SLAUGHTER AND MAY/

TAX NEWS

PODCAST

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Zoe Andrews	Welcome to the January 2026 edition of Slaughter and May's "Tax News" podcast. I am Zoe Andrews, Head of Tax Knowledge. While my regular co-host, Tanja Velling, is on maternity leave, I have lined up various members of the Tax team to join me in hosting the podcast. This month I am delighted to welcome Jamshed Bilimoria. Hi Jamshed, it's great to have you on the podcast.
Jamshed Bilimoria	Hi Zoe – it's great to be here. For those of you who don't know me, I'm a senior associate in our Tax department and I advise on the range of tax matters that we cover as a firm, everything from M&A, through to restructuring transactions, financings, disputes with tax authorities and general advisory work.
Zoe Andrews	We will discuss three cases: the Supreme Court's judgment in *Hotel La Tour*, the Court of Appeal's decision in *Tower One St George Wharf* and the High Court's refusal of judicial review of a decision by HMRC on residence which was an intermediate step prior to MAP negotiations with the Spanish tax authority in the *Font* case. We will then share our pick of developments from the Autumn Budget and Finance Bill 2026 and other UK developments before turning our attention to international news for an update on the Pillar Two side-by-side package and what the Inclusive Framework and OECD are doing to address global mobility. The podcast was recorded on the 27 January 2026 and reflects the law and guidance on that date. We will begin with *Hotel La Tour*. As regular listeners will know, the Supreme Court's judgment brings to an end a long-running series of appeals regarding the recoverability of input VAT connected with an exempt share sale. But perhaps it's worth reminding ourselves what it was all about?
Jamshed Bilimoria	Of course – so in this case the appellant, Hotel La Tour, had provided, and charged for, management services to its wholly owned subsidiary, which operated a luxury hotel. Now in order to fundraise the development of a new hotel, Hotel La Tour sold this subsidiary via a share sale, which was exempt from VAT. Now in the case, Hotel La Tour argued that the input tax on associated advisers' fees should be recoverable, because the ultimate purpose of the transaction was to raise funds for the general financing of its VATable business.
Zoe Andrews	Yes - and while the FTT and UT had essentially accepted this position, the Court of Appeal rejected this back in 2024, reaffirming that the "direct and immediate link" test is not modified by the purpose of raising funds, meaning that the input VAT was not recoverable in this case. But taxpayers and advisers alike were rather hoping that the Supreme Court might be a bit more generous on recoverability for input tax when the underlying purpose was to fund VATable activity.

	So, did the Supreme Court take a more generous view of recoverability?
Jamshed Bilimoria	Well in short Zoe, no they didn't. While input tax recovery is always fairly fact-specific, the Supreme Court's view was that the CJEU case law had not departed from earlier case law, which had rejected the idea of focussing on the purpose of the fundraising. Intention is only relevant where input tax is incurred for the purpose of a future taxable activity which has not yet commenced. So ultimately, in the Supreme Court's view, the "direct and immediate link" was between the advisers' fees and the share sale – not the wider taxable business. And that I'm afraid was the fatal blow for the taxpayer's case.
Zoe Andrews	And what about the so-called "cost component test"? Do input costs have to be included in the price if the output is to be "directly and immediately" linked?
Jamshed Bilimoria	No – so the Supreme Court was clear that this isn't how the test works. The "cost component" concept has been used before by the CJEU, but the Supreme Court found that to be unhelpful, and not to be the test that was actually applied by the CJEU.
Zoe Andrews	And what about VAT grouping? Hotel La Tour was in a VAT group with its subsidiary – was the Court of Appeal correct when it rejected the argument that supplies between them, such as the management fees charged, should be ignored? If that was the case, Hotel La Tour would not be carrying on an economic activity, bringing the share sale out of scope for VAT.
Jamshed Bilimoria	Well it was a clever attempt, but ultimately the Supreme Court agreed with the Court of Appeal's analysis here too. The disregard provision that you see in the VAT grouping rules is there to simplify tax collection, not to provide exemptions or reliefs. So you can't simply ignore the supplies within a VAT group with the result that none of the members are carrying on economic activity at all. So, the share sale was exempt here, rather than outside the scope.
Zoe Andrews	This puts to rest the idea of a blanket presumption of recoverability on deal costs. In order to associate these inputs with the general business, rather than a specific transaction, you would need to consider itemising and scoping any strategic or advisory elements which do not relate to the execution of the share sale.
Jamshed Bilimoria	That's right. We might also start to see alternative structures come into play to try and bring such transactions out of scope, such as transfers of a going concern. But of course, although the VAT treatment is clearly the most interesting part of any transaction – and I'm sure our non-tax colleagues feel the same way - there will be much wider commercial considerations than just tax here.

