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Welcome

Tax & VAT Update

With Glyn Fullelove, Stephen Relf,
Martin Jackson and Sarah Kay



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Uncertain Tax Positions Update on R&D reliefs

Glyn Fullelove



UTP – New Legislation

From 1 April 2022:

- Large businesses must notify HMRC
- When they file a return
- Which includes an **uncertain tax position**.

UTP – Today's objective

- Size of companies affected
- Taxes within scope
- Definition of UTP
- Not covering administration and penalties – see our in-depth commentary at 192-924, 192-926

What is a 'large business'?

- A company, group or partnership
- With UK turnover exceeding £200m or
- A UK balance sheet total of more than £2bn;

What taxes are in scope?

- Corporation Tax
- VAT
- PAYE
- Income tax for a partnership tax return

What is a UTP?

- A potential tax liability which is not reflected in a tax return, but which is provided for in a set of financial accounts produced in accordance with GAAP; or
- A position taken in completing a tax return which is a contrary to HMRC guidance or other published or known position of HMRC
- A third test – a tax treatment adopted in a tax return where there is a substantial possibility that a court tribunal would disagree with the treatment the taxpayer adopted – has been dropped for now

Tax threshold

- The requirement to notify is subject to the UTP amounting to a difference in tax of £5m
- This threshold applies for each UTP.
- However, it applies to all transactions/similar transactions giving rise to the UTP in a year.
- For example, a potential VAT difference of £10,000 on the sale of a product; with 500 products sold in a year, the threshold is reached.

Exemption from notification – HMRC knowledge

Where a business has reasonable grounds to consider HMRC has already been supplied with information on the UTP, it does not need to notify.

Final Thoughts on UTP

- This measure covers VAT and PAYE – which is where much of the ‘large business legal interpretation tax gap’ lies.
- £5m is quite a large amount for a single UTP

R&D Tax Relief

- In the March Budget, the Chancellor opened a consultation on the future of the UK's R&D Tax relief regime, the results of which we had on 30 November
- Generous relief – Small and Medium Enterprises can receive cash tax credits for qualifying expenditure

R&D – Good and bad news

- Good news – the scope of the relief will be expanded to include expenditure on data and cloud computing from April 2023
- Bad news – (for claimants) – relief to be focused on UK expenditure; relief to be restricted for expenditure incurred outside the UK – again from April 2023
- New measures to stop abuses and improve compliance, again from April 2023
- No clarification around ‘funded’ claims – but *Quinn* judgement published

R&D – Expanded relief

- Licence payments for datasets to qualify
- Dataset must be used directly for R&D in a qualifying project
- No relief for a dataset that can be resold
- Or have lasting value beyond the project
- Revised guidance to ensure staff costs on collecting data will be deductible
- Relief will be allowed for cloud computing services used directly for R&D
- Examples include cloud computing costs attributable to computation, data processing, analytics and software, where directly used for R&D.

R&D – Restrictions

- Sub-contracted work must be carried on the UK
- Externally provided workers must be on a UK payroll
- Consumables, clinical trials, software, data and cloud services from overseas still qualify (considered inputs)
- Sub-contracted work can still be deducted for CT, but no enhanced relief.

R&D – Compliance

- System is being abused by “boundary pushing” advisors making dubious claims
- Such advisors not affiliated to professional bodies, and specialise in R&D; cold call companies.
- All claims to be made digitally
- More detail will be required – what the claim covers, nature of advance sought, field of science/technology, uncertainties overcome
- Every claim signed off by named senior officer of company
- Must inform HMRC in advance of claim
- Claim must include details of anyone who has helped compile claim

R&D – Quinn (London) Limited

- Win for taxpayer at FTT
- If expenditure is 'subsidised' SME relief not available
- HMRC had claimed if R&D done to complete a profitable contract it was subsidised
- Decisively rejected by FTT – must be clear link
- HMRC making similar arguments for sub-contracting; hopefully will accept same principle applies

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Capital allowances update

Stephen Relf



Super-deduction

- 130% First Year Allowance
 - Spend now, not later
- Lots of conditions to satisfy
 - Eg company buying new, main rate P&M before 1 April 2023
- Additional considerations in some cases
- Clawback on disposal
 - Balancing charge
- Is the Super-deduction that super?

