the earlier negligence by the solicitors had not caused any loss to the claimants (as this consent would have been similarly given had the restriction on the property been entered and therefore the claimants were in no different a position).

The claimants appealed.

### The court's decision

In the Court of Appeal, the case came before Lord Justices Patten and Peter Jackson and Lady Justice Asplin. The court recognised that the trial judge is the primary decision maker and appellate courts should be slow to interfere with factual findings reached which are based on the evidence before the trial judge. However, the Court of Appeal felt that there was insufficient evidence before the judge to justify his findings. On the evidence that the High Court judge had heard, 'the only realistic and proper conclusion was that the claimants would not have consented to the sale'.

This then led the court to consider whether the claimants were entitled to make their claim in October 2016. In this regard, the court accepted the conclusions of the High Court judge. In particular, the judge had accepted that there was no reason for the claimants to have been aware of the property sale in early 2013 (when Dr Weddell died and at the subsequent memorial service). Furthermore, although not a part of the statutory test, the claimants had acted reasonably by first making enquiries of the solicitor who had acted back in 2003. Furthermore, that solicitor and his new firm failed to notify the claimants of any problem. Consequently, the claimants could not reasonably have known about the ingredients for making a professional negligence claim until long after October 2013. As the claim was made within three years of the requisite knowledge being held (and within the over-arching 15 year time limit), the claim was not out of time.

As a result, the claimants' appeal was allowed.

### Commentary

As noted above, many cases turn on the question as to what constitutes the relevant knowledge that triggers a new three year time period for making a claim. The court gave some useful guidance in this regard.

First, the claimants in this case could not have been expected to have obtained the requisite knowledge without engaging the services of a solicitor.

Secondly, the defendants could not reasonably argue that the claimants acquired the requisite knowledge once they learned that the property had been sold. (As this knowledge was not obtained until 2015, the point became moot.) Indeed, the mere knowledge that the property had been sold would have led to proceedings being commenced only against the residuary beneficiary of Dr Weddell's estate. What the statute is concerned with, however, is 'the knowledge required for bringing an action for damages'. Such a claim against the solicitors depended on the claimants knowing that the restriction had not been placed on the register.

Of course, that guidance was directed at the facts of the case and so care should be taken before applying it too widely, although the gist of the guidance represents a common sense approach which is capable of generalisation. In particular, it is important to realise that the three year claim period does not necessarily start as soon as one learns about a problem, but when one knows (or can reasonably be expected to know) that a claim could be made.

It is also noteworthy that, at the heart of this case, was a tax avoidance scheme, and one where the Court of Appeal noted that its efficacy was subject to 'considerable doubt'. However, that did not appear to distract the Court of Appeal from applying the statutory test before it. Indeed, when relating the facts of the case and mentioning that Dr Weddell had decided in 2003 to pass her home to her son, the court continued by noting that: 'There was an obvious problem about inheritance tax.' An alternative viewpoint could have been that Dr Weddell needed to do no more than direct the property in her will with the consequence that inheritance tax would be payable out of what was left in her estate at her death. Nevertheless, the court appears to have taken the view that the potential incidence of inheritance tax represented not only a problem but an obvious one.

### What to do next

If a client is thinking of making a claim (for example, against an earlier adviser), it is important to keep time limits in mind. In such a case, appropriate legal advice should be taken promptly. Similarly, it is worth remembering that the standard six year time limits are not necessarily the final word, although one has to act particularly promptly and clearly demonstrate what was known (and knowable) and when such knowledge was acquired.

# Staying well in the storm

*Jo Maughan* asks how we can look after our emotional wellbeing during the COVID-19 lockdown

**KEY POINTS**

- **What is the issue?**
Are feelings of guilt, loneliness and anxiety stopping you working from home productively?
- **What does it mean to me?**
How well you look after your emotional wellbeing is important so you can provide brilliant tax advice.
- **What can I take away?**
Practical techniques to build your resilience in these challenging times.

In 1977, I was in isolation in hospital. Aged seven, I had severe eczema. For six weeks, I lived in a single room with three glass walls, and one of brick. I only saw the world through my closed window. My mum and dad gowned up to visit me. My uncle waved through the window. I remember feeling scared, confused, angry, sad and lonely. I also felt happy – when nurse Sally came in. I felt proud when I'd finished a drawing. I was bossy with my imaginary class of children. So many emotions came and went, and they seemed more acute because my world had become smaller.

That's how it is now. Emotions seem to be magnified. I felt genuinely scared when I heard the prime minister had gone into Intensive Care. Sarah is anxious about her daughter's mental health while she's off school. David is worried about the drop in his income. How are you feeling?

However you're feeling, it's normal to feel as you do. Your usual way of living has been up-ended by a new virus. Whereas your mind may tell you that you SHOULD be feeling a certain way, the fact is you feel as you feel.

When I asked myself what can I write about in our new COVID-19 world, I thought emotions, especially the ones we might term as 'negative' or 'difficult'. How can we all experience our feelings with understanding and kindness and at the same time do what we need to do? Answer: build our resilience.

When we're caught up in an emotion, it's easy to think we'll feel that way for ever. Not true. Even when we're feeling lonely, there'll be moments of happiness; e.g. you get a text from a friend. A useful exercise therefore is to spend five minutes at lunch and five minutes in the evening naming and listing down the emotions you've felt that morning or day. I'm always surprised by how many emotions come and go. As the adage says: This too will pass.

## Coping with guilt

I've noticed there's a lot of guilt around at the moment. Carla feels guilty she's not supervising her kids' schoolwork enough. Ian feels guilty each time he pops down to the kitchen when working from home. Julie feels guilty she's actually enjoying working from home. Which is you?

Well, know this: Research consistently finds that we humans can only focus on a task for about 25 mins at a time before we lose concentration. Therefore, the optimum way to work productively is in bursts of 25 mins, then take a five to ten minute break (known as the Pomodoro Technique).

Still feeling guilty? Consider how much work you actually do when you're in the office. Remember, the chats before the meeting gets going; the interruptions from colleagues; getting up to fill your water bottle; chatting at the coffee machine; sorting out your lost Amazon packet? You're not actually doing as many hours

© iStockphoto/Sylverarts

work as you think. Maybe four out of eight?

Guilt makes us feel yukky. It pops up because we think we shouldn't be thinking or doing what we are actually thinking or doing. We believe we've fallen short of the ridiculously high standards we hold ourselves to. I bet there's a voice in your head telling you SHOULD do this, or SHOULDN'T do that? Yes? This is your critical inner voice.

Your critical inner voice will also be there if you're feeling any other 'difficult' emotion such as loneliness, boredom or anxiety. Quieten your critical inner voice and you'll reduce the 'difficult' feelings, while at the same time giving yourself space to feel 'positive' emotions again. Here are some tactics.

## PROFILE

**Name:** **Jo Maughan**
**Position:** Career & Executive Coach, Speaker, Author
**Company:** Your Thinking Partner Limited
**Tel:** 07771 542457
**Email:** jo@jomaughan.co.uk
**Website:** www.jomaughan.co.uk
**Profile:** Jo Maughan is a leading career & executive coach whose first career was in tax, most latterly as a Tax Director for BP's UK marketing businesses. Today she inspires and equips tax, legal, and finance professionals to get more of what they want and to be their whole, best selves at work and in life.

### 1. Ask yourself Socratic questions

- What are the advantages of having this thought?
- What are the disadvantages of having this thought?
- What would I advise a friend if they were having this thought?
- What is the evidence for and against what I'm thinking?
- So what? (This is my favourite.)

### 2. Apply the Facts, Opinions, Guesses test

Tune into your thoughts and write them down. For example, 'I shouldn't be having a break already. I should be getting that report done. My boss will see I'm off-line. I'll get into trouble. I should have more stamina.' Next: apply the Facts, Opinions, Guesses test to each thought. Be like a tax lawyer when you do this. Very literally challenge and dissect each thought. Ask: Is it a fact, a guess or an opinion? Is it actually true? For example, is it actually true that you SHOULDN'T be having a break? Who says? Who makes the rules? No, it's not a fact. You *think* you shouldn't be having a break yet, which is an opinion. Is it true your boss will see you're off-line (and by implication not like it)? No, it's a guess because you're predicting the future and you're not a mind reader. Get the idea? By challenging your thoughts in this way, you'll start to see them for what they are: just thoughts. Not facts. And if they're not facts, you can choose not to believe them.

### 3. Practise mindfulness

I do five to ten minutes of mindful breathing each morning. It helps me let go of negative feelings and thoughts. It also helps me magnify positive feelings. Have you tried it? Perhaps you're thinking you don't know how to and don't have time to learn? Well, here's the thing: you don't need to go on a course and there's no 'proper' way to do it. I define mindfulness as being with yourself with kindness.

Here's a short mindfulness exercise to try:

- sit quietly and close your eyes;
- breath in and out, being aware of each breath;
- go 'inside' yourself and notice how you're feeling, what you're thinking; just notice and 'be with' yourself however you are;
- continue to be with yourself in this quiet way; breathing; if you notice yourself getting distracted by thoughts, say to yourself, 'there's a thought. I can let it pass', and refocus your attention on your breath;
- just before you're ready to finish, make a choice about what you'll choose to do or how you'll choose to be in the next moments of your day; e.g. I choose to stop worrying about what I can't control;
- open your eyes, and implement your choice.

