October 2022

TAXADVISER

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Paying Tribute

Praise for the dedication and service of Her Majesty Queen Elizabeth II

The cost of living crisis

Tax implications for employee assistance

Going for growth

Significant tax changes announced in the fiscal event

Issues of digital compliance

CIOT's new Diploma in Tax Technology

HELEN WHITEMAN
JANE ASHTON

Welcome
An exceptional sense of duty

We were both deeply saddened by the death of Her Majesty The Queen. She has been an integral part of the context and fabric of life in the United Kingdom for more than seven decades and has served with a sense of duty and dedication that is truly exceptional.

All at ATT and CIOT send our heartfelt sympathy to the Royal Family. Our presidents have signed the book of condolence on behalf of the two organisations.

We were also deeply saddened by the news of the death of Robin Williamson CTA (Fellow). Robin was an early LITRG volunteer, playing an instrumental role in setting up the charity Tax Help for Older People in 2001 after which he went on to become LITRG's first Technical Director, serving in the role from 2003 to 2018. Robin will be hugely missed by all, but his legacy lives on. A fuller tribute can be found on page 39.

September certainly felt like the start of a new school year, with meetings and events filling up our calendars. At the ATT Prize Winners lunch, we celebrated with 28 students who had won prizes in the last few sittings of the examinations. It was lovely to meet with them and their families and we wish them every success in their career.

It was equally great to be able to hold the CIOT parliamentary reception in September, after two years when Covid closed Parliament to outside events, and after having to postpone it from the initial date in June due to train and tube strikes. It was held on the first day back after the summer recess which was also, as it happened, the day of the announcement of the new Conservative leader, who would be appointed as Prime Minister the next day. Quite a day to be in Parliament!

We were joined in the Churchill Room of the House of Commons by MPs and peers from government and opposition, including the event's parliamentary sponsor Craig Mackinlay CTA. It was warming to hear the Financial Secretary to the Treasury, Lucy Frazer, praising the work of Tax Aid and Tax Help for Older People, as well as paying tribute to our contribution to the tax policy process. It is good to know the work of our technical teams is valued. By the end of the week, Lucy had been reshuffled to a new position at the Department for Transport (we wish her well) but we look forward to continuing our constructive relationship with ministers and officials alike under the new administration.

CPD events have started up after the summer break. On 22 September, the ATT and CIOT technical teams presented a free webinar to update attendees on the latest information on MTD for Income Tax Self-Assessment (MTD for ITSA) ahead of it coming into effect in April 2024. This was well attended and there were many questions which we will continue to feed back to HMRC.

On 11 October, ATT Fellows can join a free webinar where they can meet other ATT Fellows and join in the discussion on a number of topics. The main session will cover 'The many tentacles of the Trust Registration Service – not just a problem for trust advisers' and will be presented by Helen Thornley. If you are an ATT Fellow, look out for your invitation and details of how to register.

November is an opportunity to welcome you back to our first in-person Scottish branch conference for three years at the Stirling Court Hotel. Set over two days (4 to 5 November), the conference offers the opportunity to hear from a range of quality speakers and to network with fellow tax professionals from around the UK.

Also returning in November is the Joint AAT/ATT Sharpen Your Tax skills series. This year, Rebecca Benneyworth will update us on the recent legislation and take us through some practical examples. We have three dates for this which are 7, 9 and 25 November.

For more CPD and professional skills updates, we would recommend that you look at your local branch programme, where branches are offering free and low cost CPD on a variety of subjects. Some meetings are resuming face to face, and others are online, so there is something for everyone.

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ONLINE PICKS OF THE MONTH

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Stressed and distressed businesses
Helpful measures and potential pitfalls
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What issues can impact an individual's tax status?
bit.ly/3UHnOcL

CHARLOTTE BARBOUR
VICE PRESIDENT

Our heartfelt condolences

> We were immensely proud and delighted to be granted our Royal Charter by Her Majesty Queen Elizabeth II in 1994.

Charlotte Barbour
Vice President
president@ciot.org.uk

Chartered Institute of Taxation.

To begin with, may I join our President Susan Ball in sending heartfelt condolences on behalf of the CIOT to the Royal Family following the death of Her Majesty Queen Elizabeth II.

It is an honour and a privilege to be an office bearer and trustee of the CIOT and I've outlined below some of the recent CIOT activities in which I've been involved.

With the summer holidays over, we are moving towards the autumn schedule of events and branch meetings. As I write, I was preparing to go to Cambridge for the annual conference but due to the period of national mourning, the conference has been cancelled. The Scotland Branch has also scheduled an in-person conference (4 and 5 November) in Stirling and, of course, the branch welcomes attendees not only from Scotland but from across the United Kingdom and beyond. It's my local branch and I'm very much looking forward to catching up with friends, making new acquaintances with fellow tax practitioners and being able to discuss tax face to face. (Microsoft Teams has its uses but it's so much more enjoyable to talk in person.) I particularly value the conferences which offer a spectrum of updates as this helps to maintain an awareness across the taxes.

I do feel strongly that the work and activities carried out by the branches and at the conferences are at the core of our remit as a charity to promote education and the study of the administration and practice of taxation. And so I'd like to take this opportunity to thank the wonderful events team in CIOT HQ, and all the volunteers elsewhere who put so much time and expertise into running the branch events, providing an invaluable resource to members across the country.

Do start attending the in-person events again if you can – it's certainly something that I've missed in the last couple of years. I know that the branches always welcome new volunteers to assist and, of course, as many attendees as possible at meetings and events increase their value in every way.

The autumn programmes are designed to offer topical updates and cover as wide a range of technical issues as possible. They also address professional standards. Part of being a member of a professional body is about gaining and maintaining standards – and those standards are both technical and professional. As we are all well aware, there has been considerable focus on this over the past few years from government and its agencies, the media and the public in general.

I am a member of the group of representatives from the seven professional bodies that author the guidance 'Professional Conduct in Relation to Taxation' (PCRT). We meet regularly to keep this guidance current and to refresh it if and when it is thought necessary. Much thought and proactive work has gone into this since 2015 when the outgoing coalition government called upon 'the regulatory bodies who police professional standards to take on a greater lead and responsibility in setting and enforcing clear professional standards around the facilitation and promotion of avoidance'. This work is ongoing, as is contributing to the work being undertaken by HMRC in its 'Raising Standards' agenda into how to improve standards, and the possibility of oversight and formal regulation, of tax advisers. This is not an easy task for HMRC to address but as members of the CIOT we can continue to make sure we work within PCRT, which is designed to support members in their work.

And finally, to revert to the vein in which I began and with the thought very much in mind that the CIOT is a body established under Royal Charter, I would like to add my own warmest wishes to our new Sovereign, King Charles III.

MESSAGE OF CONDOLENCE ON THE PASSING OF HM QUEEN ELIZABETH II SENT FROM THE CIOT

Your Majesty, the King

On behalf of the Council, members, students and staff of the Chartered Institute of Taxation, I would like to express our sorrow on the death of your mother, Her Majesty Queen Elizabeth II, and send our heartfelt condolences to you and your family.

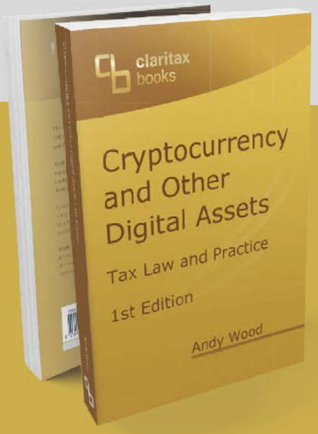
We were immensely proud and delighted to be granted our Royal Charter by Her Majesty in 1994. She was an integral part of the fabric of life in the United Kingdom and the Commonwealth for more than seven decades, serving with a sense of duty and dedication that is truly exceptional. She was such an inspiration to all of us. She was also a unifying force at times of strife and a rallying point at times of crisis.

It is hard to believe she is no longer with us and the sense of loss is profound. We hope that you and the family will be comforted at this difficult time, by the fact that she was held in such high regard.

I have the honour to be Your Majesty's humble and obedient servant.

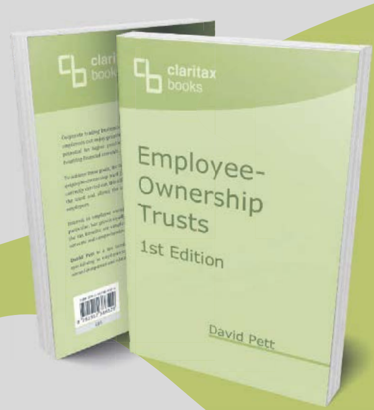
Susan Ball, President, Chartered Institute of Taxation

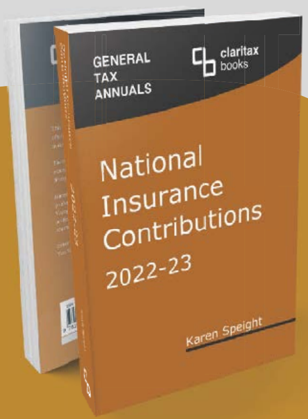
BRAND NEW IN 2022



Cryptocurrency and Other Digital Assets unpacks a whole host of concepts and jargon related to this new class of asset. It explores how established principles of UK taxation – e.g. trading or investment, the nature of income, the location of assets, loss reliefs, other reliefs – are properly applied to the fast-moving crypto world.

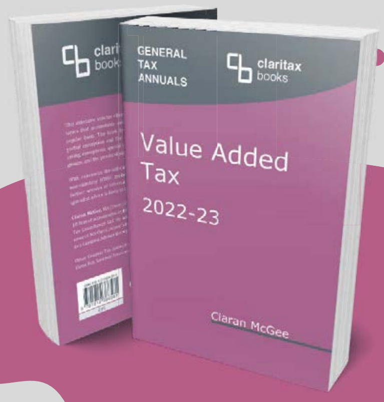
Since legislation was introduced in 2014, there has been a consistent growth in the number of company sales to employee-ownership trusts (EOTs). This book explains the different aspects of establishing a suitable trust, including satisfying the tax requirements to obtain CGT exemption. It also discusses suitable corporate governance arrangements to ensure that the vendors are paid in full and that the business continues to prosper as an EOT-owned company.





National Insurance Contributions offers practical, in-depth commentary on this important and often neglected part of the UK's tax system. All Classes of NIC are covered in detail, with practical examples throughout.

This newly released title offers extensive commentary (over 1,000 pages) on VAT, clearly written at an intermediate level for the non-specialist practitioner. It covers the general principles of VAT, property, cross-border transactions, partial exemption and the capital goods scheme, zero rating and reduced rating, exemptions, special schemes (flat rate, etc.) and issues relating to dealing with HMRC.



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SIMON GROOM
DEPUTY PRESIDENT

A selfless approach to duty

> One begins to realise the enormity of a 70 year reign.

Simon Groom
ATT Deputy President
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Welcome to the Deputy President's page for October. Deadlines and publication dates being what they are, I am writing this a few days after we learned the sad news of the death of Her Majesty, Queen Elizabeth II. It's often said that you don't miss things until they are gone and for me that seems to be particularly true. One begins to realise that the way she dedicated her life to serving her people, and her selfless approach to that duty, providing the United Kingdom and many other nations with a stability that I now realise I have taken for granted. Over the past few years, we have lived through challenging times, but the Queen has been the one constant, and in some small way that has been a reassurance.

One also begins to realise the enormity of a 70 year reign, particularly when reflecting on how things have changed. When she became Queen in 1952 the NHS was in its infancy, the country was still living with rationing after the end of the Second World War, and to put things into a tax context, the basic rate of income tax was 'nine shillings and sixpence in the pound'. For those of you that are lucky enough not to remember pre-decimal currency, that equates to 47.5%, with a top rate of 97.5%!

Timing also dictates that at the time of writing we are eagerly(?) anticipating the first budget, or 'fiscal event', under the new Prime Minister and Chancellor. As usual, speculation abounds as to what it will contain but if the headlines are to be believed there could well be some significant policy announcements. By the time you read this, we will all be getting to grips with what that means for us and clients.

You might remember from last month's page that I have a particular interest in education, and I was therefore delighted to attend a lunch recently where the ATT was able to honour those who had won prizes in our examinations. Having sat several professional examinations myself I know how challenging they can be, particularly when the candidates have to combine studying at the same time as starting to build their career. To pass the examinations is a great achievement, but I am in awe of those who manage to win a prize, or two.

This was our first Prizewinners lunch for almost three and a half years, the one planned for March 2020 being one of the first casualties of the pandemic, and it was another sign of our long road back to normality. Seven of our prizes are named after the first seven Presidents of the Association and it was pleasing that we were able to welcome three of those Presidents, Peter Gravestock, Frank Collingwood and Trevor Johnson, to award their prizes in person. These occasions are amongst the highlights of our calendar, and an opportunity to celebrate with those that have achieved excellence in our examinations.

I'd also like to remind you of our upcoming series of courses entitled 'Sharpen your Tax Skills' run in conjunction with the AAT. The courses will be held on 7, 9 and 25 November featuring Rebecca Bennyworth and the ATT Tax Technical team. During three live online sessions, Rebecca will take delegates through basis period reform: what you need to know; the cost of living crisis, employee expenses, cars, home working, trivial benefits; and cash basis for traders and landlords – yes or no? In the fourth and final session, Rebecca, together with the ATT technical team, will build on the morning's topics with practical scenarios and case studies to illustrate their significance for your clients and your work. The session will also pick up the implications of any tax changes announced by the new Chancellor. We expect this to be a lively session with a lot of audience participation. This is an excellent opportunity to gain some CPD and the sessions are always very well received.

When I next write, we'll know exactly what was in the upcoming 'fiscal event' and perhaps have a clearer picture of the direction of travel with regards to taxation and national insurance. Until then, I would like to add my own warmest wishes to our new Sovereign, King Charles III.

MESSAGE OF CONDOLENCE ON THE PASSING OF HM QUEEN ELIZABETH II FROM THE ATT

On behalf of the Association of Taxation Technicians, we are deeply saddened at the death of her Majesty Queen Elizabeth II. The ATT would like to offer our sincere condolences to the entire Royal Family as they come to terms with the loss of such as a magnificent figurehead. The Queen selflessly dedicated her life to her country, the Commonwealth and her subjects and was an example to us all. As with much of the rest of the public, the ATT has been in a period of mourning and then reflection on the long reign of the Queen and how our country has changed, evolved and progressed.

David Bradshaw, ATT President

Employer gestures

Missing the target

As the cost of living crisis encourages employers to think creatively about how to support their staff, we examine how this support can fail to deliver.

by Meredith McCammond

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You may remember the furore a few years ago when Greggs announced that a £300 bonus would be paid to all staff, linked into the success of the company's vegan sausage rolls. The furore wasn't because of the gesture per se. It was because it transpired that some workers who were on universal credit would keep just £75 of the £300 pay-outs because universal credit is a means-tested benefit.

The cost of living crisis has seen an explosion of suggestions as to how to employers can support employees. If you are an adviser with employer clients that are investigating some of the main options, this article will help you by looking at the reality of marginal deduction rates and the other weird and wonderful universal credit interactions that you need to be aware of.

First things first: how does universal credit work?

Universal credit is a monthly payment. Broadly, the amount of universal credit a person is entitled to is based on their personal circumstances, their capital and other income, and importantly their net pay in a monthly assessment period. Every time an employer pays someone, a copy of the Real Time Information payroll data is sent to HMRC. This Real Time Information data is shared by HMRC with the DWP for universal credit purposes.

Further detail about how UC works, aimed at employers, can be found at bit.ly/3RYANog.

Giving a pay rise or offering overtime or additional hours

Boosting incomes is perhaps the most obvious way in which employers can support employees, and will likely have the most immediate impact.

From an employee's perspective, earning more means that things like tax and National Insurance might increase, as well as sometimes paying more in pension contributions. But it may also impact on the amount of universal credit they receive, as the higher their wages, the less universal credit they get.

For universal credit purposes, there is a 55% withdrawal rate on net pay. Some claimants are entitled to a work allowance of up to £573 per month before universal credit starts to be progressively withdrawn. See ***Impact of a pay rise on universal credit*** for a basic illustration of how this works in practice.

A one-off bonus

Some employers may not be able to afford an ongoing increase in pay or hours but may prefer to top up an employee's pay with a one-off cost of living payment. However, for some lower paid employees who are near the edge of eligibility for universal credit, a one-off bonus could mean that their income in the universal credit assessment period is high enough to leave a nil universal credit award and close down the claim, requiring another claim to cover the next assessment period. Our understanding is that there is a rapid re-claim process in such cases.

If someone receives a very large bonus or earns much more than usual in one month, this may also affect their universal credit payments in later months. This is known as surplus earnings and is outside the scope of this article; however, more information is available on LITRG's Revenue Benefits website (see bit.ly/3S2jqmk).

Changing pay frequencies

An employer's response to the cost of living crisis does not have to just be about increasing an employee's income directly. Many people these days are paid monthly, as this saves quite a lot of payroll administration for employers. However, this often does not match an employee's cash flow needs. Some employers may be

Key Points

What is the issue?
The cost of living crisis is causing some employers to look for steers on ways to support employees.

What does it mean for me?
As well as the tax implications for employees, where they are lower paid, it is key that advisers understand the universal credit interactions of some of the potential solutions.

What can I take away?
Sometimes they can mean employees may not feel much of the benefit of their employer's generosity – awareness, communication and signposting to specialist support are key.

considering changing their pay frequency to weekly instead of monthly and so allow employees to access their earnings more regularly.

Providing that this isn't done mid pay period, the transition should be smooth for payroll purposes. However there might be universal credit issues. If employees are paid monthly, then one month's net pay should fall into each assessment period, and as a broad rule their universal credit payments should not vary significantly from month to month if their net pay remains broadly the same. (There can be exceptions to this where the payday is close to the beginning or end of an assessment period.)

> **This cost of living crisis has seen an explosion of suggestions as to how employers can support employees.**

However, if employees are paid weekly, then they should be aware that some assessment periods are likely to have four weeks net pay in them and some will have five weeks net pay in them. This means that their monthly universal credit payment will change according to whether there are four or five wage payments in the assessment period.

Employees may need to take care to budget for these peaks and troughs in the payment cycle. Indeed, it may be the case that in five week periods, the extra amount means they receive no universal credit payment at all. There is further information about this on GOV.UK which can help employees to understand when they might see changes to their universal credit award as a result of their pay frequency (see bit.ly/3R0wV5f).

Salary advance

As an alternative to changing pay frequencies, some employers may be minded to offer a salary advance; for example, to help employees deal with an emergency without accruing debt.

For payroll purposes – strictly, where there is an advance of wages (essentially a payment on account of earnings, which is money the employee has earned but which is not yet due for payment) – this is reportable by the employer and taxable on the employee at the time the payment is made. There is, however, an easement for 'ad hoc' payments outside the normal payroll run, which may

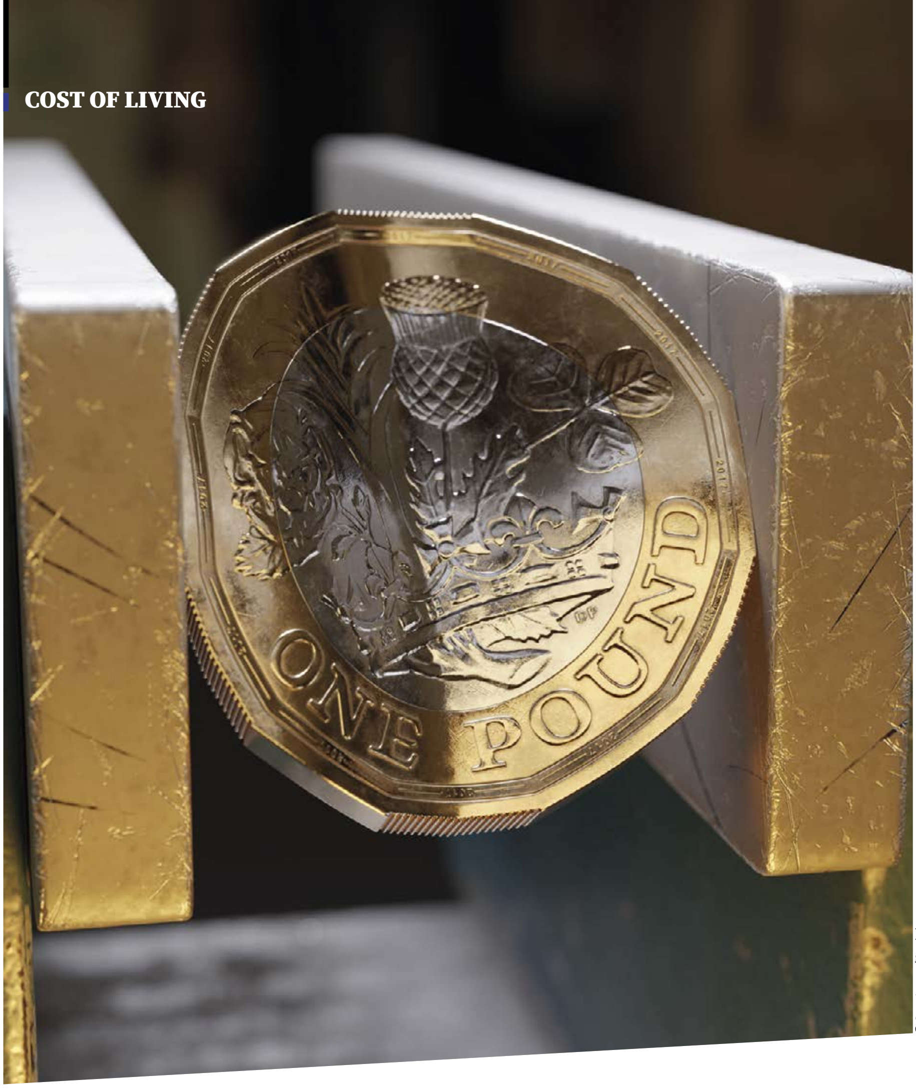
IMPACT OF A PAY RISE ON UNIVERSAL CREDIT

Jenny, 35, is a lone parent. She usually works around 25 hours a week in a pub, at the minimum wage. At £9.50 per hour there is no tax or NIC (earnings of £237.50 per week). Because Jenny is on a low income, in a month where there are five pay days in the universal credit assessment period she receives universal credit of £286.93.

