SLAUGHTER AND MAY/

TAX NEWS

PODCAST

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Zoe Andrews	Welcome to the September 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 - and this could be my last Tax News podcast for a while because I will soon be on maternity leave. I'm hoping that I can join you one more time in October but that entirely depends entirely on whether the little one decides to make an early appearance or not. But sticking with this podcast, we will discuss three decisions of the FTT: *Currys Retail* (on the capital gains tax degrouping charge), *Millennium Cash & Carry* (the first case on the so-called "sugar tax"), which highlights the limits of statutory construction, and the *Motorplus* case (on VAT recovery) in which the FTT commented on HMRC's extraordinary behaviour. We will share our pick of the L-Day materials including the draft legislation on inheritance tax on inherited pension and death benefits, HMRC's increased powers to close in on promoters, and the mandatory registration requirement for tax advisers interacting with HMRC. We also discuss a couple of international tax developments. The podcast was recorded on the 2nd of September 2025 and reflects the law and guidance on that date.
Zoe Andrews	Before we get started on this month's topics, though, we are pleased to welcome one of our tax partners, Sarah Osprey. Sarah's practice encompasses advisory, transactional, and contentious matters across the full spectrum of UK corporate tax law. On the contentious side, her work includes advising on transfer pricing and other corporation tax matters, diverted profits tax, and employment tax matters. Sarah, I think it's fair to say that we've seen a rise in tax disputes over recent years; do you expect this to continue?
Sarah Osprey	Yes, I do. The fiscal environment is challenging, with limited options at the moment for further tax rises. To deal with that, the government has been clear that it will seek to increase tax revenues through more compliance activity. Inevitably, large businesses are going to be a key area of focus for this. It's an easy vote winner, after all, and we can expect that HMRC will continue to take robust positions.
Zoe Andrews	And how do you help your clients navigate this challenging environment?

Sarah Osprey	It could be anything from proactive risk management to technical and strategic advice during a dispute and handling any follow-up activities. In practice, this could mean auditing existing compliance processes (for example, processes relating to the criminal offence of failure to prevent the facilitation of tax evasion). It could be managing complex, large-scale disclosure exercises when responding to HMRC information requests or in the course of litigation. It could be working with senior leadership teams on communications risks and obligations. And it could even be amending intragroup contracts to reflect the terms of a finalised transfer pricing settlement.
Zoe Andrews	Could I ask you to share, perhaps, your three top tips when it comes to handling an HMRC enquiry?
Sarah Osprey	Oh, that's rather difficult to pick, and I don't want to give away too much here because I, together with other members of the tax team, are sharing a whole range of tips and insights across a series of posts on the European Tax Blog (www.europeantax.blog). The first posts are already live and the remainder will be published between now and the beginning of October.
Zoe Andrews	Surely you can give us a little teaser, though?
Sarah Osprey	Oh, alright then. One thing I, for better or worse, often find myself talking about, probably because there are a lot of misconceptions about it, is legal professional privilege. This allows a client to receive legal advice without having to fear that they may later have to disclose their confidential communications with their lawyer to HMRC or in court. It's a fundamental right which obviously applies not just in a tax context. In our experience, there's a tendency within HMRC to request privileged information and to generally regard privilege with some scepticism. So that leads to challenges during disclosure exercises. One of our upcoming posts will cover five common questions in this area.
Zoe Andrews	I won't press you to reveal anything further for now then. But if anyone has further questions on topics covered in the posts or would like more detailed advice, what should they do?
Sarah Osprey	They can contact me, or one of the other authors in the series, or indeed any other member of our Tax Disputes practice! We can be found very easily on the Slaughter and May website for those who don't already have a Slaughter and May contact to point them in the right direction.
Tanja Velling	Thank you, Sarah. Another way of finding the blog posts would be through LinkedIn; Zoe and I will be sharing the blogs as they go live.
Zoe Andrews	Let's now take a look at the *Currys Retail* case. This is a First-tier Tribunal decision on the degrouping charge under section 179 of the Taxation of Chargeable Gains Act 1992 in respect of some goodwill. Before I break down what happened, it's important to note that the relevant transactions took place back in 2008 - that's before the change in law that adds capital gains degrouping charges on a share disposal to the seller's gain, thus allowing them to be covered by the substantial shareholding exemption which now makes similar planning unnecessary. So, what happened?

