Issue 05 / May 2021

# TAXline

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## THE REFORM CLUB

**Pandemic-related financial pressures have brought problems with the UK tax system into sharp focus. Is now the time for change?**

**VAT's that**
EU rules remain important despite Brexit

**Super tax**
Companies can plan ahead to make the Budget work for them

**It's a gift**
Analysing the latest decision on entrepreneurs' relief

# TAXline

May 2021 Issue 05

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COVER ILLUSTRATION BY JOSH MCKENNA

# A balancing act

This month's editorial explores the challenge faced by the Chancellor in seeking to balance the books while stimulating economic recovery and how this may affect the tax reform agenda (page 6).

Even though the UK has left the EU, the EU VAT regime is still a feature for businesses supplying goods or services to EU customers. Stephen Dale highlights issues that businesses should be aware of (page 8).

COVID-19 support schemes may be winding down, but HMRC's work to detect fraudulent claims will continue. Sophie Wales explains the application of ethics to tax work, including how to approach fraudulent claims (page 11).

Richard Jones looks at how Budget announcements concerning the corporation tax rate increase, super deduction and loss carry-back extension affect tax calculations and decision making (page 12).

The next milestone on the making tax digital (MTD) journey is less than a year away. Caroline Miskin provides an MTD project update (page 15).

In the December 2019 issue of *TAXline*, Rachael Dronfield reported on an entrepreneurs' relief case heard by the First-tier Tribunal that appeared to be common sense. In this issue, Rachael provides an update following the Upper Tribunal's reversal of that decision (page 24).

I do hope that *TAXline* readers stay safe and well.

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# Frank Haskew

Head of the Tax Faculty, discusses recent faculty developments

**The 2021 Finance Bill**
The Finance Bill was published on 11 March 2021. At 363 pages, it is longer than recent Finance Bills and includes 54 pages devoted to the new plastic packaging tax. We will be reviewing it and submitting comments on key areas of concern to MPs on the Finance Bill Committee. If you have any comments on the Finance Bill, please send them to peter.bickley@icaew.com.

**Tax Day**
The government has instituted a new fiscal event in which reforms of the tax system under consideration are opened up to consultation. The day chosen, originally dubbed 'Consultation Day' but more recently merely 'Tax Day', was 23 March.

Rumours in advance of the day suggested that we could see up to 30 consultation documents published. However, although there were 30 documents, only 12 of them were new consultations, with the rest being updates on previous consultations and previous announcements. Further details of the most important ones are set out below.

**The tax administration framework review**
The government has published a call for evidence on the tax administration framework. It includes some far-reaching proposals that, if implemented, would fundamentally change large parts of the existing Taxes Management Act 1970, as amended. The call for evidence runs until 13 July 2021 and the faculty will be holding a webinar on it to gather the views of all ICAEW members. Please send comments to caroline.miskin@icaew.com.

**More timely payment**
In addition, a call for evidence was published on possible options for the more timely payment of income tax self assessment and corporation tax. HMRC would like taxpayers to pay their tax closer to the time their income is received, but any changes would not happen in the life of this Parliament. The call for evidence runs until 13 July 2021 and the faculty will be holding a webinar to gather the views of members. Please send comments to caroline.miskin@icaew.com.

**Raising standards: compulsory PII**
As part of its work to raise standards in the tax advice market, HMRC is seeking views on its proposal to require tax advisers to hold professional indemnity insurance and on a potential enforcement regime. This consultation runs until 15 June 2021. If you have any comments, please send them to richard.jones@icaew.com.

**Making Tax Digital**
The Tax Faculty's MTD for ITSA working group, which includes practitioners and software developers, met to discuss the latest developments. We continued to engage with HMRC on the MTD for income tax proposals and held some informal discussions with HMRC on the MTD programme.

HMRC is still considering the representations made on the MTD ITSA regulations and these will not now be published until later in the year. We expect further engagement with HMRC on the regulations and the pilot.

Finally, we are in discussions with HMRC about holding a roundtable meeting with tax agents to explore the proposed quarterly filing requirements.

**COVID-19**
Engagement with the HMRC Self-employment Income Support Scheme (SEISS) team restarted following the Budget announcement about the fourth and fifth grants. The main issues are the onerous pre-verification checks for some newly self-employed claimants and the new turnover reduction test for the fifth grant.

**Committee meetings**
During the period there were virtual meetings of the Tax Faculty Board, the Tax Policy and Reputation Committee, the Technical and Oversight Committee, Employment Taxes and NIC and the VAT and Duties Committee.

**Representational work**
In addition to attending regular stakeholder meetings with HMRC, we attended a special meeting of the Representative Bodies Steering Group (RBSG) on 12 March to discuss the future of the agent dedicated line and how priority access might be restored. A further special meeting of the RBSG was held on 30 March to discuss HMRC's collection of debt.

**Webinars**
On 4 March we held a webinar on managing tax risks. Our thanks go to James Egert, Karen Riley, Steven Levine and Carrie Rutland from BDO for presenting the webinar, which provided an overview of the key risks that companies face in making disclosures, submitting accurate returns and applying the law correctly. The webinar was moderated by Richard Jones and you can watch it by following the links on the webinar pages.

# What COVID-19 means for the future of tax

With the pandemic increasing pressure on public finances, could this prompt overdue discussions on tax reform? ICAEW's Head of Tax **Frank Haskew** and independent adviser **Martin Wheatcroft** talk to **Sarah-Jayne Russell** and reflect on recent announcements and challenges facing the Chancellor

With the UK's deficit set to increase to £2.5trn by 2023, the fact that tax revenues do not cover public spending is starker than ever. However, the problem of balancing the books far predates COVID-19.

An ageing population coupled with funding and tax administrative decisions made many decades ago have meant that the gap has been slowly but inexorably widening. Frank Haskew, Head of Tax at ICAEW, says: "Since the turn of the century, we have been running deficits almost every year. The fact is that we're not raising enough tax to meet our day-to-day spending commitments."

Martin Wheatcroft, an independent adviser and author on public finances who works closely with ICAEW, explains: "People are living longer, which is a good thing, but it has a financial impact. For example, the NHS spends an average of £80 a month on 18-year-olds, while for 80-year-olds that cost is more than £500. The perennial issue is that we don't have a clear, long-term strategy for how the government, or any government, plans to deal with that."

To balance the books, the primary strategy of governments has been to grow the economy and have a moderate level of inflation to inflate away debt. However, financial crises and recessions have meant that, in the past decade, growth has been a lot weaker than expected. George Osborne, for example, was forced to leave the Exchequer without fulfilling his pledge of eliminating the deficit, due to the underperformance of the economy. "When you combine the demographic pressures with slower economic growth then it's a difficult situation," says Wheatcroft.

### Paying for coronavirus

Into this strained situation enters a global pandemic and its huge financial repercussions. Alongside the severe and prolonged impact on economic activity, stimulus and support packages are expected to add between £0.5trn-£1trn on to UK debt in the next few years.

Ahead of the Budget in March, the expectation was that Chancellor Rishi Sunak would be looking for ways to raise revenues to help cover the costs of COVID-19. However, the measures announced will not do so – in the short term at least.

"It's fair to say that there was no serious attempt to tackle a growing fiscal deficit in the *Red Book*," says Haskew. "The 2019 manifesto pledge that there would be no rise in VAT, income tax or national insurance means that the Chancellor is prevented from using the most obvious – and quickest – ways in which to raise revenues."

The flagship measure for revenue raising in the Budget was the increase to corporation tax rates. However, as the change will not come into effect until 2023, this will not provide a quick cash injection. Haskew also argues that the fiscal impact may not be significant. "The potential corporation tax revenues over the forecast period are pretty much balanced by the cost of the super deduction. In overall terms, any difference is probably loose change," he says.

Wheatcroft believes the measure gives an indication of the government's medium-term plans. "One of the more positive things you can do in the medium term to get your public finances under control is encourage stronger economic growth. By taking action on corporation tax, the government wants to try to at least stabilise the situation."

### Reallocating spending

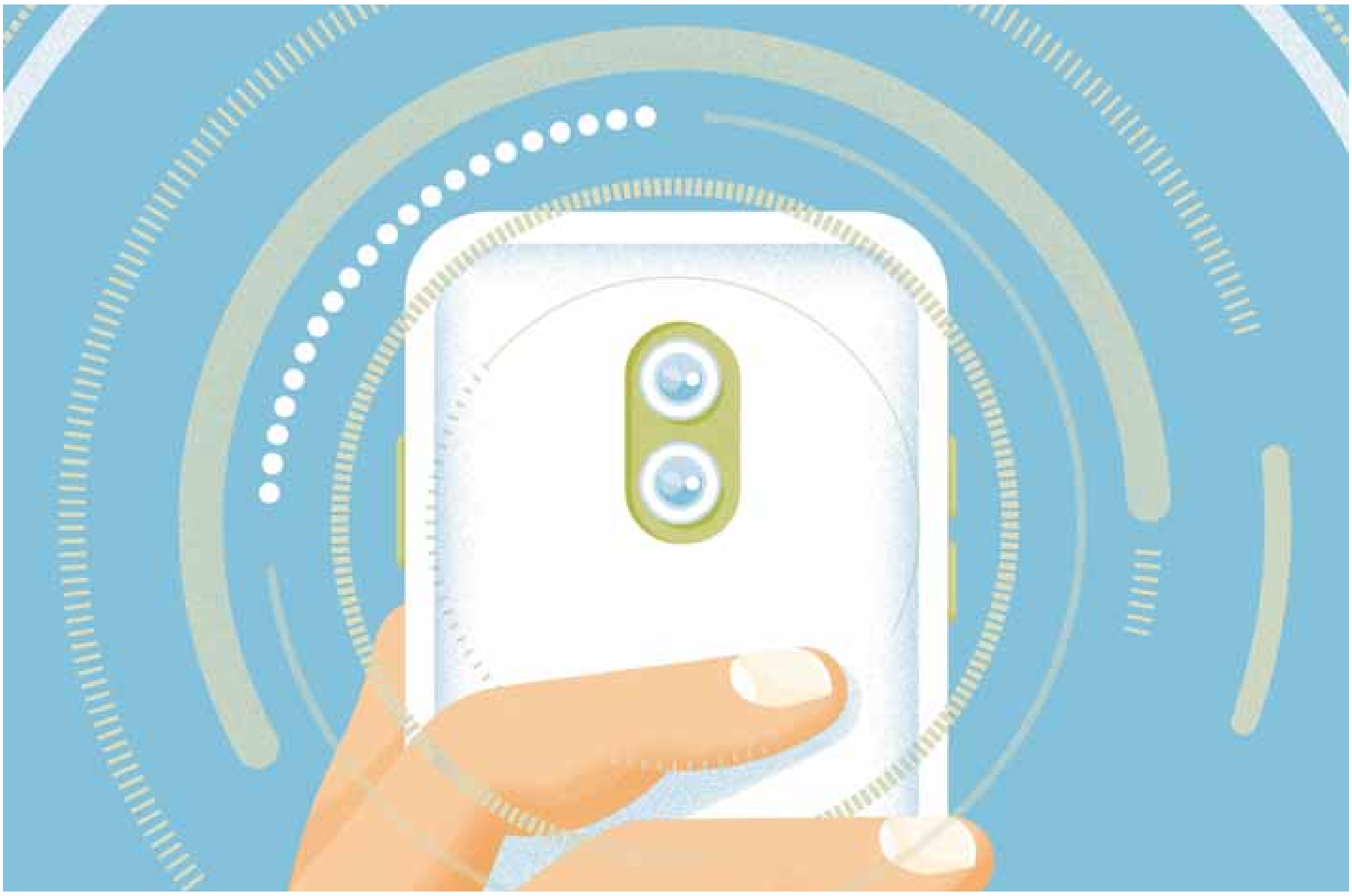
Evidence for where the Chancellor is securing finance in the short term can be seen in the integrated defence review published on 16 March, which confirmed that the size of the army would be further reduced by 2025. "Since the 1950s, the UK has cut defence spend from 10% of GDP down to 2%. Reallocating that finance to healthcare has helped successive governments avoid increasing taxes," explains Wheatcroft. "However, with defence spend now just above the NATO minimum, there's no further capacity and taxes will have to go up at some point."