If Jenny's employer were to give her a pay rise or increase her hours such that she received an extra £25 per week, based on current rates, her award would be £236.91 per universal credit assessment period. There is also tax and NIC at 33.25% on her earnings above £242 per week (£6.81 per week).

The true value to Jenny of the £125 gross earnings increase is only £40.93 (assuming there are five pay days in her universal credit assessment period). The Treasury receives the remaining amount (£84.07) in reduced welfare payments (£50.02) and increased income tax and NIC revenue (£34.05).

The marginal deduction rate on the £125 is 67% – and this is before we consider whether Jenny might lose any passported benefits.



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sometimes apply. Further, HMRC guidance on advances and on the difference between a salary advance and a loan can be found at bit.ly/3BIifTJ.

Where an employee is advanced some money (where the easement doesn't apply and it is not structured as a loan), this could place a reporting obligation on the employer and in turn effect the employee's universal credit. If someone receives their employment income early, it can fall into a different assessment period, so it can look to DWP as though they have received more salary in that assessment period than they really have, causing some of the same universal credit fluctuation/cessation issues described above.

Some employers may be considering using a salary advance scheme rather than paying a salary advance themselves. In a salary advance scheme, a third party salary advance company works with an employer to let employees access part of their salary as they earn it, rather than having to wait until their payday.

In terms of how we understand the schemes operate (and given what we say above about the tax treatment of advances), it is interesting that the schemes seem to say that payment of an advance does not impact on the employer's payroll processes. The Financial Conduct Authority has highlighted other risks of using salary advance schemes – for both employees and employers (see bit.ly/3BghlfH).

Beneficial loans and other benefits

A cheap or interest free loan could help employees to buy season tickets or help them consolidate expensive debt. For tax purposes, there may be a taxable benefit if the amount of the loan exceeds £10,000 in the tax year. This is worked out based upon an assumed interest charge at the official rate of interest less any interest the employee has paid.

Benefits in kind that are not taxable, are not treated as income for universal credit, so as well as most beneficial loans, other useful benefits that an employer could provide in the current climate that would not impact on a universal credit award are things like welfare counselling, goods provided at a discount (provided that the amount the employee pays is at least the cost incurred by their employer in making the goods) and free or subsidised meals.

It is of note that 'employed earnings' for universal credit are defined as any amounts that HMRC treat as 'general earnings' – but leaving out any amounts treated as earnings under the benefits code. This means that benefits in kind which HMRC *would* normally treat as earnings, are *not* currently treated as income for universal credit purposes. A full list of benefits in kind not yet treated as earnings can be found in Advice for Decision Making (ADM) Chapter H3 para H3081 (see bit.ly/3S7OjWo).

Although we do not cover tax credits in this article, it is worth us pointing out that this is not the same situation as for tax credits, where taxable benefits in kind are generally counted as income.

Other thoughts

Other solutions may not leave employees worse off or inconvenienced from a universal credit perspective but may still require careful thought where you have low paid employees. For example, implementing a salary sacrifice scheme to help employees with pension saving can not only save them employee NIC but the reduction in contractual pay can increase their universal credit award. However, remember that strictly those at or near the minimum wage should not participate in salary sacrifice – and some lower paid employees may lose out in other ways which will require careful consideration.

Some employers may want to pay or reimburse employee business mileage at more than the HMRC 'approved' amount. As explained in a recent publication (see bit.ly/3djadY6), this brings with it an administrative burden for employers as well as tax and National Insurance implications for employees that they may not be aware of – and yes, you guessed it – potential knock-on effects for universal credit.

None of the difficult universal credit interactions mentioned in this article are arguments for employers not to help staff. If anything, they are arguments that the tax and benefits rules for lower paid employees could probably do with being rethought! The point of the article is to raise awareness, so that the issues can be communicated and any impacts can be anticipated and even mitigated.

We appreciate that many employers won't know whether their employees receive universal credit or not. Even if they do, they're unlikely to be privy to the personal circumstances that determine how the different options could impact them. One practical suggestion for employers who *may* have employees on universal credit and who want to help them by implementing one or more of the options covered, is to signpost them to a welfare rights adviser such as Citizens Advice for advice on how their universal credit could be impacted.

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Going for growth

Examining the 'fiscal event'

by Bill Dodwell

The new Chancellor announced some of the most significant tax changes seen for many years.

The new Chancellor, Kwasi Kwarteng, delivered a 'fiscal event' on 23 September, announcing some of the most significant tax changes seen for many years. The government's focus is on growing the UK economy and it hopes that the major tax cuts announced will support that goal. The cost of tax cuts is estimated by the Treasury at £3.8 billion in the current year; then £26.7 billion in 2023-24; rising to £44.8 billion in 2026-27 – a total of £146 billion over five years. These figures net off the windfall tax on energy producers which is estimated to bring in £7.7 billion this year and a total of some £27 billion. The figures do not include the cost of supporting households, businesses and charities with energy prices. The full documents are at *The Growth Plan 2022: documents - GOV.UK* (www.gov.uk)

Several of the policies announced came from the Prime Minister's leadership campaign – but the announcements went much further.

Business measures

The legislated increase in corporation tax in April 2023 from 19% to 25% will not go ahead (and nor will the planned increase in diverted profits tax, which remains at 25%). The bank surcharge will remain at 8%, instead of the planned reduction. This costs £63 billion over five years. For deferred tax accounting purposes, the new rate will be used once substantively enacted. Since the Finance Bill may not become law until next year, The Provisional Collection of Taxes Act is likely to give effect to the 19% rate. Companies publishing results before this will no doubt record in their financial statements material differences between the rate currently in law and the new lower rate.

The annual investment allowance will be set permanently at £1 million, thereby saving the need to write another article about the complexity caused when the allowance drops. Professional bodies have called for a consistent allowance to help small businesses plan over the medium term. However, there is no replacement for the two year 130% super-deduction, which expires on 31 March 2023 (although there will be some technical amendments to manage the retention of the 19% rate).

Business also may benefit from increases in the limits to Seed Enterprise Investment Scheme and to Company Share Option Plan limits (CSOP). A CSOP is a tax-advantaged share option plan, which allows employees to pay only capital gains tax on any gains, rather than income tax and national insurance, provided various conditions are met. From April 2023, qualifying companies will be able to issue up to £60,000 of CSOP options to employees, double the current £30,000 limit. The 'worth having' restriction on share classes within CSOP will be eased, better aligning the scheme rules with the rules in the Enterprise Management Incentive scheme and widening access to CSOP for growth companies. From April 2023, companies will be able to raise up to £250,000 of SEIS investment. The gross asset limit will be increased to £350,000 and the age limit from 2 to 3 years. The annual investor limit will be doubled to £200,000. These changes will help over 2,000 companies a year that use the scheme to grow. The Chancellor also confirmed that the EIS scheme (used by over 4,000 companies annually, with 37,000 investors, raising about £2 billion) and Venture Capital Trusts will continue beyond 2025.

Off-payroll working changes

From April 2023, the off-payroll working rules will be abolished. These rules obliged an engager to determine whether a contractor was a quasi-employee, such that PAYE and national insurance at employer/employee rates be applied. The rules were introduced in 2017 for public sector engagements and 2021 for the private sector. Abolishing the rules means that responsibility for determining the status of the contractor moves back to the individual. This means that contractors will have to re-assume the obligation to assess whether or not they are quasi-employees – not that anyone providing services via a company will automatically escape the rigours of PAYE. The Treasury estimates that non-compliance and potentially the use of more contractors instead of employees will cost £1.1 billion in 2023-24, doubling to over £2 billion three years' later.

© HM Treasury/Flickr

> Several of the policies announced came from the Prime Minister's leadership campaign – but the announcements went much further.

National insurance cut

Finally, business benefits from the reduction in national insurance rates and the abolition of the Health and Social Care levy, due to commence in April 2023. From 6 November, national insurance rates for employers and employees drop to 13.8% and 12%/2% respectively. Annual rates, mainly for directors, will be set at 12.73% and 2.73%, taking effect from Royal Assent to the new abolition Bill. Class 1A (not paid monthly through RTI) and 1B will be set at 14.53% for the 2022-23 tax year.

The main and additional rates of Class 4 will be set at 9.73% and 2.73% respectively for the 2022-23 tax year. These strange rates are of course because for self-employed individuals, national insurance rates are levied on an annual basis.

Investment zones

The Chancellor announced the creation of low-tax, low-regulation investment zones in every part of England and will encourage Wales, Northern Ireland and Scotland to follow suit. Discussions have started with 38 local authorities. The zones will, for 10 years, offer:

- 100% first year enhanced capital allowance relief for plant and machinery used;
- Accelerated Enhanced Structures and Buildings Allowance relief of 20% per year;
- 100% relief from business rates on newly occupied business premises and some existing businesses expanding into an Investment Zone tax site;
- Full stamp duty land tax relief for land and buildings for commercial purposes, and for land or buildings for new residential development; and
- A zero rate for Employer National Insurance contributions for new employees working in the tax site for at least 60% of their time, on earnings up to £50,270 per year.

The government hopes that the zones will lead to enhanced activity in the UK rather than displacement of existing activities.

Income tax

Many had speculated that the government would accelerate the introduction of a new 19% basic rate of tax – and so it proved to be. This awkward to calculate rate take effect from 6 April 2023. Gift Aid to charities will remain at 20% for four years, to allow them to prepare for the impact of the reduction in their income. No one had speculated that the 45% additional rate of tax would be abolished – but it is disappearing from April 2023. This rate is currently paid by about 630,000 individuals – some 2% of income taxpayers. The Government anticipates that many taxpayers will defer bonuses and other variable income until after April. Making tax-deductible pension contributions and gift aid donations before the rate drops will also save tax. This is estimated to cost about £2.3 billion in the current year, part of which will be recaptured next year, before the annual cost settles at about £2 billion.

These rate changes do not apply in Scotland, which sets its own rates and thresholds for income tax. Rates are announced in the autumn budget and need to be enacted by February if they are to take effect in time for the new tax year. Wales also sets its own rates but in a much more limited fashion and it cannot set thresholds or introduce new rate bands. Following the reduction in national insurance, the rates of tax on dividends will return to their original levels across the UK from 6 April 2023. The rates will be 7.5% for basic rate taxpayers and 32.5% for higher rate taxpayers. This will cost about £1 billion annually, after some transitional impacts.

No changes were announced to income tax or capital gains tax thresholds, which remain frozen for four years.

Stamp duty land tax

The Chancellor announced immediate permanent reductions in stamp duty land tax in England and Northern Ireland. The nil rate band is being doubled from £125,000 to £250,000. First time buyers see an increase in the nil rate band from £300,000 to £425,000. Other rates and bands remain unchanged and the additional 3% rate remains. Scotland and Wales set their own rates and thresholds (and base) as tax in this area has been fully devolved.

Other matters

VAT-free shopping for visitors will be re-introduced, having been abolished after Brexit. The exact timing for the new scheme, which will be operated digitally, has not been announced although the mini-budget costings show it starting in 2024. It is expected to cost about £2 billion annually after the first year and is intended to restore the competitiveness of the UK compared to other European destinations.

Finally, the Chancellor decided to close the Office of Tax Simplification, which came into being in 2010 and was placed on a statutory footing in 2016. The Chancellor said that the government will embed tax simplification into the institutions of government and set a mandate to the Treasury and HMRC to focus on simplifying the tax code. The OTS has said it will publish its review of Taxation of Property Income and continue to gather evidence on Hybrid and Distance Working. It will not commence new projects.

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Radical changes
Late VAT payments

The new penalty regime to be introduced by HMRC on 1 January 2023 will be much fairer than the current default surcharge system.

by Neil Warren

Key Points

What is the issue?
A new penalty system will be introduced for VAT periods beginning on or after 1 January 2023. According to HMRC, it will penalise 'only the small minority who persistently miss their submission obligations rather than those who make occasional mistakes'.

What does it mean for me?
A VAT registered business will be charged a 2% penalty for VAT not paid by the end of day 15 after the due payment date. There will be a further 2% penalty for tax still unpaid by the end of day 30. An annual penalty rate of 4% will apply thereafter until the tax is finally paid.

What can I take away?
Late payment interest will be charged on all tax paid late. It will be charged at annual rate of 2.5% above the Bank of England base rate. There is a big incentive to pay all tax owed as quickly as possible, to avoid both penalty and interest charges. A formal time-to-pay agreement reached with HMRC will prevent penalties being charged but not interest.

1 January 2023 will be a massive date in the VAT calendar. The longstanding and very draconian default surcharge regime will be replaced by a new system to penalise late payments of VAT returns. I ask you to join me in a toast to the policy section in HMRC that decided to end both the existing system and for its work in creating the new regime, which will definitely be much fairer. Well done!

To cut to the chase, the aim of the new system will be to penalise persistent offenders – rather than taxpayers that are, say, one day late with their payment because of an oversight in their diary or confusion with their online banking arrangements. And, quite rightly, the new system will increase the penalty – and also introduce an interest charge – according to how long the payment is outstanding.

For example, a 2% penalty will be charged for tax owed at the end of day 15 after the due payment date; and a further 2% will be charged for tax still outstanding by the end of day 30. And an annualised penalty rate of 4% will apply thereafter. Every VAT registered business will have a clear incentive to pay its VAT bill as soon as possible – a good thing!

Limitations of the current system

The main problem with the current default surcharge system is that a business gets the same penalty for being one day late with its VAT payment as one year. Defenders of the system will highlight the fact that you get a lifeline with your first late payment – HMRC issues a surcharge liability notice. Smaller businesses with annual sales of less than £150,000 get two lifelines. And if the business makes its payments on time for the next 12 months after receiving a surcharge liability notice, it regains its lifeline.

The other main condition is that the surcharge increases with each default from 2% to 5%, then 10%, and finally 15%. So, by the time that a business hits the dreaded 15% rate, it will have paid tax late at least five times. It should have got its act together by then!

To illustrate the draconian nature of the existing regime, many VAT enthusiasts will remember the First-tier Tribunal case of *Susanna Posnett* [2016] UKFTT 557. A sole trader journalist made a one-off land sale for £10.36 million plus VAT and which was subject to VAT because of her option to tax election. Unfortunately, she was already on a 15% default surcharge because of minor misdemeanours with her previous periods. So, when she paid her August 2015 return one week late, she was charged a default surcharge of – pause for dramatic effect – the incredible amount of £217,701. She lost her appeal because the law had been applied correctly by HMRC.

With the new system, her penalty would have been zero because she fully paid the tax owed within 15 days of the due payment date. She would only have been charged interest, probably less than £1,000.

Features of the new regime

- If a business pays its VAT late, it will be charged interest from day one. The interest rate will be 2.5% above the Bank of England's base rate. Interest is not a penalty; it is commercial restitution to compensate HMRC for late payments.
- There will be no penalty charged if VAT has been paid by the end of day 15 after the due payment date. So, for example, tax declared on the March 2023 return is payable by 7 May; therefore payment needs to be made by close of play on 22 May to avoid a 2% penalty.
- If any tax is still owed by close of play on day 30 – 6 June 2023 in my example – a further 2% penalty will be charged on this outstanding balance.
- From day 31, an annualised penalty rate of 4% will apply until the outstanding tax is paid; e.g. an extra 1% penalty for payments made three months and 30 days late.
- A penalty is only charged on tax owed on the penalty trigger dates, so there is an incentive to make part payments.
- The new system will apply for periods beginning on or after 1 January 2023, so make sure you pay your January and February 2023 returns on time because the old regime will still apply!

PRACTICAL TIPS TO REDUCE OR AVOID A LATE PAYMENT PENALTY

- **Direct debit:** It makes sense to pay all VAT returns by direct debit, so that HMRC will automatically collect the payment three working days after the due date.
- **Time-to-pay agreements:** No penalty will be applied once a time-to-pay agreement has been accepted by HMRC. So, for example, if an agreement is reached on day 20 after the due payment date, this will avoid a penalty being charged in the first year due to HMRC's temporary 30 day concession explained in the article. However, interest will still be charged from the due payment date.
- **Submit returns on time:** Make sure that your clients submit their returns on time, even if they cannot pay the tax owed by the due date.
- **Make part-payments:** Penalties are charged according to tax owed at the end of days 15 and 30. This gives a clear incentive to pay as much tax on time as possible, and part-payments thereafter to reduce the scope for HMRC to issue late penalty notices and charge interest.

PENALTY CALCULATIONS

Raj, a computer consultant, submitted his VAT return for March 2023 before 7 May 2023 – the filing and payment deadline – but did not pay his tax liability of £100,000 until 7 August 2023 i.e., three months late.

Raj will be charged 2% penalties at the end of days 15 and 30 after the due payment date, and an annualised penalty of 4% for the next two months.

Total penalty:

(£100,000 x 4%) +
(£100,000 x 4% x 2 months/12 months)
= £4,666

Note: As a first-year concession until 31 December 2023, a penalty will not be issued by HMRC if **all** tax owed on a return is fully paid within 30 days of the due payment date. Note the word 'all' to get this concession. See ***Penalty calculations***.

Legislation and HMRC guidance

The relevant legislation about the new system is explained in Finance Act 2021 Sch 26 and s 117. HMRC's published guidance can be found at tinyurl.com/yckz4x2k.

I was initially confused by the statement in HMRC's guidance that a penalty would apply to tax 'you owe at day 15 plus 2% on the VAT you owe at day 30'. The use of the word 'at' seemed to contradict an earlier sentence that: 'You will not be charged a penalty if you pay the VAT you owe in full or agree a payment plan on or between days 1 and 15.' In other words, is a penalty first charged on day 15 or 16? And on day 30 or 31? However, Sch 26 Part 2 confirms that no penalty will be due on tax paid 'before the **end** of the 15 day period'.

A 2% penalty will apply to tax unpaid 'after the **end** of the 15 day period but before the **end** of the 30 day period' (author's emphasis). The word 'period' is confirmed as starting from the day after the due payment date. To quote the old song… what a difference a day makes!

Here are some other practical tips:

- There will be a potential escape route if there is a 'reasonable excuse' for a late payment. However, I expect there will be fewer 'reasonable excuse' appeals because the penalties will be fairer, so there will not be a big financial incentive to put pen to paper and appeal to HMRC or a tribunal.
- If a time-to-pay arrangement is agreed with HMRC, the penalty clock stops ticking. But late payment interest will still be charged on the basis of commercial restitution.
- There is also a potential concession for 'special circumstances'. HMRC has discretionary power to reduce or not charge a penalty for late payment if it considers it appropriate.

As with the current system, the ideal outcome for any VAT registered entity is to pay all tax owed by the due date. The late payment regime will then be as irrelevant as suntan lotion on a rainy day in Manchester. To help achieve this outcome, see ***Practical tips to reduce or avoid a late payment penalty***.

Conclusion

I have focused on the new penalty system for late payments in this article. But, as so often, there's more. For periods starting on 1 January 2023 and later, a new points and penalty system will also be introduced for late VAT returns. This is a radical change from the current system where only late VAT payments are penalised, although a late return still generates a surcharge liability notice. What will this new system mean in practical terms? An interesting outcome is that late repayment returns will be subject to a potential penalty, which has never happened before in the 49 year history of the nation's favourite tax.

You will need to alert your farmer clients about this one – it will be as popular with them as a New York steakhouse is for vegetarians. I will cover the quirks and pitfalls of this system in my next article for *Tax Adviser*.

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Accessing UK pension benefits
Issues for a non-UK tax resident

We consider the progressive pension and tax issues for those individuals planning to retire overseas, or those already retired abroad post-Covid.

by Mike Bonner-Davies, Emma Poynter and Conor Carson

Key Points

What is the issue?
Individuals with UK registered pension savings have significant flexibility over when and how they can take their retirement benefits. Choosing the right path can be complex, especially when they are resident overseas.

What does it mean for me?
Broadly, these rules could be relevant should they access UK registered pension scheme savings within five years of ceasing to be UK tax resident.

What can I take away?
Individuals should consider their options well before beginning to take benefits. They may be able to increase their UK pensions lifetime allowance from the 2022/23 UK tax year value of £1.0731 million by making specific HMRC registrations. The drawing of retirement benefits can be complex where the pension scheme and the member are resident in different jurisdictions.

Following the reopening of borders and the relaxation of Covid-19 related restrictions, individuals planning to retire outside of the UK have picked up their plans to do so. Lockdowns have also seen people reflect on what they want to do with their lives and where they want to retire. Some of those living and working abroad may seek to return to the UK for retirement. With the UK's departure from the EU, Brexit has given rise to challenges for UK citizens seeking to retire in EU countries.

