Vol 22, no 1 – February 2016

Schmidt *Tax* Report

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NEWS

Tax experts fall foul of HMRC

The investment management group Smith & Williamson has lost an upper-tier tax tribunal case in an argument over goodwill payments the firm made to a number of its employees. Smith & Williamson claimed the payments were capital in nature; HMRC and the courts decided they were income. The relevant payments were actually made in 2006.

Bolton Wanderers can play on

The High Court has given the Bolton Wanderers football club until 22nd February to either find a new owner or raise sufficient short-term funds from asset sales in order to start making payments on debts owed to HMRC and other creditors.

HMRC withdraws 2,000 accelerated payment notices

HMRC has admitted it incorrectly issued 2,000 accelerated payment notices (APNs) to taxpayers who participated in the Montpelier *IR35* Manx Partnership and has been forced to withdraw them. APNs force taxpayers to settle their disputed tax within 90 days and there is no right of appeal.

HMRC closes case against HSBC

HSBC is unlikely to face prosecution over allegations that its Swiss bank assisted wealthy clients to evade tax, and HMRC has now completed its investigations. Dame Lin Homer, the outgoing boss of HMRC, advised the Public Accounts Committee that the data had been reviewed but there was no base for criminal action. The story first emerged in 2008 when HSBC whistle-blower Hervé Falciani stole data from the bank's Geneva office and attempted to contact HMRC by email.

Accountants criticise HMRC

Nine out of 10 members of the Institute of Chartered Accountants in England and Wales (ICAEW) believe that HMRC's service standards have either remained the same or deteriorated, according to research from the institute. The number who believed services had deteriorated increased from 34 to 43% in the last year.

Belgium must collect €700m

A Belgian tax scheme that enabled multinational companies to save 90% of their tax bills has been described as illegal by the European Commission and the Belgian Government has been ordered to recoup €700m. "Belgium has given a select number of multinationals substantial tax advantages that break EU state aid rules," said Margrethe Vestager, the EU's competition chief. "It distorts competition on the merits by putting smaller competitors who are not multinational on an unequal footing."

Exit Homer

Lin Homer, HMRC's CEO, has resigned and will stand down in April.

Rising cost of tax breaks

HMRC claims that the cost of UK tax breaks has risen by 13% to £117bn, with the main cause attributed to the exemption of properties from CGT. In the last four years, VAT relief for housebuilders has increased from £7.5bn to £11.4bn and entrepreneurs' relief has swollen from £2bn to £3bn.

Contractors cough up £154m

HMRC's pursuit of self-employed workers in the construction industry raised £154.2m in 2015 compared to £131m in 2014.

Netflix in the line of fire

The Sunday Times has claimed that Netflix pays no tax on UK profits because all sales in the country are made through Netflix International BV, which is based in Luxembourg. However, despite having around 65 million worldwide subscribers, the cost to

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Netflix of gaining licences for third-party content was $7.7bn (£5.2bn), approximately 4.6 times its revenue.

HMRC launches digital service
HMRC has launched its new personal online tax accounts system that will eventually replace annual tax returns and will be adopted by millions of individuals and businesses. A number of issues regarding the new 'user-friendly' system have arisen, including getting the nation's 30 million taxpayers connected to the Internet.

HMRC targets High Street accountants
HMRC is sending small, High Street accountants aggressive letters advising them they are suspected of being involved with tax avoidance and that their own personal tax affairs may be investigated as a result. According to the legal firm RPC, the letters offer no evidence in support, or referring to specific clients.

Editorial

Looking for relief

As the end of the tax year rapidly approaches, you, in common with the majority of taxpayers, may be looking for a little relief. A couple of obvious options to consider are an Enterprise Investment Scheme (EIS) or a Seed Enterprise Investment Scheme (SEIS). The benefits are straightforward. With an EIS, you will initially get 30% income tax relief (meaning your actual net cash outlay is 70p in the pound) and any future gains will be tax-free. Moreover, if you roll a gain from some other investment into an EIS you can also defer capital gains tax (CGT) indefinitely. And, if things go wrong, your EIS investment will qualify for loss relief, meaning your maximum exposure is 38.5p in the pound (assuming you are a 45% income tax payer). Finally, of course, your investment can be passed on free of inheritance tax, saving you, potentially, an additional 40p in the pound. The situation for the SEIS is almost identical, with only a few small differences. The initial income tax relief is 50%, your maximum loss (assuming you are a 45% income tax payer) is just 27.5p in the pound and if you roll an existing gain into an SEIS you avoid CGT on the amount completely.

What of the downside? EISs and SEISs do carry above-normal risk, but a couple of scheme operators have done much to increase the chances for profit. Examples of lower-risk investments include:

- Rockpool, a London-based manager that structures schemes to help people obtain tax reliefs and has funded several new crematoria.
- Enterprise Investment Partners offers a range of funds, in particular, it has a bar and restaurant fund (called 'Imbiba') that purchases stakes in new hostelries and a self-storage fund.
- Triple Point's 'Generations' scheme is involved in the business of leasing out assets to local authorities and NHS Trusts (everything from refuse collection vans to MRI scanners). Investors benefit from 100% business property relief after a minimum of two years.
- Stellar Asset Management (also mentioned in 'The Alternative Investor' column) invests in forests, farms and other sectors, such as budget hotels.
- Octopus Investors has an EIS investment vehicle reminiscent of the BBC's *Dragons' Den*.

If you are tempted by any of the above, do consider the management fees. Generally, there is a 3% upfront load and an annual charge of 0.5%.

Where the ice is thin

After a string of court victories, HMRC has invited film finance partnerships to settle their long-running tax disputes. This makes sense both for HMRC – each court case uses up valuable resources and takes time – and for investors, who by now (this has all been going on since 2009) must surely crave greater certainty in their financial affairs.

Film finance partnerships were, essentially, ways to inflate losses in order to maximise tax reliefs. One might have assumed that their wholesale failure would have stopped taxpayers from straying where the ice was thin. However, at a recent tax-planning seminar I attended in London, fellow delegates were asked to describe dubious avoidance and/or outright evasion schemes that had been proposed to them by their private clients. The examples given demonstrate the ingenuity and creativity of British taxpayers, as the following clearly shows:

- A client owned various items of plant and equipment (apparently left over from a precious venture) together with a couple of portable buildings. He had the items and the buildings valued – supposedly by someone independent – at £116,000 and then swapped them for shares in a new business. Apparently, he expected the business to fail within a year (apparently the client had the power of divination) at which point he intended to claim a £116,000 loss on his tax return.

- A client had already bought shares in a listed mining company (on an exchange where shares could only be sold on a matched basis) for a relatively negligible sum (£20,000). On the back of rumours (!) the share price had risen quickly. When the shares had hit £180,000, the client gave the stock to a charity and claimed tax relief at the market value. The share price subsequently collapsed as – it seemed – the rumours were not true.

- A client with a cash business had assiduously built up a track record of gambling. He regularly visited racecourses and casinos and kept meticulous records of his (supposed) gains and losses. After a long losing streak, he had a winning streak in Las Vegas, in which he scooped $70,000. The client hinted that he and his family had been buying chips for cash over the space of their holiday and had simply cashed them all in on the last day to make it look like winnings.

Sadly, it was not disclosed whether any of these schemes had proven successful.

Watch out for new allowances

As you may be aware, new personal savings and dividend allowances that will be introduced in April 2016 will offer you a tax-free band of interest and dividend income, earned outside an ISA wrapper. For most taxpayers this allowance will mean a small tax saving, but there is a risk it could push you over a marginal tax threshold, thus costing you more tax than you would have otherwise saved. Readers are advised to take advice before taking advantage of the new allowances.

Think carefully before taking the pledge

The only 'pledge' we knew of previously was promoted by the Pioneer Total Abstinence Association of the Sacred Heart, which, if you agreed to resist the temptation of alcohol, would give you a little enamel badge describing you as a Pioneer. Now they face competition. HMRC has been writing to people with previous form (essentially tax avoiders who have recently settled a dispute with the taxman) to ask them to sign a voluntary commitment not to avoid tax again. The wording of the promise includes the statement: "I hereby confirm that I will not take part in any tax avoidance schemes or arrangements in the future." Apparently, HMRC hopes this will keep taxpayers on the straight and narrow. However, tax advisers are suggesting that taking this particular pledge is unwise, as it may leave you a hostage to fortune at some future date.

Offshore News

Irish update

Please note that multinationals resident in Ireland will now have to provide country-by-country financial results to the Revenue Commissioners. Information received will be passed on to the company's home jurisdiction as well as to the revenue authorities in all the countries in which they operate. Also, the new Knowledge Development Box (KDB) regime was introduced on 1st January. The KDB offers a preferential rate of corporation tax of 6.25%, which is half the normal level of 12.5%. However, for the companies to benefit, the underlying R & D must have taken place in Ireland. Finally, Taoiseach Enda Kenny has promised that if his party wins the forthcoming election they will slash income taxes across the board and bring Ireland in line with low-tax jurisdictions such as America and Britain.

Cross-border tax rulings to become public

The European Council has agreed in principle to a directive that would force its member states to swap information automatically on any advance cross-border tax rulings as well as advance pricing arrangements. The new rules will be applied from 1st January 2017.

New UK non-dom rules

The UK Government intends to double the length of time (from three to six years) required for an individual to be classed as non-domiciled after leaving the country. The primary effect would be on inheritance tax liabilities. Also, a recently issued Treasury paper states: "The government does not intend that non-domiciliaries who become deemed UK domiciled should have to pay UK tax on income and gains in offshore structures which were set up before they became deemed domiciled simply because the individual was the settlor of the trust or was considered a transferor under the Transfer of Assets Abroad legislation." In plain English, offshore trusts are, in principle, to be excluded from the recent UK non-domiciliary tax clampdown.

