Tax Matters

DECEMBER 2024 | EDITION 6

Welcome to the latest edition of the TLT Tax Team's "Tax Matters". In this edition, we have covered recent developments across the taxes including capital gains tax, corrporate tax and VAT. If you would like to discuss any item in further detail, please speak to a **key contact**.

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Autumn budget 2024 - key business tax measures

The Chancellor announced a raft of tax measures at the Autumn Budget on 30 October 2024, a large number of which will impact directly on businesses and business owners.

Whilst the spotlight has inevitably focused on the changes to the capital gains tax regime and increase in employer National Insurance contributions, a number of additional tax measures were announced which are worthy of attention.

The government also took the opportunity to publish the Corporate Tax Roadmap (here) alongside the Autumn Budget which confirms, as expected, that the headline rate of Corporation Tax will be capped at 25% for the remainder of this Parliament and that full expensing and the annual investment allowance will be maintained for capital allowances purposes.

In this edition of Tax Matters, we highlight some of the key business tax measures announced at the Autumn Budget.

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Capital Gains Tax (CGT)

As explained in our recent article, the changes to the CGT rules include:

- **Immediate CGT rate increases:** For disposals made on or after 30 October 2024, the main rate of CGT for basic rate taxpayers has increased from 10% to 18% and the main rate of CGT for higher and additional rate taxpayers has increased from 20% to 24%. This now aligns the rate of tax on property with other assets, with the exception of carried interest (see below). The main rate of CGT that applies to trustees and personal representatives has also increased from 20% to 24% for disposals made on or after 30 October 2024.
- **Changes to the CGT date of disposal for unconditional contracts:** The immediate increase in CGT rates is accompanied by anti-forestalling legislation which applies to unconditional contracts entered into before 30 October 2024 where completion (i.e. the transfer of the asset) occurs on or after that date.

  If the anti-forestalling legislation applies to an unconditional contract, the legislation will treat the disposal of the asset as taking place at the time that the asset is transferred (and not at the time the contract is entered into) for CGT purposes. Since that date will occur on or after 30 October 2024, this means that the increased rates of CGT will apply to the disposal.

  Significantly, the anti-forestalling legislation will not apply to an unconditional contract entered into before 30 October 2024, but completed on or after that date, if it is an "excluded contract". A contract will be an "excluded contract" if: (a) obtaining an advantage by reason of the application of section 28(1) TCGA 1992 was no purpose of entering into the contract; and (b) where the parties to the contract are connected persons, the contract was entered into wholly for commercial reasons. For an unconditional contract to be treated as an "excluded contract" the transferor must make a claim including a statement when reporting the disposal to HMRC that the contract meets the conditions set out above (unless, broadly, the chargeable gain on the disposal does not exceed £100,000).
- **Business Asset Disposal Relief rate increases (BADR):** For disposals made on or after 6 April 2025, the CGT rate that applies to BADR will increase from 10% to 14%. The rate will increase further to 18% for disposals made on or after 6 April 2026. Anti-forestalling legislation will apply to the increase in the CGT rates for BADR.
- **Investors' Relief rate increases:** The current lifetime limit for Investors' Relief will be reduced from £10 million to £1 million for qualifying disposals made on or after 30 October 2024. In addition, for disposals made on or after 6 April 2025, the CGT rate that applies to Investors' Relief will increase from 10% to 14%. The rate will increase further to 18% for disposals made on or after 6 April 2026. Anti-forestalling legislation will apply to the Investors' Relief rate increase.

- **Reform of the taxation of carried interest:** From 6 April 2025, the capital gains tax rate for carried interest will be increased to 32%. This change is one of a package of reforms to the tax treatment of carried interest. From April 2026 a revised tax regime will be introduced meaning that carried interest will be treated as trading profits and subject to income tax and Class 4 National Insurance Contributions. It is expected that a lower effective income tax rate will apply to certain "qualifying" carried interest - further details are awaited.

Stamp Duty Land Tax (SDLT)

For transactions with an effective date on or after 31 October 2024:

- the higher rates of SDLT payable by purchasers of additional dwellings and by companies are increased from 3% to 5% above the standard residential rates; and
- the single rate of SDLT payable by companies and non-natural persons acquiring dwellings for more than £500,000 is increased from 15% to 17%.

Employer National Insurance contributions (NICs)

From 6 April 2025 until 5 April 2028, the Class 1 NICs secondary threshold will reduce from £9,100 to £5,000 per annum. In addition, the main rate of secondary Class 1 NICs will increase from 13.8% to 15% from 6 April 2025 (the Class 1A and Class 1B employer rates will also increase in line with this).

PAYE: umbrella company market

Legislation will be introduced in a future Finance Bill to make agencies responsible for accounting for PAYE on payments made to workers that are supplied using umbrella companies. Where there is no agency, accounting for this PAYE will be the responsibility of the end client. It is expected that this change will take effect from April 2026.

Furnished Holiday Lettings (FHL) regime

The abolition of the FHL regime, originally announced at the Spring Budget 2024, will go ahead and the legislation will be introduced in the Finance Bill 2024-25. The changes, which will remove the specific tax treatment and separate reporting requirements for FHLs, will take effect on or after 6 April 2025 for income tax and capital gains tax and from 1 April 2025 for corporation tax and for corporation tax on chargeable gains.

