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Plastic packaging tax

A newly manufactured tax on products containing less than 30% recycled content demands much deeper analysis

EMI incentive schemes

The vital role of diligence exercises in assessing the validity of options

The problem of loneliness

Learning how not to be alone in our working and personal lives

Corporate redomiciliation

The tax implications of changing a company's corporate citizenship

HELEN WHITEMAN
JANE ASHTON

The dizzying swings and roundabouts of Spring!

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Spring may have sprung but there has been some dizzying weather to accompany a somewhat dizzying Spring statement. We both welcomed the announcement of the alignment of the income tax and NI thresholds. Not only does this represent a welcome boost for those on lower incomes, but it brings some much needed simplification to the tax system. It also perhaps illustrates different approaches to each of those taxes.

On income tax, the personal allowance has been frozen at its current level until April 2026 (a real terms cut when the cost of living is factored in). The rate of income tax is also being cut (even if not until April 2024). In contrast, the NI threshold is being increased significantly. And prior to that, the rate is also increasing by 1.25% to fund expenditure on the NHS, health and social care in the UK.

So income tax thresholds and rates are reducing, while for NI they are both increasing. The approach to NI seems the most progressive, taking the lowest paid out of the levy, whereas for income tax even high earners will benefit from the reduction in the basic rate.

After hearing the statement, our external relations and policy and technical teams published a number of press releases which you can find in full on our websites. In short:

- Both ATT and CIOT welcomed the commitment by the government to use the tax system to encourage investment in green technologies, but called on ministers to commit to a long-term tax strategy for green investment.
- The ATT called for equal access to tax relief on training costs, as well as urging a cautious approach to the further review of R&D tax reliefs, mindful of the potential impact on smaller companies.
- The CIOT welcomed the government's announcement that it is considering how to best support future business investment, once the super-deduction disappears in 2023. Whatever regime the government puts in place, we said that it should be there for the long term to enable businesses to plan effectively.
- CIOT's Low Incomes Tax Reform Group broadly welcomed the announcement that the starting point for class 1 employee and class 4 self-employed NICs will be aligned with the starting point for income tax. The group has argued for many years that such alignment would be a simplification for lower earners. There could, however, be some complexity over the course of the 2022/23 tax year in which the transition occurs.

Back with a bang

We are delighted that Spring marks the return of several in-person events for both charities. The CIOT was thrilled to celebrate the admission of over 271 Associates, nine Prizewinners and five Fellows over our two Admission ceremonies on 21 April at Drapers' Hall. We also marked the phenomenal 50 years of membership with 36 CTAs. A date for your diaries: 7 June is our CTA Address which will be held in hybrid form. All members will receive an email invite and we hope you can join us.

The ATT held its President's Reception at the Postal Museum on 28 April where President Richard Todd was able to thank volunteers and staff for their hard work and support over the past year. At the end of May, both Presidents are hosting a business lunch in Edinburgh for our contacts in Scotland, with MSP Tom Arthur giving the address.

From 9–15 May, Mental Health Awareness Week takes place and this year's theme is Loneliness. The last two years have shone a light on what really matters in life and for many, this revolved around relationships with family, friends, colleagues, nature and self. Please see page 22, which looks at how membership can increase our state of belonging.

CONTENTS

Journal of The Chartered Institute of Taxation and The Association of Taxation Technicians
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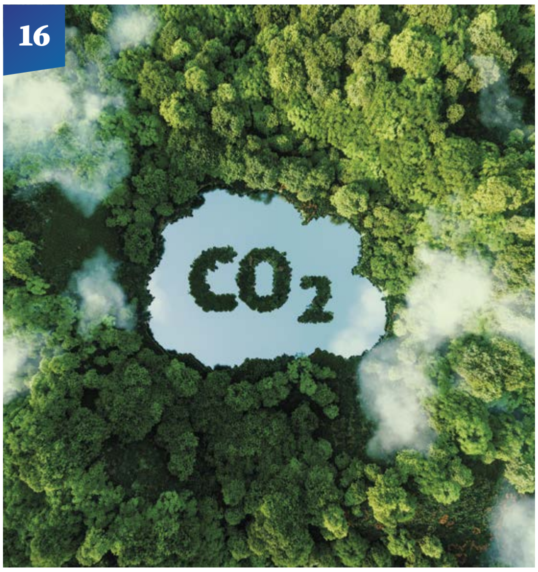
8



16


19

p22
The problem of loneliness
Learning that we're not alone

Angela Partington

Chronic loneliness is one of the biggest health concerns we face. This year's Mental Health Awareness Week will focus on the issue of loneliness, which affects millions of people in the UK. We examine what we can all do to overcome loneliness in our working and personal lives.

GENERAL FEATURE

p26
Corporate redomiciliation
Your company's passport

Nikhil Mehta

The government's recent consultation on a proposed redomiciliation regime raises questions about the scope and tax implications of changing a company's corporate citizenship. It places a larger emphasis on inward redomiciliation and asks if an outward regime is desirable.

INTERNATIONAL TAX LARGE CORPORATE

p30
Loss carry-back rules
An increase in earlier profits

Keith Gordon

The case of *Peter Lowe v HMRC* considers the consequences of a corporation tax carry-back claim when the profits of the earlier year are subsequently increased. The administrative provisions in Taxes Management Act 1970 Sch 1A provided a comprehensive procedural code in relation to claims that are made outside a tax return.

MANAGEMENT OF TAXES OMB PERSONAL TAX

p33
Non-reportable employee benefits
How to treat exemptions

Sarah Hewson

The distinction between an exemption from tax and a deduction that can be claimed by the employee is an important one, particularly when considering the treatment of cash reimbursements to employees. We examine the items which are commonly exempt from reporting obligations for employee benefits.

EMPLOYMENT TAX PERSONAL TAX

p36
The standard AIA
Impact on incorporated businesses

Will Silsby

In the second part of our feature on the end of the temporarily increased annual investment allowance on 31 March 2023, we examine the impact which the reversion to the standard allowance will have on businesses within the charge to corporation tax.

OMB

Regulars

Welcomes

Briefings
From 30 Monck Street

Technical
From the Technical team

Recruitment

26


30


ONLINE PICKS OF THE MONTH

The Spring Statement
Capital, people and ideas against a background of challenging times
bit.ly/3uVdEKr

How to use P11Ds
Reporting obligations for benefits
bit.ly/3jTJwsx

Qualifying asset holding companies
A new tax regime for qualifying companies
bit.ly/3Es4Fn7

PETER RAYNEY
PRESIDENT

Take good care of yourself

> When depression creeps up on you, there is nothing you can do about it – but you need to take time out, rest up and get the right professional help.

Mental Health Awareness Week is once again upon us. A recent government paper on 'wellbeing' reveals that the Covid pandemic has led to a surge in significant mental illness across the UK. One of the reasons cited by experts is that homeworking has led to the blurring of 'work/life' balance and increased working hours.

Often a taboo subject, mental illness is becoming an increasing concern for everyone. The constant and often intense pressures of being a tax adviser, as we try to satisfy the demands of our clients, can be very stressful. However, if we are unable to manage our stress properly, this can result in 'burn out' (the fashionable term for mental and emotional exhaustion). This story may chime with a number of members and students.

I do not mind saying that, over my life, I have had battles with depression, often caused by working too hard and not looking after myself. The textbooks will tell you that Type A personalities – workaholics with perfectionist tendencies, who are extremely driven – are particularly vulnerable to this illness. Many texts try to provide comfort by saying you are in great company, reeling off the names of Buzz Aldrin, Winston Churchill, Stephen Fry, Sheridan Smith, Ben Stokes, Monty Don and the like. But this is of little comfort when you are the one in that 'black hole'.

Clinical depression is a serious illness (like high blood pressure, heart disease or diabetes), which has to be managed due to the chemical imbalances in the brain. Often this vulnerability lies in our DNA. Like all other illnesses, you cannot simply 'snap out of it' – otherwise you would!

When depression creeps up on you, there is nothing you can do about it – but you need to take time out, rest up and get the right professional help. Depression is not a sign of weakness. A number of you will be aware of the bravery and determination that is required to recover from depression, which is typically a slow process and involves taking small steps at a time on the journey to fully regaining your cognitive abilities.

Why am I saying all this? The pandemic has generated higher levels of stress for us all. Many of us have been cocooned for months on end, missing our work colleagues, family and friends. I urge everyone to step back and learn to look after yourselves and your partners and families. Also be vigilant for signs that your work colleagues may not be coping.

We must all strive to create a healthy work/life balance – whether this be going for brisk walks, taking exercise, having regular massages, listening to music, reading books, watching sport or whatever you enjoy doing to relax.

Thank you

Talking of relaxing, this is my last article as your CIOT President, which has been an incredible and hugely enjoyable experience for me. It's been a challenging and rewarding Presidency since we have had to quickly adapt to many new ways of working and delivering services to our members.

I want to give huge thanks to Helen Whiteman (CIOT Chief Executive Officer), my fellow officers (Glyn Fullelove (Immediate Past President), Susan Ball (Deputy President), Gary Ashford (Vice-President), our CIOT Council members, the fantastic CIOT executive team and staff, my mentors, and many others who have provided me with such wonderful and friendly support during the last 18 months. There is insufficient space to name everyone – but you know who you are. I also appreciate the encouragement of all our members – it has been great to see so many of you 'virtually'.

Heartfelt thanks must also go to my wife, Patricia Caputo-Rayney, who has given me her enthusiastic and indefatigable support throughout my Presidential term.

At the forthcoming AGM, I shall be handing over the Presidential Badge to Susan Ball – who will be a fantastic and passionate successor. I wish you the very best Susan.

I am so proud of all the great things we have done together – it is truly a team effort. Now I am off to listen to my 'Ludovico Einaudi' playlist and I would ask you to take very good care of yourselves!

Peter Rayney
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Chartered Institute of Taxation.

DAVID BRADSHAW
DEPUTY PRESIDENT

Students – now it's time to relax

> We are constantly thinking of ways to improve our study resources by using technology and we are considering using digital legislation as a resource for students for the exams in 2023.

I am happy to say that my exam days are long gone but I do remember that unearthly feeling as I arrived at the Moseley Institute in Birmingham to sit my Institute of Taxation (no charter in those days) exams in November 1984. Row after row of desks in a chilly old Victorian hall. At least the ventilation was good. What was I doing in Birmingham, I hear you ask? Well, everything seemed to happen to me in Birmingham in those days. Firstly, I attended Aston University Business School; secondly, I gained employment with KPMG in Birmingham; and finally, when I returned to the North East and joined Deloitte's Newcastle office – they promptly sent me on secondment to BIRMINGHAM! That was where I studied for and passed my tax exams – in the same chilly hall that I had sat my accountancy exams four years previously. Familiar surroundings probably helped, I suppose.

Through a masterful display of hoarding technique, I have uncovered in the Bradshaw Archives my Associateship Final Exam papers from 1984. Gawd, that must have been a lot of number crunching! I specifically remember Paper III Taxation of Trusts: Capital Transfer Tax. I used reams of paper performing what I remember as 'double grossing up' and there are tables in the back of the paper providing 'gross cumulative chargeable transfers'. What was going on? I don't recall now. All I do know is that in the 38 years since that day, I don't think I have single grossed anything up, let alone double grossed up.

Highlights from Paper I Taxation of Income: the single person's allowance was £1,565 and the highest rate of tax 60%! Instead of providing a nil rate for savings, an investment income surcharge was levied so you could end up paying 75% (although I would need to find my 1983/84 tax tables to check that).

I would be interested to find out what the pass rate was for those sittings, but I remember it was notoriously low. One of the other successful candidates in that sitting of the exam was none other than Stuart McKinnon, past President and fellow member of the class of '84!

It has taken a pandemic to finally force many professions, including ours, out of those cobwebbed halls in old institutes around the country.

Students: you are of course now familiar with Exam4, a purpose-built exam application on your laptop or desktop computer. The exams are sat at a location of choice, home or office, but the student must sit alone. The online exams are open book, meaning that the student can refer to any books, study manuals, pre-prepared notes and online resources during the exams. Not dissimilar to the real world in which we practice...

Exam4 has been adopted by a number of leading universities and institutions across Europe and North America. Used by thousands of students since it was introduced for the ADIT qualification in 2014, it has a proven track record for reliability and student satisfaction. ADIT, ATT and ACA CTA Joint Programme students who have used it say their experience has been very positive.

However, we must keep you honest! The candidates are monitored by their webcams and we know exactly when all candidates fetch their exam paper and when they submit it. On the technology front, we also use anti-plagiarism software so we check if there has been collusion between any candidates.

We are also constantly thinking of ways to improve our study resources by using technology and we are considering using digital legislation as a potentially positive resource for students which we hope to launch for the exams in 2023. One consequence of open book exams is that students can place themselves under excessive time pressure by too much searching through the books during an exam. I recall being allowed copies of the Yellow and Orange books, which were used only to pin down those double grossing up calculations from flying away in the breeze.

And, finally, an event that I am very much looking forward to attending in person this year. The prizewinner's lunch returns to the schedules – an event previously held annually to reward students with the highest marks in our examinations. On 23 June, prizewinners from the last three years will be invited to Salters' Hall in London.

Well done all of you, and for those of you sitting exams in May 2022, I hope your hard work has paid off.

David Bradshaw
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The treatment of plastic packaging

A newly manufactured tax

by Jayne Harrold and Prinal Nathwani

As the plastic packaging tax came into force on 1 April 2022, we examine the developments, challenges and the way forward.

Key Points

What is the issue?
The plastic packaging tax, which came into force on 1 April 2022, is chargeable on plastic packaging imported into the UK or manufactured in the UK, which contains less than 30% recycled content.

What does it mean for me?
Quarterly returns are required to be submitted to HMRC detailing weights of plastic packaging components which are in the scope of the tax, those containing 30% or more recycled content, and those which are exempt, imported quantities, manufactured quantities and exports amongst other things.

What can I take away?
In particular, the data and information needs present a significant burden to be overcome and require a much deeper analysis of supply chains and products than was previously the case.

Aligned with the global focus on environmental, social and governance (ESG) issues, and with the aim of stimulating the market in recycled plastic, the plastic packaging tax came into force in the UK on 1 April 2022.

The plastic packaging tax is chargeable on plastic packaging imported into the UK or manufactured in the UK, which contains less than 30% recycled content. The tax presents the estimated 20,000 businesses due to be affected, and their advisers, with the unique challenges associated with the implementation and operation of a new tax. These arise from both the new data and information needs of the plastic packaging tax regime, and the usual difficulties of interpretation that arise when new provisions are introduced.

In this article, we will explore the relevant legislative developments, the requirements presented by the plastic packaging tax for businesses and tax advisers, and where solutions might be found to address what will be the first of many such developments across Europe and the world.

Legislation

The primary legislation implementing the plastic packaging tax is in the Finance Act 2021 and the compliance and reporting obligations are detailed in the Plastic Packaging Tax (General) Regulations 2022 (the General Regulations). Specific exclusions and inclusions in relation to the tax are set out in The Plastic Packaging Tax (Descriptions of Products) Regulations 2021.

The primary and secondary provisions leave a lot of the operational detail to be prescribed by HMRC in Public Notices. Whilst HMRC has released a number of pieces of guidance on these operational details, there are areas where further details may be forthcoming and where details may develop as the operation of the plastic packaging tax continues.

Scope and application

The plastic packaging tax applies at the individual packaging component level, rather than product level. A packaging component is defined as:

> ‘a product that is designed to be suitable for use, whether alone or in combination with other products, in the containment, protection, handling, delivery or presentation of goods at any stage in the supply chain of the goods, from the producer of the goods to the user or consumer’.

A plastic packaging component is defined as a packaging component where plastic is the single heaviest material by weight. The plastic packaging tax regime requires a determination to be made of the materials within a single component and the respective weights of the materials. If plastic is the heaviest material by weight, then the entire component is considered to be a plastic packaging component and the weight of all the materials is included on the return and subject to the plastic packaging tax, subject to normal rules on whether the component is taxed which are discussed below.

Businesses which manufacture or import more than 10 tonnes of plastic

© Getty images/iStockphoto

packaging components annually are required to register and account for the plastic packaging tax due to HMRC. There are two tests for determining whether this threshold is met:

- the look-forward test, which considers whether 10 tonnes or more of plastic packaging is expected to be manufactured or imported in the next 30 days; and
- the look-back test, which requires a business to consider at the start of each month whether the threshold has been met in the past 12 months.

Both tests apply and/or look back to 1 April 2022, and registration is required within 30 days of one of the tests being met.

So, what packaging counts towards determining whether the threshold is met?

Three categories of products are specifically excluded from the scope of the tax and do not count towards the 10 tonne threshold:

- plastic packaging that is designed to perform a storage function for the end consumer (e.g. toolboxes);
- plastic packaging that is designed to be an integral part of the goods (e.g. inhalers and printer cartridges); and
- plastic packaging primarily designed to be reused for the presentation of goods (e.g. shop fittings and presentation stands).

There is a specific inclusion for products that perform a packaging function after they have been sold to the consumer, for example bin bags and party cups, and these products count towards the threshold.

The Finance Act 2021 also provides for exemptions from the tax. Transport/tertiary packaging such as shrink wrap on pallets of goods imported into the UK is exempt and does not count towards the 10 tonne threshold, whereas the immediate contact packaging for licensed human medicines is exempt from the tax but does count towards the 10 tonne threshold. Given the tests, a process of monitoring the respective weights will be required. Further, there will need to be an analysis of the respective components within products and a determination as to whether these are within scope. For finance and tax professionals, there will be a new focus on operations, supply chains and manufacturing/material information and data.

> **Quarterly returns are to be submitted to HMRC detailing weights of plastic packaging components.**

Information needs and returns

The General Regulations and HMRC guidance set out the details of the information and data required for the plastic packaging tax regime.

In particular, quarterly returns are required to be submitted to HMRC detailing weights of plastic packaging components which are in the scope of the tax, those containing 30% or more recycled content and those which are exempt, imported quantities, manufactured quantities and exports amongst other things. The due date for filing and payment of the first quarterly return is 29 July 2022.

The apparent simplicity of the return belies the complexities associated with collecting and verifying the granular data and information that is required to arrive at the return figures.

All of the information needs to be backed up by evidence of material composition, weight, recycled content, and intended use if exemptions or deferrals are to be applied. This evidence needs to be at individual component level rather than product level. The challenge arising for tax and finance professionals and advisers is not just gathering the information in the first place, but ensuring that the level of evidence is understood and is robust.

Data challenges

As with all taxes, registration, reporting and declaring the correct amount of tax is fundamental.

Businesses may already hold packaging information which has been used for compliance with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) (commonly known as the Packaging Waste Regulations). The Packaging Waste Regulations are a regulatory regime and regulated by the Environment Agency. The information requirements are different, less granular, and the approach to accuracy and regulation of compliance is also different to tax administration.

The existing data held by businesses for compliance with the Packaging Waste Regulations commonly needs work to meet the compliance requirements of the plastic packaging tax regime. HMRC has been clear that data gaps are expected to be filled and there is no room for estimation or inaccuracies in returns.

The plastic packaging tax regime is underpinned by administrative penalties for a failure to register, file returns or make payment, and the normal tax-geared penalties for under-declarations and failure to register, as set out in the Finance Act 2007 Sch 24 and the Finance Act 2008 Sch 41 respectively. This reinforces the need for accuracy.

There is an increased complexity for importers of plastic packaging due to the fact that the requisite data and information will be sited abroad and may well be held a number of steps up the supply chain. Importers are, however, subject to the same requirements as manufacturers, irrespective of where the data sits.

Joint and several liability

The Finance Act 2021 puts in place joint and several, and secondary, liability provisions in respect of plastic packaging tax for the whole supply chain. Therefore, an entity which is not registrable still has responsibilities for plastic packaging tax.

Businesses should already be carrying out due diligence checks at regular intervals, although the joint and several, and secondary, liability provisions have highlighted the need for these checks to be robust and also to include information that was previously not required. Practically, communications will be required with suppliers to ensure that the plastic packaging tax obligations are understood and will be complied with. A failure to address these issues in the supply chain and/or to build in appropriate processes and checks has the potential to result in serious financial and reputational consequences for a business.

Particular areas of focus

There are a number of areas of focus that have been identified in our work with affected business and which should be drawn out.

> **Compliance and information requirements will require businesses to take extensive actions.**

For example, whilst a firm date for implementation has not yet been set, the person paying the plastic packaging tax through their return will be required to include a 'PPT statement' on their invoices when making business to business supplies. More detail is expected, but as a minimum the amount of plastic packaging tax paid and declared through the tax return in relation to the plastic packaging components supplied will need to be shown. This will necessitate systems, master data and IT changes.

HMRC's guidance sets out examples of packaging within and outside the scope of plastic packaging tax but this list is evolving and will no doubt be updated regularly. Whilst such lists are not intended to be exhaustive, it is apparent that there may be product variations that are not accounted for or have not been considered. As with any tax therefore, interaction and communication with HMRC will be necessary to get clarity on scope and application, and should be borne in mind by businesses and advisers when considering the plastic packaging tax.

Potential solutions and means to address plastic packaging tax challenges

Whilst the plastic packaging tax compliance and information requirements will evidently require businesses to take extensive actions, there are solutions that can be considered to ensure that this can be managed effectively.

It is anticipated that technology will play a significant role for businesses when it comes to the plastic packaging tax. This might arise through automation of liability determination, developing consistent information gathering processes for non-tax specialists or even processes for supporting due diligence.

As an operational tax, reliant on operational data, much of the information required is generated and controlled within the business and will not sit with finance and tax professionals.

To successfully prepare for compliance therefore, finance and tax teams need to be engaged in and have oversight of the processes and controls, but engagement with the wider business stakeholders is fundamental. In order to function effectively, the plastic packaging tax requires a multidisciplinary project team.

Conclusion

It is clear that the plastic packaging tax presents various novel challenges for businesses and their advisers, and input from various different stakeholders in a business will be required to ensure compliance. In particular, the data and information needs present a significant burden to be overcome and require a much deeper analysis of supply chains and products than was previously the case.

The challenges are, however, not insurmountable. The collaboration of multidisciplinary teams within businesses, full and frank interaction with HMRC, and the use of technology will feature heavily in dealing with the plastic packaging tax.

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Administrative complexities
The search for a solution

We must find some clear routes through the statutory maze governing employment status.

by Bill Dodwell

The key components of a tax system are law enacted by a democratic parliament; collection and enforcement by an independent tax authority; and adjudication of disputes by an independent judiciary.

Complexity can show up in every element of this virtuous triumvirate. The tax policy and enabling legislation may be unclear, or not suited to the broad structure of the existing tax system. The tax authority might have complicated administrative processes, or a lack of straightforward guidance to help taxpayers and their advisers (and indeed the tax authority's own officers). A further sign of complexity in the tax system is an over-abundance of tax cases in a specific area. Tax cases mean that either the law itself, or the application of the law to a wide range of potential facts, is not clear.

The impact of complexity is likely to be felt in increased costs, uncertainty and a lack of understanding of how tax affects a business or family transaction or activity. Litigation places a great burden on taxpayers, as it is expensive and very time-consuming – and the result often takes a decade or so to become final.