### 4. Be kind to yourself

Do more of what nourishes you, and what makes you feel safe and secure. I like to have a chocolate with my coffee as a small treat when working from home. I take time to make myself a tasty lunch such as roasted vegetable salad with tahini dressing. Then I sit down and really enjoy eating it. When I feel lonely, I cosy up on the sofa under a soft blanket to watch 20 minutes of Downton Abbey; I put my arms around myself and give myself a hug. All these little things, done for myself with kindness, help me generate 'positive' emotions.

### 5. Practise gratitude

I have an orange notebook in which I write three things I'm grateful for each morning, such as: my health, my cosy home, and the blackbirds living in my garden. I take a few minutes to 'be present' while I write down my three things, breathe consciously, so I really appreciate them. (This practice is not just writing a list.) I re-read them and smile to myself. You'll find your 'difficult' emotions will reduce because when you're feeling grateful, your mind isn't able to think about anything else.

It's my hope that this article will be useful for you when normality returns. After all, being emotionally resilient is a professional skill in itself.

# Technical Team



To contact the technical team about these pages,
please email:
Sacha Dalton,
Technical Newsdesk editor
sdalton@ciot.org.uk

## Welcome to the May Technical Newsdesk

If you are reading this introduction, thank you, and well done. First, if you are anything like me, I tend to do my technical reading when travelling into the office. I have not been into our Monck Street offices for over a month now, so I need to get stuck into my tax magazines pretty soon. Secondly, and again no doubt the same for you, COVID-19 has had a massive impact on our working lives. Not only do we continue to be extremely busy (more of which below), we have all had to get used to homeworking, holding meetings remotely, and generally living in a more isolated fashion.

We have set out in our opening articles what the CIOT, ATT and LITRG technical teams are doing in relation to COVID-19. In particular, we have been pleased that HMRC and HMT have been willing to engage with us in a number of key areas (in particular on the Job Retention Scheme and the Self-employment Income Support Scheme). Here, we are all working in unfamiliar territory; there is no legislative 'rule book' on which HMRC would normally publish guidance. Rather, the guidance is the rule book, and so it is even more important that it provides the right level of clarity.

But in this rather strange world that we're all living in, 'business as usual' must continue as far as possible. CIOT and ATT provided their comments on the Budget to the Treasury Committee in the normal way, and we will be briefing MPs on the Finance Bill as it makes its way through Parliament. Indeed, we have already called for many of the Finance Bill measures to be delayed, and we were pleased when both the off-payroll and MTD digital links measures were deferred until April 2021. A number of consultations are also underway, some of which we report on below, and we would be pleased to receive your comments. We have requested that some of these deadlines are extended, to ensure that respondents can give the consultation proper consideration when the COVID-19 pressures reduce.

As we have a full Technical Newsdesk this month I will keep my introduction brief, but I cannot end without saying a few congratulations. The CIOT Technical Committee, and the LITRG Team, have both been shortlisted in the category 'Best specialist team in a public or not for profit organisation' in the Tolley's Taxation Awards 2020. Also, Meredith McCammond, a LITRG Technical Officer, has been shortlisted in the category 'Best Rising Star in Tax'. It is a great achievement just to be shortlisted and fingers crossed for 14 May when the winners will be announced.

## COVID-19: Guidance for low-income taxpayers

GENERAL FEATURE PERSONAL TAX

**LITRG has produced web-based guidance for people affected by the coronavirus pandemic.**

Many people are facing significant changes in their personal and financial circumstances as a result of the coronavirus pandemic. The Low Incomes Tax Reform Group (LITRG) is trying to help people understand what they can claim by way of support.

Most of the group's COVID-19 related guidance can be found in a single area on the LITRG website: www.litrg.org.uk/coronavirus.

We are doing our best to keep the guidance updated as the situation evolves. At the time of writing, government information continues to be developed and published, so we cannot write specifically about what is included on the LITRG website. However, some examples of emerging themes are set out below. Please refer to the online guidance for the latest information.

**Tax credits and universal credit**

Existing tax credits claimants with a change in circumstances could, depending on how much the government relaxes the rules, face having to move to universal credit. This might happen if, for example, their working hours are reduced for a significant period.

We are pressing HMRC for some clarity over how the rules will be applied and whether exceptions to normal practice might be made in view of the pandemic. Given pressures on the Department for Work and Pensions to process new universal credit claims, we think it could ease the pressure if HMRC use any flexibility they have to keep claimants in tax credits if possible, rather than them having to move across to universal credit.

**Statutory sick pay: misinformation**

LITRG has been concerned at the prevalence of misinformation online about qualification criteria for statutory sick pay. We issued a press release (www.litrg.org.uk/pr-tax-experts-ssp) aiming to correct some of the misleading reports we have seen.

**Accessing funds**

People are likely to be asking how and from where they can access funds; for example, whether amounts saved in Tax-Free Childcare accounts can be drawn back out, or whether they can draw on tax-incentivised savings schemes such as ISAs and Help-to-Save accounts. The LITRG guidance discusses these points and highlights tax and welfare benefits impacts to watch out for.

**High-income child benefit charge**

People seeing a reduction in income might find that they are no longer liable to the high-income child benefit charge in future, or perhaps not liable to the full charge. The LITRG guidance discusses what to do in the event of income falling.

Couples' circumstances might become particularly complicated if one partner suffers a loss of income which then means the other partner has the higher income and liability to the charge switches from one to the other.

**Volunteering**

Hundreds of thousands of people have volunteered to help the NHS and others. Those people might have expenses reimbursed, such as mileage. LITRG's guidance discusses the tax and welfare benefits implications of volunteering. It also highlights that if volunteers wish to waive expense reimbursement, it is preferable in Gift Aid terms if the expense is in fact claimed and then donated back to charity.

**Feedback**

We welcome feedback via www.litrg.org.uk/contact-us or litrg@ciot.org.uk. Please let us know if you have come across any low-income issues related to the coronavirus situation that are not covered in our guidance and we will try to address them.

**And finally… for home-schoolers**

Those with children at home during school closures might want to take the opportunity to teach them about tax!

A few years ago, HMRC produced two animations introducing both younger and older children to tax – Junior Tax Facts and Tax Facts. These fun and amusing videos, together with accompanying teaching packs, are free to access online. See www.litrg.org.uk/home-schooling-try-tax for more information.

Kelly Sizer
*ksizer@litrg.org.uk*

# COVID-19: CIOT and ATT approach

GENERAL FEATURE

**The CIOT and ATT are working with HMRC and HMT in order to help mitigate the impact of COVID-19 on businesses, individuals and agents in respect of their tax obligations.**

Whilst 'business as usual' needs to continue as much as possible during these unprecedented times, the CIOT and ATT are focused on helping to support businesses, individuals and agents. We have each created a dedicated COVID-19 hub on our respective websites (see www.tax.org.uk/covid19_tax for CIOT and www.att.org.uk/covid19 for ATT) to provide a central reference source for signposting to government information. Do bookmark these landing pages. Within these areas are supporting pages for key measures such as the Job Retention Scheme and the Self-employment Income Support Scheme, along with pages dedicated to particular areas of tax or tax administration.

In considering our approach to COVID-19, we have adopted the following general principles:

1. We are here to help:
   a. HMRC and HMT in developing policy, assisting with guidance, and quickly communicating accurate messages, etc.; and
   b. members and the public by identifying areas where government guidance is disparate or does not (yet) adequately communicate known policy, or may not be reaching a wide enough audience, and attempting to bridge those gaps.
2. We will engage with HMRC and HMT at all levels – at senior levels to discuss strategic approaches to engagement and suggestions of 'blanket' measures, and at operational levels to discuss particular schemes or taxes. We will work closely with LITRG and external professional bodies. We will recognise the pressures which HMRC and HMT face and seek to work with them in a way which does not overburden them, but is for mutual benefit.
3. We will not anticipate a position. Where guidance is currently incomplete, we will make that clear in our communications. What we publish will be based on factual information provided by or ascertained from a reliable source – preferably HMRC or HMT – publishing details of the source where it is appropriate to do so. We will not publish information if a source is not considered reliable or the information cannot be independently verified.
4. We will as soon as practicable promote what we know – we will use social media (Twitter, LinkedIn), the CTA and ATT newsletters and press releases, if appropriate, to release information and to highlight material on our website pages.
5. We will not publish on our website every query or point of uncertainty that we have received/raised, but will, where appropriate, highlight key aspects that we understand are under consideration and areas we are actively exploring with HMRC and HMT. We will publish further information on the website when we have an answer/clear guidance. This seeks a balance between highlighting areas of uncertainty that are being worked on, whilst avoiding publishing a long list of questions.

We will keep this approach under review and adapt to any changing circumstances.

Richard Wild
*rwild@ciot.org.uk*

Helen Thornley
*hthornley@att.org.uk*

# COVID-19: Indirect tax announcements

INDIRECT TAX

**The government has announced a deferral of VAT payments, an extension to the MTD soft landing on digital links and easements for importers and exporters as part of a package of measures to help businesses deal with the COVID-19 response.**

### VAT payment deferral

On 20 March, the government announced that VAT payments due between 20 March 2020 and 30 June 2020 (except VAT MOSS payments and import VAT) can be deferred until 31 March 2021.