Zoe Andrews	And now for a case that should be seen as a warning to taxpayers engaging in tax avoidance schemes that using a scheme could actually put them in a worse position than just paying the tax that would be due without the scheme! *Tower One St George Wharf* involved a scheme devised by PwC to achieve a tax-free step up to market value in the base cost of the property for corporation tax purposes. The FTT and the UT had found that SDLT group relief was not available because the purpose of the transactions was the avoidance of corporation tax and that the market value rule under section 53 Finance Act 2003 applied for determining the amount of SDLT payable. The group relief point was not appealed to the Court of Appeal. The issues before the Court of Appeal were whether SDLT should be payable on the actual consideration or on the market value (which was higher) and whether this would be under section 53 of Finance Act 2003 (as the FTT and UT had determined) or under the anti-avoidance provision in section 75A of Finance Act 2003 (which the FTT and UT had not needed to consider because of their conclusion on section 53). The Court of Appeal decided that the market value rule in section 53 did not apply because the exception in section 54(4) for a distribution of assets applied. Therefore, it was necessary to consider the application of section 75A. Where section 75A applies it would deem a notional land transaction to have taken place between the seller of the property and Tower One as the purchaser. The Court of Appeal concluded that section 75A did apply to the transaction which resulted in SDLT being assessed on an aggregate amount that was even higher than the property's market value (although HMRC did not seek in this case to increase its assessment beyond market value) and so the Court of Appeal simply dismissed the taxpayer's appeal.
Jamshed Bilimoria	Now the last case we will mention today is an application for judicial review. It is very difficult to meet the conditions for judicial review in tax cases and we have seen many a taxpayer fail, often because there is an alternative remedy but sometimes because the decision is not one which is amenable to judicial review in the first place. In the *Font* case, Mr Font was dual resident in England and Spain for a number of tax years. And this meant his residence would need to be determined by the terms of the tie-breaker in the UK/Spain double tax agreement, or, failing that by mutual agreement of the UK and Spanish tax authorities under a MAP. HMRC sent a letter to Mr Font stating that HMRC considered the taxpayer treaty resident in Spain for the relevant tax years rather than, as HMRC had previously accepted, being treaty resident in the UK for those tax years. The letter said HMRC intended to communicate this position to the Spanish tax authority. Now the taxpayer was concerned that HMRC had wrongly "conceded permanently" to the Spanish tax authority that he was treaty resident in Spain for the particular years and this would wrongly render him liable to substantial taxes in Spain. The High Court dismissed the judicial review claim because the nature and form of the decision (i.e. the letter) meant it was simply not amenable to judicial review. It merely set out the UK's current view and was simply an intermediate step in the MAP process, a process that would be subject to negotiation with the Spanish tax authority. The letter did not itself determine Mr Font's treaty residence.

