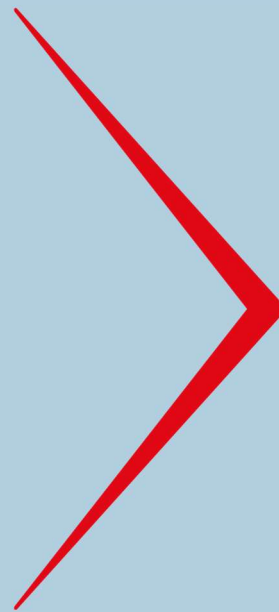


ICAEW KNOW-HOW  
TAX FACULTY

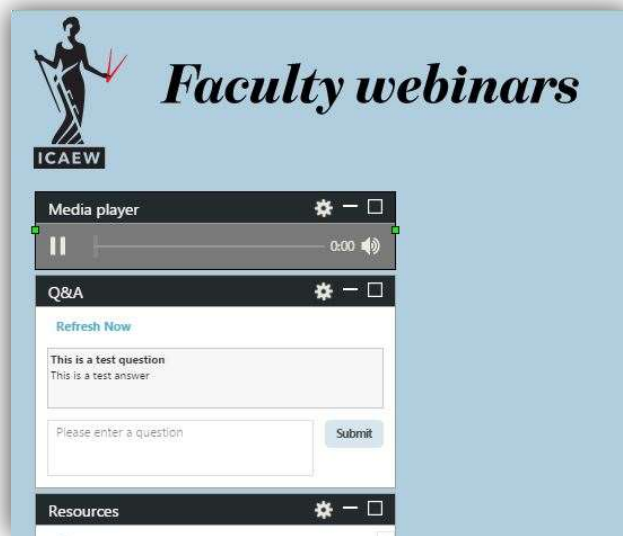


## *Managing Tax Risks in a complex world*

*A focus on some of the main  
tax risks all businesses are  
facing*

**04 March 2021**

## *Ask a question or download resources*



### ***Audio problems?***

ENSURE YOUR VOLUME IS TURNED ON  
If you experience poor sound quality you may benefit from refreshing your page

### ***Ask a question***

Type your question into the question box then click submit.

## *Today's presenters*



*James Egert*  
BDO Lead Tax Risk Partner



*Steven Levine*  
BDO R&D Partner



*Karen Riley*  
BDO Director



*Carrie Rutland*  
BDO Director

# AGENDA

Managing tax risks in a complex world

## 01 DEFINING RISK MANAGEMENT

James Egert  
BDO Lead Tax Risk Partner  
London

## 03 MANAGING CCO

Karen Riley  
BDO Director  
Leeds

## 02 PCRT IN R&D

Steve Levine  
BDO R&D Partner  
London

## 04 PATENT BOX

Carrie Rutland  
BDO Director  
London

1

## DEFINING TAX RISK



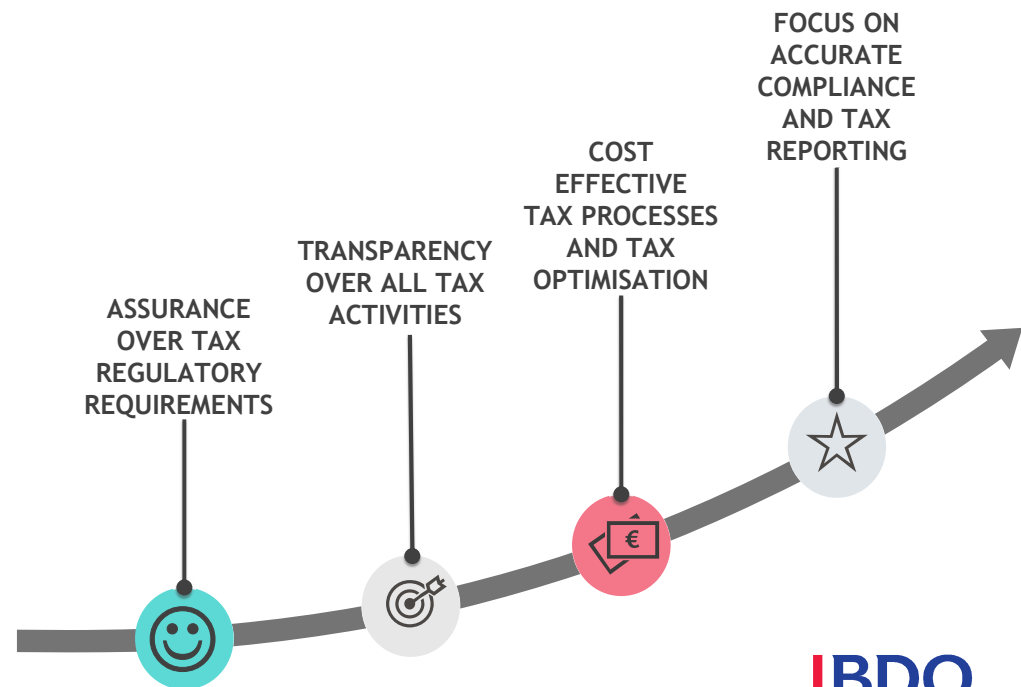
# DEFINING TAX RISK

“

Tax risk is the risk of:

- Financial downside due to increased tax costs, interest and penalties;
- Loss of missed tax opportunities;
- Commercial impact due to damaged reputation, reallocation of tax spend and resources.

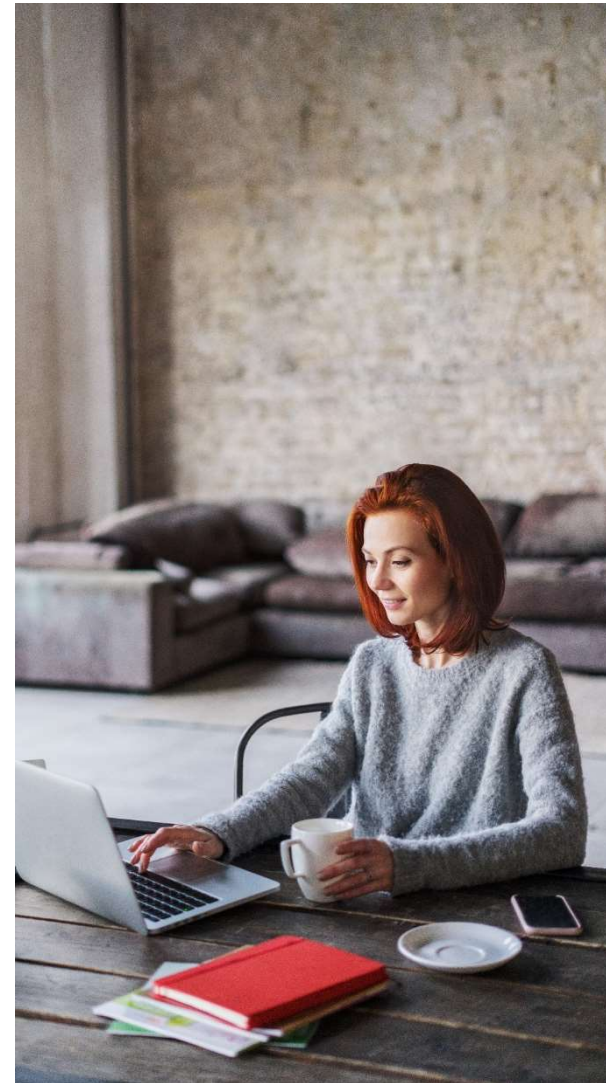
Can you provide a **level of assurance** to senior management, tax authorities, regulators and others that you have a **robust** tax control framework in place, and a **culture of 'no tax surprises'** and good tax behaviours? ”