This deferral is available to all business with a UK VAT registration number (including non-established businesses) and is automatic, with no application or notification of HMRC required. It includes:

- payments for quarterly returns ending 29 February 2020 (if not already paid by 20 March 2020);
- payments for quarterly returns ending 31 March 2020 (payment due 7 May 2020);
- payments for quarterly returns ending 30 April 2020 (payment due 7 June 2020);
- payments for monthly returns where the payment is due between 20 March 2020 and 30 June 2020;
- payments on account where the payment is due between 20 March 2020 and 30 June 2020; and
- annual accounting advance payments due between 20 March 2020 and 30 June 2020.

If a business pays by direct debit, it will need to cancel its mandate in sufficient time to prevent payment being taken – HMRC will not automatically suspend collection of direct debit payments.

HMRC have said that they will not charge interest or penalties on any amount deferred.

VAT refunds and reclaims will continue to be processed as normal – and we have encouraged HMRC to prioritise getting these funds back in businesses hands. If a business defers a VAT payment and then submits a repayment claim in a later quarter, HMRC have indicated that they will offset that repayment against existing debt from before the deferral period (in the normal way), but will not set it against any deferred VAT payments.

Businesses must continue to file VAT returns during the deferral period, and the normal filing deadlines still apply.

### Making Tax Digital (MTD) and digital links

Businesses within the scope of the MTD for VAT rules are required to have *digital links* in place for any transfer or exchange of data between software programs, products or applications used. Although this requirement was subject to a one-year soft landing, which was due to expire from April 2020 (or 31 October 2020 for those who had a deferred commencement date), HMRC announced that all businesses within MTD for VAT (including both non-deferred and deferred populations) now have until their first VAT return period starting on or after 1 April 2021 to put digital links in place.

### Importers and exporters

Although import VAT must still be paid as usual, HMRC announced a temporary tax-free treatment on imports of certain medical and hygiene products that assist with the COVID-19 response, in place until 31 July 2020 subject to fulfilling the qualifying criteria (https://tinyurl.com/qws6qjl). Exporters of personal protective equipment should note that there is a temporary requirement to have an export licence for shipping these goods outside of the EU and other specified countries (https://tinyurl.com/wyazg4d).

### Further information

The ATT and CIOT continue to work with HMRC on the VAT implications of COVID-19. As we find out further information, we update the dedicated COVID-19 pages on the ATT (www.att.org.uk/covid19) and CIOT (www.tax.org.uk/covid19_tax) websites.

Please submit any questions you may have to technical@tax.org.uk or atttechnical@att.org.uk.

Emma Rawson
*erawson@att.org.uk*

Jayne Simpson
jsimpson@ciot.org.uk

# Spring Budget 2020: Treasury Committee evaluation

GENERAL FEATURE

**As is the case following each Budget, the Treasury Committee invited comments on how the Spring Budget 2020 meets the committee's tax policy principles. The CIOT and ATT provided comments and these are summarised below.**

The Treasury Committee's principles can be found in full in its report published in March 2011 (see https://tinyurl.com/qvgnjxb), but in brief the report recommended that tax policy should be measured by reference to the following principles: be fair, support growth and encourage competition, provide certainty (which requires legal clarity, simplicity and targeting), provide stability, be practicable and be coherent.

Spring Budget 2020 was, understandably, dominated by COVID-19 and the government's plans to support public services, individuals and businesses. But consistent with previous fiscal events, it did contain a number of tax 'surprises'.

### CIOT's comments

We welcomed the fact that Spring Budget 2020 announced a number of consultations across a range of taxes, both new and existing. In that regard the Budget scored well, both against the Treasury Committee's principles and also the tax consultation framework. Similarly, reviews of existing taxes and measures were also announced and (subject to these being undertaken in a collaborative fashion) are also welcome.

Unfortunately, there were exceptions, including one of the most important tax announcements in the Spring Budget 2020 – the 90% reduction of the lifetime limit in entrepreneurs' relief from £10 million to £1 million – with the expected review seemingly having been undertaken behind closed doors. A number of measures also have an element of retroaction (as opposed to retrospection), including the changes to entrepreneurs' relief, private residence relief, and protecting your taxes in insolvency – all of which will impact to the detriment of the taxpayer. These measures therefore scored poorly around certainty and stability.

There were also measures which seek to 'rewrite the rules'; namely, clarifying the treatment of limited liability partnership returns, and HMRC automation. Whilst these two measures are intended to maintain the 'status quo' in a practical sense, we are concerned about the fairness of changes which legitimise the (potentially erroneous) actions of HMRC, when such reparatory measures are clearly not open to taxpayers. So, whilst these measures may score well around areas such as certainty and coherence, there are fairness concerns as some taxpayers may have had their rights retrospectively removed.

The remaining measures within our scope were something of a mixed bag, with our greatest concerns around the property taxes changes, but most other measures receiving a cautious approval.

**ATT's comments**
The ATT commented on a number of measures, predominantly in relation to personal and corporate taxes, which on the whole scored relatively positively against the Treasury Committee's principles.

The ATT also regretted the lack of consultation around the entrepreneurs' relief announcement, particularly considering that the extent to which it actually increases entrepreneurship rather than merely rewards it has been rightly questioned, and because it remains extremely detailed and can produce anomalous outcomes.

The increase in the rate of Structures and Buildings Allowance was welcomed, particularly as the enhanced rate will be available from 1/6 April 2020 even where the qualifying expenditure was incurred between 29 October 2018 and 31 March/5 April 2020. But the ATT questioned the change against the principles of certainty and stability, especially as the allowance was introduced just 17 months ago.

In the corporate field, the ATT expressed concern that the extension of the corporate loss restriction rules to include capital losses would impose further reporting requirements on even the smallest companies. It questioned why the changes to the intangible fixes asset regime were not implemented sooner, and why it is being restricted to purchases from related parties which take place from 1 July 2020, as opposed to all pre-Finance Act 2002 assets. But the ATT welcomed the delay of the introduction of a cap on the tax credit payable by HMRC to loss-making businesses under the SME R&D scheme, urging HMRC to utilise the extra time to refine the final design of the measure. It did, however, lament the fact that the increase in the rate of tax relief available under the Research and Development Expenditure Credit (RDEC) scheme from 12% to 13% from 1 April 2020 was not also reflected in the corresponding regime for small and medium sized businesses.

At the time of writing, the Treasury Committee has not yet published the written evidence it has received, and so we are not able to publish our full responses on our websites. However, we will do so as soon as possible.

Richard Wild
*rwild@ciot.org.uk*

Will Silsby
*wsilsby@att.org.uk*

# Spring Budget 2020: Tackling Construction Industry Scheme Abuse – a consultation

EMPLOYMENT TAXES

**HMRC are consulting on changes to construction industry scheme deductions claimed against PAYE, deemed contractors rules, deductions for materials and expansion to the scope of the false registration penalty, as well as asking for ideas to tackle fraud in construction supply chains.**

In Spring Budget 2020, the Chancellor announced that: 'The government will legislate to prevent non-compliant businesses from using the construction industry scheme to claim tax refunds to which they are not entitled. The government is also publishing a consultation which introduces options on how to promote supply chain due diligence.' A week later, on 19 March, the consultation document was published (https://tinyurl.com/vkkhg6g).

The CIOT will be responding to this consultation later this month and would welcome views from members on the proposed changes to the rules to prevent tax loss from the construction industry scheme (CIS).

**CIS deductions claimed against PAYE**
The consultation document notes (at para 3.2) that:

'HMRC is aware that CIS deductions suffered are being claimed:
- by employers not working in construction;
- by sub-contractor employers that are not companies; and
- that exceed the sums recorded as having been withheld for a particular sub-contractor on contractor returns.'

The government has therefore decided that a 'new provision will be introduced from April 2021 to allow HMRC to correct the CIS deductions figure claimed on the sub-contractor employer's EPS return where there is no satisfactory evidence to support it.'

It seems to us that these claims are potentially fraudulent, and it is unclear why existing powers are not sufficient to tackle such abuse. We are concerned that HMRC might use the new power to deny valid claims where the subcontractor has not received a CIS deduction certificate from the contractor but has other evidence of deduction. We are also concerned that HMRC will only give subcontractors 14 days to provide evidence of CIS deductions, when we would expect a minimum of 30 days to be a reasonable timescale.

**Deemed contractors**
The consultation document also notes (at para 4.1) that: '[T]he current rule to determine whether a business undertaking construction activities constitutes a "deemed contractor" is open to abuse.' The government has therefore decided to 'simplify the current rule to ensure businesses spending above a certain amount on construction operations have to operate the CIS when the threshold is reached.'

The proposed solution is that construction spending will be calculated on a rolling basis. When the cumulative spend on construction operations reaches the prescribed threshold (£3 million) the business has to register for CIS as a contractor (if not already registered) and begin operating CIS on their next payment made to a sub-contractor for construction operations undertaken.

Our concern with this change is that the requirement to operate CIS from the next payment made to a sub-contractor for construction operations undertaken via the relevant contract is not practical. In our view, the current rule that requires CIS to operate from the start of the next period of account provides deemed contractors with the time needed to put relevant processes in place.

**Deductions for materials**
The consultation document (at para 4.11) indicates that the current rule for deductions for materials is 'open to interpretation'. The government has therefore decided that 'a materials deduction for CIS purposes can be made only from a payment under a construction contract where a subcontractor has directly purchased materials used or to be used in fulfilling that contract'.

This means that no deduction will be available for materials bought by a sub-contractor further down a supply chain. Our concern with this proposal is that failing to take into account all materials purchased by all sub-contractors in the supply chain may mean that a sub-contractor further up the chain suffers a CIS deduction on the full invoiced sum and will not then have sufficient funds to pay the sub-contractor with whom they contract and who is entitled to a deduction for materials they have bought.