EU/Liechtenstein automatic exchange agreement

The European Union and Liechtenstein have ratified an agreement on the automatic exchange of financial account information. Information will now automatically be exchanged from 1st January 2017, at which point any information collected during 2016 will be handed over. The objective is to stop taxpayers from hiding capital or income on which tax has not been paid.

Improved St Kitts and Nevis 'Citizenship by Investment' programme

Various improvements have been made to the St Kitts and Nevis Citizenship by Investment programme. For example, it is now possible for applicants to apply and track the process of their applications online. The benefits of the programme include:

- visa-free travel to all EU Schengen countries and also Switzerland, UK and Ireland
- no residency or visit to St Kitts needed
- tax free: no income or wealth tax
- lifetime citizenship
- easy second passport and citizenship for your family members
- privacy in small peaceful country
- dual citizenship benefits
- choice of real-estate investment
- no personal visit required.

It takes between six and eight months to process an application and costs either $250,000 (in the form of a non-refundable charitable donation) or a designated recoverable real-estate investment to a value of at least $400,000.

St Lucia Citizen by Investment programme launched

St Lucia has launched a Citizen by Investment programme with a number of options, including investing $200,000 in the National Economic Fund or putting $300,000 into a real-estate project.

IRS news

The IRS has stated that it is now beginning to receive financial account information from a number of different foreign tax administrations as insisted upon under the inter-governmental agreements (IGAs) that implement the Foreign Account Tax Compliance Act (FATCA). Although the US has entered into a number of bilateral IGAs, the cost and complexity of implementation mean the flow of information is likely to be limited for some time. Also, the IRS claims it has received some $8 billion as a result of its Offshore Voluntary Disclosure Program (OVDP), which forced American citizens living overseas to meet their federal tax obligations.

Hong Kong intends to automatically exchange tax information

The Hong Kong Government has announced that it will be implementing a large number of automatic exchange of tax information agreements. It anticipates that the new legislation will be put in place by 2017 and that the first information exchanges will take place at the beginning of 2018.

Black Money Act generates low return

In 2015, the Indian Government passed the Black Money Act, which threatened tax evaders with up to 10 years in prison and severe penalties if they were discovered to possess undeclared foreign assets. At the same time, the Government offered a tax amnesty to citizens that allowed them to disclose overseas assets with minimal tax and penalties. However, only 638 people have taken advantage of the scheme, netting just $575 million.

Latvia offers EU residency

The Latvian Government has introduced new and improved rules designed to make EU residency for non-European citizens both easy and relatively inexpensive. There are two options:

- Subordinated equity investment, whereby the applicants receive a return of 3% per year on a subordinated loan of €300,000 after which an EU residence permit is immediately granted for five years. The permit is renewable until the deposit is withdrawn by the investor.
- Real-estate investment, whereby anyone who invests an amount to the value of €250,000 into the purchase of real estate in Latvia is granted an unlimited EU residence permit that will be valid as long as the real estate belongs to the investor.

There is a third option, whereby anyone who invests an amount of €150,000 directly into the equity of a company in Latvia will receive an EU resident's permit that will be valid while the investor remains a shareholder. The company must have fewer than 50 employees and must turnover less than €10m.

Bermuda resists UK pressure

Bob Richards, the finance minister of Bermuda, says his Government will resist pressure from the UK to publish details of who owns the companies registered in the jurisdiction, describing it as an attempt "to solve a problem that does not exist". In June 2015, Bermuda was featured in a controversial tax haven blacklist drawn up by the European Commission. However, that list has since been updated and Bermuda has been removed from it. Interestingly, the Tax Justice Network places Bermuda 34th in its league table of the most secretive jurisdictions, with the US in third place and the UK in 15th place.

The Offshore Column

The search for confidentiality

"If I maintain my silence about my secret, it is my prisoner…" said Arthur Schopenhauer. "If I let it slip from my tongue, I am its prisoner." There are really two schools of thought when it comes to the subject of privacy.

- There are those who believe it is a bad thing: the only people who could possibly need it being those with something to hide (such as criminals, terrorists, corrupt officials and… tax evaders). Innocent people, so this argument goes, shouldn't mind sacrificing their privacy for the greater good.
- Then there are those who consider privacy a human right. Supporters do not condone wrongdoing but feel that other methods should be used to expose it. They believe that when personal privacy is breached it opens the way for wider abuse by government.

Whatever school of thought you subscribe to, the fact is that it is becoming harder to maintain one's personal privacy. One strategy that appears to be gaining traction is for individuals to establish two official residences.

Before I explain the benefits of this, let me just run you through the practicalities. Basically, the plan goes something like this. You (if it were you) would choose a suitable country and then rent or buy a small property there. You would then apply for a driver's licence and, if relevant, a residency card. You would also appoint a doctor, dentist, accountant and other professionals to look after you. You would open, of course, a bank account. In your chosen jurisdiction, you would then declare a reasonable, but not excessive, level of income. Let us say, for the purposes of illustration, €20,000 a year.

What are the benefits of doing all of this? Well, you can choose which residence to use when transacting your business. For example, let's say you are resident in both the UK and Cyprus. Your UK business ventures could all be run from the UK. Your non-UK ventures could be run from Cyprus. Providing you are not evading tax in either location, you have done nothing wrong.

There is another issue, of course. Many personal and business transactions require you to supply more than details of your residence. For example, a bank, even an accountant, may require your birth certificate or passport. Why? They are simply looking to establish you are who you say you are. The automatic exchange of tax information is still, essentially, to do with where you are resident. So, if you are resident in Cyprus and open a Cypriot bank account the fact that you are, say, a French citizen will be of no interest to the bank or the Government. (It would be different if you were also a US citizen or also resident in the US.) Not that a second passport wouldn't add an extra layer of confidentiality.

At any rate, a second residency is perfectly legal, easy to arrange and relatively inexpensive. For a net cost of a few hundred pounds a month, you have given yourself a level of confidentiality that would not otherwise be available to you. But, once again, it must be stressed that if you use the second residency to evade tax then what you are doing is illegal and there will always be a high risk of your being discovered.

The Alternative Investor

From little acorns

"There is a serene and settled majesty to woodland scenery," said Washington Irving, "that enters into the soul and delights and elevates it, and fills it with noble inclinations." For British investors, part of that serene and settled majesty has to be the amazing tax breaks on offer.

The tax tail should never, of course, wag the investment dog. Nevertheless, before I go into all the financial reasons why you may like to consider buying or planting a forest, let me summarise the available tax breaks: the income from timber sales is tax-free, the capital gain from the investment is tax-free and – if arranged properly – the asset can be passed to your heirs tax-free. Yet, although forestry is highly tax advantageous, there is another solid reason to invest: performance. Over the last decade, it has proved itself one of the best-performing asset classes. And, when I say best-performing, I mean best-performing! During a period when the stock market showed an average gain of around 7% a year, woodland returned a staggering 19%. Moreover, if you go back over 25 years or so the returns still work out at around 9%.

Of course, given that the price of woodland has been rising steadily since the economic downturn, it is not surprising that total returns have been so high. So, what about annual yield? UK timber prices are determined by a wide variety of factors, including the strength of the pound, the state of the UK economy and the state of the world economy. So, although the price of British timber fell by around 10% in the last six months of 2015, the drop is not worrying long-term investors. Moreover, the growth in house construction in the UK is likely to push up demand for UK timber in the coming years.

I would summarise the non-tax benefits of investing in forestry as:

- excellent prospect of above-average returns
- reassurance of knowing your money is invested in a physical asset
- low risk: the market for timber has been steadily growing and there is every reason to believe the rising demand will continue
- availability of generous government grants
- it is an ethical investment
- it would make a sound addition to a pension fund.

Incidentally, there is also the longer-term potential of extra windfalls from carbon credits.

There are potential downsides, of course. It has to be remembered that forestry is not a liquid asset and that if you wish to dispose of an investment – whether held directly or indirectly – you may not be able to do so immediately. Furthermore, to optimise your gains you should probably think medium to long term – certainly 10 years.

So, how should you invest? There are various indirect options. To begin with, you could consider one of the forestry funds, such as those offered by FIM or Stellar Asset Management. There is also the London listed iShares Global Timber and Forestry ETF. Alternatively, you could make a direct investment. To purchase a really profitable, well-managed forest producing the sort of average returns mentioned above you really need upwards of £750,000. Having said this, if you are less concerned about income, it is possible to purchase small parcels of woodland for as little as £7,000 an acre. This should still show a slow but steady capital gain and you may be able to generate income from sporting rights, campsites, firewood and so forth. With any direct holding, do bear in mind that you will have to allow money for maintenance, insurance, drainage and – if you are selling timber – transport.

There are a number of specialist forest management companies (see below) that will only be too pleased to look after everything, from helping you to choose appropriate land to ongoing management. One decision you will need to take is whether to go for bare land or semi-mature forest. The stock of bare land has been rising because of competing land uses and speculative investment.

Woodland Investment Management
Tel: 020 7737 0070
www.woodlands.co.uk

Wildlife Woodlands
Tel: 01579 343727
www.wildlife-woodlands.com

Savills
Tel: 020 7499 8644
www.savills.co.uk

Small Woods Association
Tel: 01952 432769
www.smallwoods.org.uk

The Forestry Commission
Tel: 0300 067 4321
www.forestry.gov.uk

Property Pages

A bluffer's guide to VAT and property investment

"I never use profanity," said Mark Twain "except in discussing house rent and taxes." How he would have sworn, one imagines, had he ever been forced to talk about the subject of property investment and VAT. And to stop others swearing we have produced this short bluffer's guide to the topic.

Setting the scene

As a starting point, the key facts to bear in mind are:

- There are three different rates of VAT: a standard rate of 20%, a reduced rate of 5% and a zero rate. Some or all may apply to any given property or transaction.
- There are different rules for residential and commercial property.
- As far as HMRC is concerned when you sell a property you supply 'goods' and when you rent it out you supply 'services'. Some supplies of 'goods and services' are subject to VAT, and some are not.