As a potentially dry subject, the options for their accumulated UK pension savings can get overlooked. However, there can often be an associated benefit of retiring abroad. We recap on some of the main considerations of retiring abroad when it comes to UK pension savings and the associated tax consequences of accessing retirement benefits. This article predominantly considers UK defined benefit and defined contribution registered pension scheme savings.

Tax residence position

Pension scheme members are often keenly focused on the income tax treatment of their UK pension savings in the country where they live or intend to live, which can be favourable when compared to the tax rates they had become accustomed to in the UK. However, their residence for tax purposes is the foundation of understanding the tax treatment of their UK pension savings.

Accordingly, members seeking to access their UK pension savings when non-UK tax resident should consider their tax residence position before drawing down on those pension savings. This is a complex area and pension scheme members need to ensure that they have considered any domestic tax legislation in all relevant territories, in addition to reviewing and correctly applying the double taxation agreement (see below) between the jurisdictions involved.

Care is often required and a number of issues must be addressed, including whether the individual might be dual resident or, perhaps as a result of Covid-19 restrictions, has inadvertently become tax resident elsewhere. Mismatches in the tax year between the UK and overseas countries can have consequences.

Individuals choosing to return to the UK after accessing any UK retirement benefits need to be mindful of the UK temporary non-residence rules. These are anti-avoidance rules which subject payments made from a UK registered pension scheme to an individual who is 'temporarily non-resident' to UK income tax, irrespective of the application of the double taxation agreement. Broadly, these rules could be relevant should they become UK tax resident within five years from the date of accessing UK registered pension scheme savings.

Double taxation agreements

Where individuals receive income from one country and are tax resident in another, they may be liable to pay tax in both jurisdictions under each respective country's domestic law. To relieve 'double taxation' in these circumstances, countries generally enter into a double taxation agreement with a view to assigning taxing rights.

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Double taxation agreements and the ‘Pensions’ article contained therein are not all identical. Pensions articles in some agreements do not cover payments that most would assume were pension payments. For example, a wider assessment of the features of a double taxation agreement can include:

- distinguishing pensions derived from employment vs self-employment;
- whether an individual is drawing a pension income stream or lump sum benefit;
- the country of residence of the member at the time that the pension contributions were made;
- the relevance of any ‘Other income’ article of the agreement; and
- any ‘Limitation of benefit’ clause, which could further restrict the benefits of a double taxation agreement.

Individuals with top-up pension entitlements (i.e. outside the framework of UK registered pension schemes) should examine all of the relevant provisions of a double taxation agreement and the domestic tax legislation in all relevant territories if they are to understand their tax treatment. This applies to those with entitlements in:

- Funded Unapproved Retirement Benefit Schemes (FURBS);
- Employer-Financed Retirement Benefit Schemes (EFRBS);
- Unfunded Unapproved Retirement Benefit Schemes (UURBS); and
- International Pension Plans (IPPs).

Double taxation agreements are typically stable. However, it is possible that agreements can be terminated at relatively short notice. We have seen this in recent years with Finland, which terminated its double taxation agreement with Portugal in June 2018 as a result of the personal tax implications of their pensioners in Portugal.

UK defined benefit pension transfers

Individuals with UK defined benefit pension entitlements who are seeking to consider the appropriateness or otherwise of transferring their defined benefit pension rights into another pension structure are required by the UK’s Financial Conduct Authority to seek pension transfer advice (where the transfer value is more than £30,000). This is on account of it being an irrevocable decision with ‘no reverse gear’, which should not be taken lightly.

As the trustees of defined benefit pension schemes typically calculate transfer values with reference to long-dated gilts, the relative strength of transfer values being offered has been consistent with the level of gilt yields.

From the beginning of 2014 until the beginning of 2021, the general trend (and appreciating that gilt yields fluctuate) had been a decline in UK gilt yields, resulting in a general increase in transfer values. Since the beginning of 2021, the general trend for UK gilt yields has been in an upward direction, resulting in reduced transfer values.

Lifetime allowance

The March 2021 Budget confirmed that the lifetime allowance will remain at a level of £1.0731 million until 5 April 2026. Inflation means that more pension scheme members will be drawn into the tax effects of exceeding the lifetime allowance and its accompanying tax charge. Therefore, where possible, members should consider maximising their personal lifetime allowance position by registering for an enhancement with HMRC.

Subject to their associated conditions, there is no deadline for registering for Fixed Protection 2016 and Individual Protection 2016, both of which can give rise to a personal enhanced lifetime allowance of up to £1.25 million.

Those members who have accrued UK pension savings whilst non-UK resident may be eligible for an International Enhancement to their lifetime allowance. Pension scheme member awareness of this option for enhancing their lifetime allowance (and its accompanying complex HMRC conditions) can be low. Since there is a five to six year deadline for applying to HMRC, it can easily be missed.

Compliance and tax reporting

Disclosure to the relevant tax authorities remains a critical part of the overall process of accessing retirement benefits. Care should be given to any reporting requirements in the UK and overseas, depending on the individual's personal circumstances.

Inheritance, estate or wealth taxes

Accessing UK retirement benefits should be considered as part of the individual's wider wealth planning strategy, since any pension drawdown is likely to increase the value of their personal wealth for inheritance, estate or wealth tax purposes. There can also be a misconception that once an individual has left the UK, UK inheritance tax no longer applies to them.

Qualifying Recognised Overseas Pension Schemes (QROPS)

QROPS allow non-UK tax resident individuals with UK pension savings to transfer those pension savings to an overseas pension scheme (which satisfies requisite HMRC conditions).

Subject to detailed rules, transferring to a QROPS in the individual's country of residence can give rise to no UK pension transfer tax charge, whilst transferring to a QROPS in a third country can give rise to the 25% overseas transfer charge. It is then necessary to consider the tax treatment of the accessing of retirement benefits from the QROPS. There can be a preoccupation with the use of QROPS when there are alternatives, and pension scheme members should compare the respective advantages and disadvantages of using QROPS compared to UK pension savings vehicles.

Inbound to the UK

Individuals who are considering a return to the UK after spending some time abroad should consider their options before doing so. For example, in order to optimise their wealth planning, are there any actions that they should contemplate prior to arrival back in the UK? Where they have accrued UK pension savings whilst non-UK resident, they may be eligible for an International Enhancement to their lifetime allowance.

Conclusion

This article provides an overview of the common issues faced by internationally mobile individuals approaching or of retirement age and helps to demonstrate that pension drawdown by a non-UK resident remains a complicated matter. Individuals with material UK registered pension savings should take specific pensions, tax and investment advice tailored to their circumstances, well before proceeding.

Disguised distributions
Private equity considerations

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We consider the real life experience of anti-avoidance legislation to prevent privately owned companies from providing loans as a form of disguised distribution in the context of a typical private equity backed group.

Key Points

What is the issue?
The 'close' company and 'loan to participator' legislation exists as anti-avoidance to prevent privately owned companies or groups from providing loans to shareholders or directors as a form of disguised distribution.

What does it mean for me?
This adds an additional degree of complexity in respect of company and shareholder transactions.

What can I take away?
Where a company or group is deemed to be 'close' for UK corporation tax purposes, consideration should be given to potential tax charges under the 'loans to participator' provisions (commonly known as a 'section 455 charge').

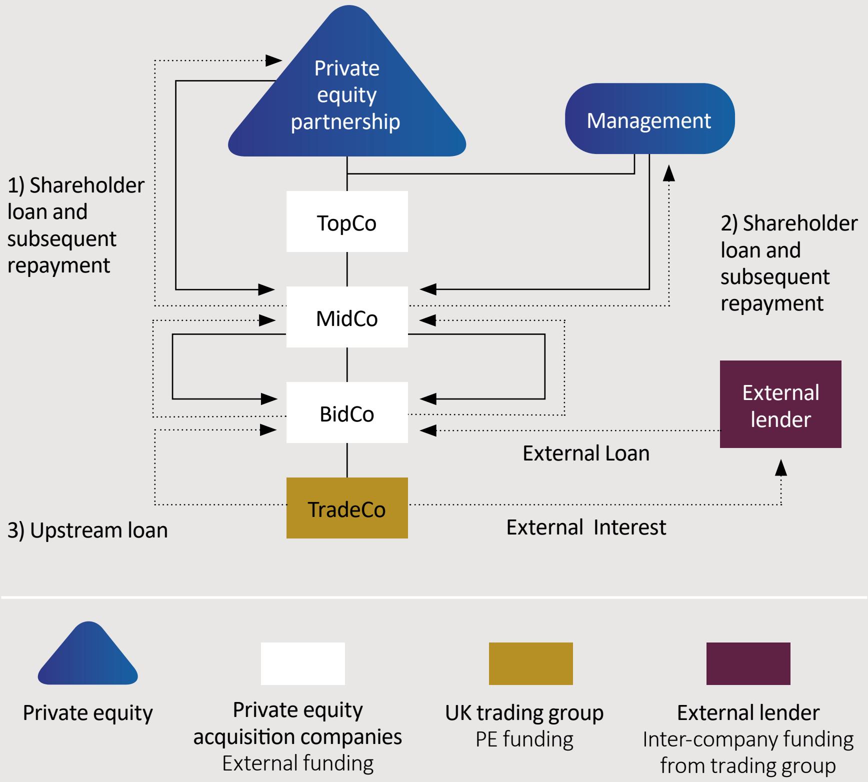
by Mark Smith and Tom Klouda

The 'close' company and 'loan to participator' legislation exists as anti-avoidance to prevent privately owned companies or groups from providing loans to shareholders or directors as a form of disguised distribution. The legislation essentially seeks to treat the loan as if it were a distribution for tax /purposes and charges tax on the company at a rate equivalent to the higher dividend tax rate.

Whilst this is generally the intention of the provisions, the drafting of the legislation is extremely broad, such that seemingly unintended scenarios (such as intra-group loans within close groups) can still be caught.

This article deals with real life experience of these provisions in the context of a typical private equity backed group.

UK PRIVATE EQUITY BACKED COMPANY



This issue may not be considered until it is picked up as part of pre-transaction structuring or due diligence. It adds an additional degree of complexity in respect of addressing the tax risks that may be identified by interested parties as part of an already time pressured process.

Technical recap: 'close' company

Broadly, a company or group is deemed to be 'close' where it is controlled by either five or fewer 'participators' or any number of participators who are directors (Corporation Tax Act (CTA) 2010 s 439). This is an over-simplification, as concluding on whether or not a company or group is 'close' can take a significant amount of analysis. However, for the purposes of this article this overview should be sufficient.

A 'participator' is defined as a 'person having a share or interest in the capital or income of the company' (CTA 2010 s 454).

When determining the level of ownership by a particular 'participator', it is also necessary to include shares owned by their 'associates' (CTA 2010 s 451). Associates include, amongst other things, a participator's relatives and any partners of the participator in any partnership (CTA 2010 s 448)

An 'associated company' is a company that either at that time, or at any other time within the preceding 12 months, has controlled or been under the control of the other; or alternatively have both been under the control of the same person(s) (CTA 2010 s 449). This effectively means that a company which is controlled by a close company is itself treated as a close company.

It is common for a private equity fund to acquire more than 50% of a business in order to secure control, and the fund investment vehicle. The aggregator vehicle behind which the limited partners and general partners sit tends to be some form of partnership. This means that all of the investors in the fund are treated as one participator due to all of the partners being associates.

On this basis, many UK companies that are private equity backed are often considered as 'close' companies for UK tax purposes, even where the company is controlled by a large private equity fund with potentially hundreds of investors.

Implications of being a 'close' company

Where a company or group is deemed to be 'close' for UK corporation tax purposes, consideration should be given to potential tax charges under the 'loans to participator' provisions (commonly known as a 'section 455 charge'). There are other close company implications too, but they are not covered here.

Under CTA 2010 s 455, if a close company makes a loan to a 'relevant person' who is a participator or an associate of such a participator, the gross amount of the loan is liable to a *temporary* corporation tax charge at a rate equivalent to the upper dividend rate for the tax year in which the loan is made (Income Tax Act 2007 s 8(2)), provided that the loan remains outstanding nine months after the relevant lending company's year end. This rate has recently increased to 33.75% (from 32.5%) for loans made from 6 April 2022, in line with the dividend upper rate for individuals.

There are some limited exceptions to the charge, set out in CTA 2010 s 456. This typically covers situations where either the loan is made in the ordinary course of business of the company; or where the loan is less than £15,000, the borrower is a full-time employee of the close company and the borrower does not have a material interest (broadly defined in CTA 2010 s 457 as being not more than 5%) in the close company or any of its associates.

Extension of the s 455 provisions

CTA 2010 s 459 extends the remit of the loan to participator rules by treating certain indirect loans made to a participator from a close company through another person, as being made directly to the relevant participator. The rules broadly apply where:

- a close company makes a loan or advance which does *not* otherwise give rise to any charge under s 455;
- a person other than the close company makes a payment *or* transfers property to *or* releases or satisfies (wholly or partly) a liability of a relevant person who is a participator in the close company or an associate of a participator; and
- the two events – the loan and the payment/release/satisfaction – are part of arrangements made by 'a person'.

Section 459 does not apply if the total income (defined in Income Tax Act 2007 s 23 as the sum of the amounts of income on which the taxpayer is charged to income tax for the tax year) of the relevant person includes an amount that is no less than the loan itself. This effectively means that if the receipt of the payment is subject to tax in the hands of the individual, s 459 will not trigger a second charge. Section 459 will also not apply where arrangements are made by a person in the ordinary course of business carried on by that person. What is meant by arrangements and ordinary course of business is not covered in this article. Section 459(4) confirms that participators in the top holding company of a close company group should be treated as also being participators in the rest of the group.

Real life example

The diagram ***UK private equity backed company*** shows an example of how seemingly unintended consequences can occur in the context of a UK private equity backed company. The timeline of events is:

- BidCo has external bank debt.
- The private equity fund and management each provide shareholder loans to MidCo which are then on-lent to Bidco.
- TradeCo generates profits. External interest payments on the bank debt are settled by TradeCo on behalf of BidCo (as BidCo has no readily available cash).
- This creates an inter-company payable due from BidCo to TradeCo in respect of the interest payment.
- Some of the profits generated by TradeCo are also used to repay the shareholder loans.

In this case, on the wording of s 459, notwithstanding that there is no extraction of value from the group, a s 455 tax charge potentially arises as follows:

- A close company (TradeCo) has made a loan or advance that does not in itself give rise to a s 455 charge (in this case, the inter-company payable due from BidCo).
- A person other than the close company has made a payment (the loan repayments) to a relevant person who is a participator in the company (i.e. management and potentially some investors in the private equity fund).
- The payment has not been included as 'total income' in the hands of the participator.

Not the end of the story?

In a private equity context, the initial loan from the private equity fund, and therefore the subsequent repayment, can be significant, which in turn means the possible s 455 liability would also be sizeable. In such situations, the exceptions set out in CTA 2010 s 456 would typically not apply. There is, however, another possible way in which the exposure to the s 455 charge can be reduced if the private equity fund is prepared to work with the business and provide certain information in relation to the investors in the fund.

The s 455 charge should only apply where there has been some form of payment to a 'relevant person' which is defined in the legislation as either an individual or a company receiving a loan or advance in a fiduciary or representative capacity (s 455(6)).

Whilst the payment to management is likely to be caught in full as it is a payment to individuals, some of the private equity investors may be institutional or corporate investors, which would not meet the definition of a 'relevant person'. In this case, the s 455 charge should be apportioned such that it only applies to the investors which meet the definition of 'relevant person'.

Securing a s 455 repayment from HMRC

The s 455 charge is temporary in nature and CTA 2010 s 458 details how relief is obtained for s 455 tax paid to HMRC – either where the loan or advance is repaid to the lending company or the debt is released or written off. In our example, the advance we need to consider is the intercompany loan made between TradeCo and BidCo. In order to recover the s 455 charge, it is necessary to eliminate this intercompany balance, being the balance within s 459. The elimination of this balance should mean that s 459, and therefore by extension the associated s 455 charge, would no longer be in point.

Whilst there are a number of ways this balance could be eliminated (further commentary on this is outside the scope of this article), these may require distributable reserves to be available.

Where the balance cannot be eliminated, the s 455 charge effectively becomes a sunk cost to the business, rather than a temporary cash flow impact. In the context of the s 455 exposure being a potential adjusting item to the value the owners are expecting to receive as a result of the exit process, the further analysis required to fully understand the ownership structure and potentially mitigate a significant portion of that value adjustment can be critical.

Summary

- As TradeCo is considered to be a 'close company', in a straightforward scenario we would generally only expect CTA 2010 s 455 to apply where TradeCo directly or indirectly makes a loan to a 'relevant person' who is a 'participator' or an 'associate' of such a participator.
- However, as TradeCo has made an upstream loan to BidCo, and BidCo has made a payment that has been received by a participator, CTA 2010 s 459 extends the possible application of s 455.
- Any s 455 charge should, however, only apply to the proportion of the payment that is deemed to have been made to a 'relevant person' – typically an individual or a corporate entity which holds the interest on behalf of an individual.
- Any s 455 charge is technically temporary in nature, but securing a repayment in this situation can be tricky as sufficient distributable reserves may be needed in order to eliminate the upstream intercompany loan balance between TradeCo and BidCo.
- Where the balance cannot be eliminated, the s 455 charge effectively becomes a sunk cost to the business and its investors.

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The Construction Industry Scheme

Avoiding unintended pitfalls

The Construction Industry Scheme can apply to more than just UK construction businesses and property developers. Awareness of and compliance with the scheme is key.

by Lee Knight and James Walkerdine

The Construction Industry Scheme (CIS) is a tax withholding and reporting regime that applies to payments from contractors to subcontractors, made under contracts which include construction operations undertaken within the UK or UK territorial waters (extending 12 nautical miles from the high watermark).

CIS was originally introduced in the 1970s as a preventative mechanism to target tax evasion perceived to be prevalent in the construction industry. It has taken different forms since then with the most recent version being introduced on 6 April 2007 (although there have been more recent adjustments to the rules, most recently from 6 April 2021).

The primary CIS legislation is within Finance Act (FA) 2004 ss 57 to 77 and Schedules 11 and 12. The secondary CIS legislation is contained in the Income Tax (Construction Industry Scheme) Regulations 2005.

Key definitions

To understand the CIS, it is important to define the following terms.

1. Construction operations

These are the services to which the scheme applies and include a wide range of work done to permanent or temporary buildings, structures or the associated land (such as site clearance and civil engineering works). The legislative definition is set out in FA 2004 s 74.

2. Construction contract

A legally binding agreement or arrangement, under which one person (the subcontractor) does work or provides services or labour for another (the contractor) which are construction operations. An employment contract is not a construction contract for CIS purposes, and so the CIS will not apply to payments made by contractors to their employees. The legislative definition is set out in FA 2004 s 57(2).

3. Contract payment

This includes any payment made by a contractor to a subcontractor (or another party, for example someone nominated by the subcontractor) under a construction contract. It can include payments by cash, cheque or credit (such as loan). The legislative definition is in FA 2004 s 60. Certain materials costs are not treated as contract payments and some payments are excepted from being contract payments, namely:

- payments treated as made under a contract of employment under the labour 'agency' provisions (Income Tax (Earnings and Pensions) Act (ITEPA) 2003 Part 2 Ch 7); *
- payments which can reasonably be taken to be for the services of an individual, and where the provision of those services gives rise to an engagement to which the off-payroll working rules (ITEPA 2003 Part 2 Ch 10) apply and are treated as employment income under those rules; *

Key Points

What is the issue?
The Construction Industry Scheme (CIS) is a tax withholding and reporting regime that applies to payments from contractors to subcontractors, made under contracts which include construction operations undertaken within the UK or UK territorial waters.

What does it mean for me?
Deemed contractors may have to operate the CIS immediately after the threshold is exceeded or is expected to be exceeded, and before the next contract payment is made. A continuous rolling 12 month check on construction expenditure is therefore required to monitor construction expenditure against the threshold.

What can I take away?
Mistakes by contractors can be costly as they can be held liable for CIS tax under-deducted from contract payments to subcontractors. If reasonable care has not been exercised HMRC is able to recover that CIS tax for up to six years from the end of the tax year it relates to, together with interest charges and penalties.

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- payments where the person receiving the payment is registered for gross payment at the time the payment is made (there are special rules to consider where the recipient is a partnership); or
- any other payment specifically excepted by virtue of the Income Tax (Construction Industry Scheme) Regulations 2005 Regs 18 to 24 (see CISR17190 to CISR17250).

* This means that the agency rules at ITEPA 2003 Part 2 Ch 7 and the off-payroll working rules at ITEPA 2003 Part 2 Ch 10 take priority over CIS.

4. Deduction

This is the amount of tax that a contractor must withhold and pay to HMRC from a contract payment. The deduction will either be at the standard rate of 20% or at the higher rate of 30%. The legislative definition of a deduction is set out in FA2004 s 61.

5. Contractor

This is the party to a construction contract which is either:

- a business which includes the carrying out of construction operations such as a construction business or property developer (FA 2004 s 59(1)(a)). HMRC refers to these contractors as **mainstream contractors**;
- a business that is not a mainstream contractor but whose cumulative VAT exclusive expenditure on construction operations within the previous 12 month period exceeds £3 million (FA 2004 s 59(1)(l)). HMRC refers to these contractors as **deemed contractors**;
- a type of other body (local authority, housing association, etc) whose cumulative VAT exclusive expenditure on construction operations within the previous 12 month period exceeds £3 million (FA 2004 s 59(1)(b)-(k)). HMRC also refers to these contractors as **deemed contractors**; or
- a subcontractor who engages other subcontractors to carry out construction work (FA 2004 s 57(2)).

