

Welcome to the first edition of the TLT Tax Team's "Tax Matters". In this edition, we have covered recent developments across the taxes including SDLT, corporate tax and VAT. If you would like to discuss any item in further detail, please speak to a [key contact](#).

Case studies

Application of the mixed rates of SDLT: *Suterwalla & Anor. v The Commissioners for HMRC*

[READ MORE](#)

Recovery of input tax in connection with fundraising costs: *Revenue and Customs Commissioners v Hotel La Tour Ltd*

[READ MORE](#)

VAT penalties upheld although assessments out of time: *Maxxim Residential Design Ltd v HMRC*

[READ MORE](#)

Exemption for injury and disability payments: *Howard Ravenspine v HMRC*

[READ MORE](#)

Reliance on non-statutory clearances: *R(oao Airline Placement Ltd) v HMRC*

[READ MORE](#)

Legislation and guidance

UK introduces a multinational top-up tax and domestic top-up tax

[READ MORE](#)



News



Government launches two Investment Zones in England

[READ MORE](#)

Tax simplification post OTS

[READ MORE](#)

Potential changes to the regulation of umbrella companies

[READ MORE](#)



Government launches two Investment Zones in England

Two new investment zones have been launched by the Government, following the initial announcement in the Government's September 2022 growth plan.

The first of these is an advanced manufacturing investment zone in South Yorkshire. The second is in Liverpool and is focused on life sciences. Tax incentives for these investment zones include the following tax reliefs which will be available for 5 years:

- full stamp duty land tax relief for land and buildings bought for commercial use or development for commercial purposes;
- 100% relief from business rates on newly occupied business premises, and certain existing businesses where they expand in investment zone sites;
- 100% first-year allowance for companies' qualifying expenditure on plant and machinery assets for use in a tax site;
- enhanced rate of structures and buildings allowance – accelerated relief to allow businesses to reduce their taxable profits by 10% of the cost of qualifying non-residential investment per year, relieving 100% of their cost of structures and buildings over 10 years; and
- zero-rate employer NICs on salaries of any new employees working in the tax site for at least 60% of their time, on earnings up to £25,000 per year, for 36 months per employee.

Tax simplification post OTS

The enactment of the Finance (No. 2) Act 2023 (on 11 July 2023) gave effect to the Government's announcement in the Growth Plan 2022 to abolish the office of tax simplification.

In response, the House of Commons Treasury Committee published a report (available [here](#)) on tax simplification concluding that the UK tax system is overcomplicated and recommending that the Government should report to the Treasury Committee annually on steps taken to simplify the tax system, covering both new and existing taxes.

A further report has been published by the Treasury Committee making a number of recommendations aimed at promoting a simpler, better value and more effective tax system including:

- a comprehensive and systematic review of existing tax reliefs to look for opportunities for simplification;
- greater public consultation on new and existing tax reliefs;
- a five-yearly review by the Government of individual tax reliefs and a commitment to remove those reliefs that no longer serve their policy goal or are vulnerable to abuse.

The latest report is available [here](#).



Potential changes to the regulation of umbrella companies

The regulation of umbrella companies has come under scrutiny in recent months culminating in the publication of a consultation on umbrella companies in June 2023.

The government's response to the consultation is awaited, however, it's likely that tighter regulation to tackle tax non-compliance within the umbrella company market will be announced. The consultation outlined three options:

- the introduction of a mandatory due diligence requirement, with penalties applying to those employment businesses or end clients that do not comply. This requirement could sit with the employment business or the end client depending on the specific arrangements of the contract;
- legislation to give HMRC the power to collect an umbrella company tax debt from another business in the labour supply chain, in specified circumstances. This would primarily apply to outstanding amounts of income tax and NICs that should have been collected via PAYE. This would encourage employment businesses and end clients to be more selective in the umbrella companies they contract with by making them potentially liable for unpaid tax debts in the event of non-compliant behaviour by the umbrella company;
- deeming the employment business that supplies the worker to the end client to be the employer for tax purposes. This option would require a party further up the labour supply chain to operate PAYE on payments to contingent workers.

The consultation paper can be accessed [here](#).



Application of the mixed rates of SDLT:

Suterwalla & Anor. v The Commissioners for HMRC

LEGAL ISSUE

In this case the First Tier Tribunal (FTT) had to consider whether mixed rates of SDLT applied to the purchase of a property which consisted of a house, gardens, tennis court and paddock. The title to the house, gardens, tennis court and paddock was distinct from the title to the paddock, which was separated from the gardens by a hedge.

A small gate gave access to the paddock from the house and it was not possible to see the paddock from the house or gardens.