	And even if a position were ultimately reached under MAP, it could not bind the taxpayer unless he agreed to it. So Mr Font would be free to reject the outcome of MAP and rely on the double tax treaty before the domestic courts. Now its recognised under UK law that the outcome of MAP, if rejected by the taxpayer, has no weight. So even if the letter had been a "decision" amenable to judicial review, the taxpayer would have an alternative remedy which would itself be a bar to judicial review. In the words of the Judge: "He does not need the High Court's intervention to prevent unfair double taxation he says will follow HMRC's alleged unlawful conduct in conceding his treaty residence." And as he went on to say "it is not for our Courts to intervene where the real dispute lies between a taxpayer and a foreign tax authority in relation to foreign tax which he wishes to argue may be improperly levied". So this case is a reminder of the limits of judicial review, particularly in the context of cross-border tax disputes and MAP processes.
Zoe Andrews	Let's now take a look at some of the Autumn Budget and Finance Bill developments. Starting with a follow-up on Tax Adviser registration and in particular whether in-house advisers dealing with the tax affairs of their employing company or a group member need to register and meet minimum standards in order to interact with HMRC. In our September podcast we mentioned that the draft legislation was not straightforward on this point and could do with being made clearer.
Jamshed Bilimoria	Well Zoe the good news is that the Finance Bill 2026 does now contain an exclusion (that's in Schedule 19) for where the tax adviser interacts with HMRC in relation to a client who is a group undertaking in relation to the adviser which should be the case for traditional corporate groups. The bad news is that its less clear if the advisory tax function of say a PE fund would need to register as this will depend on whether the entities they advise (such as funds, JV entities or portfolio companies) are outside the corporate group. The definition of "group undertaking" is narrower than the grouping test for many tax purposes as it uses the Companies Act definition which has its own specific criteria, for example, beneficial ownership is not relevant to that. Now the registration requirement begins in May 2026 with a transitional period of at least three months and HMRC guidance is expected fairly shortly.
Zoe Andrews	Moving on with some further Budget developments, set against the backdrop of ongoing modernisation efforts relating to stamp taxes, the Chancellor announced a new exemption in her Autumn Budget to the 0.5% SDRT charge. Importantly, this does not cover stamp duty or the 1.5% SDRT charge. So Jamshed, tell us a little more about how this works?
Jamshed Bilimoria	Of course, so we've all seen the recent efforts to boost the strength of the London Stock Exchange, and this measure forms part of that – in particular, to encourage new IPOs on the London market. Now as listeners will know, trading of UK shares on the LSE is generally subject to SDRT at 0.5%. This measure provides a three-year exemption from that SDRT charge for securities in companies that are newly listed on a UK regulated market. It took effect very quickly – covering companies that are newly listed on or after 27 November 2025.
Zoe Andrews	And what about stamp duty?

Jamshed Bilimoria	Well unusually, HMRC have limited this new relief just to SDRT, on the basis that the policy behind it is to support UK stock markets, and trades on those markets are usually only subject to SDRT. The downside is that typically means that some of the mechanical transactions you see around an IPO in the background, such as some price stabilisation transactions or pre-IPO positioning transactions, aren't all covered.
Zoe Andrews	And do we think this is going to be a real factor in decision making?
Jamshed Bilimoria	Well it's hard to say Zoe, but our guess is probably not. The cliff edge after three years means it's hard to see this making much of a difference – it's just too short of a period. It does suggest though that the Government sees stamp duty as an overhang on the UK stock market – but they can't afford to abolish stamp duty on stock exchanges entirely. SDRT brings in about £3bn a year, and in these straitened times, that's just too much easily collected revenue to give up. This much more limited measure is only expected to cost around £50m or so by 2028.
Zoe Andrews	Yes – but I suppose it is still a positive step that the government are actively seeking to encourage companies to list and stay listed in London. Although not affecting already-listed companies, this could be a sign of better things to come.
Jamshed Bilimoria	Agreed, and there is of course much wider and more radical stamp duty and SDRT modernisation in the works. The Autumn Budget reconfirmed that these taxes are going to be replaced by the new "Securities Transfer Charge" as part of the ongoing modernisation of stamp taxes framework. Now the objective here is to replace stamp duty and SDRT with a single tax, or, as the Treasury has rather politically called it, a "charge". This is intended to be a single, self-assessed tax, with reporting via a new digital portal which is currently in development. We're expecting draft legislation to be published for this in the first half of this year, so for now I think it's a case of "watch this space".
Zoe Andrews	While we are on the topic of modernisation and reform, a significant reform of the UK's transfer pricing rules is being enacted in Finance Bill 2026 with effect for chargeable periods beginning on or after 1 January 2026, subject to various transitional rules. This follows years of consultation with stakeholders. The reform simplifies the UK transfer pricing rules in a number of areas (including removing UK-UK transfer pricing in many circumstances) and aligns interpretation with OECD principles. The UK's permanent establishment rules are also brought into line with the latest international consensus on both the PE definition and allocation of profits to a PE. The Diverted Profits Tax (or DPT) is replaced with a new corporation tax charging provision on Unassessed Transfer Pricing Profits which is charged at a higher rate than the main corporation tax rate to retain the punitive feature of DPT and incentivise taxpayers to get their transfer pricing right. As the new charge is to corporation tax, businesses can benefit from access to the UK's tax