Haskew agrees: "The measures announced so far are just nibbling at the edges of the problem. The UK has a strategic question as to whether it tackles the deficit and, if so, how. Since the start of the pandemic, there have been suggestions from some commentators that capital gains tax and inheritance tax might rise, and others have proposed wealth taxes, but we saw none of those suggestions in the Budget. It shows just how hard it is to raise taxes."

### The need for change

There are a number of areas of the UK tax system that have been ripe for reform for many years, including the differences between the taxation of the employed and self-employed. "We've had a position of significant difference between these two types of taxpayer for 20 years and more. Successive governments, of every political hue, have identified it as a concern, but never successfully addressed it," says Haskew.

He cites Philip Hammond's attempt to make relatively modest changes to national insurance



JOSH MCKENNA

contributions for the self-employed in 2017, which were then reversed within a week.

Wheatcroft, meanwhile, points to the thorny issue of business rates and the interim review published as part of HM Treasury's Tax Day announcements on 23 March. "Everybody was in agreement that it's a bad tax and needs reform, but they were also unhappy about the main alternative option," he says. "There's definitely an inertia bias when it comes to changing taxes because it is so difficult. It's much easier to stay with the current ones because they already exist and they are collecting revenue, however imperfectly."

Haskew agrees: "These cases highlight that a lot of the structural problems in the tax system have become so ingrained that trying to change them is almost impossible."

### Catalyst for reform

Decisions on how to balance the books have been getting increasingly difficult year on year, but could the dramatic impact of the pandemic provide the impetus for the government to set out a long-term vision of how to tackle the deficit and for Sunak to make some brave choices?

"From a public support point of view, this past Budget was politically the best possible time to raise taxes, with everyone understanding the financial impact of the interventions that the government has had to take," says Wheatcroft. "However, from an economic perspective, it would be the worst time. At the moment, the government wants to do everything possible to encourage a strong economic recovery. This is probably why it took the opportunity to pre-announce raising corporation tax rates now, rather than in three years' time, immediately prior to a general election."

Wheatcroft suggests that the Chancellor has potentially another 12 months of political goodwill in which to implement changes and suggests that Tax Day is a good indication of travel. "The very fact of having a Tax Day announcing the consultations and setting out a 10-year strategy, which it did last year, is a positive sign of longer-term thinking," he says.

Haskew believes that now is the time to start having a national conversation about the future of tax and cites a Treasury Committee report, *Tax after coronavirus*, published on 1 March, as a step in the right direction. "It's a really interesting report because there was a consensus among the cross-party members about proposals to try to address some of these issues," he says.

"The deficit and tax reform are more than political issues, so reaching a consensus was really encouraging," he says. "We have this growing problem as a nation, so what are we going to do about it? These things need to be debated, to see whether we can reach consensus about the best way of raising tax without harming productivity."

**Frank Haskew**, Head of Tax Faculty, ICAEW
**Martin Wheatcroft**, Managing Director, Pendan
**Sarah-Jayne Russell**, Senior Content Manager, ICAEW

# EU VAT issues impacting UK businesses from 1 January 2021

With the UK no longer in the European Union, certain EU VAT rules that only apply to non-EU businesses now apply to UK businesses. **Stephen Dale** sets out some of the issues to be aware of

VAT rules are not static. On 1 July this year, European Union (EU) VAT legislation is changing significantly as far as e-commerce is concerned. Further changes have already been adopted, taking effect in 2024, in relation to information to be provided by payment service providers, and in 2025 for SMEs. There are, in addition, a significant number of other VAT proposals being debated by the Member States (MS) that will affect UK businesses doing business with the EU, including:

- the VAT definitive regime;
- the VAT rates' structure;
- the 'status' of the VAT committee;
- the application of VAT to financial services; and
- the VAT regime applicable to travel agents.

In most of the literature so far on the VAT consequences of the UK leaving the EU, the focus has been very much on the supply of goods and their movement between Great Britain (GB), Northern Ireland and the EU.

There are, however, important changes to the way in which the EU VAT system operates, as it applies to supplies of services that now (and in the near future) have effect, as far as UK businesses are concerned (including Northern Ireland).

This article will address:

- supplying services to non-business clients in the EU;
- EU VAT charged on services supplied to UK businesses and the potential for double taxation;
- the Tour Operators Margin Scheme (TOMS); and
- EU VAT and e-commerce changes from 1 July 2021.

## Supplying services to non-business clients in the EU

The VAT Directive contains an optional provision by which the MS can effectively opt to modify the 'normal' 'place of supply' rules. This means that, for example, a supply that would otherwise be outside the scope of EU VAT is treated as being supplied within the EU, to the extent that the service supplied is effectively 'used and enjoyed' in the EU.

France is one MS that has adopted this provision. Any business established

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outside the EU that provides a service to a final consumer, which would fall under the general 'place of supply' rule (the service being deemed to be supplied where the supplier is established), may have to VAT register and account for French VAT if the service provided is effectively 'used and enjoyed' in France.

Italy, and around 15 other MS, have a similar provision, but it is generally more limited in scope. Interestingly, Singapore is proposing to introduce a comparable taxing mechanism from 1 January 2023 for non-digital services, subject to a relatively high *de minimis* threshold.

The 'use and enjoyment' provision referred to is not directly related to the requirement to account for VAT on telecommunications, broadcasting and electronic (TBE) services, where such services are supplied to a non-taxable person resident or established within the EU.

Since 1 January 2019, there is a *de minimis* registration threshold whereby EU established suppliers can supply up to €10,000 of TBE services in other MS without having to register (and charge VAT) in an MS other than their own. However, for non-EU established suppliers, this threshold does not apply. For UK businesses, this now means that VAT is due in the MS of the customer from the first Euro (or equivalent) of turnover!

**EU VAT charged on services supplied to UK businesses and the potential for double taxation**

The 'place of supply' of services rules for most services supplied by EU suppliers to UK businesses mean that the 'place of supply' of those services is the UK. This general rule is subject to exceptions, such as services related to real estate, entrance to exhibitions and so on.

However, some MS, such as Spain, have adopted a 'use and enjoyment' test that is applied to business-to-business services, such that they will be subject to Spanish VAT if they are considered to be 'used or exploited' in Spain – for example, an advertising service supplied by a Spanish advertiser to a UK company for the latter to advertise and promote sales of goods on the Spanish market.

The Spanish VAT charged will normally be recoverable by the UK company under the 13th VAT Directive procedure, which in most EU MS is still very much paper-based.

This particular refund mechanism does have its own rules in terms of time limits and minimum amounts to be claimed. There is information, by country, of the process applicable, on the EU Commission's website (see tinyurl.com/TX-VATinEU).

When they are 'received' in the UK by a UK business, these services supplied from Spain may be subject to a reverse charge in the UK, leading to potential double taxation. This is because, under the 13th Directive refund mechanism, the EU VAT charged will, in principle, only be recoverable by the UK business if such VAT would have been recoverable in the EU MS where incurred.

**The Tour Operators Margin Scheme**

A further aspect of the EU VAT legislation, which has potentially changed for UK businesses since 1 January, is the famous (or perhaps infamous) Tour Operators Margin Scheme (TOMS).

There has been considerable debate over at least the past 20 years as to the extent to which the TOMS applies to businesses established outside of the EU, or whether, by default, the 'normal' place of supply rules for services supplied by such non-EU established travel agents should apply.

'The VAT Directive contains an optional provision: Member States can opt to modify the normal "place of supply" rules'

Germany has decided that the TOMS will not apply to non-EU established businesses (including the UK) from 1 January 2022. As such, UK businesses will have to consider from next year in which 'capacity' they are acting when supplying travel services, where the destination country is Germany.

France, on the other hand, appears to accept that the special margin scheme does apply to non-EU established businesses, acting in their own name *vis-à-vis* their customers, to support the refusal to refund French VAT on costs incurred there by the non-EU established travel agent.

UK-established businesses that are supplying travel services to an EU destination must, therefore, consider not only their contractual relationships with suppliers and customers but also, in addition, the VAT regime applicable in the country of destination. A review of the potential VAT registration and filing obligations that may arise is recommended.

The EU Commission is currently examining the operation of the TOMS and is expected to come forward with proposals for a reform of the special margin scheme next year.

**EU VAT and e-commerce changes from 1 July 2021**

Any business that is supplying goods from outside of the EU (for example, from the UK – excluding Northern Ireland) into the EU to non-taxable persons should be aware that the EU VAT rules will change significantly from 1 July 2021.

The major changes include the following points:

**1.** The removal of the VAT exemption at importation, applicable to small consignments of a value up to €22.
**2.** The creation of a new special scheme, referred to as the Import One Stop Shop (IOSS), for distance sales of goods imported from third territories or third countries (which include GB, but not Northern Ireland) of an intrinsic value not exceeding €150.
**3.** A special scheme for importations of goods of an intrinsic value not exceeding €150 by postal services and express carriers.
**4.** Obligations to account for VAT imposed on electronic interfaces (platforms), wherever they are established, 'facilitating' supplies of goods. The platforms will become, in two situations, the person liable to account for VAT on the supply of the goods to the consumer, as follows:
**a)** Importations into the EU of goods from third countries or third territories (including GB) where the goods have an intrinsic value not exceeding €150.
**b)** Distance sales of goods within the EU where the underlying supplier (being the business that is making, contractually, the supply to the consumer) is established outside of the EU.
**5.** Enhanced and extended simplified payment and reporting facilities through two new schemes – the Union One Stop Shop (OSS) and the non-Union OSS, allowing businesses to account for the VAT due on all business-to-consumer services (and for intra-EU distance sales of goods) through one single place of registration.
**6.** Reinforced information and reporting obligations. From 1 July 2021, businesses, wherever established, will be required to retain, for 10 years, details of transactions that they have 'facilitated', whether for a supply of goods or for services, where the place of the underlying supply is within the EU. These record-keeping obligations are applied in addition to any EU MS's own reporting obligations.
**7.** Fiscal representatives and intermediaries:
**a)** The VAT Directive provides that the MS can require non-EU established companies to appoint a VAT representative to account for the VAT due in that MS. The EU Commission has been contacted to determine whether, under the VAT Protocol in the Trade and Cooperation Agreement, signed between the EU and the UK last year, this Protocol would ensure that no VAT representatives are required in the EU. Several MS, but certainly not all, have already announced that they will not require UK businesses to appoint VAT representatives (for example, France, Italy and Poland).
**b)** The VAT Directive also provides that, from 1 July, non-EU established businesses must appoint an 'intermediary' established within the EU if these non-EU businesses wish to apply the IOSS. The EU Commission has also been requested to confirm that the UK will fall under the exception in the Directive not requiring the appointment of an intermediary when using the IOSS if there exist mutual assistance arrangements in place for the recovery of VAT. At present, only Norway meets these conditions.