# MANAGING TAX RISK

## CURRENT ENVIRONMENT

- ▶ HMRC focus
- ▶ C-19 **environment**
  - Increased compliance and regulation
  - Remote workforce
  - Processes and controls not fit for WFH
  - Cash flow concerns
  - Supply chain disruption pressure
  - Economic uncertainty
- ▶ Commercial impact
- ▶ ESG - a driver of value



# MANAGING TAX RISK

## REGULATORY PRESSURES

- ▶ Increased regulation focusing on tax behaviours and transparency
- ▶ Onus on businesses to demonstrate they are right first time with complex tax compliance requirements
- ▶ HMRC undertaking risk-based reviews
- ▶ EU and Global tax legislation
- ▶ Covid-19







# MANAGING TAX RISK

FOCUS ON SPECIFIC REGULATION

## SENIOR ACCOUNTING OFFICER AND TAX STRATEGY

remains on HMRC agenda; only applicable for larger businesses

## COVID-19

complexity and HMRC scrutiny in terms of all grants and claims  
specific tax risks in relation to remote working

## IR35

new rules introduced in April 2021

## DAC6

potentially still relevant despite changes in rules on 31 December 2021

## CCO

impacts all businesses and many live investigations



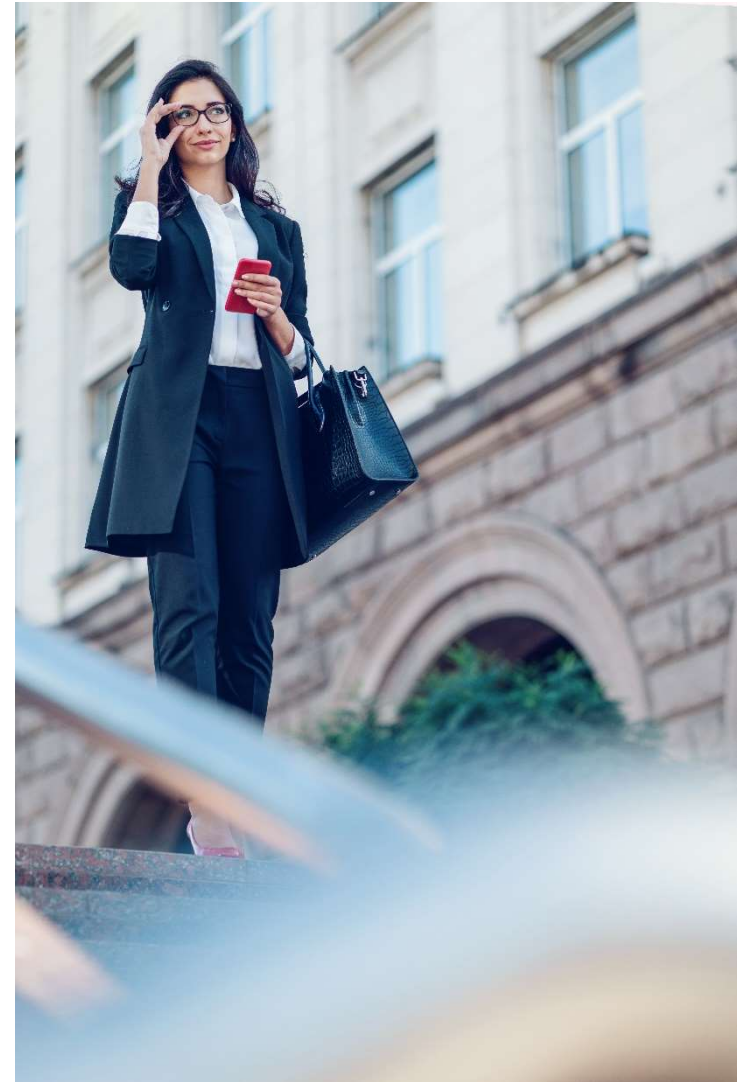
# 2

## PROFESSIONAL CONDUCT IN RELATION TO TAX CORPORATION TAX RETURNS AND R&D DISCLOSURES



# PCRT

- ▶ 2019 update - sustainable basis
- ▶ 2020 update - specific R&D guidance

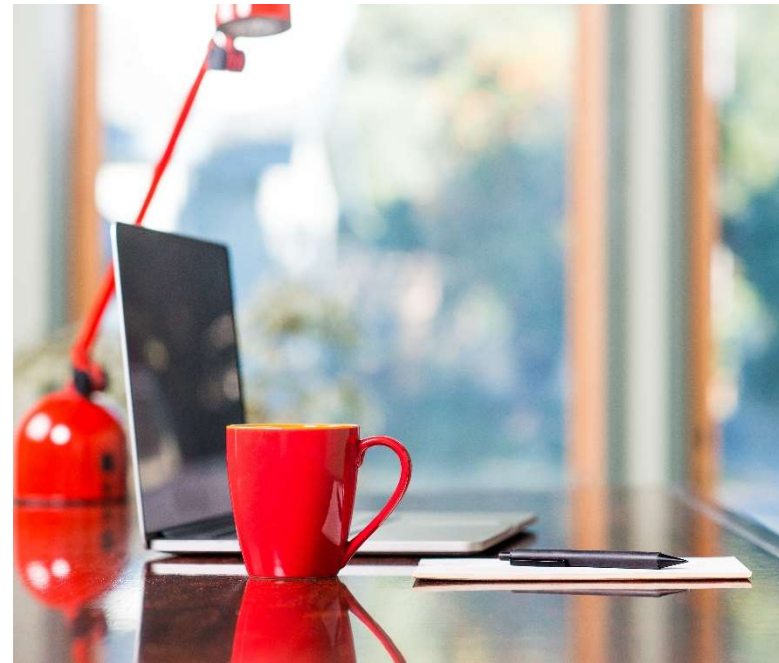


# SUSTAINABLE BASIS

(Helpsheet A Submission of tax information and tax filings)