CASE DETAIL

On the same day as the purchase of the property, the taxpayers granted a grazing lease of the paddock for one year to a third party at an annual rent of £1,000. The tenant was able to access the paddock from a bridle path without having to enter the taxpayers' garden.

The taxpayers filed an SDLT return on the basis that the property was residential and non-residential mixed use. However, HMRC issued a closure notice amending the SDLT return to charge SDLT at the residential rate.

CASE OUTCOME

HMRC argued that, since the taxpayers could not grant the grazing lease until after completion of the purchase, the lease was not relevant and the property was residential at completion. The FTT did not agree with that argument – it was sufficient for the lease to be taken into account that it had been granted on the effective date of the property purchase.

In relation to the nature of the lease, the tribunal judge said that although the rent was not large, it was more than a peppercorn and the advantage of the tenant's horses keeping the grass in order was of considerable financial benefit to the taxpayers. As such, the grazing lease was of commercial benefit to the taxpayers and therefore the property consisted of residential and non-residential property. The taxpayers' appeal was allowed.

Recovery of input tax in connection with fundraising costs:

Revenue and Customs Commissioners v Hotel La Tour Ltd

LEGAL ISSUE

The Upper Tribunal (UT) has dismissed HMRC's appeal in this case involving the recovery of input tax incurred in connection with fundraising costs.

CASE DETAIL

In this case, the taxpayer, Hotel La Tour Ltd, had sold its shares in a subsidiary company which operated a hotel in order to fund the acquisition and development of a new hotel. The taxpayer incurred VAT on fees paid for professional services (including marketing agents' fees, solicitors' fees and chartered accountants' fees) supplied to the taxpayer in connection with the sale. The taxpayer sought repayment of the VAT paid on the professional services but HMRC disallowed the input tax on the basis that the professional services which gave rise to the fees were used in making an exempt supply (sale of the shares in the subsidiary) rather than in making taxable supplies.

CASE OUTCOME

The taxpayer's appeal to the First Tier Tribunal (FTT) was allowed. The FTT applied the decision in the case of *Frank A Smart & Son Ltd v HMRC* in which the Supreme Court noted that in *Skatteverket v AB SKF (SKF)*, the CJEU rejected the "chain breaking" effect (i.e. that an exempt transaction breaks the chain between a supply and the taxable person's economic activities) as applying to a fundraising transaction. The FTT said that there was a direct and immediate link between the professional services and the taxpayer's general economic activities and that the "chain" was not broken by the sale of the shares in the subsidiary.

HMRC appealed to the UT which dismissed HMRC's appeal, agreeing with the decision of the FTT and its application of the SKF approach as interpreted by the Supreme Court in *Frank A Smart*.

TAKEAWAYS

As a result of this decision, recovery of input tax in relation to fundraisings involving exempt share sales may now be permitted where there is a link between the fundraising and the taxpayer's general economic activities.

- Read the judgment [here](#).

VAT penalties upheld although assessments out of time:

Maxxim Residential Design Ltd v HMRC

CASE DETAIL

In this case, HMRC issued VAT assessments on the taxpayer on 28 October 2015 for the VAT periods 03/13, 06/13 and 09/13 disallowing input tax claimed in respect of those periods and, on the basis that the behaviour leading to the overclaimed input tax was deliberate and concealed, levied penalties accordingly.

CASE OUTCOME

The First Tier Tribunal (FTT) decided that the assessments issued on 28 October 2015 for those periods were on the basis of information that had been provided to HMRC with evidence of facts sufficient to justify the making of the assessments within the time limits permitted under the relevant legislation (s73(6) VATA 1994). As such, given that the assessments were not issued until 28 October 2015, the assessments were out of time.

However, the FTT upheld the penalties levied by HMRC in relation to the out of time (and therefore invalid) VAT assessments on the basis that the wording of the relevant legislation (Schedule 24 FA 2007) does not limit the issue of penalties to situations where tax was actually payable but permits penalties to be issued where there was only a liability to pay tax.

TAKEAWAYS

In this case, the fact that the assessments were invalid such that the VAT was no longer payable, did not mean that the taxpayer had not been liable to pay the VAT.

This conclusion means that VAT penalties can be levied on a taxpayer even though the VAT assessments to which the penalties relate are out of time.

- Read the judgment [here](#).

Exemption for injury and disability payments: *Howard Ravenspine v HMRC*

LEGAL ISSUE

This is a rare case concerning the application of the exemption (under s406(1) ITEPA 2003) from income tax for payments made by an employer to an employee on termination of employment in circumstances where the payment is made on account of injury to, or disability of, the employee (the disability exemption).