Employee Ownership Trusts (EOT)

A number of changes to the EOT regime have been announced, including the introduction of a trustee independence requirement, a requirement that the EOT trustees are UK resident and an extension of the vendor clawback period (being the period within which the tax relief on the sale of the company to the EOT can be recovered from the vendors if the EOT conditions are breached post-sale).

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Further details and commentary in relation to these changes is available in our recent insights here and here.

Reform of the non-UK domicile tax regime

The changes to the remittance basis of taxation for non-UK domiciled individuals, initially proposed at the Spring Budget 2024, will go ahead with effect from 6 April 2025.

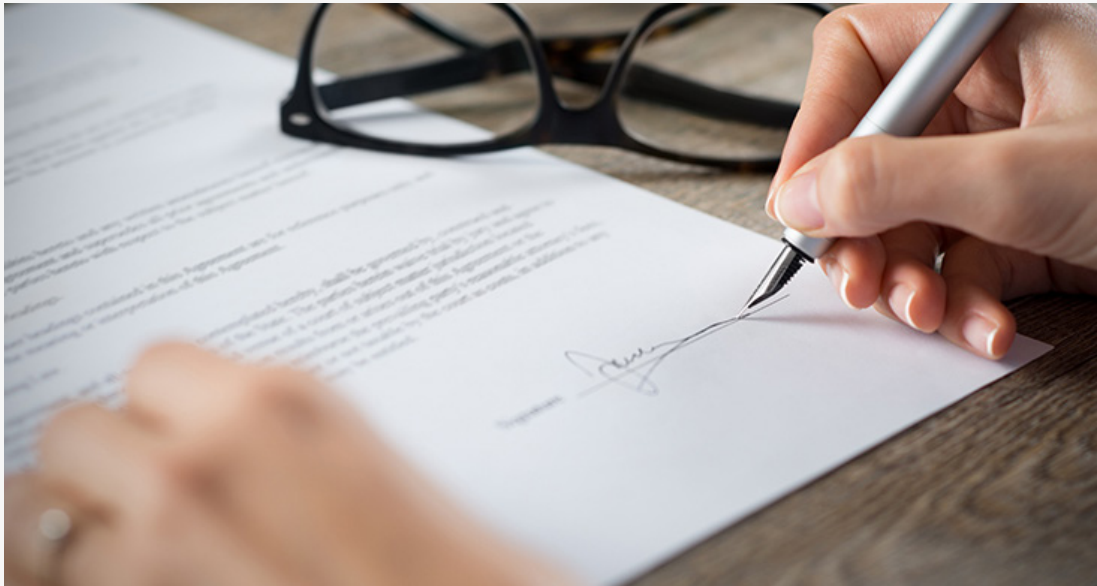
The government will remove preferential tax treatment based on domicile status for all new foreign income and gains from 6 April 2025 and introduce a residence-based regime providing 100% relief on foreign income and gains for new arrivals to the UK in their first four years of tax residence (provided they have not been UK tax resident in any of the 10 consecutive years prior to arrival).

Apprenticeship Levy

The government announced a £40 million investment to transform the Apprenticeship Levy into a more flexible Growth and Skills Levy.

WHY IT MATTERS?

The confirmation that the current rates of corporation tax will be maintained will be welcome news for businesses, although tempered by the announcement of the employer NICs threshold reduction and increase in rates from April 2025. Businesses and business owners will need to consider how the Autumn Budget measures will impact on them and what steps they may want to take to mitigate the effects. In particular, owners wishing to exit their business may want to consider selling their assets before the changes to BADR come into effect.



Consultation published: new ways to tackle tax non-compliance

Following the Autumn Budget 2024, HMRC published a consultation on new ways to tackle tax non-compliance. The consultation forms part of the government's commitment to modernising the tax administration framework.

The consultation considers two areas where improvements to HMRC's approach to correcting taxpayer inaccuracies could be made. These are explored below.

Changes to HMRC's existing powers and processes

Proposals for consultation include:

- A requirement that taxpayers provide more upfront information to HMRC at the time that a tax relief is claimed. This would enable HMRC to make a more accurate risk-assessment of any claim or relief and help HMRC identify inaccurate claims more efficiently.
- Aligning the conditions for when HMRC can make corrections to a taxpayer's direct tax return, aligning the ways that revenue correction notices can be rejected and introducing a requirement for HMRC to explain why it is making a correction.
- Enabling HMRC to open a partial enquiry into a specific issue or section of a tax return and requiring HMRC to work within a specified time limit to resolve the issue raised.

