

# TAXline

## **BREXIT AND BUSINESS**

JILL RUTTER DELIVERS  
THE 26TH ANNUAL  
HARDMAN LECTURE

## **DECIPHERING TAX**

THE SECOND REPORT  
OF THE 2018 TAX  
FACULTY CONFERENCE

## **MTD LIVE**

RECAPPING THE  
ICAEW EVENT ON  
MTD AND SOFTWARE

## **THE END OF THE YEAR**

and what to expect in 2019



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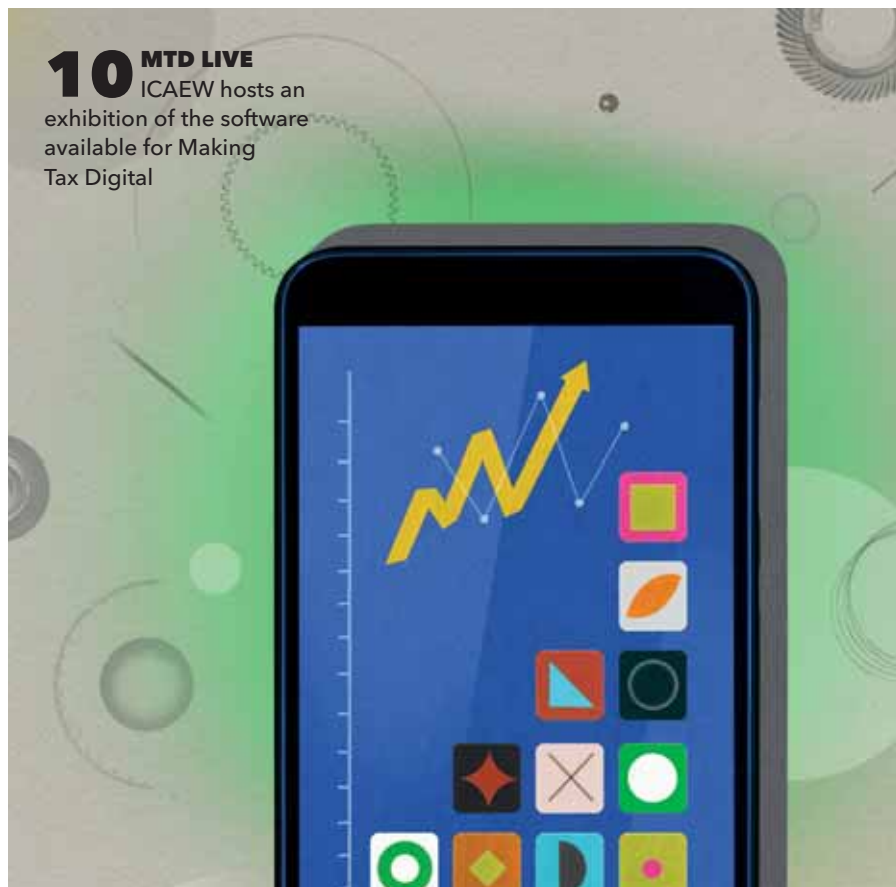
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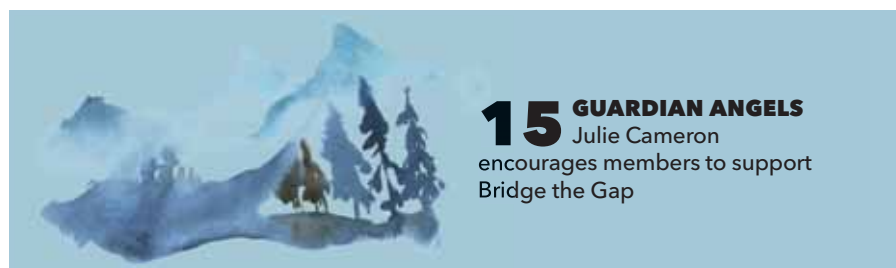
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# December 2018 Issue 12

**10 MTD LIVE**  
ICAEW hosts an  
exhibition of the software  
available for Making  
Tax Digital



**12 HARDMAN LECTURE**  
Jill Rutter, from the  
Institute for Government, talks  
about Brexit and business



**15 GUARDIAN ANGELS**  
Julie Cameron  
encourages members to support  
Bridge the Gap

**26 TAX FACULTY  
CONFERENCE**  
The second report from this year's  
conference on deciphering tax



## 08 COVER STORY



Frank Haskew's predictions for  
the tax challenges that lie  
ahead in 2019

### 04 Editor's letter

Jane Moore introduces  
this issue of *TAXline*

### 05 News

Frank Haskew on the  
latest developments at  
the Tax Faculty

### 06 Events and technical work

Events in 2019, new  
publications and the latest  
consultation work

### 18 Jumping the line

A look at the *Vigne* case for  
business property relief

### 19 Practical points

News, reminders and tips on  
recent developments in tax

### 29 Deadlines and dates

Reminders for your diary

### 30 From the faculties

Our roundup of articles from  
across ICAEW faculty titles

# At the end of the year



In this month's editorial, Frank Haskew, head of the Tax Faculty, looks back at 2018 and attempts to identify the crucial tax issues in store for us in 2019 (page 8). It is certainly going to be a challenging year, and harder than usual to predict, but as Frank says, the faculty will do its best to help and guide you through it.

Brexit is, of course, one of the challenges looming large for 2019 and was the subject of our Hardman Lecture in November. The speaker, Jill Rutter from the Institute for Government, gave us the benefit of her expert knowledge of this area, recapping on what has happened so far and considering what Brexit might mean for business. Read the full report on page 12. The lack of certainty is a huge problem and at the time of writing, before the vote in the UK parliament in December, the terms on which the UK will part company with the EU are really no clearer than on the day of the Hardman event. To keep up to date, visit our Brexit hub, [icaew.com/Brexit](http://icaew.com/Brexit)

The second issue Frank identified in his editorial is – and no prizes for guessing this one – Making Tax Digital. As businesses and advisers gear up for MTD for VAT, choosing the right software will be crucial. ICAEW recently hosted MTD Live!, an event focusing on this aspect – see page 10. As MTD progresses, check our newswire and our MTD hub ([icaew.com/mtd](http://icaew.com/mtd)) for the latest information.

Also in this issue, we have the second report of highlights from our one-day conference (page 26), an article by Julie Butler on the interesting *Vigne* case on IHT business property relief (page 18) and the usual selection of topical practical points.

On page 15 is a Christmas-themed tale from Bridge the Gap, the campaign which supports TaxAid and Tax Help for Older People in their work on behalf of vulnerable and low-income people struggling with the tax system. At this time of year, appeals from good causes come thick and fast – but do please consider supporting the tax profession's very own charities.

As I sign off the final issue of 2018, I'd like to thank everyone who has been involved with producing *TAXline*: the Tax Faculty staff and volunteers, our authors and contributors, all of whom produce such high quality material. Thank you also to support staff Chrissie O'Connor and Kirsty Vassay, and to the team at our publisher, Progressive Content, who deal so efficiently with the design and production process.

Finally, I would like to thank you, our members and subscribers, for your interest in *TAXline* throughout 2018. I'm always pleased to hear from readers, so do get in touch if you have comments or suggestions. I wish you all a happy and enjoyable Christmas.

**Jane Moore**  
Editor

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Frank Haskew  
is head of the  
Tax Faculty

## Frank Haskew on recent developments at the Tax Faculty

### BUDGET 2018 AND FINANCE BILL 2018-19

Following hard on the heels of the Budget on 29 October 2018, we published our detailed analysis, which is still available by following the links on our website. My thanks are due to the Tax Faculty team for contributing to it and, in particular, to Jane Moore for editing it to her usual very high standard despite having to meet a very short timescale for publication. On 31 October Anita Monteith hosted a Budget TAXtalk, where she was joined by me and ICAEW's head of public sector, Ross Campbell. Finally, on 16 November 2018 we held our Budget and Finance Bill webinar, presented by Anita Monteith, Caroline Miskin and Sue Moore.

The Finance Bill 2018-19 and associated explanatory notes were published on 7 November 2018. The Finance Bill clocks in at 315 pages, but that does not include the legislation for the extension of IR35 to the private sector, which will be in the Finance Bill 2019-20. We welcome the fact that businesses will have until 5 April 2020 to implement the extension of the IR35 rules, but it would be helpful to see the draft legislation as soon as possible given the scale of systems changes that many businesses will need to implement. In the meantime, we would welcome members' comments on the Finance Bill clauses - please send them to Ian Young.

On the representational side of the Budget measures, the Tax Faculty once again submitted some commentary to the Treasury Committee on the main policy announcements in the Budget. This exercise takes the form of a traffic light assessment and this year many of the measures were marked amber because we await further details about them. Only one measure earned a red mark overall, the new Digital Services Tax, but extending the off-payrolling rules to the private sector also received a number of warning lights, emphasising that great caution is needed in implementing this change. We will doubtless be coming back to this in the coming months.

### CONSULTATION AND REPRESENTATIONAL WORK

During the month there were meetings of the VAT and Duties Committee, the Tax Policy and Reputation Committee and the Private Client Committee. In addition, we attended the latest meeting of HMRC's Joint Initiative Steering Group and also the Welsh Government's Tax Advisory Group.

We have raised concerns about the new rules to restrict corporate losses, in

particular that the requirement to state the new deductions allowance (and its split between different types of loss) should be made much more prominent in the guidance. HMRC has now responded to our concerns by implementing some interim measures to raise awareness and flag the new obligations.

Members of our Private Client Committee have once again been busy with colleagues in CIOT, STEP and the Law Society to produce some Q&As on areas of uncertainty in the remittance rules for non-domiciled taxpayers. The Q&As were sent to HMRC and we have now updated our earlier *TAXguide 05/18* to reflect the comments received.

### MAKING TAX DIGITAL

Tax Faculty staff participated in ICAEW's very successful Making Tax Digital (MTD) Live Expo event, joining forces with our IT Faculty colleagues and events team to highlight the range of software options on offer, from accounting packages to spreadsheet solutions and the benefits of bank feeds. Expert speakers from the software profession and HMRC were complemented by our own MTD experts Caroline Miskin and Anita Monteith. Read a report of the event on page 10.

Following the announcement of the extension of the MTD for VAT pilot to cover 600,000 businesses, we have also updated our MTD hub; don't forget to visit the software choices section for further guidance about using spreadsheets and choosing software.

### WEBINARS

Our webinar programme continues to prove a popular feature of our service offering. The webinar on IR35 and off-payroll working, a topic acquiring further importance now that the public sector rules will be extended to the private sector, was presented by renowned experts in this field and active Tax Faculty members David Kirk and Kate Upcraft. Other recent webinars looked at issues on partnership tax and on VAT. If you missed them, all recordings are available to members on our website. ●

## PUBLICATIONS

### TAX RATES AND ALLOWANCES

We have updated our tables of tax rates and allowances to reflect changes announced in the 2018 Budget. The guidance provides a summary of key UK tax rates, allowances and reliefs for 2017/18, 2018/19 and 2019/20.

We hope you find this guide useful but let us know if you think anything else should be included by emailing [taxfac@icaew.com](mailto:taxfac@icaew.com)

See [tinyurl.com/TX-TRAA](https://tinyurl.com/TX-TRAA)

### BUDGET 2018: TAX FACULTY SUMMARY

A comprehensive summary of all the announcements in the Autumn Budget 2018, compiled by the Tax Faculty team.

See [tinyurl.com/TX-TSF1](https://tinyurl.com/TX-TSF1)

### UPDATED TAXGUIDE 05/18: Q&A ON CHANGES TO THE TAXATION OF FOREIGN DOMICILIARIES

Changes to the taxation of foreign domiciliaries took effect from 6 April 2017. To supplement the HMRC guidance, a series of questions and draft suggested answers were prepared jointly by ICAEW, STEP, CIOT and the Law Society. The Q&A was sent to HMRC for comment.

We have now received some comments from HMRC on *TAXguide 05/18: the cleansing of mixed funds* and published an updated version on 17 October 2018.

The other *TAXguides* are:

- *TAXguide 06/18: rebasing and the changes to the CGT foreign capital losses election*
- *TAXguide 07/18: trust protections and other trust issues*
- *TAXguide 13/18: inheritance tax on overseas property representing UK residential property.*

We will update the *TAXguides* as and when we receive further comments from HMRC.