The problem of definition

The area where we see most tax cases concerns whether someone is providing services as a quasi-employee or as a self-employed person. We can all see that the state of the law is unsatisfactory, as so many people, including well-known individuals, find that their status is challenged by HMRC. Of course, the key reason why so many cases arise is because self-employed individuals have a much lower tax burden than employees. Typically, the biggest difference is national insurance, where employers pay directly 15.05% and the employee's rate is 3% higher than for a self-employed person.

The debates in this area revolve around principles originally set out in 1967 by Mr Justice MacKenna in the *Ready Mixed Concrete* case, which interestingly involved the change of status of an employee to a self-employed person – rather as we see in more modern cases. The concrete company sold the individual the truck he drove under hire purchase and paid him a rate per job, with a minimum overall income. The Ministry of Pensions argued that he was an employee but the judge disagreed, holding that the individual was 'a "small business man" and not a servant'. The tests used look at the right of substitution, control and mutuality of obligations.

These rules are unclear. HMRC has put forward some help in the form of the Check Employment Status for Tax tool (CEST). The Department acknowledges that the tool cannot provide clear answers in a minority of cases (see bit.ly/3EwNm4k), and usage data shows that the status cannot be determined in about 20% of cases.

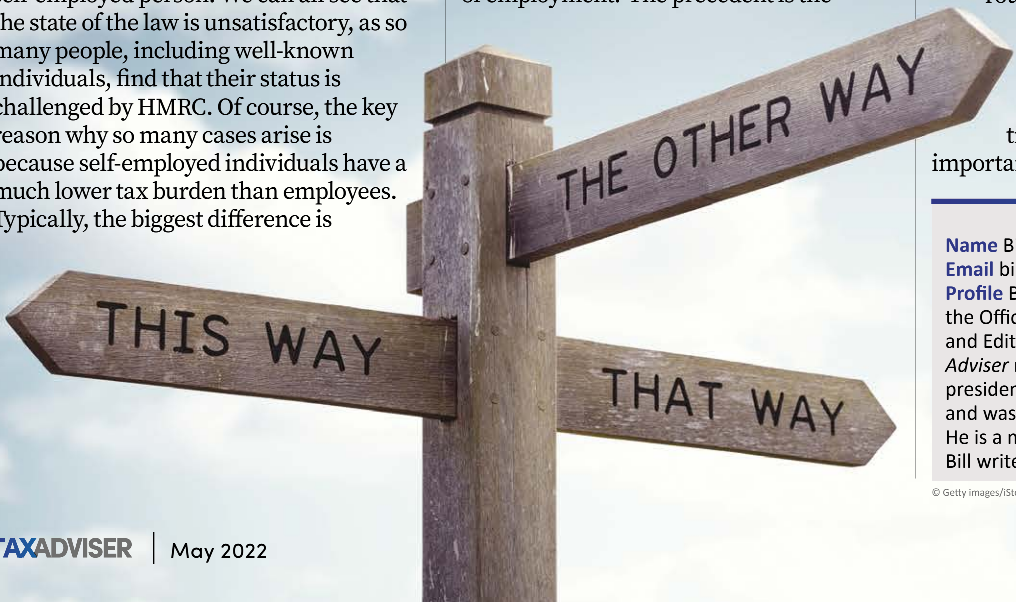
Potential solutions

How might this area be taken forward? There are two issues: the legal question of whether someone is an employee for tax purposes; and the economic issue of the overall tax and national insurance costs.

Surely the answer to the legal question is to develop a new statutory test of employment? The precedent is the statutory test of residence, where new principles were developed to define residence. The key point of the statutory test is that it did not attempt to codify principles drawn from tax cases. Rather, it asked what should be the key factors determining residence. The resulting test is complicated to apply in some cases, but it has the significant benefit of providing a clear answer. Could we not adopt the same approach and develop a new test for employment – at least for tax purposes?

There are two other important areas aligned to this issue. How should status for employment law be determined? Given that there are three status levels for employment law, but only two for tax and national insurance law, how should we deal with overlap? Litigation clearly gives rise to unintended consequences in this area, where cases involve individuals seeking additional employment law rights beyond those originally part of the initial contract between the engager and the individual. Getting it wrong means large backdated claims.

The biggest issue of all, though, is the economic difference between engaging an employee and engaging a self-employed person. Unless this is tackled, there will continue to be pressure on the boundary. Perhaps there are two possible routes: adding an engager levy, where an engager benefits from the services of a self-employed person; or substantially increasing the national insurance payable by the self-employed. The engager levy has the merit of applying to freelancer type of arrangements and – like employer national insurance – appears to be payable by the engager. It has the challenge of finding an acceptable and workable definition. Both routes involve significant economic changes which would not be easy to implement. However, as *Ready Mixed Concrete* shows, the issue has been with us for a very long time and is only like to grow in importance with new ways of working.



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CIS simplification
Time for renovation?

by David Westgate

A number of Construction Industry Scheme reforms could result in tax simplification, benefiting landlords, tenants and HMRC. We take a look at three areas which are ripe for review.

The purpose of this article is to highlight three areas ripe for review in relation to the Construction Industry Scheme (CIS).

1. CIS implications of landlord contributions to tenants

Landlord contributions to tenants for landlord works (Category A) and for tenant works (Category B) are becoming more common. Landlords are now collaborating more with tenants to assist them in obtaining early possession and in modelling space to suit their needs, rather than remodelling what they are presented with by landlords. This has time, cost and environmental benefits. For CIS purposes, the key issue is that the landlord may need to withhold tax from Category A payments to a tenant if the tenant is not registered for gross payment under the scheme. Incorrect classification of contributions results in disputes with tenants and potentially significant tax liabilities and penalties.

From a CIS perspective, there is no statutory definition of what constitutes Category A and Category B works. Most works fall into one of those categories but the identification problem pertains to the 'grey' area in between. Both the landlord and the tenant will need to agree the categorisation of these grey areas, which could include back-up generators, roof terrace enhancements or additional air-cooling requirements, for example.

Often, the proposal for allocating costs between Category A and Category B will be influenced by the tax and accounting treatment of both the landlord and tenant, so their initial analysis may reflect these influences.

This article addresses the issues pertaining to Category A works, as this is the area that is problematic from a CIS perspective.

Application of CIS to Category A works

The main commercial drivers for making contributions to tenants' works are efficiency, and improving timing to facilitate early possession.

A tenant may wish to start their own works prior to or at the same time as the landlord's Category A works. In this case, a landlord may agree that the tenant can use their own building contractors to carry out or finish the landlord's works in conjunction with their own Category B works. Dovetailing the works is more efficient and ensures that the works are carried out to a consistent standard.

Alternatively, the tenant may require a higher specification for their own purposes and wish to enhance a particular area over and above the standard specification, using their own building contractors.

Payments fall within CIS if they are made under a construction contract, defined in Finance Act 2004 s 57 as a contract relating to construction operations (which is not a contract of employment) where one party is a sub-contractor and the other is a contractor. As things currently stand, the tenant (as sub-contractor) in receipt of a Category A contribution must undertake to comply with the requirements of the CIS scheme under Finance Act 2004 Part 3 Chapter 3 and the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) ('the Regulations'). The tenant will either be registered for gross payment or subject to deduction of tax at the relevant

Key Points

What is the issue?
Landlords are now collaborating with tenants to assist them in obtaining early possession and in modelling space to suit their needs, rather than remodelling what they are presented with by landlords.

What does it mean to me?
For Construction Industry Scheme purposes, the landlord may need to withhold tax from Category A payments to a tenant if the tenant is not registered for gross payment under the scheme.

What can I take away?
The CIS rules place a significant burden on tenants, the majority of whom are not in the construction industry but rather unrelated industries.

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WHAT CONSTITUTES CATEGORY A AND CATEGORY B WORKS?

SUBJECT TO NEGOTIATION

CATEGORY A

- Raised floors and suspended ceilings
- Mechanical and electrical services
- Internal surface finishes
- Basic fire detection systems

CATEGORY B

- Final finishes and branding
- Installation of specialist facilities
- Fitting out reception areas
- Installation of specialist lighting, etc
- Fit out of kitchen areas

percentage stated under the scheme rules under Finance Act 2004 s 61.

Notwithstanding the above, certain payments are excluded from the rules, in particular:

- If the payment from the landlord to the tenant is an incentive to enter into the lease: This is a reverse premium (or would be a reverse premium but for the capital allowances carve-out) under regulation 20 of the Regulations. Most Category B items are taxed as reverse premiums in the tenant's hands and therefore outside the scope of CIS under this regulation.
- If the tenant is not contractually obliged to do the work, they would not then be a 'sub-contractor' (Finance Act 2004 s 58): Sometimes the landlord will allow this even for Category A contributions, relying on a combination of commercial reality (as the tenant will want to do the works) and the rent review clause.

Impact of the CIS rules on tenants

The CIS rules place a significant burden on tenants, the majority of whom are not in the construction industry but rather unrelated industries, including hospitality, technology, and media and publishing, to name a few. For companies such as these, registering as a sub-contractor for CIS (in order to receive gross payments from the landlord) is time consuming and costly. Due to the complexity of the rules, they will often ask their legal teams or accountants to make the application to register as a sub-contractor on their behalf.

An inordinate amount of time and money can also be spent by the landlord and tenant agreeing legal wording to ensure that the contributions are identified, categorised and invoiced correctly. In the event that a tenant is not registered for gross payment as a sub-contractor, the landlord's right to deduct must be properly documented.

Obtaining gross payment status can be difficult for tenants setting up a business or expanding into the UK for the first time because they will not have a

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trading history. In the absence of obtaining gross payment status, a tenant will be subject to deduction of tax at either 20% (if registered) or 30% (if not registered), which can lead to severe cash flow problems:

- Start-ups and owner-occupied businesses may struggle to recoup the CIS deduction against relevant liabilities because they do not have the payroll capacity to offset the amounts. They will often have to wait until the end of the tax year for the deduction to either be refunded or offset against any corporation tax due.
- Tenants may need to pay their sub-contractors in full but due to the CIS deduction being applied on the payment from the landlord, they will have a shortfall which they will have to fund until they are repaid by HMRC.

In many cases – especially the hospitality sector, which has suffered more than most during Covid – the cash flow problem created by the CIS deduction can result in protracted negotiations between the parties as they attempt to mitigate the impact. Some of these mitigation measures include:

- a change in the works specification;
- the tenants having to secure additional funding; and
- in extreme cases, the landlord funding the shortfall on behalf of the tenant.

All three situations result in delays to the tenant commencing operations from the property.

Caught in the middle

When a landlord makes a contribution to a tenant to carry out works, the tenant in most cases is not physically carrying out the works but sub-contracting them to a third-party building contractor.

The tenant may not qualify as a deemed contractor, such that any payments they make to the building contractor are not deemed to be CIS 'contract payments'. That is because of the exemption under regulation 22 of the Regulations for 'own build' works, which applies where:

- the expenditure is in respect of works to their own premises;
- the property is 'used for the purposes of the business of [the tenant]'; and
- at the point when the tenant makes the payment, they have incurred more than £3 million on construction operations in the past year.

Thus, the effect of regulation 22 can be that the tenant does ***not*** have to apply CIS when they make payment to their building contractor for works carried out at the start of the lease (regardless of the nature of the works).

The interposition of the tenant between the landlord and the tenant's third-party building contractor can mean that the tenant has to suffer a deduction from a payment from the landlord but will not be able to make a deduction from payments to the third party because regulation 22 applies. It is this asymmetry in treatment which creates a cash-flow difficulty. Even where regulation 22 does not apply to a particular payment, perhaps because the tenant has not at that point passed the £3 million threshold, there would still likely be asymmetry in the treatment if the tenant's third-party building contractors were registered for gross payment.

The mischief the rules were originally intended to capture should only be a concern in relation to the building contractor physically carrying out the construction works on behalf of the tenant. Applying the scheme to payments between landlord and tenants for the same works seems to be outside the original policy intent.

2. CIS grouping

The concept of grouping does not currently exist for CIS, so a large group company must register all subsidiaries individually for CIS (assuming they are deemed or main contractors). The compliance burden in having to report each subsidiary is significant in terms of administration time, such as collation of data by each company, verifying the same sub-contractor, making withholding tax payments and online filing for each company.

Introducing a group CIS return to ease the administrative burden in a similar vein to VAT grouping (where you nominate a representative member with joint and several liability for all members of the CIS group) would seem a sensible solution.

Submitting one CIS return under one PAYE reference is not only administratively beneficial for businesses but also for HMRC.

3. Intragroup transactions

CIS also applies if one company in a corporate group acts as a developer under a development management agreement providing services to another group member. The company providing the services to another group member will have to register as a sub-contractor and additionally function as a deemed/mainstream contractor in respect of the contracts it operates with 'genuine' third party contractors.

For the same reasons as above, it seems to be outside of the original policy intent that the rules should apply within a corporate group. The revenue is protected because of the requirement for a group member, acting as a developer, to register as a deemed/main contractor (subject to any exclusions) when dealing with the third-party building contractors. This scenario is administratively burdensome, and another example of where innocent transactions are caught under the scheme because the CIS net is cast too wide.

The way forward

These issues should be at the front of the queue for consideration by HMRC as an easy-win tax simplification measure.

Members in industry and the profession are engaging with HMRC. If you would like to assist in making a positive change to the existing CIS rules, please see the note in *Tax Adviser* by the CIOT's Kate Willis, 'Construction Industry Scheme: landlord contributions to tenant works' (see bit.ly/3wNmBqu), where there is an email address for correspondence.

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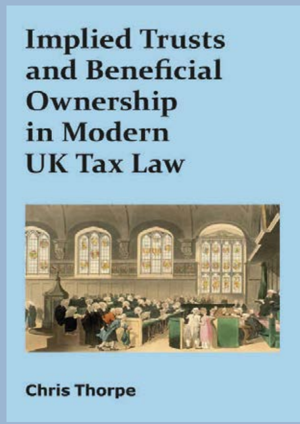
Implied Trusts and Beneficial Ownership in Modern UK Tax Law



Chris Thorpe's new book bridges that gap which lies between books on tax and those on trust law. How and why is beneficial ownership important in UK tax? How does HM Revenue & Customs and the law recognise the imposition of beneficial ownership for tax purposes via an implied trust and when will UK tax law impose beneficial ownership on a different taxpayer from the legal owner of an asset or income source? As well as tracing the story behind Britain's ancient tax laws and courts, relevant legislation, cases and HM Revenue & Customs' guidance are all reviewed to paint a picture of how equity and implied trusts fit within today's tax laws. With the introduction of the 4th and 5th Anti-Money Laundering Directives, it is more important than ever to identify where beneficial ownership lies.

128 pages	Paperback	ISBN 9781913507381	Price: £40.00
	PDF	ISBN 9781913507398	Price: £20.00

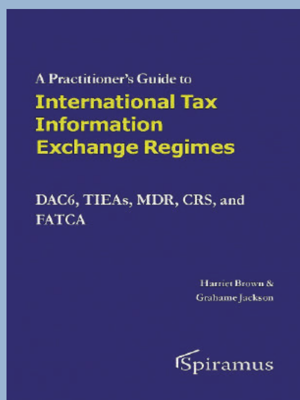
Leach's Tax Dictionary

A cornucopia of tax terms and data. It also explains all those abbreviations used in tax writing and reporting. It contains over 1,000 pages of definitions, abbreviations explained and useful data - tax rates and other information which may be of use to a tax accountant/lawyer.

- 10,000 definitions
- 3,000 abbreviations explained
- 200 pages of tax, financial and historical data related to tax.
- Where applicable terms are explained with reference to relevant case law, statutes or guidance

1046 pages	Paperback	ISBN 9781913507190	Price £85.00
	PDF	ISBN 9781913507206	Price £42.50

A Practitioner's Guide To International Tax Information Exchange Regimes - DAC6, TIEAs, MDR, CRS, and FATCA



The recent introduction of the Directive on Administrative Cooperation in the field of taxation 6 (DAC6) and mandatory disclosure regimes by many jurisdictions have led to a large number of professionals potentially being required to disclose information in relation to their clients' arrangements. The authors analyse the operation of the various automatic exchange of information regimes which have been introduced in the last five years including the OECD common reporting standards DAC6 and MDR.

420 pages	Paperback	ISBN 9781913507237	Price: £99.95
	PDF	ISBN 9781913507244	Price: £49.95

Greenhouse gases
Trading in carbon

by Colin Smith

Caps on the greenhouse gases that can be emitted by certain businesses encourage the reduction of total emissions. We examine the UK tax rules governing the trading of emissions allowances.

Emissions trading is a market based approach to controlling the production of carbon dioxide and other greenhouse gases. Since carbon dioxide is the principal greenhouse gas, many people speak simply of trading in 'carbon'. Both mandatory and voluntary emissions trading schemes exist.

Perhaps the most common example of a mandatory scheme is the European Union's Emissions Trading System (EU ETS), launched in 2005 to reduce emissions in high carbon-emitting industries. Similar systems operate in New Zealand, China, parts of the US and Canada, and the UK following the UK's departure from the EU.

The EU and UK ETS schemes work on the 'cap and trade' principle. There are caps on the total amount of certain greenhouse gases that can be emitted by the businesses covered by the system and they are organised by sector. Within the caps, affected businesses buy or receive emissions allowances, which they can trade with one another as needed. The cap is reduced over time to encourage the reduction of total emissions and the use of abatement technology. Non-compliance, as a result of having insufficient allowances, results in financial penalties.

An allowance under a cap and trade scheme is equivalent to one tonne of carbon dioxide. This is an increasing priority for firms, as shown by the traded global markets for carbon dioxide permits growing by 164% to a record $851 billion in 2021 (see http://reut.rs/3iSEX1o).

Voluntary emission trading

The voluntary carbon market operates outside but in parallel to the mandatory market, and entails the creation and acquisition of verified emission reduction (VER) credits. Each VER represents one metric ton of reduced, avoided or removed carbon dioxide or equivalent greenhouse gases.

These VERs are created when a project developer establishes a relevant project such as planting trees, avoiding deforestation, direct carbon capture or community based initiatives, such as replacing old cooking equipment with more environmentally friendly alternatives.

The VERs are sold by the project developers and purchased – often through traders or exchanges – by individuals and businesses seeking to offset their carbon emissions. Because participation in such schemes is voluntary, most purchasers are motivated mainly by environmental, social and governance (ESG) and reputation management.

VERs are verified by an independent third party based on their published standards, such as the Verified Carbon Standard (Verra) and the Gold Standard.

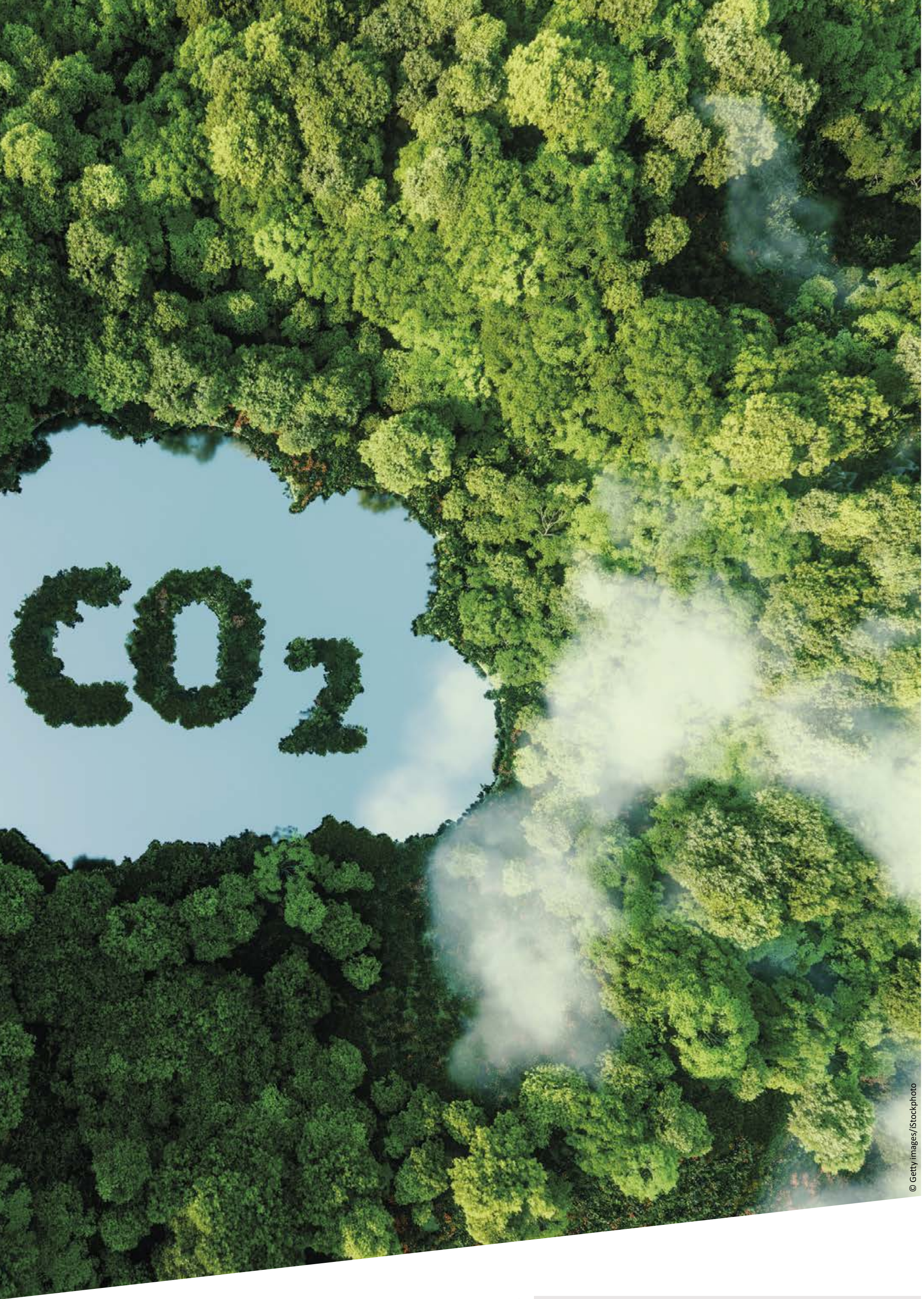
The size of this global market is relatively small in comparison to the compliance markets, at some $1 billion (see bit.ly/3K0Fb2f). However, recent research estimates that this market is set to grow some 30% year-on-year, reaching $250 billion by 2030 and potentially $1 trillion by 2050, as more and more companies seek to fulfil net zero emissions pledges.

Key Points

What is the issue?
Emissions trading is a market based approach to controlling the production of carbon dioxide and other greenhouse gases.

What does it mean to me?
There are caps on the total amount of certain greenhouse gases. Affected businesses can buy or receive emissions allowances, which they can trade with one another as needed.

What can I take away?
With the exception of VAT, there are no specific UK tax rules and very little guidance covering emissions credits.



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In 2021, the value of traded global markets for carbon dioxide permits grew by **164%** to a record **$851 billion**

Refinitiv Carbon Market Year in Review

In 2021, carbon pricing initiatives worldwide covered **11.65** gigatonnes of carbon dioxide equivalent, representing **21.5%** of global greenhouse gas emissions

World Bank Carbon Pricing Dashboard

The UK corporation tax treatment of emissions credits

With the exception of VAT, there are no specific UK tax rules and very little guidance covering emissions credits. Therefore, the tax treatment is determined by the application of general rules and depends on the role a business is playing.

