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TAX NEWS

PODCAST

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Zoe Andrews	Welcome to the May 2025 edition of Slaughter and May's "Tax News" podcast. I am Zoe Andrews, Head of Tax Knowledge.
Tanja Velling	And I am Tanja Velling, Tax Knowledge Counsel. We will discuss the First-tier Tribunal's decisions in *Candy*, *Refinitiv* and *Vaccine Research Limited Partnership*, and the Court of Appeal's decision in *WTGIL*. We will also cover the postponement of the consultation on the tax treatment of pre-development costs, HMRC's revised guidance on the salaried members rules, legislation on territories recognised as having implemented a qualifying income inclusion rule or domestic minimum tax, and a few other UK domestic and international developments. The podcast was recorded on the 29th of April 2025 and reflects the law and guidance on that date. We do not have time today to delve into the tax policy announcements made on the 28th of April as part of what the government called "Tax Update Spring 2025" but will pick up the developments of interest in our next podcast.
Zoe Andrews	Let's start with the First-tier Tribunal's decision in *Candy*, a case on stamp duty land tax which considers the interaction between overpayment relief and the provisions around substantial performance. Under section 44(4) of the Finance Act 2003, an SDLT charge is triggered on substantial performance of a contract for a land transaction. This can, for instance, occur where the purchaser sends in contractors to commence building works before completion and thereby takes possession of the property. That is what had happened in *Candy*, and the taxpayer paid the charge.
Tanja Velling	So far, so undisputed. But the original contract ended up being cancelled and, in such a case, section 44(9) permits the taxpayer to reclaim the substantial performance SDLT charge. There's a catch, though. Section 44(9) provides that the "Repayment must be claimed by amendment of the land transaction return made in respect of the contract", and the deadline for amending a land transaction return is generally 12 months. So, if the contract is cancelled more than 12 months after it was substantially performed, you would seem to be automatically out of date to claim a repayment of the substantial performance charge under section 44(9). That's exactly what the taxpayer faced here and, in a separate set of proceedings that went up to the Court of Appeal, it was confirmed that that is indeed the position; the taxpayer could not reclaim the charge under section 44(9) because the contract was cancelled after the window for amending the SDLT return had expired.

Zoe Andrews	But the taxpayer had also put in a claim for overpayment relief under paragraph 34 of Schedule 10 to the Finance Act 2003 and that's what this First-tier Tribunal decision is about. HMRC argued that section 44(9) precluded such a claim. There are, indeed, certain limitations on overpayment relief. It cannot, for instance, be claimed where the taxpayer could have sought a different relief but let the period for claiming that relief expire. That was not the case here, though, as relief under section 44(9) was never available. In such circumstances, the FTT considered that overpayment relief can be claimed. This is good news, and the decision should pave the way for refunds of substantial performance SDLT charges where the contract is cancelled more than 12 months after the event.
Tanja Velling	Do bear in mind, though, that overpayment relief under paragraph 34 is subject to its own time limit of four years after the effective date of the transaction. If you want more information on this or any other property-related issues, we can put you in touch with our tax and real estate experts. Moving now on to dispute resolution or litigation strategy… Recent reporting suggests that around half the businesses overseen by HMRC's Large Business Directorate are subject to enquiries at any one time and that enquiries now take 45 months on average. Lengthy enquiries take up significant taxpayer resource and it is no surprise when we get asked whether there are ways to speed the process along.
Zoe Andrews	Unfortunately, we won't be able to cover multiple aspects of this topic here - although we would be happy to consider recording another special episode on tax disputes, if you let us know that would be of interest! But there has been a First-tier Tribunal decision on one way in which taxpayers could try and speed the process along. You may recall that we previously discussed the Court of Appeal's decision in the *Refinitiv* judicial review case. The taxpayers challenged diverted profits tax notices for 2018 for incompatibility with an advance pricing agreement that covered certain prior periods. Very broadly, the DPT charges were on a profit-split basis in respect of a sale of IP, but part of the IP's value was derived from earlier services that had been remunerated on a cost-plus basis under the APA. So, the taxpayers argued the DPT notices were incompatible with the APA. Having lost before the Court of Appeal, they have applied for permission to appeal to the Supreme Court, and the PTA decision is outstanding.
Tanja Velling	As diverted profits tax and transfer pricing tend to run in parallel, it will come as no surprise to you that HMRC had also opened corporation tax enquiries into the 2018 period – and, as of April 2025, those enquiries were still open! The taxpayers asked the First-tier Tribunal to direct that those enquiries be closed, and HMRC resisted the application based on the ongoing judicial review. The FTT summarised the position as follows: "If the Supreme Court were to allow the JR, HMRC would need to consider how that judgment affected the transfer pricing methodology. In simple terms, at least some of the services provided by the Applicants would then need to be valued on the cost-plus basis set out in the APA rather than on the profit-split basis."