CASE DETAIL

The employee had been on long term sick leave for a number of years and received benefits under the employer's PHI scheme. The PHI provider did not wish to continue to make regular payments under the scheme and therefore discussions took place between the employer and the employee culminating in a termination agreement. That agreement provided for a severance payment of £93,357 as compensation for loss of office and termination. The severance payment was paid subject to deduction of tax on the balance in excess of £30,000.

CASE OUTCOME

The First Tier Tribunal (FTT) had to consider whether the disability exemption applied to the severance payment and concluded that it did. This was on the basis that the purpose of the disability exemption is to exempt from tax any payment which is made on account of disability, irrespective of whether other payments are being made to the employee as part of the same deal. The FTT said that to the extent that a taxpayer can establish that some element of a payment which would be taxable as a termination payment falls within the disability exemption, then that element is exempt from tax by virtue of that exemption – it is not an all or nothing.

TAKEAWAYS

Although a helpful decision, the prudent approach to termination payments remains to make a specific apportionment in the termination agreement of any portion of a severance payment to which the disability exemption applies.

- Read the judgment [here](#).

Reliance on non-statutory clearances: *R(oao Airline Placement Ltd) v HMRC*

LEGAL ISSUE

Although this case concerned the VAT treatment of a training programme for cadet pilots, it is of wider interest as the High Court had to consider a separate issue relating to whether the taxpayer had a legitimate expectation that HMRC's view of the VAT treatment of security bonds set out in a non statutory clearance provided by HMRC would not be withdrawn without fair notice and with retrospective effect.

CASE DETAIL

HMRC contended that the request for non statutory clearance was materially inaccurate and misleading and there was not full and frank disclosure such that no legitimate expectation arose.

CASE OUTCOME

Following a review of the evidence, the High Court found that the non statutory clearance request and supporting information was inaccurate and misleading, and then had to decide whether it was "materially" so. This required the High Court to consider on the ordinary standard of balance of probabilities, had the clearance request not been inaccurate, whether there was a real possibility that consideration of the matter as corrected would have made a difference to the decision.

In this case, the judge decided that the inaccurate and misleading nature of the clearance request was material and in the light of that fact, that there had not been full and frank disclosure. The taxpayer therefore had no legitimate expectation that the non statutory clearance provided by HMRC would not be revoked.

TAKEAWAYS

This case highlights the importance of ensuring the accuracy and completeness of statements made, and information provided, to HMRC in the context of clearance applications if a clearance application is to be relied on by the taxpayer.

- Read the judgment [here](#).

UK introduces a multinational top-up tax and domestic top-up tax

The Finance (No. 2) Act 2023 (FA 2023) (which received Royal Assent on 11th July 2023) has introduced the UK's "Income Inclusion Rule" to give effect to the UK's commitment under the international tax reforms agreed by the member states of the OECD Inclusive Framework on Base Erosion and Profit Shifting.

Those reforms take the form of two pillars – Pillar 1 and Pillar 2. Pillar 2 includes the global anti-base erosion (GloBE) rules which have been designed to ensure that large multinational enterprises pay a minimum effective tax rate (ETR) of 15% in each of the jurisdictions in which they operate (thereby reducing profit shifting to jurisdictions with lower, or no, corporate income taxes).

The UK's income inclusion rule (to be known as the "multinational top-up tax") will apply to multinational groups for accounting periods beginning on or after 31 December 2023 if the group has:

- at least one member in the UK; and
- an annual revenue of at least 750 million euros in at least two out of the previous four accounting periods.

If a profit-making member of such a multinational group is located in a territory outside the UK and their ETR is less than 15%, the multinational top-up tax will apply, broadly, to charge tax on the amount required to raise the ETR for that member to 15%. Any multinational top-up tax that becomes payable, will be attributed to, and chargeable on, any "responsible member" of the group which is located in the UK based on an "attribution methodology" set out in the legislation. If the ultimate parent company of a multinational group is located in the UK, it will be liable for all of the top-up tax of members of the group not located in the UK.



In addition to the multinational top-up tax, FA 2023 introduced a separate "domestic top-up tax", which will also apply for accounting periods beginning on or after 31 December 2023. Broadly, it will apply in circumstances where:

- an entity is located in the UK;
- the rate of tax payable by the entity (whether or not a member of a group) is less than 15%; and
- the revenue of the entity (or group, if it is a member of a group) exceeds 750 million euros in at least two out of the previous four accounting periods.