Selling emissions credits

Income derived by businesses selling surplus UK ETS allowances is taxable for corporation tax purposes. There is also a supplementary charge and petroleum revenue tax for oil and gas companies (see HMRC's Oil Taxation Manual OT20400). Businesses selling voluntary emissions credits as part of their trade will also generate taxable income for corporation tax purposes.

Trading emissions credits

UK based commodity traders with a trade of dealing in emissions credits (perhaps as part of wider commodity trading) are likely to be subject to corporation tax on their trading profits in the usual way.

Buying emissions credits

On first principles, in order for an expense to be tax deductible, it has to be incurred wholly and exclusively for the purposes of the trade. The purchase of allowances under a mandatory scheme should therefore be deductible.

To obtain a deduction for the purchase of credits under a voluntary scheme, it will be important to demonstrate and document the business rationale for incurring the expenditure. This could be, for example, to demonstrate climate/corporate responsibility and support the brand, and for this to feature as part of the business's customer relations communication.

In terms of the timing of any tax deduction, in the absence of any other specific tax rule, the tax treatment should follow the accounts. For example, if the emissions credit cost is included as part of the product cost, a corporation tax deduction would not be available in the period in which the purchase is made. Instead, tax relief should be available once the product is sold and the expense should be charged to the income statement as part of the cost of goods sold.

Fines incurred for failing to comply with UK or EU ETS rules are not deductible.

The UK VAT treatment of emissions credits

The VAT treatment differs between mandatory and voluntary credits:

- The sale of compliance market credits (i.e. those that are mandatory) is a supply of services which are subject to VAT.
- The sale of VERs is outside the scope of UK VAT.

HMRC's view is that compliance market credits are considered to be capable of consumption of the type envisaged by the VAT system, whereas the latter are not. As VAT is a tax on consumption, the sale of compliance

DEVELOPING THE UK EMISSIONS TRADING SCHEME (UK ETS)

A joint consultation on developing the UK Emissions Trading Scheme is taking place with the governments of the UK, Scotland and Wales and the Department of Agriculture, Environment and Rural Affairs for Northern Ireland. The consultation seeks views on the existing proposals to implement a net zero consistent cap for the scheme, review Free Allocation policy and expand the use of emissions trading across the economy. (The UK ETS is currently limited to energy-intensive industries such as steelmaking and meat processing; power generation; and aviation.)

It also calls for evidence on a number of potential future opportunities for scheme development, including the incorporation of greenhouse gas removal into the UK ETS, and on the monitoring, reporting and verification requirements necessary to address greenhouse gas emissions in the land use and agriculture sectors.

The closing date for responses is 17 June 2022 (see bit.ly/38gUgyM).

market credits is a supply of services which is subject to VAT (currently at the 20% standard rate), whilst VERs are outside the scope of VAT. HMRC's guidance at VATSC06584 states:

> 'A verified emission reduction (VER) is essentially a promise that carbon has been or may be reduced somewhere in the world. There may be a general benefit to the reputation of a business (good PR, marketing and corporate responsibility) in paying for a VER, but no particular service is rendered which can be identified as a cost component of the business. There is therefore no consumption. No service is being provided to an identifiable consumer and no benefit is being provided which is capable of forming a cost component of the activity of another person in the commercial chain.'

That is to say, whilst payment for a VER might produce a general social benefit (or, at least, the creation of the VER would be as a result of a social benefit), it might produce a specified result or it might give rise to a legal relationship with reciprocal obligations. A person's income falls within the scope of VAT only if it constitutes the consideration for a supply of goods or services to a consumer (or a payment for consumption, as per HMRC's guidance noted above). The mere fact that someone may benefit from making a payment (for example, through an improved public relations profile), or something is or may be done in exchange for a payment, is insufficient to bring such a transaction within the scope of the VAT system. The public at large cannot constitute a specific recipient of the kind which must exist in order to give rise to a transaction chargeable to VAT.

Missing Trader Intra-Community fraud

It is worth noting that the EU ETS has been affected by fraud involving the theft of VAT (also known as carousel fraud or Missing Trader Intra-Community fraud). In the UK, in June 2012 three defendants were found guilty of carbon trading carousel fraud and jailed for a combined total of 35 years. It is estimated that €41 million of VAT was stolen during 69 days of trading (see bit.ly/3Dy6U83).

Following EU wide consultation and the introduction of a zero-rate for commissions trading in the UK as a temporary measure, anti-avoidance measures have been introduced in the form of a domestic reverse charge, to help to remove the risk of such a fraud being perpetrated in the future.

Enterprise management incentive schemes

Some common pitfalls

by Richard Curtis and Tom Klouda

While enterprise management incentive schemes can provide substantial benefits for option holders, diligence exercises can uncover a range of issues leading to increased costs or even disqualification.

Key Points

What is the issue?
This article highlights some common pitfalls that we see on diligence exercises for enterprise management incentive schemes. They can result in some unpleasant surprises arising for buyers and sellers.

What does it mean to me?
A diligence exercise should always include a review of option agreements and plan rules to ensure that all of the statutory requirements have been included to assess the validity of the EMI options.

What can I take away?
As the company grows, care needs to be taken when approaching the relevant thresholds to ensure that any options issued under an EMI scheme qualify for the tax advantages on offer.

In the midst of the 'Great Resignation', and strong competition for talent, it has become key for businesses to look at different methods of retention for key members of staff and to attract new senior team members. Enterprise management incentive (EMI) schemes are not new, and we assume here that readers are familiar with the EMI benefits and qualifying conditions. In our experience, EMI comes up a lot on due diligence exercises (it is the most popular HMRC approved share plan). With the potential upside for individual option holders – namely, beneficial tax treatment on exercise and on any capital growth – come a raft of potential stumbling blocks for both the company and for the option holders themselves.

In this article, we want to highlight some common pitfalls that we see in diligence exercises. Although these may not be deal breakers in isolation, they can result in some unpleasant surprises arising for buyers and sellers.

Tax valuation

It is often overlooked that having a valuation agreed with HMRC is not an absolute requirement in order to establish an EMI scheme (or another HMRC approved share scheme). Whilst it is strongly advisable to do so, thereby avoiding unwelcome surprises for employees down the road, sometimes it simply may not be possible to wait for HMRC's typical four week turnaround time (although it is possible to agree a valuation post-grant).

Of course, getting the grant and exercise prices right for the options is key in order to ensure that company and individuals do not breach the scheme limits (a £3 million company limit and £250,000 individual limit) to avoid any unexpected income tax liabilities arising for employees. Carrying out a valuation exercise to determine the actual market value and unrestricted market value of the shares under option can help to ensure that the company has fulfilled its obligations to operate payroll on a reasonable and best estimate basis. As EMI is one of the few areas where HMRC will engage with taxpayers upfront, it is worth businesses taking advantage of the opportunity.

If a company does go down the route of agreeing a valuation with HMRC, there is a time limit to the validity of that agreement. Under normal circumstances, EMI valuations are valid for 90 days from the date of agreement, and options would normally be granted in that window. HMRC has extended the validity to 120 days as a temporary measure whilst businesses cope with the Covid-19 pandemic. In line with the unwinding of some other temporary Covid-19 measures, this is likely to revert back to 90 days shortly.

The key issue with EMI tax valuations arise where discussions around a potential exit are taking place alongside options being granted. Such conversations should be disclosed to HMRC, along with any explanation as to why they should not impact the valuation to be agreed with HMRC if that is the case.

Discounts

In addition to the above, a tax valuation is important as the company needs to ensure that options granted to employees are not done so at a discount (unless there is a commercial desire for the company to do so), again at the risk of creating unnecessary and unexpected tax liabilities for the employee. This can be a nasty surprise for an employee who finds that any discount on the option is taxed via payroll on exercise, as if it were employment income. In other words, only a proportion of future exit proceeds would be taxable at the (typically lower) capital gains tax rates.

Where there is a discount, the employer would also be subject to the usual employment taxes, including the rising rates of NICs – another potentially unexpected cost.

HMRC notifications

On top of the scheme itself needing to be registered with HMRC within 92 days of being established, a notification of each grant of options also needs to be made within 92 days of the options being granted.

Once the options are exercised and shares are held directly by the individuals, don't forget that the annual ERS returns also need to be made by 6 July following the end of each tax year. Failure to make timely notifications means that the relevant tranche of EMI options would lose their tax advantages, once again giving rise to potentially significant unexpected income tax liabilities for the employee.

Evidencing the submissions retrospectively can be problematic and is likely to be questioned on a due diligence exercise. Those making submissions should therefore always remember to take screenshots of the confirmation screens and keep them on file for future requirements!

A common solution for businesses that miss the initial 92 day registration window for the notification of grants to HMRC is for options to be cancelled and reissued. Whilst there are not any immediate tax consequences of this, there is a risk that the validity of the valuation agreement with HMRC would have expired, and the valuation of the shares may have increased. In these circumstances, a fresh valuation may need to be sought and agreed with HMRC, coming at additional cost to the business.

It should be noted that the initial 92 day deadline for submission of notification of the grants of options is strict. Although there is a reasonable excuse exemption, this requires HMRC approval to be applied, and would need strong reasons in support.

Working time requirement

The EMI rules include a requirement that recipients of options must work for the group for at least 25 hours per week, or 75% of their working time, if less, and will be required to sign a declaration to this effect as part of the acquisition of options at the time. Generally, this is tested retrospectively at the end of each tax year that the individuals work for the group. These declarations should be retained together with the option agreements themselves.

The 75% of working time and 25 hours tests will cater for those working less than full time. However, where individuals hold multiple employments this could taint the qualification for EMI options, and prematurely disqualify the options. An individual holding EMI options in multiple groups is uncommon due to the time commitments required.

A temporary measure was introduced following the Covid-19 pandemic with a concession given to workers who were furloughed or whose working hours were reduced as a result of the pandemic. Between 19 March 2020 and 5 April 2022, the usual working time requirement was relaxed, such that where an individual *would have* met the working time requirement but for the pandemic (i.e. they are usually a full-time employee, but were on furlough/reduced hours), this would not result in a disqualifying event, and they are treated as having met the requirements. Records of any relevant individuals who may have been furloughed should be retained to be provided on any future due diligence exercises.

Control

It is important to remember that the company issuing EMI options must be 'independent' and not under the control of another company at the time the options are granted. This is a test that is often failed with some private equity backed portfolio companies for instance, with control potentially being gained via shares or via the company articles or a shareholders' agreement. EMI options cannot be granted where arrangements are already in place which may lead to a change of control, and therefore care must be taken when granting options in close proximity to a potential deal or when ongoing discussions are taking place.

Where the company later comes under the control of another (e.g. following a majority transaction), this is a disqualifying event. As a result, it is common to see options being exercised before an impending transaction.

Paperwork!

Share schemes of all kinds come with plenty of paperwork for the company and for employees to sign. EMI schemes have certain pieces of information which are statutory requirements to be included in written agreements (including the number of shares under option, the exercise price and when the options may be exercised). A diligence exercise should always include a review of option agreements and plan rules to ensure that all of the statutory requirements have been included to assess the validity of the EMI options. Conditions around discretion over vesting or exercise of options need careful consideration.

Another requirement is that details of any restrictions applying to the shares under option also be made clear to the option holder, as well as the impact of those restrictions applying. Although any option agreement which does not have the details of the relevant restrictions attaching to the shares is not a valid EMI option agreement, HMRC guidance notes that the option holder can be made aware of the relevant restrictions which apply to the shares instead by referencing to a separate document. Any restrictions must be specifically identified, and any separate documents must be attached and incorporated into the option agreement.

If this information is missing from the plan rules or option agreements, there is a risk of disqualification.

Disqualification… Now what?

Once a disqualifying event occurs, the clock starts ticking, and EMI options should be exercised within 90 days of the disqualifying event to maintain the tax advantaged benefits of the scheme. Disqualifying events are one-way, and there are no means by which to un-disqualify the options.

It is important to note that a disqualifying event only affects the tax treatment of the value arising after the disqualifying event itself. Any value attributable to the period immediately before the disqualifying event will be taxable at capital gains rates, and only any gain from the disqualifying event to the option being exercised would be subject to income tax and NICs (as would a normal non tax-advantaged share option).

The employee would also be unlikely to receive the level of net proceeds that they may have been expecting post-option exercise, so effective communication is key if there have been any disqualifying events.

The future of EMI

On the face of it, EMI option schemes can be a great way to incentivise and attract staff to work for smaller and fast growth companies.

The potential benefits for the employees of participating in the growth of their company, and the ability for companies to have a 'cashless' exercise (if the plan permits or amendments can be pre-agreed with HMRC) can be a win-win for all parties.

That being said, private businesses need to tread carefully with EMI option schemes to avoid the pitfalls outlined above. As the company grows, care needs to be taken when approaching the relevant thresholds to ensure that any options issued under an EMI scheme qualify for the tax advantages on offer.

The 2020 Budget included an announcement of a consultation into the future of the EMI scheme, and a call for evidence in the 2021 Budget. Whilst it remains to be seen what will come out of the consultation, it is possible that some of the requirements and thresholds may be relaxed a little in future to allow for a wider range of companies (and therefore individuals) to benefit from the EMI regime.

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The problem of loneliness Learning that we're not alone

This year's Mental Health Awareness Week will focus on the issue of loneliness, which affects millions of people in the UK. We examine what we can all do to overcome loneliness in both our working and personal lives.

by Angela Partington

We have all needed to face the impact of Covid on both our working lives and personal lives. Whether we live on our own or have had to fight for a quiet corner amidst the rampages of our noisy offspring, many things have never been the same since the early months of 2020. The sudden shock of lockdown brought separation from family, friends, safe places and social networks. While we are starting to return to normal, it can still be a struggle to regain some of that comfort and familiarity.

The structure of work has also changed fundamentally for many of us. Some offices are now requiring employees to return to pre-Covid working patterns. Many, though, have actively embraced a hybrid model, where staff may come into the office for one or two days a week and work from home for the rest of the time.

The UK's leading loneliness charity, the Marmalade Trust, states that chronic loneliness is one of the biggest health concerns we face. Nine million people in the UK – more than the population of London – are always or often lonely.

It is perhaps no wonder that the Mental Health Foundation has selected the issue of loneliness to be its target for this year's Mental Health Awareness Week, running from 9 to 15 May. The week will explore the experience of loneliness, its effect on our mental health and how we can all play a part in reducing loneliness in our communities.

See www.mentalhealth.org.uk for more information.

The scale of the problem

Loneliness affects millions of people in the UK. The Mental Health Foundation has been tracking levels of loneliness in the UK during the pandemic and found that they have been much higher than previously, with devastating impact. Covid-19 has been an important factor contributing to higher levels of distress, resulting from people's sense of isolation and reduced ability to connect with others.

Mark Rowland, Chief Executive of the Mental Health Foundation, said: 'Loneliness has had a huge impact on our physical and mental health during the pandemic. That is why we have chosen it as our theme for Mental Health Awareness Week 2022. Our connection to other people and our community is fundamental to protecting our mental health so we much find better ways of tackling the epidemic of loneliness. We can all play a part in this.'

The statistics bear this out. The Campaign to End Loneliness analysed data gathered by the ONS Opinions and Lifestyle Survey. In December 2021, levels of loneliness in Britain had still not returned to pre-Covid levels, and 3.3 million people (6.3%) said they were 'chronically lonely' during September to November 2021, even though lockdown restrictions had eased.

Robin Hewings, Programme Director of the Campaign to End Loneliness, said: 'These figures highlight that even when restrictions lift, our feelings of loneliness do not quickly go back to normal. Loneliness can have a hugely damaging impact on our mental and physical health. Chronic loneliness is hard to get out of and it will take time and support for people to recover and rebuild their social connections up again.

'Concerted action will be needed – from national governments, charities, local government and communities – to put in place the structures and support that is needed to alleviate the impact of loneliness on our mental wellbeing. As individuals, we can also reach out to families and friends who we think may be lonely too.'

Taxing times

Last year's *Tax Adviser* readership survey revealed that almost exactly 50% of our readers are sole practitioners or work in a single office practice. While many thrive in this environment and have actively chosen to work alone, the tax industry must be alert to potential problems. The need to find our place in a community is crucial to our social and our professional wellbeing.

The tax world can provide a vital network for its sole practitioners, as we hear regularly from our members. Chris Brydon formed Brydon & Co in 2004. 'The main problem with being a sole practitioner in my experience is that "company" – in the form of work colleagues – is not there. To replicate that experience requires making an effort to meet people – clients, fellow practitioners, former colleagues and friends.'

Day and weekend courses and CIOT conferences have allowed Chris to meet younger people new to the profession, as well as older practitioners with their varied experience. 'This sharing of experience enables me to assess my own approach and to learn alternative ways of dealing with difficulties, as well as offering my own thoughts to others to assure them. In the main, I come away with a very positive outlook from these meetings.'

Melissa Dunkley, director of MD Advisory, has been a sole tax practitioner for 17 years, working from home. She enjoys working alone and thinks she would rather struggle now to work in a busy office environment. But she is honest about the need for a network. 'There are times when you can feel a little isolated, whether you've got a particular problem or you've been having a bad day and want to rant about the latest industry mess! Or perhaps you want a second opinion on something technical, or how to manage a particular client. You need some way of getting support and connecting with other people. It is very possible to do that. You should have a network of people around you.'

CIOT and ATT Branch Network

The CIOT and ATT Branch Network has over 30 local branches (see tax.org.uk/local-branches) which allow tax

SOME PRACTICAL ADVICE TO COMBAT LONELINESS

The Marmalade Trust is a UK charity with a very clear mission: to create a society which recognises that loneliness exists and where we can support each other to find new social connections. It wants to encourage people to see loneliness as a blank canvas on which they can fill their lives with new friends and experiences.

By building our understanding of loneliness, we can help ourselves and others to manage the feeling. Here is some advice from the Marmalade Trust to overcome loneliness:

- Acknowledge loneliness and don't feel embarrassed. It is a very normal human emotion and most of us will experience loneliness at some point in our lives, regardless of age, circumstance and background.
- Think about how you describe loneliness. We still use words like 'admitting' to and 'suffering' from, which can add to the belief that something is wrong with us. There is absolutely no shame in feeling lonely.
- Reach out and tell someone. Look at your life and try to identify the areas where you do have support or someone to talk to. Can you talk to a family member or a friend? Is there someone at work or in your community you can reach out to?
- Try to remember that it's not that people don't care or aren't there for you. It's more likely that they don't know how you are feeling. Once you start reaching out to people, they will respond accordingly and your social network can start to flourish.
- Use technology proactively. Social media is a great way to connect with others but notice how it makes you feel when you use it. Do you feel happier and more connected, or the opposite?
- Try swapping communicating via a screen for a real life interaction. Meet up with a friend or call someone for a chat, rather than WhatsApping or emailing them.
- Most places have opportunities to meet new people. Could you start a course, or do some sort of physical exercise, or take up a new hobby as a way to meet like-minded people who have similar interests?
- Volunteering is also a great way to meet new people and feel part of a cause or community. Research shows that being kind to others increases our own levels of happiness as well as theirs.
- Finally, it's important to distinguish between being alone and feeling lonely. Many people are happy with their company and find it to be a positive experience. We all need enough beneficial alone time!

professionals to join their local community and seek out support and companionship.

Keith Bell, who is a retired CIOT council member and was chairman of the CIOT Branches Committee, remembered his own reasons for first joining his local branch. Having moved to set up a tax department in a firm where he was the only dedicated tax person, he was initially looking for some technical input. It soon became apparent to him that there was more to gain than technical support, though. 'It meant that you were mixing with like-minded individuals. There is a camaraderie among people in the tax world that I believe has prevailed all the way through my working career.'

The tea or coffee (or beer) that so often follows on from the technical lecture means that you can build up relationships with people, he explains. 'You realise that they've all got similar problems. All of a sudden, you don't feel like you're fighting the war all by yourself. You find everyone else is pretty much in the same boat.'

The collegiate nature of the tax community means that there will always be people there to help if we need support or guidance. That can be about aspects of business management, as well as technical issues. Melissa Dunkley had a lot of questions when she was starting up as a sole practitioner – on issues as varied as pricing structures, administration, anti-money laundering requirements, engagement letters and professional indemnity insurance. 'People gave me support and help,' she says, 'so I'm happy to do it if someone calls me for advice.'

Professional support

The CIOT and ATT offer more than just a chance for companionship, however. There are times when we can feel alone as professionals. Branch events, webinars, workshops, training and conferences all provide opportunities for us to join together to strengthen our technical skills and meet the annual requirement for CPD. The various technical committees are always keen to hear from potential new volunteers.

For those of us feeling professionally isolated, it can be very reassuring to remember that the CIOT and ATT work to build a better and more efficient tax system for everyone – providing views and analysis to tax policy makers; providing commentary on changes to the tax system; and providing guidance to members on procedural matters.

Keith Bell commented on the role that CIOT and ATT play in members' lives: 'What members get out of it primarily is a voice in the tax world. Most people who qualify in tax believe in the tax system. It ought to be fair and apply equally across the board. And they respect the representation being made by the Institute at government level to make the tax system fairer and more manageable.'

We all have a voice in the tax world and we are not alone. One other opportunity is to use our own tax experience to provide help to others. Tax charities TaxAid and Tax Help for Older People are always delighted to hear from volunteers. As well as the satisfaction of helping those needing our expertise, the resulting companionship may be a real benefit to those of us who are suffering from loneliness.

USEFUL CONTACTS TO TACKLE LONELINESS

- **The Marmalade Trust:** A charity dedicated to raising awareness of loneliness and helping people make new friendships: www.marmaladetrust.org
- **The Campaign to End Loneliness:** Information, advice and research on loneliness, in a campaign to inspire everyone to connect and bring communities together across the UK: www.campaigntoendloneliness.org
- **Mind:** Information about dealing with loneliness and tips and advice on coping with these feelings: www.mind.org.uk
- **The British Red Cross:** Its 'Tackling Loneliness Digitally' programme has developed resources to help build confidence, coping skills and connections for adults and young people: www.redcross.org.uk
- **NHS:** Site includes tips, advice, local support, toolkit and resources: letstalkloneliness.co.uk
- **Do-it.org:** A UK wide database of over 50,000 opportunities to volunteer, where you will find a cause or activity that matters to you: www.do-it.org
- **Meetup:** Find meet ups in your local area. Most events and activities are either free or low cost: www.meetup.com

2 million

the number of over-50s predicted to be experiencing loneliness by 2025/6.

Source: Age UK

45%

of adults feel occasionally, sometimes or often lonely in England

Source: Campaign to End Loneliness

£32 billion

the potential cost of disconnected communities to the UK economy every year

Source: Eden Project

Embrace social interaction

There are things we can do to build our network and break out of the cycle of loneliness. Sometimes, though, we need to take the first step and embrace these opportunities.

Keith Bell acknowledged the huge convenience that online training offers to tax advisers by minimising the time required and reducing travel costs. But he believes that attending courses in-person can meet broader needs. 'The branches were formed to actually get together like-minded professional individuals. I still think that face-to-face contact allows you to sit down, have a chat, talk about your holidays, drift off into some tax issue you're dealing with. It's about that human contact. I think that gives you a comfort factor and I would suggest that really does help with your mental health.'

Melissa Dunkley agrees: 'I think you sometimes have to remember to do these things. I think people are going to have to force themselves to get back out to live events and make the effort. But I do think that it's worth it. We all get stressed; we all get wound up. And with the best will in the world, while there are people out there that do support you, you have to look after yourself. Sometimes we're better at that than other times.'