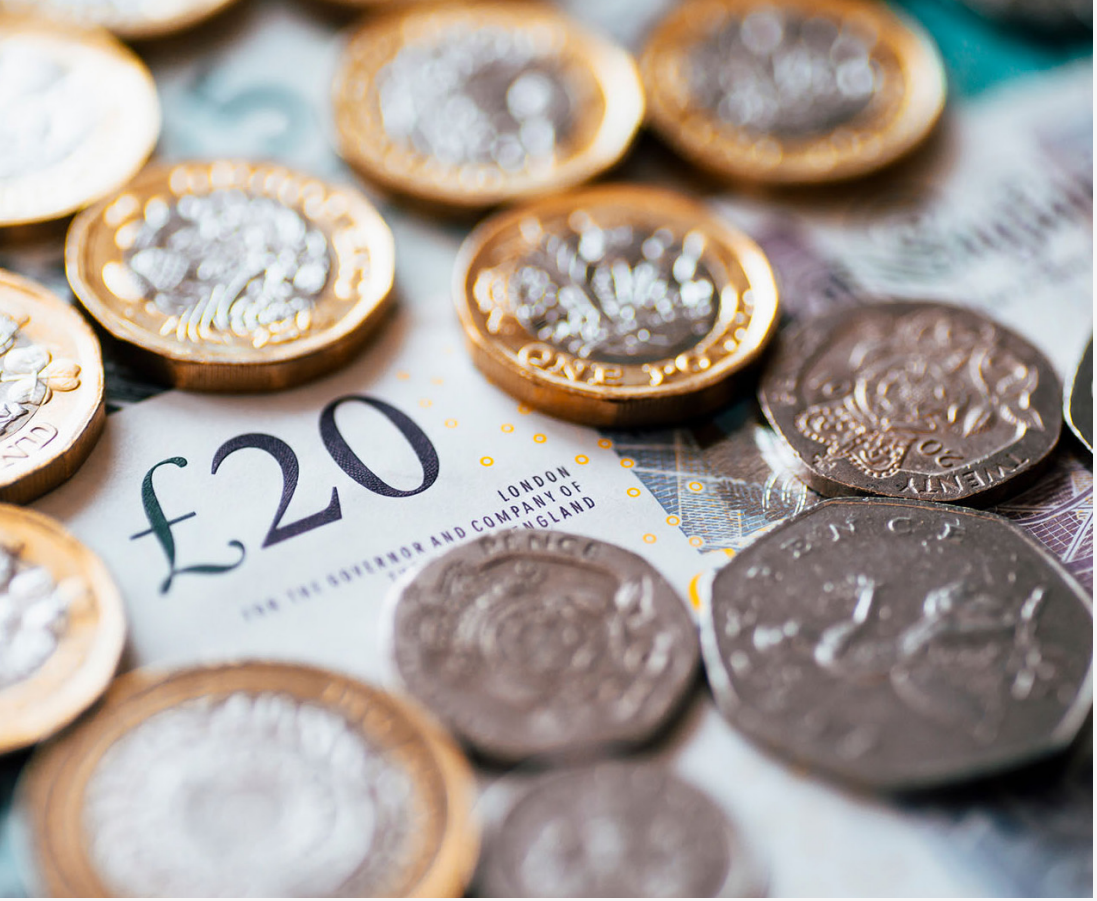
A new power to require taxpayers to self correct mistakes

A new power to require taxpayers to correct their mistakes could result in common errors being addressed more quickly and promote positive future behaviours. The consultation envisages that a new power could operate as follows:

- HMRC would identify returns or claims with issues that have common features (examples include discrepancies between third-party data and the tax return).
- Where there is evidence the issue might apply to a taxpayer, HMRC would issue a new taxpayer self correct notice detailing the issue and the reason why HMRC believes it has a high likelihood of affecting the taxpayer.
- The taxpayer would have a legal obligation to respond to the notice by amending their return or claim within a set period or providing an explanation as to why no amendment is required.

To ensure compliance with a self correct notice, it is proposed that reasonable sanctions be imposed in the form of financial penalties or further HMRC action.

Taxpayers are invited to comment on appropriate and proportionate taxpayer safeguards to ensure taxpayers are treated fairly and that there is a clear process for dispute resolution.



WHY IT MATTERS?

HMRC has identified that a large proportion of the tax gap is attributed to individuals and small businesses and estimates that around 40% of small companies have some form of inaccuracy in their tax return. In particular, HMRC has seen an increase in inaccurate claims for relief. It is important, in taking steps to close the tax gap, that HMRC responds proportionately and effectively to errors. Therefore businesses may wish to engage with HMRC on their preferred approach to improve tax non-compliance.

The consultation runs until 22 January 2025 and businesses can respond to the consultation by emailing **tafrcompliance@hmrc.gov.uk**

