SLAUGHTER AND MAY/

TAX NEWS

PODCAST

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Zoe Andrews	Welcome to the March 2026 edition of Slaughter and May's "Tax News" podcast. I am Zoe Andrews, Head of Tax Knowledge. I am delighted to welcome as co-host this month Ed Milliner. Thanks for joining me, Ed.
Ed Milliner	Thanks Zoe. Hello to all our listeners – I'm a senior counsel here in the Slaughter and May tax department, working across a whole range of corporate and financing transactions, contentious matters and advisory work, with a particular interest in real estate, infrastructure and energy matters. Delighted to be joining you today Zoe, and very much looking forward to my brief moment in the limelight while your usual sparring partner is away.
Zoe Andrews	We will discuss three cases: the Court of Appeal's decisions in *Sintra* (on burden of proof in penalty appeals) and in *Muller* (on the interaction of the corporation tax rules for partnerships and for intangible assets) and the Upper Tribunal's decision in *Lycamobile*. We will then share our pick of UK developments, including an update on tax adviser registration guidance and timings, the National Audit Office report on the Large Business directorate and HMRC's consultation on extending the Notification of Uncertain Tax Treatment regime. The podcast was recorded on the 17th of March 2026 and reflects the law and guidance on that date. We will begin with *Sintra*. What was it all about, Ed?
Ed Milliner	*Sintra* is a slightly unusual and interesting tax case – and I say "interesting" despite it being a case about procedural issues. Very simply put, the case concerned an individual who had allegedly participated in what is known as "alcohol diversion fraud", which involved exploiting weaknesses in the excise and VAT warehousing rules to pay a lower amount of duty in another EU country while physically securing the goods in the UK and selling them there for cash in hand. So HMRC were going after this individual, and two companies he had set up to implement the alleged fraud, for unpaid UK VAT and excise duty and for sizeable penalties both for non-payment of those taxes and, in the case of the companies, for failure to register for VAT. Exciting as all of that sounds, the question raised here was about the burden of proof in relation to the penalties.
Zoe Andrews	Where HMRC make an assessment or determination of tax they say is owed, it's usually for the taxpayer to prove that it's incorrect and that they owe less tax, or no tax at all.
Ed Milliner	That's right. And instinctively that might seem a bit unfair – if the Revenue are coming after you for tax they say is due, surely it's for them to prove their case? – but this is a well-established principle. Exactly how it operates depends on the particular process that is being engaged –

	sometimes the rules are expressly set out in legislation. But there is a more general principle which is justified on the basis that the taxpayer should be in possession of the relevant evidence and is therefore better placed to address the issues in contention. There's also a broader public law principle which says that, where enforcement action is taken by a public authority, the target of that action bears the burden of proof. There are a number of exceptions to all of this, again depending on the particular rules that are in play, and again these exceptions may be statutory or based in common law principles.
Zoe Andrews	It's all rather complicated then.
Ed Milliner	Exactly – and so one should be very careful not to automatically read across a decision in an excise or VAT case to direct taxes, for instance. But there are certainly common themes and principles.
Zoe Andrews	What was the particular issue here then?
Ed Milliner	One of those exceptions is that, in tax penalty cases, it is generally for HMRC to prove that the various conditions required for imposition of the penalty are met. For example, if the penalty is imposed on the basis of the taxpayer being dishonest or fraudulent, HMRC must prove dishonesty or fraudulent behaviour. Again, there are specific rules which say as much in certain cases, but there is also the presumption of innocence enshrined in Article 6 of the European Convention of Human Rights, which was engaged here.
Zoe Andrews	A bit like in a criminal case then, "innocent until proven guilty", and "proven beyond reasonable doubt"?
Ed Milliner	Innocent until proven guilty, yes. And the foundation is based on the criminal law rule, and we'll get into that. But unlike in a criminal case, it's not "beyond reasonable doubt". Where HMRC bear the burden to prove dishonesty or fraud (for example) in a tax penalty case, it's still only the civil standard that applies. Which is the balance of probabilities – i.e., was it more likely than not that the taxpayer was dishonest or fraudulent?
Zoe Andrews	In this case were HMRC trying to argue that the burden was on the taxpayer?
Ed Milliner	Well, HMRC accepted that it was for them to prove the elements that were, if you like, specific to the penalty. Dishonest or deliberate conduct, for example. The disagreement was about the underlying tax liability itself. The taxpayer argued that you can't have a tax penalty unless you have an underlying tax liability – and therefore the underlying tax liability, if it is not already a settled matter - agreed or determined by a prior decision, for instance - is as much an element of the tax penalty as any other, and so is for HMRC to prove.
Zoe Andrews	It sounds like the taxpayer's argument was basically that if you have a hearing to determine the underlying tax liability alone, then the burden is on the taxpayer for that. But if the hearing is to determine the tax penalty which relates to that liability, then the burden switches?