**Expanding the scope of the false registration penalty**
The last of the decided changes is to the penalty for providing false information when registering for CIS where the government has decided the penalty will be applicable to a 'relevant person', including an agent, director, company secretary or anyone else HMRC believes is in a position to exercise control and direction over the business/person making the application.

It is intended that all of the above changes are to take effect from April 2021.

**Supply chain proposals**

The final chapter in the consultation document is a consultation on 'measures designed to allow HMRC to better assure construction supply chains and to encourage supply chain due diligence will help combat this fraud'.

The consultation document discusses the following suggestions:

- Site numbers: CIS payments and deductions reported by contractors to HMRC on monthly returns would include a site number to help HMRC detect suspect entities and non-compliance in construction supply chains.
- Reporting supply chains: Main contractors would have to notify HMRC of their supply chain for a particular project or contract.
- Securing losses due to fraud in the supply chain: HMRC would tell entities in a VAT supply chain about any fraud it becomes aware of. And failure by the other parties in the chain to remove the perpetrator could leave the main contractor responsible for tax losses due to fraud lower down the supply chain!

It seems to us that these suggestions are a disproportionate response to HMRC's concerns with fraud in construction supply chains and we would welcome other ideas from members that could better help HMRC (and contractors) to combat fraud in construction supply chains.

Matthew Brown
*matthewbrown@ciot.org.uk*

# Spring Budget 2020: Reduction in the lifetime limit for entrepreneurs' relief and a surprise change of name

PERSONAL TAX

**A reduction in the entrepreneurs' relief lifetime limit from £10 million to £1 million was announced at Spring Budget 2020. The CIOT has raised areas of uncertainty with HMRC on the scope and ambit of the anti-forestalling measures.**

The government announced at Spring Budget 2020 that the entrepreneurs' relief (ER) lifetime limit is reduced from £10 million to £1 million, with effect for qualifying disposals made on or after 11 March 2020, together with anti-forestalling measures for certain disposals made before 11 March 2020. The anti-forestalling measures were set out in draft legislation first published on Budget Day and subsequently published (in a revised form) in the draft Finance Bill on 19 March. There are no transitional rules.

The CIOT recognises that immediate action may sometimes be needed to prevent forestalling in avoidance cases. However, the issue for ER was not generally one of avoidance rather than of design. A suitable transitional period (combined with anti-forestalling measures as appropriate) would have allowed those who have entered into transactions in good faith in reliance on existing provisions to restructure their affairs and would mitigate the element of retroaction inherent in these changes.

The anti-forestalling measures in the draft legislation apply to:

- arrangements involving uncompleted contracts (Finance Bill Sch 2 para 3); and
- elections made under TCGA 1992 s 169Q in connection with a share reorganisation or exchange of securities (Finance Bill Sch 2 paras 4 and 5).

**Areas of uncertainty**

Several areas of uncertainty as to the intent and scope of the draft legislation for the anti-forestalling measures have been raised with HMRC. These include:

- Is the para 3(3) anti-forestalling rule intended to apply where commercial negotiations for the sale of a business to a third party were underway in the lead up to the Spring Budget 2020 but were accelerated to ensure an unconditional contract was in place by 11 March, exchange taking place on, say, 10 March, and with completion shortly afterwards, or perhaps with completion now delayed due to COVID-19?
- What is the policy intent in relation to the timing of the making of the election under TCGA 1992 s 169Q in relation to the paras 4 and 5 anti-forestalling measures? The usual practice is to make the election at the same time as completing the tax return after the end of the tax year, in this case the 2019/20 tax return. Consequently, at Budget Day, taxpayers would not reasonably have expected to have made a s 169Q election in respect of a reorganisation or exchange taking place between 6 April 2019 and 10 March 2020. This position would apply to a shareholder whose shareholding no longer qualifies as a result of the exchange or reorganisation.
- We also noted that the election can be made up to a year after the date for submission of the relevant tax return. This would be relevant to a shareholder whose shareholding still qualifies for ER after the transaction but might cease to qualify due to circumstances now outside the taxpayer's control (such as a 5% post-transaction holding diluted by share awards to other employees, or the vendor ceasing to be an employee or director due to ill health).
- The meaning of the phrase 'substantially the same' defined in para 5(2)(a) and (b) is unclear.
- What is the meant by 'immediately 'in para 5(2) (a) and (b)?
- Clarification is needed on the intent of para 5(6).

It is hoped that some of these issues will be addressed in HMRC's guidance.

**A new name**

Despite widespread pre-Budget speculation, ER has been retained; however, the Finance Bill includes an unexpected name change for this relief. ER is now to be known as 'business asset disposal relief'.

Kate Willis
*kwillis@ciot.org.uk*

# Spring Budget 2020: Making Tax Digital – a welcome evaluation

MANAGEMENT OF TAXES

**At Spring Budget 2020, the government announced an evaluation of Making Tax Digital in relation to VAT and the proposed roll-out to income tax, and published a considerable amount of information.**

**An evaluation of the VAT Service and update on the Income Tax Service**

Following an announcement at Spring Budget 2020, HMRC published 'Making Tax Digital: An evaluation of the VAT Service and update on the Income Tax Service' on 19 March 2020 (see https://tinyurl.com/tgoly3w), alongside eight related research papers (links to these are at the end of this article). A considerable amount of information has been published by HMRC. The focus of this article is the evaluation paper which reviews the Making Tax Digital (MTD) for VAT service, provides an update on MTD for income tax and offers some conclusions and next steps.

The CIOT is pleased that HMRC have undertaken a review and evaluation of the MTD for VAT service. Indeed, the results of the CIOT and ATT's recent survey of businesses and their advisers led us in January to call for a comprehensive review of MTD for VAT (see www.tax.org.uk/200128PR) before HMRC take the decision to go ahead with plans to roll out digital reporting obligations more widely.

HMRC have said that they will continue to engage with professional bodies and taxpayers to ensure that future plans for MTD reflect what has been learnt from the roll-out of MTD so far.

**Evaluation of the VAT service**

The government is satisfied on the evidence available that the MTD for VAT service is working but recognises that there are lessons to be learnt and taken account of in the next stages of the MTD roll-out.

Throughout their evaluation report, HMRC specifically recognise the effort that businesses and their agents have put into the move to MTD and the significant contribution of tax agents in the implementation of MTD. They also note that they have found the insight and input from professional bodies, such as the CIOT and ATT, throughout the development of the VAT service invaluable.

The report highlights that the vast majority of business and agents have met the digital record keeping requirements of MTD for VAT. By 9 March 2020, more than 1.4 million businesses had signed up to the MTD service and more than 4 million VAT returns had been submitted successfully using MTD-compatible software. This represents 83% of businesses in scope, meaning a not insignificant number have yet to sign up. HMRC are reminding those businesses of their obligations and offering further support.

HMRC say that they are monitoring the transitional administrative costs being experienced by businesses, and that experiences are varied. The CIOT/ATT member survey showed that the costs of MTD compliance had far exceeded government estimates, and that many members had spent significant unrecoverable implementation time and costs in supporting clients in making the transition to digital filing. In their evaluation, HMRC acknowledge that some businesses and agents have incurred more costs than expected, and that they will continue to support businesses in finding affordable software providers for their requirements. They have also commissioned external research to provide evidence about the ongoing costs and benefits experienced by businesses in their first year of mandation of MTD for VAT.

The report indicates that some businesses have already reported wider productivity gains and reduction in input errors from using MTD software. This may be the case; however, our survey showed that nearly 90% of respondents said that MTD for VAT has not reduced errors and just 14% of respondents said there had been an increase in productivity in their organisation as a result of MTD for VAT.

HMRC acknowledge that there have been problems with the implementation of MTD and that in considering the roll-out of the next stages, they will continue to consider and act on feedback from all sources, including recent surveys undertaken by professional bodies.

**Update on the MTD for income tax service**

HMRC have been running a very small scale pilot since 2017 with a handful of sole traders, landlords and agents. Over 1 million businesses are now eligible to join it. However, there are still very few MTD for ITSA-compatible software products on the market. HMRC recognise that a concrete 'road-map' to mandation is necessary in order to stimulate the software market. No indication is given in the evaluation report of when mandation will take place.

Following feedback that the MTD for VAT pilot was not long enough, HMRC say that the pilot for MTD for ITSA will be much longer and that they will be increasing functionality to allow more businesses to join it.

One area which caused particularly difficulty for agents during the sign-up process for MTD for VAT was the need first to set up an Agent Services Account (ASA). Whilst this was a one-off process that will not need to be repeated for MTD for ITSA, many agents encountered significant problems. HMRC have been working with the professional bodies to address concerns and identify improvements to the design of the ASA. Since the population of taxpayers that will need to be signed up for income tax is much larger than for VAT, HMRC are mindful that a solution needs to be found that limits the burdens on agents and they will continue to work closely with the agent community on the design of the ASA for the next phases of MTD.