Read the consultation **here.**

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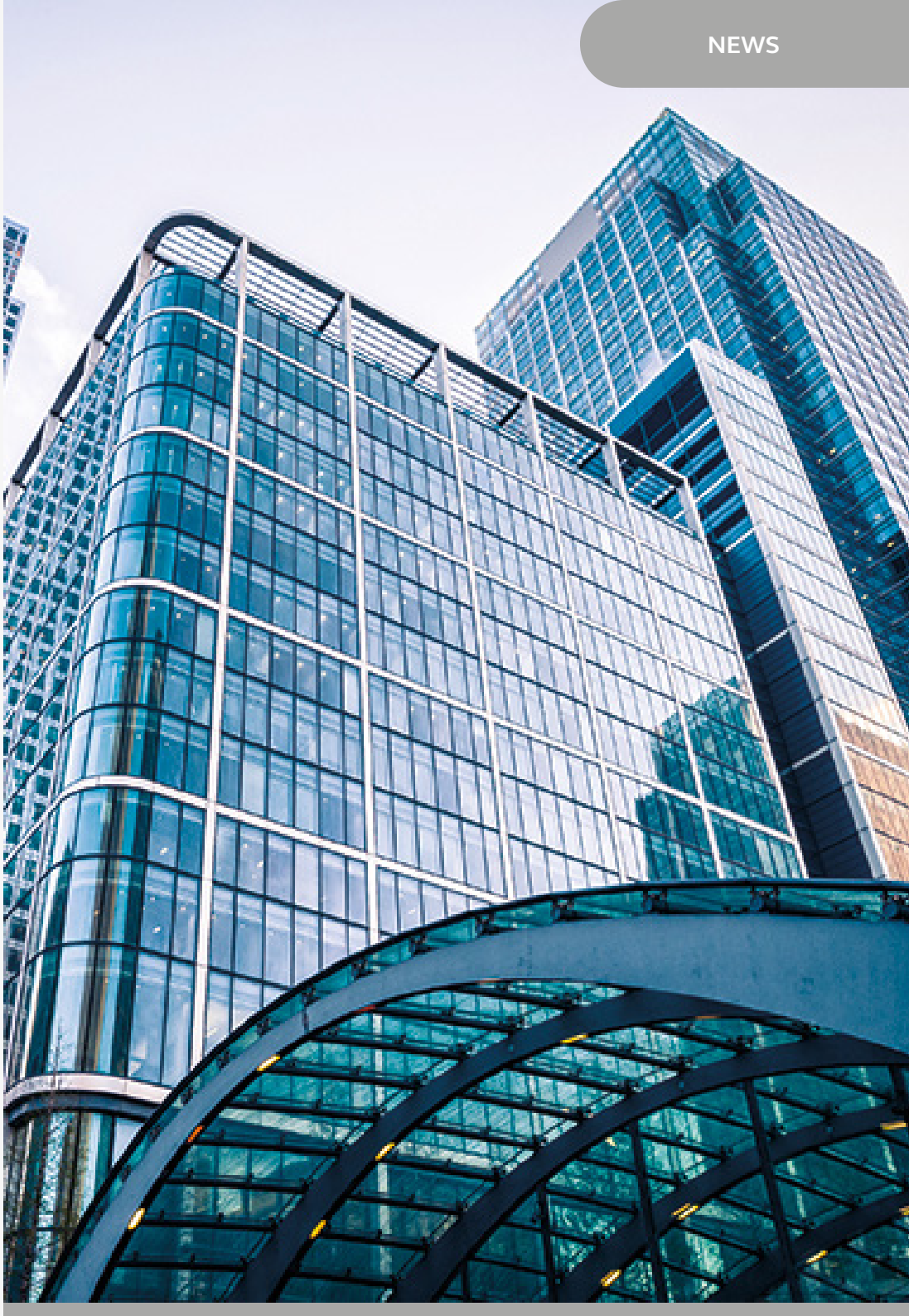

VAT costs irrecoverable as no direct and immediate link with taxable supplies: *Visual Investments International Limited v The Commissioners for HMRC*

LEGAL ISSUE

In this case, the taxpayer, Visual Investments International Limited (**VIIL**), appealed to the First Tier Tribunal (**FTT**) against a number of VAT assessments issued by HMRC. The FTT had to consider whether there was a direct and immediate link with taxable supplies such that input tax on legal costs incurred by VIIL on litigation could be deducted.

CASE DETAIL

VIIL, Mr Burgess (the majority shareholder, and a director, of VIIL) and Broadcasting Investment Group Limited (**BIG**), a subsidiary of VIIL, were the claimants in litigation against the shareholders/directors of two broadcasting technology companies.

The claimants sought to enforce the terms of an alleged oral agreement which provided that shares in the two broadcasting companies would be transferred to a new holding company in which BIG would hold 39% of the shares.

VIIL confirmed that the intended benefit of the litigation was primarily for VIIL because the claimants were seeking to obtain the transfer of valuable shares into the new holding company, which would have the effect of making those companies ultimate subsidiaries of VIIL. BIG provided no services involving taxable supplies and was not part of a VAT group with VIIL.

Prior to the litigation, VIIL had provided management consultancy services.

Legal advisers were engaged to act on behalf of the claimants. Mr Burgess gave instructions to the legal advisers and Mr Burgess' son, a director of VIIL, personally funded the cost of the litigation on the understanding he would be paid back out of any award of settlement. The case settled in 2023.

VIIL sought VAT deductions for the input tax on the legal fees incurred.

CASE OUTCOME

The FTT determined that the legal fees for the litigation did not have a direct and immediate link to VIIL's services of management consultancy (which were not, in fact, being made at the time the costs were incurred) and dismissed the appeal.

The FTT decided that for the legal fees to have a direct and immediate link to VIIL's services, those services had to form "part of the cost components of that person's taxable transactions which utilise those goods and services". This was not considered to be the case here. The subjective intention of VIIL, or its aim, as to what it intended to do post-litigation (i.e. to provide taxable supplies of management consultancy) was not relevant. The litigation was a choice made by VIIL and Mr Burgess in order to secure a large profit by selling up as soon as they could.

