SLAUGHTER AND MAY

September 2026

Tax News

Podcast

ZOE ANDREWS	Welcome to the September 2026 edition of Slaughter and May's "Tax News" podcast. I am Zoe Andrews, Head of Tax Knowledge. I am delighted to welcome Steph Mullins as my co-host today. Hi Steph, it's great to have you on the podcast.

STEPHANIE MULLINS	Hi Zoe. It's good to be here. For those who don't know me, I am a senior associate in our Tax department and advise on the full range of tax matters that we cover as a firm, including transactions, disputes and general advisory work.
	
	Today we will cover:
	
	• Four recent cases:
	    o the Upper Tribunal's decision in *Candy* on SDLT overpayment relief and a reminder to consider a variety of routes to relief;
	    o the First-tier Tribunal's decision in *Perenco* on capital allowances and the purpose test;
	    o the Court of Appeal's decision in *Elborne* on the application of *Ramsay*, and
	    o the Upper Tribunal's decision in *Knights Developments Ltd* on treaty interpretation.
	
	• We will also touch on UK and international developments, including:
	    o our pick of the L-Day developments;
	    o new or updated HMRC guidance on: transfer pricing compliance, VAT on fund management services, the Reserved Investor Fund and anti-avoidance information notices; and
	    o the draft UN Framework Convention on International Tax Cooperation and its draft protocols.
	
	This podcast was recorded on the 15th of September 2026 and reflects the law and guidance on that date.

ZOE ANDREWS	Thanks, Steph. Let's start with the Upper Tribunal's decision in *Candy*. Regular listeners may remember that we discussed the FTT's decision in this case in May last year. If you can't remember

	that far back — or if you aren't a regular listener — absolutely no judgment: we'll recap the facts. And, spoiler alert, the UT agreed with the FTT. This is 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.
STEPHANIE MULLINS	The original contract then 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) essentially says you have to claim the repayment by amending the original SDLT return — and the deadline for doing that is normally just 12 months. The problem is that if the contract gets cancelled more than 12 months after substantial performance, you're automatically out of time. You simply can't claim the repayment 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 all was not lost. The current decision is about the separate claim for overpayment relief which the taxpayer made under paragraph 34 of Schedule 10 to the Finance Act 2003. The UT agreed with the FTT that the taxpayer was not prevented from claiming overpayment relief merely because a claim for repayment under section 44(9) was out of time. 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. 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.
STEPHANIE MULLINS	So that's *Candy*: a useful reminder not to stop at the first repayment route if the facts support another one. Let's move on to our second case, the FTT's decision in *Perenco*. This is a capital allowances case, and it covers some significant points about the purpose test in that context. The facts on this one are a little involved — not quite "draw yourself a diagram" territory, but close — so bear with us. In May 2011, Perenco agreed to acquire BP's majority interests in oilfields in Southern England. Around 70% of the consideration was for qualifying plant and machinery (described in the judgment as the "field facilities" and so that's how I will refer to it here as well).