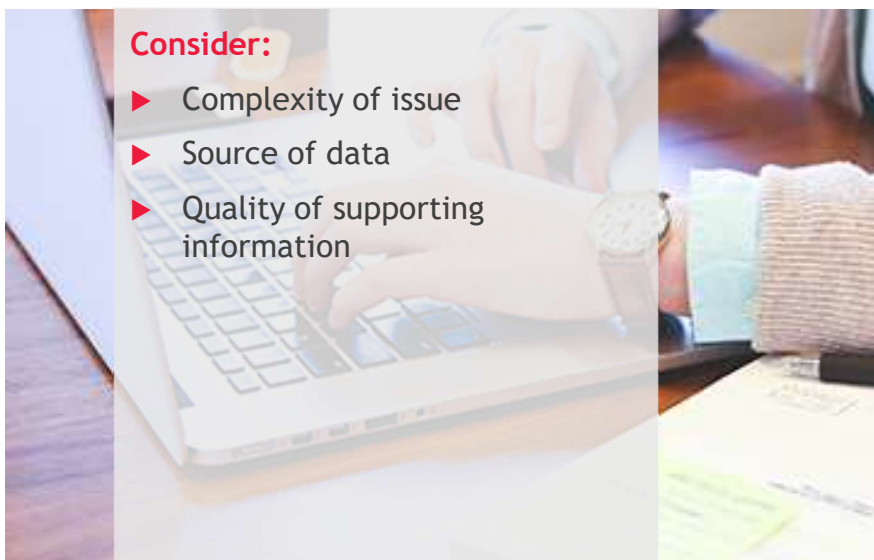
What does this mean?

13. Where acting as a tax agent, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party. However, a member should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, not to assert tax positions in a tax filing which they consider to have no sustainable basis.



# R&D - SUSTAINABLE BASIS; RELIANCE ON FIGURES

No audit or verification exercise required  
Standard of care



- ▶ Must apply appropriate professional scepticism
- ▶ Additional work requires additional fees // does EL allow
- ▶ Greater care for larger numbers (R&D, PB, CA's, TP, S/OR, CIR etc)
- ▶ Document conclusions and evidence
- ▶ Transmittal letter highlights // client responsibility

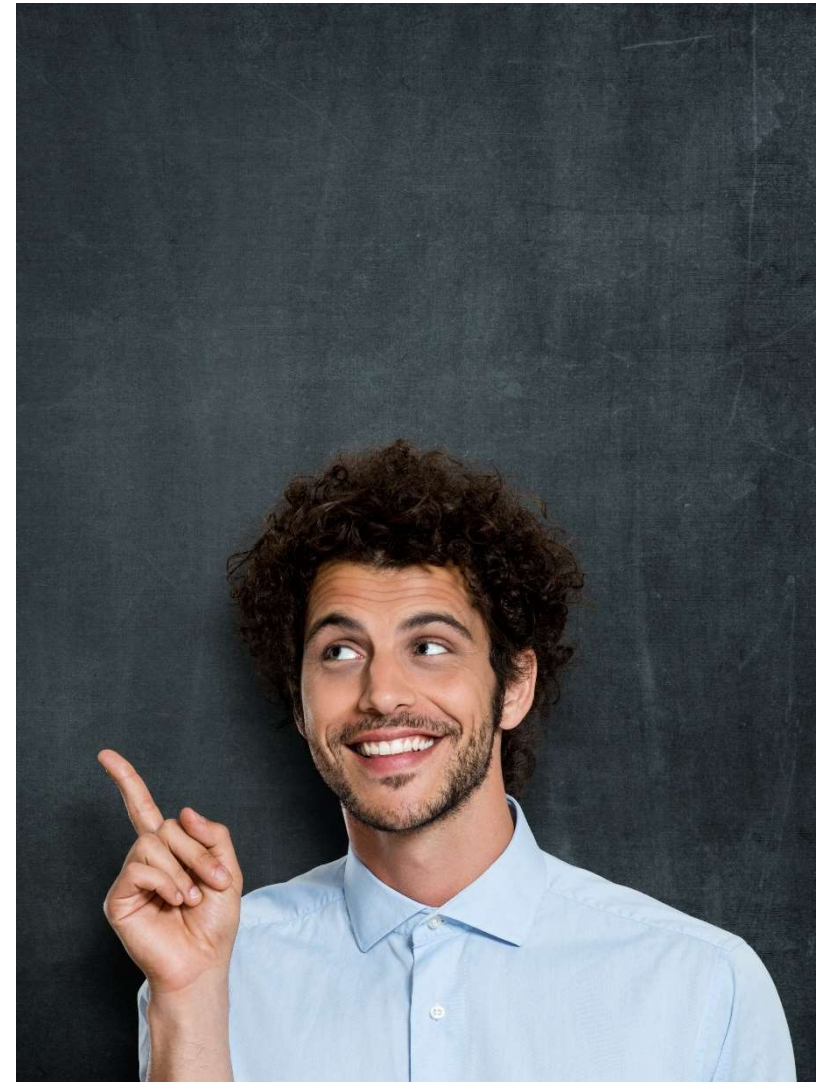
# COMPLEXITY/ SOURCE/ QUALITY OF DATA

Adviser	Next steps & considerations	Action
Regulated adviser	Read full report Understand basis of claim/ entry Supporting information	If satisfied - file Supporting documentation where crucial/ normal practice
Unregulated adviser - no info provided	Is adviser reputable and competent? Consider risk and complexity Supporting information may be critical	If satisfied - file Transmittal letter to state claim based on info prepared by [adviser] If not satisfied or info not provided we may be unable to file
Unregulated adviser - info provided	Is adviser reputable and competent? Consider risk and complexity Supporting information may be critical	If unclear whether competent/ reputable we <u>must</u> require documentation from client and carry out own review, otherwise we may be unable to file
Client prepares analysis with no/ limited supporting information	Request appropriate level of information based on complexity. Full supporting calculation/ information for higher risk items	If satisfied - file // refer in Transmittal letter If not satisfied or info not provided we may be unable to file
Client prepares analysis with full supporting information	Review information provided If concerns, consult internal specialist	If satisfied - file // refer in Transmittal letter If not satisfied or info not provided we may be unable to file