Ed Milliner	Yes - that was essentially the taxpayer's argument. As I say, it was rooted in the Article 6 presumption of innocence and right to a fair trial. Now, Article 6 is engaged in the case of a criminal charge which a tax penalty is not, but there is body of jurisprudence from the European Court in Strasbourg which makes it clear that you look at the nature of the penalty rather than merely whether it is labelled as criminal or civil under UK law. And there was a particularly helpful comment in one of the leading European cases which suggested that where the elements of a tax penalty cannot be separated then the whole thing falls within the Article 6 protection, and that this could involve bringing in what the Court called "pure" tax assessments where the elements could not be separated. This sort of suggested that the burden for the whole thing would indeed shift to HMRC where the underlying liability had not been previously determined, and indeed the First-tier and Upper Tribunals both found in favour of the taxpayer.
Zoe Andrews	That does seem like a very odd outcome – surely you'd always need to determine whether the underlying tax was owed first, before any question of a penalty arises?
Ed Milliner	Absolutely – in fact, a differently constituted Upper Tribunal said so in another case, and indeed that is where the Court of Appeal came out here, overruling the tribunals below. The Court acknowledged that the taxpayer had a serious argument based on the prior case law, but was ultimately persuaded by what they called the "arbitrary and anomalous results" that would follow if the taxpayer has the burden where the underlying liability is raised in separate proceedings or agreed between the parties, but that HMRC takes on that burden otherwise. They said it would give rise to the "risk of inconsistent decisions" and also create a "perverse incentive" for taxpayers to avoid appealing an underlying assessment so as to be able to raise it as a defence in related penalty proceedings. That was enough to win it for HMRC, but the Court also held that in any event the underlying tax liability and penalty elements here were capable of being separated and so the taxpayer would have lost even on their own interpretation of the ECHR law.
Zoe Andrews	A sensible outcome in the end then.
Ed Milliner	I'd say so. This is all a useful reminder of the role that the burden of proof plays in tax proceedings, and it's worth returning briefly to the basic point that – penalties aside – it rests first with the taxpayer to disprove HMRC's case. Another recent decision, here from the FTT in a case called *Carbon Six Engineering*. This concerned an application by the taxpayer to bar HMRC from continuing in proceedings due to HMRC's persistent failure to comply with directions of the tribunal. Now, the taxpayer was successful in barring HMRC, but it's worth noting that that itself did not mean they automatically won the whole thing – in principle, the HMRC determinations in that case still stood unless and until successfully challenged in substantive proceedings. It so happens that, in that particular case, the taxpayer was also successful in obtaining summary judgment, so it all went away. But worth noting that, in theory, a taxpayer may still need to win the fight even though its opponent may not be in the ring.
Zoe Andrews	Carrying on the boxing analogy, let's move on to the knockout blow dealt to the taxpayer by the Upper Tribunal in the *Lycamobile* case. Although the decision itself is very fact specific and seems to me totally sensible, there are a couple of quotes from the Upper Tribunal which I want to share. The Upper Tribunal agreed with HMRC that VAT arose on the supply of mobile phone bundles at the time of purchase of the bundle plans, not at the time the bundle allowances were actually used by