Available at [tinyurl.com/TX-UpTaxG](https://tinyurl.com/TX-UpTaxG)

## NEWS & EVENTS



## 2019 DATES FOR YOUR DIARY

### FLAGSHIP EVENTS

#### WYMAN DEBATE

Wednesday 19 June 2019

#### HARDMAN LECTURE

Wednesday 30 October 2019

#### TAX FACULTY ONE-DAY CONFERENCE, LONDON

Friday 5 July 2019

Chartered Accountants' Hall

#### PRACTICAL TAX CONFERENCE, SCOTLAND

Friday 4 and Saturday 5 October  
Macdonald Marine Hotel,  
North Berwick

## WEBINAR PROGRAMME

Our 2019 webinar programme will be available soon at [icaew.com/taxfacevents](https://icaew.com/taxfacevents)

In case you missed them, recordings of previous webinars are at [icaew.com/taxwebinars](https://icaew.com/taxwebinars) Recent webinars that may be of interest include:

### VAT UPDATE

Nick McChesney, partner at PKF Littlejohn LLP and chairman of the Tax Faculty's VAT and Duties Committee, gives a round-up of key issues in the world of VAT, focusing on actions that SME businesses may need to take in readiness for changes in 2019 - including, of course, Brexit.

### BUDGET SPECIAL

The Tax Faculty reflects on the Budget announcements and highlights what they will mean to you and your clients. This webinar also includes a practical overview of other measures being introduced this year by Finance (No. 3) Bill, published on 7 November.

### PARTNERSHIP TAX

The tax rules relating to partnerships were subject to a flurry of changes a few years ago, and with further tweaks introduced in Finance Act 2018.

Andrew Constable, partner at Kingston Smith LLP, provides an overview of partnership taxation and explains what the latest changes mean.

## IR35 AND OFF-PAYROLL WORKING

Employment tax experts David Kirk and Kate Upcraft provide an update on the off-payroll working rules in the public sector, highlighting the pitfalls to watch out for and the recent cases to be aware of.

### DEMYSTIFYING MTD: THE COMPLETE MTD FOR VAT RULES

Anita Monteith, Sarah Ghaffari and Caroline Miskin talk through the legislation and how the requirements will affect businesses with taxable turnover above the VAT threshold and those that may cross the threshold for the first time.

### AGENT UPDATE

Members in practice are concerned about the current lack of agent access to HMRC online services, including clients' personal and business tax accounts. How will HMRC's reassurances about the role of tax agents translate into MTD and other online services? Caroline Miskin provides an update of the latest developments.

## TAXTALK

The final TAXtalk of 2018 will be available for viewing from 12.30 on Wednesday 12 December 2018.

You can watch TAXtalk live and catch up with previous editions on our dedicated webpage at [icaew.com/taxtalk](https://icaew.com/taxtalk)

## CURRENT CONSULTATIONS

Consultations are listed on the GOV.UK website at [tinyurl.com/TX-Consults](http://tinyurl.com/TX-Consults)

### DIGITAL SERVICES TAX

The government intends to introduce a new 2% tax on the revenues of certain digital businesses with effect from April 2020. It targets large businesses deriving revenue from UK users via social media platforms, search engines and online marketplaces. It is intended as a temporary measure until an international framework is established.

**Deadline: 28 February 2019**

**Contact: Ian Young**

### AMENDMENTS TO TAX RETURNS

The government is calling for evidence on the issues taxpayers face when making an amendment to a tax return.

There are several different methods of making amendments to tax returns, which vary according to tax, value, accounting period and turnover. The government is keen to develop an amendments process that is simple and transparent. Tax records will increasingly be held and submitted digitally, and with the HMRC digital agenda there is an opportunity to modernise the amendments process.

**Deadline: 6 February 2019**

**Contact: Anita Monteith**

### THE TAXATION OF TRUSTS: A REVIEW

The government has published the long-awaited review of trusts. It is inviting views on the principles that government believes should underpin the taxation of trusts (transparency, fairness and simplicity) and on areas where these may not be fully met.

**Deadline: 30 January 2019**

**Contact: Sue Moore**

### STAMP TAXES ON SHARES CONSIDERATION RULES

Views are invited from businesses, legal firms, accountants and other interested parties on the impacts of:

- extending the market value rule introduced on Budget Day 2018 and legislated for in Finance Bill 2018-19;
- adopting the stamp duty reserve tax definition of consideration for stamp duty; and
- aligning the contingency rules, and the most practical way of doing this.

**Deadline: 30 January 2019**

**Contact: Sue Moore**

### CORPORATE CAPITAL LOSS RESTRICTION: CONSULTATION ON DELIVERY

This consultation is about the government's intention to reform the rules for the relief of corporate capital losses, announced at Budget 2018. From 1 April 2020, the proportion of annual capital gain that can be relieved by brought-forward capital losses in a company will be restricted to 50%. To ensure the measure applies only to larger companies the restriction will not apply to the first £5m of carried-forward loss.

**Deadline: 25 January 2019**

**Contact: Ian Young**

## RENEWING YOUR TAX FACULTY MEMBERSHIP

We would like to take this opportunity to thank you for your membership this year, and to remind you that you can now renew your Tax Faculty membership for 2019.

As a tax professional, you have to provide the best advice on tax legislation to your clients on a daily basis. Renewing your membership will ensure you continue to receive the faculty's suite of timely and practical resources, designed to help keep you on top tax form.

## TAX REPRESENTATIONS

Our full list of consultation responses for 2018 and earlier years can be found on our *Tax representations* webpage [tinyurl.com/TX-TaxReps](http://tinyurl.com/TX-TaxReps)

### ICAEW REP 126/18

#### HMRC powers and Making Tax Digital for VAT

Comments submitted on 1 October 2018 to the House of Lords Economic Affairs Committee Finance Bill Sub-committee in response to the call for evidence on Finance (No. 3) Bill 2017-19 published on 21 September 2018.

The committee asked what principles should underlie the design of HMRC's powers and where the balance should be struck between taxpayer and tax authority. In our view the clear set of principles developed in the Powers Review, which ran from 2005 to 2012, remain valid and should underlie the design of HMRC's powers. These include the principle that powers should be proportionate (ie, appropriate to the mischief they are seeking to address and to the taxpayers who may be subject to them). In our evidence we gave a number of examples of where HMRC is not deploying its compliance powers fairly or correctly.

In its second area of inquiry, the committee asked what key improvements have occurred, or new concerns arisen, since its report on MTD for Business in March 2017.

In our evidence we focused on MTD for VAT, and commented on the tight timetable and very limited testing of the system so far. We also cited our research which shows that many businesses are still unaware of MTD or what they have to do.

### ICAEW REP 124/18

#### Traffic Light Assessment: Autumn Budget 2018

Comments submitted on 2 November 2018 to the House of Commons Treasury Select Committee.

The Treasury Committee has six principles for tax policy: that it should be fair, support growth and competitiveness, certain (ie, legally clear, targeted and simple), stable, practical, and coherent. In preparation for the committee's evidence session with the chancellor in the immediate aftermath of each Budget, ICAEW Tax Faculty is asked to submit commentary on the policy announcements in the form of a traffic light assessment.

This year only one measure earned a red mark overall, the new digital services tax. Many measures were marked as amber, as we await further details and consultation. Extending the off-payrolling rules to the private sector was highlighted by our assessment as needing great caution. The only measures with an overall green assessment were the raising of the personal allowance and higher rate threshold and the fuel duty freeze.





# FAREWELL TO 2018, BUT WHAT OF THE FUTURE?

**Frank Haskew** looks to the year ahead

The final editorial of the year is traditionally a time for looking back over the events of the past year and making a few predictions about what might happen in the year ahead. Looking back is the easy bit; looking ahead is rather harder.

Usually we have a pretty good idea about what might be in store for the coming year but, this time around, we do not have that luxury. In fact, predicting what the future will look like, as things stand today, is probably a task reserved only for the most experienced of clairvoyants!

## **BREXIT**

Overshadowing everything is what the UK will look like post-Brexit. The trouble is that, even now, the only things we know for sure are that the UK is due to leave the EU on 29 March 2019 and that we are leaving the single market and the customs union. But we do not yet know on what terms we will be leaving or what relationship the UK will in future have with the remaining EU countries.

We are on the cusp of a once in a generation shift in the UK's position in the world, but it will probably take a generation for its consequences to

become clear. What lessons can we learn from the past to help inform what the future might look like? That is not an easy one to answer as we do not have a suitable precedent to work from. Future historians will no doubt study it with intense interest, but living through it will present numerous challenges as well as potential opportunities.

The lack of certainty makes life difficult for businesses and their advisers. The one consistent message from our members is that businesses want certainty to help them plan and grow. But how do you plan when there is so



much uncertainty and time is running short? Businesses that sell and buy from the EU need to have contingency plans in place that are sufficiently flexible to cope with a variety of possible outcomes. HMRC has estimated that 145,000 VAT-registered businesses only trade within the EU. If they continue to do so, they must (subject to any agreements to the contrary) apply customs procedures and duties to exports and imports. Businesses should plan on a worst-case basis, but we need to know soon what rates of duties will apply to imports to the UK and exports to EU countries.

### MAKING TAX DIGITAL

In a normal year all attention would be focused on the upcoming changes to Making Tax Digital (MTD). It is easy to see why: from 1 April 2019 all VAT-registered businesses will be required to submit VAT returns using functionally compatible software and also to maintain their records digitally. Out goes the old nine-box VAT return submitted through the government gateway and in comes shiny new API-enabled software that will apparently help to reduce errors and make life for businesses easier. Software providers are starting to roll out new products but many businesses will be using spreadsheets to help prepare VAT returns: how much longer will this be allowed to continue?

More problematic for many businesses will be the need to maintain records digitally. It appears that many businesses are not yet ready for this momentous change. In a survey we undertook over the summer, 42% of businesses had no awareness of the impending changes MTD will bring and about a quarter are still keeping only manual records. While not all these businesses will be required to apply the new rules, for example because they are voluntarily registered for VAT, the survey results suggest that for many VAT-registered businesses there is still a mountain to climb in order to implement MTD successfully. Our members will be at the forefront of helping them make the transition.

### OFF-PAYROLL WORKING AND CONTRACTOR LOANS

With the introduction of new off-payroll working rules for the public sector in April 2017, it was only a matter of time before these rules would be extended to those in the private sector. There was considerable political pressure to do this, given the shortcomings of the current

## The government has now made it clear that Making Tax Digital will start in April 2019 come what may

IR35 regime, so it was no surprise when the chancellor announced it in his 2018 Budget. However, it was good to see that the chancellor had listened to concerns about the timetable for extending the measure and therefore announced that it would start on 6 April 2020 rather than 2019 as many had feared.

The extra year will be welcomed by businesses that need time to make strategic decisions about the future of their off-payroll workforce and implement any necessary systems changes. This could be a tall order for many businesses, even without any other changes to contend with, but layering it on top of MTD for VAT and the tax implications of Brexit could have been too much for many.

In a further softening of the measure, the Chancellor also announced that the extension of the IR35 rules will not apply to small businesses, with a further consultation paper due shortly and draft legislation to follow in the summer of 2019. While this will be welcome news for many small businesses, it perpetuates a major fault line in the UK tax system. We desperately need a holistic view of the tax and national insurance treatment of the world of work - and whatever happened to the other recommendations in the Taylor review?

Another potential storm that could hit in April 2019 is the new charge on loans made to contractors since 6 April 1999 and still outstanding on 5 April 2019. While abuse in this area needed to be tackled, the loan charge is a potentially draconian measure that even HMRC admits may result in some contractors going bankrupt. We have seen already that this measure has great potential to backfire on HMRC, especially as it will arise at a time of great upheaval and stress within the tax system.

### HOW IS HMRC COPING?

A recurring theme of the last year or more is HMRC's capacity to operate an effective and efficient tax system. In evidence to the Public Accounts and Treasury Committees, the CEO of HMRC

Jon Thomson admitted that HMRC had the capacity to implement MTD and its own reorganisation into 13 regional offices, but it could not do these while also implementing Brexit. HMRC undertook some reprioritisation of its activities, which included deferring parts of its MTD programme, but it seems to be struggling to meet the many challenges it has been set. As Brexit and MTD activities reach a critical juncture, it looks like all hands in HMRC are manning those particular pumps, with the result that other areas of HMRC's business appear to be suffering. The Public Accounts Committee has questioned whether HMRC's targets for customer service are sufficiently stretching and, judging from our inbox, evidence from members would suggest that HMRC's basic telephone and post services have been slipping. This is disappointing and needs to be addressed if HMRC is not to be seen as part of the problem. But, if it is a truly digital organisation, why are post and telephone still the main measures by which HMRC is judged? Why do we still not have a secure email service that taxpayers and agents can use to help improve efficiency?