# 2020 PCRT UPDATE

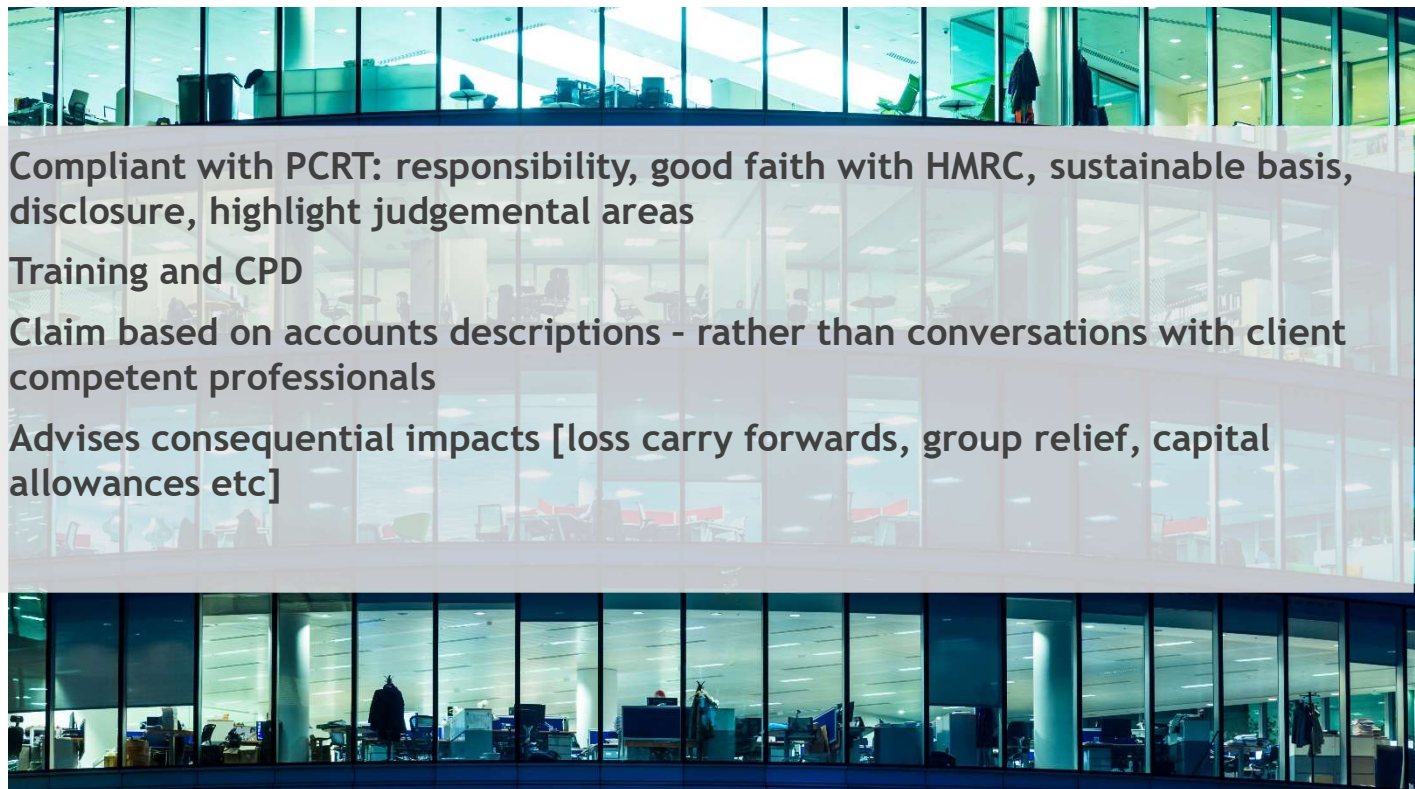
## Advisers must have appropriate skillsets:

- ▶ Assess eligibility [SME status, non-qualifying companies etc]
- ▶ Identify qualifying activities [advances, uncertainties]
- ▶ Identify qualifying expenditure [subcons v EPW, Revex v Capex, etc]
- ▶ Calculate the benefits [CT600 disclosures, RDEC steps, TFAs, etc]
- ▶ Supporting information





## REGULATED ADVISERS





# HORROR STORIES

## **SME status incorrectly claimed:**

- ▶ Group disregarded [watch common control, trusts, private equity etc]
- ▶ Subcontracts and subsidiaries disregarded
- ▶ Year of acquisition by large company
- ▶ Company size falls below SME threshold (watch demergers)

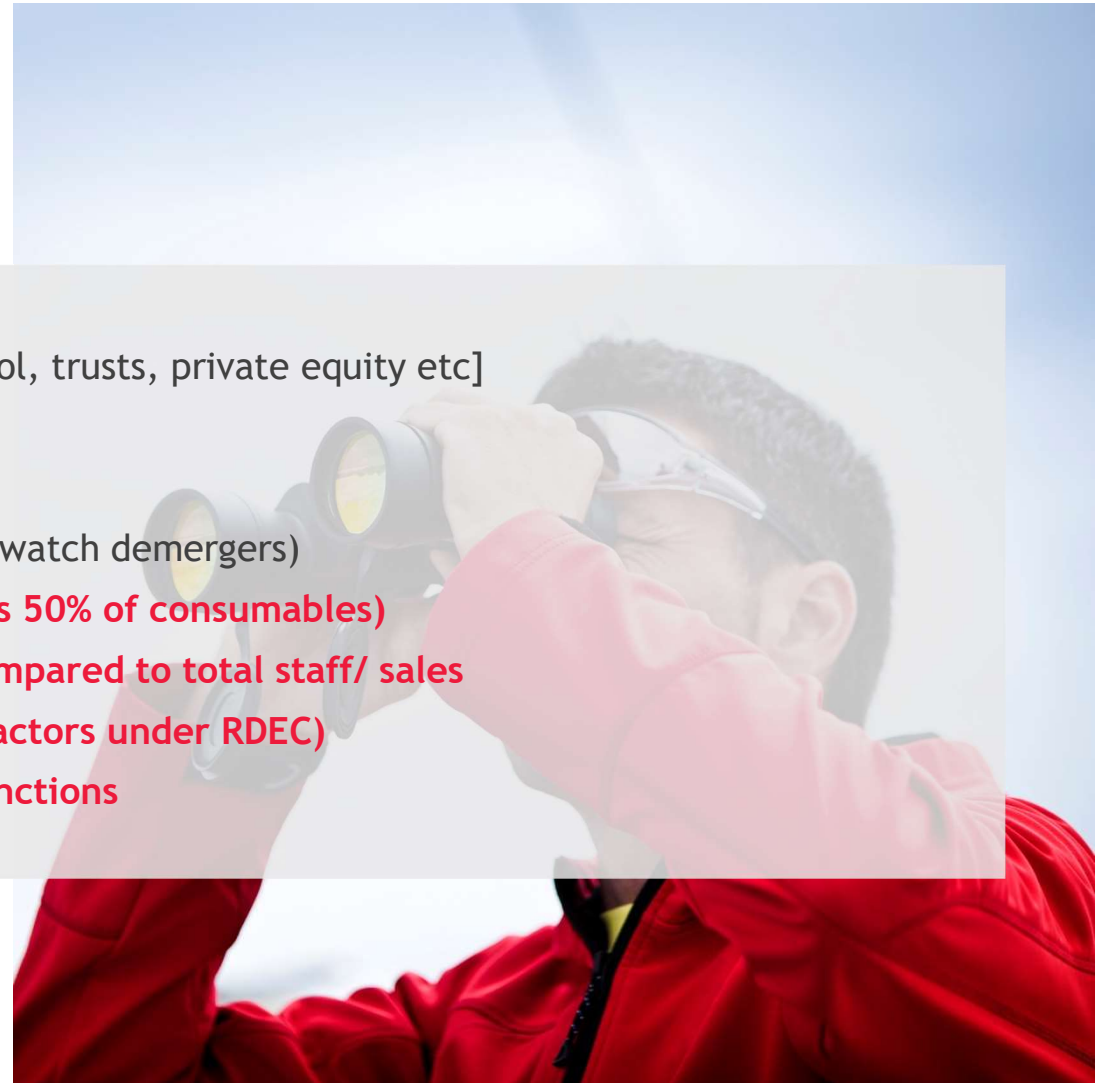
**Round sum claims (say, 50% of salaries plus 50% of consumables)**