	treaty network including access to MAP to remove double taxation, which was not the case with the DPT. What else caught your attention in the Budget and Finance Bill?
Jamshed Bilimoria	Well the surprise amendment to the rules on share exchanges and reconstructions in section 137 of the Taxation of Chargeable Gains Act 1992 (or "TCGA") deserves a mention. The changes took immediate effect for transactions made on or after budget day last year – that was 26 November. Now as listeners will know, the share-for-share exchange and scheme of reconstruction rules in the TCGA are subject to an anti-avoidance rule. Previously this anti-avoidance rule required that the **exchange or reconstruction** be effected for bona fide commercial reasons, and not **form part** of a scheme or arrangements of which one of the main purposes was avoidance of CGT or corporation tax liability. Now those rules have been changed. The bona fide commercial reasons test, which never posed much of a hurdle, has been dropped. But more importantly, the second limb of the anti-avoidance rule – the purpose test – has now been amended. Rather than looking at whether the exchange forms part of arrangements, it now looks at whether there are **any** arrangements relating to the exchange where one of the main purposes of the arrangements is CGT or Corporation Tax avoidance.
Zoe Andrews	Do we know what the context for this is?
Jamshed Bilimoria	Well it's a bit of an odd approach, but the backdrop to this seems to be HMRC's recent defeat in the *Delinian* case. HMRC have often tried to argue that when looking at "arrangements" tests, they can zoom in on particular parts or steps, to try and prove a tax avoidance main purpose. And the Court of Appeal in *Delinian* rejected that, and instead looked at the whole of the arrangements, which meant that HMRC lost in that case. What I find a bit odd though is that this is a problem HMRC have already addressed in other areas. If you look at the loan relationships code, for example, when you look at the TAAR in section 363A of CTA 2009, the legislation asks whether one of the main purposes of any party in entering into arrangements "**or any part of them**", has a tax avoidance main purpose. I'd have thought something like that would have allowed HMRC to zoom in on the individual steps they don't like, but they seem to have taken a different approach here.
Zoe Andrews	Has anything else changed?
Jamshed Bilimoria	Yes, I think there's probably two further points to mention. First, there used to be an exception to this anti-avoidance rule for smaller shareholders – those holding 5% or less. That exception has gone, which means HMRC can expect an increase in clearance applications under the new rules.

	The second point is also about clearances. Clearances under these provisions are quite commonly sought, and given the way these changes took effect so quickly, quite a lot of people will be wondering what happens to clearances they've already obtained, or just submitted, and also how they can seek clearance under the new rules, when the law hasn't technically been amended yet. Well, HMRC have issued some guidance on these points in their Capital Gains Manual. In short, if you already had a clearance under the old rules before Budget Day, you had until 26 January to complete your transaction. If your clearance was granted after that, you have 60 days to complete. Otherwise, you'll need a new clearance. Now the approach people seem to be taking to new clearances is to ask for clearance on both the old rules, and the new rules – just to make sure they are covered. And we think HMRC seem to be accepting that.
Zoe Andrews	On a similar note, we've also seen updated guidance published by HMRC regarding the application of sections 135 and 136 TCGA to non-UK company reconstructions. This is found in the Capital Gains Manual CG52502, which was updated on 14 January 2026. Jamshed, perhaps you could run us through the problem here?
Jamshed Bilimoria	Well, HMRC have accepted in this guidance that it's often complicated to see how sections 135 and 136 are meant to apply in the context of transactions which don't take place under UK company law. Proper mergers of two companies – of the type you commonly see in the US and many European jurisdictions - have often caused a bit of head scratching for UK tax lawyers. Particularly in the US, mergers are very commonly used on acquisitions, as they provide a way of achieving 100% ownership without needing 100% shareholder support (much in the same way as we do with schemes of arrangement under the Companies Act). So-called "reverse triangular mergers" are particularly popular in the US. So these involve the acquirer setting up a new subsidiary, into which the target merges, with the target surviving the merger. The target's shareholders receive shares in the acquirer, and the acquirer ends up holding the shares in the target. Now in those cases, people have often worried about whether the conditions in section 135 are met, but HMRC's guidance should now provide some comfort on that point.
Zoe Andrews	One further UK development to mention before we move on to international matters is that, as part of its series of guidelines for compliance, HMRC has released GfC16 to help multinational groups navigate the complexities of the imported hybrid mismatch rules. GfC16 explains how HMRC look at risk, what evidence they expect MNEs to retain, best practice recommendations for disclosure of counteractions, and how to fix mistakes in applying the rules. As with other HMRC guidance for large business, GfC16 forms part of HMRC's "known position" for taxpayers who fall within the uncertain tax treatment notification rules so it is worth a careful read. And now the much-awaited Pillar Two side-by-side package came out on 5 January. This is something the US in particular had been pushing for. Jamshed can you give a summary of the package and its importance?

