

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, corporate tax and VAT. If you would like to discuss any item in further detail, please speak to a [key contact](#).

Case studies

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Changes to size thresholds applying to the off-payroll working rules

Businesses engaging with contractors via an intermediary (such as a limited company or partnership) should always consider the application of the off-payroll working employment tax rules in relation to those engagements.

Broadly, those rules require businesses within the scope of the rules to assess the employment status of the worker carrying out the engagement and, if employment status is established, to account for employment income taxes and NICs in relation to fees payable to the intermediary.

Under the current legislation, a business (other than a public authority) which qualifies as a small entity in a tax year does not fall within the scope of the off-payroll working rules. For these purposes, a company will constitute a “small entity” for a tax year if the small companies regime under the Companies Act 2006 applies to the company in a specific financial year set out in the off-payroll working rules.

The Companies Act 2006 tests for determining if a company is a “small entity” are based on turnover, balance sheet total and number of employees. From 6 April 2025, these turnover and balance sheet thresholds will be increased, with the result that a company will fall within the small companies regime if it has 2 of any of the following:

- a turnover of not more than £15m (increased from £10.2m);
- a balance sheet total (i.e. total assets) of not more than £7.5m (increased from £5.1m);
- a monthly average number of employees of not more than 50 (this threshold is unchanged).

WHY IT MATTERS?

Any medium-sized company currently within the scope of the off-payroll working rules should consider whether the increases to the turnover and balance sheet total thresholds will result in the company falling within the small companies regime for the purposes of the Companies Act 2006. If so, this may result in the business falling outside the scope of the off-payroll working rules in a future tax year, easing the compliance burden for the company and potentially reducing its tax liabilities in connection with intermediary contractor engagements.





Recent and forthcoming tax rate/threshold changes

Several changes to tax rates and thresholds (some of which were announced at the Autumn Budget 2024) are due to take effect from 6 April 2025. These include:

- **SDLT residential nil-rate tax threshold:** this threshold (being the amount that a purchaser can pay for residential property before becoming liable to SDLT) will reduce from £250,000 to £125,000 from 6 April 2025.
- **SDLT nil-rate threshold for First Time Buyer's Relief:** this threshold will reduce from £425,000 to £300,000 from 6 April 2025.
- **Employer NICs:** 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) and the Class 1 NICs secondary threshold will reduce from £9,100 to £5,000 per annum.
- **Business Asset Disposal Relief:** The CGT rate that applies to Business Asset Disposal Relief will increase from 10% to 14% for disposals made on or after 6 April 2025.
- **Investors' Relief:** The CGT rate that applies to Investors' Relief will increase from 10% to 14% for disposals made on or after 6 April 2025.
- **Carried Interest:** The CGT rate for carried interest will be increased to 32% from 6 April 2025.

In addition, businesses operating company car schemes should also note that the company car advisory fuel rates were revised with effect from 1 March 2025. The new rates are available [here](#). These rates should only be used when a business:

- reimburses employees for business travel in their company cars; or
- requires employees to repay the cost of fuel used for private travel in a company car.

WHY IT MATTERS?

Tax compliance continues to be a key area of focus for HMRC. It was announced in the Autumn Budget 2024 that HMRC has investment to recruit an additional 5,000 compliance staff and HMRC subsequently published a consultation on new ways to tackle tax non-compliance. An increase in HMRC compliance checks is therefore expected and so businesses should take steps to ensure that they are aware of, and have processes in place to action, the recent and forthcoming tax rate and threshold changes.



Malus and clawback disclosures under the new UK corporate governance code

It is increasingly common for bonus and share incentive schemes for senior employees to include malus and clawback provisions.

Typically:

- a malus provision enables the employer to reduce the bonus, or number of shares subject to an award, that the employee is entitled to receive on vesting of the bonus/ share award; and
- a clawback provision requires an employee to repay all, or a proportion, of a cash bonus received, or give back all, or a proportion, of the shares received on the vesting or exercise of a share award,

in each case, if certain specified circumstances occur. These are often linked to performance (such as a significant downturn in financial performance or misstatement of financial results) or to the behaviour of the employee (for example, gross misconduct or causing reputational damage).