## 'UK businesses need to keep fully up to date with the rapidly moving EU VAT legislation and case law'

**Summary**
As can be seen from the above limited examples, UK businesses doing business with and within the EU need to keep fully up to date with the rapidly moving EU VAT legislation and also the case law of the European Union Court of Justice.

The VAT and Duties Committee of the Tax Faculty will provide regular updates on these important issues for the benefit of all faculty members, with a webinar on 9 June 2021 focused specifically on the 1 July e-commerce changes. Sign up for the webinar at icaew.com/taxfacevents

**Stephen Dale FCA**, indirect tax expert and member of the Tax Faculty's VAT and Duties Committee

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# Tax and ethics

**Sophie Wales** explains the application of ethics to tax work, including how to approach fraudulent COVID-19 support claims

The media spotlight on tax avoidance may have died down, with attention shifting to the examination of audit and corporate failure, but for many commentators, the ethics of the tax profession remains a topic of interest and concern. There is now an expectation, from both the government and the public, that tax work must be ethical.

But what does that mean in practice? ICAEW members have to adhere to the code of ethics in all their work. Core to that are the fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. Applying those concepts to real-life tax work is where the *Professional Conduct in Relation to Taxation* (PCRT) guidance comes in.

Developed with ICAEW and six other professional bodies, and endorsed by the tax authorities, PCRT discusses how the fundamental principles apply to a member providing tax services. For example, integrity requires that the member does nothing that could mislead the tax authorities; and objectivity requires that clients are made aware of the material risks of any tax planning, and the basis on which advice is given.

Building on the fundamental principles, since 2017 the PCRT has included some additional tax-specific standards for tax planning (see below right). These focus in particular on integrity, professional competence and due care, and professional behaviour. The standards, which have been developed in the context of the UK tax system, supplement the fundamental principles.

ICAEW members are very unlikely to be involved in the kinds of unacceptable tax planning that would be in breach of these standards. In the event that they were, a complaint could be made (including by HMRC) to ICAEW's professional standards department for investigation.

### Misuse of government COVID-19 support schemes

Ethical dilemmas have been front of mind for many when they are faced with potential misuse by clients of government support schemes. These schemes may not appear to be directly linked to a client's tax affairs but, under Sch 16 to the Finance Act 2020, where a claimant is not entitled to the payments, the amount to which they are not entitled is recovered in full by way of an income tax charge (corporation tax where the recipient was a company).

There is, therefore, a direct link between a support scheme claim made, to which a person had not been entitled, and the tax code. So what is a member supposed to do if they think that a client may have wrongly claimed furlough support or Self-Employment Income Support Scheme grants?

It comes down to a member's core ethical obligations under the fundamental principles and PCRT:

- The complexity and ever-changing nature of some of these schemes means that many claimants will have made inadvertent errors and may need our assistance in correcting their claims.
- However, there will unfortunately be some instances where people have sought to defraud the schemes. Integrity requires that members cannot be associated with false or misleading information. If you discover that a client has falsified figures or other details in a claim, then you have to insist that they correct it. If they refuse, then a member must take steps to disassociate themself from the misleading information, which may include ceasing to act for that client. The PCRT helpsheet on dealing with errors provides a useful flowchart (see tinyurl.com/TX-HelpsheetC1).
- Confidentiality continues to apply, so reporting the client to HMRC's fraud line will usually not be an option. Instead, a suspicious activity report may be required to advise the National Crime Agency of the wrongdoing.

ICAEW's Ethics Advisory helpline is available to help and support those members who find themselves faced with difficult situations such as these (01908 248 250).

## Standards for tax planning

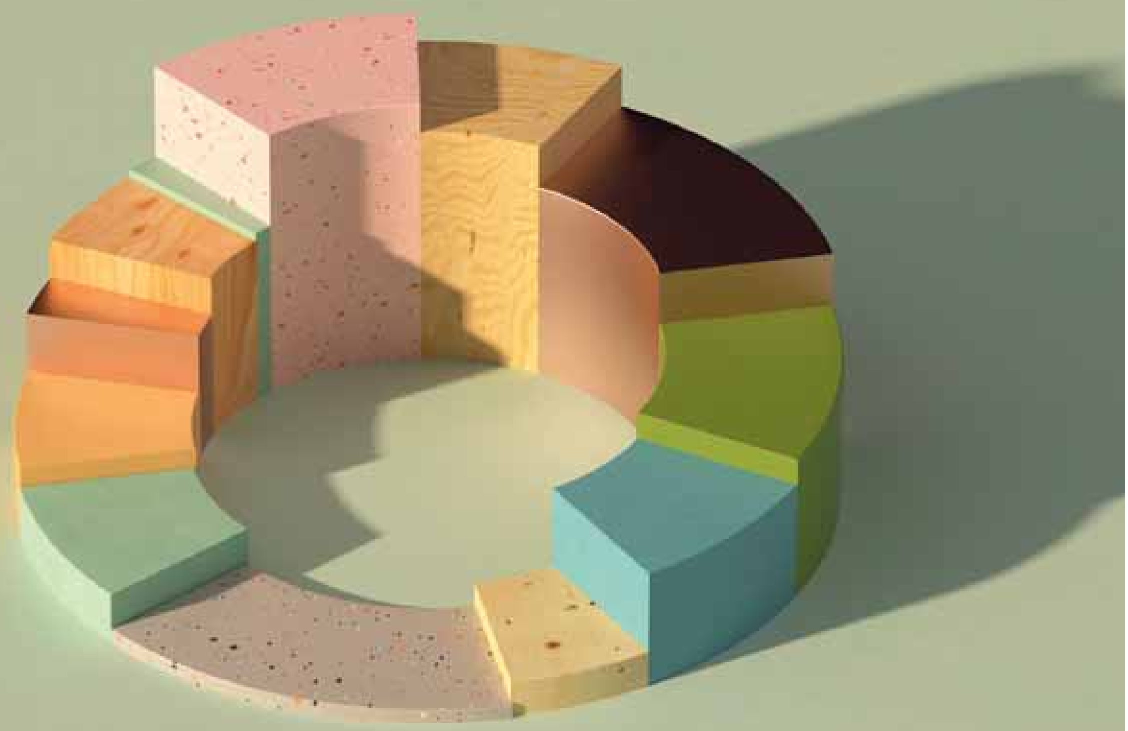
The standards explain that any tax advice given to a client must:

- be client specific;
- be lawful – including a realistic interpretation of all relevant facts and legislation;
- not rely on keeping facts from HMRC;
- not set out to achieve results contrary to the clear intention of Parliament;
- not be highly contrived or highly artificial and seek to exploit shortcomings in legislation; and
- exercise professional judgement where needed (and for this to be documented).

**Sophie Wales**, Director, ICAEW Tax, Ethics and Law Group

# Back to the future

**Richard Jones** considers the various Budget announcements affecting company tax computations



When I did my tax exams more than 20 years ago, there were several complications that caused me headaches, such as first-year capital allowances, different rates of corporation tax and marginal relief for 'medium-sized' companies. These complications were removed over time and I thought I had seen the last of them. This year's spring Budget has proved how wrong I can be!

### Multiple corporation tax rates

The introduction of a new corporation tax rate of 25% from 1 April 2023 stole most of the Budget headlines. To ensure that the rate change does not have an impact on smaller companies, the Chancellor announced that the 19% rate will continue to apply to UK resident companies that are not close investment holding companies (CIHCs) with profits (including tax-exempt distributions) of up to £50,000.

A tapered rate will apply to companies (other than CIHCs) with annual profits (including tax-exempt distributions) of between £50,000 and £250,000. This means that the first £50,000 of profits will be taxed at 19% and every £1 of profit above that would be taxed at 26.5% until profits reach £250,000 (technically via the deduction of marginal relief from tax calculated at the main rate). Hence, the closer a company is to the £250,000 'upper threshold', the closer its effective tax rate is to 25% (see Box 1, opposite).

As you would expect, the £50,000 and £250,000 limits are reduced where the company concerned has associated companies or an accounting period of less than 12 months.

Although these calculations will be built into tax computation software, complications remain for the approximately one-fifth of companies caught in the tapered rate. For example, they may find budget forecasting more difficult, as the expected tax rate will be dependent on the size of tax-adjusted profits. The varying rates will also need to be factored into already complicated decisions on whether to incorporate a business.

### Temporary capital allowance reliefs

Alongside the introduction of freeports, which will be covered in a future article, one of the most eye-catching measures supporting business investment was a new, unlimited, 130% super-deduction for eligible capital allowance expenditure on plant and machinery incurred between 1 April 2021 and 31 March 2023. This was coupled with an equivalent 50% first year allowance (FYA) for eligible expenditure taken to the special rate pool (such as integral features and long-life assets) over the same period.

At a 19% corporation tax rate, the super-deduction provides a 24.7p reduction in tax payable for every £1 spent. The '30p top-up' is pro-rated where the expenditure is incurred in an accounting period (AP) that ends after 31 March 2023.

***Example***

Babyface Ltd acquires an eligible asset on 20 February 2023 for £1m. Its AP is the 12 months to 31 December 2023. As the super-deduction rules apply for 90 days of the AP, the percentage deduction available is: (100% + (90/365 x 30%) = 107%, resulting in a tax deduction of £1.07m.

FYAs for special rate expenditure are given through an upfront relief of 50% of the cost of eligible expenditure. The remaining 50% is taken to the special rate pool, which attracts an annual writing down allowance (WDA) of 6%.

Expenditure eligible for these reliefs is essentially what would otherwise be taken to the main rate or special rate plant and machinery pools, but certain items are excluded, such as:

- second-hand or used assets;
- cars;
- expenditure in the period in which the qualifying business of the company is permanently discontinued; and
- any assets that are acquired for the purposes of leasing to another party.

The usual rules apply for determining the date on which expenditure is incurred. The general rule is that it is treated as incurred as soon as there is an unconditional obligation to pay it. However, expenditure incurred on a contract entered into before 3 March 2021 will be treated as incurred on the date of the contract and not eligible for either of the two reliefs.

**Which allowance should I choose?**

The temporarily increased annual investment allowance (AIA) limit of £1m will continue to apply until at least 31 December 2021 (after which it is scheduled to reduce to £200,000). Expenditure on plant and machinery eligible for the various forms of relief are set out in Box 2 (right).

As a company or group may allocate the AIA in whatever way it likes to eligible capital expenditure, a standalone company is likely to allocate it in the following order of priority:

1 Special rate expenditure not qualifying for the special rate FYA (eg, used, second-hand or

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## BOX 1: Effective tax rates at different profit levels from 1 April 2023

| Total profits | Marginal rate on top £50,000 slice of profits | Tax on top £50,000 slice of profits | Total cumulative tax | Effective tax rate |
|---|---|---|---|---|
| £50,000 | 19% | £9,500 | £9,500 | 19% |
| £100,000 | 26.5% | £13,350 | £22,750 | 22.75% |
| £150,000 | 26.5% | £13,250 | £36,000 | 24% |
| £200,000 | 26.5% | £13,250 | £49,250 | 24.625% |
| £250,000 | 26.5% | £13,250 | £62,500 | 25% |
| £300,000 | 25% | £12,500 | £75,000 | 25% |

## BOX 2: Capital allowance rates for different assets from 1 April 2021

| | Super-deduction (130%) | 50% FYA | 100% FYA | AIA (100% on £1m until 31 Dec 2021) | 18% WDA | 6% WDA |
|---|---|---|---|---|---|---|
| New 'main rate' assets | x | | | x | x | |
| Used assets | | | | x | x | x |
| Assets held for leasing | | | | x | x | x |
| New integral features | | x | | x | | x |
| New long-life assets | | x | | x | | x |
| New electric cars (0% emissions) | | | x | | | |
| New cars with emissions 1-50g/km | | | | | x | |
| All other cars | | | | | | x |

## BOX 3: Adjustment to disposal values when disposing of 'super-deduction' assets

| Disposal in AP | Balancing charge as % of disposal proceeds |
|---|---|
| Beginning on or after 1 April 2023 | 100% |
| Ending before 1 April 2023 | 130% |
| Straddling 1 April 2023<br>*Example: AP ending 31 December 2023 = 100% + ((90/365) x 30%) = 107.4%* | 100-130% depending on the number of days in the AP before 1 April 2023 |

assets to be leased that are long-life assets or integral features).
2 Main rate expenditure not qualifying for the super-deduction (eg, used, second-hand or assets to be leased which are general plant and machinery).
3 Special rate expenditure eligible for the special rate FYA.

