

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 employment income tax, off-payroll working 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

Speculation is rife about the tax changes that the Chancellor, Rachel Reeves, will announce at the Autumn Budget on 30 October 2024.

Changes to the capital gains tax and employer NICs rules seem very likely, but exactly how dramatic those changes will be is as yet unknown. What we do know, is that there are two Labour manifesto proposals that the government has already made clear it intends to implement as a priority. Those changes are to the carried interest tax regime and the current remittance basis of taxation.

Carried interest tax regime

It is unsurprising that the government has been quick to take action in relation to the taxation of carried interest, being the share of the profits of the fund's investments that individual fund managers typically receive.

The Labour party stated in its manifesto, published in June this year, that private equity is the only industry where performance related pay is treated as capital gains and that it would close the "loophole".

On 29 July 2024, the government launched a call for evidence on the taxation of carried interest confirming the government's intention to take action against the carried interest "loophole".

The rationale for the review of the current regime is the government's belief that the regime does not appropriately reflect the economic characteristic of carried interest and the level of risk assumed by fund managers in receipt of it.

The call for evidence requested feedback on three specific areas:

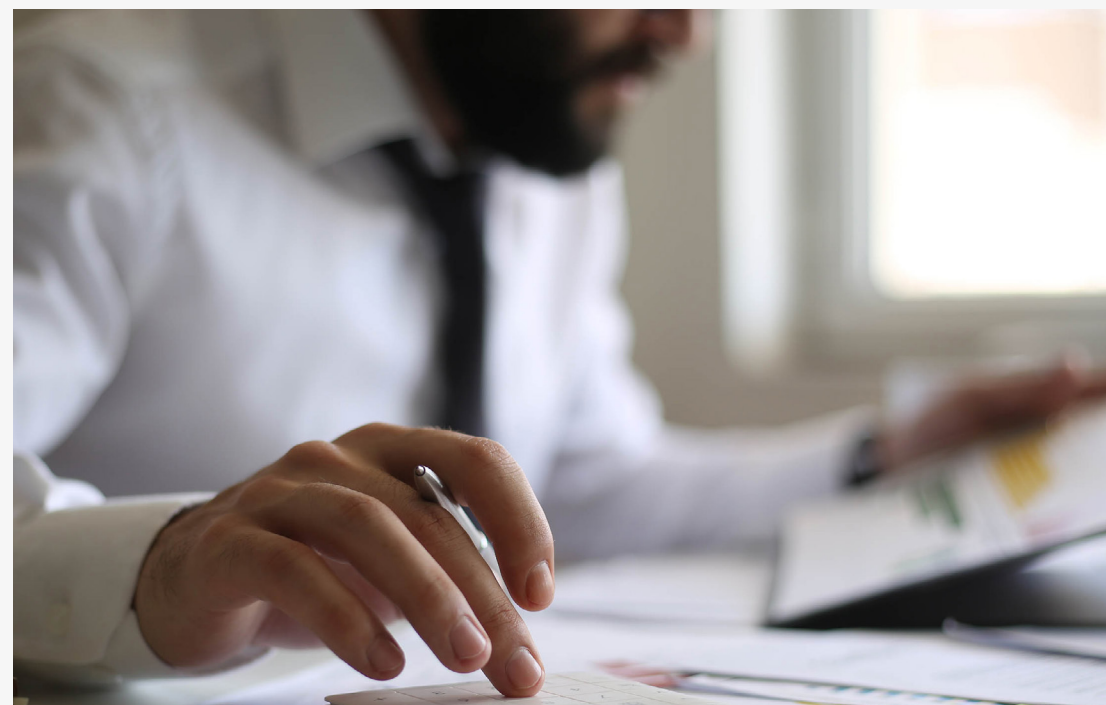
- how can the tax treatment of carried interest most appropriately reflect its economic characteristics?
- what are the different structures and market practices with respect to carried interest?
- are there lessons that can be learned from approaches taken in other countries?

The call for evidence is now closed but the government has confirmed that stakeholders should expect a further announcement at the Autumn Budget.

Abolition of the UK non-doms tax regime

In the Spring Budget 2024, the former Chancellor announced the abolition of the remittance basis of tax rules for non-UK domiciled individuals and the implementation of a new residence-based regime from 6 April 2025. On 8 August 2024, the Treasury published a policy paper confirming its intention to implement the changes announced by the former government.

