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CLIENT BRIEFING

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In *Osmond*, the Upper Tribunal allows the taxpayers' appeal concluding that the income tax advantage was an effect, not a main purpose, of the transaction. In *Eastern Power Networks*, the FTT held that enabling the taxpayers to obtain enhanced consortium relief was a main purpose of the disqualifying arrangements forming part of the corporate structure. HMRC publish a welcome change in policy on VAT deduction for pension fund management. HMRC publish guidance on the new unilateral APA programme to provide certainty about the validity of a UK entity's participation in a Cost Contribution Arrangement where HMRC consider that a CCA is 'a commercially viable prospect'. The Upper Tribunal in *JPMorgan Chase Bank* concludes there was a single, taxable supply of support function services but went on to consider, as obiter, the scope of the exemption from VAT for transactions in securities.

Osmond: an effect or consequence is not a main purpose

The Upper Tribunal (UT) in *Osmond and another v HMRC* [2025] UKUT 183 (TCC) had to consider whether the main purpose test in the transactions in securities rules in ITA 2007 s 684 was satisfied and concluded in favour of the taxpayers that it was not.

The taxpayers had made successive Enterprise Investment Scheme (EIS) investments over a 30-year period with a view to realising capital gains and had been careful to preserve their EIS relief CGT benefit. Fearing a withdrawal of EIS relief following a change of government, the taxpayers decided to trigger a disposal of shares to crystallise EIS CGT disposal relief. In the absence of a third-party buyer, the disposal was triggered by share buybacks totalling £20m. Before the buybacks, there was a restructuring to segregate the shareholders who could not benefit from EIS relief and the taxpayers who could.

HMRC argued that the transactions in securities regime applied so that the taxpayers would be taxed as though they had received EIS qualifying dividends (subject to income tax), rather than having made a disposal of shares subject to CGT but which EIS relief had ensured there was no CGT to pay. The First-tier Tribunal (FTT) had found as a fact that the taxpayers' main purpose of being party to the share buybacks was to crystallise EIS relief but decided that this automatically, 'as a matter of remorseless statutory logic', meant they had a (deemed) main purpose of generating an income tax advantage.

The Upper Tribunal applied *BlackRock* [2024] EWCA Civ 330 to find the FTT had erred in law in reaching the conclusion that the purpose of obtaining CGT relief also necessarily constituted a main purpose of obtaining an income tax advantage. The income tax advantage was an effect or consequence, but not a main purpose. The UT did hint that perhaps the FTT's findings of the subjective intentions of the taxpayers for entering into the buybacks were 'generous to the taxpayers' (they found that extraction of value from the company was not a purpose of the share buyback), but these findings were not challenged before the UT and on the basis of those findings, the taxpayers did not have a main purpose of achieving an income tax advantage.

Eastern Power Networks: main tax avoidance test in consortium relief rules

Eastern Power Networks and others v HMRC [2025] UKFTT 703 (TC) is the latest stage in a long-running dispute about consortium relief which was claimed by the taxpayers. HMRC had raised enquiries because of a mismatch between the economic interests of the parties in the consortium company (UKPNH) and the amount of consortium relief claimed. In earlier litigation at the enquiry stage, it was determined that Article 7.5 of the articles of association of UKPNH, which required a majority of 75% on any resolution of the company or its members, would enable a person to prevent the link company from controlling the taxpayers and was an arrangement within CTA 2010 s 146B(2)(b) ('disqualifying arrangements'). (This was much to the criticism of Lady Justice Rose in her judgment in the Court of Appeal ([2021] EWCA Civ 283) that asking for a determination on the applicability of one element in the hope of a 'quick win' bringing an enquiry to a halt is inefficient and risks wasting a great deal of judicial time!)

HMRC completed their enquires and closure notices were issued which the taxpayers then appealed against. In this latest case, the FTT had to consider two issues relating to

the claims for consortium relief. First, how the consortium relief rules apply where, as here, there is a tower structure of link companies, with one owning another, which owned the third. The FTT determined that the interpretation the taxpayers had argued for (computing the ownership proportions on a solus basis and aggregating the result to get 74%) was contrary to the statutory purpose of the legislation. The FTT concluded that the ownership proportion provisions should be applied to multiple link companies collectively to avoid double or triple counting of ownership proportions. This meant that the surrendering companies' losses could only be set off against 40% of the respective taxpayers' profits.