To complicate things further, the super-deduction has a nasty sting in its tail. When an asset on which the deduction has been claimed is disposed of, a balancing charge is brought into account, calculated as set out in Box 3 on page 13.

Record keeping will be key for calculating the balancing charge on disposal. The 25% corporation tax rate may apply to part of the period in which the balancing charge arises. So, the net value of the super-deduction may be less than first anticipated.

***Example***

Fox Ltd, a large company, purchased an asset on 1 June 2021 for £1m, which it disposed of on 1 February 2023 for £500,000. It has a 31 December year end. The respective allowances and balancing charges comparing the super-deduction and the AIA are as follows:

| | Super-deduction (£'000) | (£'000) | AIA (£'000) | (£'000) |
|---|---|---|---|---|
| Deduction | 1,300 | | 1,000 | |
| Tax reduction (19% rate) | | 247 | | 190 |
| Balancing charge | | | (500) | |
| ((90/365) x 0.3 + 1) x 500 | (537) | | | |
| Tax on balancing charge | | | | |
| ((90/365) x 19%) + ((275/365) x 25%) = 23.5% | | (126) | | (117) |
| Net tax reduction | | 121 | | 73 |

While an anti-avoidance provision will be introduced to counteract any artificial arrangements designed to obtain these reliefs, companies should start considering what commercial arrangements they should be putting in place to derive the greatest benefit from them. It may be appropriate, for example, to bring forward planned investment, especially if the assets concerned are expected to be retained for at least a few years.

## Company trading losses

A temporary extension to the loss carry-back rules has been introduced for both income and corporation tax purposes, which allows a limited amount of loss to be carried back for up to three years for APs ending between 1 April 2020 and 31 March 2022.

A standalone company can carry back an unlimited amount of trading losses incurred in these APs to the preceding 12 months. A company can carry back up to £2m of losses to the three years ending at the start of the AP of the loss. The loss is carried back on a last-in, first-out basis.

For groups with any companies with more than £200,000 of loss to carry back from a particular AP, there is a £2m three-year carry-back limit for the whole group.

Where a company claims to carry back losses for an annual accounting period in excess of £200,000, the claim must be made in the company's tax return and cannot be made until the following dates:

| Accounting period ending in period | |
|---|---|
| 1 April 2020 to 31 March 2021 | 31 March 2021 |
| 1 April 2021 to 31 March 2022 | 31 March 2022 |

When applying the £200,000 limit, a company must take account of all claims that are available to it, such as capital allowances, make no surrenders of losses for group relief and make the maximum permissible loss carry-back claim. Companies with loss carry-back claims exceeding £200,000 that are group members must also have their claims specified on a loss carry-back allocation statement.

***Example***

The companies of the group Armadillo suffered the following losses in the AP ended 31 December 2020.
Company Xylophone – £500,000
Company Yellow – £150,000
Company Zebra – £1.7m

Company Yellow can carry back its full loss of £150,000 to the APs ended 31 December 2017 and 2018. Companies Xylophone and/or Zebra will need to restrict their claims so that the total three-year carry back for the whole group is no more than £2m. Claims cannot be made until 31 March 2021, the allocation of the £2m limit must be set out in a loss carry-back allocation statement and Company Xylophone's and Company Zebra's claims would need to be made in a company tax return.

## Conclusion

While the changes in this year's Finance Bill create complexity, they also provide opportunities for strategic tax planning. Companies with funds to invest (perhaps from tax refunds through loss carry-back claims) may find the current capital allowances incentives attractive. The timing of expenditure should be planned carefully to ensure that companies do not miss out.

**Richard Jones**, Business Tax Manager, Tax Faculty


# Going digital

**Caroline Miskin** provides an overview of the current status of HMRC's digitalisation project

HMRC's Making Tax Digital (MTD) project is well established: MTD VAT is a reality and will soon be extended to all VAT-registered traders; MTD income tax self assessment (ITSA) is work in progress in advance of the 2023 start date; and MTD corporation tax (CT) is at early-stage consultation. ICAEW fully supports the digitalisation of business, and the efficiency and productivity benefits that digital record keeping can enable, but it has always been opposed to making it mandatory.

The quarterly reporting requirement for MTD ITSA will impose a major administrative burden on taxpayers for no obvious benefit. ICAEW has raised this concern with government and has expressed similar concerns on MTD CT. The extension of MTD VAT to all traders raises fewer concerns, as it is a transactional tax with no change to reporting frequency.

## MTD VAT

From April 2022, MTD VAT will be extended to all VAT-registered traders. Announced on 21 July 2020, this is included in the Finance Bill 2021. Around a quarter of such businesses have signed up to MTD VAT voluntarily, so approximately 750,000 businesses will be affected by the extension.

Some voluntarily registered businesses may take the opportunity to reconsider their VAT registration, but there are deregistration pitfalls (see Neil Warren's article in *TAXline* April). Others are likely to apply to HMRC for a digital exclusion exemption.

Around 100,000 businesses that should be complying with MTD VAT have yet to sign up. HMRC recently sent a further letter to these businesses. It has not yet charged the penalty of up to £400 for filing a return other than by using MTD software, but may soon run out of patience. Very little is known, by HMRC or ICAEW, about the full extent of compliance with the obligations, which go well beyond how the return is filed and include very specific record-keeping requirements.

The soft landing for digital links within MTD-functional compatible software ended in April 2021. Where digital records are held in a suite of software and spreadsheets, any data transfer between these products must be digital. It remains to be seen how HMRC will enforce this requirement.

## MTD ITSA

Unlike MTD VAT, the MTD ITSA start date is in secondary legislation. Draft regulations were published in 2017, but left to gather dust before consultation restarted in December 2020.

Alongside representations on the detail of the regulations, the faculty has made the case that quarterly reporting, which the government considers to be an essential element of the policy, is misguided and an unnecessary burden.

HMRC intends to expand the pilot of MTD ITSA in April 2021. The signs are that this will be a very small pilot with a limited number of software providers. It may not be sufficient to test the system in what is the last opportunity to run a full reporting cycle before it becomes mandatory.

One uncertainty is how taxpayers will report income other than from trading and property. HMRC's expectation is that most MTD software will allow non-MTD income to be reported, but it is also building a new service to report such income. This new service will replace the current self assessment system, which will be decommissioned.

## MTD CT

MTD CT proposals were subject to a consultation. ICAEW emphasised the need to rethink quarterly reporting (see tinyurl.com/TX-Quarterly). The pilot is expected to start in 2024. MTD CT will not be mandated until 2026 at the earliest. The faculty hopes that HMRC will use this time to engage actively.

## Penalties

HMRC is implementing a new regime for late-submission and late-payment penalties to underpin MTD (see tinyurl.com/TX-Penalties). The legislation is included in Finance Bill 2021. The regime will apply to VAT from April 2022, before being extended to income tax.

**Caroline Miskin** is a technical manager at the Tax Faculty, with responsibility for practitioner matters including MTD

## MTD timeline

**1 APRIL 2022**

- Extension of MTD VAT to all VAT-registered traders.
- New late-submission and late-payment penalties for VAT apply to periods starting on or after this date.

**6 APRIL 2023**

- MTD ITSA applies to unincorporated businesses and landlords with total business or property income above £10,000 per year.
- New penalties for late submission and payment apply to accounting periods starting on or after this date for taxpayers in MTD ITSA.

**6 APRIL 2024**

- New late-submission and late-payment penalties apply to accounting periods starting on or after this date for all other income taxpayers within self assessment.

**1 APRIL 2026**

- Earliest date that MTD CT may apply.

# Events and webinars

Book yourself in at icaew.com/taxfacevents

## Upcoming events and webinars

**Tax administration framework review**
5 May 2021, 09:30-10:30
Frank Haskew, Caroline Miskin and Anita Monteith discuss HMRC's call for evidence on the tax administration framework, which proposes significant changes to how taxpayers and agents interact with the tax system and HMRC.

**Earlier payment of income and corporation taxes**
5 May 2021, 12:00-13:00
Caroline Miskin and Anita Monteith review HMRC's call for evidence on timely payment.

**CJRS the final phase calculations explained**
7 May 2021, 12:00-13:00
Anita Monteith is joined by employment tax expert Kate Upcraft to provide details of the final extension to the CJRS scheme and how the rules will be changing for this final phase. Worked examples will be used to illustrate the changes.

**SME and OMB tax planning post Finance Bill 2021**
10 May 2021, 12:00-13:00
Richard Jones is joined by Andrew Constable, partner at Moore Kingston Smith, to discuss various measures included in this year's Finance Bill relating to small and medium-sized companies and owner-managed businesses. There will be a particular focus on changes in the corporation tax rate and the temporary changes to the loss carry-back rules.

**Employment taxes update**
25 May 2021, 12:00-13:00
Peter Bickley is joined by employment tax expert Kate Upcraft to provide an update on key changes in the employment tax arena, including CJRS compliance activity, benefit in kind easements, off-payroll working, and more.

**VAT: changes to the EU rules from 1 July 2021**
9 June 2021, 12:00-13:00
Stephen Dale and Liam Dushynsky, members of the Tax Faculty's VAT and Duties committee, explain changes to the EU VAT rules affecting goods and services that will apply from 1 July 2021.

**Capital allowances post Finance Bill 2021**
14 June 2021, 12:00-13:00
Richard Jones is joined by Steve Watts, partner at BDO, to consider changes to the capital allowance rules, including the super-deduction and extension of the uplifted annual investment allowance.

The Tax Faculty has its own web page bringing together details of all our forthcoming events in one place, including webinars. See icaew.com/taxfacevents

The ICAEW website is regularly updated with details of all upcoming events. See icaew.com/events

## Catch up on recent webinars

To view recordings of previous webinars and events, visit icaew.com/taxwebinars

Recent Tax Faculty webinars include:

**Self-employment Income Support Schemes – an update**
There are winners and losers as HMRC reassesses grant amounts, taking into account information from 2019/20 self assessment tax returns.

**Budget**
The Tax Faculty's reflections on the announcements from the spring Budget.

**Managing tax risks in a complex world**
James Egert, Carrie Rutland, Karen Riley and Steven Levine of BDO provided a high-level overview of the risks companies face in making disclosures, submitting accurate returns and applying the law correctly in key areas.

**Getting Research and Development claims rights**
James Tetley, head of Innovation Reliefs at RSM, joined Anita Monteith to discuss key issues for R&D claims.

**IR35 and employment status**
Mark Hammerton, partner at Eversheds Sutherland, discussed the essentials of the status tests, why they matter and for which purposes and end user/hirer options for managing IR35.