A householder having construction work undertaken on their own home is not a contractor in respect of these works.

6. Subcontractor

The subcontractor is a party to a construction contract that carries out, arranges or provides labour for construction operations to a contractor, or is answerable to a contractor for the carrying out of construction operations by others. The legislative definition is set out in FA 2004 s 58.

Subcontractors can fall into one of three categories, namely:

- unregistered: contract payments from contractors require a 30% deduction rate;
- registered for net payment status: contract payments from contractors require a 20% deduction rate; or
- registered for gross payment status: contract payments can be paid without a CIS deduction by the contractor.

Obtaining and keeping gross payment status is beneficial where a deduction would otherwise cause cash-flow issues for the subcontractor. Furthermore, many contractors will only want to deal with subcontractors that have gross payment status because of the administrative burden and risks associated with making CIS deductions. See more on gross payment status and these risks below.

A subcontractor who pays persons below them in the contractual chain for construction operations will also be a contractor for CIS purposes.

7. Tax month

CIS operates in relation to tax months. A tax month runs from the sixth of one month to the fifth of the next month.

Does the CIS only apply to UK construction businesses and property developers?

No, the scope of the CIS is much wider than that. Firstly, HMRC treats overseas contractors and subcontractors in the same way as if they were based in the UK. If a construction project is undertaken in the UK or within UK territorial waters, the CIS will need to be considered and potentially applied. That means overseas based contractors and subcontractors will need to register for and (for contractors only) operate the scheme in relation to UK construction projects.

Secondly, the inclusion of deemed contractors means that non-construction businesses and certain other bodies whose annual expenditure on construction operations exceeds the deemed contractor threshold are within scope.

Deemed contractors may have to operate the CIS immediately after the threshold is exceeded or is expected to be exceeded, and before the next contract payment is made. A continuous rolling 12 month check on construction expenditure is therefore required to monitor construction expenditure against the threshold. The requirement to register is subject to a discretionary period of grace (to be agreed with HMRC) not exceeding 90 days.

Do deemed contractors need to apply CIS to construction expenditure on property they use in their own business?

Under Regulation 22 of the Income Tax (Construction Industry Scheme) Regulations 2005, a payment made under a construction contract by a business treated as a deemed contractor under FA 2004 s 59(1)(l) is not regarded as a contract payment where it is made in respect of premises used for the purpose of the business of either:

- the person making the payment;
- another company within the same group; or
- another company in which the business holds at least 50% of the shares.

Note that Regulation 22:

- exempts the payment not the contractor;
- can only apply to a **business** treated as a deemed contractor under FA 2004 s 59(1)(l); and
- cannot be applied where the property to which the construction operations relate is for sale or let, except where the sale or letting of that property is purely incidental to the business of that person, or it is held as an investment.

Based on HMRC's guidance at CISR12060, it is possible for a deemed contractor to deregister as a contractor where all payments made by them under a construction contract are entirely exempted from CIS under Regulation 22. Interestingly though, neither the HMRC guidance nor the legislation specifically states that a deemed contractor in this position when they first exceed the threshold does not need to initially register as a contractor.

What CIS obligations do contractors have?

Contractors must consider the following obligations which need to be satisfied.

Register as a contractor

The timing of registration depends on the contractor type. Mainstream contractors must register for CIS before paying their first subcontractor. Deemed contractors must register only once they have exceeded, or are expected to exceed, the deemed contractor threshold.

COMMON PITFALLS AND PROBLEMS

- Not registering for and applying CIS as a contractor at the correct time.
- Not identifying when the deemed contractor threshold is exceeded. Ongoing monitoring of construction spend is required.
- Missing that a subcontractor is performing construction operations. The definition of construction operations is widely drawn and complex, and the mixed contract rule must be considered.
- Not applying the correct CIS tax deduction rate. Robust procedures relating to the verification of subcontractors are important.
- Not applying CIS tax deductions to purported materials and plant hire costs that should have suffered a tax deduction.
- Not considering employment status, employment intermediaries and 'IR35' obligations before the CIS. These rules take priority over CIS rules and are contentious areas frequently targeted by HMRC.
- Losing gross payment status as a subcontractor. Subcontractors in this position should carefully consider if there are grounds to appeal and, if there are, to submit the appeal on a timely basis.
- Incorrectly applying or missing the VAT domestic reverse charge for construction services. The domestic reverse charge can result in the contractor, rather than the subcontractor, being required to account for the VAT due on supplies they receive for construction operations.

Consider the employment status of subcontractors engaged directly as individuals

There is a requirement for the contractor to determine whether the subcontractor has employment status. This requires a status assessment to be undertaken. If that status assessment shows that the subcontractor is employed by the contractor, they should be placed on the payroll and income tax and Class 1 NIC must be applied under PAYE. CIS does not then apply.

If that status assessment shows that the subcontractor is self-employed, then (subject to the services falling within the definition of construction operations) the contractor must apply CIS.

Consider whether the agency provisions or IR35 regulations apply

As highlighted above, the agency provisions (ITEPA 2003 Part 2 Ch 7) and IR35 rules (ITEPA 2003 Part 2 Ch 10) take priority over the CIS provisions and must be considered first. If a payment is to be treated as employment income under either the agency provisions or the IR35 rules, then the CIS does not apply. If that is not the case then (subject to the services falling within the definition of construction operations) the contractor must apply the CIS rules.

Identify construction operations

A contractor must consider whether the services being performed by the subcontractor fall within the definition of construction operations. The definition of construction operations includes a broad range of construction work. Examples include site preparation, alterations, dismantling, construction, repairs, decorating and demolition.

Determining which operations constitute construction operations can be complex, as demonstrated by the extensive index of construction operations in HMRC's guidance at CISR14330.

It is particularly important to note that if a construction contract includes both construction operations and non-construction operations (commonly referred to as a 'mixed contract'), then the contractor will be required to report and apply a tax deduction to all contract payments made under that contract.

For example, carpet fitting in isolation does not fall within the definition of construction operations, but if carpet fitting is undertaken as a finishing operation on a wider construction project, or under a single contract which includes other services falling within the definition of construction operations such as painting and decorating, a contract payment for that carpet fitting will be within the scope of the CIS.

Verify subcontractors

The contractor will need to verify each subcontractor's registration status with HMRC before the first contract payment is made to them. This is undertaken online by contractors and HMRC will confirm whether the subcontractor is registered for net or gross payment status or unregistered. A contractor does not have to verify a subcontractor if they last included that subcontractor on a CIS return in the current or two previous tax years.

Deduct tax and pay it to HMRC and give a statement to the subcontractor

Where a subcontractor does not have gross payment status, the contractor must deduct tax from the contract payment before paying the subcontractor, pay that tax to HMRC and provide the subcontractor with a statement showing the deduction made.

When calculating the CIS tax deduction, the direct cost to the subcontractor of the following are not treated as part of the contract payment:

- materials;
- consumable stores;
- fuel (but not fuel for travelling);
- plant hire; and
- the cost to the subcontractor of manufacturing or prefabricating materials used.

Materials costs can only be excluded where they represent the actual direct cost of materials to that subcontractor and specifically relate to the construction contract between the contractor and subcontractor under which the payment is being made.

For plant (scaffolding, cranes, etc.), it is only when the subcontractor *hires* plant to carry out construction work for the contractor that the cost (and any necessary consumable items such as fuel) may be excluded from the contract payment. If the subcontractor owns the plant but includes a charge for this on their invoice to the contractor, this charge must be included as part of the contract payment.

Contractors need to be particularly careful here because if the cost of any of such items excluded from the contract payment are excessive or incorrect, HMRC can hold the contractor responsible for the under deducted CIS tax.

Contractors must pay any CIS tax deducted over to HMRC within 14 days of the tax month end to which it relates if paying by post, or within 17 days of the tax month end if paying electronically. The contractor must also provide a written statement to every subcontractor from whom a tax deduction has been made within 14 days of each tax month end. Contractors must include certain information in the statement but are otherwise free to decide on its style.

These risks and additional steps demonstrate why many contractors only want to engage subcontractors with gross payment status.

Submit monthly CIS returns

Contractors are required to send HMRC a monthly return (a CIS300), which includes all payments made to subcontractors in that tax month. The return must include details for the tax month of the subcontractors paid, payments made (including those to subcontractors with gross payment status), costs treated as materials and tax deductions. The return must be submitted to HMRC within 14 days of the end of the tax month end it relates to.

Strictly nil returns (where no subcontractors have been paid) are not required. However, HMRC will issue a penalty if no return is submitted for a tax month (unless the contractor has registered for a period of inactivity) meaning nil returns are required in practice.

How do subcontractors obtain gross payment status?

To obtain gross payment status, the subcontractor must apply to HMRC and pass a business test, a turnover test and a compliance test.

To meet the business test, the subcontractor's business must be carried on in the UK via a bank account.

> **To obtain gross payment status, the subcontractor must pass a business test, a turnover test and a compliance test.**

The turnover test to be applied depends on the circumstances and whether the business is an individual, partnership or company. For example the standard test requires, for the 12 month period prior to application:

- an individual to have net construction turnover of at least £30,000;
- a partnership to have net construction turnover of at least £30,000 multiplied by the number of partners, or £100,000 if this is lower; and
- a company to have net construction turnover of at least £30,000 multiplied by the number of directors, or £100,000 if this is lower. A company wholly owned by a parent company or companies holding gross payment status does not need to pass the turnover test.

To meet the compliance test, the business's tax affairs for the 12 month period prior to application must be up to date, although there are some compliance failures which HMRC will overlook (referred to as compliance tolerances). HMRC is also able to refuse gross payment status if it has strong grounds for doubting the applicant's future compliance. If gross payment status is refused, HMRC should notify the subcontractor of the decision and reasons in writing.

Businesses which are granted gross payment status will have their tax compliance automatically checked by HMRC annually. The compliance tests and compliance tolerances applied by HMRC are the same as during the application process. If, during this annual check, tax compliance failures beyond the tolerances are identified, HMRC will notify the subcontractor that their gross payment status will be removed and that 90 days after the notice date their payment status will change to the standard rate of 20%. Contractors who have paid or verified that subcontractor within the last two years will be notified of that change. Subcontractors have the right to appeal the HMRC decision where there is a reasonable excuse for the non-compliance identified. Subcontractors must ensure they appeal on a timely basis.

Conclusions

The CIS can be complex and is a focus area for HMRC and there are several traps and pitfalls for the unwary. Subcontractors with gross payment status must remain compliant to keep that status. Losing gross payment status can have a serious impact on the subcontractor's business.

Mistakes by contractors can be costly as they can be held liable for CIS tax under deducted from contract payments to subcontractors, and if reasonable care has not been exercised HMRC is able to recover that CIS tax for up to six years from the end of the tax year it relates to, together with interest charges and penalties. While there is scope under Regulation 9 of the Income Tax (Construction Industry Scheme) Regulations 2005 to reduce such settlements with HMRC in certain circumstances, this cannot be relied on and may not reduce the final settlement with HMRC to nil.

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Clear out the attic

Tidying your group structure

Group structures can grow over time to include unnecessary holding structures and dormant companies. Taking the time to eliminate or move entities can bring significant savings.

by Tom Churton

Key Points

What is the issue?
The older and more acquisitive a group is, the more unwieldy its group structure is likely to be. This is likely to already be costing money and management time, but the amount of compliance coming down the tracks is only going to increase.

What does it mean for me?
Now is therefore a very opportune time to look at your structure and consider if you have the right companies and if they are in the right places.

What can I take away?
Once you know which entities you want to close and to move, you need to consider the options for doing this and how to manage the project.

Group structures grow over time, particularly in acquisitive groups. Holding structures which previously had a purpose may be inappropriate or unnecessary now. And previously trading companies may have become dormant. I liken it to the attic at home: things just accumulate over time, and every now and then you need to put some time aside to clear it out.

Many groups know when they have too many companies or inefficient holding structures. So why don't they sort them out? Often, this type of project is put on the 'To do' list of a member of the Group Tax or Group Legal teams. But those lists are already full, and so this project can sink to the bottom of the 'nice to do' pile. After a few years, very little may have happened. From my discussions with large groups, this is a common issue: after all, who has spare capacity to pick up this project?

In this article, I will firstly discuss why now is a good time to undertake this project, and secondly offer a way for groups to do this, either themselves or with external assistance. A number of FTSE 100 groups (and equivalents) have already started on this task.

The benefit of tidying up your group

A number of cost savings can be generated from removing redundant companies or tidying up redundant holding structures – and the sooner you start the project, the sooner you will be able to lock in the annual savings. There are also important governance aspects to this. Indeed, I have heard an increasing call from CFOs to understand why their group structures are as they are. A useful rule of thumb is that a dormant company costs between £5,000 and £10,000 per year in external costs and internal management time. While this may not sound a lot, if you are removing a significant number of entities that soon becomes a noticeable annual saving. And that is before you consider the governance benefits which are harder to quantify but equally as important.

Depending on the history of each company, it is quite possible that capital losses may arise from closing dormant entities. This may or may not be of benefit to a group, given the limited number of assets that can now give rise to a chargeable gain. But it could be a further factor for some groups.

Why should groups do this now?

There are two significant potential pieces of legislation on the horizon: firstly, the EU's Anti-Tax Avoidance Directive III (ATAD 3); and secondly BEPS 2.0, and in particular Pillar 2.

ATAD 3

Much has been written about ATAD 3 in the recent past so I won't dwell on it here. Suffice to say that this will at a minimum have a reporting impact, and potentially a tax cost impact, for groups which have affected structures. Groups would be well advised to consider their current structures to determine if they might be impacted by the rules should they come in as proposed on 1 January 2024. This timeline also gives just over a year to restructure the group, or put in the additional substance that is needed to satisfy the tests in ATAD 3.

Pillar 2

BEPS 2.0 is also a much discussed phenomenon, so all I will say on the subject is that Pillar 2 is going to cause a massive compliance headache for all groups, and a tax cost for some groups. Minimising the number of entities in the group will help reduce the compliance burden. Having the retained companies in the right place in the structure may also reduce tax arising under Pillar 2.

Like ATAD 3, Pillar 2 is a proposed piece of legislation with an uncertain global timeline, but a 1 January 2024 start date seems a realistic proposition at least in the UK and EU. In some ways, however, the rules are already active, as some intragroup reorganisations (such as may be involved in

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your legal entity reorganisation project) will have a Pillar 2 impact due to the transition rules. This needs to be factored into your thoughts for the project.

Ways to eliminate or move entities

A project like this can be run internally, and I am aware of two groups which have done so very successfully. The key is to have a dedicated resource to manage the project. They can then build a team involving legal, company secretarial, finance, tax and others as necessary.

Alternatively, if a project manager cannot be found internally, this resource can be hired externally. When looking externally, an important factor is cost: does the cost of the project exceed the annual savings? In my experience, a one-year pay back is normally acceptable. If the goal is to close 50 entities, the annual saving is approximately £250,000 to £500,000, so a project cost of £250,000 would often be acceptable. Once you know which entities you want to close and to move, you need to consider the options for doing this. Each country has its own rules but essentially there are a few main options for closing an entity.

1. Deregistration

Deregistering (or dissolving) a company terminates its registration so it ceases to exist. In the UK, this requires a simple form (DS01) to be lodged with Companies House and is relatively quick. However, it does not give the directors the protection that a liquidation does (see below). Therefore, I have historically only deregistered a company which had never traded or been listed. Any assets held by a company that is deregistered

MANAGING THE PROJECT

The first thing to say is that there is no rocket science required. Treat it as any other project. Project management and governance are the key, and should follow a series of phases.

Phase 1: Project set up	The governance needs to be agreed upfront. This includes the following: • Agree the sponsor and Steering Committee. • Set up the wider team and agree lines of communication. • Agree goals, timescale, etc.
Phase 2: Data analysis	• Look at the whole group to see which companies you have and why. • Review financial and other data to determine which companies might be candidates for closure, and which might need to be moved. • Consider reasons why dormant companies might need to be retained; e.g. name protection, party to continuing agreements including warranties and indemnities, potential value shifting charges.
Phase 3: Decision	• Determine how to close or move each entity, including Step Plans for each. Treat each closure and entity movement as a separate mini-project from here. • Obtain formal sign off on which companies are to be closed or moved, and the financial, legal, tax, regulatory, etc. implications of each.
Phase 4: Action	• Undertake the steps agreed in phase 3, including obtaining relevant confirmations or clearances. For example, in the UK HMRC will need to approve a liquidation to confirm it is not a creditor.
Phase 5: Wrap up	• It is then very important to ensure that each step undertaken above is reflected in appropriate legal documentation, all accounting journals have been booked, and any tax authority notifications, etc. have been made. • Prepare a file with all the transaction documents, in case of future audits or due diligence work.

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in the UK become assets of the Crown (under the *bona vacantia* legal principle) so you will need to empty the balance sheet before deregistering the company.

As deregistering a company is often a simple process, it is a good way to start a larger project by banking a few 'easy wins' by deregistering already dormant entities. If you look at your group structure, you may find some companies with balance sheets showing net assets of, say, £1, representing an intercompany receivable. Such an entity does not require any pre-closure restructuring so could be an easy one to deregister (once you have checked its history to make sure there is no reason to keep it).

2. Liquidation

This is a more formal process than deregistering a company. In the UK, you need to appoint formal liquidators so there is a cost element, although the cost need not be high for a simple liquidation. Due to the formalities of the process, the company directors are protected from subsequent claims against them or the company, so it is a good idea to liquidate a company which has previously traded (or its shares or debt were publicly traded).

3. Merger

Some countries, but not the UK, allow a formal merger between two companies such that only one company exists afterwards. This can be a very quick and effective way to close entities

4. Redomiciliation

Some countries allow a company to change its formal seat of incorporation. For example, a company set up in Country A can change its country of incorporation to Country B from a certain date. It then ceases to have any further legal or tax requirements in Country A. The UK is considering bringing in rules to allow companies to redomicile to the UK.

5. Changing tax residency

The tax residency of a company is determined by local tax law and can depend on the place of incorporation, the place of central management and control (i.e. where the board of directors meet) or the place of effective management and control (i.e. where local management works). While the place of incorporation is generally set (subject to redomiciliation), places of management and control are more fluid, particularly in the modern world. This could therefore be a good option to quickly, and potentially cheaply, remove a 'tax haven' company from a structure; i.e. by changing its directors to UK individuals and having them meet in the UK. While the tax haven entity would still exist, from a tax perspective it is now a UK resident company.

Summary

There are benefits to ensuring that a group structure has the right entities, and that they are in the right place. Project management and governance are the keys to a successful project. The project can be undertaken just like any other large project, and there are a number of legal processes that can assist in the project. The best advice is to start now so that you can bank the savings earlier. It is also often a good idea to pick some 'easy wins' first to gather momentum for the project.

The house that Lee built

Main residence exemption

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The case of *Lee v HMRC* considers the availability of the main residence exemption when a house is rebuilt and the statutory definition of the 'period of ownership'.

by Keith Gordon

Although nothing can be taken for granted, there is a general assumption that no UK politician would seek to extend capital gains tax to gains typically arising on a family home. Indeed, the 'main residence' exemption has been with us ever since the introduction of capital gains tax in the Finance Act 1965.

Equally, no one can expect such an exemption to be without certain conditions. For example, albeit with exceptions of its own, the main residence exemption is curtailed to the extent that the home was not the taxpayer's only or main residence throughout the period of ownership.

Earlier cases have (in my view, correctly) shown that, for these purposes, the period of ownership reflects the ordinary meaning of that phrase – so that the period of ownership runs from the beginning of the time that a taxpayer has access to the property until the time at which the property is no longer available to him or her. This distinguishes the phrase from the approach generally taken in capital gains tax, whereby acquisitions and disposals are treated as taking place when contracts are (or become) unconditional and not, if later, upon completion. For example, see the case of *Higgins* [2019] EWCA Civ 1869 (where the Court of Appeal allowed Mr Higgins's appeal from the Upper Tribunal).

However, the *Lee* case (*Lee v HMRC* [2022] UKFTT 175) has now considered the situation where a house was constructed *during* the taxpayers' period of ownership of the underlying land.

Key Points

What is the issue?
Earlier cases have shown that the period of ownership runs from the beginning of the time that a taxpayer has access to the property until the time at which the property is no longer available to him or her. However, the *Lee* case considers the situation where a house was constructed *during* the taxpayers' period of ownership of the underlying land.

What does it mean for me?
The tribunal considered the statutory definition of 'period of ownership', which is found in the Taxation of Chargeable Gains Act 1992 s 222(7).

What can I take away?
The case serves as a useful reminder to ensure that dates of actual occupation as a residence are recorded so as to ensure that any exemption can be properly quantified.

The facts of the case

Mr and Mrs Lee bought a property in October 2010. The land included a house. Over the next 29 months, the original house was demolished and a new house was built on the site. Within four days of completion of the building work (in March 2013), Mr and Mrs Lee moved into the new house and (it is inferred) occupied it as their only or main residence until they sold their interests in the site in May 2014. A gain arose on the disposal.