**Staff costs component is too high when compared to total staff/ sales**

**Claims wrong in law (eg claiming subcontractors under RDEC)**

**Project descriptions set out features or functions**

**Not sharing reports**



A photograph of several small green seedlings growing in a dark brown, peat-based seedling tray. The seedlings are in various stages of growth, with some having two leaves and others just starting to emerge. The background is dark and out of focus. A red vertical bar is on the left side of the image.

# 3

## THE CORPORATE CRIMINAL OFFENCES

# TAX FRAUD LEGISLATION

## What are the Corporate Criminal Offences?

- ▶ The Criminal Finances Act was effective from 30 September 2017
- ▶ The legislation requires businesses to put in place *reasonable procedures to prevent the facilitation of tax evasion by associated persons*
- ▶ There are two corporate offences - a domestic fraud offence and an overseas fraud offence
- ▶ The CCO legislation is now a 'low risk indicator' as part of the Business Risk Review with HMRC



### TAX EVASION AND FACILITATION OF TAX EVASION

- ▶ To dishonestly 'take steps with a view to' or 'be knowingly concerned in' the evasion of tax
- ▶ Facilitation can include 'turning a blind eye'
- ▶ An associated person is anyone who provides services for or on behalf of the business
- ▶ Neither a prosecution nor a conviction of tax evasion is required for the authorities to bring an action against a relevant body under CCO

### SANCTIONS

- ▶ A successful prosecution could lead to:
  - An unlimited fine
  - Public record of conviction
  - Significant reputational damage.

# TAX FRAUD LEGISLATION

## How we need to respond

A company that fails to prevent the deliberate facilitation of tax evasion by an associated person is liable under the offences.

However, there is a defence that the company had in place reasonable prevention procedures

HMRC have set out six guiding principles of a defence that all businesses need to respond to.

These are summarised below and as an organisation, we are taking steps to demonstrate we are responding through:

- CCO awareness sessions to the Exec and identified stakeholders
- Completion of a CCO risk assessment
- Implementation of CCO policies, procedures, communications and online training as appropriate

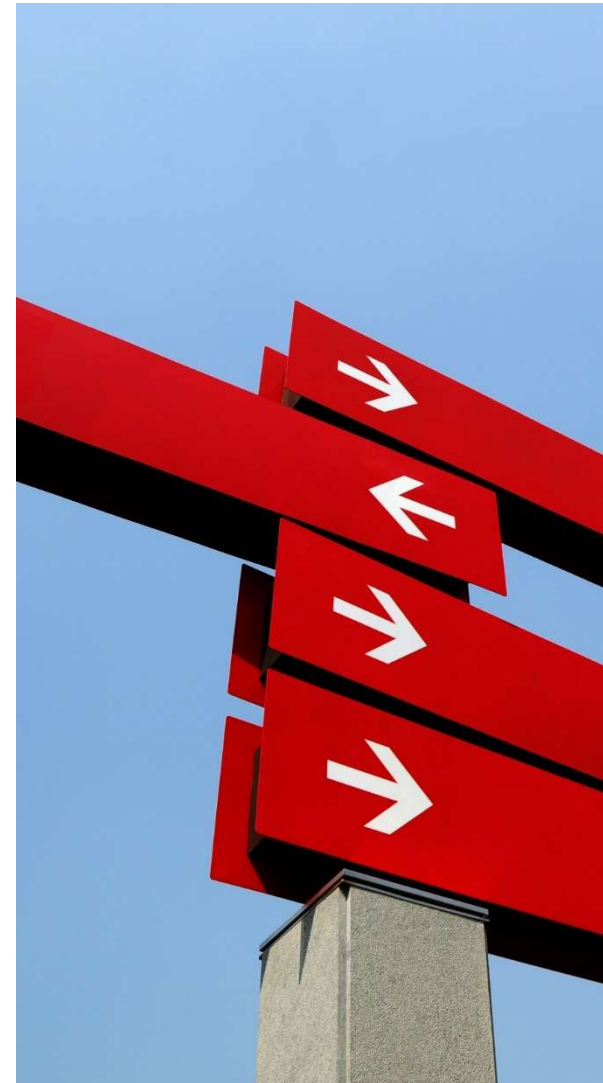


# CCO DEFENCES

CCO: Typical risks faced by many businesses

## WHAT ARE POTENTIAL RED FLAGS?

- Are there staff who are silo'ed, with little sharing of responsibilities? Are there staff who refuse to take leave and do not allow anyone else to review their files, or are overtly defensive over client relationships?
- Do existing processes ensure that for higher risk activity at least a sample of files are routinely reviewed by a second pair of eyes?
- Deficiencies in employee training, skills and knowledge
- A bonus culture that rewards excessive risk taking
- Lack of clear financial controls or whistle-blowing procedures
- Lack of clear messaging from top-level management on refusing to engage in tax fraud



# CCO DEFENCES

## TOP LEVEL COMMITMENT

Top-level commitment should be implemented through

- clear CCO policies,
- codes of conduct,
- accountabilities and responsibilities
- Senior level ‘buy-in’.