The second issue, and the one of more general interest, is whether the disqualifying arrangements form part of a scheme with a main tax avoidance purpose for the purpose of CTA 2010 s 146B. The FTT concluded there was such a scheme and so the entitlement to consortium relief would essentially be halved so the offset of losses would be limited to 20% of the respective link companies' profits. Bearing in mind Article 7.5 had already been determined to constitute disqualifying arrangements, the issue for the FTT to determine was whether Article 7.5 formed part of a scheme the main purpose or one of the main purposes of which is to enable the taxpayers to obtain a tax advantage under CTA 2010 Part 5 Chapter 4 (claims for group relief). It concluded that it did, with the consequence that s 146B applied to halve the amount of entitlement to consortium relief.

What was the scheme?

The FTT concluded that Article 7.5 formed an integral part of a scheme (the corporate structure of UKPNH), one of whose main purposes was enabling the taxpayers to obtain enhanced consortium relief. This was different to the competing versions of the scheme presented by the parties, which the FTT rejected as not being a realistic view of the facts. HMRC had argued the scheme of which Article 7.5 formed part was any steps taken in order to enable the taxpayers to obtain enhanced consortium relief. The taxpayers had argued the scheme was that of acquiring and operating the acquired business for which UKPNH was set up.

The FTT considered that what a scheme is depends on the statutory question. If the statute asks whether a transaction formed part of a scheme, the dictionary definition 'plan of action devised in order to attain some end' is apposite, as per *Snell* [2007] STC 1279. But if, as here, the question is whether certain arrangements that continued over several accounting periods formed part of a scheme, scheme in this context looks more at the outcome or legacy of a plan of action than to the plan itself. The FTT concluded that the scheme here was the corporate structure of UKPNH and that the corporate structure was 'a planned and designed system of things, with obvious coherence and integrity'.

Was the consortium relief purpose a main purpose in its own right?

There were also non-tax reasons for the corporate structure (to ensure the correct ownership relationship between the three ultimate shareholders of 40-40-20 was respected), but a number of features were then included in the corporate structure with the aim of enhancing the amount of consortium relief available.

The FTT considered *Travel Document Service* [2018] STC 723 ('main' has a connotation of importance) and *IRC v Trustee of the SEMA Group Pension Scheme* [2002] STC 276 (a tax advantage which is 'merely icing on the cake' is not a main object) to decide whether the consortium relief purpose is a main purpose in its own right or if it 'paled into relative insignificance' when placed beside the non-tax purposes. The FTT concluded that the ultimate shareholders wanted to enable the taxpayers to obtain enhanced consortium relief provided that it did not interfere with their other non-tax objectives for the corporate structure. The consortium relief purpose would provide a significant benefit in absolute terms when compared to the non-tax purposes of the corporate structure and was not one that paled into insignificance when set alongside the corporate structure's non-tax purposes, but rather was also a main purpose of that structure.

VAT deduction for costs incurred in the management of pension funds

HMRC announced, somewhat unexpectedly and very briefly, in *Revenue & Customs Brief 4/2025* a new policy that, subject to the normal deduction rules, employers can claim back all the VAT on investment costs linked to occupational pension funds (as well as all administration costs) and no longer need to split the costs with pension trustees. Trustees providing pension fund management services and charging the employer can also claim the input tax on their costs, if they are VAT registered and subject to the usual VAT rules.

This is a welcome change and a simplification from the previous policy that in some circumstances viewed investment costs as being subject to dual use by an employer and the trustees and required complex apportionment of such costs between the employer and trustee. The new policy applies from 18 June, and it is subject to the normal four-year cap for claims for additional input tax. HMRC will publish guidance explaining the policy change by Autumn 2025.