### LOOKING AHEAD TO ... WHAT?

So, what is likely to happen? We know that with the introduction of MTD and potentially a number of VAT and customs duty changes to contend with, April 2019 will be a watershed moment in UK tax history. It is possible that the impact of Brexit may be less dramatic in the short term, because existing arrangements will largely continue for a transitional period, but at this stage we cannot tell. Earlier this year, it looked as though MTD for VAT might be deferred if there was no Brexit deal but the government has now made it clear that MTD will start in April 2019 come what may. Whatever happens, rest assured that the Tax Faculty will be here to help and guide you through the challenges ahead.

Finally, and on a happier note, I wish all our members a Happy Christmas and New Year. Many thanks for choosing to support us over the past year and we hope to remain of service to you in 2019. ●



**Frank Haskew**, head of the Tax Faculty

# MTD LIVE!

**Sue Moore** and  
**Anita Monteith** report  
on an ICAEW event  
focusing on software  
for Making Tax Digital

MTD Live, ICAEW's first software exhibition with demonstrations, technical advice and lectures, was held on 15 October at Chartered Accountants' Hall and was voted a great success by the attendees.

The purpose of the day was to enable ICAEW, through the Tax and IT Faculties working together with various software providers, to explain what is happening on Making Tax Digital (MTD) and how to prepare for digital submission of VAT returns. At ICAEW we have been working on MTD since it was first mooted in its current form in 2016, presenting webinars and writing articles to inform, and working with HMRC to try to ensure a smooth transition next year. Our MTD hub ([icaew.com/mtd](http://icaew.com/mtd)) will take you to all the MTD content on our website including the latest webinar 'Demystifying MTD - the complete MTD for VAT rules'.

VAT-registered businesses with a turnover in excess of the threshold, currently £85,000, will have to submit their first VAT return for a period starting on or after 1 April 2019, using compatible software or an API-enabled spreadsheet. In future, accounting records must be kept digitally with the nine box totals being moved from the records to the VAT return digitally. Manual intervention will be allowed only by exception.

There were six different presentations (see below), given in the round throughout the day, allowing participants to attend every one if they so chose.

In the main hall, various software providers exhibited their wares and explained to attendees how their systems work, answering all the questions thrown at them and giving reassurance there was still time to be MTD-ready - but the clock is counting down.

## **MTD COMPLIANT SOFTWARE: THE VAT RETURN SUBMISSION**

Sage gave a presentation on the VAT return submission requirements. Just 11% of VAT-registered businesses currently use software for their VAT submission so there are a lot of businesses that have to make changes before the first digital submissions start from April 2019.

Agents need to have a plan to get their clients to the MTD goal of submitting VAT returns digitally. The suggested approach is to:

**Plan and prepare** - decide on the MTD strategy, understand HMRC proposals, review software.

**Client segmentation** - stratify according to VAT status and scheme, turnover, VAT period, bookkeeping system, client capability.

**Communication** - who and when, client communication (emails, letters, calls, webinars, visits), practice communication.

**'Onboarding'** - configuration, training, review, service plan, record and monitor.

Sage suggested agents need to become experts in order to be the first port of call for their clients.

## **CASH IS KING: USING BANK FEEDS**

Xero gave a presentation on the benefits of using bank feeds connected to your accounting software.

Bank statement lines flow seamlessly into the accounting software each day, giving up-to-date information on the cash position of the business. Research undertaken by Xero demonstrates that having a current picture of cash flow can help businesses grow more effectively.

Once the bank entries are pulled through, reconciling the bank account is like playing a game of snap. For each statement line, the software automatically searches for a match based on the date, amount and payee. If agreed, the posting is then dealt with automatically. It is also possible to set bank rules; for example, every payment to Paper & Co is to be coded as a purchase of stamps, stationery and office equipment. Again, the user has the option to accept or reject. The ability to update and process bookkeeping

daily makes the year-end process a simpler exercise.

## **MTD FOR VAT: SPREADSHEET SOLUTIONS**

When MTD was first mooted, HMRC envisaged all bookkeeping records being kept digitally with dedicated bookkeeping software but it has since accepted that spreadsheets have to be accommodated within MTD as a digital record-keeping tool.

BTCSoftware's presentation concentrated on their bridge offering, a solution that can get you from a spreadsheet to digital submission of the VAT return using BTCHub. BTCHub not only integrates with spreadsheets and BTCSoftware's other products, but also with other existing software used by you or your clients.

The spreadsheet solution enables the user to adopt the BTCSoftware template, or you can use your own template and BTCSoftware will provide the necessary macros; the nine VAT boxes are populated on the spreadsheet from the source records (Excel, Xero, Sage, VT, etc). Hitting the button on the spreadsheet takes the figures to BTCHub and the VAT return is submitted from there. This offers a perfect solution to those clients using spreadsheets, and should they choose to move onto an accounts package in the future, the chances are it can be linked to BTCHub.

## **HOW SMARTPHONE APPS CAN HELP YOUR BUSINESS**

Receipt Bank explained how more efficient data collection by clients and faster processing are revolutionising business advice. A key feature is collecting data in a more regular format.

A client buying petrol uses the Receipt Bank smartphone app to capture and upload a photo of the receipt in real time and send it straight to their accountant. No more lost receipts, storage issues (the van dashboard?) or chasing just before the VAT return is due.

The accountant receives the data at chosen intervals and publishes it to a cloud ledger which then feeds into the VAT return.

Uploads can be achieved in four different ways, from a simple photo through to a more sophisticated invoice fetch technique where the accountant connects online to a client's suppliers (eg, eBay and Amazon).

Whichever method is selected, all the information is pulled together into a





chart of accounts for that client. Xero, Sage and Quickbooks are just a few of the products that allow Receipt Bank to connect to their general ledgers.

### DIGITALISING YOUR PRACTICE AND UNLOCKING THE OPPORTUNITIES

Rebecca Benneyworth is well known for her extensive technical knowledge and entertaining lecturing skills. She is less well known as a practitioner, but latching on to the ICAEW initiative 'Tomorrow's digital practice', she is embracing the digital changes required by MTD and using this as an opportunity to develop her own practice. At the same time, she has signed up two of her adult children to join her and learn accounting and tax within the new family firm. So while Rebecca provides the technical expertise, they bring youth, energy and better IT skills (sorry Becky).

Rebecca has been transforming her clients slowly, but now has all her business clients using cloud-based software and has had surprisingly little resistance. One of her clients, her local pub, now supplies daily rather than weekly sales figures, and from that she has been able to identify an opportunity for the pub to save money by not serving food on two quieter days each week. Simple management accounting, but with more detailed and timely data, she has saved them £80 per week; very useful on a modest turnover. Similarly she identified loss-making pizza toppings at her local pizzeria, so now the price has been increased.

Currently, Rebecca relies heavily on bank feeds for each client which she says is essential. All her clients use QuickBooks for a fixed price monthly fee. She collects their paper invoices monthly and charges a £100 penalty through a

clause in her engagement letter if their invoices aren't ready for her at the month end. Formidable but working very well! She now styles her practice as 'business advisers', and she is adding value, not just number-crunching.

### HOW TO CHOOSE SOFTWARE

Mark Taylor from the IT Faculty presented a very useful session on how to choose software. He explained that how an organisation approaches the selection of MTD-compatible software will depend on its existing level of technological maturity and its business model. Whether using spreadsheet bridging software or a full accounting package, all organisations will need to consider how they will remain competitive in the future.

To help an organisation choose business software, the Business Application Software Developers Association (BASDA) has created a free guide. This can be downloaded from our MTD hub at [icaew.com/mtd](http://icaew.com/mtd)

### SUMMARY

The message from many of the exhibitors and speakers was to see MTD as an opportunity. Getting your clients MTD-ready gives you the opportunity to help them develop their business, to be an expert. Some of the tools available within the MTD packages could ultimately save you time on accounts preparation for your clients, giving the opportunity to develop more business.

We would like to thank our sponsors for this event (see below), which we hope will be repeated in other locations in the new year. ●

### SPONSORS

**BTCSoftware** [btcsoftware.co.uk](http://btcsoftware.co.uk)

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**Intuit** [quickbooks.intuit.com/uk/making-tax-digital](http://quickbooks.intuit.com/uk/making-tax-digital)

**Receipt Bank** [receipt-bank.com/](http://receipt-bank.com/)

**Sage** [sage.com/en-gb/cp/accountants](http://sage.com/en-gb/cp/accountants)

**Xero** [xero.com/uk](http://xero.com/uk)

**Sue Moore and Anita Monteith are technical managers at the Tax Faculty. Sue deals with private client matters and Anita is tax policy lead**

# BREXIT AND BUSINESS

The 2018 Hardman lecture reported by **Ian Young**



The 2018 Tax Faculty Hardman Lecture was given by Jill Rutter, programme director at the Institute for Government and in charge of its Brexit work.

The lecture and dinner that follows honour the memory of Philip Hardman, a founder member of the Tax Faculty and a leading light in the tax world, who died in 1993.

This year's 26th Hardman event was on 15 November and was, as usual, well attended. The invited audience in Chartered Accountants' Hall included Tax Faculty and ICAEW members and volunteers, others from across the tax profession, and representatives of government. The event was chaired by Mary Monfries, chairman of the Tax Faculty.

The Hardman Lecture this year took place the day after the UK government published the 585-page EU Withdrawal

Agreement and the seven-page outline of the Political Declaration. That morning, the Brexit secretary, Dominic Raab, resigned and the political process was plunged into chaos. At the time of the event we were looking ahead to a meeting of EU leaders on Sunday 25 November to agree to the terms of the agreement and set the course for the future relationship between the UK and the EU.

In this febrile and turbulent atmosphere, Jill sought to provide some clarity on where we have got to, the processes involved and the potential implications for business. This report covers the main themes she discussed.

## **WHY HAVE THE BREXIT PROCESS AND NEGOTIATIONS BEEN SO DIFFICULT?**

Negotiations of this complexity, involving a potential trade agreement, would

normally take as long as 10 years. In this case the Article 50 arrangements allow only a two-year period unless everyone agrees to a longer period: this has been the basis for the extended implementation period to the end of 2020 rather than the end of March 2019, two years after the UK government triggered the Article 50 process in March 2017.

Most partnership negotiations are about closer arrangements, whereas in this case it has been about separation but with minimum disruption to commercial relations.

The UK cabinet has been a mix of remainers and leavers. The prime minister, Theresa May, was a remainder during the course of the referendum campaign in 2016 and became an over compensatory leaver as prime minister to ensure that she could be seen as clearly reflecting the will of the people to leave, as evidenced by the referendum vote of 23 June 2016.



The British have less experience of the workings of Europe in recent times. For instance, the Conservatives withdrew from the main European Parliamentary grouping, the European People's Party, in 2009. The UK did not have enough familiarity with the ways of Europe and the people with whom it was negotiating.

A sensible interpretation of the Brexit decision is that it was a decision to put politics, or at least other issues such as identity, community sovereignty and control, above prosperity and the economic good of the country as a whole.

It is very difficult for the civil service to work out how to deal with such a challenge. There is also a huge challenge for representative government and representative democracy when both government and parliament are required to implement a policy that most of them did not support. They have to accept that they gave the people a choice and they have to reflect that choice in the policies and the decisions that they seek to put in place and implement. But for most of government and parliament, Brexit is an exercise in damage limitation.

### CAKE AND EAT IT

The impossible conundrum has been how to deliver the “benefits of Brexit” while at the same time retaining the benefits of EU membership. There has been a refusal by both main political parties to confront the choice and the trade-offs. It was not going to be possible to enjoy the benefits of the single market and the customs union without the obligations, not least freedom of movement of people.

### HOW WE GOT HERE AND WHAT COMES NEXT

Jill gave a recap on how we had got to the current situation.

In the Conservative manifesto prior to the 2015 general election there had been a commitment to renegotiate some of the main terms of UK's engagement with Europe and then put the improved terms to the UK public in a referendum.

**They have to accept that they gave people a choice and they have to reflect that choice in the policies and decisions they seek to put in place**



The latter was in theory advisory for the government but in practice it has been treated, and spoken about, as the will of the people. Article 50 was triggered in March 2017, which allows for only a two-year period of negotiation including the negotiation of a withdrawal agreement and a framework for the future relationship. The triggering of Article 50 had massive support in parliament after the Supreme Court case decided that the government could not decide on its own. Once Article 50 was triggered the EU had effective control of the process.