	The taxpayer had acquired four businesses, including associated goodwill, from members of its capital gains group. Less than six years later, plans were made for the taxpayer to leave that group to form a joint venture. To prevent a section 179 charge, the taxpayer purported to sell the businesses and associated goodwill. The buyer was unconnected to the taxpayer at the time, but they became connected shortly thereafter when the joint venture was formed. I say "purported to sell" because the FTT concluded that the taxpayer had not in fact disposed of the goodwill and so triggered a section 179 charge of around £30m when the JV was formed. So, what went wrong for the taxpayer? Why wasn't there a disposal of the goodwill as intended?
Tanja Velling	That question goes to the heart of the case. The taxpayer argued that the case should be determined on the construction of the relevant contracts, whereas HMRC argued for purposive construction of the legislation. Judge Beare applied *Rossendale,* concluding that the correct approach was for the legislation to be construed purposively and applied to the facts, viewed realistically, taking into account the contracts and the wider circumstances. The contractual arrangements around the purported disposal of the goodwill were unusual because of the impending formation of the joint venture. Instead of a simple transfer of the businesses with the goodwill (which would have worked to prevent a section 179 charge), the taxpayer agreed to transfer the goodwill and the right to carry on the businesses. But the taxpayer continued to manage the businesses as the buyer's agent, and its management charge was over 90% of the business revenues. As the FTT concluded, the taxpayer did not really want to make a disposal, but wanted to avoid the section 179 charge and this was part of the "wider circumstances" the FTT took into account. This then begs the question: what do you need in order to have a valid transfer of goodwill that would prevent a section 179 charge?
Zoe Andrews	For there to be a valid transfer of goodwill, the transferee must also be transferred the benefit of the business to which the goodwill is attached. This was not the case here. The buyer here was entitled to only a small, fixed percentage of gross revenues and no exposure to the real risks or rewards of running the businesses.
Tanja Velling	That deals with the question as to whether there's a charge under section 179 on the formation of the JV. But what about the purported disposal of the goodwill? The buyer paid the taxpayer around £51 million to acquire the goodwill. Did the FTT say anything about what this payment was for and how it should be treated for tax purposes?
Zoe Andrews	The FTT agreed with HMRC that the tax treatment of the purported disposal was strictly outside the scope of the appeal. This was essentially because the appeal related to a partial closure notice which covered only the section 179 charge; with the treatment of the purported disposal having been left to further discussion between the taxpayer and HMRC. The FTT did offer some observations, though: that the payment was "consideration for the right to be paid amounts equal to a fixed percentage of the future gross revenues of the Businesses" and

	that the "payment should properly be seen as a capital sum derived from the Goodwill and therefore as giving rise to a part disposal of the Goodwill".
Tanja Velling	One thing to mention here - if you're coming to this cold, you might be tempted to say: "hang on a minute! That means there was a part disposal of the goodwill **before** the formation of the JV, so the taxpayer would no longer own that part when it left the chargeable gains group on the formation of the JV. So, shouldn't that reduce the section 179 charge?" By the time the case got to the FTT, it was common ground between the parties that the answer to that question is "no". To create the section 179 charge, the legislation deems the taxpayer to have disposed of (and reacquired) the goodwill at the start of the accounting period during which the degrouping falls, and here, that was a date before the purported disposal of the goodwill. So, the purported disposal (however it falls to be treated for tax purposes) cannot impact the section 179 charge, but what about vice versa?
Zoe Andrews	The section 179 charge would need to be taken into account in determining the tax treatment of the purported disposal. Assuming that it should be treated as a part disposal of the goodwill as intimated by the FTT, one question would be whether the taxpayer can allocate the whole of its deemed reacquisition costs to the part disposal. But that question would need to be addressed in separate proceedings.
Tanja Velling	Continuing with the theme of statutory construction, let's look at a case where gaps in the drafting of the legislation meant that HMRC simply did not have the authority to tax the taxpayer. And the FTT could not remedy the defects in the legislation by reading in such authority purposively.
Zoe Andrews	Ah yes - *Millennium Cash & Carry*, the first case on the soft drinks industry levy, colloquially known as the "sugar tax"! As part of the strategy for tackling childhood obesity, the levy applies to UK-produced or imported soft drinks containing 5g or more per 100ml of sugar. As a result, many manufacturers have moved to lower-sugar recipes. The levy is intended to tax UK consumption, so a credit can be claimed in certain circumstances where the drinks are exported from the UK or are lost or destroyed. The taxpayer claimed credits that it was not entitled to (and it subsequently accepted that it was not entitled to them). HMRC denied the credits and assessed the taxpayer to around £128,000 of soft drinks industry levy. Sounds like it should have been an open-and-shut case for the FTT?
Tanja Velling	You would think so, but the FTT found that HMRC had no statutory right to make the tax assessment as there is no statutory power to withdraw claimed credits even where there is no entitlement to them. The regulations implementing the levy did not include any express mechanism to withdraw credit claims in respect of which there is no entitlement, and the FTT did not accept HMRC's argument that the missing mechanism should be implied to make the regime work according to Parliament's "obvious" intention. It was not a complete loss for HMRC, though. Part of the appeal was disallowed because the taxpayer had itself made corrections to the credits and HMRC was entitled to give effect to those corrections without the need to assess. But the taxpayer's appeal succeeded in respect of the