And finally...

I would like to end this article with a caveat. Loneliness can have a significant impact on both our mental and physical health. It has been linked to early deaths and an increased risk of heart disease, stroke, depression, cognitive decline and poor sleep.

If you have *any* concerns about your own wellbeing, seek out help. Contact one of the many helplines. Make an appointment with your GP. Most important, though, is to tell somebody – and remember that, even though it may feel like it, you are not alone.

East Midlands Branch Tax Conference

The Committee of the East Midlands Branch are delighted to announce the date of their Tax Conference at the historic Wollaton Hall in Nottingham.

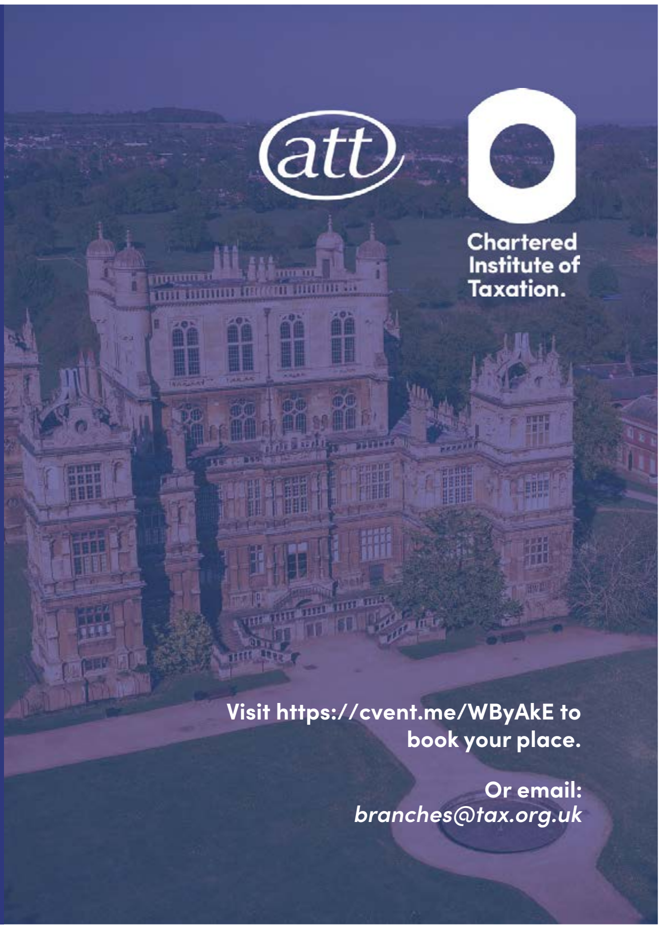
Save the Date: Tuesday 14 June 2022 – 9am to 5pm.

Conference speakers include:

- Rebecca Benneyworth MBE
- Amanda Fisher, AJF Taxation
- Andrew Hubbard, Editor-in-Chief, Taxation Magazine
- Nigel Holmes, Catax
- Susan Ball, incoming CIOT President
- Richard Todd, ATT President

Hear from speakers and take part in break-out sessions in tax-related and soft skills for professionals working in tax. Take the opportunity to walk around the historic Elizabethan Hall gardens and grounds, and the deer park too!

This special relaunch event is not to be missed! Members and non-members are welcome.



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Chartered Institute of Taxation.

Visit https://cvent.me/WByAkE to book your place.

Or email:
branches@tax.org.uk

CIOT & ATT MERSEYSIDE 41st ANNUAL DINNER

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Chartered Institute of Taxation.

Thursday 12 May 2022 at The Crowne Plaza, Liverpool

We are delighted to be joined by our guest speaker Brian Blessed OBE. Brian is a distinguished actor and carved a career spanning all media including numerous theatre credits, television appearances, the author of six books and in 1993 climbed Everest, reaching the highest a man of his age has achieved without oxygen. In 1999, he became the oldest man to reach the North Magnetic Pole on foot.

Event Details:

When: Thursday 12 May 2022, 18:45 to 23:00
Where: Crowne Plaza, St Nicholas Place, Liverpool L3 1QW
Cost: £69 plus VAT. Group bookings available.
Dress code: Black Tie

We are delighted to be supported by some of the Region's top businesses at our 2022 Annual Dinner; Adele Carr Recruitment, Bathgate Business Finance, Butterworth Spengler Insurance Brokers, Medicash, Profici and Opus Restructuring & Insolvency.

Book your seat(s), or table at: https://cvent.me/gm9bLG
If you have any queries email the Chairman, Mark Kearsley at merseyside@tax.org.uk.

Changing your company's passport

Finding a new home

By Nikhil Mehta

The government's recent consultation on a proposed redomiciliation regime raises important questions about the scope and tax implications of changing a company's corporate citizenship.

On several occasions recently, I have been asked the following question in some shape or form: 'Can a company redomicile from the UK to another jurisdiction?' Implicit in the question, but somewhat hidden, is the follow-on question of what are the tax implications, if any, of redomiciliation. Redomiciliation comes in different shapes and sizes and it all depends on what you mean by the word.

The question appears to have taken on greater significance with Brexit and the implications for UK groups with interests in different EU markets. But it is also of interest outside those parameters. For example, companies incorporated in low tax jurisdictions have to think about external pressures, such as OECD-driven rules requiring companies in those jurisdictions to have economic substance. If a company is in the 'wrong' jurisdiction, then redomiciliation to a better jurisdiction makes good fiscal and commercial sense.

In this article, I discuss the ways in which an English company can redomicile. With the recent close of the government's consultation on a proposed redomiciliation regime for the UK (see bit.ly/3ih66L6), I hope this article serves as a timely reminder of what is currently possible even without that regime.

Can an English company redomicile by changing its citizenship?

The most recent variant of this question came from a tax lawyer practising in an EU jurisdiction. He started talking about how in his own country it was possible for a company to change its place of incorporation and governing company law. He assumed that there was nothing objectionable about our mutual client, an English holding company of an international group, switching its corporate citizenship to that jurisdiction.

My colleague assumed that a company would be able to change its country of incorporation and remain in existence as the same legal entity – almost like an individual changing from a domicile of origin to a domicile of choice. But there is more to it than that. The change of 'corporate citizenship' involves the outgoing country agreeing that a company ceases to be incorporated there from a particular date and the incoming country agreeing that the company is treated as incorporated there from that date onwards.

The key to this route is that the legal personality of the company is recognised by both outgoing and incoming countries as remaining intact; i.e. it is the same company before and after the change.

This is possible in a number of jurisdictions, not just low-tax jurisdictions. However, it is not currently possible under English company law, both in terms of outward movement from, and inward movement to, the UK. Once a company is incorporated, it remains incorporated in the same place until it is liquidated. It cannot change its place of incorporation.

My EU tax colleague was incredulous when I gave him this news, as it is

Key Points

What is the issue?
Can a company redomicile from the UK to another jurisdiction?

What does it mean to me?
A UK resident company can cease being resident here and take up residence elsewhere but this is not without tax consequences.

What can I take away?
There is clearly a gap for a 'proper' outward redomiciliation regime. The government's consultation on a proposed redomiciliation regime for the UK places a larger emphasis on inward redomiciliation and even asks if an outward regime is desirable.

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apparently quite straightforward in his country for a company to move its place of incorporation. The UK government's proposals aim to put this right but it is clear that currently an English incorporated company cannot redomicile by changing its corporate passport. So how can it redomicile, if at all?

Redomiciliation by corporate inversion

Towards the end of the noughties, a number of public corporate movements of capital occurred involving companies supposedly leaving the UK. Some were quite high profile and were influenced by tax considerations where a group had built up substantial overseas operations.

The trend involved relocations to countries like Ireland, Switzerland and Bermuda with a view to the simplification of tax compliance matters, as well as substantive reductions in tax on non-UK profits. Some of this was driven by the then Labour government's aggressive approach to taxation of offshore royalties and more generally, the regime, as it was then, for controlled foreign companies.

The first company to 'go', in 2008, was Shire plc, the UK holding company of an international biopharmaceutical group. Over the years, the business of the group had shifted from UK-centric activities to offshore operations to such a degree that the vast majority of profits were generated overseas. In its press release on the move, the company said that its business and shareholders 'would be better served by having an international holding company with a group structure that is designed to protect the group's taxation position, and better facilitate the group's financial management'.

The group set up a new parent company which was incorporated in Jersey but tax resident in Ireland. The corporate mechanics involved an English company law scheme of arrangement. The shares in the existing English holding company (OldCo) were cancelled, and the cancellation reserve applied in issuing new ordinary shares to the new offshore holding company (NewCo). NewCo issued its ordinary shares to the former shareholders of OldCo. This is called a corporate inversion.

The next stage involves a reorganisation of group subsidiaries held by OldCo so as to put offshore controlled foreign companies directly under NewCo's ownership. Provided that NewCo is run as a true non-resident company, this eliminates the application of the controlled foreign companies rules to the group so as to maximise post-tax foreign profits.

Controlled foreign companies exposure is less of an issue since the revamp of the legislation in 2012. However, there are still good tax reasons, including the increasing burden of tax compliance for multinational groups, to reorganise group structures where the top company redomiciles as above. Of course, any reorganisation itself should be done in a tax-efficient manner. The substantial shareholdings exemption is a valuable tool to facilitate this.

The main tax reason for a Jersey incorporated company is to mitigate Irish stamp duty, which would otherwise apply on shares in an Irish-incorporated company. Of course, it needs to be non-UK incorporated anyway to avoid being UK resident under the place of incorporation test of residence.

Ireland was chosen by Shire as a place for central management partly because of its physical proximity to the UK, so as to

WHAT IS CORPORATE DOMICILE?

A company's existence is defined by company law in a particular jurisdiction and is usually evidenced by registration in a national register of companies. For almost all companies worldwide, the place of incorporation (formation) is the place of corporate domicile. A few countries allow a company to move its legal seat to another jurisdiction, which means that the company becomes governed by the company law in that second jurisdiction. Re-domiciliation requires that both the country of incorporation and the country of transfer permit a company to move its governing law.

facilitate the running of the company as a non-UK resident (and Irish resident), even if some UK resident individuals remained as directors. Also, its attractive tax regime for holding companies was a big factor in selection.

Other groups which relocated to Ireland included WPP (advertising), United Business Media (media) and Henderson (asset management). Famously, once the UK had introduced a more liberal controlled foreign companies regime, WPP returned to the UK after a four year Irish sojourn. The mode of return involved another corporate inversion where a UK resident holding company was put on top of the group.

This form of redomiciliation involves swapping one top holding company for another. There is no question of the same legal entity continuing as the head of the group. It may continue to exist, but only as a subsidiary of the new offshore holding company, and holding only UK resident subsidiaries.

An important point about this route is that it is tax neutral. No UK tax charges arise in relation to the scheme of arrangement itself, either for the holding companies or for the shareholders: UK resident shareholders will get rollover relief for giving up shares in OldCo and getting shares in NewCo under the Taxation of Chargeable Gains Act 1992 s 136. No stamp duty or stamp duty reserve tax charges arise on the cancellation scheme as no transfers are involved.

In a private company, a corporate inversion could be achieved without a scheme of arrangement. There would simply be a share-for-share exchange, whereby the new company acquired shares in the existing company in exchange for issuing its own shares to the shareholder(s). In transactions involving public companies, the scheme route is preferred to get 100% shareholder approval.

The corporate inversion route was, however, of not much use to the privately held group which my EU tax colleague and I were advising. Our clients still wanted the holding company to continue as the same legal entity for their own commercial reasons. So, is anything left in the UK which could get us there? The answer is found in our tax code, and involves a change of residence.

Redomiciliation by change of tax residence

A UK resident company can cease being resident here and take up residence elsewhere but this is not without tax consequences. If a company ceases to be UK tax resident, various tax charges can arise by way of 'exit' charges. For a UK incorporated company, it is quite difficult to cease to be tax resident because it will always be incorporated in the UK. That makes it tax resident under our domestic test of incorporation. If its central management and control moves abroad, it would technically become dual resident.

But in the EU matter, if the holding company moves its management and control to the EU country, it will be tax resident there under the local tax law. The country has a double tax treaty with the UK. The fact of dual residence triggers the residence 'tiebreaker' test under the treaty, which involves finding the place of effective management. This test of effective management points to the other country and not the UK, as essentially there will be no management in the UK, let alone effective management. The Corporation Tax Act 2009 s 18 then comes into play, which imports the treaty tiebreaker into our domestic law so that for all corporation tax purposes the company will be regarded as resident outside the UK and non-UK resident. That in turn means it has ceased to be UK tax resident, so the exit charges become relevant.

In case you are wondering about the amendment to the tiebreaker by virtue of the Multilateral Instrument, some EU countries have not as yet ratified it. Significant practical issues arise for a migration where the Multilateral Instrument has been adopted and the location of effective management depends on the agreement of the two tax authorities.

For the purposes of the exit charges, the company is treated as disposing of specified assets and reacquiring them at market value. Any profit or gain arising on the deemed disposal is taxable. The most relevant assets for a holding company are capital assets, loan relationships, derivative contracts and intangibles.

So, unlike the corporate inversion route, there could be a significant tax cost of migration. However, this can be significantly reduced in relation to a holding company's principal assets, which are usually the shares in its subsidiaries. The deemed disposal of these shares on exit may qualify for the 'substantial shareholdings exemption' and if it does, then no tax would be payable in relation to gains arising on these assets. Where the substantial shareholdings exemption is relevant, it is critical to carry out a detailed study of the group to ensure it applies.

Apart from tax in relation to exit charges, the company also has to settle any 'normal' tax liabilities like income tax (PAYE) as part of the migration arrangements with HMRC. But because of the substantial shareholdings exemption, it is quite feasible for a holding company to redomicile by change of tax residence without incurring substantial exit charges.

If exit tax charges are payable, then the tax administration allows for arrangements to be entered into for settlement, including an instalment plan, if required. This has been amended to deal with Brexit and companies migrating to somewhere in the EU.

Change of tax residence is the only form of redomiciliation available to an English company if the idea is for it to remain in existence after the redomiciliation. This is not a true redomiciliation, particularly as the company will continue to have obligations under the Companies Acts by virtue of remaining incorporated here.

In conclusion

The reasons for redomiciliation continue to evolve, and are not simply tax driven, although tax can play a significant part. Even in cases where tax is not a main motivation, it is clearly important to ensure that the structuring is tax efficient. Equally importantly, the new structure should operate sensibly from the tax viewpoint; not only should there be good practice regarding governance at the outset, but it should be followed consistently on an ongoing basis.

The inversion route has a feel of being somewhat outdated and is quite complex. Change of tax residence only achieves a limited form of redomiciliation and now carries an additional layer of uncertainty where the Multilateral Instrument tiebreaker is relevant.

There is clearly a gap for a 'proper' outward redomiciliation regime. The consultation places a larger emphasis on inward redomiciliation and even asks if an outward regime is desirable. It will be interesting to see what the responses are, and the official decisions taken, but I would find it inconceivable for the UK to follow the limited number of jurisdictions which have introduced only inward redomiciliation. That hardly ties in with the following statement in paragraph 4.5 of the consultation:

'The government is committed to maintaining the UK's openness, flexibility and international competitiveness.'

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Carry back regardless

An increase in earlier profits

The Upper Tribunal's recent analysis in *Peter Lowe and Civic Environmental Systems Ltd v HMRC* considers the loss carry-back rules when the profits of the earlier year are subsequently increased.

by Keith Gordon

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The combined cases of *Peter Lowe and Civic Environmental Systems Ltd v HMRC* [2022] UKUT 84 (TCC) addressed three very distinct issues, including Mr Lowe's entitlement to obtain relief for certain expenditure when calculating the capital gains tax payable following the disposal of a property and the amount of a penalty payable by Mr Lowe in relation to an underassessment on two of his tax returns.

However, this article concerns the third issue, being the consequences of a loss carry-back claim when the profits of the earlier year (i.e. those which are being relieved by the later year's losses) are subsequently increased.

Key Points

What is the issue?
The case of *Peter Lowe and Civic Environmental Systems Ltd v HMRC* considers the consequences of a corporation tax carry-back claim when the profits of the earlier year are subsequently increased.

What does it mean for me?
The Upper Tribunal agreed with HMRC that the administrative provisions in Taxes Management Act 1970 Sch 1A provided a comprehensive procedural code in relation to claims that are made outside a tax return.

What can I take away?
It might be prudent when quantifying carry-back to qualify the amounts by adding 'or, in the event of the earlier year's profits or the later year's loss being amended, such different amount as required by s 37 of CTA 2010'.

The facts of the case

In its corporation tax returns, Civic Environment Systems Ltd (CES) declared the following results:

- for the year ended 30 April 2007, a profit of £142,039; and
- for the year ended 30 April 2008, a loss of £444,748.

When submitting its 2008 return, CES sought to carry back the loss under what was then the Income and Corporation Taxes Act (ICTA) 1988 s 393A(1) (now the Corporation Tax Act 2010 s 37). It was common ground that the carry-back rules operate on an all-or-nothing basis, so that the amount carried back is necessarily equal to the lower of:

- the profits of the earlier year; and
- the loss incurred in the later year.

Accordingly, in the present case, the loss carried back was £142,039, leaving unrelieved losses of £302,709 to be carried forward and set against future profits arising from the company's trade.

However, it appears that HMRC opened an enquiry into at least one of those two tax years, with appeals against the closure notice(s) referred to the First-tier Tribunal. I say 'appears' because the precise procedures followed are not immediately apparent from the Upper Tribunal's decision. However, the net effect of the First-tier Tribunal's determination of the appeal or appeals before it was that the 2007 profit was amended to £682,039 (i.e. an increase of £540,000), without any change to the 2008 loss figure.

CES considered that £307,709 of this increased profit should be covered by the loss relief claim already made (because the claim has to be made on that all-or-nothing basis). In other words, the loss should all have been used up in relation to 2007, leaving no losses to be

carried forward. However, HMRC argued that the company was too late to modify the carry-back claim. The First-tier Tribunal agreed with HMRC.

CES appealed against the decision to the Upper Tribunal.

The Upper Tribunal's decision

The case came before Mr Justice Marcus Smith and Upper Tribunal Judge Jonathan Richards.

The Upper Tribunal looked at the wording of s 393A(1) and took particular note of the statutory words that ensure that, if a claim is made under the section, the profits of the earlier year are mandatorily 'treated as reduced by the amount of the loss'. Indeed, the Upper Tribunal accepted that if one focused on s 393A alone, CES would have 'a powerful case'.

However, the Upper Tribunal felt that it was necessary to consider the Corporation Tax Self Assessment (CTSA) administrative provisions, as well as the substantive provisions in ICTA 1988. In particular, the Upper Tribunal referred to the Finance Act 1998 Sch 18 para 58. Paragraph 58 deals with situations where a claim involves two different accounting periods (a loss carry-back claim being a very common example of such a claim).

Paragraph 58(2) provides that (in such cases) where the earlier year's tax return has already been submitted and where the claim can be given effect by an amendment to the return, then the claim shall be treated as an amendment to that earlier year's return. However, given that it was too late to amend the earlier year's return when the loss relief claim was first made, it was common ground that para 58(2) did not apply. That meant (by virtue of para 58(3)) that the provisions in the Taxes Management Act 1970 Sch 1A (claims made outside a tax return) applied instead.

HMRC argued that Schedule 1A para 3 was critical. This is a provision that governs the amendment of claims. In the same way as there is a period in which a tax return (and claims made within a tax return) may be amended within a 12 month period, the parallel code in Sch 1A ensures that taxpayers have a year in which to amend claims that are made outside a tax return.

HMRC pointed out that the increased 2007 profits were not identified until well after that 12 month period had expired, and said that fact precluded the additional 2007 profits from being relieved by the 2008 loss.

The Upper Tribunal agreed with HMRC. In short, it considered that the administrative provisions in Sch 1A (as invoked by Sch 18) provided a comprehensive procedural code in relation to claims that are made outside a tax return. Accordingly, even if anomalies arose, the Upper Tribunal could not ignore the clear time limits found in para 3.

CES's appeal was therefore dismissed.

Commentary

My instinctive response when reading this case was that the Upper Tribunal had probably reached the wrong answer in this case. Having considered the matter more carefully a few days later, I formed the view that the Upper Tribunal had definitely reached the wrong answer.

First of all, this is not a case where the carry-back claim itself had to be amended. Accordingly, it was wrong to put too much emphasis on the time limits in para 3. A claim had been made under s 393A and no-one has sought to change that fact. All that has changed is the quantification of the loss that is being carried back *as a result* of the 2007 profits having been increased.

Furthermore, the increase in the 2008 loss carry-back should have been an automatic consequence of the increase to the 2007 profits: as was common ground, s 393A does not permit companies to make partial carry-back claims (except to the extent that there are insufficient profits in the earlier year). Indeed, the Upper Tribunal's decision could lead to some unscrupulous companies manipulating the all-or-nothing aspect of s 393A by understating the profits of the earlier year, so as to artificially increase the losses relieved in other ways.

Accordingly, when HMRC amended the 2007 return as part of the closure notice process, thereby increasing the trading profits, they had no compunction in making the consequential amendments to increase the tax payable (so as to reflect the additional profits). However, the return should have been further amended so as to reflect all those consequences of the increased profits – including the additional losses now able to be carried back from later years. Furthermore, para 34(2A) of Sch 18 ensures that any further consequential amendments to other tax returns of the company can be made when a closure notice is issued. As a result, following the fact that more losses need to be absorbed in an earlier year, HMRC can (and should) effect the withdrawal of losses previously carried forward by amending the later years' returns.

Furthermore, the Upper Tribunal's decision should also be seen in the light of the provisions that follow those paragraphs specifically referred to in its decision but which were apparently not considered. Paragraphs 61 to 65 of Schedule 18 deal with the situations where certain assessments or amendments are made: subject to certain restrictions in cases involving careless or deliberate conduct, consequential claims may be made out of time or, if previously made, may be varied.

Under para 61(1)(a), one of those situations covered by those provisions is a consequential amendment of a company's tax return for one accounting period following a closure notice issued to the company in relation to another accounting period (i.e. under para 34(2A)). In other words, Parliament has expressly stated that the following could happen in a suitable case:

- HMRC issues closure notice in relation to accounting period 1.
- That gives rise to a consequential amendment to the tax return for accounting period 2 under para 34(2A).
- The company can then, consequential to that consequential amendment, make or amend a claim in relation to that second accounting period.

I fully accept that the absence of any similar provision in relation to accounting period 1 could be interpreted as saying that Parliament is permitting consequential claims to be made 'late' only in certain limited cases. However, that would be to attribute to Parliament a rather capricious attitude.

The alternative argument is that Parliament said nothing about accounting period 1 simply because the consequential amendments follow automatically. Indeed, given the 'all-or-nothing' nature of the carry-back claim (which itself has not been amended), as provided for by s 393A, then all profits should automatically be relieved, to the extent that losses were made in the second accounting period.

Secondly, I do wonder what would have happened had the 2007 losses been reduced rather than increased. The logical conclusion of the Upper Tribunal's decision is that this too would not have led to any amendment to the loss carry-back claim, meaning that the remaining losses carried forward would not be amended. The consequence of this is that some losses would inevitably be stranded and unable to be relieved in later accounting periods. The alternative is that those newly released losses would suddenly become available several years down the line (i.e. only for accounting periods in respect of which a timely claim may be made) – again creating the possibility for manipulating what is otherwise a prescriptive scheme. Neither is a desirable outcome.