Example

- Buys asset for £100,000 in AP 31-03-2022; sells asset for £50,000 in AP 31-03-2025

	Super-deduction		AIA	
	CA _s	Tax paid / (saved)	CA _s	Tax paid / (saved)
AP 31-03-2022	£130,000	(£24,700)	£100,000	(£19,000)
AP 31-03-2025	(£50,000)	£12,500	(£9,000)	£2,250
Future APs	n/a	n/a	(£41,000)	£10,250
Total	£80,000	£12,200	£50,000	£6,500

SR allowance

- 50% FYA
 - Interaction with Annual Investment Allowance
- Lots of conditions to satisfy
 - Company buying new, special rate P&M before 1 April 2023
 - Exception made for lease of background P&M
- Rules applying on disposal
 - Balancing charge

Motor vehicles

Quick reference guide for cars:

Type	CO2 emissions	Capital allowances
New	Zero	100% FYA
Used	Zero	18% WDA (main pool)
New & used	Between 1 and 50	18% WDA (main pool)
New & used	Over 50	6% WDA (special rate pool)

Freeports

- What, why and where?
- 100% FYA
 - Company buys new P&M for use in freeport tax site
 - Cut-off date 30 September 2026
- Enhanced SBAs
 - 10% pa for 10 years

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Health & Social Care Levy & Internationally mobile employees

Martin Jackson



Freeport employees

For new employments beginning on or after 6 April 2022:

- 0% rate of NICs for employers on earnings up to £25,000
- For first 3 years of the employment
- Must spend at least 60% of time in employers premises at the freeport
- New NIC category 'F'
- Must not have been employed in previous 2 years by same (or connected) employer
- Scheme expected to be available for 9 years
- Freeports:
 - Teesside (Teesworks East and West, Wilton International)
 - Humber (Hull East, Able Marine Energy Park)
 - Thames (Dagenham, Tilbury, London Gateway)
 - Coming soon:
 - Liverpool City Region
 - Plymouth Solent

Health & Social Care Levy

From April 2022:

- 1.25% Health and Social Care Levy, ringfenced for specifically for health and social care
- Temporary increase to NICs - Class 1, Class 1A, Class 1B & Class 4
- Applies to both employees' NICs *and* employers' NICs
 - Employees NICs on earnings from the PT to UEL (increased from 12%) **13.25%**
 - Employees NICs on earnings above the UEL (increased from 2%) **3.25%**
 - Employers NICs on earnings over the Secondary Threshold (increased from 13.8%) **15.05%**
- Individuals over state pension age (Category C, 0% NICs) will not be affected by the temporary increase

Health & Social Care Levy

From April 2022:

- Self employed Class 4 NICs increase:
 - On profit over the lower threshold, from 9% to **10.25%**
 - On profit over the upper threshold, from 2% to **3.25%**
- Income tax on dividends above the allowance:
 - Basic rate increases from 7.5% to **8.75%**
 - Higher rate increases from 32.5% to **33.75%**
 - Additional rate increases from 38.1% to **39.35%**

Health & Social Care Levy

From April 2023:

- Temporary increases to National Insurance contributions removed
- New, legislatively separate Health and Social Care Levy takes effect
- Payable by both employees *and* employers @ 1.25% on all earnings above the primary and secondary thresholds
- Subject to the same reliefs, thresholds and requirements as the qualifying NICs (Class 1, Class 1A, Class 1B or Class 4) on which it is based (so is effectively NICs in all but name)
- Individuals over state pension age (Category C NICs) *will* be liable to pay the 1.25% levy

Health & Social Care Levy

From April 2023:

- 29 million individuals will be directly affected
- 1.6 million employers who will be required to introduce the change
- One-off costs will include:
 - familiarisation with the change
 - updating software and systems to reflect the change
 - payroll software providers will be required to update software (costs of which likely to be passed onto customers)
- The levy must be shown separately on employees' payslips

Internationally mobile workers

Income Tax

- Tax is charged in the country where the work is performed
 - Don't confuse working *in* the UK with working *for* the UK
- For DTA countries there is an exception if 3 conditions are all met:
 1. the employee is present in the country for a period (or periods) not more than 183 days in any twelve-month period (*usually the tax year but sometimes calendar year*)
 2. the remuneration is paid by, or on behalf of, an employer who is not a resident of that country; and
 3. the remuneration cost is not borne by (ie cross-charged to) a permanent establishment of the employer in that country

Internationally mobile workers

Income Tax

- UK residents are taxed on their worldwide income
- Some employees are only taxed on the proportion of salary that relates to UK duties
 - Non-residents including split-year cases (becoming or ceasing to be resident)
 - Non-domiciled employees in the first 3 years of residence (OWR)
- Employers can agree a 'Section 690' apportionment in advance with HMRC
- If there is *no place of business in the UK*, the employer cannot be made (or even allowed) to operate a PAYE scheme (for tax)
- Employee could operate a PAYE scheme (voluntary) or report via a Self Assessment

Internationally mobile workers

National Insurance Contributions

- The world is divided into three categories
 - EU member states
 - Includes Switzerland
 - Reciprocal agreement (or Double Contributions Convention) countries
 - Now includes Norway and Iceland
 - Rest of the world
 - Now includes Liechtenstein