Zoe Andrews	That sounds like a good reason for wanting to keep the enquiries open?
Tanja Velling	Well, the FTT did agree that HMRC had "a good reason" to want to know the outcome of the judicial review before issuing the closure notices, but that isn't the test. The legislation requires that HMRC has "reasonable grounds for not giving a closure notice". And the outstanding judicial review alone was insufficient to constitute such reasonable grounds here given that HMRC were able to issue notices on terms wide enough to cover their current view and any changes following an adverse judicial review decision, and the Tribunal could adjust the quantum of the notices to reflect any change. There was some argument as to whether HMRC could issue further information notices under Schedule 36 to the Finance Act 2008 after the enquiries were closed - with the taxpayer arguing that HMRC would be able to do so. The FTT didn't express a concluded view on the legal position although it considered it very likely that HMRC wouldn't be able to issue further notices. But this did not militate against directing the issue of closure notices here: the taxpayers had been cooperative and provided large amounts of information, there were no outstanding requests, and the Tribunal could direct further disclosures if necessary.
Zoe Andrews	That's certainly good news and I shall remember that "reasonable grounds" requires more than "a good reason"! Let's move on to a case about the taxability of licence fees which turned on the meaning of "income". The issue before the First-tier Tribunal in the *Vaccine Research Limited Partnership* case was whether licence fees receivable by a partnership as part of a circular, tax-driven arrangement were "income" and if so, whether the income was taxable under either of two sections in the Income Tax (Trading and Other Income) Act 2005: either section 683 on annual payments or section 687 on income not otherwise charged. The FTT concluded that the payments were not income and so neither taxing provision could apply.
Tanja Velling	That case sounds familiar - haven't we come across this tax scheme before?
Zoe Andrews	Yes, we have. The tax scheme itself had been subject to earlier appeals resulting in only a small proportion of the intended sideways loss relief being available to the individual partners. A summary of the complex scheme taken from the Upper Tribunal's decision in 2014 is included as an Appendix to the FTT's current decision. The earlier appeals had focused on whether the partnership was trading, and the quantum of qualifying expenditure incurred by it, but had not considered whether the licence fees received by the partnership as part of the scheme were taxable and this became the subject of a new appeal before the FTT.
Tanja Velling	But in the earlier appeals hadn't the taxpayers argued the licence fees were trading income?
Zoe Andrews	That's right - they had sought to characterise the licence fees as trading income (because to get the sideways loss relief, the partnership had to be shown to be trading). However, a case