### WHERE IS BUSINESS IN THIS?

A key question for government is when to call off ‘no deal’ preparations. The government has published a number of papers on the consequences of no deal, and Jill noted that they assume quite a lot of cooperation from the EU in future.

One thing that parliamentarians are agreed on is that a no deal outcome would be disastrous for the UK. But the public discussions around the time of the Hardman suggested that the withdrawal agreement negotiated by the prime minister lacked support in many quarters and the absence of an acceptable approach to Brexit could conceivably lead to a no deal outcome.

On the evening before Hardman, the prime minister seemed to have succeeded in getting her cabinet on board but the next day there were a number of ministerial resignations, including the Brexit secretary. The prime minister still has to organise a meaningful vote in parliament in favour of the withdrawal agreement and there are a number of difficulties, including the continuing role for the Court of Justice of the European Union and supremacy of EU law in relation to EU matters.

Jill Rutter and Mary Monfries



It is unclear how long the UK will remain in the customs union and how much of the EU rule book the UK will have to follow as the price for remaining in that union. How much of the single market regulations will the UK have to follow?

#### WHAT MIGHT BE DIFFERENT POST-BREXIT?

Clearly the amount of flexibility available to the UK will depend on the terms of the future relationship with the EU, which is far from clear at the moment. There will be the potential to do things differently in policy areas no longer constrained by the EU, such as agriculture. There may be more flexibility on regulation and standards, as well as on VAT, which has hitherto needed to be consistent with the EU directives (though in Northern Ireland, VAT and customs duties will depend on the exit terms).

Brexit has highlighted a number of issues, such as real divergence between different parts of the UK, and the issue of stability in domestic policy-making: EU policies are fairly enduring, but UK governments tend to chop and change.

We are still waiting for a migration white paper, promised over a year ago. It has traditionally been easier to import cheap labour than to train and enhance skills but much of the cheap imported labour is in parts of the economy that do not need much greater skills. Jill did say that one part of the pro-Brexit critique which resonates is that firms have found it easier to import labour than invest. There could also be a more serious effort at regional rebalancing.

#### TAKING BACK CONTROL

Jill thought that taking back control in areas like fishing, farming and trade policy might turn out to be more difficult

**Brexit has highlighted a number of issues, such as real divergence between different parts of the UK, and the issue of stability in domestic policy-making**

than some people have imagined. If we are to maintain our international influence we are going to have to be smarter diplomatically. An analogy is the independence of the United States at the end of the 18th century when the US had some extremely talented people to make a success of their own version of taking back control. She ended by quoting the rather pertinent lyrics from the current West End show *Hamilton*:

“What comes next?  
You’ve been freed.  
Do you know how hard it is to lead?  
You’re on your own.  
Awesome. Wow.  
Do you have a clue what happens now?”

#### QUESTIONS AND ANSWERS

Jill was asked about the possibility of a second referendum. In response she said that the Electoral Commission had told her organisation it would take 22 weeks to run a good referendum and there would be considerable disagreement on the questions to be asked as well as the franchise for the electorate; should the age limit be reduced to include 16- and 17-year-olds?

In answering other questions, Jill said the UK had badly misread Europe in these negotiations. The EU has many more problems on its plate than just Brexit, including migration, the Italian Budget, Greece and the domestic political pressures in each jurisdiction. ●



**Ian Young,**  
international  
tax manager,  
Tax Faculty



# IT'S A WONDERFUL LIFE...

**Julie Cameron** explores the hurdles facing unrepresented taxpayers who appeal against HMRC decisions



One thing I always look forward to at Christmas is closing the curtains against the dark, settling down in front of the fire with a glass of wine and a bowl of peanuts and watching my favourite Christmas film. There are plenty to choose from and the list gets longer every year. I believe the Frank Capra classic with Jimmy Stewart, *It's a Wonderful Life*, usually comes out top. But for me, it's always *Miracle on 34th Street*, in which Kris Kringle is forced into proving he is who he says he is to the satisfaction of the judge in a New York law court.

Engaging with the legal system is a daunting prospect for anyone, but taxpayers who appeal against an HMRC decision are doing just that, although they might not consciously realise it at first. Joe had become enmeshed in the appeals system when he called on TaxAid. At the time, he had a debt of £38,000 to HMRC following an unsuccessful appeal to the First-tier Tribunal. Joe had made an application to the Upper Tribunal and had also applied to set aside a charging order on his home. Court dates were pending when he was put in touch with the tax charity.

You might think that Joe was a very recalcitrant taxpayer for his arrears to mount up to such a sum, but no - he had submitted his tax returns on time for many years, filing them himself as he could not afford professional help. However, one year he didn't understand his tax calculation so he didn't pay the tax. At first Joe wasn't completely in ostrich mode; he tried to get help from HMRC but he could not understand its explanation. His response was to stop submitting returns, as a sort of protest: he believed the tax bill was HMRC's mistake and he wasn't getting replies to his correspondence. Or when he did, he couldn't understand them.

## GUARDIAN ANGEL

With this view firmly in his mind, Joe disputed the liability, which is how he came to be before the tribunal. The TaxAid volunteer revisited the tax issue under legislation of which Joe was unaware, recalculating the tax bill and reducing it to just £7,000. TaxAid also helped him understand how this tax bill had arisen. The charity's actions also meant there was no need to appeal to the Upper Tribunal.

With a reduction of £31,000, Joe felt like Christmas had come early. But he still could not afford the remaining £7,000, so he accepted a charge on his home. He realised that ignoring HMRC would not make it go away, but remains confident enough to complete his returns unassisted.

Joe's attitude is often seen in TaxAid's clients and I have heard it in many quarters. There is a widely held view that HMRC will be in touch "if they think I owe anything". I try to suppress my shudder when I hear this view, not least because I know that tax law is complicated and difficult to understand but because the onus is very much on the individual to get it right.

For those who have the means, there are plenty of professional advisers on hand to assist when tax goes wrong. But for Joe and others lacking tax knowledge and the means to pay for help, life is pretty bleak when HMRC presents a debt they can't understand or afford. For them, the tax charities TaxAid and Tax Help for Older People must seem like Jimmy Stewart's guardian angel. And they must be as happy as Jimmy was at the end of that film, once the charities help them get it right. ●

## ADVICE CHANGES LIVES

Throughout the year, TaxAid and Tax Help for Older People provide essential tax advice to vulnerable people like Joe - people who critically need professional help but can't afford to pay for it.

This Christmas, join our many supporters in the tax profession.

**Donate now and help deliver this vital service.**

We need:

- 1,000 supporters to give £100 a year (that's just £8.50 a month)
  - 100 supporters to give £1,000 a year
- Will you become one of the 1,000 (or one of the 100) and join our many supporters in the tax profession?

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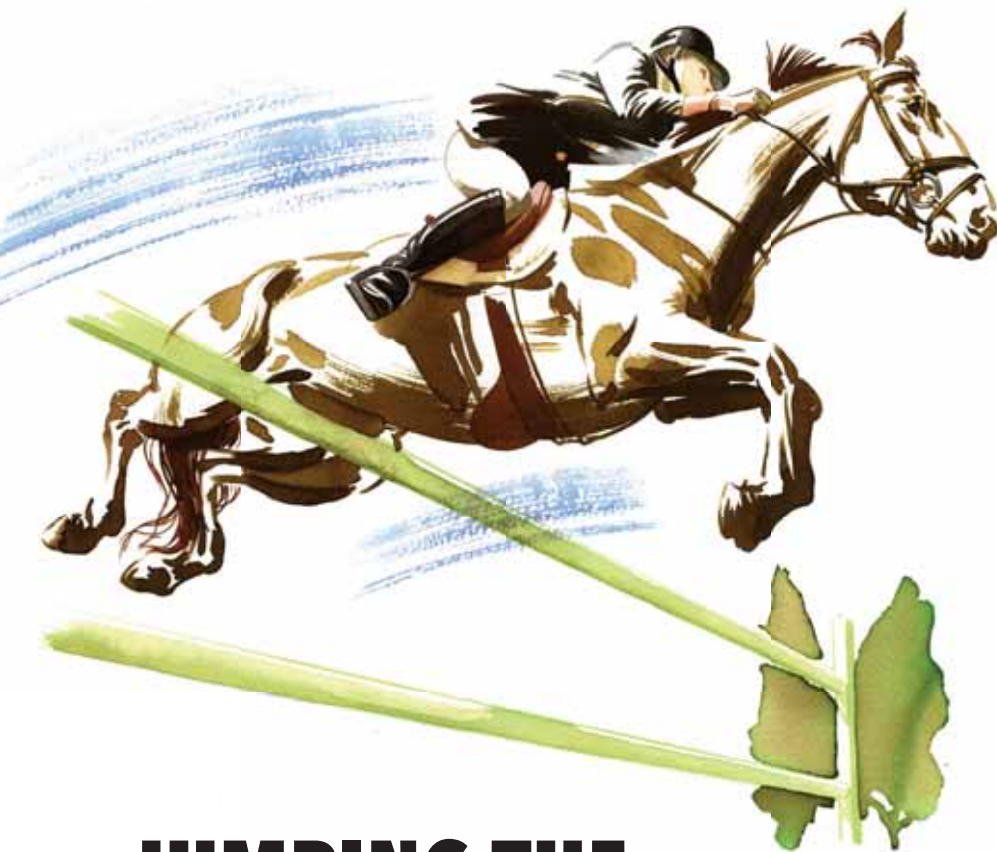


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## JUMPING THE INVISIBLE LINE

**Julie Butler** considers the *Vigne* case on business property relief

The successful result for the taxpayer at the Upper Tribunal (UT) in the *Vigne* case has highlighted that detailed preparation and careful presentation of a compelling case can be very positive in achieving business property relief (BPR) for inheritance tax (IHT).

The case of *HMRC v The Personal Representative of Maureen Vigne (Deceased)* [2018] UKUT 0357 turned on whether a livery stables was a business (thus qualifying for BPR) or consisted “wholly or mainly of ... making or holding investments” (s105(3), Inheritance Tax Act 1984).

HMRC was of the view that Mrs Vigne’s livery business was nothing more than the letting or licensing of land for the use of others and was therefore an investment business. However, the taxpayer had convinced the First-tier Tribunal (FTT) that no properly informed observer could have concluded that the livery business was wholly or mainly a business of holding

investments. The UT confirmed that the correct test had been applied to the case by the FTT and emphasised that HMRC’s view – that there was a presumption that land constituted an investment unless it was proved otherwise – was incorrect. The open-minded starting point advocated by the FTT in its decision was held to be correct. In addition, the intention of the business owner was deemed to be useful as an indicator where cases fall within the grey area on the spectrum of holding investments or qualifying for BPR.

The *Vigne* case follows swiftly after the case of *The Personal Representative of Grace Joyce Graham (Deceased) v HMRC* [2018] UKFTT 306 (TC), which involved the letting of holiday accommodation and the provision of a multitude of well-documented services, and both cases give some guidance regarding a thorough approach to recording the evidence of the work undertaken. In *Graham* the FTT stated that the provision of “the sauna, the pool, the bikes and especially the

personal care bestowed to the guests by Louise Graham” distinguished it from a second home let out in the holidays.

The UT in *Vigne* confirmed that the provision of enhanced livery, or ‘DIY plus’ as it has been termed, services to clients was enough for BPR to be applied. It is interesting to note that the UT had no position to overturn the FTT’s decision unless the UT could be satisfied that the FTT had either:

- not applied the correct test; or
- reached a decision that was incorrect on the consideration of the facts of the case and the tax law.

For HMRC to win on the correct test point, the UT would have had to find that the FTT had misdirected itself as to what the law is. The UT found that the tax law is clear and the understanding that HMRC argued for – that there is a presumption that any property-based business is one of managing an investment – could not be agreed.

Many advisers to farmers who are diversifying and to the equine industry see this UT decision as a real positive, but in order to achieve the relief it is key for the taxpayer to provide the services and evidence such work.

The case brought focus as to the nature of the extra services, as well as the intention of the business owner or landowner. However, many argue that the decision has not made satisfying the BPR test of s105(3), IHTA 1984 any clearer. There is a spectrum of land exploitation with clear investment and clear trade at either end, and this is referred to by the tribunals. In both *Vigne* and *Graham* the business owners have jumped over the ‘investment line’ successfully as a result of the hard work of both providing the services and the dedication in presenting this to the tribunals.