Do you have to register for VAT?

If your business is making annual taxable supplies of goods or services in excess of the VAT registration threshold, currently £82,000, registration is compulsory. If your turnover is less than £82,000 you may register for VAT voluntarily, which could be to your advantage if you were making zero-rated supplies.

Note the words 'taxable supplies'. Selling or renting a residential property, for example, is not a taxable supply and so the gains/income from either doesn't need to be taken into account.

The flat rate scheme

One thing to consider (and probably reject) is the flat rate scheme, which you can join if your annual sales do not exceed £150,000. You will still have to charge the same amount of VAT to your customers and you will still have to pay the same amount of VAT when you purchase goods or services. However, the flat rate scheme will allow you to pay a special, hopefully lesser, rate to the taxman. The downside is that you will not be able to recover VAT paid on most of your business's purchases. Without going into the ins and outs of it, I would rarely recommend anyone in the property business to opt for the flat rate scheme. Still, if you are taking expert advice, it is worth asking about it.

The situation for residential landlords

The letting of residential property is an exempt supply for VAT purposes. This is, of course, because VAT is not chargeable on rent. For this reason, VAT cannot be recovered on expenses. On the other hand, when you are calculating your income or capital gains tax (CGT) you can include any VAT you have had to pay out.

A couple of other useful tips:

- If you are involved in renting out holiday accommodation, your position will be different. This is, potentially, a taxable supply. Under these circumstances you may want to consider registration; although, adding VAT to your rent may make your property too expensive for tenants.
- If you supply other services (e.g. cleaning, waste disposal or the use of some facility such as a gym), these are also potentially taxable supplies and you may want to consider whether registration is worth your while.

In either case, if your income is over £82,000 a year, you will have to register.

Residential property developers

Residential property developers are in a slightly better position. As anyone who has ever purchased a new property knows, no VAT is charged on a sale. However, HMRC classifies newly constructed residential property as being zero-rated. The benefit of this is that you can reclaim VAT on any construction costs. The same rules apply where non-residential property has been turned into residential property, and if you do any work on a listed buildings.

What about property conversions where you are altering the number of legal dwellings in a property? I am talking about, say, dividing a house into flats or turning adjoining flats or houses into a single dwelling. Here a reduced VAT rate of 5% applies to all your purchases. By the way, the reduced VAT rate of 5% is also applicable if the property you are renovating has been empty for at least 24 months before work started.

Commercial property developers

So, how about VAT and commercial property? The good news is that if you are a commercial property landlord you can actually choose whether to charge VAT on the rent. Moreover, you can make your decision on each property you own rather than having to apply it to your whole portfolio. If you decided to make a particular property VATable, you would charge VAT at the standard rate (20%) and would also be able to reclaim VAT on all the relevant purchases you made.

That's the good news. The bad news is that having elected to charge VAT you cannot change your mind for at least 20 years. If your tenants are VAT registered then, of course, you are better off. But if your tenants are not VAT registered then it obviously adds a 20% increase to the cost of their rent. (As an aside, it is often possible to do a deal with non-VAT-registered tenants whereby they pay you a slightly higher rent in exchange for your agreeing not to register the property for VAT.)

Actually, there is more bad news when it comes to VAT and commercial property. If you decide to register a particular building for VAT, you will also have to charge it on the sale price. Moreover, you must also add VAT to the stamp duty land tax (SDLT), which can lead to a combined tax rate of nearly 25%. Although anyone who has registered for VAT (and you would almost certainly decide to be in these circumstances) can reclaim VAT incurred on the purchase of a commercial property, I don't know of a single accountant specialising in this area who hasn't at some point had a client who has been caught by these rules.

Property management businesses

Finally, supposing you decided to go into the property management business. Here the situation is relatively straightforward. As soon as sales go above the current £82,000 threshold, VAT must be applied. Of course, you can register voluntarily at any time regardless of turnover. You may find, though, that VAT is not always fully recoverable.

Land and buildings transaction tax

Last April, the Scottish Parliament abolished SDLT and replaced it with the land and buildings transaction tax. What's the difference? Basically, the cost. If you buy a property north of the border, you can now expect to pay the following rates:

- For residential property the rates are: up to £145,000, 0%; between £145,000 and £250,000, 2%; between £250,000 and £325,000, 5%; from £325,000 to £750,000, 10%; and for properties over £750,000, 12%.
- The tax also applies to commercial property: up to £155,000, it is charged at 0%; between £150,000 and £350,000, 3%; and over £350,000, 4.5%.

Basically, if you are planning to buy a more expensive property north of the border, you are going to be soaked. On the other hand, as anyone who has purchased property in Scotland knows, prices are, in general, a fraction of those elsewhere in the country.

An enthusiastic auction buyer reveals his secrets
by John Lowe

Coming, as I do, from a long line of traders I was raised to believe that one should never pay retail. It is for this reason that when I am purchasing investment property I always do so at auction. In my experience, there are a number of key advantages to buying this way. To begin with there are always much better deals. Anyone who has decided to sell their property at auction is doing so because they are desperate to sell. This leads me to the second advantage. About a third of all properties listed with estate agents fail to sell first time, if at all. Why? A huge percentage get withdrawn by the vendor. In other cases the buyer can't exchange because of the survey result, lack of mortgage finance, a lower-than-expected valuation or for some other reason (maybe a change of heart). Buying through an estate agent is a hassle, whereas very few properties are ever withdrawn prior to an auction and in my experience fewer than one in ten fails to sell. The third advantage is that most auctions occur 28 days after the initial catalogue has been published. So, there is no hanging around. And, more to the point, there is certainty. As a professional buyer I find amateur vendors dealing through estate agents extremely annoying. One wastes time on endless negotiations and time is, if you will excuse the cliché, money. What are the disadvantages of buying at auction? Some find the 28-day period to make up one's mind not long enough, but this, as I say, has never worried me.

When it comes to buying properties – especially multiple properties at auction – the huge risk is spending too much money on the pre-auction process.

Let me give you a real-life example.

At the moment, I am working with a partner buying and selling two- and three-bedroom houses in regional cities. We expect to buy at any price between £50,000 and £100,000 and we look to make a minimum of £15,000 clear on every deal.

This means that when I go to a typical auction in, say, a city such as Birmingham or Manchester I may have up to a dozen properties that interest me. There is no way we can afford to pay a survey fee for a dozen properties, none of which we may actually get on the day.

Instead, I (or my partner) look at each and every house. We take photos and keep notes and decide – without the help of a surveyor – how much we will have to spend to bring the property up to our desired standard. We have a list of average costs and we use the higher figure for all our calculations. For instance, I know what a new bathroom will cost, what a new kitchen will cost, what a new roof will cost and so forth. Moreover, having been in the game a long time I can walk through a house and work out pretty much what has to be done. My aim is to create a house that is in perfect condition with new windows, new bathroom, new kitchen etc. – painted and carpeted –

with a landscaped garden.

The one thing we don't economise on is having a solicitor look at the legal pack you receive from the auctioneer when you show interest in a particular property. This will contain the title deeds, local authority and environmental searches, fixtures and fittings and the seller's information form plus any relevant leasehold information. I have these checked in case there are any hidden covenants or loopholes. It is worth the money. I trust my nose to tell me whether there is dry rot or some awful problem with a house. But I don't trust myself not to be caught out by some legal small print.

Incidentally, what interests me most is looking for properties that have either been empty for a very long period or were used for non-residential purposes (houses that have had shops added). Such properties generally offer much better value and are in less demand. Furthermore, VAT is usually only payable at 5%, meaning a 15% saving. Occasionally, I will also buy a pub and convert it into flats.

This leads me on to a final point. My advice to anyone entering this business is to choose an area to specialise in and stick to it. I like to have lots of turnover. At the moment I am buying about four to six properties a month and my average turnaround from auction to final completion is six months. So we are generating around £60,000 to £80,000 gross profit a month. That may sound like a great deal of money, but I employ eight staff to deal with builders, purchasing, accounts and so forth, not to mention handling the estate agents who make our sales for us. Plus we have finance costs because at any one time I may have up to a million pounds on the table.

I have friends who work it differently. They think the best route is to work on larger deals on the basis that a larger deal requires the same amount of effort but the profit is so much greater. For example, I know one man who buys very rundown period houses in country areas and completely renovates them. Another specialises in buying small hotels and bed and breakfasts. I would urge anyone interested in this area to focus on a niche.

UK residential market update

According to Knight Frank, the rate of overall price growth in the UK housing market is expected to continue at much the same pace in the coming year as it did in 2015. However, localised differences and price performance are becoming more evident across prime and mainstream urban and rural markets.

Last year, average UK house prices rose by 4.5%, taking the average price of a home to around £197,000.

There was a huge variance from region to region. Nothing illustrates this better than annual growth in rents. Rental income in London increased by 4.1%, whereas it only rose by 0.05% in Wales and the North-East.

One of the key factors in prices is, of course, interest rates. In January, the Bank of England decided to keep interest rates level and this, together with the continued fall in oil prices, has led some economists to push back expectations for the first rate rise until 2017, despite the US Fed's decision to raise US interest rates last December.

A longer period of low mortgage rates alongside firmer wage growth and a continued lack of new and second-hand housing stock should continue to underpin overall pricing during 2016. Activity has been gradually picking up in recent years, but this trend is likely to be hampered by the continued lack of supply of homes coming to the market across the country.

Certain sections of the housing market will also have to adjust to new stamp duty charges. Last November, the chancellor announced an additional 3% stamp duty for those buying additional properties, whether as second homes or as buy-to-let investments. The consultation on these new rules closed on 1st February and the details will be announced in the Budget statement in March.