	the customer. This is because the supply was of a right to access the services guaranteed in the bundle plan and so the supply arose on the sale of a bundle plan.
Ed Milliner	As only 5-10% of allowances were actually used by customers each month, Lycamobile's argument, if successful, would have given it a windfall of £50 million in VAT that it charged to the customer but not handed over to HMRC. Were there any particular comments in the decision that caught your attention?
Zoe Andrews	There are two which I thought pretty much sum up the mysteries of VAT. The first is "The question may be simple, but we are in the world of VAT". That made me smile – the VAT world is, of course, the place where there are basic rules and exceptions to the basic rules and exceptions to the exceptions that result in much deliberation before the tribunals and courts (making little sense at all to the average biscuit buyer) about the VAT treatment of goods and services. The second quote is "Notwithstanding the extensive submissions which we have heard from counsel, it is important not to lose sight of the fact that this is a simple question". As is often the case with VAT, the question may be simple but the route to the answer may be long and windy, and it is crucial to identify the nature of the supply at the outset so as to stay on track.
Ed Milliner	Before we get too sidetracked with the mysteries of VAT let's move on to the Court of Appeal's decision in the *Muller* case. Now the intangible fixed asset rules in Part 8 of the Corporation Tax Act 2009 do not fit neatly with the notional company fiction for partnerships so this has been a complex area for taxpayers hasn't it?
Zoe Andrews	Yes, it certainly has. Let me remind you of the facts of the *Muller* case. In 2013, three UK companies in the Muller group established a UK limited liability partnership and transferred their trades (including various intangible assets and, in particular, goodwill) to the LLP in return for membership units in the LLP. The assets were recorded at fair value in the LLP's accounts and the intangible assets were amortised over five years on a straight-line basis. In computing the LLP's profits for the purposes of the corporate members' tax returns, deductions were claimed for the amortisation expense. HMRC denied these tax deductions for each of the years from 2014 to 2017 on the basis that the intangible assets were acquired from a related party. Ed, can you explain the main issue in this case?
Ed Milliner	Sure. Under section 882 of the Corporation Tax Act 2009, a deduction would only be available for the amortisation expense if the intangible assets acquired by the LLP were not treated as acquired from a "related party". The focus in *Muller* was therefore on the definition of "related party" and how this interacts with section 1259 of the Corporation Tax Act 2009, which sets out how to calculate the profits of a partnership for corporation tax purposes before those profits are then apportioned between the partners. The taxpayers argued that the "related party" exception did not apply because under section 1259(3)(a), the LLP's profits were to be calculated as though it were a company carrying on the same trade as the LLP, but this did not go so far as to require attribution of any real-world