The short-term advice to protect BPR in grey or marginal areas on property-based businesses appears to be to increase the services and their quality, and record such work clearly and in detail. In the medium-term we can only hope that the line between running a business that qualifies for BPR and the mere holding of an investment is made clearer by HMRC. ●



**Julie Butler, of Butler & Co, is a practitioner and author specialising in farming and equine tax**



# PRACTICAL POINTS

## GENERAL

**219.** Engagement letters: updated ICAEW helpsheet

## AGENTS AND HMRC

**220.** HMRC trial of podcasts

**221.** Using webchat with HMRC

## DIGITAL MATTERS

**222.** MTD for VAT pilot now open for most businesses

**223.** Overseas agents and MTD for VAT

## PERSONAL TAX

**224.** Reworked 2016/17 self assessment calculations

**225.** Deemed domiciliaries and tax return filing

**226.** Refund of HICBC penalties

## PENSIONS

**227.** Auto-enrolment: some current issues

**228.** Pension schemes for employees who do not pay tax

## BUSINESS TAX

**229.** FTT finds that a 'gift' is a payment for shares

## CGT

**230.** Reeves relieved: anomalies on gifting to a company

## IHT

**231.** Probate fees to increase

## TRUSTS

**232.** Deemed domicile trust protections: no correction to the law

## VAT

**233.** Flat rate scheme: is it still beneficial?

## APPEALS AND TRIBUNALS

**234.** Third party information notice applications to be made privately

## INTERNATIONAL

**235.** OECD: Latest on exchange of information

Tips and reminders, short technical notes and news of recent developments in tax. Contributions to this section from readers are always welcome: [taxline@icaew.com](mailto:taxline@icaew.com)

## GENERAL



### **219. ENGAGEMENT LETTERS: UPDATED ICAEW HELPSHEET**

ICAEW has updated its engagement letters helpsheet ([tinyurl.com/TX-EngagementLetters](https://tinyurl.com/TX-EngagementLetters)). The helpsheet provides guidance for practice firms on what to include in engagement letters for clients, together with sample wordings. The latest changes are particularly relevant to tax services.

The helpsheet has been issued by ICAEW's Technical Advisory Service. It explains the importance of considering the various areas of the relationship between advisers and their clients, and issuing engagement letters with a view to safeguarding against potential risks. While a member is not obliged to use an engagement letter, we strongly

recommend that members do so.

To help members put appropriate terms of engagement in place, the guidance provides a series of sample wordings for a variety of typical engagements for both corporate and non-corporate clients. The helpsheet brings together more typical engagements to encourage a consistency of approach when dealing with engagement letters and to help members manage associated risk.

The helpsheet provides best practice guidance. Given that the type of service provided and the nature of the client will vary from engagement to engagement, professional judgement should be used in applying this helpsheet, and the sample wording for engagement letters needs to be tailored to reflect individual situations. The helpsheet is not intended to provide comprehensive advice for the

preparation of engagement letters and you should refer to additional sources of information where appropriate, including legal advice if necessary.

There is a tracked-changes version of the helpsheet (see the link about halfway down the engagement letter webpage) to make it easier for members to see the changes that have been made in the latest update.

For the most part the changes are minor or relate to optional text that may not be applicable to all. The more significant changes are in the tax schedules of work:

- Part 2F (Trusts and estates tax);
- Part 2I (Corporation tax); and
- Part 4 (Terms of business).

New schedules Part 2N (Unprompted tax disclosures) and Part 2Q (Probate and related services) have also been added.

Members can direct any queries and comments to ICAEW Technical Advisory Service on 01908 248250 (select option 2) or [TechnicalEnquiries@icaew.com](mailto:TechnicalEnquiries@icaew.com)

## AGENTS AND HMRC



### 220. HMRC TRIAL OF PODCASTS

HMRC is trialling the use of podcasts and has produced an initial set of three covering the following topics:

- Making Tax Digital;
- payroll submissions; and
- tax relief for landlords: replacement of domestic items.

The podcasts are available at [tinyurl.com/TX-HMRCpodcasts](http://tinyurl.com/TX-HMRCpodcasts)

Feedback on the podcasts can be sent to [team.agentengagement@hmrc.gsi.gov.uk](mailto:team.agentengagement@hmrc.gsi.gov.uk)

The Tax Faculty is also interested in receiving feedback; please email [Caroline Miskin](mailto:Caroline Miskin).

**Contributed by Caroline Miskin**

### 221. USING WEBCHAT WITH HMRC

Agents may not be familiar with the option of using HMRC's webchat service. A webchat service is available from some of the HMRC contact us pages. For example, the link to the VAT webchat is at [tinyurl.com/TX-VATwebchat](http://tinyurl.com/TX-VATwebchat)

My firm has successfully used webchat and we are pleased to share the following overview.

If the service is too busy, a message saying "all webchat advisers are busy at the moment" is displayed. Otherwise, there is a link on the page that takes you

to a dialogue box to start the chat. If there is a queue of people, a countdown of the number of people ahead of you is displayed in the bottom left corner. This means you can leave the page open and carry on with something else until an agent is available. Also, the wait is never long. I think the longest I have had to wait is 10 minutes and that is very rare.

The query can either be specific to a client or a general query. If it is a general query, HMRC will often provide links to technical material such as VAT notices to back up what it is saying, which is very helpful.

If it is a client-specific query, the HMRC officer will ask the usual security questions. You will need to provide the client's name, address and VAT registration number, for example. HMRC will also ask for agent information (business name, address, VAT registration number and often the government gateway agent ID).

The Tax Faculty has confirmed with HMRC that webchat messages are encrypted and so can be used for unique tax reference numbers and other client-identifying information. If agent authorisation is not in place, HMRC will not discuss any client specific information.

The webchat service has been successfully used by us for various issues. For example, HMRC initiated a payment trace when a client's payment had not been correctly allocated to their VAT account. The service has also been helpful in situations where the client is locked out of their account, or we have needed to have the two-stage verification removed.

The service can also be used to obtain updates regarding UK VAT registrations, although this is for UK businesses only. If you are trying to find out the status of a non-established taxable person (NETP) registration they will not be able to help but will provide you the telephone number.

An advantage of the service is that you have the option to save or print the transcript so you can refer to it at a later date. However, it still has the same fault as telephoning HMRC, in that you can be told one thing by one agent and then go back on and ask the same question of another agent and receive a different answer!

**Contributed by Christine Turner, Turner & Co, a member of the Practitioner Tax Committee**

## DIGITAL MATTERS



### 222. MTD FOR VAT PILOT NOW OPEN FOR MOST BUSINESSES

The Making Tax Digital (MTD) for VAT pilot, which has so far been running on a small scale, moved into its public beta phase on 16 October 2018. This significant milestone means any business that meets the eligibility criteria and has acquired MTD-compliant software can now join the pilot. HMRC has also announced a deferral of six months to the start date for some more complex businesses.

From 1 April 2019, VAT-registered businesses that have turnover above the £85,000 VAT registration threshold will need to submit their VAT returns to HMRC using software or an API-enabled spreadsheet. Approximately 600,000 of the 1.1 million businesses to which this applies are now eligible to join the pilot. The eligibility criteria are expected to be relaxed as the pilot progresses, but HMRC has yet to release a timetable for these businesses.

There are certain businesses and organisations that still cannot join the pilot. These are any that:

- are a trust or charity;
- are part of a VAT group or VAT division;
- trade with the EU;
- are based overseas;
- are a partnership;
- submit annual returns;
- make VAT payments on account;
- use the VAT flat rate scheme;
- are a business that is newly registered for VAT and has not yet used its VAT online account to submit its VAT return; and
- have incurred a default surcharge in the last 24 months.

Also, businesses that pay their VAT by direct debit cannot sign up in the 15 days leading up to the submission date.

A six-month deferral from 1 April 2019 will apply to around 3.5% of businesses that fall into one of the following categories:

- trusts;
- 'not for profit' organisations that are not companies (this includes some charities);
- VAT divisions and VAT groups;
- public sector entities that are required to provide additional information alongside their VAT return (such as government



- departments and NHS trusts);
  - local authorities and public corporations;
  - traders based overseas;
  - those required to make payments on account; and
  - annual accounting scheme users.
- These groups will be mandated to use MTD from 1 October 2019.

Businesses can sign up to the pilot from the gov.uk page *Use software to submit your VAT returns* ([tinyurl.com/TX-VATsoftware](https://tinyurl.com/TX-VATsoftware)). Agents can sign their clients up to the pilot from the page *Agents: use software to submit VAT returns* ([tinyurl.com/TX-Agents-VATsoftware](https://tinyurl.com/TX-Agents-VATsoftware)). Businesses should not be signed up until they are ready to file future VAT returns using functional compatible software.

We have updated our MTD hub [icaew.com/mtd](https://icaew.com/mtd) for this latest development.

## 223. OVERSEAS AGENTS AND MTD FOR VAT

Are you an overseas agent with UK-based clients that will be in (MTD) for VAT from April 2019? If so, the Tax Faculty would like to hear from you.

Having an agent services account is a prerequisite for providing MTD for VAT services to clients, including signing clients up to MTD for VAT and submitting returns using MTD-compatible software. Overseas agents, however, will not be able to set up their agent services account until early 2019. The precise date is still to be confirmed but it does mean that overseas agents will have a very limited period in which to test the system before the April 2019 start date.

The start date for mandatory MTD for VAT reporting has been extended to October 2019 for overseas businesses (see point 232). This allows more time for overseas agents acting for non-UK businesses – but some overseas agents may act for UK-based clients with a start date of April 2019.

We would like to establish how many agents will find themselves in this position: if you are affected please contact Caroline Miskin.

**Contributed by Caroline Miskin**

## PERSONAL TAX



### 224. REWORKED 2016/17 SELF ASSESSMENT CALCULATIONS

In November, HMRC issued some revised self assessment (SA) calculations (forms SA302) for 2016/17.

HMRC has reviewed approximately 30,000 2016/17 SA calculations where there is a risk that the tax liability has not been correctly calculated. These are cases where an exclusion from online filing applied but the return was nevertheless filed online (HMRC's own SA software and some commercial packages allowed returns to be filed online where an exclusion applied).

HMRC expects that the original calculation of the tax liability for 2016/17 will be incorrect in approximately half of the 30,000 cases it is reviewing. Where additional tax is due, the due date is 28 days from the date of the revised assessment and interest and late payment penalties will not apply if the tax is settled within this period.

It is important to note that any future amendments to tax returns in these cases must be submitted on paper and not online.

SA302s are no longer routinely copied to agents. The Tax Faculty and other professional bodies have made representations that agents should be copied in in these circumstances, as the reworking is down to the inadequacy of HMRC systems and we are disappointed that HMRC has not, at this stage, responded positively to these representations.

**Contributed by Caroline Miskin**

### 225. DEEMED DOMICILIARIES AND TAX RETURN FILING

Past briefings in *TAXline* have discussed the changes made by Sch 8, Finance (No. 2) Act 2017 (F(No. 2)A 2017) to the taxation of foreign domiciliaries. This practical point focuses on some compliance issues arising from the deemed domicile provisions.

To recap, effective from 6 April 2017:

1. Anyone born in the UK with a UK domicile of origin, defined as a 'formerly domiciled resident' (FDR) who is UK-resident in a tax year is deemed domiciled in the UK for all tax purposes (subject to a period of grace for IHT if the individual was not UK resident in either of the preceding two tax years).
2. A long-term resident – one who has

been UK-resident in at least 15 of the immediately preceding 20 tax years – is deemed domiciled for all tax purposes. Provided they are not also FDRs such individuals may be able to benefit from reliefs, transitional provisions and offshore trust protections.

It might be thought that the above means that deemed domiciled individuals are automatically subject to tax on the arising basis and do not have to complete the Residence, remittance basis etc tax return supplementary pages. This is not correct as the following situations show.

First, a foreign domiciliary who is deemed domiciled under the new rules and has less than £2,000 of unremitted foreign income and gains in a tax year will still qualify for automatic access to the remittance basis under s809D, Income Tax Act 2007 without loss of allowances or liability to the remittance basis charge (keeping this provision in place was an entirely pragmatic decision on the part of the government since the tax at stake is relatively small compared to the cost of collection). If being taxed on the remittance basis is not advantageous, the individual will need to opt out for the tax year.

Second, the preparation of the tax return may be influenced by one of the reliefs or transitional provisions, so that while the individual is being taxed on the arising basis for the tax year, their foreign domicile status is relevant to how their tax return is prepared.

For example:

- rebasing relief (Part 3, Sch 8, F(No 2)A 2017) may be relevant for foreign domiciled clients who first become deemed domiciled in 2017/18; and
- the trust protection legislation (Part 2, Sch 8, F(No. 2)A 2017) impacts on all foreign domiciled settlors of non-UK resident trusts – and so also on foreign domiciliaries who are not deemed domiciled but have opted to not make the remittance basis claim for the year.