Jamshed Bilimoria	Well it's a significant achievement and it's a highly negotiated package comprising four new safe harbours and an extension of the Country-by-Country Reporting safe harbour for another year. Central to the package is the new Side-by-Side (or SbS) Safe Harbour, which is not expressly limited to the US, but the US is the only jurisdiction currently listed in the Central Record as having a Qualified SbS regime. Any jurisdiction can (theoretically) rely on the safe harbour provided that before the end of 2028 a request is made to the Inclusive Framework to assess the eligibility criteria of their tax rules. The Inclusive Framework must agree that the jurisdiction has an eligible domestic tax regime and an eligible international tax regime. Now the safe harbour protects entities in a group headquartered in the SbS safe harbour jurisdiction from both the IIR and UTPR (deeming top up amounts under both of those to be zero) but crucially, QDMTTs will still apply. So, for example, a US headquartered group with entities in the UK would still be subject to the UK's Domestic Top-up Tax in respect of the UK profits, but US profits and low-taxed foreign profits in jurisdictions without a QDMTT would fall outside the scope of the global minimum tax. The US has to notify the Inclusive Framework if it materially amends its Qualified SbS regime (for example if it reduces its corporate tax rate, repeals its CFC regime or introduces a new exclusion, exemption or preferential regime). The SbS safe harbour is based on the current rules of the US for imposing a minimum tax on domestic and foreign profits which it's been agreed meet the eligibility criteria.
Zoe Andrews	For those jurisdictions which can meet the eligible domestic tax regime requirement but not the eligible international tax regime requirement, the UPE safe harbour might apply. This provides a safe harbour for domestic profits of MNE groups headquartered in jurisdictions which have an existing eligible domestic tax regime, protecting them from the application of the UTPR. No jurisdictions have yet been determined by the Inclusive Framework to have a Qualified UPE regime but the Inclusive Framework will assess this in the first part of 2026. A key part of the Pillar 2 side-by-side package is simplification. So what simplification measures are included?
Jamshed Bilimoria	That's right. And simplification definitely plays a big part with a further temporary extension of the CbCR Safe Harbour to fiscal years beginning in 2027 (but a 17% or more Effective Tax Rate is required for financial years beginning 2026 and 2027 and the "once out, always out" rule remains a feature). There's a new Simplified ETR Safe Harbour (or SESH). This has a 15% ETR threshold and permits re-entry after dropping out. Basic, optional and unusual adjustments are permitted. These additional adjustments add complexity to the SESH but adopting them may allow the MNE to qualify for the safe harbour.
Zoe Andrews	What was wrong with the Country-by-Country Reporting Safe Harbour – why not just make that permanent?
Jamshed Bilimoria	The simplicity of the Country-by-Country Reporting or (CbCR) safe harbour gave rise to volatility concerns and unreliable results, and the harshness of the once out always out rule was also a criticism. According to the OECD, the SESH improves on the Country-by-Country Reporting design in a more coherent, complete, and stable mechanism. Further permanent safe harbours for routine