For a number of years, to comply with the Financial Reporting Council's Corporate Governance Code (**the Code**), all companies with a premium listing on the London Stock Exchange have been required to include malus and clawback provisions in their remuneration schemes. However, because of changes made to the Code in January 2024, a company subject to the Code is now required to include a description of its malus and clawback provisions in its annual report on remuneration. That description should include:

- the circumstances in which malus and clawback provisions could be used;
- a description of the period for malus and clawback and why the selected period is best suited to the organisation; and
- whether the provisions were used in the last reporting period. If so, a clear explanation of the reason should be provided in the annual report.

This requirement applies for accounting periods beginning on or after 1 January 2025.

Read the updated Code [here](#).



WHY IT MATTERS?

Given the likelihood of increased shareholder scrutiny of malus and clawback provisions because of these changes, companies within the scope of the Code may want to take this opportunity to review the terms of the malus and clawback arrangements which apply to their bonus and incentive schemes. In particular, companies may want to (i) check for inconsistencies in the malus and clawback terms between different remuneration schemes and consider if any amendments would be beneficial; (ii) review the circumstances in which the provisions have, or have not, been operated in order to explain the rationale for those decisions to shareholders; and (iii) consider if a policy for applying any malus and clawback provisions should be adopted.

Penalties incurred under a statutory regime were tax deductible: *Scottishpower (SCPL) Ltd and other companies v Revenue and Customs Commissioners*

LEGAL ISSUE

In this case, the four taxpayers (referred to collectively as “**Scottishpower**”) appealed to the Court of Appeal against a decision of the Upper Tribunal (UT) that a number of payments made by Scottishpower to certain consumers and charities settling consumer protection investigations were not deductible in computing its taxable profits.

The key issue was whether a rule established in case law (the “**von Glehn principle**”) that a penalty or fine incurred under a statutory regime is not deductible in calculating trading profits, even where the expense was incurred in the course of trading activities, applied to the payments.

CASE DETAIL

A number of investigations into certain regulatory breaches by Scottishpower were initiated by the Office of Gas and Electricity Markets (**Ofgem**).

During the investigations, it was proposed by Ofgem that Scottishpower should pay substantial penalties in respect of these breaches. However, Scottishpower ultimately paid nominal penalties on the basis that substantial sums, totalling around £28 million, were to be paid to third parties (including consumers and consumer organisations) under the terms of various agreements entered into between Scottishpower and its regulator.

Scottishpower deducted the payments in calculating its taxable profits but HMRC denied the deductions. This led to an appeal by Scottishpower to the First Tier Tribunal (FTT) which found that Scottishpower had agreed to the settlement terms “in the expectation that if they did not a penalty greater than £1 would be imposed”. As such, it determined that most of the payments were not compensatory in nature (being, instead, in respect of a penalty or in lieu of a penalty) and therefore were not deductible.

Both Scottishpower and HMRC appealed to the UT which decided that all the payments were non-deductible.

CASE OUTCOME

HMRC’s case in the Court of Appeal was that the payments made by Scottishpower should be treated as having the same nature or character as penalties because the payments replaced the penalties. However, the Court of Appeal disagreed with HMRC deciding that there were no policy considerations requiring that a principle which prohibits a deduction for fines and penalties must extend to payments which are not in fact fines or penalties. The Court also went on to state that “there is no need for judges to step in to ensure that differences in tax treatment between penalties or fines and alternative forms of redress are avoided”.

The Court decided that the von Glehn principle was clear and correct, but account needed to be taken of its proper limits. The only penalties imposed were the nominal amounts. Although the regulator agreed to nominal penalties only because it was required to consider all the circumstances (i.e. the payments to be made to the third parties), that did not mean that its agreement to Scottishpower making the payment to the third parties was an exercise of its power to levy penalties.

The payments were made in the course of Scottishpower’s trade, deducted in accordance with the ordinary principles of account and made wholly and exclusively for the purposes of trade. Therefore, since the payments were not in fact penalty payments, the von Glehn principle did not apply, and the payments were tax deductible.

WHY IT MATTERS?

The Court of Appeal decision is helpful to taxpayers by clarifying, and limiting, the scope of the von Glehn principle in the context of penalty payments and compensation/consumer redress payments.

- Read the judgment [here](#).