In such circumstances an X should be put in box 23 of the Residence, remittance basis etc supplementary pages and the rest of the relevant questions then answered. Where box 23 is the only box that requires completion, the software may not allow it to be marked. In such cases, make appropriate disclosure about the taxpayer's common law foreign domicile status in the white space of the main tax return.

**Contributed by Lynnette Bober, Rawlinson & Hunter**

## 226. REFUND OF HICBC PENALTIES

HMRC is to review cases where penalties were charged for failing to notify a liability to the high income child benefit charge (HICBC) for the tax years 2013/14, 2014/15 and 2015/16.

Alongside this, HMRC is writing to taxpayers who may be liable to the HICBC for 2016/17 and/or 2017/18.

HMRC is proactively reviewing the penalties charged for 2013/14 to 2015/16 where the following circumstances apply:

- the claim for child benefit was made before the HICBC was introduced in January 2013;
- one partner's income subsequently increased to over £50,000 in or after the 2013/2014 tax year; and
- the individual liable to the charge received no communications from HMRC about HICBC or claiming child benefit after the charge was introduced.

It is unusual and very welcome that HMRC has accepted that ignorance of the law can provide grounds for reasonable excuse. From the outset, the tax profession has made strong representations that the charge was not the best way to achieve the policy objective. Given the complexity, particularly the fact that the individual liable to the charge may not be related to the children concerned and is liable only because they are the partner of a parent of the children, it does seem reasonable that HMRC should waive the failure to notify penalties.

The refunds are to be made automatically. It is not necessary for taxpayers or agents to contact HMRC though they may wish to do so after a reasonable interval if no refund is forthcoming.

Having made this concession, HMRC is likely to take a hard line for 2016/17 and subsequent tax years and it is advisable for taxpayers and advisers to check whether they may be liable to the charge. HMRC provides a calculator for this purpose at [gov.uk/child-benefit-tax-calculator](http://gov.uk/child-benefit-tax-calculator)

**Contributed by Caroline Miskin**

## PENSIONS



### 227. AUTO-ENROLMENT: SOME CURRENT ISSUES

The auto-enrolment (AE) minimum contribution is currently 5% of qualifying earnings, of which at least 2% must be paid by the employer. In April 2019 this rises again to 8% of qualifying earnings of which at least 3% must be paid by the employer, as shown in the table.

Date	Employer minimum contribution
6 April 2018 to 5 April 2019	2%
6 April 2019 onwards	3%

Date	Employee minimum contribution
6 April 2018 to 5 April 2019	3%
6 April 2019 onwards	5%

Employers should be aware of some potential upcoming issues in relation to AE and the April changes:

- 6 April 2019 is a Saturday so some people will have their payday brought forward to Friday 5 April. The RTI full payment submission (FPS) must still be dated 6 April, and as AE pension contributions go up with effect from 6 April, the FPS must incorporate the increase.

For many weekly payrolls Friday 5 April is week 53, but for these schemes AE pension contributions do not go up until the following week.

- Opting down, ie, where employees continue to contribute to their pension schemes but opt to pay smaller contributions, is likely to become more prevalent owing to forthcoming increases in rates.
- Several of the 80-plus pension scheme master trusts are unlikely to be able to meet registration requirements in October 2019 as their inadequate size will render them unviable. A few have already been wound up and around 30 have decided not to apply for authorisation and are being wound up. Employers will need to ensure that affected employees are transferred to replacement qualifying pension schemes.

**Contributed by Peter Bickley**

## 228. PENSION SCHEMES FOR EMPLOYEES WHO DO NOT PAY TAX

We suggest that non-taxpayer employees should be enrolled in AE pension schemes that accept contributions paid under the relief at source (RAS) scheme, rather than net pay arrangements (NPA).

Under RAS, employees have a net contribution (80%) deducted from their take-home pay and the pension scheme recovers the basic rate tax relief (20%) from HMRC.

Where contributions are made under NPA, gross pension contributions are deducted from gross pay. Non-taxpayers do not get tax relief on their pension contributions as pension schemes funded via NPA do not receive the top-up equivalent to basic rate tax that HMRC pays to pension schemes that are funded by RAS contributions.

NOW Pensions only accepts contributions under NPA, but we would note that NOW Pensions has for some years of its own volition topped up non-taxpayer contributors' pension funds. For 2017/18, NOW Pensions has said that taxpayers who have total earned income of less than £11,500 per annum may be eligible to receive a top-up. A form is being made available – see [tinyurl.com/TX-NOWPensions](http://tinyurl.com/TX-NOWPensions)

However, AE contribution rates are increasing from 6 April 2019, which may make NOW Pensions question the viability of future top-ups.

For employees who pay tax, the distinction between NPA and RAS is less important. Employees who are higher or additional rate taxpayers and in a scheme operating RAS can claim tax relief at higher and additional rates from HMRC, normally through their annual SA tax return.

Under NPA, as noted above, income tax is calculated on gross pay as reduced by the gross pension contribution. This means that, for employees who do pay tax, full tax relief at all rates is automatically deducted in the payroll, so no income tax is paid on the money being contributed to a pension.

For further information on tax relief, especially in relation to low earners, see ICAEW's helpsheet on selecting a workplace pension scheme at [tinyurl.com/TX-Auto-PensionSchemeHelpsheet](http://tinyurl.com/TX-Auto-PensionSchemeHelpsheet)

**Contributed by Peter Bickley**



## BUSINESS TAX

**229. FTT FINDS THAT A 'GIFT' IS A PAYMENT FOR SHARES**

In *Kieran Looney & Associates (Partnership) and Kieran Looney v HMRC* TC06770, the First-tier Tribunal (FTT) examined three receipts and the nature and owner of each. Where there was a contract, the terms of the contract were held to supersede the individual's own understanding. In the absence of written evidence, the balance of probabilities was also found to outweigh the individual's claims.

Mr Looney operated a leadership training business, which received £3m of income from a client under a contract for services and £1m for the early termination of the contract. He claimed that the contract was between the client and his company, but the client mistakenly paid the funds into the bank account of Mr Looney's partnership. He further claimed that the £1m payment was payment for the continued use of intellectual property that was made net of tax. He therefore believed it was a non-taxable capital receipt. HMRC contended that both sums belonged to his partnership and that the early termination payment was a taxable revenue receipt.

HMRC examined the contract and found that the parties to it were the client and the partnership. There was no evidence that the contract had been novated to the UK company, so the income from the services was taxable on the partners. Furthermore, the nature of the early termination payment should be determined by looking to the wording of the contract. Mr Looney's understanding of the payment could not alter the clear meaning of the contractual terms. Since the contract stated that the payment was compensation for early termination it was a taxable revenue receipt belonging to the partnership.

The early termination of the contract had been the subject of litigation by Mr Looney, funded by what he claimed was a gift of \$5m from a close friend. HMRC argued that the sum was not a gift, but was payment in exchange for shares in a company holding land in the Caribbean. The FTT considered the abnormality of such a large gift and the lack of written evidence. It found that, on the balance of probabilities, there

had been a sale of shares. Mr Looney argued that the sale was eligible for entrepreneurs' relief on the basis that the holding company operated a property development trade. The claim was denied because none of the conditions for the relief were met.

**From the weekly Tax update published by Smith & Williamson LLP**

## CGT

**230. REEVES RELIEVED: ANOMALIES ON GIFTING TO A COMPANY**

Imagine that you are a UK-resident self-employed trader. You want to incorporate your business. You do this by gifting the business assets to a UK company in which you hold 100% of the shares. You know that in such a case there is a special 'holdover' relief that defers recognition of any capital gain that would otherwise arise.

We wager that you would be more than a bit surprised to be told that you aren't entitled to claim the relief because your half-brother (whom you have never actually met) emigrated to Australia in 1991. Yet that was the interpretation that HMRC sought to put upon the law in the recent case of *Reeves v HMRC* [2018] UKUT 293 (TC).

The problem is that the law provides that the holdover relief in question is not available if the company to which you are transferring the business is controlled by a non-resident person who is connected with you. Add to that the facts that (a) the definition of 'connected' is wide enough to include half-siblings and (b) any company that you control is treated as controlled by any associate of yours (which term also includes half-siblings), and you can see how the law appears to lead to this bizarre outcome.

But why on earth was HMRC seeking to defend such a manifestly absurd result? Indeed, given the enthusiasm with which HMRC argues for a purposive construction in tax avoidance cases, how did it have the chutzpah to contend in this case for a construction that cannot possibly have accorded with parliament's intention? For that we must look a little more deeply at the facts of the case.

Mr Reeves was not in fact resident in the UK. Nor were his wife and family.

But he was a member of a limited liability partnership (LLP) that carried on business in the UK. He would thus (despite his non-resident status) have been liable to UK capital gains tax (CGT) on any gain made on disposing of his interest in the LLP. So, he did what many people in his position have done: he incorporated the business by transferring it to a company that he controlled. Any subsequent disposal of the shares would then be free of CGT.

In truth, HMRC's real objection was that it thought that holdover relief ought not to be available because Mr Reeves was himself non-resident. Indeed, HMRC's primary contention before the Upper Tribunal (UT) was that the law should be interpreted in that way. But, if its primary contention were to be rejected (as it was), HMRC sought in the alternative to assert that the non-resident status of Mrs Reeves meant that the company was controlled by a non-resident connected with Mr Reeves, and thus to deny relief 'by the back door'. The obvious weakness in that argument was that if the law was to be interpreted in that way, not only would it deny relief to Mr Reeves, it would also deny relief in the situation outlined at the start of this point. It's troubling that HMRC didn't appear to see that as a problem; it is as though it was so focused on winning the case that the obvious collateral damage in the consequential denial of relief in other cases didn't count for anything.

In the event, the tribunal held that the legislation could not have been intended to mean what it appeared to mean: it was absurd to suppose that parliament had intended relief to be denied where the connected party had no personal interest in the company.

How the law should be interpreted was less clear. The tribunal settled for deciding that, in the context of holdover relief, attribution could be made to an associate only if the associate held some personal interest (however small) in the company. Neither Mrs Reeves nor any other non-resident associate of Mr Reeves held any such interest, so the company was not to be treated as controlled by a non-resident and the relief was available.

The decision cannot be regarded as entirely satisfactory; it is almost as absurd to suppose that I am to be denied relief if my non-resident associate has a 1% holding in the company as it is if the associate has no

interest at all. But, as the tribunal put it, the line has to be drawn somewhere. Perhaps on appeal a higher court will find a better solution.

**By David Whiscombe, writing in Brass Tax, published by Berg Kaprow Lewis LLP**

## IHT



### 231. PROBATE FEES TO INCREASE

On 5 November and quite out of the blue, the junior Justice Minister Lucy Fraser announced that a new statutory instrument had been laid before parliament to implement a new banded structure of fees for a grant of probate.

The government proposed in 2016 that probate fees should be linked to the size of the estate. The proposals came in for criticism from ICAEW and others, and were not taken further at the time, not least because a general election was in the offing.

Now the revised fee structure is back on the agenda. Although the new fees are lower than those proposed in 2017, they still represent a considerable increase on the current fees of £155 (if the probate application is made by a solicitor) or £215 (if by an individual) on estates valued at over £5,000.

The new fee structure will be based on the value of the estate as follows:

Estate value	Proposed fee
Up to £50,000	£0
>£50,000 < £300,000	£250
>£300,000 < £500,000	£750
>£500,000 < £1m	£2,500
>£1m < £1.6m	£4,000
>£1.6m < £2m	£5,000
>£2m	£6,000

The government has said the new fees will come into effect in April 2019 and are necessary to support the Courts and Tribunal Service as a whole. But the fact that the proposed increase was not announced in the Budget has led to accusations that the government is trying to bring this in by the back door and that the new fees are a tax on the bereaved.

## TRUSTS



### 232. DEEMED DOMICILE TRUST PROTECTIONS: NO CORRECTION TO THE LAW

The government has decided not to amend the legislation affecting non-UK domiciliaries (non-doms) and offshore trusts. This relates to a particular aspect of the 'trust protections' introduced when the domicile rules changed in 2017.

From April 2017 non-doms who have been in the UK for 15 out of the last 20 years are treated as deemed domiciled in the UK for all taxes. As part of this change to the tax status of non-doms the government introduced trust protections to ensure that income and gains in trusts set up before the individual became deemed domiciled would not be taxed if they were retained in the trust and the individual was not born in the UK with a UK domicile of origin.