Internationally mobile workers

National Insurance Contributions

- EU member states & Switzerland
- NICs can only be due in one country
- NICs (both employee and employer) are due in the country in which the work is performed, unless
 - the individual *normally* works in two or more EU countries; or
 - has been *temporarily* (max 24 months) seconded by their existing employer
 - and (in either case) has obtained a portable certificate of continuing liability and continues to pay NICs (employee and employer) in their home country

Internationally mobile workers

National Insurance Contributions

- Reciprocal agreement countries
- In some cases NICs can be due in both countries (USA & Iceland)
- NICs (both employee and employer) are due in the country in which the work is performed, unless
 - the individual *normally* works in two or more agreement countries; or
 - has been *temporarily* (maximum varies from 1 – 5 years) seconded by their existing employer; and
 - has obtained a portable certificate of continuing liability and continues to pay NICs (employee and employer) in their home country

Internationally mobile workers

National Insurance Contributions

- Rest of the World (ROW) countries
- NICs can be due in both countries
- Employee and employer NICs remain due in UK for 52 weeks for employees seconded temporarily abroad (if still ordinarily UK resident)
- No employee or employer NICs in the UK for 52 weeks for employees seconded temporarily to the UK by an overseas employer (even if also a place of business in the UK)

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VAT: EU VAT issues

Sarah Kay



EU VAT refunds

Selling to EU consumers

EU VAT Refunds

Great British businesses:

- Can claim EU VAT incurred on business expenses via the Thirteenth Directive procedure

Northern Irish businesses:

- Can claim EU VAT incurred on business expenses via the Thirteenth Directive procedure; Or
- If VAT was incurred on goods, the old EU electronic refund procedure can be used.

EU VAT Refunds

Thirteenth Directive Procedure:

- Paper based;
- Bureaucratic;
- Deadline for claims is 31 December following year ended 30 June in which VAT was incurred.

EU electronic refund system:

- Online applications submitted to HMRC;
- More straight forward and less administratively cumbersome than 13th Directive procedure;
- Deadline for claims is 30 September following end of calendar year in which VAT was incurred.

EU VAT Refunds

ACTION POINTS

- Need to familiarise business with requirements of the Thirteenth Directive;
- Update systems & procedures to accommodate new deadlines;
- Be aware that, typically, refunds take longer to process than under the old system;
- NI businesses need to take a decision over whether to claim all EU VAT under the Thirteenth Directive or to make separate claims for EU VAT incurred on goods and services.

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Selling to EU consumers



Selling to EU consumers

GOODS

- Understand supply chain & physical movement of goods;
- Mail/internet/telephone order goods- place of supply is territory of delivery;
- 28 Single Market territories all have different rates of VAT;

Goods delivered within single market

- Register for VAT in every territory where goods are supplied; or
- Register for One Stop Shop (“OSS”):
 - Simplified way to account for sales VAT across the single market;
 - Union OSS: for suppliers established within the single market;
 - Non-Union OSS: for suppliers established outside the single market.

Goods delivered to single market

- Subject to import VAT and, potentially, customs duty.
- Import One Stop Shop: simplified way to account for import VAT
 - Consignments <£135/€150 in value;
 - Non-excise goods.
- If IOSS does not apply, account for import VAT & duty in normal way.

Goods GB to NI consumers

- Customs border in the Irish Sea
- Goods moving GB to NI are imports
- If goods shipped from GB to NI consumers are:
 - <£135;
 - Non-excise goods; and
 - GB supplier is registered for IOSS
- Then UK VAT should be declared on IOSS return.

Online market places

If goods are sold via an OMP, the OMP is deemed supplier if:

- Goods sold within the EU (Union OSS):
 - Supply of goods to a consumer within the EU is facilitated via the platform;
 - The supplier is established outside the EU.
- Goods imported into the EU (IOSS):
 - Non-excise goods valued at \leq €150 (£135);
 - Sold to a consumer.

Services supplied to EU consumers

- If place of supply is EU, supplier can either:
 - Register for VAT in territory where customers are; or
 - Register for One Stop Shop (“OSS”)
- Union scheme for EU established suppliers.
- Non-Union scheme of non-EU established suppliers (includes UK suppliers).
- UK businesses are required to appoint an intermediary to represent them.

Simplification for small businesses

EU established suppliers:

- If, distance sales to EU consumers plus digital services supplied to EU;
- Are below €10,000 per annum;
- Can opt to treat supplies as made in own member state (i.e. charge local VAT)

NI suppliers:

- If distance sales to EU consumers;
- Are below £8.818 per annum;
- Can opt to treat supplies as made in UK.

GB suppliers:

- No simplification for small businesses

Selling to EU consumers

ACTION POINTS

- Confirm where business making supplies is established;
- Confirm VAT rate applicable to goods & services;
- Understand supply chain;
- If using IOSS:
 - GB suppliers need to track NI sales separately to GB sales;
 - Know whether to use own IOSS or OMP's IOSS number;
 - Monitor exchange rates.

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