HMRC accepted that part of the gain was covered by the exemption, but considered that the exempt fraction was limited to 18/43. The denominator of 43 represented the number of months between the acquisition in October 2010 and the disposal in May 2014. The numerator would ordinarily have been 14 (being the number of months from March 2013 until May 2014), but for the special rule allowing the last 18 months of ownership to qualify for exemption (now, generally, reduced to nine months).

The case proceeded to the First-tier Tribunal.

The tribunal's decision

The case came before Judge Sarah Allatt and Member Celine Corrigan.

The tribunal considered the statutory definition of 'period of ownership', which is found in the Taxation of Chargeable Gains Act 1992 s 222(7). It provides as follows:

'"the period of ownership" where the individual has had different interests at different times shall be taken to begin from the first acquisition taken into account in arriving at the expenditure which under Chapter III of Part II is allowable as a deduction in the computation of the gain to which this section applies…'

This had to be read in the context of the overall scope of the rules starting with s 222 itself. In particular, s 222(1) ensures that these rules apply 'to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence'.

The Lees were arguing that the definition of period of ownership focuses on the dwelling house and not the underlying land. The tribunal agreed with this approach. As the tribunal noted: 'In every part of the legislation concerned, "period of ownership" would appear to attach to the "dwelling house" where the taxpayer may or may not reside.' Conversely, 'No mention is made of the land in reference to "period of ownership".'

Although the tribunal accepted that there was no 'clear definition of period of ownership', it felt that 'the natural reading of the legislation is that "period of ownership" means the period of ownership of the dwelling house that is being sold'. The result of the tribunal's decision is that the whole of the gain was exempt from capital gains tax.

In doing so, the tribunal positively disagreed with the Special Commissioner's decision in a similar case, *Henke v HMRC* (2006) SpC 550. Instead, the tribunal was comforted by the more recent (and binding) decision in *Higgins,* although the facts of that case were not so comparable.

Commentary

In one respect, I fully agree with the tribunal. That respect is its conclusion that there is no clear definition of 'period of ownership' that puts the question in this case beyond doubt. Indeed, this is a case where I would hesitate to give a definitive view. However, my starting point is that the outcome is surprising as it gives taxpayers (or at least some taxpayers) an opportunity to wipe clean a tainted period of ownership by demolishing an existing house and starting again (although that course of action might require some care for other reasons). But I would be the first to accept that surprising does not mean wrong. Far from it.

Nevertheless, I do not agree with the tribunal's statement that 'in every part of the legislation concerned, "period of ownership" would appear to attach to the "dwelling house" where the taxpayer may or may not reside'. Virtually all of the references to 'period of ownership' make no direct reference to the dwelling house but simply use the phrase 'period of ownership' in the way defined by s 222(7).

Of course, the set of rules starting with s 222 is focused on a dwelling house and, therefore, it is not surprising that one could interpret 'period of ownership' so as to mean the period of ownership of the dwelling house in question. In my view, however, that risks putting the cart before the proverbial horse. In particular, there is nothing in s 222(7) itself that expressly limits itself to the dwelling house itself. My view is that the phrase 'period of ownership' is more naturally attached to the asset, the disposal of which has given rise to the gain mentioned in s 222(1).

> **The Lees were arguing that the definition of period of ownership focuses on the dwelling house and not the underlying land.**

Of course, I must acknowledge that ss 222(8) and 222A (twice) appear to be exceptions to this rule, as they do refer to the period of ownership of a (or 'the') dwelling house. Accordingly, they definitely provide a clue that the 'period of ownership' could indeed relate to the dwelling house itself. However, s 222A was introduced relatively recently and should not be seen as an indicator as to how the phrase 'period of ownership' was intended to be interpreted by Parliament in the many instances where it was used prior to the enactment of s 222A.

Section 222(8), on the other hand, is of longer vintage. It was in place in 1992 when the legislation was consolidated and, in fact, it was found in the 1979 consolidation. Nevertheless, it was not a part of the original legislation (see Finance Act 1965 s 29) when the phrase 'period of ownership' was used on 14 occasions without any qualification. In fact, what has become s 222(8) was inserted only in 1978.

It could be said that those three isolated references to dwelling house in the context of 'period of ownership' are therefore erroneous. Or it could be said (slightly more charitably) that the express use of the words 'of the/a dwelling house' are deliberately limiting the scope of 'period of ownership' in those three situations to periods during which the dwelling house in question is in existence. Either way, I do believe that the true meaning of the phrase 'period of ownership' elsewhere should be determined by looking at how it was used when the rules were originally enacted.

For completeness, I should mention that there is a rule of statutory interpretation that deprecates the analysis of pre-consolidated legislation, saying that it is the post-consolidation version that must be interpreted. That approach would require a tribunal to consider what is now s 222(8) as a part of the overall legislative picture. However, as one might expect, all rules of statutory interpretation are subject to exceptions in appropriate cases and I think that this is one such case.

For me, the most definitive clue is s 222(7) itself. That definition is undoubtedly drafted without reference to any particular dwelling house. Further, it makes reference to the actual times when acquisition costs are first incurred – such costs being those which are then deductible when calculating the capital gain. In a case such as the present, I would say that that points to a date long before the construction of the dwelling house: the date when the site was first acquired.

For these reasons, although the matter is not free from doubt, I think that the First-tier Tribunal reached the wrong conclusion.

What to do next

This is a case where I would expect HMRC to appeal against the First-tier Tribunal's decision. Indeed, I would hope that some clarification of the law would be forthcoming. (If HMRC is to appeal, I hope that it would consider doing so on terms that mean that the taxpayer is not saddled with HMRC's costs.)

In the meantime, and irrespective of the outcome of the case, it serves as a useful reminder to ensure that dates of actual occupation as a residence are recorded so as to ensure that any exemption can be properly quantified.

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Branch events

What's happening where you are?

Chartered Institute of Taxation.

ENGLAND – EAST & MIDLANDS

Transactions in Securities
Thursday 20 October | 4.00 - 7.30 PM
KPMG, 1 Snow Hill Queensway, Birmingham B4 6GH
Visit https://cvent.me/WXLaPo to book your place.

LONDON & HOME COUNTIES

Recent Tax Cases Tuesday
4 October | 6.45 - 8.15 PM
Harrow Masonic Centre, Northwick Circle, HA3 0EL
Visit https://cvent.me/Z9ke0E to book your place.

What is the source of interest paid to a foreign lender – in the UK (bad news) or abroad (good news)? And is it yearly interest in the first place?
Wednesday 16 November | 6.45 - 8.15 PM
Harrow Masonic Centre, Northwick Circle, HA3 0EL
Visit https://cvent.me/Y14zzb to book your place.

The Construction Industry Scheme (CIS) - a refresher
Thursday 24 November | 6.45 - 8.15 PM
Harrow Masonic Centre, Northwick Circle, HA3 0EL
Visit https://cvent.me/7PaM9l to book your place.

IRELAND

What it's like being the client – the anatomy of a real life transaction
Tuesday 18 October | 2.00 - 5.00 PM
Chartered Accountants Ireland, 32-38 Linenhall Street, Belfast, BT2 8BG
Visit https://cvent.me/K7Wm9Q to book your place.

Northern Ireland Branch Annual Dinner
Friday 11 November 2022 | 7.00 - 11 PM
Ten Square Hotel, 10 Donegall Square S, Belfast, BT1 5JD
Visit https://cvent.me/g3RG28 to register your interest

Tax Issues in a Recession
Wednesday 23 November | 3.00 - 6.00 PM
Chartered Accountants Ireland, 32-38 Linenhall Street, Belfast, BT2 8BG
Visit https://cvent.me/2g401q to book your place

ENGLAND - NORTH

Tax Aspects Of Succession Planning - Family Companies
Tuesday 4 October | 2.00 - 5.00 PM
Grant Thornton, Royal Liver Building, Liverpool, L3 1PS
Visit https://cvent.me/WXP5MG to book your place

Capital Taxes Update
Thursday 20 October | 2.00 - 5.00 PM
NUFC Conference Centre, St James' Park, NE1 4ST
Visit https://cvent.me/AW0XEx to book your place.

Sheffield Branch 50th Anniversary Celebration Dinner
Thursday 27 October | 7.00 - 11 PM
Tankersley Manor, Church Lane, Tankersley, S75 3DQ
Visit https://cvent.me/9BAm3A to book your place.

Selling to an EOT: opportunities and elephant traps
Wednesday 16 November | 5.30 - 7.00 PM
The Sitwell Arms Hotel, 39 Station Road, Renishaw, S21 3WF
Visit https://cvent.me/Z9g7Wm to book your place.

Finance Bill Update
29 November | 1.30 - 4.30 PM
AMP Technology Centre, Advanced Manufacturing Park, Rotherham, S60 5WG
Visit https://cvent.me/mElqxZ to book your place.

ENGLAND - SOUTH & SOUTH WEST

Topical Tax Tips
Wednesday 19 October | 4.00 - 7.00 PM
Sandy Park Conference Centre, Exeter, EX2 7NN
Visit https://cvent.me/52dvwK to book your place.

PAYE, NIC and BIK Refresher & Planning
Wednesday 26 October | 2.00 - 5.15 PM
Crowne Plaza Reading East, Wharfedale Road, RG41 5TS
Visit https://cvent.me/Ok2v2O to book your place.

The ScaleUp Blueprint: how to scale up your business with confidence!
Wednesday 23 November | 2.00 - 5.15 PM
Crowne Plaza Reading East, Wharfedale Road, RG41 5TS
Visit https://cvent.me/lEEQgZ to book your place.

You can also view and connect with your local branch online www.tax.org.uk/local-branches

Choosing the right trust
A confusing spread

In the second of two articles on providing for partners, children and minors by will, we examine how the challenges of identifying the right sort of trust work in practice.

by Emma Chamberlain

Testators have a range of possible trusts that can be used for partners, young children and grandchildren in their wills, including an immediate post-death interest, trusts for bereaved minors, and age 18-to-25 trusts. Because the inheritance tax treatment differs, it is necessary to provide for which form of trust takes priority over another.

There is often confusion about what regime a will trust falls into, which can result in some missteps in calculating the appropriate capital gains tax and inheritance tax regime to apply.

Following on from our article in September, we set out some examples of how these issues can work in practice.

Example 1: Adam and Brian

Bereaved minor trust: By his will, Adam leaves property to his son absolutely on attaining the age of 18. Failing that, it is to go to Adam's sister. When Adam dies, his son is aged nine. This is a bereaved minor trust (known as a Section 71A trust). Although there is a substitutional provision in favour of the sister, while the son is alive capital and income can only be applied for his benefit and he takes absolutely at 18.

18-to-25 trust: Brian's will leaves property to his daughter at age 21 with remainders over. Until that age, the trustees have power to use income for her maintenance and to accumulate any balance. He dies when she is nine. This is not a bereaved minor trust. Capital and income vesting is postponed to 21 but it will qualify as an 18-to–25 trust (known as a Section 71D trust) unless the trustees give her entitlement to income within two years of death, in which case it will be an immediate post-death interest.

A deceased parent

The requirement that the trust must be established under the will of a deceased parent can be satisfied:

- if the trusts arise as the result of an instrument of variation of the deceased's will which is read-back

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under Inheritance Tax Act 1984 s 142(1); or
- if the trusts arise as the result of an event occurring within two years of death leading to a reading-back under Inheritance Tax Act 1984 s144.

An immediate post-death interest involves the beneficiary becoming entitled to the interest in possession on the death of the testator. Unlike an immediate post death interest, it is not necessary that the property becomes immediately held on these trusts at death. A bereaved minor trust can, for instance, be preceded by an immediate post-death interest, a relevant property trust or an 18–25 trust.

> **There is often confusion about what regime a will trust falls into, which can result in some missteps.**

If the immediate post-death interest ends during the lifetime of the interest in possession beneficiary, he will make a potentially exempt transfer into the bereaved minor trust (see Inheritance Tax Act 1984 s 3A(1A)(iii)). Contrast the position in the case of 18–25 trusts under s 71D.

Bear in mind the overriding requirement that a bereaved minor trust must be set up by the will or on intestacy of a deceased parent.

Example 2: Elizabeth and Emma

Elizabeth died in 2012 leaving her property on an immediate post-death interest trust for her daughter, Emma, who was aged 45. Emma died unexpectedly in 2013 and the property became held on trust for her two minor children in equal shares contingently on reaching 18.

Emma's children are bereaved minors but the trust is established under the will of their grandmother, not their mother, and therefore on the death of Emma the settled property is taxed under the relevant property regime. If Emma had been given a general testamentary power of appointment, she could have exercised this in her will to give her children qualifying interests in possession and these would have been immediate post-death interests.

Complications and capital gains variations

There are other complications and capital gains variations. For example, hold over relief is available on transfers from a Section 71A and a Section 71D trust (and apparently even if the beneficiary is entitled to an interest in possession). This is the case before or after the beneficiary reaches 18 in the case of a Section 71D trust.

The tax free death uplift is available on the death of a minor child before 18 whether the trust is Section 71A or Section 71D but only if the beneficiary has an actual interest in possession. In the case of a Section 71D trust, this interest in possession cannot be appointed within two years of death; otherwise the trust will be an immediate post-death interest trust not a Section 71D trust. The death uplift will be available on the death of the life tenant with an immediate post-death interest but hold over relief is not available under Section 71D.

On a Section 71D trust, there is no capital gains tax death uplift if the beneficiary dies after 18 but before 25, even if they have a (non-qualifying) interest in possession.

For cases where a will contains more than one set of trusts, a change made by Finance (No. 2) Act 2015 improves matters for relevant property trusts in some circumstances. This is because it is no longer necessary to take account of non-relevant property in the same or related property trusts when calculating the rate of tax applicable to the exit and ten year charges. So if a will has an immediate post-death interest for one child and a discretionary interest for another, the immediate post-death interest property can be ignored in calculating the rate of tax on the discretionary interest. The position is slightly different in relation to Section 71D property.

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Profile Emma Chamberlain OBE is a barrister at Pump Court Tax Chambers and visiting professor of law at Oxford University and LSE. She is a member of the STEP technical committee, joint chair of the CIOT Private Client (International) Committee, a former council member and fellow of CIOT. She was a co-author of the December 2020 report on wealth taxes in the UK (see bit.ly/3fVYkVH). Readers can obtain more information on trust taxation in the forthcoming 5th edition of *Chamberlain and Whitehouse: Trust taxation and private client tax planning.*

Bear in mind that Inheritance Tax Act s 144 can also operate to destroy what at first sight would appear to be a Section 71D trust.

Example 3: Roy

Roy dies in 2013. He leaves his entire estate to his three children Alice, Ben and Catherine contingent on attaining 25 and if more than one equally. Alice is 19 when Roy dies, Ben is 17 and Catherine is 14. At 18, each child will become entitled to income (as a result of Trustee Act 1925 s 31).

Position of Alice: Alice has a right to income when Roy dies, which means that her share is held in an immediate post-death interest trust. When she becomes entitled to capital at the age of 25, there will be no inheritance tax charge (Inheritance Tax Act 1984 s 53(2)). Capital gains tax hold-over relief will not be available unless the property is business assets within Taxation of Capital Gains Act 1992 s 165. If Alice dies before the age of 25, the value of her immediate post-death interest fund will be taxed as part of her estate.

Position of Ben: Ben will become 18 within two years of Roy's death and when this happens s 144 will apply to read-back his entitlement to income to the time of Roy's death. He too, therefore, will have an immediate post-death interest. Of course, if Ben dies before he reaches the age of 18, the trust for him will satisfy the Section 71D requirements and there is no inheritance tax charge; if he dies after the age of 18 there will be.

Position of Catherine: The trust for Catherine is within Section 71D. Accordingly, an exit charge of up to 4.2% may arise in respect of the period from Catherine becoming 18-to-25. At that time, capital gains tax hold-over relief will be available.

Advice: If Roy had wanted all his children treated the same and had intended the Section 71D regime to apply, the will as drafted in this case is a disaster. This has resulted from the right to income at the age of 18 given by Trustee Act 1925 s 31. It should have been excluded.

The will draftsman should have provided that until the age of 25, the income from each share can be used for the child's maintenance with any balance being accumulated and added to the share. The alternative is for the trustees to accelerate Catherine's right to income and appoint an immediate post-death interest to Catherine within two years of Roy's death. The choice is between a bereaved minor trust and Section 71D – or an immediate post-death interest?

What sort of trust to use?

The immediate reaction of many taxpayers is that they would prefer to postpone capital vesting until the child becomes at least 25, albeit that the trustees will be given a power to advance capital earlier. Further, it might be thought that it will be sensible to draft wills with a Section 71D trust on the basis that by advancing capital at the age of 18 the trustees can, in effect, obtain bereaved minor trust treatment. The Section 71D trust can be extended into the relevant property regime if the trustees decide to postpone capital entitlement even beyond 25 (albeit with the same exit charge as absolute entitlement).

This is broadly correct but the following factors should be borne in mind:

i) Inheritance tax will be chargeable once the trust continues after the beneficiary has attained the age of 18 in accordance with the charging regime in Inheritance Tax Act 1984 s 71F. If the beneficiary dies after the age of 18, there is an inheritance tax charge, unless the property continues to be held on trust for other children of the deceased who are under the age of 25.

ii) A potentially exempt transfer will arise on the inter vivos ending of an immediate post-death interest (e.g. for the surviving spouse of the testator) but only if the continuing trust is a bereaved minor trust, not if it is a Section 71D trust when it will be a chargeable transfer.

iii) Capital gains tax death uplift is only available if the beneficiary enjoys an interest in possession and dies before the age of 18. (Note that that the top rate of charge is 4.2% at age 25, which some will consider a fair price to pay for continuing the settlement. But, of course, rates may rise in the future.) In fact, the uplift is available whether the trust is a bereaved minor or Section 71D trust and the key features of the relief are that:
   a) the beneficiary must enjoy an interest in possession; and
   b) must die under the age of 18.

iv) For young beneficiaries where it is thought that the age of 25 is too young to take outright particularly on large estates, it may just be better to avoid the relevant property regime altogether. Instead, an interest in possession could be appointed to the children within two years of death, so they take immediate post-death interests which are qualifying interests in possession. No hold over relief is available under s 260 on absolute entitlement but the assets can stay in the trust indefinitely without continuing inheritance tax charges until the death of the child.

One further factor to bear in mind is that a bereaved minor trust can be extended by making a settled advance (assuming the trustees have a full power of advancement) so it becomes a Section 71D trust, which may in turn be further extended beyond 25. The trust may then fall into the relevant property regime after the beneficiary reaches the age of 25 and a wider class can potentially benefit. So in all cases retain a wide power of advancement!

Note, however, that it may be hard to justify a settled advance as being for the benefit of a beneficiary under the age of 25 if as a result of the advance a wider class can benefit. If the testator wants flexibility between siblings and their issue on distributions of income and capital, it is preferable to have a trust within the relevant property regime from the outset.

Generally, it is unwise from the inheritance tax perspective to leave the cohabitee a qualifying interest in possession. It may be better to leave the assets on discretionary trust for that cohabitee. Otherwise there is inheritance tax payable on the first death and then again on the death of the cohabitee. At least if assets are held on discretionary trust, income and capital can be paid to the cohabitee at the trustees' discretion (the cohabitee can be a trustee) and there will simply be ten year charges.

Check the sort of trust you are dealing with before filing a ten year anniversary charge or exit charge form. It may not always be as you anticipate or even as the deceased intended!

A detailed survey of the technicalities of the relevant property regime, trust and will drafting issues is in the forthcoming edition of *Trust Taxation and Private Client Estate Planning.*

ATT FELLOWS' WEBINAR

Tuesday 11 October 2022
13:00 – 14:30 BST

The President and Council of the Association would like to invite all Fellows of the Association to our next Fellows' Webinar on Tuesday 11 October 2022.

This free event provides a unique opportunity for all Fellows to enjoy the company of members of similar standing within the Association and participate in discussion sessions led by our Technical Officers.

On the day:

Welcome from the President, David Bradshaw.

Followed by a talk with Helen Thornley on The many tentacles of the Trust Registration Service – not just a problem for trust advisers (with Q&A).

After Helen's talk you can choose to attend one of the following discussion groups led by our Technical Officers:

- Recruitment and resourcing – is your practice ready for what's coming? – Emma Rawson.
- What clues do our years in tax give us about the future? – Will Silsby.
- The latest updates to HMRC's online services – Helen Thornley.

Book online: https://form.jotform.com/222563715169359

Any questions? Email us: events@att.org.uk

AAT ATT Sharpen Your Tax Skills 2022

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This year we are delighted to welcome a new presenter for our popular Sharpen Your Tax Skills series- the very popular and highly renowned Rebecca Benneyworth. During three live, online sessions, Rebecca will take delegates through:

- Basis period reform- what you need to know.
- Cost of living crisis, employee expenses, cars, home working, trivial benefits etc.
- Cash basis for traders and landlords - yes or no?

In our fourth and final session, Rebecca - together with the ATT technical team - will build on the morning's topics with practical scenarios and case studies to illustrate their significance for your clients and your work. The session will also pick up the implications of any tax changes announced by the new Chancellor. We expect this to be a lively session with a lot of audience participation.

Choose one of the following dates to join the live sessions:

- Monday 7 November 2022
- Wednesday 9 November 2022
- Friday 25 November 2022

Book online:

www.att.org.uk/aat-att2022

Remorseless change
Issues of digital compliance

The Diploma in Tax Technology by CIOT will be launched in November, responding to the impact that technology is having on the work of tax professionals. We consider the issue of digital compliance and how it is likely to develop.