	Shortly after Perenco signed the SPA, Premier Oil — which held a 12.5% minority interest in the oilfield — indicated it wanted to exercise its pre-emption rights under the joint operating agreements. Perenco feared this could derail their deal with BP and so entered into negotiations with Premier. Perenco agreed to on-sell part of the interests under the BP SPA to Premier Oil. But the pricing of that deal was a little unusual. Zoe, can you elaborate?
ZOE ANDREWS	Yes, certainly. Premier Oil paid less than a simple pro rata share of the original purchase price Perenco paid to BP. This pricing difference was addressed through a joint election under section 198 of the Capital Allowances Act 2001 which fixed the amount treated as Premier Oil's expenditure on the transferred fixtures at 2 US dollars. This enabled Perenco to retain the benefit of capital allowances on the transferred assets despite transferring ownership of a proportion of them to Premier Oil. Both SPAs completed in December 2011, with the Premier Oil one completing 6 days after the BP one. HMRC challenged Perenco's claim and reduced its qualifying expenditure by an amount referable to the proportion of the field facilities sold on to Premier Oil, resulting in additional corporation tax assessments of approximately £39 million. So as Steph said – the facts are slightly complicated, but the issue is a familiar one: what was the arrangement really trying to achieve?
STEPHANIE MULLINS	Exactly, Zoe. HMRC argued that Perenco was not entitled to capital allowances in respect of the portion which was transferred on to Premier Oil because it did not meet the relevant conditions in the Capital Allowances Act 2001 due to the onward sale to Premier Oil. HMRC argued, amongst other things, that this meant the purpose of this portion of the expenditure was to acquire the assets to be on-sold to a third party, and not for the purposes of Perenco's trade. HMRC also submitted that one of the main purposes of the section 198 election was to enable Perenco to obtain a tax advantage of retaining the capital allowances on the oilfield plant and machinery.
ZOE ANDREWS	And what did the FTT think of those arguments?
STEPHANIE MULLINS	The FTT held that the fact that Perenco had already agreed to an onward sale did not prevent the expenditure being used for Perenco's trade for the period of its ownership, which ended up being six days but could have been much longer as certain conditions precedent had to be satisfied under the Premier Oil SPA and there was some doubt over whether these would be satisfied. The FTT also held that although the section 198 election together with the Premier Oil SPA formed an arrangement capable of producing a tax advantage, obtaining that advantage was not a main purpose of the arrangement. The discussion on this point in the judgment is limited but the FTT held that the main purpose of the SPA with Premier Oil and the section 198 election was to secure a deal with Premier Oil to prevent disruption to the BP SPA given Premier Oil's pre-emption rights.

	Retention of the capital allowances was a 'key bargaining chip' and a means of bridging the pricing gap, not itself a main purpose of the arrangement.
ZOE ANDREWS	Thanks, Steph. Let's turn now to our third case: the Court of Appeal's decision in *Elborne*. We are moving from oilfields into inheritance tax territory — so quite a change of scene — but there is some useful discussion of the *Ramsay* principle of purposive construction in *Elborne* that we want to draw out. In 2003 Mrs Elborne implemented a "home loan" scheme, which is a form of inheritance tax planning that was popular in the late 1990s and 2000s. The scheme had four steps: - First, Mrs Elborne sold her home at market value to the trustees of a life interest settlement in which she retained a life interest. - Second, rather than receiving cash, the trustees gave her an unsecured promissory note for the purchase price. - Third, Mrs Elborne then assigned (for no consideration) the promissory note to the trustees of a second separate trust established for the benefit of her children (she was entirely excluded from this trust). - And fourth, she continued to live in the property rent-free as life tenant of the first trust until her death in 2011, which critically was more than 7 years after the assignment of the promissory note. The intended effect was that, because Mrs Elborne lived for more than 7 years after gifting the promissory note, that transfer fell out of the inheritance tax net, while the outstanding debt owed under the note reduced the value of the settled property deemed to form part of her estate. The central question was whether the home loan scheme successfully removed the value of the property from Mrs Elborne's inheritance tax estate. So, Steph – did it?!
STEPHANIE MULLINS	The Court of Appeal thought so! The case is, of course, predominantly about inheritance tax. But it is potentially wider in significance because of what the Court of Appeal says about the *Ramsay* principle and the Supreme Court's decision in *Rossendale*. So that is where we will focus. HMRC argued that the Court of Appeal should adopt the purposive interpretative approach used by the Supreme Court in *Rossendale* and effectively disregard the liability under the promissory note as being part of an avoidance scheme. The Court of Appeal firmly rejected this argument. Sir Launcelot Henderson was pretty forthright – he said that "the argument [was] pitched at such a high level of generality, and [was] so far divorced from the actual statutory language" that he had difficulty understanding it. He noted that if a statutory provision is to be given a wider meaning and application than normal in reliance on the *Rossendale* approach, it must be possible for the purpose of the statutory provision