**MTD for ITSA**
With the Tax Faculty's Anita Monteith and Caroline Miskin.

**VAT: Construction industry reverse change**
Neil Warren, independent VAT speaker, author and consultant, explained the new CIS VAT reverse charge and how it will affect your clients.

# Practical points

Tips and reminders, short technical notes and news of recent developments in tax. Contributions to this section from readers are always welcome: taxline@icaew.com



## Business taxes

### 108. Amounts found not to be partnership profits

In an LLP with complex remuneration arrangements, amounts received by the members under a deferred payment scheme were found to be miscellaneous income, not partnership profits.

A group of employees were entitled to deferred remuneration. An organisational restructuring resulted in some of them becoming members of a new LLP, although they were seconded to the company that they had been working for as employees and continued to undertake the same work for it. The LLP was entitled to a share of the business profits, including the amount earmarked as deferred remuneration. Under the remuneration arrangements, the deferred remuneration was paid to a corporate member of the LLP, which invested the amount and contributed it back to the LLP as special capital in tranches at later dates. The individual members could then withdraw the amounts on demand if they had not left on bad terms.

HMRC assessed the partners to tax on the grounds that the amounts were part of their profit shares. The First-tier Tribunal (FTT) found that this was not so, as the individual members had no rights to the amounts allocated to the corporate member, merely a right to be considered for future distribution. The FTT found that the amounts were instead miscellaneous income, dismissing the members' contention that the income lacked a source, so did not fall strictly within the wording of the miscellaneous income provision. The reallocation to the members under the arrangements by the LLP was not entirely voluntary, so a source existed.

*HFFX LLP and others v HMRC* [2021] UKFTT 36 (TC)

tinyurl.com/TX-HFFX

From the weekly *Tax Update* published by Smith & Williamson LLP

### 109. Amounts again found not to be partnership profits

In an investment management LLP, amounts received by the members under a deferred payment scheme were found to be miscellaneous income, not partnership profits. The deferral scheme had routed the amounts through a corporate member of the LLP. As the individual members had no strict entitlement to the amounts, this was not part of the 'profit-sharing arrangements'.

Each year, the LLP retained part of the profit shares that would otherwise have been due to its members and paid them out to those members in later years if set conditions were met. These withheld amounts were paid to a corporate member of the LLP. It had discretion to contribute the amounts back to the LLP as special capital, to then be invested in the fund managed by each member due to receive deferred remuneration. The members could withdraw the amounts from the fund later if they met the conditions.

The FTT found for the taxpayer that the members were not subject to income tax on the amounts they would have received if not for the deferral arrangement in the year they arose, as the members were not entitled to receive those amounts. They were instead taxable as miscellaneous income at the point when the members withdrew the special capital.

*Odey Asset Management LLP v HMRC* [2021] UKFTT 31 (TC)

tinyurl.com/TX-Odey

From the weekly *Tax Update* published by Smith & Williamson LLP

### 110. Capital allowances: gas cavity not 'plant'

The Upper Tribunal (UT) has dismissed the taxpayers' appeal in *Cheshire Cavity Storage v HMRC*. The appeal concerns the availability of plant and machinery allowances under the Capital Allowance Act 2001 on expenditure incurred in relation to underground cavities for gas storage in Cheshire. The cavities are formed by injecting water into naturally occurring salt rock beneath the ground, which leaves a hole filled with saltwater when the salt rock dissolves. Gas is then pumped into the hole and the saltwater in it is expelled. The rock all around the hole creates a barrier so the gas cannot escape. The cavity is connected by pipes to the national transmission system for gas, which is owned by National Grid and which supplies gas to end users. The UT held that the FTT had made no error of law when it concluded that the cavities were not 'plant' under common law.

tinyurl.com/TX-Cheshire

From the weekly *Business Tax Briefing* published by Deloitte

## Company tax

### 111. Amortisation deductions allowed for a licence

The FTT upheld a taxpayer's claim for amortisation deductions relating to intangible assets. The existence and nature of goodwill and licence were questions of fact and the FTT examined the agreements and conduct of the parties in detail.

The taxpayer was a company that had acquired the business of a partnership and the shares in a connected company. The assets acquired included goodwill and a licence. The licence conferred the right to use the partnership's brand, know-how, assets and client data. The licence had previously been granted to the connected company for an annual fee. HMRC argued that the licence was a financial asset, rather than an intangible asset. It additionally argued that there was no goodwill that could be properly recognised, and that the accounts were not GAAP compliant. On that basis, HMRC disallowed the CT deductions for amortisation.

The FTT found for the taxpayer. The licence was held to be a genuine licence and an intangible asset. The partnership was also found to have had goodwill, which was transferred at the time of the acquisition. The fact that accountants and auditors over several years had all agreed this treatment was also in the taxpayer's favour. Two past HMRC inquiries into the licence arrangement had found no errors, which also weighed in the taxpayer's favour.

*Roger Preston Group Limited v HMRC* [2021] UKFTT 38 (TC)

tinyurl.com/TX-Roger

From the weekly *Tax Update* published by Smith & Williamson LLP

### 112. Court of Appeal dismisses taxpayer's consortium relief appeal; comments on procedure

In *Eastern Power Networks plc and others v HMRC*, the Court of Appeal has upheld the decision of the UT in a case concerning an HMRC inquiry into the application of anti-avoidance legislation, s146B, Corporation Tax Act 2010, to a specific group structure and consortium relief/group relief claim. The effect of s146B, where it applies, is to reduce the number of losses claimable by 50%. In this case, the consortium company and its shareholders made changes to the capital structure and the articles of the consortium company, which, in the absence of s146B, would have had the effect of increasing the amount of losses that could be surrendered by some of the shareholder companies without adversely affecting the levels of control. The Court held that the arrangements, specifically the introduction of a 75% voting threshold in the company's articles, met both the conditions in s146B(3)(a) and s146B(2)(b), so it was possible that s146B applied. Therefore, HMRC could continue its enquiries to determine whether the main purpose test was also satisfied.

Lady Justice Rose commented that the procedure in this case had required the Courts to apply the statutory provision in the absence of any clear findings of fact. The overall dispute remains unresolved, even after the Court of Appeal's judgement, despite 11 years having elapsed from the relevant events (and seven years from the start of HMRC's enquiries). She would "firmly discourage" the FTT from embarking on this kind of hearing; the Tribunal's jurisdiction to direct HMRC to issue a closure notice "is not generally a suitable vehicle for deciding points of law in the course of an enquiry". (Footnote: it has been announced that Lady Justice Rose will become a Supreme Court Justice in April).

tinyurl.com/TX-Eastern

From the weekly *Business Tax Briefing* published by Deloitte

### 113. Tackling R&D errors

Some specialist R&D claims firms have automated selling processes designed to convince businesses that they are undertaking R&D and so will qualify for a tax repayment by claiming R&D tax credits.

Those R&D claims often succeed because HMRC hasn't properly reviewed them, but this is changing. There are more cases of unsupported R&D claims being taken to the tax tribunals. For example, see the case of *AHK Recruitment Ltd*, which is worth reading. HMRC has also updated its *Corporate Intangibles Research and Development Manual* to include common errors it finds when it examines an R&D claim (see CIRD80500). These errors cover almost every aspect of the R&D scheme, but the list starts with the basic: "project activities outside the scope of R&D for tax purposes".

A myth being circulated in the building trade is that alterations to offices or buildings to accommodate COVID-19-secure working qualify as R&D – they don't.

For a project to qualify as R&D for tax purposes it needs to involve "an attempt to achieve an advance (in knowledge or capability) in a field of science or technology, through the resolution of scientific or technological uncertainty".

All those elements need to be present:

- an attempt to advance knowledge or capability;
- in science or technology; and
- resolving a scientific or technological uncertainty.

Guidance on what R&D is for tax purposes is set out in a paper below, which is referred to in the R&D regulations.

Even if the project does qualify as R&D, there are plenty of other mistakes that can be made with an R&D claim, from including the wrong categories of expenditure to claiming under the wrong scheme (SME or large company).

Common errors in R&D claims: tinyurl.com/TX-RDErrors

*AHK recruitment v HMRC* [TC07718]: tinyurl.com/TX-AHK

Guidelines on meaning of R&D for tax purposes: tinyurl.com/TX-RDMeaning

From the weekly *Tax Tips* published by the Tax Advice Network

### 114. The worrying lure of the 130% super-deduction

While the 130% deduction on plant and machinery expenditure appears very attractive to companies in the short term, especially those that want to buy long-term plant and machinery, the balancing charge could have an impact with an extra cost. Such relief might attract a lot of conversations to incorporating the business in the short term, but there is a sting in the tail.

Companies will be required to recognise the disposal proceeds with the 1.3 factor resulting in some extra corporation tax at the rate of 25% or the 'tapered' rate. For plant and machinery with a fast turnaround (for example, tractors and commercial vehicles), there could be a 'net cost' compared to the pre-Budget arrangement.

However, where there are long-term assets (eg, a functional grain silo or silage clamp), the cashflow advantage is attractive, particularly with the carry back of losses.

All potential claims should be fully researched and projections carried out as to the 'real' tax saving. Likewise, a mad rush towards incorporation must be looked at in the round – especially where some capital taxes could be jeopardised by the choice of the wrong trading vehicle.

Contributed by Julie Butler, Joint Managing Partner, Butler & Co

## Payroll and employers

### 115. Enterprise Management Incentives – working time easement extended

Relaxations to the Enterprise Management Incentives (EMI) legislation made in response to the coronavirus outbreak were set to end on 5 April 2021. These will now extend to 5 April 2022, but employers might need to take steps now to ensure they and their employees benefit.

#### *EMI share options*

The EMI scheme offers the most flexible and generous UK tax advantages of any employee share options. However, certain conditions must be met for an employee to be granted a qualifying EMI option.

Among these is the 'working time requirement': that the employee devotes at least 25 hours per week, or 75% of their total working time, to the business of the relevant company.

Additionally, an employee must usually continue to meet the working time requirement until the date on which they exercise an EMI option in order to retain its full tax advantages and be taxed at lower CGT rates. If they do not, in certain circumstances, income tax and employee's national insurance contributions (NIC) at up to 47% (or 48% for Scottish taxpayers), plus employer's NIC at 13.8%, will arise on any growth in value of the underlying shares.

#### *Temporary relaxation of the working time requirement*

Subject to limited exceptions for ill health, etc, any reduction in an employee's working time could, in principle, prevent them from being granted new EMI options and potentially jeopardise the tax advantages of EMI options they already hold. However, a temporary change to the EMI rules was announced last year.

This means an employee will not be prevented from meeting the working time requirement solely because, due to the coronavirus outbreak, they are:

- furloughed;
- working reduced hours; or
- taking unpaid leave.

This temporary change applies from 19 March 2020 and was originally due to end on 5 April 2021. However, legislation has been brought forward in the Finance Bill 2021 to extend this relaxation to 5 April 2022.

#### *Do employers need to take any action?*

HMRC has confirmed that employers and employees must retain evidence demonstrating a link between the coronavirus pandemic and the relevant reduction in working hours (ie, that the reduction in working hours below the required minimum results from the pandemic, rather than from some other cause). For employees who have been furloughed under the Coronavirus Job Retention Scheme (CJRS), the furlough agreement between the employee and employer should provide this evidence.