Finally, I consider that the Upper Tribunal was wrong to suggest that the 'powerful' argument it identified (if one focuses on s 393A alone) should be undermined by the subsequent introduction of CTSA. The Upper Tribunal has implicitly accepted that CES's arguments would have prevailed before CTSA came into being because the Upper Tribunal refers to 'the statutory provisions relating to carry back of losses [being] materially overhauled following the introduction of self-assessment'.

That statement is only partially correct because what was undoubtedly overhauled was the entire mechanism for dealing with claims (and not merely loss carry-backs). However, it strikes me as somewhat surprising that the *effect* of loss carry-backs would have been so fundamentally changed as an unannounced by-product of the introduction of CTSA.

What to do next

I sincerely hope that the case will proceed to the Court of Appeal and/or the legislation is overhauled so as to remove all anomalies that arise in connection with consequential claims.

In the meantime, it might be prudent, when quantifying carry-back, to qualify the amounts with the following rider: 'or, in the event of the earlier year's profits or the later year's loss being amended, such different amount as required by s 37 of CTA 2010'. Such a rider might not be sufficient to overcome the effect of this case. However, it would give the company a further argument to deploy.

Of course, if the company does not wish to disturb those residual losses as brought forward, then the *CES* case (in its current state) will be of considerable use. That is, if HMRC maintains a consistent stance as to how these provisions operate...

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Non-reportable employee benefits

How to treat exemptions

We examine the items which are commonly exempt from reporting obligations for employee benefits, as well as covering PAYE Settlement Agreements and payrolling benefits under HMRC's statutory regime.

by Sarah Hewson

The distinction between an exemption from tax and a deduction that can be claimed by the employee is an important one, particularly when considering the treatment of cash reimbursements to employees. Whilst some further explanation is outlined below, some common examples of items that may be treated as exempt for income tax, National Insurance (NI) and reporting purposes are listed in ***Common exemptions***.

Exemptions

There are a number of benefits that are specifically exempted from tax and NI where the relevant conditions are met (the majority are outlined in the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) Part 4 ss 227 to 326B)). Where the conditions are met, no reporting requirements and/or liabilities arise for the employer. However, determining whether an exemption is available is becoming increasingly complex for a number of reasons, including a divergence between the strict terms of some exemptions and common working practices (exacerbated by Covid-19) and changes of approach by HMRC.

For example, whilst some exemptions apply to both 'the provision' of a benefit and cash reimbursements made by an employer (e.g. workplace parking), many

COMMON EXEMPTIONS

Where the relevant conditions are met, the following items can be provided with no tax, NI or reporting obligations arising. Please note this list is not exhaustive and analysis will need to be undertaken to determine whether a particular exemption may be applied:

- mobile phone;
- workplace parking;
- cycle to work;
- workplace meals;
- work transport/bus;
- professional fees;
- travel to a temporary workplace and related expenses;
- trivial benefits;
- job related accommodation;
- work related training;
- health screening/eye tests;
- long service awards;
- equipment for business use;
- workplace childcare;
- annual events;
- workplace gyms; and
- qualifying relocation.

exemptions do not extend to cash reimbursements. A common example of this is the exemption for an eye test (ITEPA 2003 s 320A). Whilst HMRC accepts that this extends to the provision of a non-cash voucher to obtain an eye test, it does not extend this to cover cash reimbursements.

Given this lack of flexibility, care needs to be taken by employers to consider whether the conditions have actually been met for an exemption to apply and that a process is put in place to ensure that any taxable cash reimbursements are processed via the payroll for both tax and NI purposes. Where an employer would prefer to cover the employee's tax/NI liability on such reimbursements, this could be grossed up via the payroll. However, given both the cost of this and the administrative burden of processing this in 'real time', employers should consider entering into/ including such items in a PAYE Settlement Agreement (see below).

Of particular complexity is the application of the trivial benefits exemption (ITEPA 2003 s 323A), introduced with effect from 6 April 2016 to provide clarity as to what small benefits can be provided to employees without an income tax, NI or reporting obligation arising. Broadly, the trivial benefits exemption can apply where:

a) the benefit is neither cash nor a cash voucher (e.g. a cheque);
b) the cost (including VAT) to the employer of providing the benefit does not exceed £50 per person;
c) the employee is not contractually entitled to receive the benefit and it is not provided under a salary sacrifice arrangement; and
d) the benefit is not provided in recognition of services performed, or to be performed, in the course of the employment.

Whilst this was originally applied liberally by employers, HMRC has been narrowing the application of the exemption; for example, stating that condition (a) has not been met where cash reimbursements are made (see EIM21866). HMRC is offering no flexibility in this regard. For example, it has confirmed that the exemption does not apply to any cash reimbursements for flu jabs, despite the fact that this was the only practical option available to a number of employers during Covid-19.

HMRC has also been restricting the application of each of the other conditions above. As such, any employers that have previously relied on this exemption should review the items to which it has been applied in order to consider whether HMRC's narrower interpretation of the conditions has been met.

Deductions

Since April 2016, amounts that would be deductible for the employee (under ITEPA 2003 Part 5 ss 327-385) can be treated as exempt where reimbursed by the employer. Expenses are tax deductible for the employee if they are incurred wholly, exclusively and necessarily in the performance of the duties of the employment (ITEPA 2003 s 336).

When deciding if the payment is tax deductible under this general rule, HMRC considers both of the following, namely whether:

- a particular employee needed to incur the expense; and
- any employee carrying out the duties of the employment would have incurred the expense.

Aside from any items covered by s 336, the most common deductible item(s) covered by employers is travel to a temporary workplace and related expenses.

As an aside, expenses incurred by an employee on the terms outlined above that are not reimbursed by the employer can be claimed as a deduction against taxable income by the employee.

Temporary Covid-19 easements

In response to the Covid-19 pandemic, a number of Covid-19 easements were introduced (as set out below). Where a benefit meets the conditions of one of these easements, neither a tax, NI nor reporting requirement arises and therefore this item should not be included in any benefit reporting for the 2021/22 tax year. In addition, HMRC has also published guidance on the treatment of certain benefits and expenses provided during the pandemic (see 'How to treat certain expenses and benefits provided to employees during coronavirus (Covid-19)' at bit.ly/37jEu5O.

Any positions taken regarding these easements will now need to be reviewed (or reviewed ahead of the 2023/24 tax year in the case of Covid-19 tests) and a process put in place to capture any taxable items.

Covid-19 antigen tests: The government introduced a temporary tax exemption and NI disregard for any relevant coronavirus antigen/viral ribonucleic acid (RNA) tests (but not any antibody tests) provided by an employer, where the relevant conditions are met. This is a temporary measure for any relevant test provided by an employer from 8 December 2020 for tax purposes and 25 January 2021 for NI purposes, until the end of the 2022/23 tax year (i.e. to 5 April 2023). HMRC will exercise its collection and management discretion and will not collect tax and NI due on the cost of any tests from 6 April 2020 to the date the relevant legislation came into force.

Homeworking equipment: The government introduced a temporary tax exemption and NI disregard for expenses reimbursed to employees to cover the cost of equipment needed by employees who were required to work at home due to Covid-19, where the relevant conditions are met. This measure has effect for amounts reimbursed from 11 June 2020 until the end of the 2021/22 tax year (i.e. to 5 April 2022). HMRC will exercise its collection and management discretion and will not collect tax and NI due on any reimbursed payments made from 16 March 2020 to 11 June 2020.

Cycle to work scheme: One of the conditions for an employee to benefit from the tax exemption for employer-provided bicycles and safety equipment is that the employee uses the bicycle and equipment mainly for 'qualifying journeys' (broadly travelling to or from work or in the course of work). Restrictions imposed by the government to combat the Covid-19 pandemic have meant that many employees have been required to work from home and have not, therefore, been able to make the qualifying journeys to work, such that the conditions for the tax exemption may not have been met. To prevent a tax charge arising, the 'qualifying journeys' condition was temporarily removed for employees who joined and received their cycling equipment on or before the 20 December 2020. The easement was in place until 5 April 2022, after which point all the conditions must be met for the exemption to be available.

PAYE Settlement Agreement

Employers can choose to settle an employee's tax liability on certain benefits and expense payments via a PAYE Settlement Agreement (see ***PAYE Settlement Agreements***). Where included in a PAYE Settlement Agreement, the relevant item does not need to be included in either Form P11D or Form P11D(b). Settling the tax and NI via a PAYE Settlement Agreement can be expensive. For example, applying the 2021/22 rates for England and Northern Ireland, the additional tax and NI cost on top of the cost of the benefit is:

- 42% for basic rate taxpayers;
- 90% for higher rate taxpayers; and
- 107% for additional rate taxpayers.

However, given both the administrative burden of calculating and reporting the taxable value for each relevant employee, as well as the ethics of expecting employees to pay tax on something that is intended to be a reward (e.g. a thank you voucher or a social event), many employers choose to bear the additional cost.

It should further be noted that including items in a PAYE Settlement Agreement is generally administratively simpler and cheaper than grossing items up via the payroll. Such gross up can also cause issues; for example, for employees receiving universal credit and/or the level of taxable income for purposes such as the high income child benefit charge, personal allowance tapering and capital gains tax rates.

The temporary increase to NI for the 2022/23 tax year will mean that these costs increase. However, this increase does not impact the PAYE Settlement Agreement liabilities due to be paid by 22 October 2022, given that such liabilities should be calculated by reference to the 2021/22 Class 1B NI rate of 13.8%.

PAYE SETTLEMENT AGREEMENTS

A PAYE Settlement Agreement is an agreement with HMRC which allows an employer to settle an employee's tax liability on benefits and/or expense payments which are minor, irregular or given in circumstances where it is impractical to apply PAYE or apportion the value of particular benefits which have been shared by a number of employees. HMRC will not allow major benefits or cash payments to be included in a PAYE Settlement Agreement. Typical items covered include staff entertaining, incentive awards, long service awards and taxis to and from home and the normal place of work.

If not already in place, a PAYE Settlement Agreement must be agreed with HMRC (via Form P626) no later than 5 July following the first tax year to which it applies (e.g. 5 July 2022 for the 2021/22 tax year). Once agreed, the PAYE Settlement Agreement will remain in place until amended or revoked by either the employer or HMRC. If any amendments are required, such as the inclusion of an additional category, these must be agreed with HMRC via Form P626 no later than 5 July following the first tax year to which it applies.

The expenses and benefits included in a PAYE Settlement Agreement are deemed to have been received by the employee net of tax and must therefore be grossed up by the applicable tax rates. The value of the benefit/expense included in the PAYE Settlement Agreement and the grossed up tax is subject to Class 1B (employer only) NI. The aggregate value of the grossed up tax and Class 1B NI must be paid by the employer no later than 22 October following the end of the relevant tax year (19 October if not paying electronically).

Payrolling benefits in kind

Subject to formal agreement from HMRC, since 6 April 2016, employers can voluntarily elect to payroll certain benefits in kind, thereby removing the requirement to report these benefits on Form P11D, although the value of any benefit subject to Class 1A NI will still need to be reported via Form P11D(b) for Class 1A (employer only) NI purposes.

Since 6 April 2017, all benefits other than accommodation and beneficial loans can be processed via the payroll. Employers must register online to payroll benefits and notify HMRC which benefits they wish to payroll. Registration can be completed any time up to 5 April of the tax year preceding the first tax year a particular benefit will be payrolled (i.e. on or before 5 April 2022 for the 2022/23 tax year). Registration is for a full tax year and is automatically carried forward unless HMRC is informed otherwise.

As well as notifying employees following registration that benefits are being payrolled and outlining what this means for the employee (including any potential impact on their tax code), employers must also provide specified information to employees on or before 31 May after the end of the tax year for which benefits were payrolled. Whilst this can be included in a separate statement, many employers include the relevant information as part of the employee's payslip.

Since 6 April 2021, informal arrangements to payroll benefits are no longer accepted by HMRC. Any benefits not payrolled (together with the benefits that cannot be payrolled) must still be reported on Form P11D.

Where an employer has elected to process a particular item via the payroll for tax purposes, any benefits that are payrolled do not need to be included on Form P11D. However, other than those items subject to Class 1 NI (e.g. gift vouchers and settling of pecuniary liabilities), the taxable value still needs to be included in Form P11D(b) for Class 1A NI purposes.

Further information can be found at 'Payrolling: tax employees' benefits and expenses through your payroll' (see bit.ly/38ng1gh).

Ongoing review

Whilst the above summary gives an overview of an employer's key obligations in relation to employee benefits, it also highlights that the factors employers need to consider are getting ever more complex. As a first step, employers should ensure they have a process in place to regularly review any polices and/or positions and ensure any changes (whether legislative or change of approach by HMRC) are reflected and that they are making use of exemptions, where available. Further, employers should ensure that the employment tax treatment is considered ahead of the introduction of any new employee benefits.

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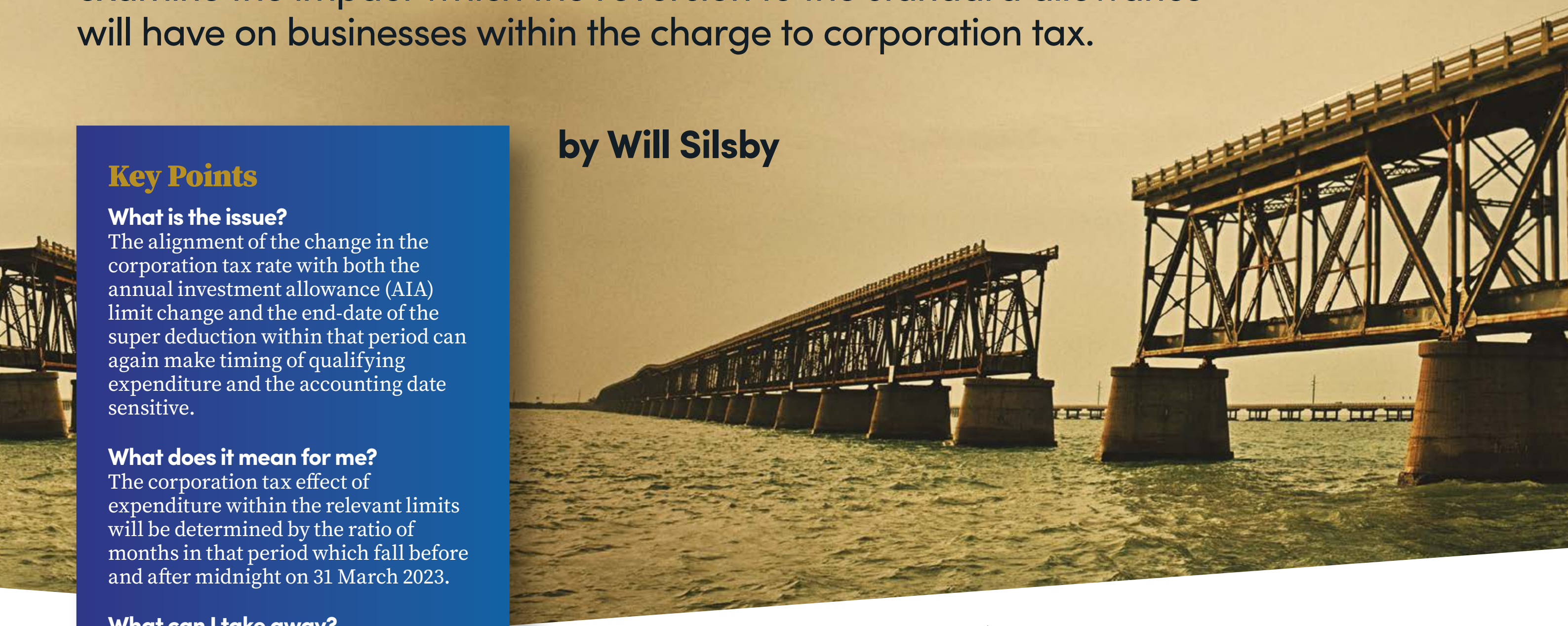
Reverting to the standard all

Impact on incorporated businesses

In the second part of our feature on the end of the temporarily increased annual investment allowance on 31 March 2023, we examine the impact which the reversion to the standard allowance will have on businesses within the charge to corporation tax.



by Will Silsby

Key Points

What is the issue?
The alignment of the change in the corporation tax rate with both the annual investment allowance (AIA) limit change and the end-date of the super deduction within that period can again make timing of qualifying expenditure and the accounting date sensitive.

What does it mean for me?
The corporation tax effect of expenditure within the relevant limits will be determined by the ratio of months in that period which fall before and after midnight on 31 March 2023.

What can I take away?
The effective tax rate applied to the AIA on expenditure incurred in the second straddling period will vary depending on a company's year-end, with the rate increasing the later that year-end falls in the financial year to 31 March 2024.

As the temporarily increased annual investment allowance (AIA) is due to revert to the standard £200,000 AIA limit from 1 April 2023, the transition period will have potentially significant impacts on businesses claiming the allowance, resulting in some surprising results in relevant tax assessments. The first part of this article was published in the April 2022 issue of *Tax Adviser*. Here, we examine the impact of the transition on incorporated businesses.

Incorporated businesses with a second straddling period do not have to contend with the basis period transitional rules. However, the alignment of the change in the corporation tax rate with both the AIA limit change and the end-date of the super deduction within that period can again make timing of qualifying expenditure and the accounting date sensitive.

The government announced at the Spring Statement that it is considering ways to incentive business to increase capital investment, with a view to announcing proposals at the Autumn Budget (see the Capital section at bit.ly/3Kpou0F). This article ignores the impact of any changes which may result from that review and must be read accordingly.

Profits charged at main rate of corporation tax

The AIA limits in respect of qualifying expenditure incurred in the second straddling period will vary, as shown in Table A, by reference to the date of expenditure. The corporation tax effect of expenditure within the relevant limits, however, will be determined by the ratio of months in that period which fall before and after midnight on 31 March 2023. For example, a main rate company with a 31 December 2023 year end will have three twelfths of its total AIA for the second straddling period relieved at 19% and the other nine twelfths relieved at 25%.

On qualifying expenditure of £400,000 (incurred before 1 April 2023 in that second straddling period), the corporation tax relief for that company is £94,000:

(3/12 x £400,000 @19%) +
(9/12 x £400,000 @ 25%)

This amounts to an overall effective rate of 23.5% on the expenditure. By contrast, that same £400,000 of AIA qualifying expenditure in the previous accounting period to 31 December 2022 would have attracted corporation tax relief at only 19% (relief of £76,000). This demonstrates why the super deduction was needed to incentivise investment in plant and machinery before the corporation tax rate increase on 1 April 2023.

However, if the expenditure of £400,000 was instead incurred by the same company in the nine months from 1 April 2023, the AIA cap of £150,000 would apply (as shown in Table A). Whilst the 19% and 25% rates would still apply for the respective parts of the second straddling period, the capping of the AIA would limit its effect in that period to a tax reduction of only £35,250:

(3/12 x £150,000 @19%) +
(9/12 x £150,000 @ 25%)

Ignoring any writing down allowances on the £250,000 balance of expenditure which

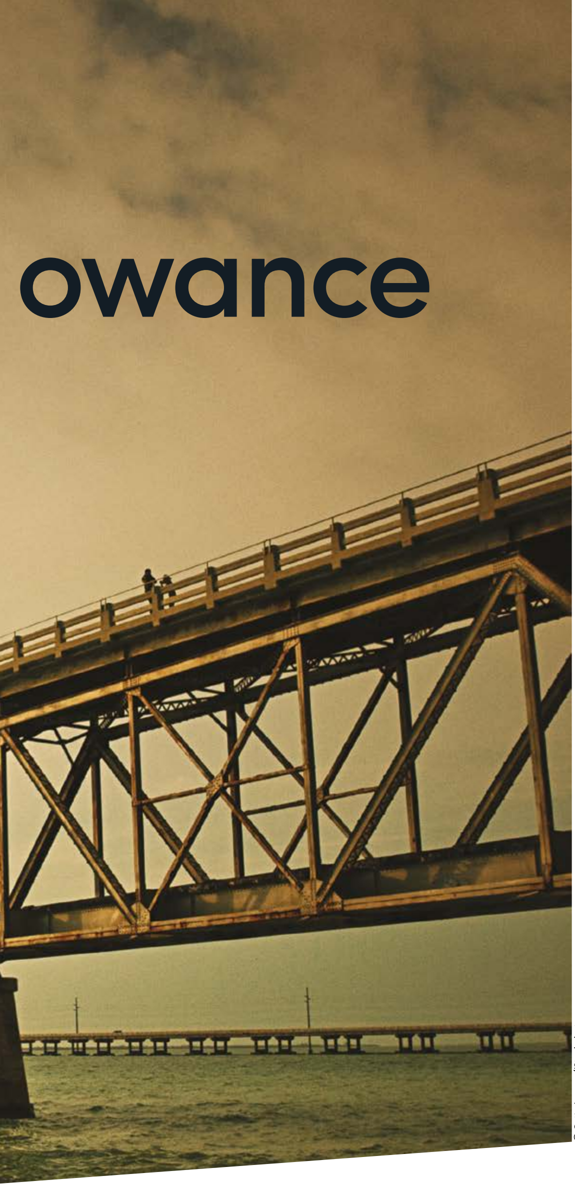


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TABLE A: SECOND STRADDLING PERIOD AIA LIMITS (ROUNDED MONTHS)

Expenditure incurred	Respective parts of:		Up to	From
	1,000,000	200,000	31.03.23*	01.04.23*
12 month chargeable period to:				
30 April 2023	916,667	16,667	933,333	16,667
31 May 2023	833,333	33,333	866,667	33,333
30 June 2023	750,000	50,000	800,000	50,000
31 July 2023	666,667	66,667	733,333	66,667
31 August 2023	583,333	83,333	666,667	83,333
30 September 2023	500,000	100,000	600,000	100,000
31 October 2023	416,667	116,667	533,333	116,667
30 November 2023	333,333	133,333	466,667	133,333
31 December 2023	250,000	150,000	400,000	150,000
31 January 2024	166,667	166,667	333,333	166,667
29 February 2024	83,333	183,333	266,667	183,333

* The AIA limit for expenditure incurred before 1 April 2023 is the aggregate of both parts. The AIA limit for expenditure incurred after 31 March is confined to the second part and is further reduced to the extent that expenditure before 1 April 2023 exceeded the limit for the first part.

attracted no AIA, the effective rate of relief on the £400,000 expenditure would be just 8.8%.

The effective tax rate applied to the AIA on expenditure incurred in the second straddling period will vary depending on a company's year end, with the rate increasing the later that year end falls in the financial year to 31 March 2024. With a year end of 30 April 2023, it is only 19.5%; with a year-end of 29 February 2024, it is 24.5%. Table B summarises the effective rates on AIA qualifying expenditure within the relevant limits with different year ends (this needs to be read in conjunction with Table A). In the example just given, the use of a company with a 31 December year end meant that its £400,000 expenditure (if incurred before 1 April 2023) was exactly at the AIA limit.

If the expenditure of £400,000 by the same main rate company with a 31 December year end was incurred in the three months before 1 April 2023 and qualified for the super deduction, what would the tax effect be?