Key Points

What is the issue?
Changes to the administration of tax have been and are being set. These digital changes affect how tax is computed, how it is charged, how it is paid.

What does it mean for me?
If the data is wrong or there is a fault with the system, whilst the tax liability will fall on the taxpayer or the adviser, there may be cases where there are contractual rights against advisers or software companies.

What can I take away?
Tax professionals must have the tools and the understanding to work efficiently with the new professionals now part of our world: programmers, data engineers and analysts.

HMRC's self-declared ambition is for the UK to become one of the most digitally advanced tax administrations in the world. Making Tax Digital is a key part of the government's plans and is bringing fundamental changes to the way the tax system works. Whilst there has been some slippage in the timing of implementation, this process is continuing remorselessly.

All VAT registered businesses are now required to keep digital records and use software to submit their tax returns (unless digitally excluded). However, Making Tax Digital for Income Tax Self Assessment has been delayed, so it now will be required of self-employed businesses and landlords with annual business or property income (turnover) above £10,000 from 6 April 2024. General partnerships will not be required to join MTD for ITSA until April 2025 (and exclusions for complex partnerships are expected). It remains to be seen whether these deadlines remain unchanged.

The timing and scope of Making Tax Digital for Corporation Tax remains unclear, although its use will not be mandated before 2026 at the earliest; many expect a later date.

Speaking at the CIOT's Parliamentary Reception in September, CIOT president Susan Ball addressed the issue of MTD implementation, highlighting some of the related problems. She said: 'While we support digitalisation, the current timetable for MTD for income tax is unrealistic. Taxpayer obligations are not yet clear, approved software is limited (and) the pilot is not yet up to speed. The government should revisit and consider whether a more gradual, phased approach to MTD will ultimately deliver better results.'

Digital compliance

Changes to the administration of tax have been and are being set. These digital changes cover everything from keeping business records, filing with HMRC and ultimately the structure of parts of the tax system. Individuals could move away from once-a-year tax returns to new ways of reporting.

Large companies may now use specialist tax software to link their accounting systems to financial reporting and tax return systems. Some tax systems have built in robotic process automation to reduce human time processing repetitive tasks. Banks and financial institutions have new tax reporting obligations, where digital reports of taxpayers' income are sent globally between revenue administrations. Work continues under the auspices of the OECD in developing additional reporting by platforms. The UK has adopted 'split payments' for certain overseas sellers transacting via platforms, where the platform may withhold VAT and pay it direct to HMRC, rather than requiring the seller to account for VAT directly.

Systems are enhanced to embrace new social needs and social payments. New digital assets previously neither conceived nor understood must be identified, reported and taxed. Artificial intelligence is on the horizon.

Clearly, the issue of digital compliance – and how it is to be handled – is one of vital importance to tax advisers. They are following the route set by tax authorities globally and HMRC in the UK by primarily using third party produced software.

HMRC is in the process of moving to multiple new enterprise management platforms for managing UK taxes. These new systems enable HMRC to offer for the first time access to taxpayer data both to taxpayers and their agents. Individual taxpayers are likely to be able to access their data and upload information to HMRC via the forthcoming single customer account. However, agents and taxpayers (particularly companies) seeking more complete access to this system will do so by means of software, using one or more APIs. An application programming interface (API) is a way for two or more computer programs to communicate with each other, built into a piece of software for users. HMRC designs APIs to be built into tax software to meet a wide range of needs. MTD-compliant software is checked by HMRC for its ability to file data into their system, and is designed to be purchased by taxpayers and/or their agents. MTD software is either used to keep accounting records, or it needs to be linked to the existing financial records of taxpayers.

Software companies will have used tax advisers when building and updating their MTD software programs, and these professionals will no doubt have instructed the programmers on the critical data required to be collected and reported for tax purposes to HMRC.

When HMRC checks a VAT software program and gives it a clean bill of health for filing purposes, it is *not* saying that by using this software the taxpayer – or the agent, on their client's behalf – will have complied with the tax law underlying the taxpayer's filing requirement. Rather, it is saying that if all the necessary checks have

CIOT DIPLOMA IN TAX TECHNOLOGY

CIOT has decided that understanding digital change is as important a part of tax practice as tax law. Its first response is to launch a Diploma in Tax Technology, set at Level 4, in November 2022.

For CIOT, it is probably the biggest change in practice made in the last 50 years. The recognition of the central and fundamental role of technology means that it will become embedded in our professional examinations, higher level qualifications will be designed and made available and the expert skills of some of our members will be specifically around the application of digital technology to taxation.

In the first instance, we see the Diploma in Tax Technology as being available both to existing tax professionals wishing to begin building their technology skills, and to technologists wishing to gain more knowledge of taxation matters relating to technology. It will also be an excellent first step for a new entrant to the tax technology world wishing to forge their career in the field and to those wanting to return to tax after a career break.

been undertaken and the data collected by the software system is correct, that software system can interact with HMRC to transfer the return information correctly. And that is all.

Risks with digitalisation

Digitising accounting and tax systems reduces some risks, but it gives rise to new types of risk. If the data is wrong or there is a fault with the system, tax may be incorrectly calculated. The correct tax liability, of course, remains with the taxpayer. In some cases, the taxpayer may have contractual rights against the adviser – or the software company.

Certainly, increased transfer of data digitally should reduce the risk of error because there is a reduction in the number of human interface events. However, digitalisation does not eliminate the risks for the taxpayer or the tax adviser, who remain liable for any errors.

Tax systems are human constructs. A new added factor of risk is the construction of the software system, how it has been adapted for use and how the tax elements within it are reflected. Embedding tax software systems into a comprehensive digital accounting and customer relationship management system needs to be carefully engineered and tested. Those responsible do need to have a sufficient knowledge to understand and accept the system when it has been explained to them.

There is an issue of oversight and comprehension of the digital aspects of tax compliance which is vital within project implementation, and failure to fulfil that role makes a taxpayer or agent vulnerable.

Digitalisation now

HMRC is very much in the vanguard of revenue administrations that have grasped the benefits and challenges of digitalisation where there was, and still is, a multi-layered, legacy tax system.

Phase 1 of the Making Tax Digital implementation programme – which required all VAT registered businesses with a turnover in excess of £85,000 to keep records digitally and file their returns directly from software – is long gone. Commercially available programs are available and online filing is the norm. For some, data analysis has become a key tool in understanding their business better.

> **There is a risk that the role tax advisers play will be fractured by ignorance of digital technology, by reluctance to embrace change and by reliance on adapted old systems until it is too late and obsolescence takes over**

Tax advisers know from personal experience how much of their professional life is handled by programmed and programmable machines. Today, almost all personal tax returns are submitted digitally, either by entering data on HMRC's online systems, or by using tax return software. Tax agents and their clients have working relationships with tech companies which manage the software systems with the tools to handle historic compliance processes previously dealt with in analogue, non-binary ways.

Digital change Phase 2 is well underway, requiring direct linkage for tax data reporting in all its forms. The biggest non-deliberate threat to digitalisation is human error. The fewer times that data passes through a human interface (otherwise known as the taxpayer, accountant, bookkeeper or tax adviser!), the more reliance can be placed on that data. At present, this is seen within the timelines and reporting schedules of pre-digital reporting, but undoubtedly move closer to real time reporting.

And this will open the door for Phase 3, already being discussed.

Digitalisation in the future

In some countries, instantaneous reporting can allow real time taxation, certainly for indirect taxes, which, allied with the bifurcation of payments, leads to real time tax payments. Whether the UK will adopt transaction level reporting is an open question. New measures will be introduced to handle new digital asset manufactures, sales, leases and shared intellectual property.

There will also be participation in distributed ledger systems, such as blockchain, that record and certify ownership, providing the ability to transfer legal title to real estate, equities and works of art with smart contracts, which have inbuilt tax assessment and payment systems.

And then there is the global context, minimum level corporate taxes, cross border exchange of information, extraterritoriality, as well as the new world of crypto assets and non-fungible tokens. The path that new tax advisers will tread is exciting in the extreme, but it will only be possible if they have the tools to do the job, and those tools will be digital.

Embracing change

There is a risk that the role tax advisers play will be fractured by ignorance of digital technology, by reluctance to embrace change and by reliance on adapted old systems until it is too late and obsolescence takes over. Digital technology has changed for good how we do things in terms of compliance, recording and communication.

Companies now advertise roles for tax technologists within in-house tax teams and major advisory firms have teams specialising in this area.

For tax advisers, as for any professional facing the challenge of digitalisation, the ultimate and real question is: how do we change? There are several answers, all centred around an awareness of digital technology and an understanding of how it works, how it can be used and how those key professional principles and practices we have fought so long to establish and adhere to can be transposed and embedded within the digital world.

It will not be necessary for tax advisers to do it all but we must have the tools and the understanding to work efficiently with the new professionals coming into our world, the programmers, the data engineers and the analysts. And just as we recognise the need to understand their world, we also see that they too must change and understand the principles and ethics of tax practice.

The report was prepared with the assistance of the CIOT Tax Technology Taskforce, chaired by Ian E Hayes.

Robin Williamson

A tribute

Top: Robin Williamson
Middle: Robin with John Andrews, Founder of LITRG
Bottom: Leaving Number 11 Downing Street

The CIOT and ATT are extremely saddened at the death on 4 September 2022 of Robin Williamson MBE CTA (Fellow) MA(Oxon), former Technical Director of the Institute's Low Incomes Tax Reform Group (LITRG). It is no exaggeration to say that tributes have been pouring in from across the tax community at the loss of a highly respected and dedicated colleague.

Career

Robin took great pride in his work for LITRG and the success of the group as a whole. There is not enough space in one article to list all of Robin's remarkable achievements but, for example, he stood up for 'digitally excluded' taxpayers; fought for safeguards to protect those in tax debt; and was instrumental in achieving reforms that have benefited disabled people and carers.

Robin was an early LITRG volunteer, working with the group's founder and first Chair, John Andrews OBE. He played an instrumental role in setting up the charity Tax Help for Older People in 2001, then went on to become LITRG's first Technical Director, serving in the role from 2003 to 2018. This was not the end of his contribution, with the group welcoming his reappearance at the very next meeting as an active volunteer.

Before working for LITRG, Robin trained as a solicitor and worked as Senior Technical Editor for tax publishers CCH, where he helped to develop and then edited the Red and Green tax legislation books. He wrote and lectured extensively on personal tax matters throughout his career and took a keen interest in the interaction of tax with the welfare benefits system.

Robin enjoyed his retirement from full-time work, but he did not retire from tax. Latterly, he worked as a senior policy adviser for the Office of Tax Simplification as well as writing a book, *Taxpayer Safeguards: Rights and Protections for Individuals* (published by Claritax books) and started to pen another, on disability and the tax system.

Recognition

Quietly influential, Robin was not one to seek praise or reward for his endeavours. He was nevertheless extremely gratified when in 2015 he was awarded the MBE in recognition of his work for low-income taxpayers.

In 2020, he was presented with the Lifetime Achievement award at the Tolley's Taxation Awards. His typically humble acceptance speech sought not to focus on his own endeavours, but instead praised colleagues in the profession and government for their help and collaboration over his 'fascinating' 40 year career.

Personal life

In some respects, Robin's private life was inseparable from the professional as he and his wife, Jane Moore, were a 'tax couple'. They met through LITRG in 1999 when Jane was technical director at TaxAid. In his Taxation Award acceptance speech, Robin said that he owed more to Jane than he could ever say and fondly recounted their initial meeting 'in the committee room at 12 Upper Belgrave Street, and immediately afterwards in the Plumbers Arms down the road' – clearly a *coup de foudre*! Robin and Jane celebrated their 20th wedding anniversary in July this year.

Something of a polymath, Robin's general knowledge was encyclopaedic. This meant that he was always excellent company and never short of interesting conversation. Coupled with his great sense of fun and humour, Robin was someone to be sought out at events and functions – colleagues describing him as a 'hoot'!

Music was a great source of joy for Robin. An accomplished amateur viola player, he played in the Sevenoaks Symphony Orchestra. Robin's passion was shared with Paddy Millard MBE, co-founder of Tax Help for Older People and himself a former professional musician, who described Robin as a 'very talented player'.

Having read classics at Oxford, Robin retained a lifelong love of Greece and Rome. He was also interested in theology and a parish council member at his local church.

Future influence

Many years before he stepped down as Technical Director of LITRG, Robin began the invaluable task of mentoring his staff so that the group could forge ahead with the work that he, together with others, had started.

Robin's approach to encouraging and developing others was subtle, yet effective. He might, for example, make a suggestion to read his favourite author, Graham Greene, as a means of honing one's own writing style. Or perhaps he would use a particularly apt classical quote to make or emphasise a point, thus helping the idea stick in his protégé's mind.

Through passing on some of his wealth of knowledge and experience in these skilful ways, Robin's legacy will continue via LITRG's future successes. In a last email to colleagues, he said, 'It is good to see the team still ploughing on with things as we used to do – in fact, better if anything. Continued good luck to you all.'

Robin touched many people's lives and those of us that knew him count ourselves lucky – we are all the better for having done so. He will be greatly missed.

Kelly Sizer, 15.9.22

WELCOME

October Technical newsdesk

Welcome to this month's Technical Newsdesk. The eagle-eyed among you may have noticed that I am not Richard Wild! As Richard takes a very well-deserved holiday, I have been asked to write this month's introduction.

I am head of the CIOT's Low Incomes Tax Reform Group (LITRG). Our aim is to give a voice to low-income, unrepresented taxpayers in the tax system. We do this by providing free information about the tax system through our website www.litrg.org.uk and by making representations on behalf of our constituents. Regular readers of Technical Newsdesk will often see details of LITRG's published submissions, alongside those of CIOT and ATT.

LITRG submissions focus on the perspective of the low-income, unrepresented taxpayer. Often, we look at both the tax and benefit systems which can create some tricky interactions.

A timely example of this is one of the proposals that has been mooted during the leadership election, which is to increase marriage allowance to the level of the personal allowance. Currently, the marriage allowance is £1,260. It broadly enables someone who is not liable to income tax at a rate higher than the basic rate (or higher than the intermediate rate if a Scottish taxpayer) to receive £1,260 of their (usually non-taxpaying) spouse or civil partner's personal allowance, to provide them with a tax credit of £252.

If the transferable amount was increased to the level of the (current) personal allowance of £12,570 that would potentially mean a tax credit of £2,514, which is a significant increase for those who qualify. However, if the couple is claiming universal credit, then a reduction in the income tax bill of one partner by £2,514 means an increase in the level of their net earned income for universal credit purposes. As income increases, universal credit tapers at the rate of 55%. That means the couple would gain £2,514 from the increased marriage allowance but lose £1,382.70 from their universal credit award.

Another frequent activity in the LITRG team is publishing articles and press releases on the LITRG website. One recent press release (www.litrg.org.uk/ref2665) warned workers of the tax and benefits hit from fuel top-up money, published as we became aware that some employers were trying to help employees by starting to pay or reimburse employee business mileage at more than the HMRC-approved amount. As we explain, due to the tax and benefit interactions, employees may not see the full benefit of those additional payments. See the article by Meredith McCammond on page 8, which considers how employers can actually support their staff through the cost of living crisis.

These are just two examples of the many interaction issues we think about on a daily basis. We know that many CIOT and ATT members use the LITRG website. I would encourage anyone who comes across LITRG-related issues – either in practice or from family and friends – to contact us via email litrg@ciot.org.uk. We welcome feedback about the website but also information about any issues that you may see that we should be responding to.

Not unsurprisingly, I have taken the opportunity to highlight some of LITRG's work. As always, regular updates on the wider work of the technical teams in CIOT and ATT are in the 'latest news from CIOT/ATT' emails, circulated on Tuesday afternoons. Richard will be back in his usual spot next month!

Victoria Todd, Head of LITRG

NEWSDESK ARTICLES

Contact

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GENERAL FEATURE LARGE CORPORATE
MANAGEMENT OF TAXES

HMRC Annual Report and Accounts 2021-22

The CIOT has responded to the Public Accounts Committee's call for evidence on HMRC's work.

Each year, the House of Commons Public Accounts Committee (PAC) holds a short inquiry into HMRC's Annual Report and Accounts (tinyurl.com/HMRC22), consisting of a call for evidence from interested bodies, followed by a single hearing with senior HMRC officials and resulting in a short report containing recommendations to which HMRC must respond.

The PAC works closely with the National Audit Office and the starting point for the inquiry is the Report by the Comptroller and Auditor General (C&AG) on HMRC's accounts (published as part of the HMRC annual report). This year the C&AG qualified his audit opinion on HMRC's accounts because of 'material levels of error and fraud in the Covid-19 support schemes, personal tax credits expenditure and corporation tax research and development reliefs', so these are the focus of the PAC's inquiry. However, evidence can also cover other issues relating to how HMRC is managing tax reliefs and revenue collection. CIOT took a broad approach in its response, covering HMRC's customer service performance among other issues, in a wide-ranging 16 page submission.

On Covid support schemes, CIOT focused on Coronavirus Job Retention Scheme (CJRS) errors. Given the complexity of the CJRS, the speed of its introduction and frequent changes to its rules, the level of errors is not a surprise, we said, adding that it was particularly hard for smaller employers to obtain reassurance from HMRC that they were claiming correctly. We regretted that the Treasury Directions given to HMRC provided no discretion for the tax authority to exercise its care and management powers, particularly for cases where employers were acting in good faith and in pursuance of the stated objectives of the CJRS.

On personal tax credits error and fraud, we drew attention to LITRG's long-running concerns about the accuracy of statistics in this area. We also expressed concern about the process for transferring tax credit debt from HMRC to DWP. As managed migration starts in earnest, it is important that HMRC and DWP work together to ensure their guidance and communications are robust to help people understand what is happening and their options.

CIOT told the committee that we share the National Audit Office's concern over abuse in R&D credit reliefs and are supportive of government efforts to crack down on it. However, we are concerned that some of the measures being proposed will prevent genuine claimants from accessing the relief to which they are entitled, while not necessarily leading to a significant reduction in abuse. We suggested other ways forward which could be more effective in tackling abuse. We expressed concern that HMRC is interpreting some rules around eligibility for R&D credits in an arbitrary way which is creating uncertainty and may be harming the relief's effectiveness.

More broadly on the management of tax reliefs, we praised improvements in how HMRC reports on tax reliefs, but said that the way information is presented makes it difficult to analyse. Additionally, too many reliefs remain uncosted. When a relief is introduced, there should be a mechanism to obtain sufficient data to monitor its cost. The government should take a more systematic approach to the evaluation of reliefs.

On revenue collection and tax debt, we focused on time to pay arrangements (TTPAs), noting that their use still seems low. We told the PAC that our members have told us that it seems quite difficult to get a TTPA now unless you apply via the online route. We also expressed concern about a lack of consistency in decision-making following a TTPA request.

The C&AG's report pays close attention to the tax gap and CIOT provided our own analysis and recommendations in our submission. We noted that more than £9 billion of the tax gap relates to taxpayers not getting things right through error or carelessness and suggested that this is indicative of the complexity of the tax system. We argued for a stronger focus from ministers on tax simplification. On the question of whether HMRC's expectation that Making Tax Digital would reduce the amount of tax lost to avoidable errors has been realised, although we are two years in we feel that the data remains inconclusive.

Noting that progress on tackling evasion and criminal attacks on the tax system seems to have stalled, we suggested that HMRC should focus on data analytics to make best use of the large amount of data they now have access to. We concluded that we will probably have to wait a number of years for the full impact of the pandemic to become clear, as we find out how much of the tax deferred in 2020-21 will ultimately go unpaid due to business failure. We welcomed HMRC's intention to publish a new standalone offshore tax gap estimate.

We are taking every opportunity to make our concerns about HMRC's customer service performance clear (see, for example, tinyurl.com/yvzy8m5c). In our submission, we explained the difficulties that both advisers and taxpayers face in getting timely responses and action from HMRC. We expressed concern that staff numbers within HMRC are being cut in anticipation of securing savings from digitalisation when these savings have not yet been realised. We told the MPs that HMRC's performance standards need to be improved if the tax authority is to play its essential role in supporting taxpayers and businesses.

Finally, on repayments to taxpayers, we welcomed HMRC's acknowledgement that there is a serious problem around unacceptable practices by some repayment agents, and the holding of a consultation over the summer. However, we expressed concern that any action could take time to materialise. We urged HMRC to consider what more they can do to protect people in the short-term.

The PAC's hearing with HMRC took place on 12 September and a report can be read on the CIOT website blog. The CIOT submission is not expected to be published until the committee publishes its report later this autumn.

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GENERAL FEATURE PERSONAL TAX

Scottish taxes

The CIOT's Scottish Taxes Committee has been considering a number of recent wide-ranging consultations.

The Scottish Taxes Committee has been considering a number of consultations of late. A recent submission concerns Scotland's public finances in 2023/24, a wide pre-Budget consultation released by the Scottish Parliament: 'Scotland's public finances in 2023-24: the impact of the cost of living and public service reform'.

The Finance and Public Administration Committee of the Scottish Parliament, as part of their pre-Budget scrutiny, aim to:

GENERAL FEATURE PERSONAL TAX

Decentralised finance (cryptoassets): HMRC call for evidence

The CIOT has responded to the recent government consultation on Decentralised Finance in relation to cryptoassets, addressing the future tax treatment of lending and staking.