Where the conditions are met, the entity will be liable to pay the domestic top-up tax on, broadly, the amount required to raise the tax rate for that entity to 15%. The purpose of the domestic top-up tax is to ensure that the UK has the primary right to any top-up tax in respect of entities located in the UK.

Key contacts



Mark Braude

Partner

T +44 (0) 333 006 0263

E Mark.Braude@TLT.com



Emma Bradley

Partner

T +44 (0) 333 006 1282

E Emma.Bradley@TLT.com



Ben Watson

Partner

T +44 (0) 333 006 0376

E Ben.Watson@TLT.com

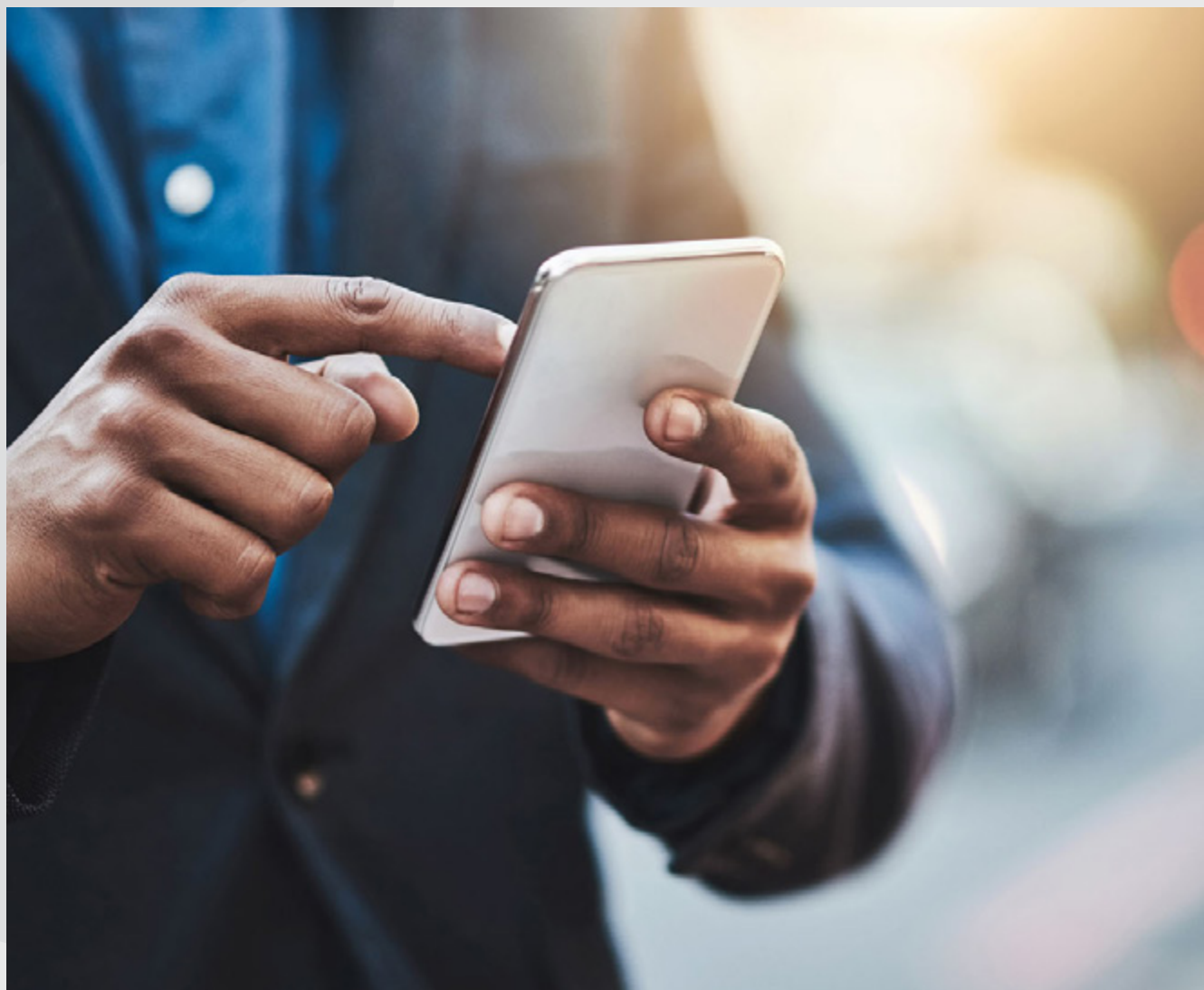


Laura Allum

Senior Knowledge Lawyer

T +44 (0) 333 006 0884

E Laura.Allum@TLT.com



For what comes next

tlt.com