Composite agreement did not fall outside the scope of the IR35 rules: *Bryan Robson Limited v The Commissioners for HMRC*

LEGAL ISSUE

This case concerned an appeal to the First Tier Tribunal (FTT) against income tax and National Insurance Contributions determinations issued by HMRC in relation to services provided by Bryan Robson (BR) to Manchester United Football Club (MUFC) under contracts between BR's personal services company, Bryan Robson Limited (the Appellant), and MUFC.

The two arguments raised by the Appellant were:

- that all, or at least some, of the consideration payable under the contracts did not fall within the scope of the IR35 legislation on the basis that it was attributable to the Appellant's agreement to allow MUFC to exploit BR's image rights, and
- even if some or all of the consideration payable under the contracts did fall within the ambit of the IR35 legislation, had the arrangements been directly between BR and MUFC, BR would not have been regarded as an employee of MUFC.

CASE DETAIL

BR had acted as an ambassador for MUFC for many years and the Appellant had first entered into a contract to act as an ambassador in March 2008. Under the terms of the contracts, BR was required to make a specified number of personal appearances per year for an agreed annual fee, whether at the request of MUFC or at the request of one of MUFC's sponsors.

On occasion, the Appellant would receive additional fees for BR's appearances. This occurred when either BR had already satisfied the minimum commitment under the contract or because the request was made by a sponsor

and MUFC did not want the personal appearance to count towards BR's personal appearance requirement for MUFC.

There had been no written assignment of BR's image rights to the Appellant, but the parties had all proceeded on the basis that the Appellant owned the image rights and was entitled to license the image rights to MUFC. No valuation of BR's image rights had been carried out and there had been no discussion between BR and MUFC as to the value of his image rights, although the FTT noted that the image rights had considerable value to MUFC.

CASE OUTCOME

The FTT agreed that consideration which is properly payable for a licence of image rights as opposed to the personal performance of services is not subject to IR35 and not taxable as employment income. The contracts were composite agreements which included the licence of image rights, but that did not mean that the arrangements were outside the scope of the IR35 rules.

As MUFC exploited the valuable image rights, they could not be disregarded meaning that some part of the consideration (to be determined separately) fell outside IR35.

The consideration relating to the Appellant's obligation to provide BR's services potentially fell within the scope of IR35. To determine whether an employment relationship would have existed between MUFC and BR had there been a direct contract between those parties, it was necessary to ascertain the terms of the hypothetical contract between MUFC and BR by reference to the terms of the actual contracts and the relevant circumstances and then to consider whether that contract would be a contract of employment.

The FTT held that in determining the terms of the hypothetical contract all of the terms of the contracts were required to be taken into account including the terms relating to the licensed image rights. The tribunal concluded that the hypothetical contract would create a relationship of employment based, in particular on, the length of the relationship between the parties and the fact that BR was key to deepening the relationship of between the club and the sponsors and fans. These factors outweighed the minimal time commitment which the ambassadorial role involved and the fact that BR had historically used the Appellant to pursue other commercial engagements. The Appellant therefore failed on the employment rights issue.

WHY IT MATTERS?

This is the first case to consider the scope of the IR35 rules in the context of a composite agreement. This decision is of particular relevance to businesses entering into engagements within the scope of the rules in circumstances where the contractual obligations go beyond the provision of personal performance of services. Those businesses should consider the impact of this decision and give thought to whether separate contracts, or apportionment of consideration, is prudent.

- Read the judgment [here](#).

Construction industry scheme: updated guidance

The CIS is a type of tax deduction scheme which sets out a process for a contractor to deduct tax at source from payments (other than payments relating to the cost of materials) made to a subcontractor relating to construction work and account for the amounts deducted to HMRC.

In the light of recent case law decisions, HMRC has updated its guidance to address the steps that a contractor can take if the contractor has failed to correctly deduct tax on a payment made to a subcontractor.

The following Q&As provide an overview of when, and how, the CIS operates and discuss the impact of the updated guidance.

Which payments are subject to the CIS?

The CIS applies only to payments which are made under a construction contract, which is a contract (other than an employment contract) relating to construction operations between a contractor and a subcontractor.

There are some payments made under a construction contract to which the CIS may not apply. These include:

- most payments by a landlord to a tenant (for example, for fit out costs as an inducement for taking a lease); and
- expenditure by a concern that relates to property used for the purposes of the concern's business (or, if the concern is a company, other companies within the same group) where the concern is not a mainstream contractor.