	in question to be safely identified, and for the wider meaning, when realistically applied to the facts, to be needed in order to prevent frustration of Parliament's evident intention in enacting it.
ZOE ANDREWS	That is very helpful guidance from the Court of Appeal on the boundaries of the *Ramsay* doctrine, particularly where HMRC is asking the court to attribute to the statutory language a meaning it would not normally bear. Sir Henderson also observed that the taxpayer's interests had in fact changed substantially. The arrangements therefore produced genuine legal consequences and could not simply be ignored. He therefore dismissed HMRC's appeal on this point, adding that he considered HMRC's "whole approach to this issue to be clearly untenable".
STEPHANIE MULLINS	Which, in judicial terms, is about as close to a raised eyebrow as you are likely to get! The final case we will discuss today is the Upper Tribunal's decision in *Knights Developments Ltd* (KDL), a significant win for HMRC in a case on treaty interpretation. I thought I must have missed the FTT's decision on this but in fact there was no FTT decision – this case is an example of a transfer to the Upper Tribunal under Rule 28 of the FTT Rules which permits complex cases to be heard by the UT without first having an FTT hearing and decision.
ZOE ANDREWS	That's right - KDL's appeal is the lead appeal for a number of related companies within the same group as KDL whose appeals are stayed behind this one. HMRC estimate the broader revenue implications at up to £1 billion of historic claims and £230 million of annual future revenue. KDL was a property developer resident in the Isle of Man and did not have a UK permanent establishment. It was agreed by the parties that KDL made trading profits from the acquisition, development and sale of UK land. But the parties disagreed on whether the trading profits were taxable in the UK. This turned on the interpretation of the UK-Isle of Man Double Tax Treaty.
STEPHANIE MULLINS	The UK did not have taxing rights under the business profits article (as there was no UK permanent establishment) so HMRC sought to argue that the trading profits constituted 'income derived from immovable property' within Article 6 of the treaty, or alternatively, fell within Article 13 as 'gains derived from the alienation of immoveable property'. The UT concluded that Article 6 was broad enough to give the UK taxing rights over the trading profits. KDL had argued for a narrower interpretation – pointing to academic texts which drew a clear distinction between "use" and "alienation" and would confine Article 6 to profits from the "use" of immovable property. Although academic commentaries are not authoritative aids to treaty interpretation, they may be persuasive in some circumstances. In this case, however, the UT did not give them any weight because they did not address the specific question of whether profits realised by a property developer from the acquisition, development and sale of land fall within Article 6. The UT therefore did not depart from the conclusion reached from the language of the treaty itself.
ZOE ANDREWS	There was no need, then, to consider Article 13, given this conclusion on Article 6 but because of the likely relevance on appeal or for the related appeals, the UT did express a view on Article 13. As the

parties had agreed KDL's profits were trading profits not capital gains, HMRC had to argue that the trading profits were "gains" for the purposes of Article 13. Now "gains" is not defined in Article 13, so HMRC argued for a UK domestic law meaning of "gains" which includes trading profits. But the UT said that Article 13 cannot be viewed in isolation but must be considered in the context of the structure of the treaty as a whole and in that context "gains" in Article 13 does not extend to trading profits.

The broad interpretation of Article 6 picking up alienation of immoveable property as well as use and the obiter view confining Article 13 to capital gains make this an important treaty interpretation case. But probably not the end of the story as an appeal is likely given the amounts at stake and the implications for other taxpayers.

STEPHANIE MULLINS

Turning now away from recent case law to some UK developments, we thought it would be helpful to highlight the recent ministerial changes and where the responsibility for Tax now sits within the Government.

As I am sure everyone knows, following Andy Burnham's arrival in Downing Street, John Healey was appointed Chancellor of the Exchequer on 20 July 2026, succeeding Rachel Reeves in the role.

But what may have passed some people by is that as part of the subsequent Treasury reshuffle, James Murray was appointed Financial Secretary to the Treasury and Paymaster General on 21 July, taking on responsibility for the UK tax system, as well as serving as the departmental minister for HMRC.

Notably, responsibility for tax has transferred to Murray from Dan Tomlinson, who remains in post as Exchequer Secretary to the Treasury but now holds the additional title of Minister for Growth, with a portfolio focused on industrial strategy, devolution, and investment rather than tax policy.