**A board approved CCO policy is often the best starting point.**

- Ensuring the tone at the top is adopted throughout the business

2. Top level commitment

3. Due diligence

4. Proportion procedures

5. Comms and training

6. Monitoring and review



“ The top-level management of a relevant body should be committed to preventing persons acting in the capacity of a person associated with it from engaging in - criminal facilitation of tax evasion. They should foster a culture within the relevant body in which activity intended to facilitate tax evasion is never acceptable.

FROM HMRC GUIDANCE

”

# CCO DEFENCES

## DUE DILIGENCE

Organisations that have identified a potential **lack of transparency** over their associated persons (including outsourced providers, suppliers etc.) will need to improve their due diligence procedures.

It is not unusual for there to be differing **due diligence procedures** for different parts of your business reflecting varying levels of risk across all of your activities.

“An organisation applies due diligence procedures, taking an appropriate and risk based approach, in respect of persons who perform or will perform services on behalf of the organisation, in order to mitigate identified risks.”

FROM HMRC GUIDANCE



- 2. Top level commitment
- 3. Due diligence
- 4. Proportion procedures
- 5. Comms and training
- 6. Monitoring and review



HM Revenue  
& Customs

### How to spot missing trader VAT fraud

A guide to helping you protect yourself or your business from organised criminals

If you are a VAT registered business it is important that you read this leaflet.

If you do not take reasonable care and HMRC can demonstrate that you knew or should have known that your transactions were connected to missing trader fraud then you may lose your entitlement to claim the input tax linked to those transactions.

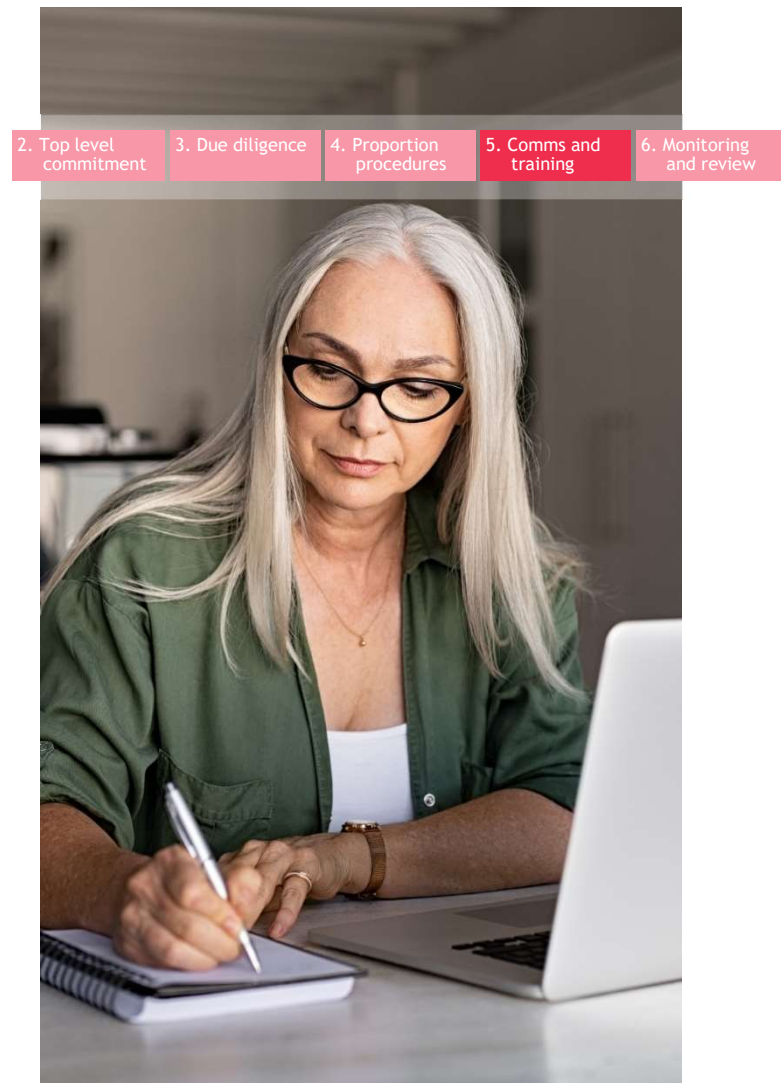
# CCO DEFENCES TRAINING

## A KEY DEFENCE:

“ The organisation seeks to ensure that its prevention policies and procedures are communicated, embedded and understood throughout the organisation, through internal and external communication, including training. This is proportionate to the risk to which the organisation assesses that it is exposed. ”

As such, we are seeing increasingly the use of e-training or similar.

Typically, this is rolled out every 1-2 years.





# CCO DEFENCES

## MONITORING AND REVIEW

- |                         |                  |                          |                       |                          |
|-------------------------|------------------|--------------------------|-----------------------|--------------------------|
| 2. Top level commitment | 3. Due diligence | 4. Proportion procedures | 5. Comms and training | 6. Monitoring and review |
|-------------------------|------------------|--------------------------|-----------------------|--------------------------|

All CCO policies and procedures must work ‘in practice’.

Ongoing monitoring of compliance is imperative, and HMRC states this can be managed by:

- seeking internal feedback from staff members and looking to other financial crime prevention procedures
- formalised periodic ‘cold review’ with documented findings
- working with other organisations, such as representative bodies or other organisations facing similar risks.



# CCO DEFENCES

## CASE STUDY OF WHAT BUSINESSES ARE DOING

### CASE STUDY FOR SMEs:

After the risk assessment, quick wins can be gained through learning from the experiences and actions of other businesses and we share **various CCO tools and templates** to develop a CCO defence framework.