What are construction operations?

The definition of construction operations is wide and covers most construction work carried out in the UK (which includes UK territorial waters up to 12 miles) to a permanent or temporary building or structure or civil engineering work or installation, including, alterations, construction, repair and site preparation.



Construction operations carried on outside the UK are not within the scope of the CIS.

Who is a contractor?

A contractor is broadly defined in the relevant legislation and has a wider meaning than it normally has in the construction industry.

Under the CIS there are two groups of contractors:

- mainstream contractors – these are, broadly, those whose business is construction and who pay subcontractors for construction work; and
- deemed contractors - these are, broadly, businesses outside the mainstream construction industry whose cumulative expenditure on construction operations exceeds £3m within the previous 12-month period.

Who is a subcontractor?

A subcontractor is also defined in legislation and is broadly, a person or body that has agreed to carry out construction operations for a contractor. The subcontractor may carry out the operations itself or have the operations carried out by its employees or subcontractors.

Tax deductions and accounting to HMRC

All contractors are required to register with HMRC under the CIS when they take on and pay their first subcontractor.

The rate of tax that must be deducted by a contractor on making a payment to a subcontractor under a construction contract depends on the status of the subcontractor. The maximum deduction to be made on account of tax and Class 4 National Insurance contributions is 30%. In some circumstances, no deduction is required.

The amount deducted from payments to subcontractors must be paid to HMRC monthly by the contractor and the contractor may have to pay penalties if they do not pay the amounts due to HMRC on time and in full.

In addition, each month, a contractor must send to HMRC a complete return of all the payments they have made within the CIS or inform HMRC that no payments have been made. The contractor must also provide a written statement to every subcontractor from whom a deduction has been made within 14 days of the end of each tax month.

What are the consequences of failing to make deductions under the CIS?

If HMRC believe that a contractor has failed to make the correct deductions under the CIS, legislation provides that HMRC is able to issue a determination on the contractor requiring the contractor to cover the deductions that should have been made (**a Determination**).

However, legislation also provides HMRC with the power to direct (**a Direction**) that a contractor does not have to pay the tax under-deducted if either:

- the failure to deduct arose from an error made in good faith or a genuine belief that the payment was not in the scope of the CIS; or
- the subcontractor was not liable to tax on the payment or the subcontractor has paid the relevant tax.

Recent case law has considered the interaction of HMRC's power to issue a Determination with its power to issue a Direction as a result of which HMRC updated its guidance earlier this year. That guidance (which can be found [here](#)) now confirms that a Direction that a contractor does not have to pay under-deducted tax can be made even if HMRC has already issued a Determination to a contractor, provided that any Determination issued has not been finalised (i.e. when it is not appealed, or is no longer within the time limit for an appeal or an appeal has been concluded).



WHY IT MATTERS?

Tax non-compliance within the construction industry has been a concern for HMRC for some time and as recently as last summer, HMRC commenced a “one to many” letter campaign targeted at CIS contractors reminding them of the steps they are required to take under the CIS and asking them to check that they regularly verify the CIS status of all subcontractors. Businesses were warned that failing to act risked an HMRC compliance check and potential penalties if CIS return errors were found.

Accordingly, it is important that businesses involved in the commissioning of construction work are aware of their obligations under the CIS and adopt the necessary internal processes to ensure continued compliance with those obligations. However, if errors in CIS compliance are found to arise, businesses should be aware of HMRC's latest guidance and the steps that they can take to minimise their CIS tax liabilities.

A woman with dark hair and glasses is shown in profile, looking at a laptop screen. The screen displays a bar chart with several blue bars of varying heights. She is wearing a grey knitted sweater. On the desk, there is a calculator and some papers. The background is slightly blurred, showing a typical office environment.

Looking ahead

Key tax developments to look out for over the next quarter

26th March 2025

- Chancellor to deliver Spring Statement

31st March 2025

- Reductions to the SDLT residential nil-rate tax threshold and nil-rate threshold for First Time Buyer's Relief take effect

1st April 2025

- National Minimum Wage increases

6th April 2025

- Increases in the (i) main rate of secondary Class 1 NICs employer's NICs; (ii) rate of BADR; (iii) rate of Investors' Relief; and (iv) rate of CGT for carried interest, take effect
 - The remittance basis of taxation for non-UK domiciled individuals is abolished from this date. A replacement, residence-based regime will be introduced from this date
 - Changes to turnover and balance sheet thresholds for the purposes of the Companies Act 2006 small companies regime take effect
- 
- A decorative graphic in the bottom right corner consisting of two overlapping curved shapes. The top shape is dark blue, and the bottom shape is a lighter teal color.