WHY IT MATTERS?

This case confirms that a direct and immediate link exists where the "goods and services are part of the components of that person's taxable transactions which utilise those goods and services". The approach that the FTT will take is to objectively ascertain whether such a link exists from the facts and circumstances of the transaction without investigation of the subjective intentions of the taxpayer. Businesses should consider the VAT treatment of costs at the outset and ensure that they can evidence the direct and immediate link with their taxable supplies. It should not be assumed that legal fees will always satisfy the direct and immediate link test.

- Read the judgment **here.**

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Investment activity found to be a business but not a trade: *GCH Corporation Ltd & Ors v The Commissioners for HMRC*

LEGAL ISSUE

In this case, the First Tier Tribunal (**FTT**) considered whether the activities of an LLP were sufficient to amount to a trade or business with a view to profit for the purposes of section 59A of the Taxation of Chargeable Gains Tax 1992 (**section 59A**). If they were, the LLP would be treated as tax transparent, meaning that no additional tax would be payable by the transferors of loan notes to the LLP.

CASE DETAIL

On 26 August 2010, GCH Active LLP (the **LLP**) was incorporated as part of a tax mitigation scheme. The initial members were Mr Hutching, as nominee for two Hutching family trusts, and GCH Corporation Limited (the **Company**), a company owned by Mr Hutching and his daughter. Both of the family trusts and the Company held shares in Tomkins PLC (**Tomkins**) and the LLP acquired five other shareholdings (two of which were sold shortly after acquisition).

In September 2010, Tomkins was the subject of a takeover by Pinafore Acquisition Limited (**Pinafore**). Both the Company and the family trusts received consideration for the sale of the shares in Tomkins in the form of loan notes issued by Pinafore. Subsequently, a change to the membership of the LLP was made to admit Mr Hutching, as nominee for a Hutching family children's trust. The three members of the LLP then sold their loan notes to the LLP for a price equal to a 2% discount to their face value. A short time later, the LLP entered into a members' voluntary liquidation and the LLP redeemed the loan notes (realising a profit) and sold its remaining shareholdings in the third party companies (at a profit). As a result of the appointment of the liquidator, the LLP was opaque for tax purposes so that the liquidator was treated as having acquired the loan notes at the price paid by the LLP and any gain pre-disposal to the LLP was eliminated.

HMRC assessed the Company and the three trusts (the **Appellants**) to tax on the basis that the LLP was opaque and the transfer of the loan notes to the LLP was a disposal of the loan notes by the Appellants. The Appellants argued that the LLP was tax transparent and that the transfer of the loan notes to the LLP were contributions of capital by its members.

CASE OUTCOME

After considering the badges of trade and looking holistically at the circumstances (i.e. the LLP's activities and the way in which they were implemented) the FTT concluded that the LLP's activities were not sufficient to amount to a trade. However, the LLP was carrying on a business with a view to profit for the purposes of section 59A, since "business" is broader than trade and should not exclude investment business. The basis for the FTT's decision to allow the appeal was that: (i) the LLP was established for the purpose of making a return from dealings in high yielding public company shares; (ii) the LLP's activities, although limited, were consistent with that business purpose; and (iii) Mr Hutching spent time pursuing that activity both before and after acquisition by the LLP of its shareholdings. This conclusion was not impacted by the fact that the LLP was set up as part of a tax mitigation scheme.

WHY IT MATTERS?

The question of whether or not an entity is "trading" or "in business" is relevant in numerous tax contexts and therefore the discussion of the badges of trading and the distinction between a trade and a business is of wider interest. The FTT's finding that "business", in the context of section 59A, should be given its ordinary commercial meaning means that investment business should fall within its scope. Additionally, LLPs wishing to satisfy the requirements of section 59A will be reassured by the FTT's conclusion that an LLP established for a particular business purpose should prima facie be regarded as carrying on a business to the extent that it is carrying on activities pursuant to that purpose.

- Read the judgment **here.**

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Relying on advisers was not a reasonable excuse: *David Hill and another v HMRC*

LEGAL ISSUE

In this case, the taxpayers appealed to the First Tier Tribunal (**FTT**) against penalties imposed by HMRC for failure to comply with Schedule 36 information notices (**Information Notices**) issued to the taxpayers by HMRC. The issue for the FTT was whether the taxpayers had a reasonable excuse for failing to comply with the Information Notices.

CASE DETAIL

The two individual taxpayers were each the scheme administrator of a pension scheme. Liddell Dunbar Ltd (**LDL**) operated the pension schemes on behalf of the scheme administrators and following receipt of the Information Notices, LDL engaged Independent Tax (**Independent**) to advise LDL in respect of the notices and to correspond with HMRC on behalf of the scheme administrators.

Following a review of the Information Notices, HMRC issued a review conclusion letter (copied to each of the taxpayers) broadly upholding the Information Notices. LDL subsequently told the taxpayers that Independent had advised it that as the pension schemes had been wound up there should be no need to respond to the Information Notices.