The joint CIOT-ATT working group has recently been giving some thought to the call for evidence 'The taxation of Decentralised Finance involving the lending and staking of cryptoassets', which closed at the end of August and to which the CIOT responded.

In the document, the government acknowledge that the current legislation does not properly accommodate the unique nature of cryptoassets, particularly with regard to Decentralised Finance (or 'De-Fi'), whereby assets are dealt with on something akin to a brokerage platform, which can offer the services of a traditional financial institution. Through De-Fi, investors can also buy, sell and trade cryptocurrencies, crowdfund, and insure crypto investments, as well as manage and grow them. As well as allowing investors to lend and borrow cryptoassets, these De-Fi platforms can also allow assets to be 'staked', where they are used to provide liquidity in exchange for rewards – akin to payments of interest.

HMRC currently treat the staking and lending of cryptoassets within De-Fi as giving rise to a capital gain tax (CGT) charge, but options put forward within the consultation include the introduction of a no-gain/no-loss treatment, or bringing cryptoassets into the existing repo and/or stock lending rules. A third option put forward was to legislate to create an entirely new set of rules for lending and staking, along similar lines to those for repo/stock lending.

Whilst any of these options would remove actual CGT charges on De-Fi transactions, the CIOT's response raised concerns about the continuing administrative burdens surrounding the compliance requirements in reporting transactions. Within CIOT's response, the third option was put forward as the preferred choice; however, prompted by some of the document's questions, the response went a little further by urging the government to not only start with new legislation aimed specifically at De-Fi, but to reconsider the tax rules surrounding cryptoassets as a whole.

Specifically on De-Fi, and along the lines of the third option put forward, the CIOT's final recommendation was to remove De-Fi transactions from the scope of CGT entirely, such that both CGT charges and reporting requirements did not arise. There can be a huge number of transactions involved within De-Fi, and the work required to keep track of and report these can be incredibly time-consuming for advisors. As well as making life much easier for investors and their advisors, by bringing the UK's treatment of cryptoassets more in line with that of other nations, such changes might help to attract more investment onto UK platforms, which the government is keen to promote.

The cryptoassets industry is developing rapidly, and the current tax rules are in danger of not being able to keep up with and develop alongside them. CIOT is keen to ensure continued liaison with HMRC and the government to ensure that this does not happen.

The CIOT recently submitted another response to HMRC calling for a universal, statutory definition of cryptoassets to be adopted for tax purposes. Such is the recent development of these assets that no single definition is currently in place within the tax legislation.

The full CIOT response to the De-Fi call for evidence is available here: www.tax.org.uk/ref973

Chris Thorpe *cthorpe@ciot.org.uk*

- influence how the Budget is prepared;
- improve transparency and increase public awareness of the Budget;
- consider how the Scottish government's Budget for 2022-23 should respond to new fiscal and wider policy challenges; and
- ensure better results and outcomes when compared against the Scottish government's fiscal targets and goals.

The stated focus was: 'How will the rising cost of living impact on the Scottish Budget in 2023-24? Will the Scottish government's proposals for reforming the public service deliver the efficiencies expected?' Questions included concerns around efficiency savings, transparency, net-zero targets and inflation or the cost of living crisis. However, there also were questions about whether Scottish tax priorities and the necessary framework for tax scrutiny will be in place for Scotland.

The CIOT's response focused on the need for pressing ahead with promised reforms such as devolution of air passenger duty, reforms to the additional dwelling supplement for the land and buildings transaction tax (LBTT), the appointment of a full-time minister for taxation, reconvening of the Devolved Taxes Legislation Working Group, and the possibility of introducing annual Scottish Finance Bills.

Other consultations which are currently ongoing include:

- 'Land reform in a Net Zero Nation': one section asks about how taxation policy can support land reform, particularly in regard to council tax, LBTT and more effective use of reliefs and exemptions.
- 'Assessing the design and operation of the Scottish government's block grant adjustments': asks about the Barnett formula and various ways in which it is calculated.

The CIOT's full response on Scotland's public finances in 2023-24: the impact of the cost of living and public service reform can be found here: www.tax.org.uk/ref984.

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INTERNATIONAL TAXES

The two-pillar solution to international tax: where we are now?

Work continues by the OECD/G20 Inclusive Framework on BEPS on the two-pillar solution agreed in October 2021 that is intended to address the challenges arising from the digitalisation of the global economy. The CIOT has recently considered a Progress Report from the OECD on Pillar One and draft legislation published by the UK government that will implement Pillar Two in the UK.

In October 2021, the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) reached an agreement on a two-pillar solution to reform the international tax framework in response to the challenges of digitalisation.

The CIOT welcomed this historic agreement which aims to bring the international corporate tax framework up to date with the challenges of the digitalising economy, as well as to introduce more transparency and fairness in the global tax environment. We have long advocated a multilateral solution to these issues. We have been increasingly facing an international tax landscape of unilateral measures (and retaliatory actions) being taken independently by countries. These measures lead to less alignment of tax bases globally, resulting in potential double taxation and a significant compliance burden for businesses, and consequently restrict economic growth and innovation. Thus, the two-pillar solution and its key objective of stabilising the international corporate tax framework is welcome.

'Pillar One' involves a partial reallocation of taxing rights over the profits of multinational enterprises (MNEs) to the jurisdictions where consumers are located. (This is intended, among other things, to address the issue that many of the tech giants, under existing rules, pay most of their tax in the US, despite making sales all across the globe.)

'Pillar Two' intends to ensure that MNEs pay a minimum rate of 15% corporation tax (or their version of it) in every country they operate in.

Pillar One

In July 2022, the OECD Secretariat published a 'Progress Report on Amount A of Pillar One' (www.tinyurl.com/2s3e295u) and the CIOT welcomed this as a significant step in delivering the two pillars. We recognised the significant progress on the work on Amount A of Pillar One reflected in this report, following the consultations on the building blocks relating to the new taxing right under Amount A that have taken place during Spring and Summer 2022.

The Progress Report gave a welcome opportunity to comment on the draft domestic model rules for the various building blocks for Amount A. In our response, we also noted the revised schedule for the ongoing work, with the intention now being that the Pillar One rules will come into force in 2024, provided that a critical mass of countries enter into a multilateral convention to implement it.

Whilst recognising the political drive behind the two pillars, we also said that we support the additional time being taken in the design of these innovative rules that are intended to last for decades.

Our response welcomed the draft model rules in the Progress Report that introduce mechanisms to simplify the position for MNEs, indicating that the Inclusive Framework has listened to stakeholder feedback on previous consultations. We suggested that the ongoing work should continue to focus on the practicalities of the model rules and continue to ensure that these are as practicable and straightforward as possible, while delivering the policy aims.

We also said that effective relief from double taxation is crucial in order to deliver the policy aim of Pillar One, being the allocation of profits of an MNE to jurisdictions in which goods or services are supplied or consumers are located (market jurisdictions).

We noted that Pillar One is not intended to give rise to an overall increase in taxation for the MNE. Rather the rules are intended to operate as a reallocation of profits from one jurisdiction to another. Therefore, alongside the new taxing right for market jurisdictions, it is important that the rules provide relief for the equivalent amount that, under the existing profit allocation rules, are taxed elsewhere in order to prevent double taxation that would penalise and discourage cross-border activity. We noted the ongoing work in this area.

Our full response to the OECD can be found at: www.tax.org.uk/ref985

Pillar Two

Pillar Two intends to ensure that MNEs pay a minimum rate of 15% corporation tax (or their version of it) in every country they operate in. The Inclusive Framework has published model legislation (Model Rules) with the aim for countries to legislate these Pillar Two rules (also known as the Global Anti-Base Erosion (GloBE) Rules) in 2022, with effect from 2023.

In July 2022, the UK government published legislation, as part of the draft Finance Bill legislation package, for a new 'multinational top-up tax', which will implement Pillar Two in the UK. The CIOT welcome the publication of this draft legislation, notwithstanding the recognition that there are many areas that require further multilateral work through the Inclusive Framework. This affords an opportunity for early scrutiny. The legislation is long and complex and the new rules will pose big administrative and compliance challenges for tax authorities and affected businesses alike.

Over the summer, the CIOT has met with HMT/HMRC to discuss the draft legislation and the implementation of Pillar Two in the UK. CIOT representatives have also taken part in a series of technical meetings held by HMT/HMRC at which the legislation has been discussed clause by clause, page by page. These meetings have given a welcome and valuable opportunity for detailed and open discussion, but have also highlighted the many remaining open questions within the draft legislation that need to be resolved by the Inclusive Framework.

The CIOT has previously urged the government not to rush ahead with implementing Pillar Two rules before other competitor countries. To this end, we welcomed the government's decision to delay the proposed implementation date of the reform to the end of 2023 rather than, as previously suggested, next April.

However, at our recent meetings we have also discussed with HMT and HMRC the reporting obligations that will arise for MNEs ahead of actual implementation if the legislation is enacted in the UK on the currently proposed timetable of the next Finance Bill.

We have suggested that the legislation remains in draft while the unresolved points are worked through and that it is not enacted until it is in a more settled state and closer to the implementation date.

Our press releases on Pillar Two can be found at: www.tax.org.uk/multinational_tax_plan and www.tax.org.uk/global_minimum_tax

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INTERNATIONAL TAX EMPLOYMENT TAXES

Double tax treaties: review of treaty policy positions

CIOT has responded to an informal consultation by HMRC in relation to the UK's policy position in negotiating treaties around permanent establishments and changes to the Model Treaty introduced by the Multilateral Instrument entered into following the OECD/G20 BEPS project. The informal consultation also asked about remote working across borders, and the potential impact for permanent establishments.

In July 2022, HMRC's Tax Treaty Team sought input in relation to the changes to Article 5 of the OECD Model Tax Convention (MTC) as a result of the BEPS action reports and also in relation to the permanent establishment (PE) implications of remote working.

With regard to Article 5, HMRC's letter refers to the changes to Article 5 and, in particular, the new 'preparatory or auxiliary' activities listed in the MTC that businesses were concerned would cause less certainty and, potentially, to a proliferation of PEs. We suggest that it is too early to conclude that the changes are not causing difficulties in practice. In our view, the concerns expressed by businesses in 2016 remain valid. It is also important to put these rules into context. The rules set out in the MTC apply to all business, and not just the largest multinationals for whom the new rules were designed.

More time should be allowed for these changes to bed in. However, we also recognise that flexibility in negotiating treaties is important. We said that generally treaties are to be welcomed. It is probably not always the case that PE will be the critical point for multinationals, including smaller ones, when considering a double tax treaty as a whole. It will depend on the treaty and its finally agreed terms.

With regard to remote working, our members are reporting increasing demands on businesses from employees to perform work remotely across a border for short term and more permanent periods of time. This is due to the pandemic and, subsequently/more generally by some employers wanting to give employees greater flexibility in being able to work in a country outside the UK for a limited period (particularly where they are nationals of that country). This is not least in light of the continuing war for talent and businesses wanting to be competitive in the global jobs market. The rise of remote working (both UK individuals working overseas and non-UK individuals working in the UK) has allowed businesses to realise they can often operate effectively with people working remotely, including at senior positions.

Businesses can find it challenging to apply the PE regulations in the context of remote work. Guidance from HMRC (and the OECD) around this would be welcomed by businesses and advisers.

Our response to HMRC said that it would be extremely useful to have content dealing specifically with remote workers to help clarify the position,

We noted that difficulties arise as our members' experience is that different countries take different interpretations of remote worker situations (and of the OECD guidance contained at paragraph 18 of the commentary). Some countries appear to have a default position that a home office cannot be at the disposal of the individual's employer, whilst other countries take the opposite view. Thus, our letter said that HMRC guidance would be useful, but that it would also be very helpful to have an agreed position through the OECD that applies internationally.

Our full response can be found at: www.tax.org.uk/ref1016

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INDIRECT TAX

Online VAT registration

HMRC launched its new online VAT registration system on 1 August 2022, which brings the system onto the same mainframe as Making Tax Digital. Members have subsequently been raising troubleshooting concerns with the CIOT and ATT.

The CIOT and ATT, as well as other stakeholder representatives, have been collating member feedback and making submissions to HMRC highlighting the difficulties and errors experienced with the new online system. HMRC initially issued an 'Agent Update' paper on 10 August, with a further 'Query paper' on 12 August (published at tinyurl.com/2pdy2r2w).

As these still did not cover all of the arising scenarios, the ATT and other stakeholders attended a meeting with HMRC on 30 August, where feedback submissions, including those from the CIOT and ATT, were discussed. During that meeting, HMRC confirmed that several steps in the online application process had been amended, including removing the reference to intending traders having to provide a date 'within three months'. Also confirmed was that the upload functionality was being worked on as a priority so that documents can be submitted with applications, as was available in the previous system. Further, they anticipated that 'task functionality' would be added to the system so that users would not need to click through all questions to move forwards and backwards within the online form. Instead, the questions would be grouped by 'task' so you can select the heading to find the area you want to access more quickly.

HMRC confirmed that they would compile responses to the feedback points that were not able to be finalised during the meeting, and that these would be sent to stakeholders in due course. Once the CIOT and ATT receive them they will be published on the technical news areas of our websites at: CIOT: www.tax.org.uk/technical-news/1, ATT: www.att.org.uk/news.

Whilst we would hope that the major concerns with the new system are all corrected by the point of publishing this article, if you still experience issues with the new system that are not already addressed in the technical news publications, please do contact technical@ciot.org.uk or atttechnical@att.org.uk with 'Online VAT registration system' in the title and the CIOT and ATT will continue to feedback user issues to HMRC.

Jayne Simpson jsimpson@ciot.org.uk
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GENERAL FEATURE

Green guidance

Whilst the government's 'Ten Point Plan for a Green Revolution' policy paper sets out its ten priority strategic aims for the UK to move towards net zero, it is not always so straightforward to find out via gov.uk if there are associated tax incentives or taxes that seek to change polluting behaviour that need to be considered.

The CIOT and ATT have engaged with HMRC with a view to improving the accessibility of tax guidance relating to the UK's net zero strategy. There are green tax incentives/considerations throughout the various taxes, for example:

- VAT: zero-rate for the installation of specified energy saving materials;
- business rates relief: certain green installations in property; and
- employment taxes: allowances for employee electric vehicles.

There is existing guidance for many green tax incentives/dissuaders, but you may already have to know that they exist to be able to find them in gov.uk. If a business or an individual wanted to plan a going greener/net zero strategy based on the Ten Point Plan (tinyurl.com/49u9ym6c) or Build Back Greener (BBG) (tinyurl.com/ycknj8ck) government policy aims, there are no links in either of these reports to the relevant gov.uk pages about the taxes/tax developments mentioned. (For example, tax incentives for cycling, woodlands, R&D and vehicles are in the BBG document.)

Similarly in the government response to the Climate Change Committee report (tinyurl.com/myhm7x38), it mentions some climate change tax developments, though again, readers would have to find the information on these tax policies individually via an internet search on each measure. There is no link to gov.uk to a landing page for net zero and tax.

We would like to see an index page on gov.uk that lists the associated tax considerations for each of the UK's priority net zero targets, so that businesses and individuals can start from an indexed landing page that is easy to find and lists the relevant net zero tax considerations that are linked to the existing or new tax guidance.

Additionally, where governmental reports are published, they too could embed a link to a general net zero tax measures index page, which would facilitate accessing the relevant net zero tax guidance of interest.

HMRC were receptive to our suggestion and agreed in principle to take something forward, though it may be the medium term before a project can progress.

The CIOT and ATT will continue to engage with HMRC on net zero tax measures. We welcome hearing from members about tax and net zero, particularly as we note that there are green projects run by other governmental departments where the tax treatment of funding, transaction arrangements or the impact to the tax position on the recovery of associated costs can raise tax questions, and it is not always straightforward to apply existing guidance to new innovations.

Jayne Simpson *jsimpson@ciot.org.uk*
Helen Thornley *hthornley@att.org.uk*

CIOT		Date sent
Progress Report on Amount A of Pillar One	www.tax.org.uk/ref985	17/08/2022
Scotland's Public Finances in 2023/24: the impact of the cost of living and public service reform	www.tax.org.uk/ref984	17/08/2022
The taxation of decentralised finance involving the lending and staking of cryptoassets	www.tax.org.uk/ref973	31/08/220
Review of treaty policy positions	www.tax.org.uk/ref1016	05/09/2022
LITRG		
Draft regulations to introduce a Statutory Debt Repayment Plan	www.litrg.org.uk/ref2668	05/08/2022
Making Tax Digital for Income Tax: draft tertiary legislation	www.litrg.org.uk/ref2669	12/08/2022

News from CIOT and ATT

Minister thanks CIOT for input on furlough design

The outgoing Financial Secretary to the Treasury (FST) praised the work of the CIOT and its Low Incomes Tax Reform Group and said the tax system would be central to the government's response to the cost of living crisis, in remarks to the CIOT's Parliamentary Reception in early September.

Lucy Frazer thanked the tax bodies for their input to the design of a range of government policies including the furlough scheme, the extension of loss relief carry back and pension tax relief equality for low earners, the latter of which LITRG has been campaigning for since 2018.

Frazer said that the tax system would be front and centre of the government's efforts to tackle the cost of living crisis, address climate change and harness technological innovation, telling the room: 'Not only does [tax] bring in revenue to enable us to pay for vital public services ... it also incentivises behaviours and actions in these areas and it's really important that we get it right.'

The FST also highlighted the work of Tax Aid and Tax Help for Older People, saying that their work supporting the elderly and vulnerable was 'imperative' and highlighting the successes of the charities' 'Bridge the Gap' campaign.

Frazer added that the government would continue to 'value the expertise and advice' brought to bear on the tax system by CIOT and LITRG, telling the assembled guests that government would only be able to deliver 'the most nimble, efficient and reputable services ... with organisations like CIOT'.

At the Parliamentary Reception: Jim Harra, Susan Ball, Lucy Frazer, Craig Mackinlay.

CIOT President Susan Ball used her remarks at the event to identify tax policy priorities for the new UK government. These are the same three priorities put forward in her letter to the new Chancellor and tax minister (see opposite).

The President's call for the government to intensify efforts to simplify the tax system received the support of Craig Mackinlay MP, the event's parliamentary sponsor. Mackinlay – himself a CTA in practice – urged the government and the tax profession to continue to work cooperatively to improve the system.

The reception took place just hours after Liz Truss had been announced as the new Conservative leader and only three days before Frazer was moved to the Department of Transport amid a widespread ministerial shake-up.

Political update

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

During the Conservative leadership contest in August, CIOT President Susan Ball wrote to the two final round contenders Rishi Sunak and Liz Truss identifying three strategic priorities for the new Prime Minister to improve the tax system. These were the same issues raised with the new ministers responsible (see opposite).

CIOT, ATT and LITRG representatives joined other professional and representative bodies in August for our annual meeting with the special advisers to the House of Lords Economic Affairs Finance Bill Sub-Committee. We discussed potential areas of focus for the Sub-Committee's inquiry into the draft Finance Bill. The Sub-Committee is this year being chaired by Chartered Tax Adviser Lord Leigh of Hurley.

CIOT responded to two parliamentary tax inquiries in September. The Public Accounts Committee called for evidence on HMRC's annual report and accounts ahead of a hearing with officials now expected to take place in October. CIOT's response is summarised on page 41. The Treasury Committee asked for views on the effectiveness of tax reliefs. This response will be summarised in a future Technical Newsdesk. Both inquiries are expected to lead to reports in the coming months.

CIOT was represented at a planning session held by the Scottish Parliament's Finance and Public Administration Committee in September. The committee heard from Kate Willis on the steps being taken by the Senedd to improve scrutiny of tax legislation in Wales.

Institute's tax messages for new ministers

Chancellor Kwasi Kwarteng


Tax minister Richard Fuller

CIOT President Susan Ball has written to the new Chancellor and tax minister congratulating them on their appointments and identifying three key areas of tax policy and administration where the Institute is urging the new government to take action: improving HMRC performance, reviewing Making Tax Digital and simplifying the tax system.

In her letter, the President writes that unless these issues are addressed, the tax system will become 'less efficient, harder to comply with and less effective in both raising revenue and supporting taxpayers'.

Alongside new Chancellor Kwasi Kwarteng, the letter is addressed to Economic Secretary Richard Fuller, who is the new minister responsible for overseeing the tax system and HMRC.

In the letter, Susan Ball states that HMRC's performance standards 'are falling badly short and must be improved if HMRC is to play its essential role in supporting taxpayers and businesses'. She gives examples of tax advisers and their clients waiting lengthy periods – in one example for more than a year – for responses and action from the tax authority.

She urges the government to 'undertake to maintain HMRC's existing resources and capabilities, coupled with a more ambitious mandate to improve standards of basic performance across the full range of HMRC activities, including answering telephone queries, dealing promptly with correspondence, investigation and compliance activity and timely processing of new tax registrations and agent authorisations, as well as ensuring that these improvements are sustained for the remainder of the life of this Parliament'.

Turning to Making Tax Digital (MTD), Susan Ball tells the new ministers that while digitalisation can improve the efficiency and effectiveness of the tax system, there are 'serious concerns' that the current timetable is becoming unrealistic, because the obligations that taxpayers will have under MTD are not yet clear and there remain significant technical challenges to overcome. She calls on the government to undertake an early review of the MTD programme and its implementation timetable in the light of the lessons learned since its announcement in 2015, adding that: 'The government should work with stakeholders to identify areas of risk with the current strategy and whether changes … can be made to ensure that MTD can be launched successfully and be built on as experience develops.'