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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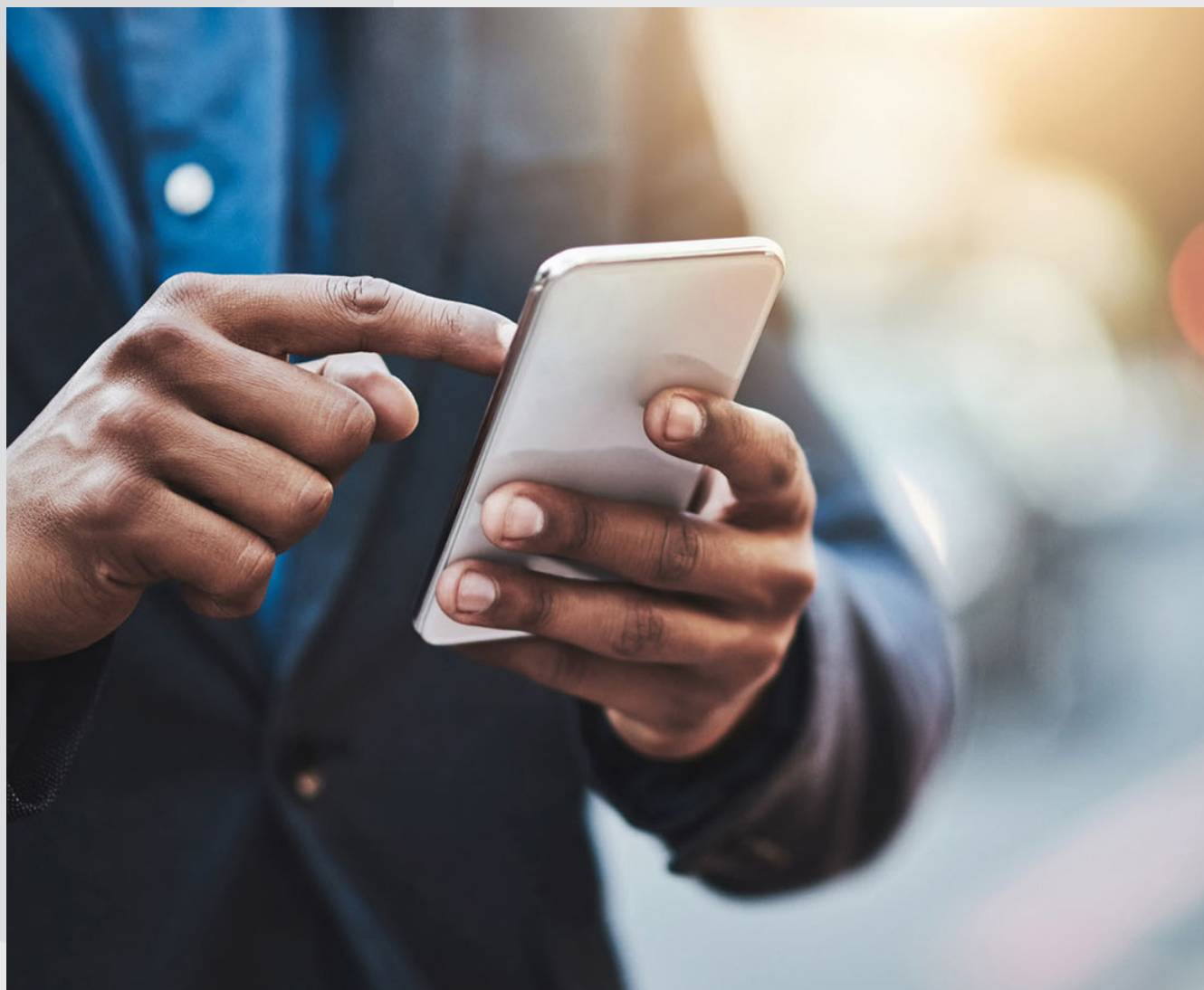


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For what comes next

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