	remainder of the credits it had claimed and not corrected because HMRC had no power to make a contrary assessment.
Zoe Andrews	I liked the way that the FTT began its discussion by observing that "neither party's case was particularly attractive"! So, we can expect some revised soft drinks industry levy regulations to ensure HMRC can challenge erroneous credit claims in future! And speaking of unattractive arguments, let's move on to the *Motorplus Limited* FTT case. Although a procedural decision rather than a determination of the substantive issue, it raised some interesting points about VAT recovery and HMRC's extraordinary behaviour, as you highlighted in your blog post. Can you tell us more about this case?
Tanja Velling	Sure. The taxpayer sought to recover VAT on certain supplies where it had not received VAT invoices because the relevant suppliers treated the supplies as exempt. But the contractual price was inclusive of VAT and the taxpayer argued that the supplies were properly taxable, and it should be allowed to recover input tax based on the alternative evidence it had provided. HMRC denied the claim, relying on the Supreme Court's decision in *Zipvit*, without, however, really addressing that the facts in that case had been fundamentally different – in *Zipvit*, the parties laboured under a common misapprehension that the supplies were exempt, and a later decision by the CJEU clearly established that they were taxable; the contractual price was exclusive of VAT and the supplier never charged VAT. Of course, this meant that, in *Zipvit*, there weren't any VAT invoices, either, but it seems that that's really just a superficial similarity at this point.
Zoe Andrews	So, where does HMRC's extraordinary behaviour come in?
Tanja Velling	Well, instead of just referring to *Zipvit*, HMRC should have first considered (and decided) whether the supplies were, in fact, taxable and then considered whether input tax could be reclaimed based on the alternative evidence provided. And HMRC then sought to rely on that mistake to have the taxpayer's appeal struck out. HMRC argued that because they had made no decision on the taxability of the supplies, the FTT had no jurisdiction to consider this point in the appeal, so the claim had no reasonable prospect of success and should, therefore, be struck out. Fortunately for the taxpayer, the FTT confirmed it has the required jurisdiction and denied HMRC's strike out application, reprimanding HMRC for seeking to take advantage of their failure to adopt the correct approach.
Zoe Andrews	That is quite extraordinary. As to what might happen in the substantive proceedings, if the FTT decides that the supplies were taxable, do you think the taxpayer can recover the input tax without a VAT invoice?
Tanja Velling	That remains to be seen. In *Zipvit*, the Supreme Court refused to rule on the issue whether having a VAT invoice is a prerequisite for input tax recovery (as on the facts of that case it was irrelevant as no VAT had been paid), but the Supreme Court also noted that there "may have to be debate on