	and de minimis profits are also being worked on. The reason for the extension is to continue the safe harbour until jurisdictions have had time to implement the SESH and other safe harbours to come. A new Substance-based Tax Incentives Safe Harbour (or SBTI) recognises the widespread use of tax incentives to support investment and economic development, which can otherwise depress Effective Tax Rate unless they are Qualifying Refundable Tax Credits. The safe harbour allows an MNE group to treat certain Qualified Tax Incentives, which are expenditure-based, or production-based, incentives, as an addition to Covered Taxes of the Constituent Entities located in the jurisdiction. A substance cap calculated by reference to payroll and tangible assets in the jurisdiction also applies to limit the addition to Covered Taxes.
Zoe Andrews	A key concern in the negotiation of the package was the protection of the integrity of Pillar Two. A stocktake by the Inclusive Framework will be concluded by 2029 looking at risks to the level playing field and BEPS risks to preserve the objectives of the global minimum tax and the Side-by-Side system. The package applies from 1 January 2026 but how and when will the UK implement it?
Jamshed Bilimoria	Well given the UK's legislative cycle, it's too late to be shoe-horned into the current Finance Bill. Implementing legislation will be included in the Finance Bill 2027 but will have effect for accounting periods beginning on or after 1 January 2026. Draft legislation will be published for consultation in the usual way. Now let's move on from global minimum tax to global mobility. Remote and cross-border working give huge flexibility, but they also create uncertainty, for example, about when a business might accidentally trigger a tax presence in another country. There are two recent OECD developments which aim to bring clarity to the tax treatment of global mobility. The first is the 2025 Model Tax Commentary update on Article 5(1) for cross-border working which includes new guidance on whether someone working from home creates a permanent establishment (or PE) for their employer.
Zoe Andrews	The revised Commentary states that in most cases, if the employee works from home less than 50% of their total working time over a 12-month period the home will not constitute a PE of the employer. What matters is the actual conduct of the individual, not what the contract says. If however, an employee works from home 50% or more of their time, you will have to look at further facts and circumstances. The key question then is whether "there is a commercial reason for the activities to be undertaken by that individual in the Contracting State where the home… is located". Where there is no such commercial reason, that place will not be a fixed place of business PE "unless other facts and circumstances indicated otherwise". The detail in the Commentary about what is and is not a commercial reason is helpful but as the indicators are now more fact-sensitive than the previous test, the analysis is more nuanced. The second development is a consultation by the Inclusive Framework which closed in December, looking at both personal tax issues and corporate tax concerns, including PE and profit attribution. The OECD acknowledges that uncertainty about the tax treatment and compliance burden can actually deter global mobility altogether. There was a public consultation hearing on 20 January.

	The hope is that these discussions will result in practical solutions that make cross-border working easier and less risky for businesses and employees. What have we got coming up over the next few months?
Jamshed Bilimoria	Well we've got the Spring Statement set for 3rd March which is not supposed to be a fiscal event but we'll be on the lookout for any tax policy announcements. In any event, the Autumn Budget promised the government will announce further changes to simplify and improve tax and customs administration "at a Tax Update in early 2026" so we have those to look forward to as well. Also coming up: • There are a number of awaited judgments in cases heard last year to watch out for. The *HFFX* hearing was June 2025 so the judgment may come out soon. In December 2025, the Court of Appeal heard the *Burlington* case (on the purpose test in the UK/Ireland double tax treaty) and the Upper Tribunal heard HMRC's appeal in *Brindleyplace* (an SDLT avoidance scheme) so we have those decisions to look forward to at some point this year. • We're expecting further Pillar Two simplification measures and further Administrative Guidance. • And we're also expecting the consultation on draft legislation for the stamp taxes on shares modernisation in the first half of this year.
Zoe Andrews	And that leaves me to thank you for listening. If you have any questions, please contact Jamshed or me, or your usual Slaughter and May contact. Further insights from the Slaughter and May Tax department can be found on the European Tax Blog – www.europeantax.blog

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