The existing non-dom tax rules allow most individuals who move to live in the UK to elect into a system of personal taxation where their non-UK income and gains are sheltered



from UK tax unless they are actually brought into (or 'remitted' to) the UK. This is available for up to a maximum of 15 years, with annual fees introduced from the 8th year.

Under the proposed new residence-based regime new arrivals to the UK on or after 6 April 2025 will benefit from 100% tax relief on foreign income and gains (whether it is remitted to the UK or not) in their first four years of UK tax residence. However, the rules will only apply to people who have been non-UK resident for a full 10 tax years prior to their arrival.

A new temporary repatriation facility is expected to be available for individuals who have previously claimed the remittance basis. This will mean that those individuals will be able to remit foreign income and gains that arose prior to 6 April 2025 and pay a reduced tax rate on the remittance. However, this facility will only be available for a limited period of time after 6 April 2025. Further details of the rate of tax and length of time that the facility will be available have not been provided.

If the new regime is implemented, UK resident individuals who do not qualify for the new residence-based regime will be subject to capital gains tax on foreign gains, although a transitional provision will allow individuals who claimed the remittance basis prior to 6 April 2025 to rebase foreign capital assets to their value at the rebasing date (as yet unconfirmed) when they dispose of them.

WHY IT MATTERS?

Businesses will need to consider how these proposed changes will impact them, and their employees, going forward and review the detailed proposals which we expect to be provided in the Autumn Budget. In particular, businesses may wish to identify internationally mobile employees who may be significantly impacted by the abolition of the non-dom tax regime and consider ways to mitigate the impact of the changes for those employees.



IR35 applies to services provided by rugby union broadcaster to Sky: *The Commissioners for His Majesty's Revenue and Customs v S&L Barnes Limited*

LEGAL ISSUE

The legal issue for the Upper Tribunal (**Tribunal**) in this case was whether two contracts under which the taxpayer, Mr Barnes, provided services through his personal services company, S&L Barnes Limited (**SLB**) to Sky TV Limited (**Sky**), fell within the intermediaries (**IR35**) legislation. If so, Mr Barnes would be taxable on his income as if he were an employee.

CASE DETAIL

Between 6 April 2013 and 5 April 2019, Mr Barnes provided services as a rugby union sports broadcaster to Sky through SLB. During that period, Mr Barnes' main engagements were with Sky, the Times and the Sunday Times. He also worked for non-Sky broadcasters in covering the 2015 and 2019 World Cups and fitted in various commitments with other media organisations.

HMRC issued determinations for both income tax (under PAYE) and NICs for the relevant period and SLB appealed against those determinations to the First Tier Tribunal (**FTT**). The FTT applied a three-stage analysis involving finding the terms of the actual contractual arrangements and the circumstances in which Mr Barnes worked (stage 1), ascertaining the terms of the "hypothetical contract" (stage 2) and

then considering whether the hypothetical contract would be a contract of employment or a contract for services (stage 3).

To determine stage 3, the FTT had to consider whether a contract of service existed. Case law has identified three tests which must be satisfied for a contract of service to exist, being, mutuality of obligation, control and the other provisions of the contract being consistent with it being a contract of service (the **3rd test**).

Both the mutuality of obligation and control tests were found to be satisfied, therefore, the FTT considered whether the 3rd test was satisfied and concluded that it was not, meaning that the hypothetical contract would not have been a contract of employment.

HMRC appealed to the Tribunal on the grounds that the FTT had made an error in its construction of the hypothetical contract or in its application of the 3rd test.

CASE OUTCOME

The Tribunal dismissed HMRC's first ground of appeal but allowed HMRC's appeal on the second ground. The FTT's decision was set aside and remade by the Tribunal, which dismissed SLB's appeal, concluding that the relationship under the hypothetical contract would have been one of employment.

In particular, the Tribunal found that the long duration of the contract, the absence of a right of substitution, Sky's right of first call on Mr Barnes' services for up to 228 days a year, Sky's rights of exclusivity to Mr Barnes' services, the absence of financial risk and the overall length of the relationship with Sky were all factors which, in the Tribunal's opinion, collectively outweighed the right of Mr Barnes to exploit his work product, his agreement regarding availability and the fact that he was in business on his own account outside his relationship with Sky.