Independent provided the same explanation to HMRC who disagreed on the basis that the Information Notices had been issued to the individual scheme administrators, so the individuals remained liable to comply.

HMRC subsequently issued a number of penalties to the taxpayers who were advised by Independent not to pay the penalties or comply with the Information Notices. The taxpayers relied on that advice.

CASE OUTCOME

The reasonable excuse put forward by the taxpayers for the failure to comply with the Information Notices was reliance on their adviser, which had consistently advised that no action was needed as their pension schemes had been wound up.

The FTT noted that a lack of technical expertise does not automatically mean that a taxpayer has a reasonable excuse in relying on their adviser, although it was a factor to be taken into account. The FTT stated that whilst a taxpayer is not required to second-guess their adviser or obtain multiple opinions, they are required to take reasonable care in relying on their adviser.

The appeals were dismissed on the basis that neither of the taxpayers took reasonable care to check that they could rely on the advice being provided. The reasons for the decision include: (i) the taxpayers appeared not to have read the Information Notices in any detail; (ii) the taxpayers took at face value what LDL said in their emails and didn't ask for copies of HMRC correspondence; (iii) the taxpayers did not ask for an explanation as to the basis on which Independent had concluded that no response to the Information Notices was necessary nor as to why there had been no appeal in their cases; and (iv) the taxpayers did not seek to clarify with Independent what the advice related to (i.e appealing against the penalties or appealing against the Information Notices).

WHY IT MATTERS?

This case highlights the importance for businesses of ensuring that they take reasonable care when relying on advice provided by their advisers. In practice, this is likely to require taxpayers to review correspondence with HMRC, check that correspondence is factually correct, ensure that they understand the basis for the advice being provided and raise queries with their adviser when that's not the case.

- Read the judgment **here.**

Employees working from overseas: key issues for UK employers

In the wake of the changes to the remittance basis of taxation for non-UK domiciled individuals announced at the Autumn Budget 2024, UK employers may see an upturn in requests from UK resident but non-domiciled employees to begin working remotely from outside the UK.

The following Q&As address some of the employment tax issues that UK employers need to be aware of when employees ask to work remotely from overseas.

Will the employer company have to account for PAYE on salary paid to the employee?

Possibly. This will depend on whether the employee will remain resident in the UK and whether the employee will carry out any duties in the UK.

An employee who moves to another country to work from there indefinitely is very likely to cease to be UK resident (the UK residence of an employee is determined by applying the statutory residence test). If the employee will not be carrying out any duties of their employment in the UK then the UK employer can apply to HMRC for permission to apply a "no tax deducted" code in relation to earnings paid to that employee.

However, if the employee becomes non-UK resident but will perform some duties in the UK (other than duties which are "merely incidental" to the duties performed overseas), then the UK employer will be required to operate PAYE in relation to the earnings paid to the employee, regardless of their residence status.

What duties count as "merely incidental"?

HMRC's guidance lists the following examples of UK duties that may be "merely incidental' to duties performed overseas:

- arranging meetings and business travel;
- feedback on employee performance and/or business results, if this does not involve the employee concerned in preparation or analysis whilst in the UK and as long as responsibility for these matters is not part of the employee's core duties of employment;
- input to team restructuring and staff matters, provided that the employee does not have a management role; and
- reading generic business e-mails that do not relate directly to the employee's role/ responsibilities.

What if the employee only works in the UK for a few days in each tax year?

If the employee's duties in the UK are not "merely incidental" but the employee spends less than 60 days in the UK, then the employer may be able to apply to HMRC for a special PAYE arrangement to apply (this is known as an "Appendix 8" arrangement).

If this arrangement applies, then the UK employer will only have to account to HMRC for income tax due on the employee's earnings which relate to UK workdays and this tax will not become payable to HMRC by the UK employer until 31 May following the end of the relevant tax year.

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If the employee is entitled to personal allowances, it might be the case that no income tax becomes due.

What if the employee is non-UK resident but works in the UK for more than 60 days?

In that case, the UK employer will have to account for PAYE on all of the earnings paid to the employee unless the UK employer applies to HMRC for a direction (referred to as a section 690 direction). This direction is a request to HMRC that the UK employer only has to operate PAYE in relation to the proportion of the employee's earnings which relate to the UK duties. At the end of the tax year, the employee must complete a self-assessment tax return to determine the correct tax position.

Currently, the employer can only operate PAYE on a proportion of the earnings once HMRC has issued the section 690 direction. However, the draft Finance Bill 2025 includes amendments to the current legislation which will mean that the employer can operate PAYE on a partial basis from the date that the application to HMRC for the section 690 direction is made. This change is due to take effect from 6 April 2025.

Does a UK employer have any tax withholding obligations in the overseas country?

This depends on the rules in the country in which the employee is resident and working. As the UK employer is paying the employee's salary, the UK employer may have reporting and withholding obligations in the employee's country of residence and therefore the UK employer should seek local law advice in that country.

Do the income tax rules for non-UK resident employees also apply to National Insurance contributions?

No, unfortunately the social security rules that apply when an employee works overseas for a UK employer are different to those which apply for income tax purposes. The rules depend on whether the employee is resident and working in the EEA or outside the EEA.