However, for employees who have taken unpaid leave, or who have worked reduced hours, without being furloughed under the CJRS, employers should ensure the link between the coronavirus outbreak and that leave or those reduced working hours is appropriately documented and copies of that evidence retained by the employee and employer. This is important to protect against any future challenge to the qualifying status of employees' EMI options, either from HMRC or from a potential purchaser during a future due diligence exercise.

From KPMG's *Tax Matters Digest*

### 116. Seafarers/mariners helpline numbers

Income tax: there is no longer a specialist team within HMRC that deals with income tax inquiries relating to seafarers. HMRC's general income tax inquiries line, 0300 200 3300, has access to guidance to enable operators to help those who contact them.

NIC: The number on the seafarer's NIC page has been updated (see tinyurl.com/TX-SeafarersNI). The marine NIC team, which is responsible for establishing the UK NIC liabilities of individual mariners, can be contacted on 0300 322 9464.

(NIC inquiries relating to share fishermen are taken on the general NIC helpline, 0300 200 3500.)

Contributed by Peter Bickley

### 117. Offshore workers NIC questionnaire for seafarers/mariners

Mariners who need to check their NIC position, pay voluntary contributions, claim a refund or check the status of their employer should complete HMRC's mariners NIC questionnaire.

HMRC has published a new e-form version of the NIC questionnaire at tinyurl.com/TX-OWQuest

When completing the e-form, make sure you have all information to hand before you start. In common with other HMRC e-forms, it cannot be saved mid-completion – ICAEW's Tax Faculty has complained about this feature of HMRC's e-forms in the past.

A PDF version of the mariner's questionnaire can be found at tinyurl.com/TX-PDFFiller (use Google Chrome rather than Internet Explorer to download this).

Once completed, the form should be submitted to ISBC, Campaigns and Projects, HMRC, BX9 1QZ (not the Glasgow address cited on the form).

As to processing these forms, HMRC has said:

- although the e-form replaced the PDF form, which was withdrawn from service around September/ October 2020, it will still process the old PDF questionnaire;
- it can take between three to six months to process these questionnaires depending on the time of year of submission;
- questionnaires submitted in support of applications for Portable Documents A1 or S1 are treated as priority and taken up for processing within 15 working days of receipt. Those submitted in support of an application for the issue of a UK National Insurance number (NINO) are screened initially to determine whether or not there is a liability to UK NIC. If so, HMRC informs DWP of the UK NINO request and processes the questionnaire fully at a later date; and
- all questionnaires are screened upon receipt to ensure that those relating to offshore workers who are not classified as mariners for UK NIC purposes are forwarded as soon as possible to HMRC's PT Ops North East England International Caseworker Section.

HMRC's guidance *National Insurance if you work at sea* has been withdrawn, presumably as a result of Brexit (see tinyurl.com/TX-NISea). However, it contains helpful information and fortunately is still available on gov.uk.

Contributed by Peter Bickley

## CGT

### 118. When is a gift not a gift? Transfers on relationship breakdown

The making of a gift is a disposal for the purposes of capital gains tax (CGT). The basic rule is that tax is payable as if the asset gifted had been sold for its market value. But in some circumstances – including where the asset gifted is a 'business asset' – it is possible for donor and donee to elect (jointly) that the disposal be treated as made at such a price as results in neither gain nor loss being recognised. In effect, the gain that would otherwise be recognised on the disposal is 'held over' and becomes chargeable (on the donee) when the donee eventually disposes of the asset.

There is, of course, a whole panoply of rules about what assets qualify and the precise conditions to be met, but the broad rule that a gain on a gift of a business asset can usually be 'held over' in this way will suffice for present purposes.

The gain can be 'held over' in full if there is no consideration for the gift. If it is a 'partial gift' (meaning that any consideration received is less than the market value of the asset transferred), the relief may be restricted.

How do these rules apply where business assets are transferred following the breakdown of a marriage or civil partnership?

The first point to bear in mind is that, until the end of the tax year in which the parties permanently separate, no joint election is needed: any assets transferred (whether or not business assets) are automatically deemed to go across on the 'no-gain, no-loss' basis.

It is, therefore, only in subsequent years (typically when assets are being divided up following the relationship breakdown) that the triggering of a tax charge becomes an issue. That may of itself be an incentive to sort these things out sooner rather than later. The problem is the question of 'consideration'.

HMRC formerly accepted that where an asset was transferred pursuant to a Court Order (even a Consent Order formalising an agreement between the parties), there was no 'consideration' and no bar to a joint 'holdover' election: the asset had been transferred not because the recipient had given consideration but because the Court had required the transfer to be made.

Unfortunately, that is no longer HMRC's view. HMRC's current view is that, where an asset is transferred on the breakdown of a marriage or civil partnership, it will be exceptional for this to be a gratuitous transfer potentially qualifying for holdover relief. Normally, the transfer is not truly a 'gift' made for no consideration but is made because the recipient is giving something up – namely "rights which [the recipient] would otherwise have been able to exercise to obtain alternative financial provision". That amounts, in HMRC's view, to 'consideration' of a value equal to the market value of the property transferred. This is the case whether or not the transfer is made under a Court Order. Consequently, holdover relief will not normally now be available.

Contributed by David Whiscombe writing for *BrassTax*, published by BKL

## IHT

### 119. *Timeo Danaos et dona ferentes*: IHT rules on lifetime gifts

The sad case of Kirsty Makin reported in *The Times* highlights the complexity of the inheritance tax (IHT) rules on lifetime gifts. In 2017, before they were married, Tom Makin gifted Kirsty a share in the £1.8m family home. They married in 2018 and Tom passed away in June 2019. The IHT bill is apparently £300,000. Had Kirsty inherited the property under Tom's will, it would have been IHT-free in view of the spouse exemption.

The point is that marriage or civil partnership does not purify a gift made in advance, so it will often be a potentially exempt transfer (PET) on the transferor's IHT 'clock' for the normal seven years, unless it is covered by an exemption other than that applicable to transfers between spouses. Most people are aware that there are exemptions in consideration of marriage, but less well-known is that the exemption for parties to the marriage is only £2,500. The position is more complicated if the giver reserves a benefit, as then the seven-year clock will not start to run.

Turning to the fictional world of ITV's *Finding Alice*, the eponymous heroine's partner Harry gifted the newly built family home to his parents shortly before falling victim to the lack of a stair banister. As recipients of a failed PET, they were primarily liable for the IHT occasioned by his untimely death.

The moral of the story is stop and think before making any substantial gifts and remember that gifts are disposals for CGT purposes.

Returning to the title – a reference to the caution with which a Trojan priest greeted the Greeks' gift of a certain wooden horse – bear in mind that UK assets are always within the scope of IHT, even if the owners are non-UK domiciled.

Contributed by Terry Jordan writing for *BrassTax*, published by BKL

### 120. Clearance requests

HMRC advised in its August 2020 *Trust and Estates* Newsletter that it would no longer be stamping and returning the application for a clearance certificate (IHT30). Instead, HMRC is issuing a letter that contains a unique code. The letter serves the same purpose as the stamped certificate. The reason for the change was that HMRC staff need to be in the office in order to stamp and return IHT30s, whereas the letter can be issued if staff are working from home.

HMRC confirmed at the recent HMRC Trusts and Estates Agents Advisory Group (T&E AAG) that it is receiving high volumes of telephone calls, IHT400 accounts and IHT post. However, it is not treating clearance requests with any less urgency than any other work on hand.

The form IHT30 explains that clearance should only be applied for when you are sure that there will be no more amendments to report to the estate and you are ready to make the final distributions from the estate. Nothing has changed in HMRC's expectations in the move from the IHT30 to the issue of a letter in its place.

Contributed by Caroline Miskin

### 121. IHT calculations

HMRC outlined in the June 2020 *Trust and Estates* Newsletter that, with many more of its people working from home, it is currently unable to print and issue repayment calculations, or calculations where the balance to pay is 'nil'. However, HMRC will normally write to you to tell you the amount of tax and interest it has calculated that is now due or repayable. If you think that HMRC has made a mistake in its calculations, please call the IHT helpline on 0300 123 1072.

HMRC explained at the T&E AAG that it needs staff to be present in the office to print these types of calculations. HMRC is not yet sure when it will be in a position to invite staff into the IHT office in greater numbers. HMRC is grateful for your patience and understanding until this can be achieved.

Contributed by Caroline Miskin

### 122. Gift with reservation and the IHT spouse exemption

HMRC has agreed an analysis of when the inheritance tax spouse exemption is available for assets held in a trust, which are treated as beneficially owned by the settlor as a result of the reservation of benefit rules.

The interaction of the spouse exemption and gift with reservation IHT rules has been a subject of debate, with some arguing that the spouse exemption is not available where the gift with reservation rules apply.

This has come into focus because of the excluded property changes in Finance Act (FA) 2020. The impact of the FA 2020 changes appears to be to remove the protection that excluded property treatment provided for gift with reservation purposes in certain cases where the trust was established prior to the FA 2020 changes.

This issue is being considered further by HMRC, but is coloured by the possible availability of the spouse exemption. Further information about the excluded property provisions in FA 2020 is available to Tax Faculty members in an article in the October 2020 edition of *TAXline*.

ICAEW, together with other professional bodies, provided an analysis of the rules, to which HMRC has now indicated its agreement and has amended the IHT manual (IHTM14303) to reflect it. The analysis states:

- property subject to a reservation at the donor's death is treated by s102(3), FA 1986 as: "property to which he was beneficially entitled immediately before his death";
- section 4, Inheritance Tax Act (IHTA) 1984 requires tax on death to be charged as if the deceased had made a transfer of value and: "the value transferred had been equal to the value of his estate immediately before his death";
- section 5(1), IHTA 1984 provides that a person's estate is: "the aggregate of all property to which he is beneficially entitled";
- a chargeable transfer is a transfer of value which is not an exempt transfer;
- section 18(1), IHTA 1984 provides that a transfer of value is an exempt transfer: "to the extent that the value transferred is attributable to property which becomes comprised in the estate of the transferor's spouse";
- it follows that spousal relief applies to settled property subject to a reservation if on the death of the settlor the settlor's spouse becomes beneficially entitled to the property under either:
  (a) the original terms of the settlement; or
  (b) a subsequent appointment made thereunder and prior to the settlor's death;
- the same would apply where the spouse's entitlement on the death of the settlor is to a qualifying interest in possession (ie, to an interest in possession to which s49, IHTA 1984 applies); and
- it is not considered spousal relief applies where settled property ceases to be subject to a reservation inter vivos. This is because s102(4), FA 1986 operates by deeming there to be a potentially exempt transfer rather than by deeming the donor to be beneficially entitled to the gifted property.

Contributed by Caroline Miskin

## Trusts

### 123. Non-taxpaying trusts given longer to register

The requirement to register on HMRC's trust registration service (TRS) has been extended to non-taxpaying trusts. The regulations, introduced in SI 2020/991, implement the EU's Fifth Anti-Money Laundering Directive into UK law. The original deadline for existing trusts to register was 10 March 2022. However, this was on the basis that the TRS would be open for registrations in spring 2021. This is now not expected until summer 2021. HMRC has indicated that the extension will provide trustees and agents with approximately 12 months from the date that the service is available to register. HMRC will provide further details in due course. Those who would like to be involved in testing the system should contact serviceteam17.digital_ddcn@digital.hmrc.gov.uk.

Contributed by Caroline Miskin

## VAT

### 124. Faster process for temporary changes to partial exemption methods

VAT-registered businesses whose partial exemption method does not give a fair result because their trading activities have been affected by

COVID-19 can request temporary alterations to their calculation methods. HMRC has confirmed it is now speeding up the process.