WHY IT MATTERS

This is yet another case which highlights the complexities in the practical application of the IR35 legislation. Whilst the courts appear to have settled on the tests to be applied to determine the existence of an employment contract, as opposed to a contract for services, there is still considerable debate as to how those tests should be applied. The difficulties the courts have in reaching a decision in these IR35 cases creates further uncertainty for taxpayers who provide services via a personal services company.

- Read the judgment [here](#).

“Trading” for BADR purposes: *Wardle v Revenue and Customs Commissioners*

LEGAL ISSUE

In this case, the First Tier Tribunal (**FTT**) had to consider whether entrepreneurs’ relief (now business asset disposal relief) was available to the taxpayer, Mr Wardle, on the disposal of his interest in a limited liability partnership.

CASE DETAIL

In early 2014, Mr Wardle, as part of a development team, purchased project rights for a waste-to-energy power plant. In June 2015, Biomass UK No. 1 LLP (**the LLP**) was established as the special purpose vehicle for the project. Shortly afterwards the LLP entered into a connection agreement with a grid company to connect the LLP to the grid company’s distribution system.

On 18 August 2015, a new partnership agreement was signed, under which Mr Wardle became the owner of 14.65% of the LLP equity and the development rights to the project were transferred to the LLP. On 21 August 2015, prior to construction commencing, the LLP entered into approximately 56 contracts with various parties relating to the construction, operation and financing of the project (**Financial Close**). Funding for the project was obtained on 24 August 2015 at which time notices to proceed were issued under various of the contracts.

In June 2019 electricity was generated commercially for the first time and on 28 February 2020, Mr Wardle disposed of his interest in the LLP.

HMRC denied Mr Wardle’s claim to entrepreneurs’ relief on the basis that the LLP did not trade at the date of the disposal by Mr Wardle of his interest in the LLP. It was agreed by the parties that the relevant trading period for entrepreneurs’ relief was the two years prior to 28 February 2020. However, HMRC argued that as at 28 February 2018, the LLP had not set up a business because construction was incomplete, commissioning was outstanding, ROC accreditation had yet to be obtained and electricity had not been produced.

CASE OUTCOME

The FTT held that the LLP was trading in the two-year period prior to the disposal of Mr Wardle’s LLP interest and therefore that Mr Wardle was entitled to entrepreneurs’ relief.

The FTT determined that the question of when the LLP commenced trading should be decided on the basis of the test set out in the case of *Mansell v The Commissioners for HMRC (Mansell)*. The appeal turned on whether the second step in *Mansell* was satisfied – that step provides “that a trade cannot commence until it has been set up (to the extent it needs to be set up), and that acts of setting up are not commencing or carrying on the trade. Setting up trade will include setting up a business structure to undertake the essential preliminaries, getting ready to face your customers, purchasing plant, and organising the decision-making structures, the management, and the financing. Depending on the trade more or less than this may be required before it is set up”.

The FTT decided that the second step was satisfied in the relevant period, and therefore that the LLP was trading, on the basis that:

- the partnership agreement organised the decision-making structure and management;
- the finance was fully organised with funds being drawn down from 24 August 2015 and continually thereafter;
- Financial Close was reached and it was considered unlikely that the contracts would be terminated; and
- notices to proceed were issued on 24 August 2015.

WHY IT MATTERS

The concept of “trading” is relevant in a number of contexts within the UK tax legislation, including in the context of the availability of business asset disposal relief. The guidance in this case on the steps that a business needs to take to establish that it is trading is therefore helpful to taxpayers.

- Read the judgment [here](#).

HMRC's power to relieve taxpayer of its PAYE obligations: *R (oao UBS AG) v HMRC and another*

LEGAL ISSUE

In this case the Upper Tribunal (**Tribunal**) had to consider a judicial review challenge by UBS AG (**UBS**) to a decision made by HMRC not to exercise its discretion under s684(7A)(b) Income Tax (Earnings and Pensions) Act 2003 (the **7A Discretion**) to relieve UBS from its obligation to comply with the Income Tax (Pay As You Earn) Regulations 2003 (**PAYE Regulations**) in respect of the employment income of a former senior employee of UBS, Mr Wood.