	management decision in 2018 allowed the current arguments to be run even though arguing that the licence fees were not income was contrary to the earlier position.
Tanja Velling	I know the scheme as a whole was complex, but in a nutshell, what was the circularity in relation to the licence fees?
Zoe Andrews	Most of the funds that were borrowed and contributed to the partnership as capital by the individual partners were used to pay for the licence fees which were then used to repay the full capital and interest payments incurred by each partner on their borrowings. The taxpayers argued that, applying *Ramsay*, on a "realistic view of the facts" the licence fees represent a circular flow of funds which does not answer to the description of "income" for the purposes of the statutory provisions. HMRC argued that the Court of Appeal's decisions in *Bostan Khan* and *Thomas William Good* were authority for the proposition that "the statutory question posed by the relevant provisions is not concerned with the overall economic outcome of a series of interlinked transactions and focuses instead on the agreement giving rise to the payments in question". The FTT did not find *Khan* or *Good* helpful, however, as they deal with whether a person receives or is entitled to an amount but do not address whether that amount is "income" which is the issue here.
Tanja Velling	The FTT turned to the Court of Appeal's 2023 decision in *BlueCrest* as authority on the statutory question of whether something is income. In *BlueCrest*, Sir Launcelot Henderson considered it necessary, in order to determine if the PIP awards were income, to consider the arrangements in their entirety, including their economic effect and this is the approach the FTT followed here. The FTT noted that, although *Ramsay* was not mentioned specifically by Sir Launcelot Henderson in *BlueCrest*, his approach "seems consistent with the second step of the *Ramsay* approach which is to ascertain the facts in the light of the statutory question". The FTT applied Sir Launcelot Henderson's basic "fruit and branch" analogy to conclude in this case that there is no "fruit" for the individual partners because of the circular, self-cancelling flow of funds.
Zoe Andrews	A win for the taxpayers, for now at least, but HMRC may yet appeal. And, of course, the Supreme Court will have the opportunity to determine the nature of miscellaneous income when it hears *HFFX* in the next few months, so the legal position in *Vaccine Research Limited Partnership* may change again very soon.
Tanja Velling	Changing gear for a moment, excuse the pun, let's have a look at the *WTGIL* case. Young drivers could get specialised (and usually cheaper) insurance if they had a "black box" installed in the car which monitors and reports to the insurer and the driver on their driving. The Court of Appeal had to consider the tax treatment of the provision and fitting of such black boxes by an insurance intermediary, ISL. ISL claimed that the provision and fitting of the devices were taxable supplies made by it to the policyholders and that input tax of around £2 million on the purchase price of the devices and the fitting costs over a four-year period should be recoverable. HMRC disagreed; one of their arguments was that the relevant supplies were exempt.

	The Court of Appeal held that ISL could not recover VAT for providing and fitting the black box devices in motor vehicles because this was part of the single exempt supply of insurance intermediary services.
Zoe Andrews	This is an important case on the scope of the insurance intermediary exemption. It highlights the need to "strictly construe" exemptions from VAT but makes clear this does not mean they should be "restrictively construed". This means that exemptions should not be construed in such a way as to deprive them of their intended effect.
Tanja Velling	And what is the intended effect of the intermediary exemption?
Zoe Andrews	The Court of Appeal decided that the intended effect is that the basic exemption for "insurance and reinsurance transactions" should extend to "related services performed by insurance brokers and insurance agents". The Court of Appeal concluded that the services of providing and fitting the devices were performed by ISL as an "integral and indispensable" element of the relevant insurance transactions and it would be artificial and unrealistic to exclude them.
Tanja Velling	The Upper Tribunal had found in favour of HMRC on another ground but had rejected HMRC's argument on the application of the exemption – why was that?
Zoe Andrews	The Upper Tribunal had rejected HMRC's exemption argument on the basis that it did not consider that ISL was "acting in an intermediary capacity" when it provided and fitted the devices. The Upper Tribunal concluded that the services provided by ISL to policyholders were not comprised exclusively of services falling within the relevant exemption because there was a separate supply to policyholders comprising the installation of the black boxes which would be a taxable supply if made for consideration. The Court of Appeal, however, disagreed and expressed the view that the Upper Tribunal had over-compartmentalised the services of provision and fitting of the device and lost sight of the overall picture which was a single, exempt supply of insurance intermediary services.
Tanja Velling	VAT always takes you back to the basic question of who supplies what to whom. This question is more difficult, isn't it where, as here, there is more than one contractual arrangement between different parties?
Zoe Andrews	Yes, here we have the policyholder, the insurer and the insurance intermediary. The Court of Appeal found the Supreme Court's decision in the *Secret Hotels* case helpful in addressing this issue. The starting point is the contractual arrangement but regard must be had to the totality of the circumstances and to the whole of the relationships between the various parties. From the perspective of the policyholder, the provision and fitting of the device in the insured vehicle is an essential component of the insurance for which the insured pays the premium to the insurer. The device is necessary for this type of insurance and its provision is not an end in itself. As the FTT had found, "the policyholders saw the policy as a single transaction with a single premium". The Court of Appeal considered that the black box fitting and provision services were provided to the insurers as well as to the policyholders and were undoubtedly provided to the