Where will the employee pay social security if they are resident and work in the EEA?

If the employee is resident and working in the EEA, then the general position is that the employee should be subject to the social security legislation of the EEA country where they perform the duties of their employment.

However, special rules apply where the employee is resident and working in an EEA state and also working in the UK. Broadly, the employee will pay social security in the country in which they are resident provided that they carry out a substantial part of their activity in that country. Spending more than 25% of their working time in a country is likely to be treated as substantial.

How does the position differ for employees who are resident and working in a country outside the EEA?

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The general rule is that the employee will be subject to the social security legislation of the country in which the employee is resident and works.

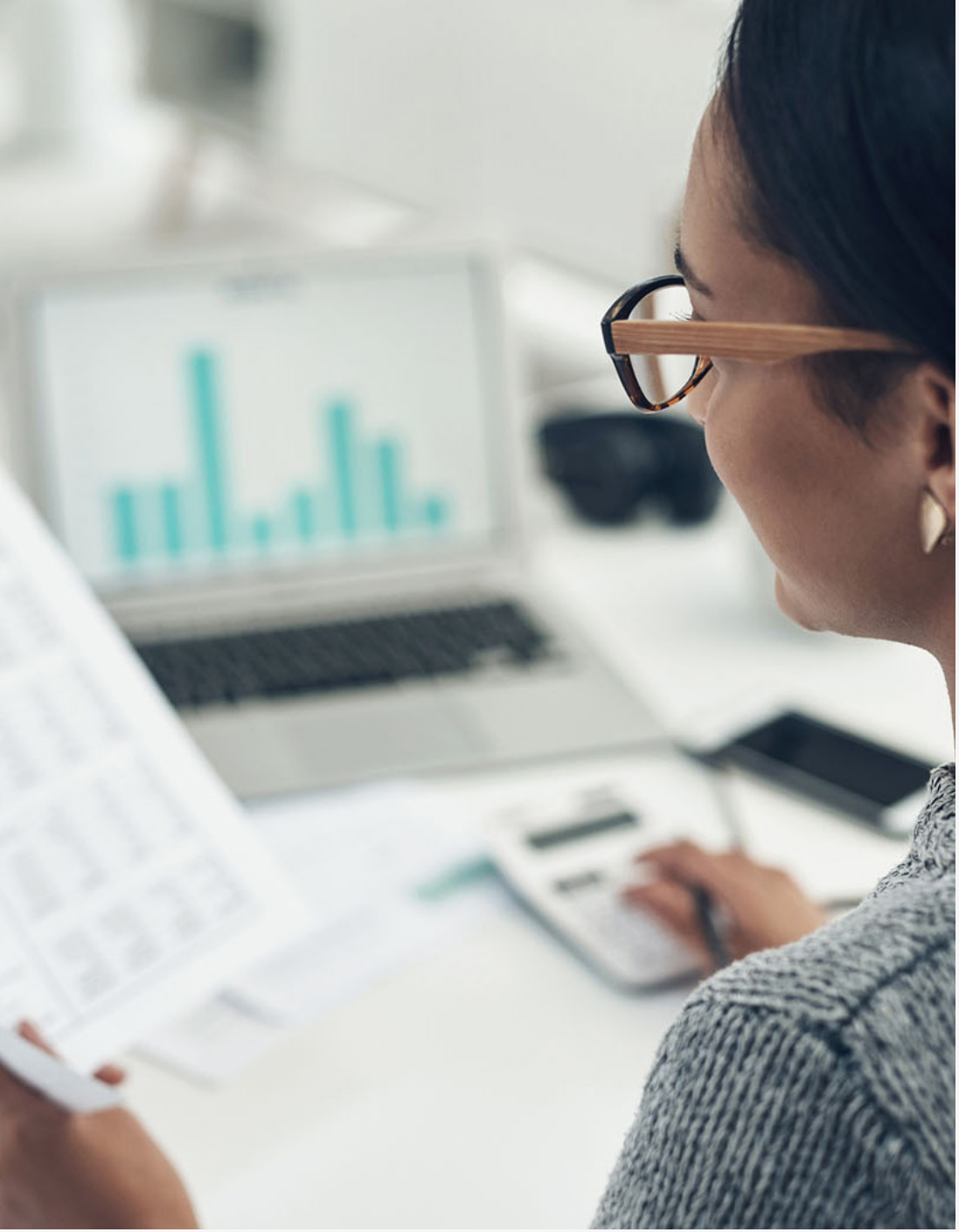
Are there any other tax risks that a UK employer should be aware of?

The UK employer will need to ensure that permitting the employee to work in an overseas country will not create a permanent establishment for the UK employer in that overseas country since that could lead to unanticipated tax liabilities for the UK employer in that country (for example corporate taxes or VAT).

This is most likely to be an issue where the employee is a senior employee or director who exerts management or control of the UK employer and/or who has authority to conclude contracts on the company's behalf. It is recommended that local law advice is obtained and, if the UK employer is concerned about the risk of creating a permanent establishment, the UK employer may consider: (i) restricting the activities and decisions that the employee can undertake in that country, (ii) engaging a third party (such as an employer of record) to employee the individual; or (iii) refusing the overseas working request.