	characteristics of ownership and control to the notional company – according to the taxpayers the legislation should be read literally requiring no assumptions beyond that the notional company was carrying on the same trade as the LLP. However, both Tribunals and now the Court of Appeal agreed with HMRC that the statutory fiction did permit the notional company to be taken to have the same ownership and control characteristics as the LLP with the effect that the intangible assets acquired by the LLP were acquired from a "related party" and deductions were denied by the related party rule in section 882.
Zoe Andrews	It is worth noting for completeness that changes were made by Finance Act 2016 to the related party definition for the purposes of section 882 so that section 882 does now work better for partnerships.
Ed Milliner	That's right. But the main relevance of this case is the discussion of the scope and effect of the deeming provision in section 1259(3). The issue of how the notional company fiction for partnerships interacts with the rules on intangible fixed assets does come up regularly in practice and there are other parts of the intangible fixed asset rules that still use a "related party" definition that do not cater properly for partnerships and it is not always clear how transactions between partnerships and partners, or indeed other partnerships, should be taxed. So, the discussion of the scope and effect of the deeming provision in section 1259(3) will be useful for taxpayers navigating their way around those provisions.
Zoe Andrews	And now for a look at some recent UK developments – starting with an update on tax adviser registration. In February, HMRC published guidance on the conditions to register and when to register which staggers registration over three stages between May 2026 and February 2027. This practical guidance is a helpful starting point but it is high level and does not resolve areas of uncertainty in the legislation, such as whether in-house advisers dealing with the tax affairs of their employing entity or a group member need to register and meet minimum standards in order to interact with HMRC. Although there is an exclusion in the Finance Bill where a tax adviser interacts with HMRC in relation to a client who is a group undertaking in relation to the adviser, we flagged in our last podcast that it is unclear if the tax advisory 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.
Ed Milliner	HMRC has been informed by stakeholders that the legislation as drafted risks bringing some activities into scope as an unintended consequence, and that certain requirements may present operational difficulties for the financial services industry. UK Private Capital (previously the BVCA) has informed its members that there will be a delay until 31 March 2027 for the registration of in-house tax teams for the "financial services" industry (a term still to be defined). This is to allow time for HMRC to work with stakeholders to get the legislation right and to ensure the requirements are proportionate and workable. HMRC intends to update the guidance on the website to reflect this delay. Further guidance, including guidance on more technical aspects of the rules, is expected before the rules commence in May.
Zoe Andrews	Ed, you've had a look at the National Audit Office's report on the work of the large business directorate at HMRC haven't you? What did you make of it?

Ed Milliner	Yes, I have. The report tells us that some 40% of all taxes collected by HMRC come through large businesses – although that figure is mostly comprised of taxes collected through them, such as PAYE income tax and national insurance, and VAT, rather than corporation tax borne by those businesses directly. The report looks into HMRC's approach to working with large businesses and their effectiveness in managing the particular risks and compliance issues that arise; it also provides some other interesting facts and figures about the taxes collected from large businesses and how compliant they are. So perhaps we'll start with a pop quiz, if you're up for that Zoe?
Zoe Andrews	Well, I've already read the report, Ed, so it sort of feels like cheating – but perhaps our listeners can play along?
Ed Milliner	Fair enough! Perhaps it will be more of a memory test for you then Zoe. Listeners can play along and have a guess – no prizes on offer, I'm afraid. Let's give it a go. First question: Of all of the compliance interventions into large business opened by HMRC, what proportion do you think came from disclosures made voluntarily by the businesses themselves? A quarter, a third, or half?
Zoe Andrews	Yes, I remember this one – it was 33%, so a third. Did that seem quite high to you?
Ed Milliner	Yes that's right. And yes it does seem rather high perhaps, although the report does say that that figure includes disclosures arising through the business risk review process, so not just cases of disclosures arising entirely out of the blue. Slightly confusingly, the report also gives a separate figure of 19% as coming from the business risk review process – presumably these are cases where HMRC has identified the issue itself during the review. And we're not told anything about the other 48%. Second question then – and talking of the risk review process – roughly what proportion of large businesses are awarded the coveted low risk status? Same options: a quarter, a third or a half?
Zoe Andrews	I think I recall this being … around a half?
Ed Milliner	Right again, well done. Of the two thousand or so businesses dealt with by the large business directorate, just over a thousand were low risk as at this time last year. And there were just over a hundred businesses falling within the moderate to high or high risk categories. Right, third and final question: what proportion of compliance interventions do you think are closed without a single penny of additional tax being collected? Same choices as before.
Zoe Andrews	I do remember this one – it's around a third. 30%, which I think was down from 38% from the previous period?
Ed Milliner	Excellent – bonus points. Yes it was 38% for the same period three years prior, now down to 30%, which might suggest that HMRC have become more discerning in the cases they take on, although it would be interesting to see the broader trend there. Now, the report does remark that these so-called "zero-yield" interventions take almost twice as long to resolve as interventions that produce at least some additional tax – 17 months compared to 9 – and that's excluding time spent in litigation, which obviously adds much more. But I suppose in fairness that's sort of what you'd expect – once you've found what you're looking for you stop looking.