The eight research papers that were published are:

1. Research and analysis: Exploring views of business reporting errors to support Making Tax Digital upstream compliance – see https://tinyurl.com/wz7ercg
2. Research and analysis: Making Tax Digital: letter testing – see https://tinyurl.com/yx39cu9u
3. Research and analysis: Exploring business Income Tax errors and how these can be addressed within software design – see https://tinyurl.com/udo5ysp
4. Research and analysis: Monitoring business' awareness of Making Tax Digital – see https://tinyurl.com/rwkeaz5
5. Research and analysis: Monitoring agents' awareness of Making Tax Digital – see https://tinyurl.com/s7mblkh
6. Research and analysis: Making Tax Digital: late submission penalty models – see https://tinyurl.com/s4cjodq
7. Research and analysis: Exploring complex businesses' tax processes and readiness for Making Tax Digital – see https://tinyurl.com/rwnoobh
8. Research and analysis: Evaluating Making Tax Digital's impact on record keeping behaviour and scope for error among small businesses – see https://tinyurl.com/t5erpvr

Margaret Curran
*mcurran@ciot.org.uk*

# Consultation on HMRC Charter

GENERAL FEATURE

**HMRC propose to update their Charter. Public consultation closes on 15 May. HMRC are inviting comment not simply on a proposed wording but more fundamentally on the standards which it enshrines, the areas on which it focuses and how HMRC could measure their performance against the Charter.**

There is a statutory requirement for the Charter to be reviewed. This is set out in FA 2009 s 92, which amends the Commissioners for Revenue and Customs Act 2005, and reads:

1. The Commissioners must prepare a Charter.
2. The Charter must include standards of behaviour and values to which Her Majesty's Revenue and Customs will aspire when dealing with people in the exercise of their functions.
3. The Commissioners must:
   a. regularly review the Charter; and
   b. publish revisions, or revised versions, of it when they consider it appropriate to do so.
4. The Commissioners must, at least once every year, make a report reviewing the extent to which Her Majesty's Revenue

and Customs have demonstrated the standards of behaviour and values included in the Charter.'

The last review of the Charter did not involve public consultation and was completed in 2015.

The need for revision was highlighted in reports of both the House of Lords Economic Affairs Committee ('The powers of HMRC: treating taxpayers fairly', December 2018, see https://tinyurl.com/sfvooqa; and the Independent Loan Charge Review, December 2019, see https://tinyurl.com/uj87kl5). They focused respectively on HMRC's particular responsibilities to the unrepresented and the need to set higher expectations of performance and ensure staff training to meet those expectations.

The consultation provides an opportunity to comment on two main aspects: first, the proposed draft wording of the revised Charter; and secondly, on measuring HMRC's performance against the Charter.

**The wording of the charter**

The current Charter (https://tinyurl.com/jxnlnye) sets out separately what you can expect from HMRC, and what HMRC expects from you. It makes seven important statements on each, such as that HMRC will 'respect you and treat you as honest', 'be professional and act with integrity and 'accept that someone else can represent you'; and that you will 'keep accurate records and protect your information' and 'take reasonable care to avoid mistakes'. Each of these statements is accompanied by a short explanation.

The revised Charter takes a different approach. It does not set out a series of respective rights and obligations, but a combined set of 'values' such as 'getting things right' and 'being responsive'. Again, each of these values is accompanied by a short explanation.

A direct comparison between the two versions is, therefore, difficult. Some of the more direct wording in the current Charter is more subtly stated in the revised wording (for example, 'accept that someone else can represent you' has become 'we will … work with anyone you've asked to act for you').

Particular aspects suggested in the consultation include whether the new wording sets the right standards for HMRC's service and whether it identifies the areas of greatest importance in relation to HMRC's interactions with the public.

**Measuring HMRC's performance against the Charter**

Perhaps more important than the wording of the Charter is the extent to which HMRC (and taxpayers and their agents) follow it in practice. Feedback received to date, including that provided to HMRC through the Powers and Safeguards Evaluation Forum previously reported on in Technical Newsdesk, has identified that some of the principles in the Charter are not being applied in practice by HMRC.

The consultation prompts consideration of how HMRC should monitor their performance against the Charter, including the use of feedback and the action required to achieve improvements. HMRC indicated in a virtual meeting with representative stakeholders (including ATT, CIOT and LITRG) at the beginning of April that they envisage ongoing engagement with the group.

In addition to representation on the stakeholder group, ATT, CIOT and LITRG are each preparing a written response. The consultation is due to close on 15 May. Ideas for inclusion in those responses or the subsequent group discussions with HMRC are very welcome and should be sent as soon as possible to those named below.

HMRC's consultation document can be found at: https://tinyurl.com/v8865u6.

Will Silsby *wsilsby@att.org.uk*
Richard Wild *rwild@ciot.org.uk*
Claire Thackaberry *cthackaberry@litrg.org.uk*

# HMRC's discretionary PAYE powers and the *Hoey and Higgs* cases

EMPLOYMENT TAXES

**ITEPA 2003 s 684(7A)(b) provides HMRC with wide discretionary powers to collect PAYE direct from individuals. The CIOT has sought from HMRC details as to when they will use this discretion, how this power interacts with its powers in the PAYE regulations, and whether the power will be used retrospectively or prospectively.**

The CIOT recently asked HMRC to clarify their application of the powers available to them under ITEPA 2003 s 684(7A)(b), which enable them to suspend the operation of PAYE by employers and assess employees directly.

Many of you will be familiar with the provisions in the PAYE Regulations (regs 72 and 81) that permit HMRC to collect tax from an employee where the person making a relevant payment has not complied with the requirements of the PAYE Regulations.

What you may be less familiar with is the general discretion available to HMRC under ITEPA 2003 s 684(7A) to disapply the PAYE Regulations and effectively circumvent the protections within the PAYE Regulations that limit the circumstances under which HMRC can pursue employees for unpaid PAYE. Section 687(7A)(b) provides that:

'Nothing in PAYE regulations may be read … as requiring the payer to comply with the regulations in circumstances in which an officer of Revenue and Customs is satisfied that it is unnecessary or not appropriate for the payer to do so.'

Section 684(7A)(b) was discussed in the *Hoey* case (https://tinyurl.com/wmw3k3e), a loan charge case which Keith Gordon reported on in October 2019's *Tax Adviser* (see www.taxadvisermagazine.com/loan_arrange) where the tribunal found it was not open to the tribunal to consider whether HMRC exercised their discretion properly. It was also the subject of the *Higgs* case (https://tinyurl.com/uvolgjh), where the tribunal found that it did not have the jurisdiction to consider s 684(7A)(b).

The CIOT was concerned that if the tribunal judges views are correct, s 684(7A)(b) gives HMRC wide – and apparently uncircumscribed – discretionary powers to collect tax direct from an employee in circumstances in which taxpayers and employers might have little reason to expect it. We therefore sought clarification from HMRC of four points to which HMRC provided the following responses:

*Q1: When will HMRC use the discretion to collect tax from the individual?*

A: 'HMRC is of the view that the PAYE Regulations provide a complete scheme for the deduction of and accounting to HMRC for tax by employers and other persons who make, or are treated as making, relevant payments of PAYE income. The PAYE regulations will apply for most individuals in receipt of employment income, and also act to protect employees from fraudulent or negligent employers who fail to pay to HMRC the tax they have deducted or should have deducted from an individual. The PAYE regulations were not intended to ensure that the employer, or any other person treated as making a relevant payment of PAYE income, should bear the cost of unwittingly becoming party to an individual's arrangements to avoid their tax liability. HMRC is able to disapply the PAYE regulations where an officer considers it "unnecessary or not appropriate" for the payer, or deemed payer, to apply those provisions.'

*Q2: How do regs 72 and 81 interact with ITEPA 2003 s 684(7A)(b) and what is HMRC's approach to collecting tax from an individual in these circumstances?*

A: 'HMRC considers that the respective powers at ITEPA 2003 s 684(7A)(b) and regs 72 and 81 of the PAYE Regulations are overlapping, so the regulations do not limit the operation of s 684(7A)(b). HMRC does not consider that an inability to collect tax is, without more, sufficient to allow it to use s 684(7A)(b). As explained above, in most appropriate cases HMRC will seek to use regs 72 and 81 to collect tax from an employee rather than from an employer. Where an individual has participated in arrangements that HMRC consider disguise remuneration, then an officer may take a decision to invoke s 684(7A)(b).

'A First-tier decision was published 24 February 2020 covering similar ground to the *Hoey* case. This was the *Higgs* decision and related to the Edge Scheme litigation (see TC/2018/05042 https://tinyurl.com/uvolgjh). In that case taxpayers sought to argue that s 684(7A)(b) could not operate in respect of arrangements that HMRC considered disguised remuneration because of the existence of regs 72 and 81 of the PAYE Regulations. At paragraph 77 of the *Higgs* decision Judge Austen endorsed HMRC's view that the powers are overlapping, but he did not agree with Judge Gillett in *Hoey* that this would render those regulations otiose. At paragraph 81 Judge Austen states that Parliament intended that HMRC should have both the discretion conferred by s 684(7A)(b) and the powers contained in the regulations, and that s 684(7A)(b) having a wide interpretation, and by extension broad areas of possible application, does not undermine the PAYE Regulations.'

*Q3: When HMRC invoke ITEPA 2003 s 684(7A(b) do you envisage this to be prospective or retrospective in relation to communications with the payer/employer?*

A: 'HMRC considers that the statutory language of ITEPA 2003 s 684(7A)(b) is clear in relieving the employer or deemed employer of the mandatory application of the PAYE Regulations, both in relation to obligations that have arisen and ones that will arise. This view is supported by Judge Austen in the *Higgs* decision where, at paragraph 82, he says that: "There is nothing in the statutory wording that cuts down the exercise of the discretion to a prospective application … I see no difficulty with the decision having prospective and/or retrospective effect."