In *Revenue and Customs Brief 4*, HMRC explains a new accelerated process to swiftly respond to requests to change a partial exemption method that has become unfair due to the effects of the coronavirus pandemic on the business.

The partial exemption rules apply where a VAT-registered business makes a mixture of taxable and exempt supplies.

The standard method for calculating the amount of input tax that such businesses can recover can be overridden either by:

- the standard method override – where the deductible input tax differs significantly from that calculated based on the use of input tax in making taxable supplies; or
- requesting a partial exemption special method (PESM) if it produces a fairer reflection of the use of residual input tax than the standard method.

HMRC is encouraging businesses that use the standard method to use the standard method override, where it applies, rather than applying for a PESM.

Businesses that already have a PESM may serve a special method override notice on HMRC and these will be considered under HMRC's accelerated process where the reason given is the impact of coronavirus.

Requests for such changes should be sent to PESMcovid19@hmrc.gov.uk

The accelerated process is also available to businesses using a capital goods scheme special method.

The *Brief* also sets out the evidence that businesses should submit and how HMRC may apply time limits and agree to retrospection.

tinyurl.com/TX-Brief4

**125. Reverse charge on overseas investment management fees**

Wellcome Trust (a charitable fund worth more than £23bn, which supports medical research) incurred fees of £65m over five years from non-EU investment managers. It is registered for VAT in the UK (because it also receives substantial property income) and therefore was not receiving services as a consumer (B2C). Some 25 years ago, the Court of Justice of the European Union (CJEU) ruled that Wellcome was not acting in a business capacity either (when managing its non-EU investments) so Wellcome argued it should not apply the reverse charge to the investment managers' services because it was not a 'taxable person acting as such' (ie, receiving B2B services).

The CJEU, however, has ruled that the definition of a business customer for the purposes of determining the place of a supply is broader than the definition of a business activity for input tax recovery purposes (the subject of its judgement in 1996). The definition of B2B services as being to a 'taxable person acting as such' is simply carving out services intended for the private use of the taxable person or their staff. Services that are received for a non-economic activity, such as the management of Wellcome's non-EU equity portfolio, should be treated as B2B supplies and the reverse charge applied.

tinyurl.com/TX-Wellcome

From the weekly *Business Tax Briefing* published by Deloitte

**126. VAT on charges from VAT group to branch**

In the absence of VAT groups, financial services businesses can recharge costs cross-border between head offices and branches without creating a VAT cost. The branch is not economically independent of its head office and has no separate identity for VAT purposes. In 2014, the CJEU ruled that VAT was due if the branch joined a VAT group with other local companies, as the branch became assimilated with those group companies and could no longer be seen as indistinguishable from the head office (*Skandia*).

In *Danske Bank*, the CJEU has now ruled that the reverse is also true: where a head office that was part of a Danish VAT group provided IT support to its Swedish branch (which was registered for VAT on its own), then the head office and branch should be considered as independent from each other for VAT purposes. The Swedish branch should account for VAT on IT support provided by the head office under the reverse charge in Sweden.

tinyurl.com/TX-Danske

From the weekly *Business Tax Briefing* published by Deloitte

**127. Community cricket club not a charity**

The Court of Appeal has determined that community amateur sports clubs (CASCs), such as Eynsham Cricket Club, cannot be treated as charities for VAT purposes. Consequently, the construction of Eynsham CC's new pavilion did not qualify for zero-rating. Following the Charities Act 2009, a club registered as a CASC could no longer also be a charity – foregoing some charitable reliefs in return for avoiding the administrative burden of operating as a registered charity.

The following year, FA 2010 introduced a new EU-law compliant definition of 'charity' for tax law purposes. However, in the Court of Appeal's judgement, there was no indication that Finance Act change was also meant to allow CASCs to enjoy charitable tax reliefs. The Court also rejected arguments that treating Eynsham differently from nearby Charlbury Cricket Club (a charity, not a CASC) breached the EU law principles of equal treatment or fiscal neutrality.

tinyurl.com/TX-Eynsham

From the weekly *Business Tax Briefing* published by Deloitte

**128. Accommodation essential to welfare services**

The Lilias Graham Trust runs residential assessment centres that support parents (many of whom have mental health issues) in learning how to care for their children (for example, getting them to school on time, recognising if they are hungry or dirty and keeping their homes clean and tidy).

In 2019, the FTT ruled that the Trust's services were exempt, as they were directly connected to welfare services, and dismissed the Trust's appeal (it is one of those infrequent cases where a taxpayer wants to charge VAT in order to improve input tax recovery). The welfare exemption, however, only covers a supply of accommodation if it is ancillary to welfare services.

The Trust appealed, arguing that it made a 'supply' of accommodation as part of its welfare services, which was an essential part of those services and could not be regarded as 'ancillary'. The UT has ruled that the Trust could not carve out a discrete supply of accommodation from its single exempt supply of welfare services. It also considered that essential

accommodation should be more likely to qualify for exemption than ancillary accommodation. The UT decided that the FTT had correctly ruled that the Trust's services were exempt and dismissed its appeal.
tinyurl.com/TX-Lilias
From the weekly *Business Tax Briefing* published by Deloitte

## Customs and other duties

### 129. Six-month delay to UK import border controls

On 11 March, the UK government confirmed that the introduction of full import border controls has been postponed for six months. The change means that full declarations at the point at which non-controlled goods are imported into the UK from the EU will not be needed until 1 January 2022. Guidance from the government confirms that, while customs import declarations are still required, the option to delay for up to six months after the goods have been imported has been extended until 1 January 2022. Meanwhile, safety and security declarations will not be required until 1 January 2022. Find out more at tinyurl.com/TX-BorderControls
Contributed by Neil Gaskell

## Brexit

### 130. SME Brexit Support Fund

Small- and medium-sized enterprises can apply for grants of up to £2,000 to help with training or professional advice to meet their customs, excise, import VAT or safety and security declaration requirements.

To qualify for grant funding, the business must:

- be established in the UK;
- have been established in the UK for at least 12 months before submitting the application, or currently hold authorised economic operator status;
- not have previously failed to meet its tax or customs obligations;
- have no more than 500 employees;
- have no more than £100m turnover; and
- import or export goods between Great Britain and the EU, or move goods between Great Britain and Northern Ireland.

The business must also either:

- complete (or intend to complete) import or export declarations internally for its own goods; or
- use someone else to complete import or export declarations, but require additional capability internally to effectively import or export (such as advice on rules of origin or advice on dealing with a supply chain).

Applications can be made for a training grant, a professional advice grant or both, but the total amount of funding requested cannot exceed £2,000. Applications must be made by 30 June 2021 at the latest. As the total fund is limited to £20m, applications will close sooner if the total fund is allocated before the 30 June deadline.

Advice provided by ICAEW members competent to deliver consultancy advice to enable the grant applicant to discharge its obligations to HMRC, such as customs, excise, VAT relating to importing or exporting or safety and security declaration obligations would qualify for grant funding if the expenditure was made on or after 11 February 2021.

The expenditure would have to be evidenced and submitted by the applicant within two calendar months of the grant offer being issued and by 31 August 2021 at the latest.

More information on grants to help small- and medium-sized businesses new to importing or exporting can be found at tinyurl.com/TX-SmallMedGrant. To find out about professional advice grants, go to tinyurl.com/TX-AdviceGrant. For training grants, look up tinyurl.com/TX-TrainingGrant

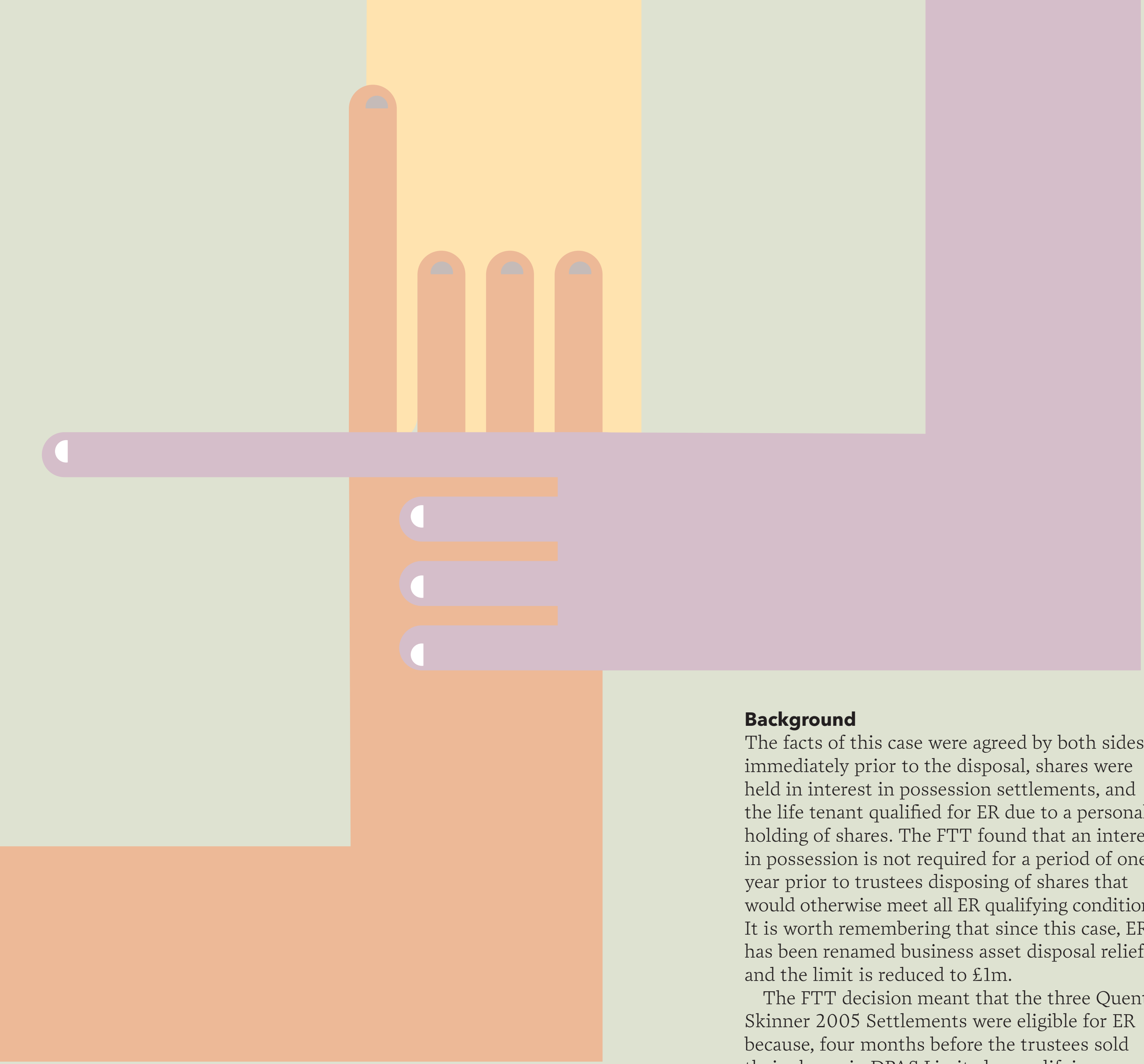
## International

### 131. Polish and Hungarian turnover taxes not unlawful State aid

In cases *C-562/19 P Commission v Poland* and *C-596/19 P Commission v Hungary*, the CJEU has upheld the EU's General Court in finding that progressive turnover taxes imposed by Hungary and Poland do not violate EU State aid rules, dismissing the appeals of the European Commission.