Incidentally, if you are interested in London property prices here is a rundown of what happened during 2015:

- Islington up 6.4%
- City and fringe up 5.7%
- Marylebone up 4.7%
- Riverside up 4%
- Mayfair up 3%
- Kensington up 2.5%
- Southbank up 1.7%
- St John's Wood up 0%
- Belgravia down 0.2%
- Hyde Park down 1.8%
- Chelsea down 2.7%
- South Kensington down 3.7%
- Notting Hill down 3.8%
- Knightsbridge down 6.1%.

Commercial property forecast

CBRE, the American commercial real estate company, has forecast that the total investment in UK commercial property will be around £70 billion in 2016. CBRE also predicts attractive total returns of around 10.1%, which it expects to decline thereafter but remain positive through until 2020. It feels that a strong economy and an increasing role in e-commerce mean that industrial property will outperform with total annual returns of 9.5% on average for each of the next five years. Retail property, on the other hand, is expected to experience better times as consumer disposable incomes recover, with returns of 7%. A recovering supply in the office market will constrain total returns to 7.4% on average each year to 2020.

Interestingly, CBRE's forecast is at odds with that of Capital Economics

(CE). CE expects commercial capital values in the UK to fall sharply in 2017. It expects investor demand to fall as a result of an increase in the UK base rate and a general downturn in world economies.

Of course, many investors would actually like to see capital values fall. Why? Let's take London. The first half of 2015 in central London saw a 26% increase in investment levels, totalling £16 billion. Despite the increase in sales, there was still an imbalance between supply and demand as £40 billion was actually chasing commercial property in central London, compared to £28 billion a year earlier.

A report from Avison Young states: "The £8.7 billion invested in quarter two 2015 is covered more than four times by money parked on the side lines due to a lack of available assets. As a result there was a further yield compression with Central London office yields falling to 4.2% and prime yields down to 3.1% in the West End. Further downward pressure on yields is expected due to the amount of money being pushed into the investment market, the market's appeal to investors, and the opportunity for rental growth in most sectors. Some overseas investors were sold London assets. Asian investors were sold £2.5 billion worth of investments in the last 12 months – almost three times the amount this investor group sold in the previous 12 months."

Asian investors are likely to be taking advantage of recent price rises in London combined with a stronger sterling compared to most Asian currencies, locking in substantial profits.

If we move outside London, it is interesting to note that the latest CBRE monthly index recorded the highest rental growth since 2000 in the outer London/M25 office sector, known as the doughnut. This increase is set against a context of slow rental growth for offices in the rest of the UK.

New energy regulations

Here's a reminder to all readers involved in residential and non-residential rented property that the Energy Efficient (Private Rented Property) (England and Wales) Regulations 2015 will come into effect on 1st April 2018. By then, any property you rent out will have to meet minimum energy performance standards. However, although the regulations don't come into full effect for two years, it is worth noting that, from 1st April, your tenants can ask you for permission to make energy-efficiency improvements. You will not be expected to pay for such improvements but you cannot unreasonably refuse your consent.

What of the future? From 1st April 2018, your properties must have an EPC rating of at least E. In plain English this means that if your properties are rated either F or G you won't be able to rent them out unless you are able to obtain an exemption. Exemptions will not be easy to get. Incidentally, if you don't meet the minimum standards set out in the new law you could be fined anything from £5,000 to £150,000.

So, what action should you take? At this stage our advice would be to instigate an audit of all your properties and to plan, where relevant, a two-year improvement programme so that on the relevant date you are fully compliant.

Look east

Now may be the time to consider investing in the Slovakian real estate market. Consider the following facts:

- Slovakia has 359 properties for every 1,000 inhabitants and only 317 housing units for every 1,000 inhabitants (this is because of holiday homes, uninhabitable properties etc.). The average in Europe is 400 housing units for 1,000 inhabitants.
- At the current rate of housing development (approximately 13,000 new properties a year), it will take more than two decades for Slovakia to reach the European average.
- After a long period of decline, Slovakia's housing market has seen some modest gains. Average residential prices rose by 1.2% in 2015.
- Slovakia's house prices are still 21% below their 2008 peak.
- The most expensive area of the country, Bratislava, saw growth last year of 3.2%.
- Rental yields are relatively steady. Again in Bratislava, investors can expect to generate between 5 and 6.5% a year.

What about tax? There are special rates of income and CGT for property. Basically, the rate is 19%, although personal allowances mean it can fall to as low as 9.3% and can often be avoided altogether. Deductions are generous and include depreciation, interest and finance charges, management charges, taxes, repairs and other expenses. Interestingly, taxpayers are allowed to make a general expense claim of up to 40% of the rental income instead of itemising deductions. Another favourable aspect of investment property in Slovakia is that rented buildings qualify for depreciation.

However, on the downside, the law states that landlords must register with the tax office or face a €6,599 fine if caught.

Finally, if you do decide to go look at Slovakian property and fall in love with the country, there are some substantial advantages to living there. Resident foreigners are taxed only on their Slovakian-sourced income. In other words, you will pay tax on a remittance -only basis. There are only two levels of income and CGT: 19% for income up to €35,000 and 25% on all income over €35,000.

What can you get for your money? Bratislava, the capital of Slovakia, occupies both banks of the Danube and is the only national capital to border two independent countries (Austria and Hungary). It's surrounded by vineyards and the Little Carpathians, crisscrossed with forested hiking and cycling trails. The pedestrian-only, C18th old town is known for its lively bars and cafés. Perched atop a hill, the reconstructed Bratislava Castle overlooks the old town and the Danube. A quick search of the Internet gave me a four -bedroom cottage in the traditional Slovakian style hidden among the pine forests of the High Tatras Mountains close to some of the country's best winter sports and ski resorts for ⇔120,000. For ⇔300,000, I found a 130m2 (recently developed) three-bedroom apartment in the historical centre and for ⇔65,000 a pretty little studio apartment with a balcony also on the edge of the old town.

British farmland update

What would happen to farmland values in the event of a British exit (Brexit) from the European Union? As the Financial Times points out: "many sectors of agriculture remain highly dependent on the EU through the Common Agricultural Policy, which accounts for about 40% of the EU budget. A mainstream, mixed enterprise UK farm showing an annual net profit of £150 an acre might expect about £70 of that to come from direct support via the EU's basic payment scheme."

Obviously, if the UK left the EU, the Government would have to decide whether to maintain those subsidies, which cost around ⇔3bn a year. Many experts feel that a post-Brexit Government would be unwilling to maintain the current level of subsidies. Of course, the best farmland is likely to hold its value. Prime arable farmland of the highest quality available in plots of at least 1,000 acres tends to sell at around £10,000 per acre. However, dairy farms, lowland beef and sheep farms and farms with a mixture of enterprises would be unlikely to maintain their value. In particular, upland farms on hills and fells, which would otherwise be financially unviable, are completely unprofitable without government support. If Brexit occurs, there may be a considerable shake up in farm values.

Hold on to your (Panama) hat

According to Knight Frank, the number of ultra-high-net-worth individuals (those with a net worth of more $30 million) in Panama City rose by 80.9% between 2000 and 2014. It is forecast to rise by a further 51.8% over the next 10 years. Why? The Panamanian Government offers fantastic tax breaks to anyone moving to the country.

This, in turn, has had an amazing effect on one particular part of the city: Casco Viejo. Anyone who visited this historic Panamanian city district as recently as 10 years ago did so at their own risk. The buildings were falling down and the area was rife with crime. Once elegant palazzos and grand family houses had been overrun with squatters, weeds and rubbish.

In 1997, UNESCO named this area a World Heritage site and the benefits of this are now in evidence. The area has witnessed an incredible boom, so that a two-bedroom apartment with views of the Pacific now costs $500,000 and a restored three- or four-bedroom house could set you back a million dollars.

It is a nice are to live in. Not only are the buildings beautiful but also there has been an inflow of fantastic restaurants, bars, lounges and galleries. It must also be remembered that Panama's economy has grown by 7.2% on average every year since 2001. Anyway, if you are looking for a long-term property punt, Panama may be the place to head.

Dividend Reform

One of the challenges facing tax authorities around the world is how to tax individuals on dividends paid by companies, given that those companies generally pay tax on profits before any such distribution is made. The approach in the US, for example, where corporation tax rates are higher than those in the UK, is to charge an additional 15% withholding tax on dividends.

In the UK, however, investors have, at least since 1973, been afforded recognition of the fact that some tax has already been paid by the company. Until 1993, they were treated as though basic rate tax had already been paid and therefore came with a tax credit for that amount, which was reclaimable by non-taxpayers. In 1992/93, therefore, when the basic rate of tax was 25%, a £75 net dividend was accompanied by a £25 tax credit that could be reclaimed by tax-exempt investors such as non-taxpayers and pension funds. To ensure the tax was actually collected, the company had to pay advance corporation tax (ACT) equal to the tax credit, which could in reality exceed the company's actual corporation tax liability.

The system was then amended by Norman Lamont in the 1993 Budget so that while the basic rate remained at 25% the tax credit and ACT were reduced to 20%, which was matched by a new 20% basic rate for dividends. For the Exchequer, this was doubly beneficial, as the lower credit meant more income tax from higher-rate taxpayers and a lower reclamation by non-taxpayers, while the actual corporation tax receipts did not change.

In 1997, Gordon Brown tweaked the system further with another reduction in the tax credit and basic rate for dividends to 10%, accompanied by the withdrawal of the ability for pension funds (immediately) and individuals and PEP/ISA investors (from

1999/2000) to reclaim the tax. Higher-rate taxpayers ended up paying more tax (an extra 22.5% after allowance for the 10% credit), and while ACT continued at 20% until April 1999, it was then scrapped, henceforth removing any link between the dividend tax credit and the corporation tax paid.

Move forward to 2015 and another chancellor, George Osborne, proceeded to scrap the 10% tax credit as well, thus moving the UK towards the US model of dividend taxation. While that could have been the end of it, with further adjustments to the rates for higher and additional rate taxpayers to maintain the same tax receipts, he opted to go further and introduced more far-reaching reforms.