HMRC guidance on Cost Contribution Arrangements Advance Pricing Agreement programme

Cost Contribution Arrangements (CCAs) are contractual arrangements for MNEs to share the costs and risks of developing assets such as intellectual property. There is significant enquiry activity in this area and concerns about unresolved double taxation because different views have

been taken by HMRC and other tax authorities as to when a CCA can be an acceptable pricing mechanism under the OECD's Transfer Pricing Guidelines. HMRC's view has been that for a CCA relating to IP to be an acceptable pricing mechanism, the UK entity must also employ the functions which control risks associated with that IP. The corporate tax roadmap promised that the Government would review the treatment of CCAs and explore a solution.

The solution is that clearance will be offered on the treatment of CCAs through unilateral Advance Pricing Agreements (APAs) using existing legislation. HMRC have published guidance in their *International Manual* at *INTM422160* explaining the new APA programme and setting out the conditions to be satisfied for the clearance to be granted. A sample CCA APA is published at *INTM422170*.

The CCA APA is intended to provide certainty about the validity of a UK entity's participation in a CCA where HMRC 'considers that a CCA is a commercially viable prospect'. The CCA APA is a unilateral APA which will confirm no adjustment will be made on the basis that the UK entity is not a valid participant but it will not price the contributions of the UK participant to the CCA – a general APA would be required for that which may be bilateral. The guidance sets out (in paragraph 16) four things that an expression of interest in a CCA APA would need cover which, as expected, includes a narrative explanation of why the business considers the CCA to be commercially viable over the proposed term of the APA at the point of applying for the APA.

The APA may apply to periods where returns have already been filed as well as in relation to future periods. The typical term of an APA is three to five years and a longer term will be agreed only in exceptional circumstances but HMRC consider the development of IP in CCAs may, in certain cases, constitute exceptional circumstances and acknowledges in such cases a longer term, such as one matching the term of the CCA, may be appropriate.

When it comes to 'roll-back' to cover periods that have already ended, including those currently under enquiry, HMRC suggest the CCA APA may be used to narrow the scope of the enquiry. The guidance flags (at paragraph 19) that '[t]his is contrary to HMRC's typical approach, where HMRC would typically expect an enquiry to be completed before agreeing an APA'.

JPMorgan Chase Bank: VAT treatment of supply of bank support function services

The UT in *JPMorgan Chase Bank v HMRC* [2025] UKUT 188 (TCC) had to consider whether a supply of infrastructure and support services was a single, taxable supply, or multiple separate supplies, and if the latter, whether any of the separate supplies were exempt. The UT concluded on the facts that the FTT had made no error of law concluding there was a single, taxable supply.

The case is interesting, however, for the comments on the scope of the transactions in securities exemption in Article 135(1)(f) of the PVD (implemented into UK law in VATA 1994 Group 5 Schedule 9 item 6 (securities) and item 5 (negotiation)), which because of the decision on the single taxable supply point were obiter but may be picked up in a future appeal. The UT agreed with the FTT's analysis of the case law that the narrow approach to the scope of the payment exemption (item 1 of Group 5), taken in *Target Group Ltd v HMRC* [2021] EWCA Civ 1043 and subsequently upheld by the Supreme Court in *Target Group Ltd v HMRC* [2023] UKSC 35 (issued after the FTT had issued its decision), applies equally to the securities exemption: there is a need to bring about a change in the legal and financial position in order for the securities exemption to apply. A merely causal effect on the legal position will not suffice.

What to look out for:

- The consultation on the Stamp Duty and Stamp Duty Reserve Tax 1.5% charges closes on 21 July 2025.
- Publication of draft Finance Bill provisions on 'L-Day', which the Government has confirmed will be on 21 July 2025.
- Following the US commitment to drop the s 899 retaliatory tax measures proposed in the One Big Beautiful Bill, the UK Government will continue business engagement and work with international partners to develop the understanding reached by the G7 on a possible solution that would allow the US minimum tax system to operate alongside the Pillar Two rules but take steps to ensure any substantial risks with respect to the level playing field or base erosion and profit shifting are addressed.

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