The cases involved a Polish tax on the retail sector and a Hungarian tax on advertisements. The CJEU found that EU law on state aid does not, in principle, preclude Member States from deciding to opt for progressive tax rates intended to take account of the ability to pay, nor does it require Member States to reserve the application of progressive rates only for taxes based on profits, to the exclusion of those based on turnover.

The CJEU held that the General Court was justified in its conclusions that the Commission had not sufficiently established that the tax measures adopted by Hungary and Poland were designed in a "manifestly discriminatory manner, with the aim of circumventing the requirements of EU law on State aid". The judgements generally follow Advocate General Juliane Kokott's Opinions published on 15 October 2020.
tinyurl.com/TX-Poland
tinyurl.com/TX-Hungary
tinyurl.com/TX-PHJudgments
tinyurl.com/TX-AGOpinions
From the weekly *Business Tax Briefing* published by Deloitte



# A question of trust

**Rachael Dronfield** provides an update on entrepreneurs' relief for trust business assets

When I reviewed the First-tier Tribunal (FTT) decision of *Quentin Skinner 2005 Settlement L & Ors* [2019] UKFTT 0516 (TC) concerning entrepreneurs' relief (ER), I commented that the outcome was in line with what most practitioners expected; for many, the only surprise was why HMRC took the case to the FTT (see *TAXline*, December 2019). I ended the article by saying we all awaited the outcome of HMRC's appeal with great interest. I can now comment on the Upper Tribunal's (UT) findings, but first I begin with a reminder of the case and the FTT's decision.

## Background

The facts of this case were agreed by both sides; immediately prior to the disposal, shares were held in interest in possession settlements, and the life tenant qualified for ER due to a personal holding of shares. The FTT found that an interest in possession is not required for a period of one year prior to trustees disposing of shares that would otherwise meet all ER qualifying conditions. It is worth remembering that since this case, ER has been renamed business asset disposal relief, and the limit is reduced to £1m.

The FTT decision meant that the three Quentin Skinner 2005 Settlements were eligible for ER because, four months before the trustees sold their shares in DPAS Limited, a qualifying beneficiary was granted an interest in possession in the whole of settled property of their respective settlements. For the FTT, the key fact was that each life tenant had personally owned more than 5% of the shares in DPAS Limited with full voting rights for more than one year (now two years) and therefore DPAS Limited was their 'personal company'.

## The legislation

The two sections in the ER legislation at Ch 3, Pt 5, Taxation of Chargeable Gains Act 1992 (TCGA 1992), that specifically refer to settlements are s169J, *Disposal of trust business assets*, and s169O, *Amount of relief: special provisions for certain trust disposals*.

Section 169J(3) defines a 'qualifying beneficiary' as an individual with an interest in possession over the relevant business assets or, in this case, shares. Section 169J(4) then requires that throughout a period of one year ending not earlier than three years before the date of the disposal:

i) the company is the qualifying beneficiary's personal company (as defined in s169(3)) and is a trading company; and

ii) the qualifying beneficiary is an officer or employee of the company.

Section 169O includes a reference to 'material time' being a period of one year ending not earlier than three years before the date of the disposal.

**The FTT decision**

The FTT described the required relationship between an individual, their shareholding and the relevant company in order to qualify for ER as the 'entrepreneurial connection' and found that the purpose of s169J(4), TCGA 1992, was to extend the entrepreneurial connection to business assets owned by a settlement. The reference to qualifying period was therefore in the context of whether the company was the personal company of the qualifying beneficiary identified in s169J(4). In particular, the FTT dismissed the need to consider the provisions of s169O in determining s169J(4).

This meant that a beneficiary could be granted an interest in possession immediately prior to trustees disposing of shares that would otherwise meet all ER qualifying conditions providing the company was the beneficiary's personal company.

**HMRC appeal to the UT**

HMRC appealed the FTT's decision at the UT – *R & C Commrs v Quentin Skinner 2005 Settlement L & Ors* [2021] UKUT 0029 (TCC). HMRC has always argued that ER was not due as the life tenants had not held an interest in possession over their respective settlement shares in DPAS Limited for at least one year not ending more than three years prior to the disposal.

Having considered not only the relevant sections of TCGA 1992, but also the provisions of the now abolished retirement relief (as the Explanatory Notes to the Finance Bill 2008 described ER as based on the former retirement relief but that the new rules would be simpler), the judges found in HMRC's favour.

Part of the rationale for their interpretation of the relevant sections stemmed from the fact that trustees do not have an unqualified right to make a claim for ER; instead, they must make a joint claim with the qualifying beneficiary. The need for a joint claim makes sense given that the trustees use part of the beneficiary's personal ER limit, but there is no guarantee that the beneficiary will actually benefit from the sale proceeds.

In other words, a life tenant only has a right to any income arising from the settlement, and it is up to the trustees' discretion as to whether they receive any capital.

The UT therefore felt that the meaning of s169J(4) was clear when understood in the light of s169O. Unlike the FTT, the UT found that it was necessary to consider both s169N and s169O in the case of trustees. They also found that this conclusion was supported by the review of the operation of retirement relief.

Considering the terms of s169J itself, the UT found it significant that s169J(3) and (4) make reference to a 'qualifying beneficiary' rather than an 'individual' and thought the FTT went too far in its extension of the 'entrepreneurial connection' for disposals by trustees.

'The UT's decision may result in more absolute gifts of shares as part of the pre-sale planning of trading companies'

To quote the UT: "We consider that Parliament intended this 'transfer' to be premised on the existence of an enduring link between the qualifying beneficiary's business and the interest in possession in the trust enjoyed by the qualifying beneficiary. Such a link is provided if there is a requirement in s169J for the beneficiary to be a qualifying beneficiary throughout the one-year period mentioned in subsection (4) of that section."

It is disappointing that the UT did not address certain related points such as whether the interest in possession must be over all the shares in the company (or other qualifying business assets) for which ER is to be claimed during the entire year prior to sale. Instead, it preferred to leave some points to be determined in a case where this issue is relevant.

**Another nail in the trust coffin?**

It is understood that the UT's decision is being appealed. Pending that appeal, the UT's decision may result in more absolute gifts of shares as part of the pre-sale planning of trading companies. This is because a gift of further qualifying shares to someone who is already eligible for ER will result in the newly gifted shares also being eligible for ER (assuming the current £1m limit is not breached). In contrast, a gift of those shares into a trust where the life tenant has not held their interest in possession for at least a year cannot qualify for ER.

Given the uncertainty of other scenarios (for example a trust that is part discretionary and part interest in possession, with the shares held in the discretionary part for the year prior to sale), then trusts owning shares may be avoided where a claim for ER is to be made.

In view of the wide variety of non-tax reasons that settlements are used in estate and succession planning, it is unfortunate that the outcome of this appeal can result in some settlements paying more tax. It will not affect the extent of pre-tax planning that will be recommended prior to sale of a company, but the consequences, whether intended or not, may well be to put more wealth into the hands of individuals and perpetuate some misconceptions about the use of trusts.

**Rachael Dronfield**
Private Client Director, Shorts and member of the Capital Taxes & Trusts Working Group of the Tax Faculty's Private Client Committee

# Deadlines and dates

### 31 May 2021

**Automatic exchange of information:** returns due for calendar year 2020 in respect of United States Foreign Account Tax Compliance (FATCA), Crown Dependencies and Overseas Territories (CDOT) and the Common Reporting Standard (CRS).
**PAYE:** last date for giving a form P60 for 2020/21 to each relevant employee who was working for you on 5 April 2021, together with details of payrolled benefits-in-kind.
**CTSA:** deadline for returns for accounting periods ended 31 May 2020 to reach HMRC.

### 1 June 2021

**Company tax:** UK resident companies making payments of annual interest or royalties to connected companies resident in an EU member state have to apply withholding taxes, subject to the terms of a relevant double taxation agreement.

### 15 June 2021

**US tax:** deadline for US expatriates to file 2020 US federal tax returns if they have not obtained a filing extension. If more time is needed, an extension can be obtained to 15 October 2021. If tax is due, interest will accrue from 17 May 2021 until the tax is paid.

### 30 June 2021

**Patent box:** transitional period for intellectual property that existed at midnight on 30 June 2016 for companies that had already elected into the patent box regime at that date comes to an end.
**CTSA:** deadline for returns for accounting periods ended 30 June 2020 to reach HMRC.

### 1 July 2021

**VAT:** 5% penalty charged if VAT deferred from the period 20 March 2020 to 30 June 2020 is not paid by 30 June 2021 or deferred under the new payment scheme.
**Stamp duty land tax:** nil rate band for residential property reduces to £250,000.
**Land transaction tax:** residential thresholds return to normal.

### 4 July 2021

**PAYE:** deadline for employee to reimburse payment made by employer on account of tax in 2020/21 (eg, on employment-related securities). If no reimbursement is made or if it is made after this date, a further tax charge arises.

### 5 July 2021

**PAYE:** last date for agreeing PAYE settlement agreements for 2020/21.
**Non-resident landlords:** deadline for 2020/21 returns of rent paid by agents to non-resident landlords and of tax deducted by tenants from rents paid direct to non-resident landlords.

### 6 July 2021

**PAYE:** deadline for filing forms P11D, P11D(b), or substitutes for the tax year ending 5 April 2021.
**PAYE:** last date by which to give forms P11D to relevant employees, and/or details of benefits-in-kind that have been payrolled.
**Employers:** deadline to file the 2020/21 report of termination payments and benefits where non-cash benefits are included in an employee termination package. No report is required where the total value of the settlement is below £30,000.
**Employers:** deadline for employees to make good the cost of non-payrolled benefits-in-kind provided in 2020/21. This deadline does not apply to beneficial loans.
**Employers:** deadline for taxed award scheme providers in 2020/21 to provide form P443 certificates to recipients showing details of the award and tax paid under a higher rate scheme, and make returns of awards made to HMRC on forms P35(TAS) and P440. This is generally used by third parties who provide taxable benefits to someone else's employee.
**Employers:** deadline to register an employee share scheme which was in place during 2020/21 and to self-certify the scheme if it is a tax-advantaged scheme. Schemes in place prior to 2020/21 should already have been registered.
**Employers:** deadline for filing employment-related securities returns for 2020/21.
**Employers:** deadline for a close company to elect that all beneficial loans to a director be treated as a single loan for calculating 2020/21 benefits-in-kind (s187, ITEPA 2003).

### 7 July 2021

**Employers:** deadline to make a return of non-cash benefits provided in 2019/20 to retired employees under an employer-financed retirement benefits scheme. Such benefits are taxable unless provided from a registered pension scheme or covered by one of the exemptions.

### 19 or 22 July 2021

**PAYE:** deadlines to pay outstanding class 1A NIC for tax year ended 5 April 2021. Postal payment must reach the HMRC Accounts Office by 19 July, and electronic payments be cleared in HMRC's bank account by 22 July.

### 31 July 2021

**ITSA:** deadline for second self assessment payment on account for tax year ended 5 April 2021.
**Pensions:** deadline for a scheme member to notify the scheme administrator to elect for a 2019/20 annual allowance charge to be met from his or her pension benefits where the tax is more than £2,000.
**Tax credits:** renewal deadline to provide information to finalise 2020/21 awards and renew claims for 2021/22.
**CTSA:** returns for accounting periods ended 31 July 2020 should reach HMRC.

Note: These deadlines and dates are correct at the time of going to press, but further relaxations and changes may be announced in response to the COVID-19 crisis.


# Are you digital first?

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