The first was a new dividend allowance of £5,000 for all individual taxpayers from 2016/17 onwards, but this was accompanied by additional tax rates on dividends above this figure of 7.5% for basic-rate taxpayers, 32.5% for higher-rate taxpayers and 38.1% for additional-rate taxpayers – a rise, therefore, in all effective rates of around 7.5% (see Table 1).

Table 1

	Basic-rat taxpayer		Higher-rate taxpayer		Additional-rate taxpayer	
	(£)		(£)		(£)	
	15/16	16/17	15/16	16/17	15/16	16/17
Dividend	90	90	90	90	90	90
Tax credit	10	—	10	—	10	—
Taxable	100	90	100	90	100	90
Tax liability	10	6.75	32.50	29.25	37.50	34.29
Tax credit	10	—	10	—	10	—
Tax to pay	—	6.75	22.50	29.25	27.50	34.29

While the chancellor claims that 85% of taxpayers will not be worse off and over a million will pay less tax, this is perhaps another fine example of the enthusiasm for all holders of that appointment to reform (i.e. increase) those taxes that are poorly understood by the majority of the public (i.e. voters).

It is indeed good news for taxpayers with income above the higher-rate threshold and who have dividends under £5,000, representing a saving of up to £1,250 for those paying 40% (who will only be worse off than currently when their dividend income exceeds £21,667) and up to £1,528 for those paying 45% (who are worse off only when their dividends exceed £25,250).

The losers will be those who pay only basic-rate tax but have dividends above £5,000; these individuals currently pay no tax at all on dividends until they reach the higher-rate threshold, but from 2016/17 they will pay 7.5% on all those in excess of the first £5,000. This group is likely to comprise not only some who own substantial investment portfolios (the relevant value depends on the yield after any fund charges) but also those who own substantial shareholdings in their own businesses and either remunerate themselves via dividends rather than salary or use a company structure to hold rental properties and would thus avoid the new rules restricting interest relief for individual buy-to-let investors.

An illustration of the size of portfolio affected is given in Table 2.

Table 2

Yield	1%	2%	3%	4%	5%
Portfolio to produce £5,000	£500,000	£250,000	£166,667	£125,000	£100,000

The impact on two individuals (who are not caught by IR35) using dividends in lieu of salary is illustrated below.

Example 1 – A contractor

Thomas operates his contracting business via a limited company and takes just enough income to keep himself below the higher-rate threshold, drawing a salary (£8,000) just below the National Insurance contribution (NIC) threshold and net dividends of £30,946. Disregarding the 2016/17 changes to the personal allowance and thresholds, Thomas's position is illustrated in Table 3.

Table 3

Earnings	£8,000	£8,000
Dividend (net)	£30,946	£30,946
Tax credit on dividend	£3,438	Nil
Total income	£42,384	£38,946
Personal allowance	£10,600	£10,600
Taxable income	£31,784	£28,346
Tax on earnings	Nil	Nil
Tax on dividends	Nil	£1,751*
Total tax	Nil	£1,751

*As Thomas's salary leaves £2,600 of his personal allowance unused, he does not begin to pay tax on his dividends until they exceed £7,600.

Since the dividend is no longer grossed up and, again, disregarding the change in the higher-rate threshold (which will be £43,000 in 2016/17), he could draw a further £3,439 of net dividends before incurring higher-rate tax in 2016/17, which would entail paying another £258 (£3,439 × 7.5%) in tax, whereas if he had done so in 2015/16 his tax on that amount would have been £860 (£3,439/0.9 × 22.5%).

Once his income exceeds the higher-rate threshold, each £100 of dividend will be worth only £67.50 after 6th April 2016, compared with £75 before that date.

Example 2 – Bonus or dividend?

Annabel, a higher-rate taxpayer earns £50,000 and draws £7,500 of dividends from the company of which she is a director. The business has earned profits of £25,000 and she is considering how best to withdraw it (Table 4).

Table 4

	2015/16		2016/17	
	Bonus	Dividend	Bonus	Dividend
Marginal gross profit	£25,000	£25,000	£25,000	£25,000
Corporation tax at 20%	N/A	£(5,000)	N/A	£(5,000)
Dividend	N/A	£20,000	N/A	£20,000
Employer's NI contributions £21,968 at 13.8%	£(3,032)	N/A	£(3,032)	N/A
Gross bonus	£21,968	N/A	£21,968	N/A
Director's NIC £21,968 at 2%	£(439)	N/A	£(439)	N/A
Income tax	£(8,787)	£(5,000)	£(8,787)	£(6,500)
Net benefit to director	£12,742	£15,000	£12,742	£13,500

Although she would receive 60% of the gross benefit as a dividend under the 2015/16 regime, the new rules mean she will lose a further £1,500 in tax as the effective rate on gross profits increases to 46%, although the dividend route is still more tax-efficient than taking a bonus.

For business owners, a number of points are apparent:

- There is obvious merit to bringing forward dividend payments into 2015/16, which the Treasury anticipates bringing in additional revenue compared to its original expectations. Although this is offset to an extent by a fall the following year, by 2019/20 the forecast additional revenue is around £2bn annually.
- The Treasury expects reducing the tax advantages of incorporation will cause fewer businesses to opt for corporate status where the motivation is purely or largely for tax reasons.
- With the corporation tax rate due to be reduced to below the basic rate of income tax, incorporation for tax reasons would have looked increasingly attractive but is now less so.
- It is possible that reducing the motivation to incorporate is related to the Government's declared intention not to increase NIC rates only for employers and employees; with the Class 2 rates paid by the self-employed due to be scrapped and Class 4 being revised, the rate of the latter may conceivably be increased from the current 9% to match the employee rate of 12%.

There are also changes for other recipients of dividends, notably the trustees of interest-in-possession trusts and the executors and personal representatives of an estate, for whom the 7.5% rate will now also apply.

However, the trustees/executors are then required to distribute income to the estate beneficiaries or life tenants, who may not be subject to the additional rate personally. Since the trustees /executors must pay the 7.5% rate on dividends received, a £1,000 receipt is passed on to a beneficiary as only £925 with an attached credit of £75. This is neutral if the recipient has already exceeded their own dividend allowance but, if not, they will need to make a tax reclamation. While it is possible that the situation will be avoided by the dividend being mandated direct to the beneficiary, HMRC has yet to confirm this.

For other trusts, trustees will not qualify for the new £5,000 dividend allowance and the dividend trust rate will continue to mirror that for additional-rate taxpayers, and so will be 38.1%.

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Why Can't I Be Google

A lot of accountants are being asked this question at the moment by their owner-managed business (OMB) clients, and the obvious answer, perhaps, is for the accountant to say we simply don't know what Google's tax arrangements are. Of course, almost complete ignorance of the facts doesn't stop the journalists, politicians and all whom they influence from forming strong opinions on the subject, but the fact is we simply haven't the information to make any kind of objective judgement of what is going on, how much tax is being saved or even how much tax these multinational companies are actually paying.

In the case of the majority of people, who either don't pay tax or have all of their liability taken off them before they even see the money, under the PAYE system, the reaction tends to be one of disapproval, even anger. That of business people is divided between those who refuse to take a misguided moralistic approach to taxation and those who would like to get in on the act themselves in some way, hence the question that forms the subject of this article.

How do the multinationals manage, apparently at least, to pay so little corporation tax? One technique we can certainly disentangle from the confused reports is as follows.

It all hangs on what's called 'intellectual property' (IP). This can take the form of all kinds of intangible asset, like brands, know-how and computer software. Let's take a nice easy example, like the software one.

Imagine you're a multinational business that provides services in the computer sphere. All, or almost all, of your profits are dependent on the use of proprietary software you have developed in-house at great expense.

The same principles apply, of course, to brands and other intangible assets, but let's carry on with the software example just to illustrate the way the arrangements work.

Let's say you have two companies in your group, A Limited and B Limited. A Limited is the trading company that relies on the software to make profits. B Limited is the company that owns the software rights legally. Commercially, if the two companies weren't in the same group, they would no doubt enter into a licensing agreement under which company A pays over to company B a fee for the use of the software. This fee may be worked out as a proportion, even a large proportion, of company A's profits – after all, without the software, company A wouldn't be making any profits in our example.

So company B makes a large profit from the exploitation of its IP rights, paid to it by another group company, company A. This is really only moving the profit of the group from one company to another, of course, but it gets very interesting from the tax-planning point of view where companies A and B are incorporated in different countries.

To take a completely random example, let's suppose company B is incorporated and resident in Luxemburg, whereas company A operates in the UK. Without claiming any specialist expertise on how the tax rules in Luxemburg work, let's just hypothetically assume the profits made by company B in Luxemburg aren't subjected to tax there, or not a very high rate of tax.

So, bingo! You've reduced the group's global corporation tax bill by a large amount by means of perfectly commercially calculated intercompany charging arrangements. It's for this reason that the UK Government's backlash against multinational corporation tax planning has been to introduce a 'diverted profits tax' in last year's Budget. In our view, that's the sort of thing governments should be doing, not ranting on about multinational companies being 'immoral'. The Government makes the rules and has a huge advantage over those businesses that have to comply with them.

But, to get back to the question, why can't OMBs do this sort of thing? Or can they?

The answer lies in the big difference between OMBs and quoted international groups. With the former, there is always an individual, or a small group of individuals, who both own and control the enterprise. Except in some rare cases, these individuals are always going to be physically resident in one country or another, and therefore easy for governments to get at. They get at them, if they're UK-resident individuals, by means of the 'transfer of assets abroad' regulations. Under these rules, if a UK-resident individual makes arrangements that result in income of any kind being received by a non-resident person (such as a Luxemburg company) then the individual can be charged to income tax on that overseas entity's profits, as if they were his own, unless:

- There is no way the individual is going to benefit from those profits in the future; or
- The arrangements are being set up wholly, or more or less wholly, for commercial reasons rather than for tax avoidance; or
- The individual is not domiciled (although resident) in the UK and makes a claim for the 'remittance basis'.