'HMRC envisages that in some instances there will be communication with a payer or employer. However it also considers that its ability to use s 684(7A)(b) should not be restricted where it holds sufficient evidence for an officer to reasonably determine that the operation of PAYE is unnecessary or not appropriate, but where the identity of the employer is not clear.'

*Q4: Does HMRC intend to publish guidance in the PAYE or COG manuals on the operation of this provision?*

A: 'Currently HMRC does not intend to include guidance in either the PAYE or COG manuals. This is because most officers will not need to consider invoking ITEPA 2003 s 684(7A)(b) in their day to day work. HMRC consider this power is likely to be most appropriate in cases presenting an unusual or complex fact pattern, where a bespoke decision will be made taking account of the particular facts of the case.'

Matthew Brown
*matthewbrown@ciot.org.uk*

# Penalties checklist

MANAGEMENT OF TAXES GENERAL FEATURE

**An update of the penalties applying to tax avoidance and offshore tax evasion and non-compliance.**

The checklist on the CIOT website listing the penalties applying to tax avoidance and offshore tax evasion and non-compliance has recently been updated (see www.tax.org.uk/penalties_checklist).

A number of new penalties have been introduced in this area through legislative changes over recent years. As tax penalty legislation is updated it is important that tax advisers are aware of those changes and seek to minimise exposure to those penalties both for their own practice and for their clients.

The checklist sets out some of the recent changes in Finance Acts and the Criminal Finances Act 2017 which relate to taxpayers and tax advisers and the associated penalties and states the position as at 20 March 2020.

Members may find this checklist of assistance to ensure that they have considered the implications in relation to their practice and their clients, and therefore that they meet the professional standards required from them.

Margaret Curran
*mcurran@ciot.org.uk*

# HMRC letters and 'certificates of tax position' to individuals with offshore income, gains and assets

MANAGEMENT OF TAXES

**The guidance on the CIOT website has been updated to take account of some recent changes to the wording of HMRC's letter and certificate of tax position being sent to individuals with offshore assets, income or gains.**

The update provides some background to, and information about, HMRC's letters and some guidance to help members decide the most appropriate way to respond if a client receives one of the letters. A copy of a recent letter and certificate of tax position issued by HMRC in February 2020 is also provided.

The update is at www.tax.org.uk/tax_position_cert.

*Margaret Curran*
*mcurran@ciot.org.uk*

# Devolved Taxes Legislation Working Group: Interim Report

GENERAL FEATURE

**The CIOT and LITRG made a written submission to a consultation on the Interim Report published by the Devolved Taxes Legislation Working Group.**

The Scottish government and the Scottish Parliament jointly set up the Devolved Taxes Legislation Working Group in March 2019. Various organisations, including the CIOT, were invited to nominate a representative to attend meetings of the working group.

The working group has been taking forward some of the recommendations made by the Budget Process Review Group (set up by the Finance and Constitution Committee of the Scottish Parliament) in its June 2017 report. In particular, it has been exploring alternative legislative processes for devolved taxes legislation and the need for a Finance Bill.

The working group published an interim report in February 2020 for consultation. This set out the challenges and opportunities of a few alternative options for devolved tax legislation, such as a Finance Bill, a Tax Bill and secondary legislation powers. It should be noted that the intention is for any alternative process to cover only the fully devolved taxes, that is, currently, Land and Buildings Transaction Tax and Scottish Landfill Tax.

We used our response to suggest that there may be a case for extending the remit of any suggested alternative legislative process, such that it is able to cover all tax powers of the Scottish Parliament, for example, non-domestic rates.

As noted in the interim report itself, the Scottish Parliament has new powers and responsibilities over taxation as a result of the Scotland Acts 2012 and 2016. It is now no longer a parliament that deals almost exclusively with spending, but one that must have the capacity and ability to deal with both revenue-raising and spending. Yet, the current arrangement of the parliamentary timetable means that, with capacity to consider only 14 to 16 Government Bills per annum, (with one slot guaranteed for the Budget Bill), changes to existing tax legislation face stiff competition for a Bill slot.

In making our case for the need for an alternative legislative process for tax legislation, we argue that tax is distinctive from other policy areas. While Scotland still receives a significant proportion of its funding from the Block Grant, taxes provide an increasing share of Scotland's funding resources. Moreover, it places obligations on citizens in a way that other policy areas do not, and requires a more detailed and ongoing understanding of the law than many other areas of policy. It is particularly important, therefore, that there is an avenue available to make changes effectively and efficiently, to ensure the credibility of the tax system in Scotland.

We note that the current legislative procedures are inadequate for dealing with devolved taxes as the current procedures do not offer a sufficient balance between the competing needs of speed, scrutiny and responsiveness when making changes to existing tax legislation. This is of concern given that changes are often needed, for example, in the light of operational experience, to ensure the legislation works as intended and to respond to changes in the wider environment.

Our response favours either a Finance Bill or a Tax Bill as having the potential to address the tensions set out in the interim report. In either case, a guaranteed Bill slot in the annual parliamentary timetable would be essential.

The submission is available on the CIOT website: www.tax.org.uk/ref644.

Joanne Walker
*jwalker@litrg.org.uk*

| **CIOT** | **Date sent** |
|---|---|
| Devolved Taxes Legislation Working Group - Interim report<br>www.tax.org.uk/ref644 | 26/03/2020 |
| **LITRG** | |
| Call for evidence: The economics of Universal Credit (UC)<br>www.litrg.org.uk/ref376 | 13/03/2020 |

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

30 Monck Street, London SW1P 2AP.
tel: 020 7340 0550
The CIOT is a registered charity – No. 1037771; The ATT is a registered charity – No. 803480

**EDITORIAL**
**Editor-in-chief** Bill Dodwell
**Publisher** Jonathan Scriven
**Editor** Angela Partington
angela.partington@lexisnexis.co.uk
tel: 020 8401 1810
**Web editor** Jonathan Chan
jchan@tax.org.uk

**ADVERTISING & MARKETING**
**Advertising Sales** Jimmy Jobson
advertisingsales@lexisnexis.co.uk

**Commercial Marketing Director**
Sanjeeta Patel

**PRODUCTION**
**Production Assistant** Nigel Hope
**Design & Technology Manager**
Elliott Tompkins
**Senior Designer** Jack Witherden

**Offices** LexisNexis, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS.
tel: 020 8686 9141
UK print subscription rate 2020: £112.00 for 12 issues
UK print subscription rate 2020: £198.00 for 24 issues

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

For any queries regarding late deliveries/non-receipt please direct to Derek Waters,
Magazine Distribution Administrator
Derek Waters [tel] 020 7400 2898
derek.waters@lexisnexis.co.uk

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



Printed by William Gibbons & Sons Ltd. West Midlands



ISSN NO: 1472-4502



CIOT & ATT

# Joint Presidents' Lunch in Edinburgh

EVENT


Jeremy Coker (ATT President), Professor Graeme Roy (Director of the Fraser of Allander Institute) and Glyn Fullelove (CIOT President)


115 guests attended the Joint Presidents' Luncheon in Edinburgh

Glyn Fullelove, Sean Cockburn (Chair, Scotland Hub) and Jeremy Coker

The annual Joint Presidents' Lunch in Scotland has grown to become an important fixture in the CIOT and ATT calendar. This year's event, held at the start of March, reinforced the growing reputation of both organisations north of the border.

They say a change is as good as a rest so it was back to the Signet Library in the heart of Edinburgh's Old Town following the temporary relocation of the lunch to Glasgow last year.

CIOT president Glyn Fullelove and ATT president Jeremy Coker welcomed as guest speaker Professor Graeme Roy, director of the Fraser of Allander Institute – the respected Scottish economic think-tank based within the University of Strathclyde.

Professor Roy used his remarks to reflect on recent developments in Scottish tax devolution, noting the significant changes that have taken place since 2015.

While he said that tax devolution had added a vibrancy to Scotland's political dynamic, he noted that a number of challenges remain, including improving public understanding of how tax devolution works and strengthening the scrutiny of decision making.

In remarks that piqued the interest of the Scottish journalists who attended the lunch, Professor Roy said that the Scottish government's decision to introduce its five-band system of income tax could be viewed by some as an expensive soundbite.

He said that some may choose to view it this way because, although it was a 'visible statement of intent to do things differently', the overall cost of the policy – around £50 million – was set against a maximum overall saving to a Scottish taxpayer of around 40 pence per week.

Professor Roy concluded by calling on Scotland's political parties to 'set out a much broader and joined up approach to all aspects of tax policy' as we approach next year's Scottish Parliament elections.

It is a mark of the growth of the CIOT and ATT's activity in Scotland that the lunch has, in recent years, attracted a 'who's who' of guests from across the Scottish tax, accountancy, legal, media and political professions.

With tax matters expected to emerge as a battle line in Scotland's upcoming parliamentary elections due next year, it is also a reminder of the important role that both CIOT and ATT play in promoting improved public understanding of Scottish tax devolution.

CIOT & ATT

# Free advice and support from ATT and CIOT

SERVICES

*Managing your mental wellbeing and improving your personal brand: Coming soon this month!*

Rebecca Fuller is the Business Development and Marketing Manager for ATT and is passionate about health and wellbeing. To support our students, members, volunteers and other stakeholders, she will be delivering a 45 minute webinar on Managing your mental wellbeing. Rebecca will cover a brief history of mental health concepts; signs and symptoms of ill-mental health and offer some ways to maintain wellbeing, as well as sharing information and resources that are available. Rebecca's blog details are: rebeccafuller.co.uk.