There seemed to ICAEW and other professional bodies to be a defect in the legislation in that offshore income gains are not included in the protections. The defect means that offshore income gains (that is, gains realised on the disposal of non-reporting funds) do not qualify for trust protection and will, therefore, be taxable regardless whether or not they are retained in the trust.

This is contrary to the stated government policy that: "Non-doms who have set up an offshore trust before they become deemed domiciled here under the 15-year rule will not be taxed on trust income and gains that are retained in the trust ..."

We requested information from offshore trustees regarding the preponderance of non-reporting funds in offshore trusts that now fall to be within the protected trusts regime as the settlor has become deemed domiciled since 6 April 2017. We presented the information from the survey to HMRC in the hope that changes would be announced in the Autumn Budget – but there is to be no change.

HMRC has given us this statement: "A decision has been made not to amend the current legislation to include income arising in offshore non-reporting funds in the foreign trust exemptions at this time.

"The current demands placed on parliamentary resource make it difficult

for the government to justify returning to the legislation at this time to add to the generous package of protections which the government has already legislated for in the extensive reform of the non-dom rules last year.

"Going forward, HMRC will continue to monitor this situation and engage with stakeholders."

As such, currently there will be no changes made to the legislation with effect for 2017/18 or 2018/19.

**Contributed by Sue Moore**

## VAT



### 233. FLAT RATE SCHEME: IS IT STILL BENEFICIAL?

The VAT flat rate scheme (FRS) for small businesses is a simplification scheme which allows VAT-registered traders to work out the VAT which they pay over to HMRC by applying a fixed percentage to their gross (VAT-inclusive) turnover. The percentage used to work out the VAT due depends on the sector in which the business operates. The scheme removes the need to keep detailed records of purchases as it is not necessary to record input VAT separately – relief for input VAT is built into the flat rate percentage used to calculate VAT.

The question of whether the FRS remains appropriate is particularly relevant where the client is a 'limited cost business'. Since 1 April 2017, a flat rate percentage of 16.5% has applied to such businesses. A business is a limited cost business if the amount spent on 'relevant goods' is either:

- less than 2% of the client's VAT flat rate turnover; or
- greater than 2% of the client's flat rate turnover but less than £1,000 a year (£250 per quarter).

However, in applying the test, not all expenses and purchases are taken into account – only those falling within the definition of relevant goods, which excludes:

- vehicle costs, including fuel (unless the business is operating in the transport sector using their own vehicle or a leased vehicle);
- food and drink for the client or the client's staff;
- capital expenditure goods of any value;
- goods for resale, leasing or letting or



hiring where this is not the main business activity;

- goods that the client intends to re-sell or hire out, unless selling or hiring is the main business activity;
- goods for disposal as promotional items, gifts or donations;
- any services.

The problem is that a flat rate percentage of 16.5% is equivalent to 19.8% of net turnover, meaning that a limited cost business pays over virtually all the VAT that it charges to HMRC, with little relief for input VAT incurred. If the client incurs significant input tax on goods and services that are outside the definition of relevant goods, they may be better off leaving the FRS and working out VAT in the usual way. There is no substitute for doing the sums.

Where a client is within the FRS, the existing relaxations on record-keeping are replicated under MTD for VAT, and clients using the FRS will not need to keep a digital record of purchases unless they relate to capital expenditure on which VAT can be reclaimed (ie, capital items costing more than £2,000 including VAT) or are purchases of relevant goods used to determine whether the business is a limited cost business.

**From the weekly newsletter of the Tax Advice Network**

## APPEALS AND TRIBUNALS



### 234. THIRD PARTY INFORMATION NOTICE APPLICATIONS TO BE MADE PRIVATELY

The FTT has refused an application for the taxpayer to have the right to participate in an application for a third party information notice by HMRC (*Mr E and Others v HMRC* [2018] TC06754).

The FTT considered whether or not an application by HMRC for approval of a third party information notice could be held *inter partes*. This means that the taxpayer would be notified of the time, date and location of the hearing, have the right to make representations at the hearing, and the right to hear and to respond to representations made by the other party. The FTT determined that it does not have the power to allow such an application to be made *inter partes*.

A third party information notice is used by HMRC to request information

about a taxpayer from a third party. HMRC must apply for approval from the FTT to do so, unless the taxpayer consents to the notice being sent. The purpose of a third party notice would be defeated, reasoned the judge, if all the evidence held by HMRC was disclosed to the taxpayer. This is a particular concern where the taxpayer has acted fraudulently. The taxpayer should not be allowed to know if HMRC is relying upon the evidence of a confidential informant or what the evidence is; this would enable the taxpayer to frustrate or delay the investigation. Furthermore, the taxpayer does not need to know whether or not a confidential informant has been relied on. The evidence of such an informant is unverified and is merely the basis of opening an investigation; it is not relied on for the outcome of the enquiry.

A taxpayer has the right to be informed that a HMRC is applying for approval for a third party information notice, unless HMRC also successfully applies for the taxpayer to be kept uninformed. A taxpayer may also make representations in relation to the application, which HMRC is bound to present to the Tribunal. Outside of these rights, a taxpayer may only request judicial review of the application. The application was therefore dismissed.

**From the weekly Tax update published by Smith & Williamson LLP**

## INTERNATIONAL



### 235. OECD: LATEST ON EXCHANGE OF INFORMATION

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes held its 11th annual meeting from 20 to 22 November in Uruguay. A statement of outcomes is at [tinyurl.com/TX-ForumOutcomes](http://tinyurl.com/TX-ForumOutcomes)

Global Forum members took stock of the tremendous progress made in the implementation of the standard of automatic exchange of information (AEOI) with 4,500 successful bilateral exchanges by 86 jurisdictions having taken place under the new standard in 2018. Each exchange contains detailed information about the financial accounts each jurisdiction's taxpayers hold abroad. Such widespread exchange was also facilitated by the use of the Common Transmission System managed by the Global Forum.

Following its review of the legal frameworks, the Global Forum will move to assessing the effectiveness of the AEOI standard in practice. To this end members adopted detailed terms of reference for such reviews and a work plan to further develop, test and refine its approach to conducting the reviews, which will commence in 2020.

The Global Forum also published a further 22 jurisdiction reviews this year in relation to the exchange of information on request (EOIR), which has only increased in relevance with the move to AEOI and transparency initiatives in relation to base erosion and profit shifting (BEPS) (read the reviews at [tinyurl.com/TX-TransparencyReviews](http://tinyurl.com/TX-TransparencyReviews)).

In other developments, Global Forum members commended the technical assistance work carried out to support jurisdictions in implementing the standards effectively.

The Global Forum delegates also welcomed the Punta del Este Declaration, which sets up a Latin American initiative to maximise the effective use of the information exchanged under the international tax transparency standards in order to tackle not only tax evasion, but also corruption and other financial crimes.

**Contributed by Ian Young**



# THE ICAEW TAX FACULTY CONFERENCE 2018

The second report from this year's event

This year's one-day Tax Faculty conference took place on 28 September in Chartered Accountants' Hall, with the theme of 'Deconstructing tax'.

Chaired by Tax Faculty chairman Mary Monfries and Frank Haskew, the event had a line-up of well-known speakers on a wide range of topics. Exhibitors and sponsors included Catax, who presented a breakfast session, professional insurance experts Bluefin, BTC Software, CABA and Lloyds Bank.

This is the second article highlighting some points likely to be of interest to members. The first article appeared in November's issue.



**UNDERSTANDING TAX RELIEF:  
R&D AND PATENT BOX**  
**Nigel Holmes**  
Catax

Catax is well known as a capital allowances expert, but it also specialises in research and development (R&D), tax reliefs and patent box. This was the subject of the breakfast session at the conference.

## R&D TAX RELIEF

Recent figures from HMRC show that 43,000 companies have claimed R&D tax relief, of which around 34,000 are SMEs. However, it is estimated that around 200,000 may be able to claim. Part of the reason for the low take-up are some misconceptions about R&D relief - businesses (and their advisers) may not realise their activities are eligible. Some useful points to note are:

- The definition of R&D is wider than many people realise. It can apply to creating or developing processes as well as products.
- As well as developing new products or processes, improvements to existing ones can also qualify; for example, devising a change to improve an existing manufacturing process. However, the development has to be new to the relevant industry sector,



rather than new just to one particular business.

- The R&D activity does not have to be successful - expenditure on failed projects can qualify.
- Qualifying expenditure includes staff and subcontractor costs, materials consumed, software and associated costs of heating, lighting and water.

With regard to materials, note that they qualify if used in the project - for example, in building a prototype - but not if they are later re-used for something else.

If the business is receiving a grant, it may still be possible to claim some R&D relief. However, the 130% enhanced relief for SMEs is not available for any expenditure on a project which benefits from state aid (claim the R&D expenditure credit (RDEC) instead) or for expenditure which is funded by other grants and subsidies (claim RDEC for the funded element of the project and the SME enhanced relief for the rest). However, note that R&D tax relief may be worth more than a grant, so businesses should first do a cost/benefit analysis rather than automatically claiming any available grants.

Claims have to be made within 24 months of the relevant accounting period. It is advisable to accompany the claim with a detailed R&D report to minimise the risk of HMRC starting an enquiry. It is possible to revise a claim if further qualifying expenditure comes to light within the time limit.

Nigel ran through a number of case studies as illustration. In a brewing business, areas of R&D included a bespoke water treatment facility, analysis of the local environment regarding water supplies, a process for testing pH levels, and enhancing the knowledge of key staff members. Catax's work identified £89,000 of additional qualifying R&D costs, with a benefit to the client of £24,400.

The drinks industry is a fruitful source of new claims at the moment, with many microbreweries and distilleries developing new products, flavours and processes. Other qualifying activities include integrating non-standard brewing ingredients (such as fruit or yogurt) or novel hop types and yeast strains into the brewing process, and developing new e-commerce methods.

## PATENT BOX

Patent box is another relief which is vastly underused due to lack of awareness or understanding. The term 'box' may itself add to the misconceptions.

The relief provides a reduced effective rate of corporation tax of 10% for any companies making an income from patents. The relief was phased in from 1 April 2013 and the full benefit of the patent box has been available from 1 April 2017.

Relief is not compulsory; a company must elect into the patent box regime and care is needed with this if there are potential patent box losses.

Some companies claiming R&D tax relief could also benefit from the patent box, which is one reason to consider applying for patents. Relief is given in the year the patent is granted, but is also available for years when the patent was pending following an application.

There are qualifying criteria for both the patent and the patent income. There is a multi-stage process for calculating the patent profits and then a formula for calculating the tax benefits, both of which are less than straightforward - perhaps another factor putting off potential claimants.

Catax is an ICAEW member rewards partner. For more details of the benefits this scheme provides, see [tinyurl.com/TX-MemberRewards](http://tinyurl.com/TX-MemberRewards)



## HMRC ENQUIRIES

**John Cassidy**

**Crowe Clark Whitehill LLP**

John Cassidy is an investigations expert and deputy chairman of the Tax Faculty's Enquiries and Appeals Committee. He spoke about myths and recent developments in the field of HMRC enquiries, illustrated by cases from his own experience.

## CHECK THE DATES

This is not a new point but, when HMRC starts an enquiry, it is vital to check what date the opening letter was received. This is the date when notice is given - it is not the date of the letter itself. We are still finding that HMRC is opening enquiries out of time. The date of receipt of a notice in the ordinary course of post is given by the Interpretation Act 1978 and assumes second-class post takes four working days.

This is relevant not just to enquiries but also to claims and elections. John has seen three different examples in the space of a week where HMRC said the claim was received late and thus was invalid.

## INFORMATION REQUESTS

HMRC often argues that Sch 36, Finance Act (FA) 2008 allows it to ask for anything that is reasonably required (para 1) to check a tax position, which includes an enquiry or investigation of any kind (para 58) and past, present and future liabilities (para 64). However, information notices under this legislation are not open-

ended. They are restricted by the type of check that is being undertaken (para 21). For example, they cannot be used to reopen a closed tax year unless the discovery rules apply, which means there must be a genuine suspicion of discovery before the information notice is issued, not as a result of the information gathered (in other words, the information notice cannot be used for a fishing expedition).

Recently we have seen HMRC issue what purport



to be information requests under the Data Protection Act. However, the data protection rules prescribe what information an agent is permitted to hand over; they are not another enquiry power forcing data to be handed over. The agent is not compelled to provide the information just because the data protection rules allow it, but should, as always, consider if HMRC is acting within its powers and procedures to open an enquiry or request information.