CASE DETAIL

Whilst an employee of UBS, Mr Wood's remuneration arrangements involved the entering into of certain gilt option agreements. The options were exercised several years after Mr Wood ceased to be employed by UBS giving rise to taxable employment income for Mr Wood.

Since Mr Wood was not employed by UBS when the options were exercised, there were no payments being made by UBS to Mr Wood from which UBS could deduct the relevant tax. However, under the PAYE Regulations, UBS was nonetheless required to account to HMRC for Mr Wood's liability to tax on the exercise of the options on the basis of the best estimate that UBS could reasonably make of the amount of tax.

In October 2018, HMRC issued a determination to UBS under regulation 80 of the PAYE Regulations for £13,439,600.51 based on a value of the gilts of £22.5 million. However, HMRC explained that it would continue to work with UBS on the valuation.

On 1 June 2022, UBS asked HMRC to exercise the 7A Discretion to relieve UBS of its obligation to

account for the best estimate amount of tax – the tax would then be recovered from Mr Wood. UBS made the points that it would be more efficient for HMRC to deal with Mr Wood rather than UBS in relation to Mr Wood's tax liability. The 7A Discretion can be exercised where HMRC is satisfied that it is unnecessary or not appropriate for the payer to comply with the PAYE Regulations.

HMRC did not exercise the 7A Discretion explaining that exercising the 7A Discretion would not remove UBS's liability for national insurance contributions (**NICs**) and that if the 7A Discretion was granted, UBS would not have any obligation to continue to assist HMRC. HMRC sought consent to withdraw on the basis that it intended to reconsider UBS's request and argued that UBS's claim had become academic.

CASE OUTCOME

The Tribunal decided that the claim had not become academic since UBS's claim sought the exercise of the 7A Discretion and that discretion had not been exercised by HMRC, rejected HMRC's application to stay the proceedings and dismissed UBS's claim that HMRC's failure to exercise the discretion was inconsistent with the object of the statute.

However, the Tribunal found that HMRC's response to the request for exercise of the 7A Discretion contained misdirections - if the efficiency arguments put forward by UBS pointed in favour of exercising the 7A Discretion, the fact that the exercise would not remove the NICs liability did not detract from the efficiency argument.

Further, any assertion by HMRC that UBS would not have any obligation to assist HMRC with enquiries in relation to Mr Wood and the options if the 7A Discretion was exercised was incorrect.

The Tribunal concluded that HMRC's decision was not unlawful (and therefore that HMRC should not be compelled to exercise the 7A Discretion in favour of UBS) but ordered that HMRC should reconsider the issue of whether to exercise the 7A Discretion.

WHY IT MATTERS

This case is a useful reminder to businesses of the importance of ensuring that they have processes in place to recover any income tax arising under PAYE on payments, or notional payments, made to employees and former employees. The case provides an interesting insight into the factors that HMRC take into account when determining if it will exercise its discretion to relieve an employer from its obligation to account for PAYE. It is clear from the case that HMRC will not be easily persuaded to exercise that discretion, even where the employee/former employee supports the exercise of the discretion and has evidenced that it has the funds to pay the liability directly to HMRC.

- Read the judgment [here](#).

UK branch not a fixed establishment for VAT: *Barclays Service Corporation and another v The Commissioners for HMRC*

LEGAL ISSUE

The First Tier Tribunal (FTT) had to consider whether the UK branch of a US company was a fixed establishment and therefore able to join the US company's VAT group.

CASE DETAIL

Barclays Execution Services Limited (**BESL**) is a UK company registered for VAT in the UK under a VAT group registration number (**the VAT Group**) and a wholly owned direct subsidiary of Barclays Plc. Barclays Services Corporation (**BSC**) is a US private corporation and under the indirect ownership of Barclays Plc. BSC's UK branch (**the UK Branch**) is registered with Companies House as a UK establishment of BSC.

On 1 December 2017 an application was made to HMRC for BSC to be treated as a member of the VAT Group in accordance with s43B(2) of the Value Added Tax Act 1994. The application was made on the basis that BESL and BSC were both members of the Barclays corporate group and that BSC had a fixed establishment in the UK.

One of the grounds on which HMRC refused the application was that BSC was not eligible to be treated as a member of the VAT Group because it is neither established nor has a fixed establishment in the UK. HMRC's decision was upheld following an internal review and BESL and BSC appealed to the FTT.