Joanne Herman is the Business Development and Marketing Manager for CIOT and has worked alongside entrepreneurs and dot.com boom influencers, such as Errol Damelin of Wonga, who over the last 20 years have demonstrated the power of raising their business and personal profiles. In her new mini blog series, Joanne explains why it's important to improve your personal brand during the current crisis and how you could turn a seemingly unhelpful situation to your advantage. This includes ideas on how to start, practical tips, and an interview with a key tax influencer who reveals how they did it and the benefits it could bring you.


Joanne Herman (left) and Rebecca Fuller (right)

CIOT & ATT

# Professional indemnity insurance

ADVICE

**Don't leave it to the last minute to submit your professional indemnity insurance (PII) renewal.**

The CIOT and ATT have been made aware that the PII market has changed over the last 12 to 18 months. As a result, members may find it more challenging and/or time-consuming to renew cover than before and insurance providers may well ask for additional information. It could also mean that members find their premiums increase.

The change in appetite has largely been driven by the Grenfell disaster. Although this was in the construction industry, the knock-on effect has been felt in all sectors of the insurance market. We have been told that insurers are reviewing more critically the risks they are willing to accept and the price they will set for cover, while a number of providers have left the insurance market altogether. In addition, COVID-19 will not have helped an already strained market.

Members and their firms are therefore recommended to prepare early for their renewal, particularly if they have a disciplinary or claims history that they need to disclose or if they work in high risk areas such as tax mitigation schemes, investment advice, insolvency, entertainment, legal work, valuations, offshore and M&A work. Insurance providers and brokers are generally sending out their renewal reminders several months in advance and it is advisable for members to submit their requests for renewal as early as possible as insurers may take several months to respond. Leaving it to the last week or days before your insurance runs out to renew may leave you exposed and without insurance cover and this is contrary to CIOT/ATT Professional Indemnity Insurance Regulations.

ATT

# Foundation Qualifications

TRAINING

ATT offers four online Level 2 Foundation Qualifications which can open up the door to a future career in tax or just broaden a person's knowledge in a specific area of tax.

We offer Foundation Qualifications in four areas:

- Personal Taxation
- Business Taxation
- VAT Compliance
- Transfer Pricing

Once the Qualification's four modules and Final Certificate Examination have been successfully passed, employees will receive a Foundation Certificate.

**Who are the Foundation Qualifications for?**

- Anyone looking for the first step to the full ATT Qualification.
- Accountants who wish to enable cross-department secondments.
- Bookkeepers and other professional staff providing tax services.
- Junior members of staff to extend their knowledge and broaden the work they can do.

For more information, please visit www.att.org.uk/foundations.

TAX CHARITIES

# Volunteering activities

CHARITIES

*Alison Lovejoy tells us how positive partnership volunteers bring mutual rewards.*

It has been becoming increasingly clear that the support for the tax charities must come from the tax profession itself and that the accounting firms are very well placed to give this help. As many of my readers will be working for a large accounting firm, I thought it would be helpful to explore in a little more detail the close and beneficial partnerships TaxAid has been developing with the corporate sector.

TaxAid has a number of different volunteering arrangements with large firms including Deloitte, PwC, KPMG, EY and Smith & Williamson. But the demand for TaxAid's service far outstrips resource available. So, over the last couple of years, TaxAid and its partners have been exploring ways in which the TaxAid volunteer resource might be further expanded to bring in more partner firms and volunteers.

One of these initiatives is the Enhanced Volunteer Programme. This began with trained Deloitte volunteers handling selected TaxAid client telephone calls and managing selected cases. The success of this initial phase resulted in further Deloitte volunteers being recruited to the programme, together with a team from KPMG in Manchester. In developing the scope of the volunteering, there have been a number of issues to work through. As they have been resolved, though, the service has expanded to provide a complete 'end to end' volunteer service support – from taking the appointment call through to problem resolution and sign off.

The charities developed this new model with Deloitte and KPMG and they will shortly extend this innovative Enhanced Volunteering Programme to other firms whose volunteers are already providing similar support face-to-face. With the experience gained with Deloitte and KPMG, the enhanced model of volunteering is poised to be extended further into additional partner firms.

Craig Muir, tax partner at Deloitte, and a fellow Trustee for Tax Help for Older People, sums up the benefits for the corporate partner.

'First and foremost, it is about Deloitte using its skills and resources to help those in real need of expert and caring support. It makes us all feel good to be able to help someone in need. But volunteering with TaxAid brings us operational benefits as well. It enables some of our people to gain invaluable experience of wide-ranging tax issues and to gain practical experience in problem resolution, of working directly with people and learning all the soft skills required to achieve success. It helps us grow our skills and our people.'

Valerie Boggs, TaxAid Chief Executive, is equally positive. 'It has helped us increase our trained volunteer resource, so we can help even more clients than ever before. As well as the increased support in London, it has extended the scope of our face-to-face service in Manchester and will do so shortly in Newcastle and Birmingham. The closer, positive operational working with our partners also provides an excellent platform from which we can continue to grow and develop our tax support service through additional working partnerships.'

# Disciplinary reports

## Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

### Mr Ray Davis

**NOTIFICATION**

At its hearings on 12 December 2019 and 28 February 2020, the Disciplinary Tribunal of the Taxation Disciplinary Board considered complaints raised by HMRC in relation to Mr Ray Davis of Lyndhurst, a member of The Chartered Institute of Taxation.

Mr Davis admitted (inter alia) charges that he had:

1. failed to be either straightforward or honest and to act honestly and in good faith in his dealings with HMRC in that he had:
   a. prepared and submitted self-assessment tax returns on behalf of clients that included claims for EIS and SEIS relief when he knew that those reliefs were not available to be claimed by those clients;
   b. acted dishonestly when preparing and submitting a VAT return that deliberately understated the VAT liability for his client;
   c. acted dishonestly when preparing and submitting a VAT return that included a claim for input tax on services provided over a period during which he knew that the client was not registered for VAT;
   d. failed to cooperate fully with HMRC's investigation.
2. failed to be straightforward and honest in his professional and business relationships;
3. failed to uphold the standards of CIOT and ATT; and
4. brought himself and his professional body into disrepute.

The tribunal determined that Mr Davis be expelled from membership of The Chartered Institute of Taxation, pay a fine of £20,000, and pay costs in the sum of £12,836.95.

A copy of the tribunal's decision can be found on the TDB's website www.tax-board.org.uk.

# Your Branch Network is here for you

CIOT/ATT Branch Network Support Team is working closely alongside our Branch Network to continue to deliver CPD to members where possible, with a number of Branch events going ahead as online seminars.

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

If you are booked onto an upcoming Branch event, please check your emails for latest updates on whether the event is going ahead as an online seminar or if you have been issued with a credit.

Webinars will be open to all members at the prices of the events as originally advertised, unless otherwise stated.

Check online at www.tax.org.uk/online-branch-seminars to see the latest digital offerings from the Branch Network.

Email us with any queries about upcoming Branch events at branches@tax.org.uk


## Private Client Tax Senior Manager
**London – £80,000 - £90,000**

Work from home one day a week. Flex around core hours for the rest of the week. This is a pure advisory role with an award-winning international private client tax team. Undertake high-end UK res non dom personal tax planning work. Assist with networking and business development. Be supported with progression to Director. **Ref 4831**

## Private Client Tax Manager
**Redhill, Surrey – £55,000 - £65,000**

Work from home 2-3 days a week. A super lifestyle option advising HNWIs, entrepreneurs, business owners and wealthy families on all areas of their personal taxation. This high-quality Tax-focused firm offers genuine scope to progress to Senior Manager and Director, in a collegiate, supportive environment. CTA essential. Flexi hours and part-time considered. **Ref 4846**

## Personal Tax Manager
**Gatwick – £55,000 - £65,000**

Part-time, full-time and/or flexi hours. Avoid the commute into London without compromising your career. Our client is the Gatwick office of a prominent accountancy firm. Their respected Private Client team advises entrepreneurial HNWIs on UK income and capital taxation. They seek a CTA Manager to provide personal tax compliance and planning advice. **Ref 4738**

## Personal Tax Manager
**City – £60,000 - £70,000**

Full-time, part-time or flexi hours. This prominent national accountancy firm continues to plan for growth this year and is keen to recruit an additional CTA Personal Tax Manager. You will undertake ad hoc planning and complex compliance/review for a portfolio of UK and international HNWIs. UK res non dom experience is important. **Ref 4837**

## Trusts Manager / Senior Manager
**Oxford or Reading – To £65,000**

Remote work up to four days a week. Progress your career with a modern, growing, private client-focused firm. Initially a trust return/trust accounts focused role, the intention is for the individual to quickly progress to assisting the Head of Trusts with ad hoc advisory projects. A lifestyle option offering scope to progress to Director. **Ref 641**

## US/UK Expat Tax Senior
**London – To £45,000**

Remote work 2-3 days a week and flexi hours for the balance. Our client is a specialist tax boutique, with significant expertise in advising on US/UK expatriate taxation. They are growing and keen to appoint an additional dual-handler to prepare US and UK returns, as well as provide ad hoc tax advice to expatriate executives. **Ref 818**