	insurers by ISL acting in an intermediary capacity. Sir Launcelot Henderson concluded that "To treat the same services as being supplied to the policyholders but not in an intermediary capacity would be the height of artificiality."
Tanja Velling	I like how the Court considered the installation of the black box not an end in itself. I'm almost curious what such a device would make of my driving – which, for the record, I would consider not terrible! Anyway, back to a case we discussed last month in the April 2025 edition of this podcast. The Court of Appeal overturned the Upper Tribunal's decision in *Gunfleet Sands* to find that the majority of disputed predevelopment survey costs for certain offshore wind farms were eligible for capital allowances. This would have come as welcome news for taxpayers, and probably also for the government as the Corporate Tax Roadmap published in October 2024 had envisaged a consultation on the tax treatment of predevelopment costs in light of the Upper Tribunal's decision (with, I assume, would have had the aim of reversing the effect of that decision). There have been two further developments in this space since our April podcast. First, the government announced that the consultation would be postponed while they consider the implications of the Court of Appeal's decision. In the meantime, stakeholders were invited to email their views on what the judgment means for business. The second development is that HMRC has applied for permission to appeal the case to the Supreme Court. In some ways, this might seem contrary to the government's mission to drive infrastructure development. Why not just let the Court of Appeal's decision stand and perhaps this would obviate the need for legislative action? Well, in that case there would have always been a risk of a future Supreme Court decision that overturns the Court of Appeal, so getting final resolution on the current wording of the legislation here may not be a bad thing.
Zoe Andrews	Now for another update from a previous podcast. In the March 2025 edition, we noted that HMRC planned to update their guidance on the salaried members rules to reverse an earlier U-turn. The updated guidance would clarify that top-up arrangements which ensure that a partner's contribution to the LLP remains at least 25% of their "disguised salary" can work to keep the partner outside the salaried members rules by reference to so-called "Condition C". The updated guidance is now available in the Partnership Manual at PM259200. It no longer suggests that such top-up arrangements are generally vulnerable under the relevant anti-avoidance rule. This will be assessed on a case-by-case basis. The key question will be whether the top-up is a "genuine contribution made by the individual to the LLP, intended to be enduring and giving rise to real risk", and in determining this, HMRC will take into account all facts and circumstances. It will be good to have evidence that there is an actual risk that the individual could lose the contribution (even though that risk may be low in practice if the LLP is well capitalised and therefore unlikely to become insolvent), and that some commercial use has been made of the contribution. HMRC is likely to challenge arrangements where contributions are segregated for the individuals' benefit or where there appear to be circular transactions that return the contribution to the individuals.