CASE OUTCOME

The FTT determined that for the UK Branch to be a fixed establishment it must, on 1 December 2017 (the date of the application), have had sufficient human and technical resources in the UK to make a meaningful commercial contribution to the non-UK company, BSC. In considering that question, the FTT had to consider substance over form.

The FTT noted that at the date of the application, two of the three individuals who entered into employment contracts with the UK Branch had not started to work for the UK Branch. Further, the third employee, at the date of the application, continued to undertake work for another member of the Barclays corporate group, (**BTCL**) which took up the vast majority of her time and she continued to report to her line manager at BTCL. Accordingly, the required level of control by the UK Branch over the third employee was missing. Although office space had been secured for the UK Branch employees, the FTT found that there was no evidence of the UK Branch having "comparable control" to an owner of the assets (desk, computer, telephone) available in that office space.

The absence of comparable control over the human and technical resources by the UK Branch meant that it did not satisfy the criteria necessary to be a fixed establishment of BSC and the appeal was dismissed.

WHY IT MATTERS

This case highlights the importance for taxpayers of ensuring that a UK fixed establishment of another company is actually in existence before making an application for the company to join an existing VAT group.

- Read the judgment [here](#).

Failure to follow procedure results in IR35 tax liabilities: *Cranham Sports LLP v The Commissioners for HMRC*

LEGAL ISSUE

The issue for the Upper Tribunal (**UT**) in this case was whether the appellant, Cranham Sports LLP, should be granted permission to bring a late appeal against determinations by HMRC for income tax and National Insurance Contributions (**NICs**).

CASE DETAIL

The appellant is an LLP of which Barry Cowan (**the appellant**), a tennis commentator, is a member. Mr Cowan performed services as a commentator for Sky UK Limited (**Sky**) via Cranham Sports LLP. HMRC issued income tax and NICs determinations on the appellant on the basis that the intermediaries (**IR35**) legislation applied to the engagement. The determinations were placed on hold until HMRC completed a review of the contractual arrangements. On 17 June 2021, HMRC issued an opinion confirming its view of the engagement to which the appellant's representative responded on 8 July 2021. HMRC responded on 9 December 2021 without addressing the issues raised by the appellant's representative in his response of 8 July 2021. HMRC's letter of response dated 9 December 2021 stated that it would treat the matter as settled if the appellant did not accept HMRC's offer of an internal review or notify an appeal to the First Tier Tribunal (**FTT**) within 30 days. The appellant's representative took neither of those steps but responded to HMRC to complain that HMRC had not addressed the issues raised in his response of 8 July 2021.

The appellant lodged a complaint in respect of the non-disclosure of certain documents and material obtained by HMRC from Sky. That complaint was upheld in April 2022, but the relevant material was not disclosed until July 2022.

By a letter dated 26 January 2022, HMRC informed the appellant that the matter was treated as settled under section 49C of the Taxes Management Act 1970 as the 30-day statutory time limit had elapsed and the appellant had not accepted the review or notified an appeal to the FTT.

The appellant's representative subsequently requested a review, but HMRC rejected the request on the basis that the appellant had not provided a reasonable excuse for the late request. An appeal by the appellant's representative was notified to the FTT out of time on 9 March 2022. The FTT decided not to grant permission to bring the late appeal.

CASE OUTCOME

The UT granted permission to appeal but subsequently dismissed the appeal. The UT held that there were no errors of law in the decision made by the FTT, finding that the FTT had:

- not failed to take into account relevant considerations;
- not made an error in referring to the 8 December 2021 email from the appellant's representative as not being a request for a review; and
- taken into account the fact that all the documentation relating to Sky had not been provided.

WHY IT MATTERS

In this case a simple failure to follow an administrative step had a significant financial impact on the taxpayer since the UT's refusal to grant the late appeal resulted in the taxpayer being unable to challenge HMRC's view that IR35 applied to the engagement. It is therefore important that taxpayers and their representatives pay close attention to, and respond to, procedural steps in tax disputes with HMRC.

- Read the judgment [here](#).

Abolition of the Furnished Holiday Lettings tax regime

What is the Furnished Holiday Lettings (FHL) tax regime?