---

**For details of these and similar opportunities visit our website:**

**www.howellsconsulting.co.uk**

HOWELLS CONSULTING

*Specialists in Private Client Appointments*

**E: michaelhowells@howellsconsulting.co.uk**
**T: 07891 692514**

Georgiana Head Recruitment

# MEET YOUR ADVISERS

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

ALISON TAIT

Director

Tel: 0113 426 6671
Mob: 07971627 304

alison@ghrtax.com

## Private Client Manager
## Skipton, Yorkshire – £market rate

Our client is a local independent firm in Skipton, West Yorkshire. They seek to hire a tax manager to deal with a wide range of personal tax and business tax clients. This friendly firm is able to offer flexible, full or part time working as well as an interesting mix of compliance and advisory work. Your role will involve: managing the personal tax compliance issues of the firm's clients; providing high level technical advice to clients on a broad range of issues, focussing on income tax, capital gains and inheritance tax planning. You will also be involved in a mixed variety of tax projects. **Call Georgiana Ref: 2867**

## Head of Treasury – Homeworking or Cheshire
## To £120,000 + benefits + bonus

Rapidly growing international group seeks a Head of Treasury for busy full time role. This position can be worked mainly from home but with regular travel to Cheshire (Warrington area) and London. This is an exciting opportunity to join a company which is a disruptive player in its market and is still in the early stages of its evolution; the business has very ambitious growth plans. The role will report to the Group Finance Director who needs an experienced treasurer to help drive the group's treasury strategy, manage day-to-day liquidity and ensure treasury related activated are managed and controlled. **Call Georgiana Ref: 2948**

## Corporate Tax Manager – Real Estate
## Manchester – £excellent + benefits

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

## Corporate Tax Manager
## Southampton – circa £55,000 + benefits

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

## In-house Tax Manager
## Bradford – £excellent + benefits

Reporting to the Head of Tax, you will work as part of the Group Tax Team responsible for managing the group's tax affairs in line with the group tax strategy. You will ensure compliance with the SAO and CCO rules, manage tax risk, prepare the UK corporation tax returns, undertake tax reporting work and lead on projects including M&A, capital allowances claims and R&D claims. You should be ACA/ICAS/CTA/ACCA qualified, with a minimum of 5 years corporate tax experience. **Call Alison Ref: 2949**

## Personal Tax Senior
## North Leeds – £excellent

This firm provides accountancy and taxation services to GP practices, GPs and hospital consultants. You will be responsible for the completion of the self-assessment tax returns (for both partnerships and individuals), advising on tax liabilities, dealing with expense claims and superannuation certificates and giving ad-hoc taxation advice to your clients. You do not need a background in taxation work for the medical profession, but you must have a minimum of 4 years' experience gained in a private client tax role in practice. **Call Alison Ref: 2809**

www.georgianaheadrecruitment.com

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

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

## In-house Tax Manager
## Near Goole – to £60,000 + benefits

This is a new role in the in-house finance team at a large international company. You will be responsible for undertaking the more complex areas of the tax compliance and reporting for the group, country-by-country reporting, transfer pricing, managing the Tax Risk register and SAO reporting requirements. You will also support the Group Treasurer on strategic, operational and funding initiatives. You should be ACA/CTA qualified, with a background in corporate tax. **Call Alison Ref: 2912**

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

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

## International Tax Director –In-house
## Homeworking + travel to Cheshire

An exceptionally rare opportunity has arisen for an experienced international tax practitioner to join a newly formed but highly experienced in-house tax team. This role can be home worked with some travel to Cheshire. Day to day, your role will be to provide dedicated resource to a global expansion project, including provision of timely and accurate tax advice relating to new business involving overseas territories and/or new products. The ideal candidate will be able to work independently, confidently interacting with colleagues across the business. **Call Georgiana Ref: 2911**

## International Tax Roles
## Manchester or Leeds – £excellent + benefits

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

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


www.linkedin.com/in/georgiana-head-7a339417/

Georgiana Head@GeorgianaHead

YOUR TAXATION RECRUITMENT SPECIALISTS

# A selection of jobs recently posted on Taxation-jobs

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

| | |
|---|---|
| **International Tax Manager**<br>London<br>£competitive<br>MAZARS | Work will focus on advising our UK and international multi-national clients on a range of tax matters. The role includes advising on group structuring and reorganisations, tax due diligence, the efficient use of financing and intellectual property, and structuring cross-border investment. The team works across a number of sectors including financial services, infrastructure and real estate, consumer markets, industrial markets and private equity. We would be open to candidates wanting a flexible working pattern. Someone wanting part time or some flexibility with their working week would be considered. |
| **Tax Partner**<br>London<br>£competitive<br>MAZARS | If you are currently a Financial Services Tax Director exploring opportunities with further progression, this is a perfect opportunity to fast track to Partner! If you are going above and beyond but seeing a block in being able to progress to Partner then please get in contact. This role will offer a clear and transparent line to Partnership for the right candidate. You will be able to take ownership and help grow this very profitable service line as well as working alongside some market leaders in the Financial Services Tax space. The incoming individual will perform a trusted adviser role working with financial institutions to develop and execute effective global tax methodologies. |
| **Indirect Tax Senior Manager**<br>London<br>£80,000 – £85,000<br>THE CONSULTANCY GROUP | An International Media Group, leaders in their field, are looking to hire an Indirect Tax Senior Manager, based in London. They are seeking a commercially minded Senior Manager to lead the global Indirect Tax function during a time when the tax landscape is changing at an unprecedented rate. Reporting to the Group Head of Tax and supported a small Indirect tax team, the person will be responsible for delivering the global approach to indirect tax compliance and providing proactive and commercial indirect tax advice and technical support to the business. |
| **FTSE 100 - Tax Manager**<br>London<br>£excellent benefits & bonus<br>brewer morris SPECIALIST SEARCH & RECRUITMENT | Working in the Head Office, this role will provide tax support on all issues facing a FTSE listed Group operating across the globe. You will take on responsibilities covering all aspects of tax reporting, compliance and advisory as required. You will continuously seek to improve the quality and effectiveness of tax reporting and compliance outputs by identifying and implementing operational process efficiencies through, for example, better use of internal information systems and tools. You will manage and maintain close working relationships with the tax support team in Mumbai and continue to integrate and expand their role in supporting all tax compliance activity and other aspects of Group Tax work. |
| **Personal Tax Manager - Top 20 Firm**<br>London<br>£60,000 – £70,000<br>HOWELLS CONSULTING | This high-profile international accountancy firm has a significant (and growing) Private Client practice. They are particularly well-known for advising international HNWIs, business owners, wealthy families and serial entrepreneurs. The London team is keen to appoint an additional CTA Personal Tax Manager, who can work closely with the Directors and Partners on a broad range of income and capital taxes issues. The Manager will oversee a portfolio of HNW/UHNWIs including UK res non doms. They will ensure the day to day compliance is effectively undertaken by the Tax Seniors and Assistant Managers, reviewing their work and looking to identify and advise on ad hoc tax planning opportunities. |

www.taxation-jobs.co.uk


**Corporate Tax Manager**
Southampton
£42,000 – £58,000 + benefits

Georgiana Head Recruitment

This large accountancy firm is looking for an ACA/ICAS/CTA qualified corporate tax manager to manage a portfolio of owner managed and private equity backed corporate clients with complex tax affairs, ensuring both excellent client service and identification of further work opportunities. The role will involve working on a variety of advisory projects and technical assignments. In addition, you will take an active role in business development opportunities, proposals and networking events. As well as the compliance and recurring work that you would expect, much of the advisory work centres on international group structuring, transfer pricing, tax due diligence and group financing. You will be making a significant contribution towards the overall future development and success of the corporate tax offering of the office and the role therefore comes with very real career progression prospects.

**Corporate Tax Director**
Manchester
£six figures

longman tax recruitment

Rare opportunity for an experienced and driven corporate tax practitioner to join this leading international firm in a key role as Corporate Tax Director. You will join a growing, vibrant business in a varied role that will involve managing the delivery of technical work, coaching and developing the corporate tax team and business development. If you are an ambitious Senior Manager frustrated by the lack of progression opportunities to Director at your current firm then this could be the opportunity you have been waiting for!

**Associate Tax Director**
Cheltenham
£60,000 – £70,000

JPConnections

This is a key leadership Corporate Tax Associate Director role working with a large OMB client based for a successful independent practice, The role is for a senior Corporate Tax professional and will offer progression and advancement. As a leadership role, there will be management responsibilities along with client and business development. This key role based in the beautiful town of Cheltenham in the heart of the Cotswolds offers an extremely attractive salary and package.

**Private Client Tax Manager**
Cheltenham
£highly competitive

CLARK WOOD

Are you an experienced Private Client and Personal Tax professional looking for a role offering genuine career progression? Situated in Cheltenham, Gloucestershire, this well-known accountancy firm are currently recruiting for a technically strong Private Client Tax Manager or Senior Manager to join the team. The role would suit either a qualified Manager looking to take their next step, or someone already working in a supervisory/ managerial position. The firm have a growing client base driven by good marketing work and a high number of referrals.

**Restructuring Tax Manager/SM/AD**
London
£60,000 – £120,000 + excellent bonus

harris glubb CONSULTING

Keen to join a growing team offering a clear progression route? This client is building its restructuring tax team to support its market leading restructuring and financing business. The role will encompass working closely with these teams to assist UK and International clients with distressed restructurings, insolvency transaction issues including DDs and dealing with the tax implications of financing and refinancing. To be considered you must have good UK transaction tax or restructuring tax experience, ideally be ACA or CTA and be looking for a team with good career prospects.

@TaxationJobs