	another occasion whether the judgment of the Court of Justice in this case has any bearing on the reasoning of the Tribunals and the Court of Appeal in relation to this issue".
Zoe Andrews	Moving on from cases now, let's have a quick look at the L-Day materials. There are three areas that stood out to us as worth a mention. The first is inheritance tax on inherited pensions and death benefits, which is one of the topics covered in the July 2025 edition of the *Pensions Essentials* podcast hosted by our pensions team colleagues, Daniel Schaffer and Karen Mumgaard. Under the proposed new rules from April 2027, unused pension funds, and certain benefits, payable from a registered pension scheme on a member's death will fall within the scope of IHT. Death in service benefits will be excepted from IHT whether or not they are discretionary so schemes may wish to consider removing the element of discretionary distribution in some cases. Pensions payable to dependants and spouses directly from the scheme or from a separate joint life annuity are out of scope of the new requirements. There will be increased administrative burdens on pension scheme administrators when a member dies. Although it will be the deceased's personal representatives who will primarily be liable, a beneficiary can either: direct the scheme administrator to pay the IHT on their behalf if the amount is £4,000 or more; or pay the IHT directly. HMRC expects the pensions industry to provide clear guidance and support to beneficiaries in respect of IHT due and the options for paying it. Further details are expected in draft information sharing regulations. For more detail on this measure listen to the July 2025 edition of the Pensions Essentials podcast at the link provided in the show notes, or wherever you get your podcasts.
Tanja Velling	The second area is HMRC's proposed enhanced powers to close in on promoters. Despite the name of the consultation, "Closing in on promoters of marketed tax avoidance", the draft legislation is very broadly drafted and is not limited to mass-marketed avoidance.
Zoe Andrews	There has been much written about this draft legislation, but we would like to highlight two aspects which increase the compliance burden, in particular for banks and other financial institutions: the PFIN (Promoter Financial Information Notice) and PAN (Promoter Action Notice). HMRC already has the power (in the Finance Act 2021) to issue a FIN (Financial Institution Notice) to request a financial institution to provide information about its customers for the purposes of UK or overseas tax investigations. The PFIN will, if approved by the Tribunal, allow HMRC to obtain financial data from banks and other financial institutions about a promoter and parties connected to the promotion of avoidance schemes. This is intended to help HMRC identify avoidance schemes, trace the flow of funds, identify breaches of new or existing anti-avoidance legislation, and better target the issue of a PAN.
Tanja Velling	A PAN, unlike a PFIN, does not require approval from the Tribunal. HMRC may issue a PAN if an authorised officer "reasonably suspects" that the recipient of a PAN is: providing goods or services to a target person who is promoting an arrangement prescribed by either a Stop Notice or a

	Universal Stop Notice; and the goods or services are being procured or used wholly or partly in connection with the promotion or arrangements. A PAN may, for the purpose of impeding the target's promotion of the arrangements, require the recipient of the notice to stop providing some or all of the goods or services, or provide the goods or services subject to specified conditions, or take specified steps in relation to the provision of the goods or services. The PAN cannot apply to legal services and services that provide internet access but any other services or goods may be restricted or stopped by a PAN. Although HMRC listened to feedback from the consultation earlier this year and the draft legislation does not make non-compliance with a PAN a criminal offence, there will be a maximum penalty of £1,000 for each day that a recipient fails without "reasonable excuse" to comply with the PAN.
Zoe Andrews	I am concerned that HMRC will have the power to publish or report information about a recipient of a PAN who failed to comply without "reasonable excuse". This could be a very damaging measure given HMRC's acknowledgment that, fundamentally, the vast majority of businesses receiving a PAN will themselves be entirely compliant in respect of their tax affairs. It could also potentially result in the naming and shaming of businesses that are wholly different in nature from the disingenuous actors called out in existing published lists of promoters, enablers, suppliers, and schemes.
Tanja Velling	Although the response to the consultation recognised the additional administrative burden on businesses when HMRC issues a PAN, as part of the government's Regulation Action Plan commitment to reduce the administrative burden on businesses by 25%, the government will work with industry to ensure the PAN proposal complements existing rules and laws, including existing safeguards. Of course, this increased compliance burden on financial institutions comes in addition to the increased compliance burden related to separate proposals for making better use of third-party data from no earlier than 2027/28, but we do not have time to go into that here. But financial institutions should keep an eye on what they will be required to do and ensure they have procedures in place to comply with the increased obligations to provide information and/or to take action required under a PAN.
Zoe Andrews	The final piece of L-day draft legislation we wanted to discuss, is the requirement for mandatory registration with HMRC for tax advisors interacting with HMRC, starting from the 1st of April 2026, which appears totally unworkable as currently drafted. As a matter of principle, it would seem to us that in-house advisors shouldn't really be caught but the legislation is not straightforward in its application to in-house advisers dealing with the tax affairs of their employing company or a group member, and the legislation could be made clearer in this respect. We are submitting a response to HMRC on this and various other concerns with this draft legislation and would be happy to discuss further. Please contact Tanja or me or your usual Slaughter and May contact. Let's have a look now at some of the other documents published on or around L-Day.
Tanja Velling	The Financial Services Growth and Competitiveness Strategy, referred to as the "Leeds reforms" as it was launched in Leeds, is intended to unleash the vast potential of the UK's world-leading