The sort of planning that involves charging for IP across borders is not likely to be available for many types of OMB in any case. If you are a corner shop 'open all hours', your business is not going to depend on the exploitation of any intangible asset. But, even if you have some such IP, you have the lion in the path of the transfer of assets abroad regime.

Turning it around, and looking at it more positively (from the tax planner's point of view) there is obviously scope for a limited category of OMB's to emulate the big boys. Probably the most frequently found type of IP in this sector (although by no means the only one) is computer software. Is there any commercial reason to justify locating such software in a low-tax jurisdiction? Lots of businesses, it's true, make use of the huge human resource in India, including for the development of software; however, last time we looked, India could not really be described as a low-tax jurisdiction. There may, however, be legal reasons, or reasons of commercial confidentiality, that would favour using some offshore location with a lower rate of tax than the UK's. If that lower rate of tax is an important factor in the choice, of course we're back to square one, because there's a tax-avoidance motive. If you can genuinely argue that the decision is made on purely commercial grounds, though, you could have a 'Google style' tax benefit as a by-product.

The other possibility, if you're non-UK-domiciled, and the business is big enough, is to make use of the 'remittance basis' get-out. Let's say you live in the UK but are of Indian parentage, sufficient to maintain a non-UK-domiciled status. Then let's suppose you develop some kind of intangible asset, such as software, which results in huge profits being anticipated in the future. If (and it's an important if) the rights have not yet acquired a substantial market value, you could vest these rights in a company in Jersey or somewhere of that description. Your UK company could then pay a commercially worked out licence fee, in the same way as discussed above for the multinational groups. If the profits of the Jersey company are not remitted to the UK, you can claim the remittance basis, and the transfer of assets abroad rules therefore won't apply. Remember, though, that if you have been in the UK for several years you will have to pay a substantial 'remittance basis' charge, which could be as high as £90,000 a year, for the privilege of using this 'tax break'.

Corner shops need not apply!

The Business Column

Simple planning techniques for a 'simple' tax

The simple tax I'm talking about, of course, is value-added tax, or VAT. Ignored by most tax advisers since its introduction in 1973, and having the tendency to raise yawns or irritation in just about equal measure in the business community, VAT is nevertheless a tax that repays a bit of attention. In some cases, it can repay attention very richly indeed, because, contrary to what many think, there are some quite lucrative planning opportunities available with VAT.

What I'm going to do in this piece is pick on a few of the opportunities and VAT-planning wrinkles; I can't possibly do justice to them all in a subject that actually deserves a book to itself. You'll find some of the same ideas, but not all, in my book *The Entrepreneur's Tax Guide*, which has a chapter headed 'VAT: Irritation or Armageddon?'

Back to basics

VAT, of course, is an invention of the European Union. The idealists (or control freaks, according to taste) who were behind the setting-up of this would-be super state decided there should be a common system of indirect taxation throughout Europe. So all members of the EU have VAT, and it works on very similar lines in each country: only the rates of tax are different.

The basic idea was to avoid the effect of 'cascade taxation' that applies to other types of tax which are added to a business's turnover. A business that buys from other businesses is obviously paying the tax on top of the actual basic price of the goods. If it then sold them on at a profit, and added another layer of sales tax, there would be tax on tax: then tax on tax on tax, and so on. So VAT is based on the principle that a business can claim back the VAT charged to it, and so the amount it charges its customers is not a turnover tax but a 'value added' tax.

That idea is simple enough. The problem, and complexity, with VAT comes about because of the different rates of tax, which in the UK are 0, 5 and 20%, and the fact that some supplies are exempt from tax, and other supplies still are outside its scope. So a lot of care is needed in administering the VAT system, and this complex system is all put in the hands of untrained business people to run. More of that later.

However, the important thing to note is that anybody in any kind of business who turns over more than the VAT threshold (currently £84,000 a year) needs either to register for the tax, and make quarterly or monthly returns, or be happy that all of his supplies are exempt.

In what follows, I have picked out six areas to think about, where, if you can use the arrangements described, you could be saving a lot of tax.

1. Flat rates

At the end of this article, you'll find a table giving the flat rates of VAT that apply to certain categories of business. The VAT flat rate scheme is intended as a simplification, but it can also be used as a way of reducing the amount you pay HMRC, below what it would have been. It works like this.

Taking the example of an IT consultant, who has a flat rate of 14.5%, let's say this business bills its client £100,000 in total in a year, before adding VAT. The VAT invoices addressed to the client therefore add up to a gross amount of £120,000, after adding the 20% standard rate of VAT, which applies to IT consulting services.

If this business were not in the flat rate scheme, there would be a liability of £20,000 to pay to HMRC, being the VAT the business has collected on behalf of the Government. From this £20,000 liability would be deducted any VATable costs the consultant had incurred. Very often for this particular type of business (and for many others), the input tax (as it's called) is fairly negligible, and so the amount paid over to HMRC over the course of the year wouldn't be much less than the £20,000 output tax.

If, on the other hand, this business registers for the flat rate scheme, it has a liability of 14.5% of the £120,000, that is £17,400. The business may well have saved in excess of £2,000 in VAT liability if its inputs are small.

Using the flat rate scheme doesn't prevent the reclaim of input tax on capital assets costing over £2,000, and so the concern about losing a substantial amount of input tax reclaim probably isn't an issue.

Continuing with our example of the IT consultant, if he bought computer equipment costing more than £2,000, the VAT on the purchase would be reclaimable.

If your turnover goes over £230,000, you have to leave the scheme. I have heard examples of individuals operating a business that would otherwise have gone over the turnover threshold of the flat rate scheme splitting this business amongst a number of companies, but obviously this is a potentially risky strategy.

2. Bad debt relief

If you are a business that operates on credit and you don't, or can't, use the 'cash accounting' or 'continuous supply' (see below) schemes, the chances are you could be missing out on an opportunity to reclaim some tax from HMRC.

The basic problem bad debt relief seeks to address is the fact that when you have charged VAT to a customer you owe it to the Government even if the customer hasn't paid you. Rather than having to use judgement in deciding whether a debtor is going to pay up, the rules impose an objective criterion: if your debtor is more than six months old, you can claim the VAT back on that debtor.

Subject to keeping up the necessary records, which are set out in detail in the relevant VAT booklet, you can ease your cash flow, possibly quite significantly, by doing a review of your entire sales ledger and seeing who hasn't paid you for at least six months.

3. Continuous supplies of services

You could describe this as a kind of 'heads I win, tails you lose' version of cash accounting. Under VAT cash accounting – which is available, like the flat rate scheme, for smaller businesses – you are allowed not to account for VAT until you receive the cash from your customers. If you are eligible for cash accounting, you get a kind of automatic bad debt relief. However, the downside is you can only reclaim VAT on purchases as and when you pay for them, which seems a fair enough quid pro quo.

If you are supplying services, though, and these services are billed from time to time, you can get the best of both worlds by refraining from issuing VAT invoices, and hence avoiding crystallising a 'tax point'. On the income side of the business, then, you only pay the VAT when you get the money – just like cash accounting. But on the other side of the ledger, you can reclaim VAT on purchases even if you haven't paid for them, because if you are using the 'continuous supply of services' arrangements, you are basically a normal taxpayer, not a taxpayer on cash accounting.

If you qualify – basically you are providing services, not goods, and you bill a client more than once in the course of providing the service – all you need to do is make sure the bits of paper you send out don't count as VAT invoices (a VAT invoice crystallises the requirement to pay output VAT over to HMRC) by stating that the payment request you send out is not a VAT invoice and by refraining from putting on the VAT number, and preferably also refraining from showing the separate net VAT and gross amounts. You will then avoid triggering a tax point, and the tax is then not due until the customer or client pays up.

4. Partial exemption: Special methods

If some of your outputs are exempt from VAT, you have a VAT problem – or opportunity, depending on how you look at it. Examples of exempt businesses are commercial property letting (without an 'option to tax'), insurance-related services, independent financial adviser services, the services of doctors, dentists, tutors, undertakers and those who do up and let or sell 'second-hand' residential property. If you do one of these activities but also make VATable supplies, you have to decide how much of your 'input VAT' you can reclaim. There is a standard method of deciding this, which basically separates out the VAT directly attributable to either exempt or taxable sales to then just split the balance by reference to the proportions of the business's turnover that are respectively exempt and taxable.

But this 'standard method' doesn't always give the best result. It may be possible to get much more of your input VAT back if you adopt a creative approach to deciding how much of your input VAT relates to taxable supplies (and is therefore reclaimable) and how much relates to exempt supplies (and is therefore 'blocked'). For example, expenses relating to your premises could be split on a floor area basis rather than on the standard turnover basis, and this might give a better result. Or, if it's possible to determine in other ways how much time is spent, and how much of your expenses are 'consumed', in making taxable rather than exempt supplies, this can be set up as a partial exemption 'special method'. This method has to be agreed with HMRC, but if it seems to them to be fair, they should accept it, even if it does mean you can get a lot more VAT back.

5. Stagger your periods

If you have more than one VAT-registered entity in your 'group', consider whether you can obtain a cash-flow advantage by having different quarterly periods for sending in VAT returns. Normally speaking, the VAT period will depend on when the business's accounting year-end is. So, to take an example, let's say you have company A that makes VATable supplies to company B. Company A does its VAT returns to February, May, August and November. Company B uses the calendar quarters of March, June, September and December. If company A issues an invoice to company B in March, it won't have to pay over the VAT on this until the end of June, when it sends in the VAT return for its May quarter. Company B, on the other hand, will be able to reclaim the VAT in its March return, and should get this back in April – something like two months before the VAT has been paid over by the charging company. You see how the idea works.