	Being uncharitable one might see it as an example of the sunk costs fallacy in action; although from a governance perspective, one can see how it's wise to let it be seen that no stone has been left unturned if the end result is a nullity.
Zoe Andrews	I see. So overall, would you say HMRC come out well from the report? What about strengths and weaknesses?
Ed Milliner	Overall, I'd say it's a good report for HMRC. We're told that the compliance work of the large business directorate gets good value for money, measured at £95 of tax for every £1 spent on staff pay, which is considerably above HMRC's overall average. We're also told that large business customers rate their experience of dealing with HMRC highly compared to other taxpayer groups – although perhaps that's not surprising if you've got your own Customer Compliance Manager who understands your business and has time to dedicate to your particular issues, and you're not being shunted around different officers or listening to the hold music on the general HMRC helpline. In terms of weaknesses – it probably won't surprise anyone to hear that IT and technology is an issue, with what the report refers to as "a fragmented network of legacy systems" meaning that HMRC isn't able to make the best use of the data available. Indeed, the report notes that HMRC lacks a clear view on short term changes in compliance risk, partly being down to an absence of reliable data, although it's also noted that the annual nature of tax returns and the time allowed for filing them is a key factor there. And despite the overall positive feedback from taxpayers, slightly less than half said that the overall level of the tax compliance admin burden was reasonable.
Zoe Andrews	As you say, I thought it was generally quite positive. Does this mean that it's business as usual then for HMRC – fix your IT issues and keep up the good work?
Ed Milliner	Pretty much! There are six recommendations in all, none of which are particularly striking. There is a reminder for HMRC not to over-burden businesses with information requests, no doubt picking up on complaints from taxpayers (as noted in the report) that HMRC seem to ask for information without it being clear how it was relevant to their decision making. I suspect many taxpayers will recognise that. There's also encouragement for looking into expanding the cooperative compliance approach beyond the large business population, which sounds all well and good but will ultimately be a resourcing issue I'd have thought. The one perhaps slightly concerning recommendation is that HMRC should, quote: "explore any barriers it faces in using more of the legislative powers it has to tackle egregious behaviour by large businesses, particularly its special measures regime". Now, just to say, HMRC seem to regard the fact that no businesses have been placed in special measures as pointing to its success as a deterrent - but the NAO are seemingly unconvinced. I have to say, that's a bit surprising, as there is a general sense from the report that "egregious" behaviour isn't much of a problem amongst large businesses. For instance, as the report notes, the "tax gap" for large businesses is relatively small compared to the overall number.
Zoe Andrews	By the "tax gap" – you mean HMRC's estimate of how much tax should in theory be paid but, for one reason or another, isn't paid.