The FHL regime is a set of tax rules that apply to rental income from properties that qualify as FHLs. Under the current rules, a property is a FHL if it is in the UK or the EEA, it is furnished for normal occupation and it is commercially let. The property must also satisfy certain occupancy conditions.

Income from FHLs is treated as trading income subject to income tax or corporation tax, however, certain benefits are available to letting of FHLs that are not available to other types of letting. These benefits include:

- capital gains tax relief for traders can be claimed;
- plant and machinery capital allowances may be available for items such as furniture, equipment and fixtures; and
- finance costs can be deducted from FHL profits before tax.

What is changing?

On 29 July 2024, the government announced that it intends to move forward with the abolition of the FHL tax regime, originally announced by the former Conservative government at the Spring Budget 2024. A policy paper and draft legislation were published for consultation on 29 July 2024.

The abolition of the FHL tax regime will remove the specific tax treatment and separate reporting requirements for FHLs. This means that income and gains from a FHL will then form part of the landlord's UK or overseas property business and be treated in line with all other property income and gains. Mortgage interest relief will be restricted to the basic rate of income tax, capital allowances will no longer be available for new expenditure and the reliefs from capital gains for traders will be withdrawn for FHL properties. For individuals, income from FHLs will no longer be included within relevant UK earnings when calculating maximum pension relief.

Who will be affected by the change?

The change will impact on all individuals, corporates and trusts who operate or sell FHLs.

Why are the changes being made?

When the former Chancellor, Jeremy Hunt, announced the abolition of the FHL tax regime in March this year, the explanation for the measure was to level the playing field between short-term and long-term lets and support people to live in their local area. The abolition of the regime is intended to achieve this by removing the incentive for landlords to offer short-term holiday lets instead of longer-term homes.

When will the changes happen?

The abolition is intended to take effect on or after 6 April 2025 for Income Tax and for Capital Gains Tax and from 1 April 2025 for Corporation Tax and for Corporation Tax on chargeable gains.

Will any transitional rules apply?

Yes, including:

- where an existing FHL business has an ongoing capital allowances pool of expenditure, they can continue to claim writing-down allowances on that pool;
- former FHL properties will form part of the landlord's UK or overseas property business meaning that carried forward losses from former FHL properties will be available for set off against future years' profits of the UK or overseas property business;
- in relation to business asset disposal relief, where the FHL conditions are satisfied in relation to a business that ceased prior to the commencement date, relief may continue to apply to a disposal that occurs within the normal 3-year period following cessation.

Is there anything else to be aware of?

The draft legislation includes an anti-forestalling rule which will prevent landlords obtaining a tax advantage by using unconditional contracts to sell FHL properties prior to the abolition date and obtain capital gains relief under the current FHL rules. That rule applies from 6 March 2024.

WHY IT MATTERS

Businesses with furnished holiday lettings should consider how these changes will impact their business from April 2025 and consider what steps they may wish to take to plan for the changes.

Read the policy paper [here](#).

New HMRC transfer pricing guidance

HMRC has published new “Guidelines for Compliance” to help businesses who fall within the scope of the transfer pricing rules to navigate their compliance obligations.

The new guidelines:

- provide HMRC’s expectations of the role that a UK business should perform in managing transfer pricing compliance risk;
- highlight common risk areas to watch out for, or for which greater scrutiny is recommended, together with best practice approaches to assist UK businesses;
- identify common risks in scoping, preparation, analysis and retention of transfer pricing documentation and best practice; and
- highlight common indicators of risk in designing and selecting transfer pricing policies.

Although not exhaustive, the guidance contains helpful examples of compliance risks for businesses based on risks most commonly encountered by HMRC. It also contains best practice for those businesses who engage with transfer pricing specialists to assist them with transfer pricing compliance.

WHY IT MATTERS

Transfer pricing compliance failures can lead to unexpected tax liabilities and penalties. Therefore businesses subject to transfer pricing rules, including those which outsource compliance to specialists, should read this new guidance.

Read the guidelines [here](#).