6. Get it right!

Even if you do nothing else that this article suggests, you must read this bit. Although it may seem negative, the way VAT most often makes a big difference to a business, in practice, is where some serious mistake is made in the bookkeeping and accounting for VAT, and the VATman, rubbing his hands in glee, slaps an assessment and penalties on the unfortunate business.

It's not difficult to see why this is such a common phenomenon. VAT, being a boring tax, is almost always relegated to the lowest possible level of a business organisation. And the bookkeeper, or even the office junior, who deals with the VAT recording often has only the sketchiest idea of how this tax works. If you combine that with a system which abounds in very difficult areas of judgement, of the sort that often exercise tribunals and courts for days to decide, you're pretty much asking for trouble.

A very frequent mistake is claiming the VAT back on expenses which either don't have VAT, like insurance premiums, or on which VAT reclaim is specifically excluded, like cars, entertaining and private expenditure. The VATman will comb through your input VAT reclaim records, if he visits, looking for all of these.

A surprisingly common error involves situations where rent is charged, perhaps to a subtenant of part of the business premises. The bookkeeper will often blithely assume this rent should have VAT, whereas, unless there is an 'option to tax' formally notified to HMRC, this rent will actually be VAT-exempt. On the other side of the coin, if VAT is reclaimed on the purchase of a building when there isn't an option to tax in place, you could be looking down the barrel of a huge clawback.

So that's the problem. What's the solution?

One thing you could consider is asking your accountant or tax adviser to do a general review of your VAT affairs, including looking at the last four VAT returns or so. Another is inculcating in the relevant staff member or members the need to take nothing for granted with VAT, but always to take advice, either in-house or from the accountants, if they are in any doubt about any specific issue. They should be told not to be afraid of making a nuisance of themselves!

Of course, you can always try using the HMRC VAT 'helpline'. If you do decide to use this resource, which I have put in quotation marks advisedly the very best of luck to you!

Type of business	VAT flat rate (%)
Accountancy or bookkeeping	14.5
Advertising	11
Agricultural services	11
Any other activity not listed elsewhere	12
Architect, civil and structural engineer or surveyor	14.5
Boarding or care of animals	12
Business services not listed elsewhere	12
Catering services including restaurants and takeaways	12.5
Computer and IT consultancy or data processing	14.5
Computer repair services	10.5
Entertainment or journalism	12.5
Estate agency or property management services	12
Farming or agriculture not listed elsewhere	6.5
Film, radio, television or video production	13
Financial services	13.5
Forestry or fishing	10.5
General building or construction services*	9.5
Hairdressing or other beauty treatment services	13
Hiring or renting goods	9.5
Hotel or accommodation	10.5
Investigation or security	12
Labour-only building or construction services*	14.5
Laundry or dry-cleaning services	12
Lawyer or legal services	14.5
Library, archive, museum or other cultural activity	9.5
Management consultancy	14
Manufacturing fabricated metal products	10.5
Manufacturing food	9
Manufacturing not listed elsewhere	9.5
Manufacturing yarn, textiles or clothing	9
Membership organisation	8
Mining or quarrying	10
Packaging	9
Photography	11
Post offices	5
Printing	8.5
Publishing	11
Pubs	6.5
Real estate activity not listed elsewhere	14
Repairing personal or household goods	10
Repairing vehicles	8.5
Retailing food, confectionery, tobacco, newspapers or children's clothing	4
Retailing pharmaceuticals, medical goods, cosmetics or toiletries	8
Retailing not listed elsewhere	7.5
Retailing vehicles or fuel	6.5
Secretarial services	13
Social work	11
Sport or recreation	8.5
Transport or storage, including couriers, freight, removals and taxis	10
Travel agency	10.5
Veterinary medicine	11
Wholesaling agricultural products	8
Wholesaling food	7.5
Wholesaling not listed elsewhere	8.5

* 'Labour-only building or construction services' means building services where the value of the materials supplied is less than 10% of the turnover for those services. If more than this amount, the business is classed as 'General

building or construction services'.

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Year-end Planning

Every year at around about this time, wise taxpayers start thinking about things they should be doing before 5th April. The end of the tax year isn't quite such an important date as it used to be before self-assessment, with 31st January taking its place for lots of things, such as most claims. However, the 5th April is still a key date in many respects.

1. Personal allowances

Every man, woman and child has got a right to a personal allowance, that is an amount of income they can receive tax-free. If this allowance is not used in a tax year, it's lost; it's not carried forward to next year. So, if there are individuals in your household who have not used up their personal allowance for the current year ended 5th April, are there ways in which they could? For example, if they worked at all in your business, could they receive a wage for doing so? If they had an interest in a property, perhaps one that your business occupied, could they receive a payment of rent?

2. Lower tax bands

The same principle applies where one of the individuals in a household is a higher-rate taxpayer (40 or 45%). Sometimes, in order to spread the income around the family, and make use of otherwise unused basic rate tax bands (which go up to approximately £42,500 gross), it's necessary to make payments before 5th April. For example, a dividend could be paid out of a company over which one of the members of the household has control to another member of the household – providing they are the minor children of the controlling individual.

3. CGT exemption

The capital gains tax (CGT) annual exemption of £11,100 is another 'use it or lose it' relief. So if, say, you had shares in your portfolio that had gone up in value, you could try selling them to crystallise the gain within the annual exemption. Beware, these days, of the more straightforward 'bed and breakfast' arrangements, though. If you buy back the same shares on the market within a 30-day period, you won't have achieved anything, owing to new rules introduced recently. But you can sell, and your spouse can buy, for example, or you can buy back in over 30 days' time.

4. Capital losses

It can also make a big difference to your CGT bill when, or whether, you crystallise losses. Again using the share portfolio example, you may have losses inherent in the shares (quite likely at the moment) that are worth less than you paid for them. Sometimes if you crystallise these losses in the current year, they can then be used to carry forward against future gains or, alternatively, if your gains for the current year are more than the annual exemption, a judicious crystallising of losses before 5th April can reduce your tax bill.

The thing to guard against is wasting losses by realising them in the same year as you're making gains under the annual exemption, because they have to be offset under the rules, even if you have annual exemption available. By contrast, carried-forward losses are not wasted where gains are not over the annual exemption.

5. Negligible value claims

This is an example of a claim that still goes on the tax year basis. The fifth of April 2016 is the latest date on which you can claim that an asset you have invested in became of negligible value, crystallising a capital loss, at some point in the year ended 5th April 2014. It may be important to backdate the loss, so to speak, to this earlier year, if you have gains against which you would like to offset the loss. Capital losses, unlike income losses, can't be carried back.

All the above straightforward income -tax- and CGT-saving ideas recur year after year. However, because of the way our tax system is being changed, with more and more punitive taxes being introduced, there are some considerations that are specific to 5th April 2016. Here are some of them:

6. Forestall the new 'dividend tax'

Broadly speaking, dividends paid after 5th April 2016 are set to be taxed at a rate which is something like 7.5% higher than dividends paid before that date. If you were reconciled to the idea of having to pay income tax on dividends (rather than extracting value from your company in some other, and 'cleverer', way), you could consider paying a larger-than-usual dividend this year before the 7.5% additional surcharge comes in. If you have a company lacking the necessary cash, you can immediately lend the money back to the company following the dividend, so that it can continue to meet its working capital requirements.

7. Forestall the SDLT hike

In a malicious attack on the wealthy and the owners of residential investment property, the chancellor has announced basically a 3% SDLT (stamp duty land tax) increase for every residential property except one's principal home, acquired after 5th April 2016. If at all possible, then, you should look to acquire any such new investments you are planning prior to that date. It could be expensive to do so afterwards.

8. The annual tax on enveloped dwellings

This has already been with us for two or three years; however, the change from 6th April 2016 is that it applies to properties worth as little as £500,000. ATED, as the tax is usually abbreviated to, applies wherever a residential property is held in a company or a partnership in which a company is one of the partners, and is not part of a property letting or property development business. So consider carefully whether you have any dwellings within the scope of ATED, which, for the first time, will have the tax levied on them from 6th April (the previous value threshold was £1 million). Sometimes it is possible to forestall ATED by removing the property from its envelope, depending on how easily this can be done without triggering, potentially, other tax liabilities.

The restriction on loan interest relief for higher-rate taxpayers who hold buy-to-let portfolios is a major blow to the same sector, but the proposal is that this will be phased in from 6th April 2017: so watch this space next year for thoughts on this.

What Should My Will Say?

Well, that's very much up to you. Whether you cut your son off with a shilling or make him rich is nothing to do with us. However, if you've decided broadly how you would like your estate to be shared out amongst your nearest and dearest after your death, tax considerations do then dictate what precise format you use to achieve your wishes. The following straightforward principles may be useful in drafting a tax-efficient will, or making sure your current will is tax efficient:

1. It's normally a good idea to make sure the will arrangements prevent there being any tax on the first death of a married couple. The straightforward 'mirror will' arrangement, which consists of giving the whole estate to the surviving spouse, will usually achieve this because bequests to a surviving spouse (or civil partner) are usually exempt from inheritance tax (IHT). We say 'usually' because this doesn't apply if the recipient spouse is non-UK-domiciled; although, there is now a facility for him or her to elect to waive the non-domiciled status. It's obviously very useful to ensure there is no IHT on first death, first because one would want one's spouse to be as comfortably off financially as possible but, second, because this at least gives the opportunity for the surviving spouse to downsize and save IHT by making lifetime gifts.

2. Make sure your will terms are not too much of a straitjacket. It's a good idea to introduce flexibility into your will, because none of us knows what the tax rules will be when we die. If the executors are bound hand and foot by very precise wording of the will (for example as to which specific assets go to which beneficiaries), it could mean the tax bill is increased, because of the impossibility of varying the arrangements for tax-planning reasons. It's true that, under current rules, you can vary a will after a person's death, to restore tax efficiency where it previously hadn't been; however, first, the ability to make deeds of variation may be taken away by the Government between now and the time of your death and, second, a deed of variation requires everyone who may benefit from the will to agree, and none of them must be minors. Much better to build the flexibility into your will rather than to rely on the ability to use deeds of variation to put things right after your death.