Because that expenditure occurred in a chargeable period which ended on or after 1 April 2023, the headline rate of 130% for the super deduction would be subject to the reduction required by Finance Act 2021 s 11. That prevents the company benefiting from both the uplifted rate of allowance and relief at 25% on part of that allowance.

This 'damping' of the super deduction is achieved by restricting the 30% bonus element in proportion to the part of the period which falls before 1 April 2023. So, for our 31 December year end company, the super deduction factor is not 130% but 107.5%:

$$(100 + 3/12 \times 30)\%$$

The uplifted amount of £430,000 (£400,000 x 107.5%) would produce a tax reduction of £101,050:

$$(3/12 \times £430{,}000\ @19\%) + (9/12 \times £430{,}000\ @\ 25\%)$$

This gives an overall effective rate of 25.26% on the £400,000 of expenditure.

That same level of super deduction qualifying expenditure in the previous accounting period to 31 December 2022 would produce corporation tax relief of £98,800 (£400,000 x 130% x 19%), giving a slightly lower effective rate of 24.7%.

The effective tax rate applied to the super deduction on expenditure incurred in the second straddling period (in AIA terms) varies only slightly with different year ends. The rate increases gradually from 24.86% with a year end of 30 April 2023 to 25.31% with a year end of 31 October, before easing back to 25.11% with a year end of 29 February 2024. (Table B summarises the effective rates with different year ends.)

The effective rate of relief on AIA qualifying expenditure within the relevant limit for a main rate company relief, if incurred in the second straddling period, is determined by a combination of the company's year end and any capping of the AIA by the transitional rules. By contrast, the effective rate of relief on super deduction qualifying expenditure incurred (necessarily before 1 April 2023) in that period will be close to 25% regardless of the company's year end.

Profits charged at small profits rate

For a singleton company (i.e. a company that is not a member of a group), where the whole of its taxable profits for the second straddling period would be charged at the small profits rate even if they had no AIA entitlement (because they did not exceed £50,000), any AIA qualifying expenditure within the relevant limit would necessarily be relieved at 19% – as it would have been in the previous chargeable period and as it would be in the subsequent chargeable period (assuming no change in the small profits rate or limits). For example, if such a company had a 30 June year end, the

TABLE B: MAIN RATE CORPORATION TAX COMPANY

This provides a comparative summary of the effective rate of tax relief on AIA and super deduction expenditure on a main rate corporation tax company.
Year One = last accounting period ending before 1 April 2023
Year Two = accounting period straddling 1 April 2023

	AIA expenditure		Super deduction expenditure	
	Year One	Year Two	Year One	Year Two
Year-end:				
30 April	19.00%	19.50%	24.70%	24.86%
31 May	19.00%	20.00%	24.70%	25.00%
30 June	19.00%	20.50%	24.70%	25.11%
31 July	19.00%	21.00%	24.70%	25.20%
31 August	19.00%	21.50%	24.70%	25.26%
30 September	19.00%	22.00%	24.70%	25.30%
31 October	19.00%	22.50%	24.70%	25.31%
30 November	19.00%	23.00%	24.70%	25.30%
31 December	19.00%	23.50%	24.70%	25.26%
31 January	19.00%	24.00%	24.70%	25.20%
28/9 February	19.00%	24.50%	24.70%	25.11%

TABLE C: SMALL PROFIT RATE CORPORATION TAX COMPANY

This provides a comparative summary of the effective rate of tax relief on AIA and super deduction expenditure on a small profit rate corporation tax company.
Year One = last accounting period ending before 1 April 2023
Year Two = accounting period straddling 1 April 2023

	AIA expenditure		Super deduction expenditure	
	Year One	Year Two	Year One	Year Two
Year-end:				
30 April	19.00%	19.00%	24.70%	24.23%
31 May	19.00%	19.00%	24.70%	23.75%
30 June	19.00%	19.00%	24.70%	23.28%
31 July	19.00%	19.00%	24.70%	22.80%
31 August	19.00%	19.00%	24.70%	22.33%
30 September	19.00%	19.00%	24.70%	21.85%
31 October	19.00%	19.00%	24.70%	21.38%
30 November	19.00%	19.00%	24.70%	20.90%
31 December	19.00%	19.00%	24.70%	20.43%
31 January	19.00%	19.00%	24.70%	19.95%
28/9 February	19.00%	19.00%	24.70%	19.48%

effective rate of relief would be a flat 19% whether it incurred £20,000 of AIA qualifying expenditure in its second straddling period to 30 June 2023, the preceding period to 30 June 2022 or the succeeding period to 30 June 2024. The only sensitivity of timing of expenditure by such a company would be confined to any impact of the transitional rules on AIA limits (see Table A), which would not be relevant in this example.

If instead that same level of expenditure was incurred by the company before 1 April 2023 in the second straddling period and qualified for super deduction, the effective rate of relief would not be quite so predictable. The super deduction would be subject to the same 'damping' as described above for a main rate company, despite the company being unable to obtain tax relief at 25% from 1 April 2023. As nine months of its period to 30 June 2023 fell before 1 April 2023, its super deduction entitlement would be £24,500:

£20,000 x (100 + 9/12 x 30)%

As the company's corporation tax rate both up to 3 March 2023 and from 1 April 2023 would be a constant 19%, the effective rate of relief on the expenditure would be 23.28%:

£24,500 x 19% / £20,000

That same level of super deduction qualifying expenditure in the preceding period to 30 June 2022 would have enjoyed the same effective rate of relief of 24.7% as any other company.

Table C summarises the effective rates of relief for both AIA and super deduction with different year ends and demonstrates the increased damping effect with later year ends. It will be seen that the timing of AIA qualifying expenditure by a company within the small profits rate is only sensitive if the AIA transitional capping rules apply

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(Table A). By contrast, super deduction qualifying expenditure of such a company is more effective if incurred in its accounting period which ends before 1 April 2023.

Profits eligible for marginal relief

For a singleton company whose taxable profits in the second straddling period without any AIA expenditure would otherwise lie between the £50,000 and £250,000 thresholds, the timing of any AIA expenditure can be significantly more sensitive than for a company within the small profits rate. For example, take such a company with a 31 October year end, an identified need to incur qualifying expenditure of £180,000 sometime in the 14 months between (say) 1 October 2022 and 30 November 2023, and taxable profits (ignoring that planned expenditure) regularly around the £250,000 level. If that expenditure was incurred in October 2022, it would create an entitlement to AIA of £180,000 which would result in a tax reduction for the period to 31 October 2022 of £34,200 (£180,000 @ 19%).

Incurring that expenditure in the five months to 31 March 2023 would again create an entitlement to AIA of £180,000 (which would be within the cap for the first part of the second straddling period). However, in this case the corporation tax rate change would mean that five twelfths of that would attract relief at 19% (so £14,250) and seven twelfths would attract relief (in simplified terms) at the effective marginal small profits rate of 26.5% (so £27,825), giving a combined tax reduction of £42,075 and an overall effective rate of relief of 23.38%.

By contrast, incurring that same expenditure of £180,000 in the seven months starting from 1 April 2023 would, for a company with a 31 October year end, create a capped entitlement to AIA of £116,667 (see Table A). Five twelfths of that capped amount would attract relief at 19% (so £9,236) and the other seven twelfths would benefit from the marginal rate of 26.5% (so £18,035). This would give a combined tax reduction of £27,271 for the period and an overall effective rate of relief of only 18.47% on the £180,000 expenditure (ignoring writing down allowance on the non-AIA eligible amount taken to the pool).

If the company was able to defer the same expenditure until after 31 October 2023, AIA would be available on the whole £180,000 and the whole of that amount would be relieved at the marginal rate of 26.5% giving a tax reduction of £47,700.

For the same company, if the £180,000 expenditure could be incurred in the five months before 1 April 2023 and qualify for the super deduction, that allowance would be damped from 130% to 112.5%:

(100 + 5/12 x 30)%)

Five twelfths of the allowance of £202,500 (£180,000 x 112.5%) would be relieved at 19% (so £16,031) and seven twelfths would be relieved at 26.5% (so £31,303), giving a combined tax reduction of £47,334 and an effective rate of relief of 26.3%. Had that super deduction qualifying expenditure of £180,000 been incurred in the company's year to 31 October 2022, it would have benefited from an effective rate of relief of 24.7%.

The reintroduction of the marginal rate from 1 April 2023 inevitably makes the timing of expenditure more sensitive. In the scenario just considered, there is a danger zone for AIA qualifying expenditure incurred in the months of the second straddling period which fall after 31 March 2023 because of the transitional rules. Super deduction qualifying expenditure in the months to 31 March 2023 would benefit from a greater effective rate of relief than if that expenditure had been incurred in the previous period. However, in the particular scenario, the most beneficial rate of relief (just) arises where the expenditure is incurred in the subsequent period, the accounting period which begins after 31 March 2023.

Hopefully, you will be able to rely on your software to make all the right calculations. Maybe, however, this article will be helpful in explaining why your software's answers appear a bit counterintuitive.

TABLE D: MARGINAL RATE CORPORATION TAX COMPANY

This provides a comparative summary of the effective rate of tax relief on AIA and super deduction expenditure on a small profit rate corporation tax company.

Year One = last accounting period ending before 1 April 2023
Year Two = accounting period straddling 1 April 2023

	AIA expenditure		Super deduction expenditure	
	Year One	Year Two	Year One	Year Two
Year-end:				
30 April	19.00%	19.63%	24.70%	25.02%
31 May	19.00%	20.25%	24.70%	25.31%
30 June	19.00%	20.88%	24.70%	25.57%
31 July	19.00%	21.50%	24.70%	25.80%
31 August	19.00%	22.13%	24.70%	26.00%
30 September	19.00%	22.75%	24.70%	26.16%
31 October	19.00%	23.38%	24.70%	26.30%
30 November	19.00%	24.00%	24.70%	26.40%
31 December	19.00%	24.63%	24.70%	26.47%
31 January	19.00%	25.25%	24.70%	26.51%
28/9 February	19.00%	25.88%	24.70%	26.52%

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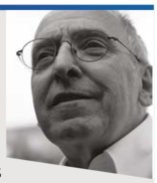

NEWSDESK ARTICLES

Contact

To contact the technical team about these pages, please email:
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Technical Newsdesk editor

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WELCOME

May Technical newsdesk

Those of you who also write regular articles will appreciate the apparent speed at which each deadline comes around. While pondering what to cover in this month's introduction, HMRC's monthly performance report for February (tinyurl.com/29sy7eyx) arrived in my email inbox. As they used to say on Gladiators, let's take a look at those stats.

Telephone performance is a key metric. After all, listening to recorded messages before being put on hold is not a productive use of anyone's time. In February, the average speed of answer was 12 minutes and 35 seconds (timed from after the recorded messages have ended). Telephone performance has fluctuated over recent months, but remains at over 12 minutes on average across the year to date. While there are no performance targets for 2021/22 (something we have raised with HMRC), the last published target was five minutes.

Performance on correspondence continues to improve. In February, 52.4% of correspondence was cleared within 15 working days of receipt, compared to just 29.7% in April 2021. Some of these improvements have come at the expense of telephone performance (for example, the recent Friday closures of some telephone lines), but HMRC's stock of post is now back to pre-pandemic levels – though still amounting to some 1.9 million items of correspondence.

Many of these improvements can be seen on the HMRC service dashboard (tinyurl.com/2bdz3azh). At the time of writing, 21 of the 27 service lines are showing 'normal service', which compares favourably to its launch at the beginning of February when 17 of those service lines were showing delays. That is a significant recovery in just two months. Of course, this is not the full picture, as there are many examples of old correspondence still waiting to be actioned, even if current correspondence is being dealt with timeously. If you have such examples, please send them to technical@ciot.org.uk so we can highlight them to HMRC.

Consistent with our charitable objectives which are (to paraphrase) to make the tax system better, we have recently reached out to our volunteer network for ideas to help HMRC improve their systems and processes, including how the expertise of agents can be leveraged and the pressure on HMRC's resources relieved. We will be reviewing those suggestions (along with our own) and surveying members to gauge their popularity. We will then discuss them with HMRC. Suggestions received to date indicate that small changes can make a big difference.

GENERAL FEATURE

Spring Statement: ATT, CIOT and LITRG initial reactions

ATT, CIOT and LITRG press releases gave their initial reactions to the announcements on tax by the Chancellor in his Spring Statement on 23 March 2022 and to the Tax Plan that sets out the government's future direction of travel in relation to tax policy.

As part of the Spring Statement, the government set out its 'Tax Plan', providing some detail on the government's aims, with the intention of providing clarity on the direction of travel for future tax policy, helping to bring stability and certainty to stakeholders. In some areas, this document sets out firm policies that the government intends to take forward; in others it sets out a spectrum of options for further consideration, saying that additional announcements will be made in future Budgets. The Tax Plan sets out three key priorities:

- helping families with the cost of living;
- creating the conditions for private sector led growth; and
- sharing the proceeds of growth with working people.

In various press releases, which can be found on our websites, the ATT, CIOT and LITRG made some initial comments on the Tax Plan.

Helping families with the cost of living, and sharing the proceeds of growth with working people

Two of the Chancellor's headline announcements in the Spring Statement were about income tax and national insurance, and were key proposals around delivering the first and third of the priorities identified by the Chancellor.

The Chancellor announced that the threshold for paying both Class 2 and Class 4 National Insurance contributions (NIC) will be aligned with the threshold for paying income tax, and that self-employed individuals earning above the small profits threshold will get National Insurance credits even if they do not earn enough to pay income tax or NIC. The Chancellor also announced a future reduction in the basic rate of income tax.

Whilst these announcements were broadly welcomed by the ATT, CIOT and LITRG, we also had some concerns.

LITRG highlighted that, while this was good news for the self-employed, sole traders will need to declare their profits on a self-assessment tax return to benefit from these credits.

The CIOT commented that the alignment of the income tax and NIC thresholds may lead to further income tax divergence between Scotland and the rest of the UK, as would the lowering of the UK basic rate of income tax to 19p from 2024.

The Tax Plan states that 'tax reliefs and allowances play a vital role in ensuring that the tax system works effectively and that it encourages positive economic and social outcomes', but goes on to note that there are over a thousand tax reliefs and allowances, causing complexity, unfairness and inconsistency. The government intends to reform tax reliefs and allowances 'to better support a fair, efficient, simple, and sustainable tax system'.

Creating the conditions for private sector led growth

This priority identified in the Tax Plan says that 'the government considers that a new culture of enterprise is essential to drive growth through higher productivity'. The Spring Statement also says: 'The government wants to create the conditions for the private sector to invest more, train more and innovate more. This includes cutting and reforming taxes to support these aims.' Three areas are then discussed in more detail as to how this might be achieved.

1. Capital

The CIOT and ATT welcomed the announcement by the Chancellor that the government is considering how to best support future business investment, once the super-deduction ends in 2023.

The CIOT said that whatever regime the government puts in place, it should be there for the long term to enable businesses to plan effectively. Business investments often take place over decades. Businesses need consistent levels of relief to help them plan. We need to move away from temporary levels of annual investment allowance to a permanent high level, and away from short term measures like the current super-deduction to a stable investment regime. Constant changes to the rules undermine investor understanding of, and confidence in, what is on offer at any one time.

ATT commented that the proposed engagement of the government with businesses and other stakeholders has the potential to create a stable system of capital allowances which encourages investment, meets the varying needs of different types and size of businesses, and is easier to understand. That objective is only achievable if the discussion involves a wide range of stakeholders and the discussion itself is wide-ranging.

The ATT also said that the current capital allowances system is confusing, with too much depending on the precise timing of expenditure, fine statutory distinctions between similar types of assets and the nature and structure of a particular business.

2. People

In highlighting 'people' as one of his priorities, the Chancellor set a goal to encourage businesses to offer more high-quality employee training. The Tax Plan says that the government has concerns over whether the current tax system is doing enough to encourage businesses to invest in training because UK employers spend just half the European average on training for their employees. The Spring Statement signalled an intention to improve training opportunities for employees. In response to this, the ATT called for a level-playing field for both employees and the self-employed when it comes to tax relief on new skills, as the self-employed currently cannot access the same tax benefits.

3. Ideas

The Tax Plan reiterates the government's commitment to increasing spend on research and development (R&D) by the private sector as a percentage of GDP. The CIOT welcomed the changes confirmed in the Spring Statement around including data and cloud computing costs, and a focus on R&D activities in the UK and the increased flexibility and scope of those changes, commenting that this showed that the government has listened to what business has said.

ATT suggested that there should be a cautious approach to the further review of R&D tax reliefs to ensure smaller companies are not disadvantaged. The Tax Plan said that the government would consider increasing the generosity of the 'RDEC' scheme which provides relief to larger companies, while also considering what more can be done to tackle abuse of the separate R&D tax relief scheme which provides relief to small and medium sized companies (the 'SME scheme'). The ATT said that it shares the government's concerns over abuse of the R&D relief schemes, and strongly supports efforts to crack down on such behaviour. However, it also said that care needs to be taken that these efforts do not prevent genuine claimants from accessing the relief to which they are entitled.

Other measures

In the Spring Statement, the government committed to use the tax system to encourage investment in green technologies. Both the CIOT and the ATT welcomed this, but called on ministers to commit to a long-term tax strategy for green investment.

The CIOT and ATT said that these measures in the Spring Statement (in relation to the VAT rate on energy-saving materials and green reliefs from non-domestic (business) rates) will give taxpayers and businesses some incentive to continue to invest in green energy technologies at a time when cost of living pressures are taking priority over the need to reduce carbon emissions. However, the VAT reliefs are temporary, and there remains uncertainty over the government's long-term approach to using the tax system to encourage green investment.

We will focus on the areas where further input is sought over the coming weeks with a view to making written representations. Please send any comments or thoughts on any of these to technical@ciot.org.uk, technical@att.org.uk or technical@litrg.org.uk.

Sacha Dalton *sdalton@ciot.org.uk*

INDIRECT TAX

Online sales tax: Call for evidence: input requested

In its conclusion to the Business Rates Review consultation in 2020-21, the government committed to exploring whether introducing an online sales tax may be a viable option to address the rebalancing of the business rates system, where the costs of business rates for bricks and mortar high street retailers exceed those for online retailers who are generally less dependent on high value properties.

HM Treasury published 'Online sales tax: Assessing an option to help rebalance taxation of the retail sector' (tinyurl.com/2p8ac7sp) earlier this year to gather evidence and inform government policy on the proposal for a possible online sales tax (OST), though the consultation document stresses that at this early stage there has been no decision taken that an OST will be implemented. The government states that it 'wishes to build its understanding of the issues associated with pursuing an OST and the pros and cons of progressing policy development to a technical phase'.

Following the launch of this consultation, the CIOT's press release (tinyurl.com/tz7n2k2y) stated that the effect of such a tax could be to shift the tax burden away from commercial landlords and onto shoppers, though we welcomed that the government was consulting prior to making a decision on whether to introduce a new OST.

Why is the government consulting on an OST?

Respondents to the call for evidence on the Business Rates Review identified an OST as 'an idea worthy of further examination' (see paragraph 2.2 of the final report at tinyurl.com/5yaeafsp), as the revenues raised from an OST could be used to address (in England) the difference in the business rates burden between high street and online retailers. The commitment to consult on this matter formed part of the conclusion of the Business Rates Review.

What does the call for evidence ask?

The consultation document looks at a potential OST in quite technical detail, focusing on three main areas: scope, design and impact.

The call for evidence asks technical questions relating to different business models, such as:

- identifying what online sales are, particularly where there is interaction with a bricks and mortar outlet, such as click and collect sales;
- differences between business to business and business to consumer transactions;
- domestic and international sales;
- the effects of intermediaries;
- thresholds and allowances; and
- systems issues.

It also looks at the impact of an OST on businesses, consumer behaviour and distributional impact, and any arising impacts for the environment.

What could an OST look like?

Possible models for an OST could be:

1. A transaction based tax

For example:

- a percentage of the price, such as a 1% or 2% OST that varies based on the selling price; and
- a fixed charge on a sale of goods and/or services via an e-commerce transaction, where the charge remains the same irrespective of the overall price to the customer.

2. Profits based taxation

The OST could be calculated by means of a percentage applied to the net profits of the business.

Member feedback

The CIOT and ATT will be responding to the consultation. Volunteers from our technical committees have provided feedback and we have engaged with HM Treasury via a virtual meeting. The call for evidence closes on 20 May 2022 so if members would still like to provide comments, please send them by 10 May 2022 to technical@ciot.org.uk or atttechnical@att.org.uk with 'online sales tax' in the title.

Jayne Simpson *jsimpson@ciot.org.uk*

GENERAL FEATURE

Office of Tax Simplification: Review of Simplification: ATT, CIOT and LITRG input

The Low Incomes Tax Reform Group, CIOT and ATT have each met with the Office of Tax Simplification to discuss their Review of Simplification scoping document (tinyurl.com/3vdex8fm).

LITRG discussions

The Low Incomes Tax Reform Group (LITRG) had a wide-ranging discussion with the Office of Tax Simplification (OTS). Drawing in part on our December 2020 report, 'A better deal for the low-income taxpayer' (www.litrg.org.uk/better_deal) and recent experience, we gave examples of complexity ranging from problems logging on to the Government Gateway to the growing numbers of unrepresented taxpayers dabbling in cryptoassets.

More generally, we talked about simplification having two distinct elements: first, making the rules themselves simpler; and second, making the system administratively simple so it is easy to comply with irrespective of the underlying complexity of the rules. For the smooth running of the tax system, the second element can be more important. The complexity of the overall tax system is not as relevant to an unrepresented taxpayer as being able to easily ascertain and understand the parts which are relevant to them, and knowing how to comply with their obligations given their personal circumstances. We discussed how this can unfortunately go awry when guidance is oversimplified, to the extent that it can be confusing or misleading and therefore contribute to non-compliance, despite its writers' best intentions.

Benefits from simplification should be plentiful. Most obviously, it should mean that people pay the right amount of tax and claim all the reliefs and allowances they are due. Simplification should also help people to avoid pitfalls that come with inadvertently getting things wrong, such as the compounded complexity, cost and stress that result from having to unpick problems possibly many years down the line. That said, simplification can potentially lead to unfairness (a flat rate of tax being simple, for example, but potentially poorly targeted) so it must be appreciated that there is a balance to be struck between simplicity and fairness.

We also observed that – somewhat ironically – measuring simplification is no easy feat. One idea we put forward is that the OTS could make use of HMRC complaints data and the Adjudicator's

PERSONAL TAX GENERAL FEATURE

Office of Tax Simplification: call for evidence on residential property income: input invited

The Office of Tax Simplification is reviewing the current regime for taxing residential property income. The CIOT will be responding and would welcome your input.

The Office of Tax Simplification has launched a call for evidence, together with an online survey (tinyurl.com/bdwtj53k), about simplifying the taxation of residential property income received by individuals, partnerships and micro companies.

The review is considering:

- ***Structural aspects:*** looking at whether different regimes for taxing property income lead to distortions and other drawbacks.
- ***Operational:*** how well the cash and accruals basis is understood, the operation of reliefs and exemptions, and HMRC's processes and guidance about property income.
- ***Administration and compliance:*** the potential for letting agents or platforms to help landlords in easing the administrative burden and to consider any areas of tax administration that present challenges for property income.
- ***Non-UK aspects:*** any areas of concern for non-resident landlords or their tenants and issues for UK residents receiving rental income from abroad.