The third issue raised by the Institute is simplification. 'The UK tax system has become far too complicated for taxpayers to understand and comply with,' writes Susan Ball.

CIOT encourages the new administration to 'undertake a more ambitious tax simplification programme and resist the temptation to make major structural changes to the tax system until this is done'. The Institute adds that priority should be given to the development and roll-out of the single customer account.

The letter concludes with an offer to work with the new government, HMRC and other professional bodies to effect improvements in the UK tax system, with the Institute requesting a meeting to discuss the issues raised.

In the news

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

'CRS gave HMRC huge amounts of data on assets and income outside the UK, but until now it has been unclear whether HMRC already knew about most of these cases, or whether they had the appetite or capability to check,' said John Barnett, chair of the Chartered Institute of Taxation's technical policy and oversight committee. 'It now appears that we will soon have a better idea of the scale of offshore evasion than we have had before,' he added.

John Barnett, chair of CIOT's technical policy and oversight committee, Financial Times, 15 July 2022

'With the power to set national insurance in Scotland, ministers could choose to align it with Scottish tax rates. They might even consider more radical proposals such as merging the two, although the history of tax devolution suggests reform of this kind is unlikely.'

CIOT's John Cullinane on national insurance devolution, 'Thunderer column', The Times (Scotland edition), 21 July 2022

'Officials see capital allowances as a way to boost growth and productivity. However, three of the main bodies representing tax experts – the Chartered Institute of Taxation (CIOT), the Institute of Chartered Accountants for England and Wales (ICAEW) and the Association of Taxation Technicians (ATT) – have said that businesses would benefit most from a simple system that does not change.'

The Times, 29 July 2022

'John Cullinane, the director of public policy at the Chartered Institute of Taxation, the leading body representing tax accountants, said oligarchs and other members of the corrupt elite would be easily able to exploit "gaping holes" in the new rules.'

The Guardian, 1 August 2022

'To successfully appeal a late-filing penalty [for not paying CGT on a sale of a property], you need to demonstrate to HMRC that you had a reasonable excuse for being late and HMRC does not normally accept ignorance of the law as a reasonable excuse.'

ATT Technical Officer Helen Thornley, Financial Times, 19 August 2022

Event

ATT Prizewinners' Lunch

On Wednesday 7 September, ATT President David Bradshaw hosted a celebratory luncheon at Salters' Hall, London for prizewinners from the May and November 2019, May and November 2020, May and November 2021 and May 2022 examination sittings. Past Presidents Trevor Johnson, Peter Gravestock and Frank Collingwood attended the event to present medals and congratulate the prizewinners. Well done to all our prizewinners and we wish you every success in your career!

ADIT

Capturing the zeitgeist at IFA Berlin 2022

ADIT Academic Board Chair Jim Robertson and ADIT Manager Rory Clarke promoted ADIT as the unrivalled qualification for international tax professionals at the 74th International Fiscal Association (IFA) Annual Congress in Berlin from 4 to 8 September.

More than 2,000 tax leaders from around the world attended the Congress, and interest in the ADIT qualification was high throughout the five days of the event.

The emergence of Big Data as a key issue in the international tax discourse was reflected by the Congress programme, which featured a number of seminars on the subject. The implications of Big Data for the activities of tax administrations and actors around the world is also a growing topic within the ADIT syllabus and our own line-up of events, including our popular ADIT International Tax Webinars.

Congress highlights included a series of Women of IFA Network (WIN) in Conversation discussions presented by ADIT Committee member Sarah Blakelock. There was also a key look at recent international tax developments chaired by Jonathan Schwarz. Meanwhile Mukesh Butani, Philip Baker, Ruth Mason, Luís Schoueri and Jefferson VanderWolk were among the ADIT Academic Board and Committee members who shared their time with us, meeting with fellow delegates at our exhibition stand.

We also had the pleasure to meet with a number of CTAs and ADIT holders from around the world who were among the attending delegates, telling us of their personal experiences of our qualifications and the resulting benefits to their international tax careers.

ADIT exhibited alongside the International Tax and Investment Center (ITIC), a research and education organisation that promotes initiatives to encourage investment in transition and developing economies. We look forward to future collaborations with ITIC, who share our goal of promoting tax understanding around the world.

If you participated in the Congress, either in person or virtually, we hope you enjoyed it and we look forward to promoting ADIT at future IFA events.

To stay in touch, you can email Rory and the team at: education@adit.org.

We welcomed a number of ADIT stakeholders to our stand, including Anna Theeuwes, Ruth Mason, Philip Baker, Jonathan Schwarz, Johann Hattingh and Katharina Beberweil

Our past students Claire Galineau CTA ADIT, Sumeeta Ahluwalia CTA and Rajeev Agarwal ADIT

Education

Tax education in schools

Sofia Thomas, ATT, CTA, Head of Tax, Juno Sports Tax on how discussing taxes in schools can help young people to engage with the big ideas in tax policy.

If you work for HMRC do you still have to pay tax? Why do the big companies not pay tax? Can you choose where your taxes go? Do politicians pay tax? These are just some of the questions I am asked when I run tax sessions in schools for students aged 10 to 12.

Almost every individual in the UK will interact with the tax and benefits system in their lifetime. It is often the most tangible link that people have with their governments. Therefore, it is so important to introduce young people to taxes at school. The sessions are not about teaching young people the ins and outs of the tax system but about discussing big ideas – from VAT to inheritance tax to benefits. If you earn more, should you pay a higher percentage of taxes? What is a good rate of tax? What if the top rate of tax is so high that people move to another country?

Depending on the year group and their interests, tax can be linked to many of their subjects. Geography can lead to discussions about whether green taxes could help to slow down climate change? History can ask whether the UK could ever go back to the 83% top rate of tax? And in English, whether it makes sense to charge VAT on ebooks but not on paper books?

There is also the social impact of paying taxes and contributing to the society you live in. Ask students to list all the services that the government provides. Then discuss how the government pays for these things. Engaging young people early on helps them to understand the significance of tax policy both in the UK and internationally. Empowering students by giving them the language to think about tax policy and politics is essential to their education.

We don't need to teach detail or complex theories. We can talk to the students about key areas and ask them to share opinions about what they think an ideal tax system might look like. Personally, I love running these – no two sessions are ever the same.

There are lots of helpful resources online, including HMRC's Junior Tax Facts (at www.att.org.uk/hmrcs-junior-tax-facts), and the new recruitment video from the ATT (at https://youtu.be/a3lN32iHaQI). Teachers are often happy to discuss content with you if you're unsure of the right level for that age group.

A MEMBER'S VIEW

Kurun Khangura

Tax Associate, RSM UK

This month we are excited to shine the spotlight on Kurun Khangura, Tax Associate at RSM UK and member of the ATT.

How did you find out about a career in tax?

During sixth form, our head of careers informed me of apprenticeships available. Following this, I attended many insight evenings at professional services firms which outlined the various departments available for the school leaver route. When I was 16, I completed a two-week work experience programme at Grant Thornton, gaining experience in Audit and Tax, and in doing so learned that I was best suited to a career in tax.

Why is the ATT qualification important?

The ATT qualification indicates that the members have a strong understanding of the basic UK tax system and demonstrates our ability to provide tax advice to individuals and businesses, which often have a broad range of requirements. This is important for me, because I not only deal with tax compliance for high-net worth individuals, but I also provide tax advisory services based on my clients' unique situations and needs.

How would you describe yourself in three words?

Charismatic, resilient and dedicated.

Who has influenced you in your career?

Two partners within RSM, both of whom have given me the utmost responsibility since I joined the firm, providing me with the greatest empowerment and support. They allowed me to join client meetings within my first few weeks of starting and gave me challenging tasks which enabled me to grow and improve my technical ability. At the same time, they have supported me by showing me how they would deal with these tasks, leading me to adopt their methods as I approach day to day tasks.

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

Never be afraid to ask the question. If you get stuck and are afraid to ask a colleague, this can cause delays. I would also suggest taking the initiative to do research before presenting your query to your colleague. This shows that you have put some thought into it and you can see what is missing.

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

One key prediction is that the capital gains tax rate may rise in the coming years, meaning that disposals of shares in companies and many other assets will be subject to higher rates.

What advice would you give to your future self?

To continue to broaden my tax and wider commercial knowledge, so I can better understand my clients and how to help them. In particular, I should make sure I continue to take on new and challenging technical work to ensure I continue to build on the great knowledge I have obtained from completing the ATT qualification.

Tell me something about yourself that others may not know about you.

I joined RSM at 18 years old as a school leaver straight after A Levels and was ATT qualified by the age of 21. Outside of work, I am currently studying for my CTA and enjoy going to the gym and playing five a side football in my spare time.

Contact

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

Award

Peter Rayney receives his Tax Tolley Award for Outstanding Contribution to Taxation


(L to R) Jonathan Scriven, Peter Rayney, Andrew Hubbard

We were delighted to report in the June Tax Adviser that Peter Rayney, outgoing President of the CIOT, won the esteemed Tax Tolley Award for Outstanding Contribution to Taxation in 2021-22 by an individual (see www.taxadvisermagazine.com/article/sunshine-rayney-day).

Peter was personally presented his award this summer and is pictured with Tolley's Director of Tax Markets Jonathan Scriven and Taxation's editor-in-chief and chair of the judging panel Andrew Hubbard.

Technical Work

Spotlight on the CIOT's Property Taxes Committee and the Business Rates Working Group

Kate Willis, CIOT technical officer.

The Property Taxes Committee remit covers most aspects of property taxation. The Committee is chaired by Marc Selby, the Vice-chair is Leigh Sayliss and the Business Rates Working Group is chaired by Kersten Muller.

The work of the Committee in 2021 and 2022 illustrates the diverse nature of its engagement in property taxes underpinned by the knowledge and expertise of senior direct and indirect tax specialists.

The Committee engaged extensively with HMRC and HM Treasury on the consultation to introduce the new residential property developer tax as part of the government's measures to bring an end to unsafe cladding. We provided input on the land and property related aspects of the Office of Tax Simplification's review of capital gains tax in 2021 and their review of property income in 2022. Recent consultation responses have included the proposals to reform the treatment of multiple dwellings relief and mixed use property for stamp duty land tax purposes and, over the summer, the consultation on sovereign immunity from direct taxes.

We contributed to HMRC's informal consultation on the development of the stamp duty land tax relief for freeports, identifying the need to address alternative finance in the draft legislation with a subsequent amendment introduced at Committee of the Whole House stage.

The Committee has also reviewed HMRC's manuals in property-related areas, including land remediation relief and non-resident capital gains tax to address areas of uncertainty or anomalies. Together with the Private Client (UK) Committee, we have contributed to HMRC's consultation on full manual guidance for the 60-day capital gains tax on UK property reporting regime.

The Committee has engaged proactively through written submissions and informal consultation on the tax issues associated with the assembly of land for housing development and tax issues in relation to flat management companies. Recently, the Committee made a proactive submission on the derelict land remediation scheme to ask for the qualifying date of 1 April 1998 for land in a derelict state to be reviewed in line with the policy intent.

Business Rates Working Group

Membership of the group includes specialist rating agents, members with valuation expertise and tax practitioners. The Working Group is therefore able to offer a fairly unique insight, within the CIOT's wider remit, on business rates and the interaction with the wider tax system. This perspective has informed our response to the two tranches of the government's fundamental review of business rates.

Latterly, the Group has responded to the government's technical consultations, including the consultation looking at the new and potentially onerous requirement for businesses to notify the Valuation Office Agency of changes to properties, the nature of their occupation and to provide rent and lease information. These changes are to facilitate new three yearly valuations. The most recent consultation the Group has considered is on 'Digitising business rates: connecting business rates and tax data'. It is anticipated that the Group's participation in business rates will only increase as business rates seem set to become more aligned to mainstream taxes.

Kate Willis, kwillis@ciot.org.uk

Director of Public Policy

Salary circa £125,000 (hybrid or remote considered)

Chartered Institute of Taxation.

The CIOT is recruiting a full-time Director of Public Policy who will be responsible for ensuring that the CIOT's contribution to debates on technical and policy is developed, formulated, and effectively communicated; and that CIOT's professional standards and its response to anti-money laundering obligations are robust and up to date. They will achieve this by leading and managing the work of a diverse, multidisciplinary team of staff, including volunteers. Direct reports include the Head of CIOT's Tax Technical Team, the Head of LITRG, the Head of Professional Standards, the Head of External Relations and the Editor-in-chief of Tax Adviser magazine.

The role involves striking a successful and occasionally finely judged balance between managing the work of others and getting personally involved in the delivery of activities and outputs. The key areas covered by the role are technical and policy strategy, the leadership of staff and volunteers, technical leadership and external relations.

The ideal candidate must be able to command immediate respect from across the tax community, and the strongest candidates must be able to demonstrate first-class technical tax policy credentials, a genuine and demonstrable commitment to the aims of CIOT and outstanding communication, relationship-building and influencing skills. Applicants must be a member of the CIOT.

Please email recruitment@ciot.org.uk for further details or visit www.tax.org.uk/vacancies. The application deadline is 24 October 2022.

Select your preferences to get relevant communications

att

Chartered Institute of Taxation.

The CIOT and ATT prides itself on holding, managing and using student and member data with integrity.

We want to ensure we are sending the most relevant communications, and in October all students and members are requested to select their communication preferences.

Please update your preferences when prompted to do this when we email you in October.

GEORGIANA HEAD
Taxation Recruitment

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

VAT Senior Manager – In-house
Manchester – £65,000 to £75,000 + bens

Our client is an international group headquartered in Old Trafford in Manchester. They seek an experienced indirect tax professional to manage their VAT on a worldwide basis. This will include management of a more junior member of staff, review of VAT returns, liaison with external advisors and overseas accountants, dealing with the relationship with HMRC and overseas revenue authorities, dealing with queries from the business and helping educate teams within the business. An excellent in-house opportunity, this would suit an experienced manager or senior manager, and reports to a Head of Tax. **Call Georgiana Ref: 3277**

Senior Tax Analyst/Assistant Manager
Bradford – £50,000 to £55,000 + bens

In-house tax team of global chemical distribution group seeks a qualified corporate tax professional. In this role, you will deal with all round corporate tax compliance and reporting work, and you will assist tax directors with advisory work including getting involved in transfer pricing. This role can be worked on a hybrid basis, ideally with 3 days a week in Bradford. There is plenty of parking available and a great salary and benefits package. You'll be involved in the nitty gritty, including preparation of monthly and quarterly reporting under US GAAP as well as helping the finance team with tax disclosures. **Call Georgiana Ref: 3282**

Corporate Tax Manager
Harrogate – £excellent

Looking for a local corporate tax role? This well regarded practice seeks a qualified corporate tax specialist to join a friendly team based in the centre of Harrogate. You may be looking to relocate to Harrogate or may currently commute to Leeds. Lovely offices with a mix of home and office working available. Great client base ranging from local OMBs to dynamic international groups. Mix of compliance review and advisory work. Plenty of client contact. Will consider part-time. Great benefits package. Also plenty of scope for promotion – means this role ticks all the boxes. **Call Georgiana Ref: 3276**

R&D Director or Senior Manager
Derby, Bolton or remote working – £excellent

You will be an experienced tax professional with proven knowledge of R&D tax and the incentives regime. You will enjoy building relationships with clients, and will be able to manage your workload and a team of more junior staff. A key element of this role is technical focused – you will be the quality control for the reports prepared by your team. You will help the Business Development and Marketing Team by writing client literature, articles and blogs. Would consider a Manager looking for a step up to Associate Director or an AD looking for a step to Director and future equity participation. **Call Georgiana Ref: 4000**

Stamp Duty/SDLT
London – £59,000 to £72,000 + bens

Excellent chance to work outside of a Big 4 or law firm in an SDLT role. The role is to provide support to the specialist SDLT Partner and Senior Manager in the Tax Advisory team to provide Stamp Taxes advice to the firm as a whole and to assist in the growth of this service offering to the firm's client base. The role is advisory only – so no tax compliance. Instead, you will be dealing with one-off special assignments, report writing and advising on complicated tax technical areas. Could suit someone from a Big 4 or HMRC or a solicitor with strong property tax experience. Great benefits package and part time and flexible working available. **Call Georgiana Ref: 3284**

In-house Tax Manager
Manchester – £excellent

International group seeks a Group Tax Manager, reporting to the Head of Tax and Treasury. Day to day, your role will be to manage tax matters across all taxes and territories. You'll help manage the relationship with HMRC and improve tax systems. You'll liaise with advisors, provide technical support and advice and, where appropriate, get involved in projects including tax due diligence and related structuring for M&A activity. This role would suit a UK qualified ACA, ICAS or CTA with proven large group corporate tax experience. You may currently work in practice or in industry. Full time or 4 day week considered. A classic in-house role. Great benefits package. **Call Georgiana Ref:3293**

www.georgianaheadrecruitment.com

Tax Analyst or Tax Accountant
Liverpool – £36,000 to £45,000 + bens

Large international group seeks a qualified corporate tax professional to join their in-house team based in a shared service centre in the heart of Liverpool. In this role, you will gain valuable experience of VAT and employment taxes, which will help you to progress in industry. This is an ideal first move into an in-house position. Would consider someone more experienced on a part time basis. For full time, this business works c 3-4 days in the office and 1 from home. You will get the opportunity to report to and learn from experienced in-house tax professionals. **Call Georgiana Ref: 3283**

In-house Tax Manager
Blackburn – £excellent

Based in Blackburn, this role is office based in a busy finance team. This role provides an opportunity to join one of the fastest growing businesses in the UK, giving the candidate exposure to a broad range of UK and international corporate tax matters within a supportive and dynamic team, with excellent opportunities for future progression. The ideal candidate will be ACA/CTA qualified, with compliance and reporting experience gained in a large accountancy firm, as well as some knowledge of international groups. Good mix of project work too. **Call Georgiana Ref: 3286**

VAT Accountant or Manager
Manchester – £35,000 to £50,000 + bens

Newly created role in a growing in-house tax team. Reporting to a senior VAT manager and a Head of Tax, you will help run the day-to-day VAT compliance and reporting for this international group. You will liaise with the business and the finance team to ensure timely preparation of VAT returns. You will help with forecasting and will also deal with advisors in the UK and overseas. Would consider someone looking for a step up to manager. Based in the Trafford Park area of Manchester. Hybrid working available – and a really great team. **Call Georgiana Ref: 3278**

Group Tax Manager
Hull – £excellent

Large international group is expanding its tax team and looking for an experienced corporate tax professional who can help run compliance and reporting. In this role, you will business partner with overseas entities and tax advisers to ensure compliance deadlines are met. You will be a focal point for corporate tax compliance on a global basis. There is also the opportunity to deal with project work such as R&D tax and assisting the head of tax with transaction work. Would consider someone remote working who could travel to Hull once a week. Would also consider a part time hire for a more experienced candidate. **Call Georgiana Ref: 3295**

Corporate Tax Manager
Huddersfield – £excellent

Our client is a long standing independent accountancy firm based in Huddersfield. This tax team sees a corporate tax or mixed tax manager. This role could be full time or part time. Working with a good quality OMB client base, you will advise on all areas from compliance to structuring. As you build in confidence, you will become a trusted advisor to your clients. This role is office based but can be worked on a hybrid basis. Ideally, you will have a relevant professional qualification (ATT, CTA, ACA, ICAS, ACCA) but those qualified by experience will also be considered. **Call Georgiana Ref: 3292**

Tax Manager
Newcastle-under-Lyme – £38,000 to £45,000

Independent accountancy firm with offices in Cheshire and Newcastle-under-Lyme seeks a tax manager to help oversee and run tax compliance. In this role, you will supervise more junior staff and help train them. About 90% of your time will be spent dealing with tax compliance for HNW individuals, owner managers and their businesses. This firm is looking for someone who wants to build long term relationships with their clientsl who can liaise with the IFA team and offer a good all round tax service. There will also be the opportunity to get involved in some planning work. Good benefits package and friendly team. Flexible working and hybrid working available. Ideally you will be ATT qualified or equivalent. **Call Georgiana Ref: 3294**

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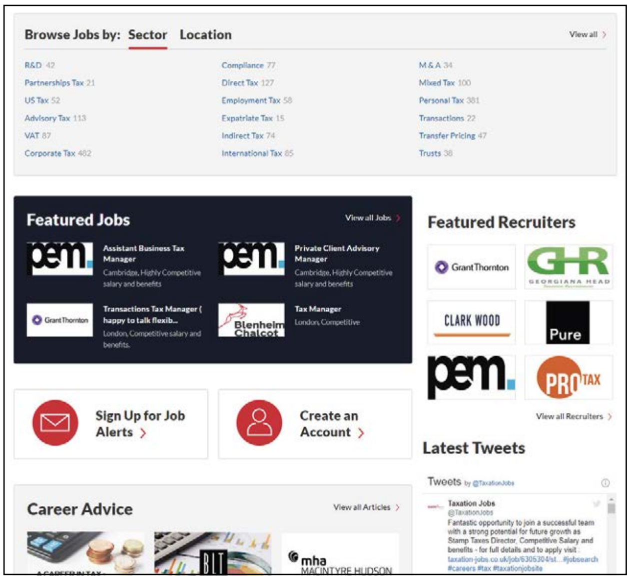

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These opportunities range from senior positions at high profile global multinational in-house companies to roles at practice firms that can be worked from anywhere in the United States.

Contact us today for more information

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www.andrewvinell.com

SCAN ME