Actions include development of:

- Board Paper on CCO to ensure top level buy-in
- Internal communication on CCO to raise awareness
- Roll-out of CCO Policy including whistleblowing and escalation mechanisms
- External comms and contractual terms for suppliers
- Declaration templates for agency workers and contractors
- Formal contractual terms with Suppliers relevant for CCO
- Internal Supplier Due Diligence Checklist

- 2. Top level commitment
- 3. Due diligence
- 4. Proportion procedures
- 5. Comms and training
- 6. Monitoring and review



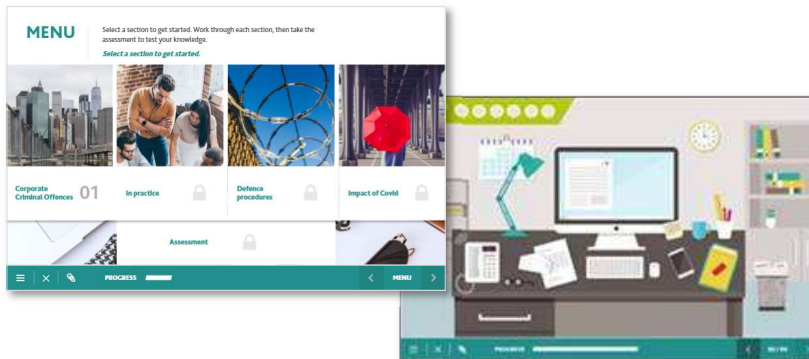
# CCO DEFENCES

## CASE STUDY OF WHAT BUSINESSES ARE DOING

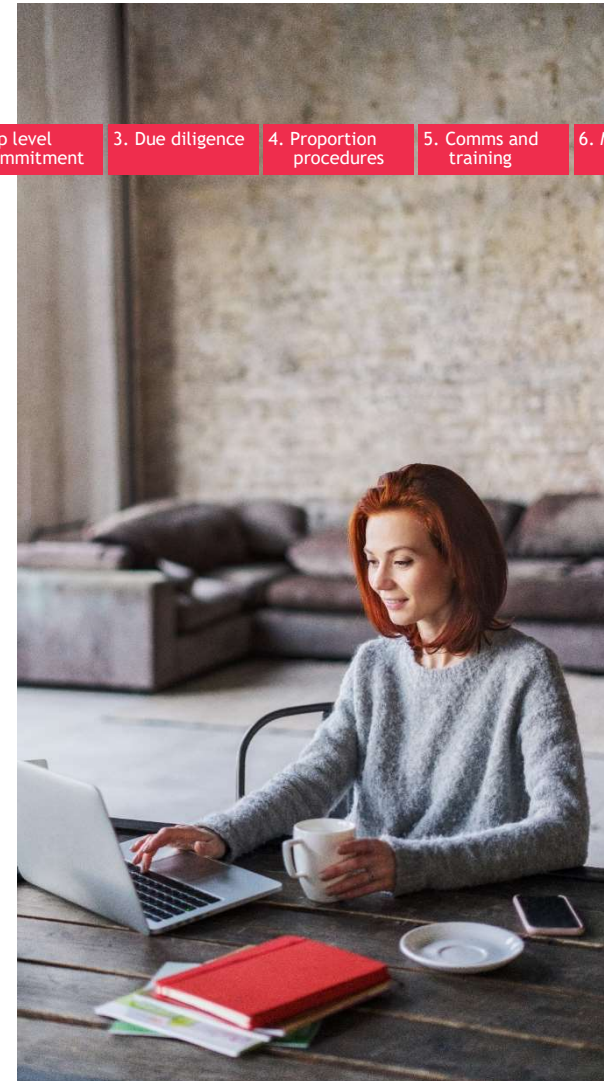
### LEARNING FROM OTHER BUSINESSES:

Communication and Training is one of the key Six Guiding Principles in establishing a defence from prosecution as set out in HMRC's CCO guidance.

Many organisations have rolled out CCO eLearning as part of their suite of defences to include background to the legislation but importantly, case studies and red flags to look out for.



- 2. Top level commitment
- 3. Due diligence
- 4. Proportion procedures
- 5. Comms and training
- 6. Monitoring and review



4

PATENT BOX  
RULE CHANGES



# OVERVIEW

- ▶ Introduced in Finance Act 13 from 1 April 2013
- ▶ Applies to both large companies and SMEs
- ▶ Effective 10% corporation tax for global 'patent' related profits
- ▶ More qualifies than you might think
- ▶ Formulaic process for calculating patent profits, with a limited number of key variables



# QUALIFYING INTELLECTUAL PROPERTY

Hold / Exclusive licence over UK / EU patent or similar right

Carried on qualifying development to the patent

- Makes a significant contribution to either:
  - The creation or development of the patented invention; or
  - A product / process incorporating the patented invention

Group companies:

- The claimant company need not have performed the development itself as long as it is **actively managing** the IP and the group has undertaken qualifying development activities



# QUALIFYING IP PROFITS

1. Sales income from products incorporating patents;
2. Licence fees;
3. Proceeds of sale;
4. Damages for infringement;
5. Other compensation

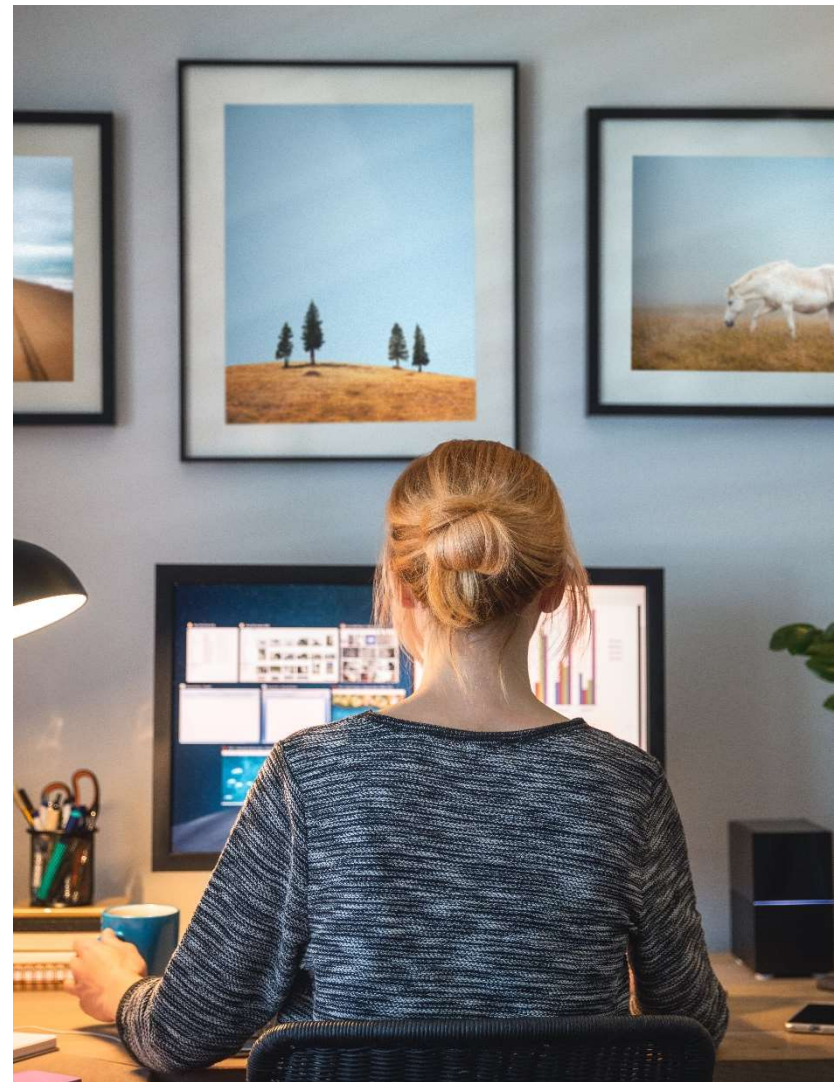
OR

Notional royalty - where the patent is incorporated in a product / process that is used internally and generates third party income