The call for evidence runs to 5 June 2022 and the CIOT will be responding. Please send your comments and thoughts to Kate Willis.

Kate Willis *kwillis@ciot.org.uk*

experience to help gauge common areas of misunderstanding between HMRC and taxpayers (and then whether any changes result in a reduction of problems).

Finally, it would be preferable for complexity to be avoided if policymakers were to consider various factors upfront, such as how a tax proposal will interact with other parts of government (for example, welfare benefits for those on lower incomes). While appreciating that various financial support payments have been developed and implemented at pace over the last two years, we highlighted problems that have occurred where tax and other implications have not been considered in advance.

CIOT discussions

The CIOT's discussions covered a number of similar points, such as simplification being both tax technical as well as administrative, and the need to consider the impact of proposals at an early stage to minimise further complexity. We felt that some recent policies (such as the requirement to report residential property disposals within 30 days (now 60 days) have introduced both tax technical and administrative complexities, and would have benefited from a more thorough consideration of these aspects during the policy development process. It was recognised that it was better to prevent complexity arising in the first place, than to try and simplify an existing regime.

We also recognised that it was difficult to specify 'success measures'. The OTS's role is to offer recommendations and advice to the Chancellor about how to make the UK tax system simpler, and their implementation (or otherwise) is out of its control. As well as sympathising with this position (as it is also difficult to judge the 'success' of our own technical work), we felt that the breadth of the OTS's engagement with individuals, businesses, agents and government departments was one of its key strengths. The recent approach of preparing evaluation papers following up on previous reports was also welcomed.

ATT discussions

The ATT discussed how simplification does not always mean the same thing to all different stakeholders. Taxpayers will not necessarily be as interested as agents in the simplification of underlying legislation, but both will care about the ease of use of HMRC's IT systems.

We highlighted the importance of policy, legislation and operation all being coherent and how we would like to see the development of a future administration framework done in parallel with the design of the underlying IT systems.

We also shared feedback from members over the challenges of simplification in retrospect and welcomed the OTS's recent evaluation paper on the Single Customer Account as having much more of a forward-looking approach.

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INTERNATIONAL TAX LARGE CORPORATE

The Global Anti-Base Erosion Model Rules (Pillar 2): CIOT responses

The CIOT has responded to consultations by the UK government and the OECD/G20 Inclusive Framework on BEPS on the Pillar 2 rules addressing the tax challenges arising from the digitalisation of the economy – the Global Anti-Base Erosion Model Rules.

In October 2021, the OECD/G20 Inclusive Framework on BEPS reached an agreement on a two-pillar solution to reform the international tax framework in response to the challenges of digitalisation. We welcome this historic agreement and its key objective of stabilising the international corporate tax framework, bringing it up to speed with the challenges of the digitalising economy, as well as more transparency and fairness in the global tax environment.

The OECD published 'Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)' on 20 December 2021 – the 'GloBE Rules'. Broadly, Pillar 2 intends to deliver a minimum level of corporation tax for all multinational enterprises (MNEs) of 15% of accounting profits in all jurisdictions through the introduction of two rules in national domestic tax laws: the Income Inclusion Rule; and its backstop, the Under Taxed Payments Rule. Pillar 2 also includes a treaty-based rule, the Subject to Tax Rule, which allows source jurisdictions to impose limited source taxation on certain related party payments that are subject to tax below a minimum rate. The Subject to Tax Rule is still work in progress.

UK government consultation on implementation in the UK

In January 2022, the UK government published 'OECD Pillar 2: Consultation on implementation', which was a consultation on the implementation of the OECD agreed Pillar 2 framework within the UK. This consultation asked for views on various aspects of the GloBE Rules and, to some extent, how these should be implemented into the UK. HMT and HMRC also ran a series of Roundtable Stakeholder Sessions during February and March to discuss certain aspects of the rules that the CIOT attended.

In our response to the UK government, whilst welcoming the historic agreement, we highlighted the speed at which this has been developed by the Inclusive Framework, and in particular the lack of opportunity for deep and public consultation with businesses and other stakeholders before the GloBE Rules were finalised. Although the lack of consultation was understandable in the context of the mandated timetable, it has led to significant challenges with the rules published by the Inclusive Framework and to their implementation coinciding with, rather than following, the development of a global implementation framework. We said that the timetable outlined by the OECD in October 2021, with the aim for countries to introduce the Pillar 2 rules into domestic law in 2022, ahead of implementation in 2023, is too short a time for the introduction of such a complex set of rules, especially given the need for international alignment. We noted that the GloBE Rules will present a huge administrative and compliance challenge for many tax authorities as well as for taxpayers; 12 months is not long enough to successfully implement these as yet incomplete and very detailed laws.

Our response said that the process around the consultation on the implementation of these rules into the UK has been unsatisfactory. This is because the UK government was consulting on an incomplete framework of rules, as work by the Inclusive Framework is continuing throughout 2022. In our view, a process and timetable that means the UK is developing its domestic legislation alongside the ongoing development of the underlying international framework will not lead to good law, will put businesses and advisers in a very challenging position, and will lead to arbitrary and unsatisfactory results. We strongly urged the government to confirm to businesses as soon as possible that it will delay the implementation of these rules in the UK, until at least 2024, or such later date when it is clear that other jurisdictions are going to be implementing the rules.

In this regard, we also noted that while some countries have publicly announced that they intend to meet the 2023 timeline, and there is clearly a desire from some EU countries for the EU to mandate introduction from 2023, the UK is currently the only country that has committed to issuing draft legislation in the coming months that would bring the Pillar 2 rules into law from early 2023.

We recognised that the UK government wishes to continue the UK's leadership role in relation to international tax and we support that aim. However, we suggested that the UK government's leadership role should be focused within the Inclusive Framework, encouraging all jurisdictions to reach agreement around what adaptations to the GloBE Rules should be permitted in the implementation of them, so that the result is a multilateral set of interlocking rules that deliver the policy aims of Pillar 2 in a manner where each country's implementation is recognised from the outset to be a qualifying regime. We said that leadership in these circumstances does not require the UK to introduce this very complex set of rules so speedily, or first. Indeed, doing so would place UK parented multinational businesses at a competitive disadvantage (and, given the systems challenges against the pace of entry into force, place them in the position of potentially being unable to comply and/or meet their financial reporting obligations). We said that it is effective leadership toward reaching and implementing an agreed outcome, translating the principles correctly into the detail, that is required. We said that we are not in a race to achieve a presentational milestone, but a common endeavour to reach an agreed, coherent and purposeful result.

Finally, we said that we would support further safe harbours and other simplification mechanisms that can be developed through the GloBE Implementation Framework and would support a UK domestic minimum tax. The introduction of domestic minimum taxes, together with an effective mechanism to have a 'white list' of qualifying regimes, would result in an overall simplification of the Pillar 2 rules.

Inclusive Framework consultation on Implementation Framework

During the consultation by the UK government on the implementation of the Pillar 2 rules, on 14 March 2022, the Inclusive Framework released Commentary on the GloBE Rules. The Commentary is intended to provide governments and MNEs with technical guidance on the operation and intended outcomes of the GloBE Rules. At the same time, the Inclusive Framework launched a public consultation, seeking input on the issues that should be addressed during the development of the GloBE Implementation Framework, which is intended to facilitate the co-ordinated implementation and administration of the GloBE Rules. The CIOT has also submitted comments to the Inclusive Framework in response to this consultation.

In this we reiterated our support for the international agreement. But we also said that whilst we welcome this public consultation, it is unfortunate that it comes at this late stage. As we said to the UK government, our response noted that the lack of deep consultation with businesses, accountants and other stakeholders throughout the development of the GloBE Rules has led to significant challenges – both in terms of the rules seeming to depart in some areas from the stated policy aims of Pillar 2 outlined in the Blueprint and/or creating incoherent and arbitrary or illogical outcomes.

We reiterated the points made to the UK government around encouraging the Inclusive Framework members as a priority to reach agreement around what adaptations to the GloBE Rules should be permitted in the implementation of them, so that the result is a multilateral set of interlocking rules that deliver the policy aims of Pillar 2 in a manner where each country's implementation is recognised from the outset to be a qualifying regime. We said that we would like to see the Inclusive Framework work towards reaching and implementing an agreed outcome, translating the policy principles correctly into the detail. We also reiterated our support for further safe harbours and other simplification mechanisms that can be developed through the GloBE Implementation Framework. We said that, in our view, the introduction of domestic minimum taxes, together with an effective mechanism to have a 'pass list' of qualifying regimes, would result in an overall simplification of the Pillar 2 rules.

Our full responses can be found at:
UK government consultation on Pillar 2: www.tax.org.uk/ref913
OECD/G20 Inclusive Framework consultation on the implementation framework: www.tax.org.uk/ref938

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PERSONAL TAX MANAGEMENT OF TAXES

Income tax self-assessment registration for the self-employed and landlords: CIOT, LITRG and ATT responses

CIOT, LITRG and ATT have responded to HMRC's recent call for evidence on Income tax self-assessment registration for the self-employed and landlords. The government says that it wants to understand whether bringing forward the point at which the newly self-employed and landlords are required to identify themselves to HMRC will help to support taxpayers to develop good tax habits early, ultimately creating a better taxpayer experience.

CIOT response

In our response, the CIOT recommends that HMRC improve awareness among the newly self-employed and landlords about how and when they need to register with HMRC and focus on public education,

EMPLOYMENT TAX

Employment Taxes Forums

Representatives of the CIOT, LITRG and the ATT have attended recent forums with HMRC, including the Employment and Payroll Group, the Collection of Student Loans Group, the Expat Tax Forum and the Employment Status and Intermediaries Forum.

In this article, we summarise the main points from meetings of various groups that took place recently, which are attended by CIOT, LITRG and ATT volunteers. HMRC publishes the minutes of their meetings on GOV.UK.

Employment and Payroll Group

This group is the main HMRC forum for employment tax related matters. The forum is attended by representatives of CIOT and ATT and meets quarterly. The main topics of discussion at the last meeting were the health and social care levy, hybrid-homeworking expenses (where new guidance has been published by HMRC), negative earnings, child maintenance deductions and the freeports employer and veterans NICs reliefs.

Collection of Student Loans Consultation Group

CIOT, LITRG and ATT representatives all participate in this group. Topics discussed included:

- the Scottish student loans threshold introduced on 6 April 2021 and updates to the Self-Assessment processes to collect these loans via 2022 returns;
- the issuing of start notices to employers in March 2022 for borrowers coming into repayment on 6 April 2022;
- the new Lifelong Loan Entitlement scheme which is currently being piloted and will be generally available in the 2023 Academic Year; and
- the Student Loans Company's correspondence with borrowers within two years of repayment (and the option of direct payment).

Joint Forum on Expatriate Tax and NICs (Expat Tax Forum)

This forum is attended by the CIOT, and recent discussions have included:

- Appendix 7A/7B filing deadlines (no extension to deadline in 2022);
- Section 690 applications (and delays in processing them, particularly for out-bounds);
- obtaining self-assessment unique tax reference numbers (and problems in obtaining these without a national insurance number) and 'no tax' codes;
- Appendix 5 agreements (where HMRC's view is that they cannot be obtained for tax equalised employees); and
- international social security coordination.

Employment Status and Intermediaries Forum (formerly the IR35 Forum)

This forum is attended by the CIOT. HMRC reported to forum members that they have been busy on external engagement and since the end of November have been dealing with the BEIS and Treasury call for evidence on umbrella companies, the NAO report and recommendations on the implementation of off-payroll working reforms in the public sector (and a similar House of Lords inquiry and report), a workshop looking at off-payroll working tax set-offs in compliance cases, and they have also published research into the long-term effects of the public sector reform.

Matthew Brown *matthewbrown@ciot.org.uk*

guidance and improved processes, rather than making any changes to the timing of registration.

In our view, the income tax self-assessment (ITSA) registration process works well for most taxpayers and there is insufficient evidence to change the current statutory deadline, which is six months after the end of the tax year in which the business starts (Taxes Management Act (TMA) 1970 s 7). However, we identified some difficulties with the current system which lie mainly with how HMRC process applications, how their system supports applications, and how taxpayers interact with HMRC's system. It can often take a long time, for example, to obtain a Unique Taxpayer Reference (UTR) and in the meantime a taxpayer cannot file returns or pay the tax they owe. HMRC should focus their attention and resources on improving the registration process and joining up IT systems to make the registration obligation easy to understand and comply with for every taxpayer.

If any changes are considered, such as bringing forward the registration deadline, linking it to the date a business starts trading (or a landlord starts to rent out a property) or even abolishing the statutory notification obligation altogether, we say that there must be further detailed consultation to assess the impact on other parts of the self-assessment framework.

We also suggest that there should be a single system for taxpayers to use to register (and deregister) for different taxes (including ITSA), to track the progress of applications, and appoint one or more agents. HMRC should investigate how the proposed Single Customer Account could be utilised to help streamline and monitor an individual's registration (and deregistration) applications with HMRC.

LITRG response

The LITRG response concluded that while we would not be against moving the deadline for notifying liability to tax to a date earlier than 5 October, but after the end of the tax year, at present we do not think there is sufficient evidence to support such a change. In our experience, many of the existing problems with notification and registration are due to confusion and lack of awareness amongst unrepresented taxpayers of what activities could be taxable (such as non-traditional forms of trading via online platforms or being an 'accidental landlord'). These issues will not be solved by advancing the notification of liability to tax deadline.

We recommended that HMRC prioritise addressing various pinch-points in the existing system. First, we think that some confusion could be eliminated by reviewing and aligning the statutory requirement to notify of a liability to tax and HMRC's non-statutory criteria for registering for and filing ITSA returns. HMRC should also address the different methods of registration/deregistration and consider how people can be helped to recognise that their activities may trigger an obligation to notify liability to tax. Also, we note that HMRC guidance on registering for ITSA needs revision as it is currently confused – for example, the term 'income' is used to mean turnover and profit interchangeably on the same GOV.UK page.

ATT response

In the ATT response, we similarly concluded that the proposed options for reform of the existing registration obligations were unlikely to achieve significant improvements to taxpayer experience.

We did though receive a large amount of feedback from members suggesting that improvements to the operation of HMRC's IT systems and processes for dealing with registration would significantly improve the user experience. We would also like to see a more integrated registration system which allows agents to register *all* types of client for self-assessment online and for taxpayers to authorise their agents at the same time. We also called for the long-standing issues around the interaction of registration for self-assessment and for Class 2 to be resolved.

The CIOT's full response can be found at: www.tax.org.uk/ref889

The LITRG's full response can be found at: www.litrg.org.uk/ref2624

The ATT's full response can be found at: www.att.org.uk/ref392

Margaret Curran *mcurran@ciot.org.uk*
Claire Thackaberry *cthackaberry@litrg.org.uk*
Helen Thornley *hthornley@att.org.uk*

PERSONAL TAX GENERAL FEATURE

Land transaction tax increases for second homes in Wales?

The CIOT and the Stamp Taxes Practitioners Group have responded to the recent consultation by the Welsh government on using land transaction tax to help to address the impact of second homes and short-term holiday lets on permanent housing in Wales.

The Welsh government wishes to address the impact of second homes and short-term holiday lets on the affordability and availability of permanent housing in areas in Wales where second homes and short term lets predominate. It is proposed to use land transaction tax (LTT) (in tandem with other policy levers including increasing council tax and imposing planning conditions) to influence behaviour. The proposal is to impose additional local LTT rates over and above the current 4% higher residential rates of LTT that already apply where an individual purchases a dwelling and already owns another dwelling or a company purchases a dwelling. The additional rates would apply to the acquisition of a dwelling intended to be used as a second home or as a short-term holiday let.

We suggest it is likely to be harder and less satisfactory to use a transaction tax for this purpose compared with a recurrent tax, such as council tax, on the type of occupation that it is wished to discourage. A transaction tax is levied by reference to acquisition and is therefore dependent on an inherently unsatisfactory intention test as regards the nature of the future occupation. Furthermore, there are widely recognised economic arguments that such transaction taxes disincentivise transactions (with a loop back effect on public revenues, among wider economic costs) and, while levied on the purchase, impose much of the real economic burden on the seller who wishes to move.

There are challenges in designing an additional rates charge, in particular:

- the identification and definition of a 'second home' and a 'short-term holiday let';
- the ongoing management of records to ensure additional rates are consistently applied; and
- adding complexity in terms of the need for further stages in the conveyancing process (investigating the nature of intended occupation) and the administration and enforcement (through a clawback charge on change of use).

There is also the question of identifying the areas where a local additional rates charge might apply. Applying additional rates based on wards could create boundary issues and local anomalies in a similar way to those which arose under the disadvantaged area relief for stamp duty land tax. On the other hand, rates based on local authority areas would not allow for specific targeting of areas.

A further alternative – though with advantages and disadvantages of its own – is to impose additional rates of LTT nationally in the same way as the existing higher rates surcharge of 4%, but to introduce reliefs (from the additional rates only) for purchases of second properties that are outside the policy intent, such as buy to lets intended to provide a permanent home. One advantage of national rates is that they would automatically adjust to the areas where demand for second homes is highest.

Given that the aim is to help people purchase permanent homes, the proposals, if successful in these terms, may reduce the availability of short-term holiday lets, thereby impacting the local tourism economy. The interaction with any tourism levy will need to be considered.

The full response is at: www.tax.org.uk/ref906

Kate Willis *kwillis@ciot.org.uk*

Recent submissions

CIOT	Date sent
Income tax self-assessment registration for the self-employed and landlords www.tax.org.uk/ref889	21/03/2022
Second homes: local variation to land transaction tax rates www.tax.org.uk/ref906	25/03/2022
OECD Pillar 2: Consultation on implementation in the UK www.tax.org.uk/ref913	04/04/2022
OECD/G20 Inclusive Framework consultation on the implementation framework www.tax.org.uk/ref938	11/04/2022
ATT	
Income tax self-assessment registration for the self-employed and landlords www.att.org.uk/ref392	21/03/2022
LITRG	
Income tax self-assessment registration for the self-employed and landlords www.litrg.org.uk/ref2624	22/03/2022

News from CIOT and ATT

Influencing the Scottish tax debate: authoritative comment and analysis

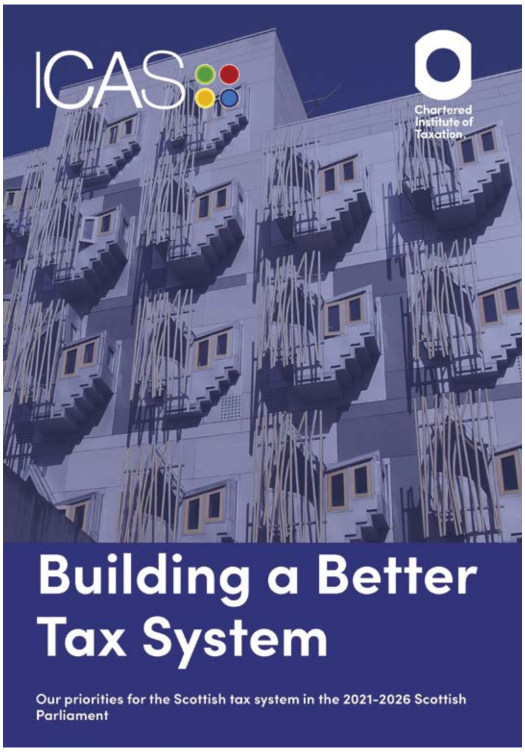
The CIOT has underscored its position as a go-to source for authoritative comment and analysis on devolved taxes with recent media comments on the debate around further Scottish tax reform.

Following comments made by Scottish ministers in March that fundamental reform of council tax was unlikely before the next Scottish election, CIOT Director of Public Policy John Cullinane told the *Herald* newspaper that this statement – along with previous commitments to retain the existing Scottish income tax and land and buildings transaction tax regimes as they are – suggested we were in for 'a tax reform-free parliament'.

CIOT also set out a series of options available to ministers and stressed that existing plans to establish a Citizens' Assembly to discuss council tax reform needed to include a clear indication from government about its priorities for reform.

Comments originally made by CIOT in November that the Scottish government may not be using its tax-raising powers to full effect were repeated at the start of April, when it was confirmed that proposals to allow councils to introduce new taxes on tourists had been delayed again.

Last year CIOT, along with ICAS (Institute of Chartered Accountants of Scotland), published a tax manifesto (pictured) for the Scottish Parliament setting out a number of changes the two institutes would like to see over the course of the parliamentary term. These include a move away from tax as a source of 'last-minute budget concessions' and towards a longer-term, strategic approach to tax policy making.



It's not just the media where CIOT is active. The Institute was a participant in the discussions to establish the Scottish government's Framework for Tax, which aims to provide stakeholders with clarity and certainty in Scottish government tax policy.

THREE MAIN AREAS FOR ACTION FROM THE CIOT AND ICAS

1 Improved oversight over the way that tax decisions are taken in the Scottish Parliament to ensure they receive an appropriate level of scrutiny.

2 A more strategic, longer-term approach to introducing and reforming taxes in order to avoid last-minute 'rabbits from the hat'.

3 A renewed effort to improve public awareness and understanding of devolved taxes in Scotland.

John Cullinane, CIOT Director of Public Policy, quoted in *The Herald*, 28 March 2022

'With Scottish ministers having already ruled out major changes during this parliamentary term to two of the main taxes under their control – Scottish Income Tax and Land and Buildings Transaction Tax – it looks increasingly like this will be a tax reform-free Parliament.

'A Citizens' Assembly on council tax reform will allow a range of opinions to be heard and it is welcome that the Scottish Government is committed to consultation and engagement. But the Scottish Government needs to set out what it wants from reform too.'

Political update

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

In the past month:

- CIOT contributed to a roundtable discussion organised by the All Party Parliamentary Group on Responsible Tax and Anti-Corruption which was attended by politicians from four different parties.
- CIOT comments on accelerated payment notices were cited by Conservative MP Steve Baker during a parliamentary debate in which he called for reform or abolition of APNs.
- Financial Secretary to the Treasury Lucy Frazer cited LITRG comments about the importance of consultation during debate on the National Insurance Contributions (Increase of Thresholds) Bill.
- CIOT/ATT Head of External Relations George Crozier attended the Liberal Democrats' virtual spring conference, contributing to debate at conference fringe meetings and reporting back on the CIOT blog. Planning is already underway for our attendance at four autumn conferences (all expected to be in person), including fringe events at Labour and Conservative gatherings.

Green taxes: overall strategy still lacking

ATT and CIOT have welcomed the commitment by the government to use the tax system to encourage investment in green technologies but called on ministers to commit to a long-term tax strategy for green investment.

The Spring Statement confirmed that the VAT rate on energy-saving materials – such as solar panels, wind and water turbines – installed in domestic properties will be reduced from 5% to zero between 1 April 2022 and 31 March 2027. It was also confirmed that the implementation date for green reliefs from non-domestic (business) rates would be brought forward a year to April 2022.

Jason Collins, chair of the CIOT/ATT Climate Change Working Group, said: 'These measures are welcome but what is still missing from the government is an overall strategy for using the tax system to encourage green investment.

'A longer-term approach to taxation and climate change would send a signal to businesses and taxpayers that they can plan ahead with confidence and certainty. Otherwise, government interventions will seem piecemeal, rather than strategic.'