	financial services sector, making the UK the location of choice for financial services firms to set up, invest, grow and sell their services to the world. The strategy does not include any tax changes but notes that the tax regimes affecting the financial services sector will be kept under review. That message might now sound rather hollow, or even ominous, with the recent decline in bank share prices following calls for additional taxation on banks ahead of the Autumn Budget… But we shall leave the Budget speculation to the media. Is there anything of interest in the latest HMRC Report and Accounts?
Zoe Andrews	I'm always interested to see HMRC's litigation success rates. The latest figures show that HMRC's success rate at the First-tier Tribunal has risen to 93% (from 88% the previous year), which may be disheartening for taxpayers - but hang in there, because the success rate for HMRC in cases appealed beyond the FTT has now fallen to 73% (from 79% the previous year). Success in these figures includes partial wins. The Report also shows that upstream compliance is working for HMRC – this refers to the prevention of non-compliance and the promotion of good compliance. Examples of upstream compliance include legislative changes to close tax loopholes and changes to HMRC's processes that reduce opportunities to avoid or evade tax, but also the Guidelines for Compliance that HMRC has been publishing. Upstream compliance has grown as a proportion of the compliance yield target from 24% in 2019 to 2020 to 43% in 2024 to 2025. What can you tell us about HMRC's Transformation Roadmap?
Tanja Velling	The Transformation Roadmap sets out HMRC's three strategic priorities for this spending review period until 2030 of: improving day-to-day performance and experience, closing the tax gap, and modernising the tax system. Three takeaways from the Roadmap are: first, that "Making Tax Digital" will not be extended as previously planned to corporation tax but that HMRC will optimise corporation tax administration; second, HMRC will address legal interpretation disputes through guidance and/or legislative changes; and third, there will be a shift away from longer-term, larger-scale programmes towards regular, iterative changes developed with stakeholder consultation.
Zoe Andrews	I had a look at the Large Business Compliance: Technical Note published in July (a few days before L-Day) and there are three points from that I'd like to share. First, there has been a decrease in the length of large business enquiries from 21 months to 17 months; that seems good news. Second, international issues (such as transfer pricing) remain the biggest area of tax under consideration. We'd expect to see continued enquiry activity in this area. And finally, as expected, there have been very few formal Uncertain Tax Treatment notifications made. In this respect, it's interesting that HMRC's latest Guidelines for Compliance "recommend" that taxpayers disclose any "finely balanced" tax positions, or positions relying on an untested view of the law, to HMRC when filing a tax return, even if the statutory requirements for disclosing an uncertain tax position aren't met.

Tanja Velling	Following earlier consultation on draft guidance, HMRC published its new Manual for the Multinational Top-up Tax and Domestic Top-up Tax. It is still a work in progress, however, with further guidance to be added, including the promised tables mapping the UK legislation to OECD documents and guidance to be amended or supplemented to reflect the changes to the legislation to be included in the Finance Bill 2026 as per the L-Day draft legislation. What has caught your eye on the international tax front?
Zoe Andrews	The European Commission is consulting until the 12th of September on draft guidelines on the implementation of the FSR (Foreign Subsidies Regulation) which provides guidance based on experiences and practices. Final guidelines are expected to be published by January 2026. The FSR has since 2023 created a new regime aimed at combating distortions in the EU internal market caused by foreign subsidies. It imposes mandatory notification and approval requirements for acquisitions of significant EU businesses (including new JVs) and large EU public tenders, and it gives the European Commission extensive powers to launch *ex officio* investigations. The draft guidelines provide guidance on how the Commission concludes whether there is a distortion of competition caused by a foreign subsidy; clarify how the Commission applies the "balancing test" for assessing the harms and benefits of foreign subsidies; and set out in greater detail what kind of M&A transactions would be "called in" for review. The Commission is also working on a report reviewing the implementation and enforcement of the FSR, which will be published by July 2026.
Tanja Velling	My pick from international developments is an Italian case decided by the CJEU. In *Banca Mediolanum SpA*, the CJEU ruled that a certain Italian tax on EU-sourced dividends is contrary to the Parent Subsidiary Directive (or PSD). Dividends received by Italian financial intermediaries (including banks) from their subsidiaries are subject to Italy's regional tax on productive activities (or IRAP). Following the CJEU ruling, this IRAP charge violates the PSD. For further details on this case and its implications, take a look at the blog post by Michele Dimonte of BonelliErede on our European Tax blog. What's coming up next?
Zoe Andrews	The consultation on the L-Day draft legislation closes on the 15th of September. We also have the Autumn Budget to look forward to at some point in the next few months (hopefully not during half term again!), which will at least put a welcome end to all the press speculation about what might be included in the Budget! In the meantime, keep an eye out for our Tax Disputes blog series!
Tanja Velling	And that leaves me to thank you for listening. If you have any questions, please contact Zoe 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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