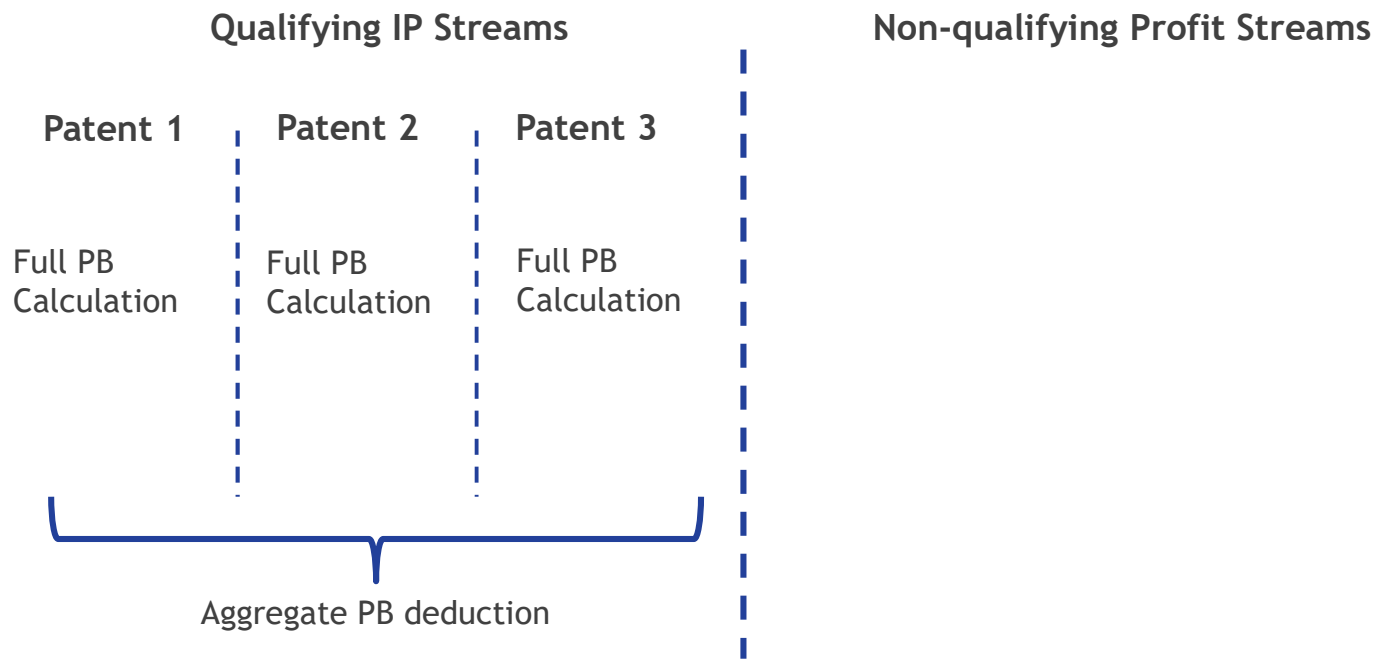
# THE CALCULATION

1. Stream profits between qualifying IP profits and non qualifying
2. Deduct routine return on normal overheads
3. Deduct marketing return
4. Apply nexus fraction
5. Remaining profits qualify for effective 10% corporation tax rate





# STREAMING



# NEXUS

- ▶ The patent box benefit is proportional to the nexus between the location of the IP and where the patent related R&D is carried out
- ▶ As calculated by:  $((D+S1) \times 1.3) / (D+S1+S2+A)$ 
  - D = qualifying direct expenditure on in-house R&D relevant to the income stream.
  - S1 = the company's qualifying expenditure on relevant R&D sub-contracted to unconnected persons.
  - S2 = is the company's qualifying expenditure on relevant R&D sub-contracted to connected persons.
  - A = expenditure on acquisition of qualifying IP rights



# PITFALLS AND BEAR TRAPS

- ▶ Identifying qualifying IP streams
- ▶ Allocation of debits and credits (not accounting income & expenditure)
- ▶ Allocation of admin expenses to IP streams
- ▶ Tracking and tracing R&D
- ▶ Valuable IP sitting in the wrong legal entity
- ▶ Elect in on an all or nothing basis - cannot pick particular IP streams



# CASE STUDIES

## Luxury car manufacturer

Patented stitching  
Stitching integral to the entire car  
Sales of the car qualify for the reduced effective rate of corporation tax

## Packaging company

Sandwich box lie-flat opening mechanism patented  
All sales of the boxes qualify for the patent box

## Swimming goggles

Each goggle has a specific patent  
Company maintains mini P&Ls for each line of goggles  
High profit margin product  
Patent box extremely valuable and relatively easy to calculate

## Disabled vehicle manufacturer

Ramp to enable wheelchairs to be rolled into the vehicle patented  
No marketing spend so no brand value to reduce the patent box benefit  
Very worthwhile claim

## Technology platform

Misconception that software cannot be patented in the EU  
Can if certain conditions met, e.g. the invention has a 'real world effect' or results in the better running of a computer  
The patent box benefit can be significantly increased with IP structuring upfront

## Glass manufacturer

New use case for existing product  
Qualifies sales of products manufactured for the new use case for the patent box

# CONCLUSION

- ▶ While patent box has historically been low priority, now may be a good time to revisit it, given the pressure on the Effective Tax Rate of companies
- ▶ Once set up in year 1, the patent box calculation is relatively straightforward
- ▶ Structuring of the IP and R&D is key so upfront planning should be considered where possible





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QUESTIONS &  
CLOSE

**BDO**

# *Future webinars*

- Tax Faculty webinars
  - 05 March 2021 – Tax Faculty Budget 2021 update
  - 15 April 2021 – Making Tax Digital and tax system transformation

For further details visit [www.icaew.com/taxfacevents](http://www.icaew.com/taxfacevents)



## *Thank you for attending*



Please take the time to fill out our short survey



Contact the Tax Faculty

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