Ed Milliner	Yes, exactly. Half of the tax gap for large business is down to different interpretations of the law rather than, for instance, error or straight up evasion. For context, in terms of the overall tax gap, two-thirds is reckoned to be down to a combination of error or evasion of some kind; the corresponding figure for the large business tax gap is around one-third. For the most part, then, large businesses are simply disagreeing with HMRC on the technical analysis rather than making mistakes or worse.
Zoe Andrews	That brings me neatly on to HMRC's consultation on opportunities to extend uncertain tax treatment (or UTT) published on 12 March and running until 4 June. The UTT regime was introduced in 2022 to bring legal interpretation uncertainties to HMRC's attention with the aim of discussing and resolving them and reduce the legal interpretation portion of the tax gap. Currently, the UTT regime applies only to large businesses (those with a UK turnover of more than £200 million and UK balance sheet total of more than £2 billion) and the taxes covered are corporation tax, VAT and income tax (including PAYE). HMRC is concerned that, although to date UTT has resulted in over 30 notifications involving identified potential tax at risk estimated to be £1 billion, the regime could more effectively close the legal uncertainty tax gap if the regime were extended to require more legal interpretation uncertainties to be notified to HMRC. HMRC is consulting on three proposals. First, extending the notification requirements beyond the companies and partnerships which constitute large businesses to individuals and trusts where the tax advantage of the legal interpretation exceeds £5 million. The second proposal is the addition of further taxes to be within scope of UTT, so: SDLT, NICs, construction industry scheme obligations, IHT and CGT. The third proposal is to introduce an additional trigger to broaden the range of legal interpretation uncertainties that are notifiable.
Ed Milliner	It is this third proposal that has caused some concern. At the moment there are two triggers: - Recognition of a provision in the accounts to reflect the probability of a different tax treatment being applied; and - Reliance on interpretation or application of the law that is not in accordance with HMRC's "known position". Now you may recall that there had been a third trigger contemplated but it was ultimately removed before the UTT regime was introduced.
Zoe Andrews	Ah yes – I remember the third trigger required notification where there was a substantial possibility that a tribunal or court would find the tax treatment to be incorrect in one or more material respects. This was fortunately dropped because it was considered too subjective and would have made it difficult to determine if a notification was required or not. What additional trigger is now proposed?
Ed Milliner	The consultation document does not propose a particular trigger at this stage but states that HMRC wants to capture the situation where HMRC's view is not known and there is more than one

	credible legal interpretation. The focus will be on cases involving significant tax advantage (presumably measured with the current £5 million threshold) and material uncertainty (currently not defined). The triggers will be linked with Guidelines for Compliance 13 (which are to help ensuring documents filed with HMRC are correct and complete). The good news is that it is proposed that the transfer pricing calculations are excluded from the new trigger as they inherently involve a degree of judgement – but they may of course already be caught under the existing two triggers. And there are of course other parts of the tax code which require a similar judgement – for instance, where a just and reasonable apportionment is required.
Zoe Andrews	Under the current rules there have not been many formal UTT notifications to HMRC because most large businesses would instead have discussions with their Customer Compliance Manager (or CCM) and there is an exemption from notifying if it is reasonable for the taxpayer to conclude HMRC already has the information that would have been included in the notification. Will this still be the case?
Ed Milliner	I think so – but the consultation does refer to tightening this exemption to require the taxpayer to hold confirmation from HMRC acknowledging that the uncertainty has been brought to its attention so the taxpayer would need to make sure that there was an acknowledgement of the uncertainty by the CCM. Anyway, we have some time to reflect on the proposals as the consultation is open until 4 June and the legislation will be introduced in the "next available Finance Bill" and will apply to returns filed after 1 April the following year – so presumably 2027.
Zoe Andrews	Before we move on from measures to reduce the tax gap, I should also mention another recent HMRC consultation on modernising and standardising company tax returns. HMRC is introducing, in stages over a number of years, a prescribed format for corporation tax returns in order to improve the quality and consistency of data. Poorly structured or incomplete computations undermine HMRC's ability to deliver its core functions of supporting and ensuring taxpayers comply with their tax obligations and divert resources to clarifying basic information. Better quality data will make digital services more efficient and allow HMRC to focus resources on reducing the corporation tax gap. So what have we got coming up, Ed?
Ed Milliner	Royal Assent to the Finance Bill is expected this month. We then have the commencement of various Finance Bill changes from 6 April such as the new regime for carried interest and the two percentage points increase to the ordinary and upper rates of income tax on dividends. A technical consultation is expected in Spring 2026 on the draft regulations on the new International Controlled Transactions Schedule which is an annual filing requirement to support HMRC's automated risk assessments and expected to take effect for accounting periods beginning on or after 1 January 2027.

	A consultation on reporting transactions between close companies and shareholders is expected early 2026 – so any time now. Also promised early 2026 is a consultation on the future of the remaining ACT regime (Shadow ACT being abolished by statutory instrument from 1 April 2026).
Zoe Andrews	And that leaves me to thank you for listening. If you have any queries, please contact Ed 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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