### VISITS TO BUSINESS PREMISES

HMRC can visit business premises and inspect those premises, business assets and business documents (para 10, Sch 36, FA 2008). But it cannot:

- Force entry into premises. The taxpayer has the right to refuse entry and this cannot be overridden. However, is it a good idea to refuse entry? For an unexpected visit it may be; but for a visit that has been pre-arranged following correct procedures, it may not be helpful to annoy the HMRC officer.
- Conduct a search.
- Interview the owner of the business or its staff.
- Oblige a business to 'cash up'. HMRC has no power to require a person to cash up at any time during the inspection. However, the officer may observe the cashing up process when it takes place.

The power of inspection does not allow a search for assets or documents. 'Inspect' means to look at what you can see but not look for something you cannot see. John said a broad rule of thumb is that "inspect is by eye and search is by hand". So, inspecting means HMRC is allowed to touch and to open things as long as it is not searching for things. HMRC officers are instructed to, wherever possible, ask the person to open items for them to inspect the contents. A tip is to make sure visitors are escorted once they have entered the premises.



### PRACTICAL POINTS Tax Faculty Team

In this year's conference we introduced a new session, in which members of the Tax Faculty team provided nuggets of useful information from their various areas of expertise and also took questions.

One particular area of interest was the agent services account (ASA). As HMRC rolls out new digital services to agents, including MTD for VAT and income tax services, access is via the ASA, a new portal to provide services for agents. An early step that agents need to take to prepare for MTD is to sign up for an agent services account.

Guidance is available at [tinyurl.com/TX-ASA-Guide](https://tinyurl.com/TX-ASA-Guide) and the link to set up the account is [tinyurl.com/TX-ASA](https://tinyurl.com/TX-ASA)

At present the ASA provides access to MTD for VAT and the trust registration service (TRS), and a few other minor systems.

Some hints and tips on setting up an ASA:

- Each firm can have only one account. The account is linked to the UTR of the firm (income tax self assessment UTR for sole practitioners, partnership UTR for partnerships and corporation tax UTR for those trading as limited companies).
- The process involves setting up a new Government Gateway user ID. Don't confuse these details with existing Government Gateway IDs.
- A new Agent Reference Number is allocated during the process.
- Existing Government Gateway IDs will remain in use for existing services.
- Consider the best email address to use - choose one with some permanence.
- If you get an error message the most likely reason is a mismatch between the postcode and the UTR caused by HMRC user error when the account was set up; contact HMRC.
- It is a good idea to print or save copies of the information sent back to you as you go through each stage of the ASA set-up process.

Given that there is just one log-in for the ASA, one question was whether firms will have to share the log-in details with all members of staff. The answer is that there will be an access control facility, to be managed via the software for MTD for VAT or another relevant system. The ASA does not display client lists, with concern about confidentiality one reason for this.

At the same time, clients should be encouraged to access their business tax accounts. Unless they are digitally excluded, businesses within MTD will be required to use their business tax account to carry out certain transactions. Agents should check that all clients in scope for MTD for VAT from April 2019 have access to their business tax account. The first step is to set up a Government Gateway ID, remembering to register as an organisation rather than an individual (even the self-employed need to register as an organisation). ●

**The power of inspection does not allow a search for assets or documents. 'Inspect' means to look at what you can see but not look for something you cannot see**



**Jane Moore,**  
TAXline editor  
and technical  
manager,  
Tax Faculty



# DEADLINES AND DATES

## 12 DECEMBER 2018

**Scottish Budget:** the draft Scottish Budget 2019-20 will be published.

## 15 DECEMBER 2018

**US tax:** last possible deadline for US expatriates to file 2017 US tax returns if they have obtained a filing extension.

## 29 DECEMBER 2018

**Compliance:** last possible date to make a disclosure under the requirement to correct rules and avoid the failure to correct penalties if, on or before 30 September 2018, you notified HMRC of your intention to disclose. The time limit is 90 days from the date HMRC acknowledges the notification.

## 30 DECEMBER 2018

**ITSA:** deadline for filing a 2017/18 tax return online in order for HMRC to collect any balancing payment (excluding class 2 NIC) via the 2019/20 tax code if the amount owed is less than £3,000. The taxpayer can opt out and pay the balance directly instead.

## 31 DECEMBER 2018

**CTSA:** returns for accounting periods ended 31 December 2017 should reach HMRC.

**Company accounts:** private companies with 31 March 2018 year-ends and public companies with 30 June 2018 year-ends should file their accounts with Companies House.

**VAT:** transitional rules allowing cost-sharing groups to ignore certain non-qualifying supplies for VAT cost-sharing exemption purposes cease on 31 December 2018.

## 1 JANUARY 2019

**VAT:** changes to the VAT treatment of vouchers come into force. The new rules apply to vouchers issued on or after 1 January 2019 and distinguish between single-purpose vouchers and multi-purpose vouchers, with VAT due and payable

at different points in the supply-chain depending on the type of voucher and underlying supply.

**VAT:** two changes to the operation of the VAT mini one-stop-shop for supplies of digital services take effect from 1 January 2019.

**Company tax:** IFRS 16, the new lease accounting standard, comes into force.

## 31 JANUARY 2019

**ITSA:** self assessment filing and payment deadlines:

- Filing deadline for 2017/18 personal, partnership and trust returns filed online, or for paper returns which cannot be filed online.
- Paper 2017/18 SA returns not filed by 31 October 2018 will incur £10 daily penalties if they do not file by today. File electronically to avoid a penalty.
- Balancing payment for 2017/18 and first payment on account for 2018/19.
- Deadline to amend a 2016/17 tax return.
- Deadline to file an outstanding 2016/17 return to avoid a tax-geared penalty.
- Deadline to file an outstanding 2014/15 return to displace a determination.

**Claims and elections:** 31 January 2019 is the deadline for numerous ITSA claims and elections, for tax years 2012/13 to 2017/18.

**Business tax:** for entities within the IR35 rules, deadline to make corrections to the 2017/18 employer return and pay outstanding PAYE and class 1 NIC to qualify for the concession under which penalties will not be charged for failing to make final returns by the normal due date.

**Business tax:** deadline to elect to disapply incorporation relief.

**NIC:** deadline to notify liability for class 2 NIC where self-employment began in 2017/18, to avoid a penalty.

**NIC:** last day for claiming a repayment of class 2 NIC for 2017/18 on grounds that earnings



were below the exemption limit.

**Tax credits:** last day to renew tax credits for 2018/19 (if the 31 July 2018 deadline was missed and the claimant can show good cause) or to provide final income figures for 2017/18 (if renewal was done by 31 July 2018 using an estimate).

**Trusts:** deadline to register UK-connected trusts with a tax liability in 2017/18 on HMRC's Trust Registration Service (TRS).

**Trusts:** deadline for trusts already registered on the TRS to provide details of changes in 2017/18. The TRS cannot currently be updated online and so details of changes must be sent in writing this year.

**CTSA:** returns for accounting periods ended 31 January 2018 should reach HMRC.

**Company accounts:** private companies with 30 April 2018 year-ends and public companies with 31 July 2018 year-ends should file their accounts at Companies House.

## 1 FEBRUARY 2019

**ITSA:** penalty charged where 2017/18 self assessment tax return was not filed on time and was issued before 1 November 2018.

**ITSA:** third late payment penalty due of 5% of any 2016/17 income tax and capital gains tax due on 31 January 2018 and remaining unpaid on this date.

## 14 FEBRUARY 2019

**NIC:** last day HMRC will accept an application to defer class 1 NIC for 2018/19. Applications made after that date and before 6 April 2018 will only be considered by HMRC with the agreement of the employer(s).

## 28 FEBRUARY 2019

**CTSA:** returns for accounting periods ended 28 February 2018 should reach HMRC.

**Company accounts:** private companies with 31 May 2018 year-ends and public companies with 31 August 2018 year-ends should file their accounts at Companies House. ●

# FROM THE FACULTIES

Keep up to date with what is going on in our selection of other faculty magazines

## HANDLE WITH CARE

### Corporate Financier

As banks rein in lending to SMEs, different funding options have become available to companies looking to expand. But looser terms have prompted warnings there may be trouble ahead.

The past two years have seen a boom in global M&A, with \$1.94trn of deals announced across 8,560 transactions in the first half of 2018 – the highest value recorded since the financial crisis, according to Mergermarket findings.

Persistent low interest rates are at the heart of this drive for expansion. Yield-seeking investors have pushed into asset classes such as private equity and private credit strategies. There is clearly a lot of liquidity in the system and debt funds have boomed as banks reduced their exposure to SME lending.

The Corporate Finance Faculty launched a new guideline – *Debt for Deals* – in conjunction with Clydesdale and Yorkshire Bank to help businesses navigate the complex debt landscape.

"Companies have never had so many options when it comes to

funding growth," said David Hayers, head of growth finance at CYBG.

"The weight of equity to be invested is driving appetite for deals and also contributing to increasing prices. That, in turn, is encouraging sellers. Added to this is the strong availability of debt coming from both banks and funds."

Valuations have reached their highest levels for 30 years, according to the *Intralinks Deal Flow Predictor*. The effect of this is clear. In 2012, European leveraged buy-outs were funded with a 55:45 ratio of equity to debt. By 2017 that ratio reversed, according to PwC. This increased leverage has prompted warnings that risk is building up in the system.

And it may not be long before we see how much risk some lenders have taken on, with a number of businesses facing financial difficulty, including House of Fraser. The next 18 to 24 months are likely to be something of a test for a debt market that has changed almost beyond recognition.

Visit [icaew.com/cff](http://icaew.com/cff)

## LEARNING FROM FAILURE

### FS Focus

George Bernard Shaw famously said: "England and America are two countries separated by a common language." The new European Insurance and Occupational Pensions Authority (EIOPA) report, *Failures and near misses in insurance*, could probably qualify for a similar quote if judged against the lexicon used in the world of risk management.

We tend to view a failure and a near miss from the viewpoint of an operational incident – something that needs to be rectified and should result in a process being improved. But in the language of EIOPA and its associated regulatory bodies, the reference here is to something far more catastrophic – the failure of a whole insurance business.

EIOPA has examined the data provided by national supervisory authorities on 180 such incidents over the past 20 years, backed up by previous analyses. It provides some insightful results.

Faculty page at [icaew.com/fsf](http://icaew.com/fsf)

## STRIKING THE RIGHT BALANCE

### Business & Management

Corporate governance has been in the headlines more in the past few years than at any point since the introduction of the UK Corporate Governance Code. Recent scandals – the collapse of Carillion and BHS, the lawsuit against Tesla's Elon Musk owing to his tweets, the treatment of Sports Direct's workers and even the 2008 financial crash – can be distilled down into a failure of corporate governance.

We still live in the slipstream of the financial crash and there remains a general, if misguided, mistrust in business that pervades public opinion. More of an art than a science, good corporate governance could mitigate such mistrust and provide an environment in which business can be celebrated as enterprising and operating within society, rather than being somehow isolated and immune from social considerations.

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## STAY AHEAD WITH ICAEW THOUGHT LEADERSHIP

ICAEW is required by its Royal Charter to advance the theory and practice of accountancy in all its aspects. One way we do this is through papers published in our ICAEW Thought Leadership series. Some papers are more practical in nature and aimed at helping members do their work, others consider how law and standards might develop for the future professional.



### ***Business and economic crime in an international context***

#### **CONDUCTING BUSINESS WITHOUT BORDERS**

When discussing business crime internationally, ambiguities and complexities inevitably arise between jurisdictions. The paper discusses possible types of business crime and diffuses some of the more difficult interpretational points, with the aim of promoting good law and consistently good business conduct.

[icaew.com/businessandeconomiccrime](https://icaew.com/businessandeconomiccrime)



### ***Acting in the public interest: a framework for analysis***

#### **ASSESSING AND CHALLENGING AN OVER-USED CONCEPT**

The concept of the public interest is used to justify many actions and inactions, but usually with little explanation. The paper establishes a framework to help policy setters and others focus on the appropriate meaning in specific circumstances, and to challenge the term's use as a smokescreen.

[icaew.com/publicinterestframework](https://icaew.com/publicinterestframework)



### ***Real integrity – Practical solutions for organisations seeking to promote and encourage integrity***

#### **BUILDING A FRAMEWORK FOR INTEGRITY**

Integrity is a much talked about but little understood feature of organisations and the individuals they employ. What is the desired culture of integrity and what techniques really work to ensure behaviour is in line with the ideals?

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