3. Despite the ability to use your deceased spouse's nil band on your own death, it's a good idea, still, we think, to include in your will a 'nil rate band discretionary trust'. Assuming the estate is big enough, and no previous taxable gifts have been made, currently £325,000 of a person's estate can be diverted from their surviving spouse to a trust. Because the will is expressed formulaically, the amount going into the trust guarantees there to be no IHT on the first death of the couple. The benefit of the nil band trust, despite the fact that using it means the second spouse has only one nil band and not two, is that the value which goes into the trust may go up at a faster rate than the nil band (not difficult in the current situation where the nil band has remained the same for seven or eight years and is set to remain the same for many years to come – a classic example of a stealth tax).

4. If there are assets eligible for business property relief or agricultural property relief in your estate, consider whether the will provisions, as they are, make full use of the ability to leave such assets to persons (including trusts) other than one surviving spouse without IHT. Business property relief is available basically for shares in trading companies and other trading businesses.

5. The classic will, in the context of a married couple, provides that the whole estate (or the whole estate except for a nil band trust) goes to the surviving spouse, with the estate going to the children equally if the spouse is not still alive. Consider, though, as an alternative to this, leaving the residue of the estate to a trust in which your children, grandchildren, great-grandchildren etc. are all prospective beneficiaries. The benefit of this is that the estate does not thereby go to swell your children's estates, and hand an IHT problem on to them. Instead, if needed, the estate could go down one, two or even more generations and therefore deprive the Government of its ability to thrust its shovel into your family's stores many times over.

You And The Revenue

Who will mediate the mediators themselves?

With due apologies to the Roman poet Juvenal, this phase is called to mind by HMRC's way of 'mediating' disputes with taxpayers, for reasons which will become apparent.

These days, everything has to come with its acronym, and we are talking here about ADR, or alternative dispute resolution. This is a trendy, but often very effective, way of taking the heat out of arguments and avoiding them dragging expensively through a court of law. Outside the fantasy world of HM Revenue & Customs, mediation (which is a form of ADR) works like this:

The two disputing parties both attend the same offices, usually those of one of the solicitors. They have appointed an entirely independent mediator, who is often a practising barrister. The meeting starts in the same room, where the mediator introduces himself and explains the rules of the game. Both sides make a brief statement of their position, and then they split up into two separate rooms and the mediator whizzes between the two rooms trying to find a compromise solution to the dispute. The mediation isn't binding on either side, and neither side can use whatever is said, or has been offered, in evidence in any court proceedings which could follow.

We believe the evidence shows that, in commercial disputes, mediation is very often highly effective in resolving what would otherwise have been potentially ruinous litigation. One might say, "Well done, the legal profession" for coming up with this idea, but of course you have to bear in mind that the whole reason why it is a good idea is because the legal profession has made litigation such an enormously cumbersome and expensive process in the first place!

As far as our experience is concerned, though, we enter an entirely new, and bizarre, world when entering the Revenue's version of an ADR process.

The wackiest part of HMRC 'mediation' meetings is that the mediator him- or herself works for HMRC! Second, HMRC wouldn't be HMRC without imposing strict and onerous rules from the outset, including often impossibly short timescales to set out one's position in what can be highly complex areas of fact.

Here are two real-life case histories to illustrate the Revenue's interpretation of ADR. The names, of course, and some inessential facts, have been changed:

Greased Lightning Limited

This company makes grease guns, which it sells to a wide range of wholesale and retail customers. Acting on malicious information, the Revenue started an inquiry, and claimed that a lot of cash was going through the business and not being accounted for as income. The allegation was based on an examination of the main director's personal bank statements, which showed lodgements that, after the usual long interval of years, he couldn't identify or explain. The Revenue also claimed that he was making a lower gross profit percentage on his grease guns than other manufacturers of similar equipment. So, a pretty complex case for the taxpayer to answer.

The tax inspector suggested, in the face of near deadlock on these points, that the case be submitted for ADR. This seemed like a good idea.

So a very formidable lady at HMRC wrote to the taxpayer's accountants, saying she wanted a full statement of their position within 10 days. The accountant's reaction was to thank the stars for at least one good laugh that day. There was no way a sensible case could be made up in that short time. Expecting the usual accommodating attitude that, to do them justice, tax inspectors usually show in the face of practical issues like this, the accountant wrote to the mediator asking for more time.

However, over the years, we have always found the Revenue's version of the ADR process an entirely different, and rather bizarre. The accountant and his client found themselves staring at each other, blinking in disbelief. (The interesting postscript to this story is that the Revenue subsequently withdrew most of its allegations anyway.)

Quick Fire Solutions Limited

This company specialised in executive travel, and its managing director made what turned out to be a serious mistake in firing the chief bookkeeper, who was either incompetent or positively dishonest.

Shortly afterwards, he received a letter from the Revenue under the so-called COP9 procedure, basically asking him to own up to having committed serious tax fraud and saying, as is common in COP9 inquiries, that he would be immune from prosecution if he agreed to accept this point. It wasn't difficult to work out why the Revenue had come out all guns blazing. The taxman was claiming, specifically, that he paid for his own holidays out of the company's profits, and work on the company's office was really work on the director's house etc., etc. These were highly targeted accusations, and, in the course of this inquiry, the taxman said he wanted to see all of the managing director's personal bank statements for the last six years.

At this point, the tax advisory profession stepped in and appealed against the requirement to produce personal statements. There were basically two grounds for appeal, first, that the statements were not needed for the purpose of checking the company's tax position and, second, that they were not 'statutory records', which are within the scope of a formal demand for information. This second is a technical point on which the tax advisory profession and HMRC are still in dispute, and the advisers were looking forward with professional interest to its being aired at the tribunal.

Again, mediation was suggested, and this time the process wasn't cut off by an impossibly short timescale, probably because the issues at stake were much simpler.

So a meeting took place in which two tax inspectors, two 'mediators' working for the Revenue, the taxpayer and two of his professional advisers were present. A pretty heavyweight meeting, and it lasted for over four hours.

It soon became apparent that only one of the two 'mediators' was in any way trying to adopt an unbiased approach. The other, who had been brought in because of his experience of COP9 inquiries, was neither more nor less than an additional gun firing on the side of the tax inspectors. Repeated injunctions were made by this so-called mediator to the taxpayer to take the COP9 process seriously – as if anybody shrugs off a letter from the Revenue accusing them of serious fraud with a light laugh!

The taxpayer, in the spirit of mediation, and with his advisers' approval, put forward a compromise solution of disclosing some of the bank statements, but only on condition they would be used for specific purposes.

The HMRC reaction? The compromise solution was almost immediately rejected and no compromise on the part of HMRC was suggested. Indeed, on being asked whether they would compromise, they made it quite clear that no compromise was on the table.

You might well ask how this went on for four hours. A more pertinent question, though, would be why?

Should I try ADR?

If you are in a long-running dispute with HMRC, the above case histories can hardly encourage you to try the Revenue's distorted version of the mediation process. Any meeting with HMRC can be a traumatic experience, even for the more hard-bitten of business people among us, and if there's no hope of getting any kind of compromise out of the other side, it's difficult to see why anyone should subject themselves to it.

However, these two examples could, conceivably, not be representative of the experience of taxpayers as a whole, and we would be very interested to hear from any readers who have had a better (or indeed worse) experience.

So it may be worth agreeing to a mediation meeting subject to clearly understood rules, and not just the rules imposed by HMRC unilaterally but also the rules set by the taxpayer and his advisers. For example, the duration of the meeting could be strictly limited, which may concentrate the minds of the more prolix inspectors who are very keen on using meetings to browbeat their victims. Second, it can be made a condition of holding a meeting that HMRC is willing at least in principle to arrive at a compromise (unlike the Quick Fire case described above). Third, any mediator who shows any signs of bias in favour of HMRC should be asked to leave the meeting immediately and permanently. Fourth, the process that applies in commercial mediations should be followed, under which the taxpayer and the Revenue are not asked to share the same room at any point in the day except for a brief initial introduction.

Despite the discouraging start for ADRs in the context of tax disputes, then, it could still be worth persevering with them if the HMRC mediator will accept these clearly defined rules in advance of the meeting.

Ask the Experts

Q. I have replaced wooden framed double glazed windows in a let property with plastic double glazed ones. The old window frames were rotting and the glass was cloudy so I consider it to be a repair. The property is let unfurnished and I do not claim the 10% annual allowance. Can I claim the cost of the replacements against the rental income? I believe the rules are changing.

A. S. via email

A. This is definitely a repair both under current rules and under the new rules that come in in April (and really only change things for furnished properties). The cost can therefore be offset against your rental income for the year.

Q. A GP surgery had a trainee GP registrar working at the practice. She had been training with the practice for over a year. The practice was responsible for her terms of employment but her salary was fully reimbursed by the local Deanery, including her employer's national insurance and superannuation. On completion of her training, the surgery appointed her as a salaried GP, and incurred its cost. Within four months into her new contract, she informed the practice that she was pregnant. If the new contract alone is taken into consideration, she does not fulfil the criteria for receiving SMP. Is it right to add the weeks during her training period to count the 26 weeks in spite of two different bodies, Deanery and the GP surgery, paying her national insurance?

S. M., via email

A. Did she notify you of her pregnancy immediately or only once she was several months into it? The rule is that you have to have had 26 weeks' employment up to the 15th week before the baby is due, so she needs a total period of 41 weeks working up to the birth. She may achieve this, depending on how many weeks she was pregnant when she told the employer.

If she doesn't fulfil this condition, we still don't think she will have a problem. You indicate that she had an employment contract with the practice during her training and we assume her salary was processed with the practice's payroll and she received a P60 from them each year. Nothing therefore will have changed when she qualified except that the practice ceased to receive funding for her salary.