	That's certainly an improvement over the March 2024 edition of the guidance, although there remains a level of risk. If you'd like to discuss this further, please let us know so we can put you in touch with our colleagues who have deep experience advising in this area.
Tanja Velling	Our colleagues would also be able to assist you if you're someone to whom HMRC may have written (or who may be thinking about approaching HMRC) following the Court of Appeal's decision in *BlueCrest* on Condition B of the salaried members rules. According to the CIOT, HMRC has been contacting LLPs with open compliance checks in this respect and advises LLPs with concerns about the impact of the decision to discuss this with their Customer Compliance Manager.
Zoe Andrews	Another development since our April podcast is that the National Insurance Contributions Act which increases employer national insurance contributions, as announced during the Autumn Budget, received Royal Assent on the 3rd of April and generally took effect from the 6th of April 2025. What do you have for us on Pillar Two?
Tanja Velling	Another piece of the UK's Pillar Two implementation jigsaw is now in place. Regulations came into force on the 21st of April and have effect for accounting periods beginning on or after the 31st of December 2023 setting out three lists to provide certainty to business about the terms used to determine the apportionment of taxing rights between implementing territories in the multinational and domestic top-up tax legislation. • The lists are of "Pillar Two territories" which are those territories which have qualifying income inclusion rules; • then you have list of each tax that is a qualifying domestic top-up tax (and the respective territories of those taxes); and • finally, there's a list of each tax specified as being accredited for the qualifying DTT safe harbour in Schedule 16A to Finance (No.2) Act 2023 (and the respective territories of those taxes). Each list specifies the date from which the particular territory or tax is treated as qualifying or accredited.
Zoe Andrews	I was surprised by how few territories are on the UK's lists. For example, there are only 26 Pillar Two territories currently listed but we know of more territories that have implemented Pillar Two legislation. So, what are these three lists based on?
Tanja Velling	They are based on the OECD's central record of legislation with transitional qualified status. In order to get on this record, a territory has to submit a self-certification to the Inclusive Framework which then has to complete the agreed transitional qualification mechanism process. So, there will be territories that have implemented qualifying rules but which will not appear on the central record until they have completed the process. Don't worry, though, HMRC has the power to specify additions to each list in the regulations by notice and so the UK lists will be revised as and when other territories are considered to

	implement qualifying rules. Guernsey and Spain were recently added to the OECD central record and so I would expect that these will be added to the UK lists by HMRC notice.
Zoe Andrews	Do you think we may yet see the US appear in these lists?
Tanja Velling	Well, never say never. The US already has the global intangible low-taxed income (or GILTI) regime which functions as a minimum tax system on global income but its scope and rate differs from the income inclusion rule so, unless the US makes changes to align GILTI with the Pillar Two income inclusion rule (which has not proved possible so far), I don't think we will see the US listed as a Pillar Two territory! As we know, the Trump Administration is rather busy with tariffs and trade deals at the moment, so I don't see this as being resolved any time soon although we understand the US still wants to be part of the Pillar Two discussions with a view to finding a politically acceptable and stable coexistence between its GILTI regime and Pillar Two.
Zoe Andrews	Reportedly, this is also a priority topic for leaders within the EU. In other EU/Pillar Two news, the Council adopted DAC9 which paves the way for one central top-up tax filing within the EU. And what do we have to look out for?
Tanja Velling	Over the next few weeks, a few consultations that were published alongside the Spring Statement are scheduled to close. • The 7th of May is the closing date for the consultation on "Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance". This includes proposals to expand the circumstances where HMRC can require access to a tax adviser's working papers. The government proposes to allow HMRC to issue a file access notice without prior Tribunal approval where HMRC "'reasonably suspects' the tax adviser has facilitated an inaccuracy in a taxpayer's document or return." This could be very wide indeed; it is currently unclear what the government envisages should be regarded as an "inaccuracy" or "facilitation" for these purposes. By way of comparison, the specific file access power that the consultation proposes to widen is currently subject to Tribunal approval and can be exercised only after the tax adviser has been convicted of an offence relating to tax that involves fraud or dishonesty, or after HMRC has determined that the tax adviser has acted dishonestly and that determination is final. So, the consultation seems to propose quite a significant extension of these powers! • The consultation on "Better use of new and improved third party data" which will be of particular interest to finance and card service providers closes on the 21st of May. It envisages a shift from notice-based reporting to a standing reporting requirement, so information is received by HMRC closer to real time. Whilst the consultation focuses on improving the datasets that HMRC already receive, it also envisages a potential future extension to dividends and other investment income. • And the 26th of May is the closing date for the consultation on advance clearances for R&D reliefs.
Zoe Andrews	And that leaves me to thank you for listening. If you have any questions, please contact Tanja 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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