Looking ahead

Key tax developments to look out for over the next quarter

30 October 2024

- Autumn Budget
- Publication of the government's Business Roadmap expected

26/27 November 2024

- Court of Appeal scheduled to hear HMRC's appeal in the LLP salaried members rules case of The Commissioners for His Majesty's Revenue and Customs and Bluecrest Capital Management UK LLP

2/3 December 2024

- Upper Tribunal scheduled to hear HMRC's appeal in the IR35 case of Gary Lineker and Danielle Bux t/a Gary Lineker Media and The Commissioners for His Majesty's Revenue and Customs

Key contacts

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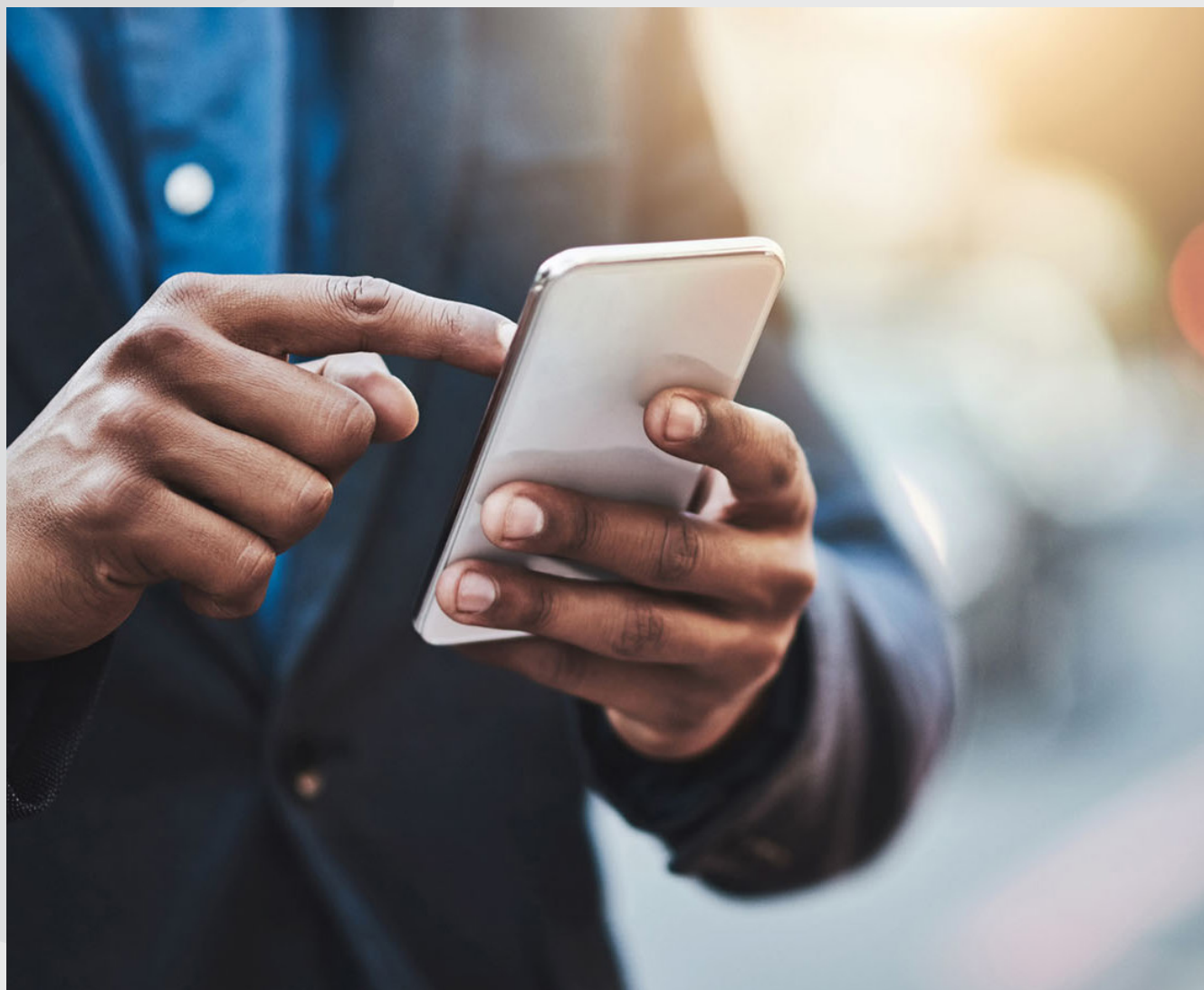


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For what comes next

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