In October last year, the working group published a Climate Change Tax Policy Roadmap, in which it called on the government to set out how it plans to use the UK tax system to help the country meet its ambitious net zero goals.

The Coalition government's 2010 Corporate Tax Roadmap was cited by the group as a good example how government can provide businesses with a clear direction of travel to help them plan for the future. It suggested that a similar approach could be adopted when thinking about the role of taxation in tackling climate change.

Government is to review CEST advice

The government has promised to review the advice offered to taxpayers who receive an 'unable to determine' result from the Check Employment Status for Tax (CEST) tool. This follows a recommendation from a House of Lords committee after taking evidence from CIOT and others.

Colin Ben-Nathan, chair of the CIOT's Employment Taxes Committee, had told the Lords committee that: '20% of the time [CEST] is unable to determine. The question then is what you do next. I suppose if you do not have recourse to advice, you call the HMRC helpline, but there is a limit to what they can do.'

More generally, the government told the Lords in its response to their latest recommendations on off-payroll working that monitoring the impact of reforms in this area would continue to be a priority.

CIOT and LITRG representatives had also told the committee that there was a need for what LITRG's Meredith McCammond called 'a clearer and simpler employment status landscape', in line with the recommendations of the Taylor Review. However, there was little reassurance in this area, with a promise from the government only to 'set out more detail in due course'.

For more see our report at tinyurl.com/opw2022

In the news

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

'"For the sufficiently determined owner of a UK property who wants to remain anonymous, we think the Act leaves loopholes," says George Crozier, spokesman for the Chartered Institute of Taxation.'

BBC home and legal correspondent Dominic Casciani drew attention to CIOT concerns in a BBC News Online article about the Economic Crime Act, 16 March 2022

'The ATT says up to one million trusts may have to register with HMRC under new rules, while currently only those with a tax liability are required to.'

Financial Times, 22 March 2022

'The Chartered Institute of Taxation warned Mr Sunak's move [to cut income tax in 2024] could lead to further future divergence between the income tax regimes north and south of the border.'

The Scotsman, 24 March 2022, was one of a number of Scottish publications highlighting CIOT comments on the implications for Scotland of tax announcements made in the Spring Statement.

'There are two national insurance changes – a rate change and a threshold change later in the year – the interaction of which is likely to confuse taxpayers.'

Helen Thornley, Technical Officer at ATT, appeared on BBC Radio 5 Live's Wake Up to Money, explaining the detail of the NICs changes, 6 April 2022

'Capital gains tax is a tax on the profit when you sell, or dispose of something, such as an asset that has increased in value. LITRG explains how taxpayers should report their capital gains on its website.'

Daily Express, 7 April 2022

Pension crime

Pension scams and fraud

As a tax professional, you will be familiar with the liberalisation of private pensions, introduced by George Osborne in 2015.

People over 55 now have greater access to their pension pots and more discretion on how they are invested and drawn down. At the same time, how pensions actually work and the tax implications of withdrawals remains poorly understood by the general public. Pension liberalisation has also coincided with a massive rise in digital crime. The Financial Conduct Authority has revealed that savers were nine times more likely to accept a pension review online than from a stranger in person. Only 28% realised that a free pension review could be the sign of a scam.

In addition to providing false information, fraudsters will typically phone, text or email your clients, claiming they have loopholes that can yield a higher level of tax-free cash than the usual 25%. They offer unfeasible returns of over 8% from overseas or new and creative investments. They offer loans, advances or cashbacks on pensions. Scams ignore the good advice and processes of pension professionals. They suggest a single investment or courier paperwork, requiring immediate signature. Pressure is applied to demand quick decision making to not 'lose out' on golden opportunities. The scammers will only have a mobile number or PO box, rather than a verifiable address.

At Tax Help for Older People, we help devastated pensioners who have lost the rewards of decades of hard work. Their dreams of finally enjoying their savings funding a comfortable old age are shattered. There is redress for any individual who receives poor advice from a financial adviser authorised by the FCA through the Financial Services Compensation Scheme. We help vulnerable people facing a large tax bill that has arisen as a result of scam who has no support and cannot afford an agent to help them understand what has happened and try to limit the damage.

Pension scams are particularly pernicious, as long-term investments mean that it is often many years before larceny becomes apparent. It is often some time


Valerie Boggs

before the tax implications of a scam become apparent. HMRC will contact the victim who is often completely unaware that they owe tax and penalties. They turn to us in confusion and despair.

Tax Help for Older People supports the victims of scams. We also work with other charities, the pensions industry and the tax professions to spread the word on avoiding scams. We want you to be involved, so please contact Alice Devitt at alice@taxaid.org.uk or follow us on @taxhelp4. If you feel that you or your firm can donate to support our work fighting scams, we'd be delighted to hear from you. View our CAF donation page to make a one-off or regular donation to the charities at cafdonate.cafonline.org/18211

Together we can help the fightback against pension crime. It is too serious to ignore and we hope we can count on you to support our work.

Valerie Boggs is Chief Executive of TaxAid and Tax Help for Older People

Anti-money laundering

Your 2022/23 AML renewal form

Some tips and information for completing your form.

Members currently supervised by CIOT/ATT for anti-money laundering (AML) supervision should receive an email reminder to renew at the beginning of May when the 2022/23 AML renewal form goes live. Here are our top 10 tips to help you complete this year's form:

1. The renewal form can be accessed at pilot-portal.tax.org.uk. You can use this link if you don't have your email.
2. The form works best if accessed through the following browsers:
   - Microsoft Edge v86 or higher
   - Google Chrome v86 or higher

   Members have previously experienced problems using Firefox and Internet Explorer so these browsers are best avoided.
3. Your renewal form must be completed by midnight on **31 May 2022.**
4. It is a legal obligation under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as amended, to be supervised for AML at all times. If you fail to renew on time, you will be referred to the Taxation Disciplinary Board for a fine/disciplinary action.
5. The cost of supervision for 2022/23 has not increased and remains at £310.
6. At Q.31, you are asked: 'Do you check HM Treasury's Financial Sanctions consolidated list of targets and the Home Office's Proscribed terrorist groups or organisations list as part of your client due diligence procedures to ensure you are allowed to act for a client?' This is particularly important this year, given the situation with Russia and Ukraine. Further information can be found at: www.tax.org.uk/new-financial-sanctions-in-relation-to-russia www.att.org.uk/new-financial-sanctions-relation-russia
7. For sole practitioners, on questions that relate to 'all staff and principals', you should include yourself as a principal in your response (except for Q.35 which relates to communicating policies and procedures to staff where you can put 'N/A').
8. You do not need to repeat criminality checks for existing beneficial owners, officers and managers (BOOMs) but you do need to carry out criminality checks for any additional BOOMs appointed on or after 1 June 2021 and email the results to us separately at: aml@tax.org.uk.
9. When putting the number of BOOMs on Q.47 of your form, remember to include yourself.
10. There is an opportunity at the end for you to make sure you review and edit your form before it is submitted. This is helpful if completing the form via your phone, as experience has shown that it is easy to hit the wrong button and give an erroneous non-compliant answer.

CTA address

Margaret Hodge to give CTA Address


Margaret Hodge

Dame Margaret Hodge MP is to give this year's Chartered Tax Advisers' Address on the subject 'What does a responsible tax system look like?'

She will give a 30 minute keynote speech and then join a panel to respond to questions from the audience. The new CIOT President Susan Ball (who takes office the previous week) will chair the debate.

Margaret Hodge has been the Labour Member of Parliament for Barking since 1994. She held several government positions in the last Labour government, holding portfolios across education, work and pensions, business and culture. From 2010 to 2015, she was Chair of the House of Commons Public Accounts Committee, a period when the committee took a heightened interest in scrutinising HMRC and the tax affairs of multinational companies. She has chaired the All Party Parliamentary Group on Responsible Tax since 2015 (since 2020 the All-Party Parliamentary Group on Anti-Corruption & Responsible Tax).

The CTA Address will take place at One Birdcage Walk on Tuesday 7 June 2022 from 18.30 to 20.00.

Please visit www.tax.org.uk/ctaaddress2022 if you are interested in attending.

A MEMBER'S VIEW

Banin Oozeerally

Manager, Hentons

Why did you pursue a career in tax?

Although I did well in numerate subjects, I also enjoyed writing at school. This encouraged me to look into career options that would enable me to use both skills.

My interest in tax grew when I started working alongside a tax practitioner about 12 years ago. I found our conversations about tax engaging and was keen to improve my knowledge. He guided me on how to interpret rules and use the legislation. It gave me insight into the fast-paced learning environment that I thrive in.

What are the highlights of your career so far?

My appointment as a Council member of ATT in 2021. The support which I received as an ATT student and member has been invaluable in my professional development. It is an honour to give back to the Association through my work as a Council member and being a volunteer on some of the Steering groups. It is also a wish come true, as this is a role I have been attracted to since my student days.

Why is the ATT qualification important?

The ATT qualification offers a broad coverage in terms of the various types of taxes, professional ethics and understanding of the business legal framework. It is a strong qualification on its own that gives you recognition as a tax professional and opens doors for several career options.

What advice would you give to people starting off in their career?

Surround yourself with people that nourish you. You should build on your skills by absorbing as much as possible from colleagues and client work. This will also allow you to explore which area you would like to develop your career in. Everyone's definition of success can be different and sometimes things may not work out as planned. However, your efforts and patience will ensure that you will always land somewhere better.

How would you describe yourself in three words?

Determined, empathetic and curious.

As a tax professional, who influenced you?

I would like to give credit to all my mentors. They have all influenced me positively with their knowledge, work ethics and passion. They showed me that it was important to focus on both the big picture and small details. I learned that consistency was crucial in achieving long-term success.

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

Compliance obligations are constantly evolving and these often come with global implications. However, skills in non-tax areas such as technology and data analytics will be as important as having technical tax skills. The use of technology is not new but it has now taken a bigger dominance in our business lives. As it delivers more in terms of automation of processes and real-time sharing of information both within the UK and across tax jurisdictions, we will have to maintain the edge by adding value to the services we offer. It will be challenging but exciting on a professional level.

What advice would you give your future self?

Stop worrying about tomorrow and focus on today. Winnie The Pooh is one of my best-loved characters and A.A. Milne hit the nail on head when he penned, 'Today is my favourite day.' I draw inspiration from those words.

What may others be surprised to know about you?

My family and friends are often surprised that I know London and its suburbs so well considering I did not grow up here. They say that the best way to explore a city is by foot and it has definitely been true for me.

Contact

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

Technical work

Spotlight on the ATT Technical Steering Group

The technical work of the ATT is set and guided by the Technical Steering Group (TSG). Unlike the CIOT, which has a number of sub-committees focusing on different areas of tax, the ATT's TSG has a single sub-group – for VAT. The TSG itself oversees the complete range of technical work carried out by the ATT. In addition, the ATT shares some joint technical committees with CIOT, including the Digitalisation and Agent Services Committee and Climate Change Working Group.

TSG meets four times a year – virtually during the last year – and is co-chaired by Michael Steed and Jon Stride. From July, Senga Prior will be taking over the reins as chair, with Jon Stride as vice-chair. The breadth of taxes covered is reflected in the breadth of the group's membership, from sole practitioners to Big 4 and in-house. The full membership of the group is available at www.att.org.uk/TSGwho.

The TSG is supported by ATT's three Technical Officers, who carry out much of the day-to-day work. This includes representing the ATT at meetings with HMRC, HMT and the OTS and drafting responses to consultations. We maintain the technical pages of the ATT website – which received over 1.8 million hits last year – and produce a monthly newsletter *Employer Focus*.

As part of the ATT's educational remit, we contribute articles to journals and online publications such as *Taxation*, *AccountancyAge* and *AccountingWEB* (as well as *Tax Adviser*, of course) and are regularly invited by local and national radio to comment on major tax changes. We also help to support the ATT Annual Conferences and hold joint events with AAT and CIPP.

In addition to the members of TSG, a further group of contributors also provide feedback on consultations, draft legislation and day-to-day tax issues. The views and comments received from TSG members and contributors are invaluable, as they help to ensure that ATT responses to HMRC reflect the views of the membership and are informed by members' practical experiences. Only by making well-considered submissions and contributions can the ATT expect to influence the development of tax law and practice.

In recent months, the ATT has been heavily involved in MTD and basis period reform, engaging in formal consultations with HMRC as well as information and ad hoc discussions.

In recent months, the ATT has been heavily involved in MTD and basis period reform, engaging in formal consultations with HMRC as well as informal and ad hoc discussions. These areas will be a key focus for many ATT members in the coming years, and we are pleased to have the opportunity to engage with HMRC, especially when it comes to the practical aspects of policy implementation.

Members' concerns with HMRC's performance have also been a major concern for the past year. We are working with HMRC in order to seek practical improvements both across the board and in specific problem areas like the UK Property Reporting service.

We have also started working with HMRC on improving guidance (and hopefully processes) around bereavement and estate administration. Some welcome tweaks to HMRC's manuals were made recently at our request.

The VAT sub-group deals with any VAT issues relevant to ATT members. HMRC performance is also current focus of the VAT Sub-Group, and we continue to raise concerns and queries through the Joint VAT Consultative Committee (JVCC). Following representations from the ATT and other professional bodies, we were pleased to see HMRC change their approach to dealing with delayed VAT grouping registrations (see www.att.org.uk/vat_grouping).

In the coming months, MTD will inevitably remain a large part of our work and we will shortly be seeking members' views to inform our response to the OTS Review of property income.

If you would be interested in joining TSG, please get in touch with Jane Ashton at jashton@att.org.uk. We would be particularly keen to hear from members with experience of corporate or Scottish/Welsh taxes and those involved in MTD changes.

AGM

Chartered Institute of Taxation: Notice of Annual General Meeting

The Annual General Meeting of Members of the Chartered Institute of Taxation will be held on Tuesday 31 May 2022 at 16.45. The meeting will be held via Zoom.

Civica Election Services have been appointed as scrutineers for the CIOT AGM 2022. Access to the AGM Notice, Annual Report and Statutory Accounts and information regarding those standing for election to Council was provided through links in an email sent to Institute members by Civica in late April. The Civica proxy voting site can also be accessed via that email, together with information on how to book attendance at the virtual AGM. There will be a reminder email sent in May.

If you prefer to receive a hard copy of the proxy form, please email: support@cesvotes.com or telephone: 0208 889 9203 and a form will be sent to you in the post with a reply-paid envelope. You will have until 29 May 2022 to return the form.

A copy of the proxy form, AGM Notice and Annual Report and Statutory Accounts will also be available on the CIOT website later this month: www.tax.org.uk

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Corporate / Mixed Tax: Senior Manager - Director

Ever wondered about escaping the rat race? Thought about moving somewhere where good housing is affordable, the schools are great and the quality of life is high?

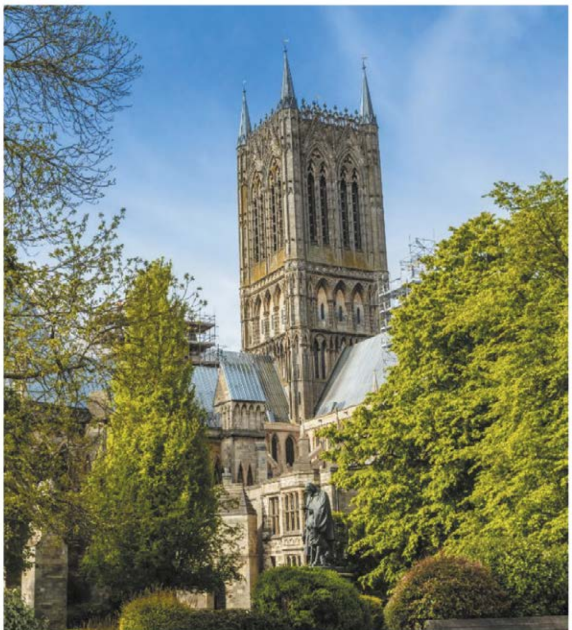
Wright Vigar are experiencing fast growth and as a result, we have opportunities available for experienced senior Corporate Tax or Mixed Tax professionals who can provide advisory services to our growing client base. The role would principally involve providing tax advisory services to our corporate and family company client base, and also supporting and helping to oversee our corporate compliance function.

We are an independent firm with a strong family ethic and our clients are typically owner-managed businesses or high net worth individuals of all different shapes and sizes. We aim to be our clients' long-term trusted partner and many of our clients have been with the firm for many years.

The roles would primarily be based at our Head Office in Lincoln or at our Nottingham office, from which we provide tax advisory services to our offices across the East Midlands region.

We offer flexible hybrid working, competitive salaries, and a range of other benefits and we pride ourselves on being the friendliest place to work in the region.

Please contact our HR Manager John Richmond on WV.HR@wrightvigar.co.uk or 0845 880 5678



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CHARTERED ACCOUNTANTS

Tax and Treasury Accountant
Southwark, London
To £70,000 + benefits

Great opportunity to be part of a new in-house tax and treasury team based in central London. This role combines a mix of corporate tax and treasury for a truly global consulting group. The ideal candidate will have strong tax expertise of international groups, with knowledge of UK GAAP, including tax and treasury accounting in a group scenario. Ideally, you will already have some treasury experience, but applications also considered from corporate tax or transfer pricing specialists who would like to broaden their experience. Excellent salary and benefits package. Hybrid working, ideally 2-3 days in the office. **Call Georgiana Ref: 3236**

In-house Tax Senior
York
To £27,000 + benefits + bonus

This is an excellent opportunity for a tax specialist to move into industry. You will likely be an ATT qualified person working in a mixed tax role. This may also be your first move out of the profession and into an industry role, having worked for a small/medium sized professional firm. The role may also interest someone qualified by experience or someone holding a higher tax related qualification but looking for reduced hours. You must have experience of preparing corporation tax computations and be able to research a tax problem. Any experience of VAT and property issues desirable. **Call Georgiana Ref 3223**

Corporate Tax Staff –
ACA or ICAS qualified
Melbourne and Sydney, Australia

Has Covid interrupted your plan to work overseas? Are you looking for a chance to travel and work abroad? Our client is looking for chartered accountants with a UK or Australian tax background, and you can be based in either Melbourne or Sydney! These roles come with visa sponsorship, help towards relocation if required and plenty of opportunity for personal and professional development. This firm's client base ranges from dynamic family owned businesses to global multinationals. Your role will include a mix of compliance and advisory work, and you will also have the chance to work in specialised areas. The firm is renowned for supporting client contact from day one, and you will be mentored by a partner. **Call Georgiana: Ref 3211**

Corporate Tax Asst. Manager or Manager
Hull
£35,000 to £50,000 + benefits

Large accountancy firm in Hull seeks a corporate tax specialist. In this role, you will help clients to improve their compliance and reporting processes and tax audit work. Clients range from dynamic OMB's to major global groups. You will have considerable client contact and will be a trusted advisor to your portfolio. This position would suit someone who is qualified (ACA, ICAS, ATT, CTA, ex Inspector or ACCA) and who has a solid grounding in corporate tax for group companies. Applicants from smaller practices and industry would be welcomed as well as individuals from larger firms. This firm offers hybrid and flexible working and a great benefits package. **Call Georgiana 3230**

Personal Tax Roles
Bromsgrove, Worcestershire
£excellent

Our client is one of the leading sports, media & entertainment accountancy firms in the UK, with offices based in Bromsgrove in the Midlands and Soho in central London. The firm focuses on providing an extremely personalised service to individuals and businesses in the sports, media and entertainment market, and act for some of the biggest worldwide names in these respective industries. As a result of exceptional growth, the firm is looking for three new hires in either Bromsgrove or London at Tax Senior, Assistant Manager and Private Client Advisory Manager level. **Call Georgiana Ref:3213**

Corporate Tax adventure
Dublin and Galway
€65,000 to €120,000

One of the largest accountancy firms in Ireland seeks to hire qualified tax staff at every level from Assistant Manager to experienced Senior Manager. They offer visa sponsorship for individuals trained in the UK, Canada, New Zealand, Australia or South Africa. Excellent quality corporate tax work including full training on Irish tax, and plenty of scope for personal and professional development. So if you have had your travel plans curtailed by Covid, here is a really interesting adventure. ACA, ICAS or CTA ideally. Hybrid working and good holiday allocation to enable you to explore Ireland. **Call Georgiana Ref: 3217**

Treasury Tax Senior Manager or Manager
London or Birmingham
£50,000 to £95,000 + benefits

Our client is establishing a specialist Treasury Tax team to provide high quality advice on a broad variety of treasury tax related matters across a range of service lines and industry sectors. This new team seeks individuals with strong corporate tax and relevant accounting knowledge and ideally some existing familiarity with the UK's loan relationship and derivative contract regimes (including the disregard regulations) and related matters (e.g. corporate interest restriction, anti-hybrids, distributions legislation, withholding tax, etc.). This is an opportunity to specialise in Treasury Tax work and be part of a new team at its instigation. **Call Georgiana Ref:3234**

Tax Advisor – all round advice
Leicester or home working
£40,000 to £50,000

A fantastic opportunity has arisen to join an established and growing telephone tax advice team providing advice on a variety of issues in line with agreed service level agreements and KPI's to partnership and affinity group clients. The role includes the promotion and the fulfilment of additional consultancy work. Our client will consider those qualified by experience or ATT, CTA qualified. Ideally, you will have experience as a telephone tax adviser or in a professional firm, have good working knowledge along with a strong technical background of advising on a range of issues including income tax, self-assessment, corporation tax, SDLT amongst others. **Call Georgiana Ref:3237**

VAT Senior Managers
Leeds or Manchester
£50,000 to £80,000 + benefits

Our client is a large accountancy firm. They are looking for several hires at senior manager level to be based in either their Leeds or Manchester offices. Will consider an experienced manager looking for a step up to senior manager. Client base is diverse, ranging from OMB's to global multinationals and not for profit organisations. Part time and flexible working arrangements as well as hybrid working available. Great salary and benefits package and a friendly team with plenty of scope for promotion. Would consider someone looking to move back to practice from industry. **Call Georgiana Ref: 3240**

Personal Tax Compliance Manager
Leeds or York
£38,000 to £47,000

Our client is a large independent firm of accountants. This growing firm is looking for an experienced personal tax specialist to run a portfolio of clients and help manage a team of tax seniors and assistants. In this role, you will focus on personal tax compliance and client management. You will work closely with directors and partners and will be a key hire within the business. Full or part time working considered – this firm also offers hybrid working. You may be ATT or CTA qualified or will consider those qualified by experience. **Call Georgiana Ref: 3222**

Private Client Roles in a Law Firm
London
£excellent

Two great roles based in a new team within a successful longstanding commercial law firm. They seek both an experienced senior manager and a consultant/manager. These are client facing roles managing a mix of complex compliance and advisory work for ultra HNW clients, entrepreneurs and business owners. You will work closely with the private client and commercial legal teams. Plenty of scope for progression – these roles are the start of a whole new division. **Call Georgiana Ref: 4001**

VAT Manager – In-house
Bradford
£40,000 to £50,000 + benefits

Our client is the shared service centre of a major Plc. They seek an experienced VAT specialist to join a friendly team. This in-house role is reporting and compliance focused, and would suit someone who already has some in-house experience or who enjoys improving processes. Hybrid working (likely 2 days in the office, and there is parking). You might be someone in a tax accounting role looking to specialise in indirect tax. **Call Georgiana Ref 3213**

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