WHY IT MATTERS?

There can be numerous advantages for a UK employer of permitting an employee to work from overseas. However, for many UK employers, an overseas working arrangement is not without challenges from a tax perspective and businesses should be aware of the risks so that they can address them and, where possible, minimise their impact on the business.



Looking ahead

Key tax developments to look out for over the next quarter

31st December 2024

- Introduction of the Pillar Two undertaxed profits rule on this date
- Offshore receipts in respect of intangible property (ORIP) rules scheduled to be abolished from this date

1st January 2025

- Removal of the exemption from VAT on private school fees to take effect

22nd January 2025

- Consultation on The Tax Administration Framework Review: New ways to tackle non-compliance closes
- Consultation on Simplifying the Taxation of Offshore Interest closes

31st January 2025

- Deadline for reporting under the UK tax reporting rules for digital platforms for the first reporting period (1 January 2024 to 31 December 2024)

4th February

- Court of Appeal hearing scheduled for this date in the case of Gunfleet Sands II Limited v The Commissioners for HMRC relating to the availability of capital allowances for offshore windfarm expenditure

Key contacts

If there is any topic not covered in this edition that you would like to know more about, please email a Key Contact

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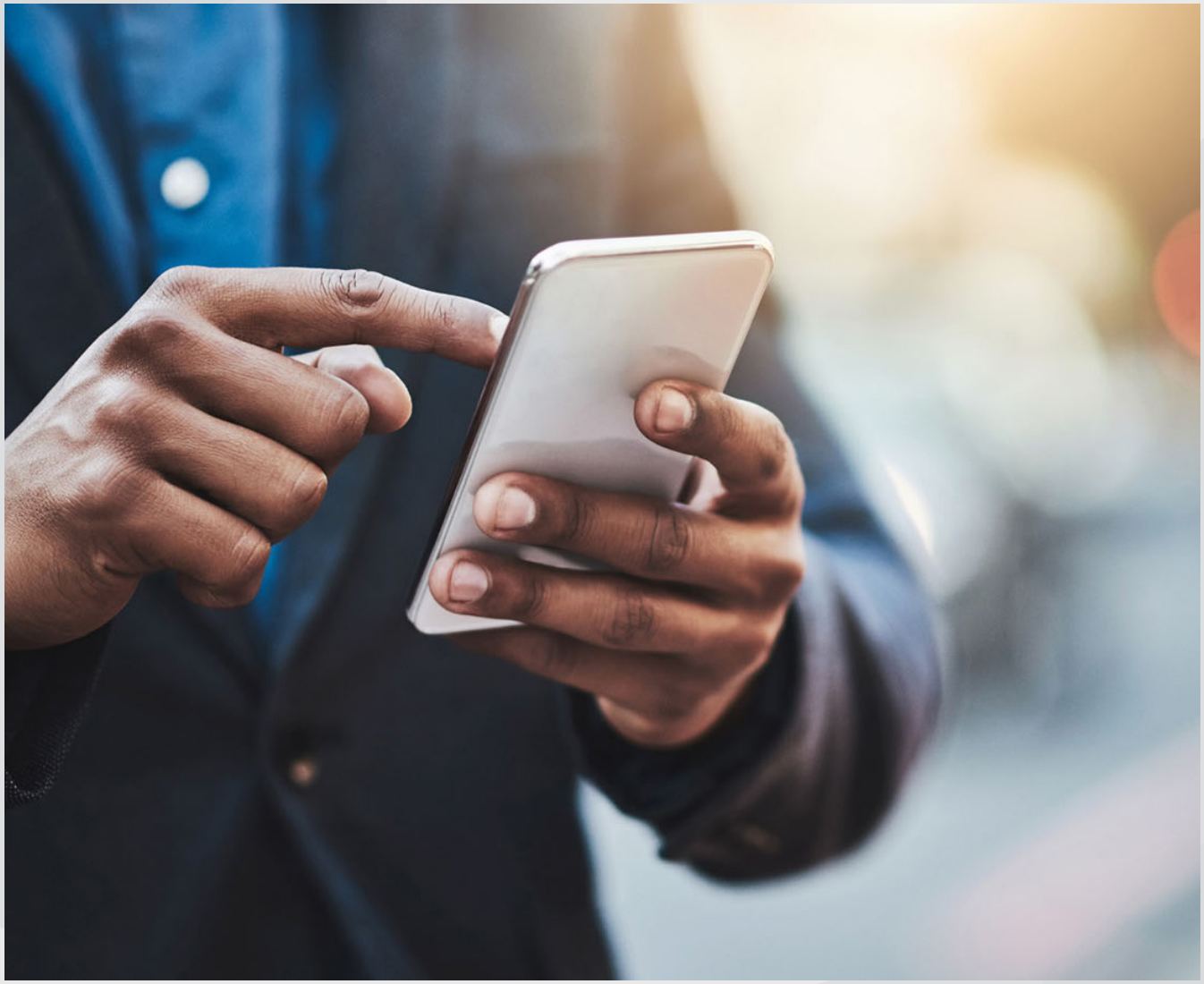

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