ZOE ANDREWS

Now we won't speak too much about L-Day in this podcast as I think everyone has probably had enough content on that for now. But we did want to just flag three things:

- First, the consultation on reform of treaty withholding tax procedures (to simplify the process and reduce administrative burden) closed on the 7th of September. We now wait for the Government's response to see if this is an area it will prioritise for reform and what that will look like;

- Second, the long-promised consultation on the taxation of predevelopment costs following the Supreme Court's decision in *Gunfleet Sands* closes on the 21st of September. We will await the Government's response on this and will discuss further in a future podcast but affected taxpayers will need to work hard to push for reform given the comment in the consultation that the Government is 'not currently minded to legislate'; and

- Finally, the draft legislation for the Securities Transfer Tax (the STT) was published. This is intended to replace both stamp duty and stamp duty reserve tax with a single, fully digital regime for taxing transfers of shares and other securities. The legislation is only in draft form and comments were requested by 7 September. HMRC have not committed to an exact date for bringing the STT into force, beyond that it will be in 2027. A further update on timing is expected at the Autumn Budget.

STEPHANIE MULLINS

I know you like threes, but there are four recent UK developments in the form of guidance that I would like to mention:

First, we have previously spoken about HMRC's Guidelines for Compliance 7 – 'Help with common risks in transfer pricing approaches' (GfC7). This sets out what HMRC considers best practice compliance and higher risk approaches to transfer pricing. In August, GfC7 was updated to add information about the 'Transfer Pricing and Profit Diversion Compliance Facility'. The guidelines now explain three ways for taxpayers to correct errors in their transfer pricing position identified after reading GfC7. If they are in time to amend the return it should be amended to reflect the increased profits or reduced losses for the period. Outside the timeframe for an amendment, the Transfer Pricing and Profit Diversion Compliance Facility can be used to amend the tax position if there are significant or complex Diverted Profits Tax, Unassessed Transfer Pricing Profits or non-financial transfer pricing risks. If neither of these options suit, the voluntary disclosure process should be used.

Second, continuing the series of guidelines for compliance to provide greater clarity and transparency of tax compliance obligations, GfC20 was published on 10 September – 'Help with VAT on Fund Management Services'. Aimed at businesses providing or receiving fund management services, the guidelines explain HMRC's recommended approach to deciding whether these services are single or multiple supplies. As with other forms of HMRC guidance, these guidelines form part of HMRC's "known position" for large taxpayers within the scope of the uncertain tax treatment notification rules.

Third, on 9 September HMRC published a new chapter of the Investment Funds Manual (IFM09000) on the Reserved Investor Fund (RIF). Building on the previous technical note explaining the legislation, the guidance explains the qualifying conditions, tax treatment of investors, procedures for entering and leaving the regime, and the administrative obligations of fund operators. The RIF, which was introduced following the Government's wider review of the UK funds regime, is intended to provide a flexible, lower-cost UK contractual fund vehicle for professional and institutional investors.

Finally, on 9 September, HMRC published technical guidance on its new anti-avoidance information notice (AAIN) powers introduced by Finance Act 2026. The notices allow HMRC to obtain information and documents from persons it reasonably suspects are connected with the promotion or facilitation of tax avoidance arrangements, without needing to prove any tax loss or establish that the arrangements are ineffective. The new power is in addition to HMRC's powers in Schedule 36 Finance Act 2008 which govern investigations into taxpayers' tax positions.

That's enough UK news for now – what is happening in international news?

ZOE ANDREWS

With OECD Pillar One Amount A stalled, many developing countries are now focusing on the UN Framework Convention on International Tax Cooperation, which has become the key multilateral tax project to watch.

It is not going to impact business in the near-term though. Even if countries can agree the final text and ratify it, we're probably looking at 2029 or 2030 before the Framework Convention enters into force. If domestic legislation is needed, the practical impact may not be felt until well into the 2030s. But we cannot ignore it. It has momentum despite the US pulling out early in the Trump administration saying it would reject any outcome. Negotiations have continued. In fact, after five

	rounds of talks, the debate is no longer whether there will be a UN Framework Convention, but what it will contain. Steph, how did the fifth session of talks go in August?
STEPHANIE MULLINS	It was the first time delegates worked from draft texts. The draft Framework Convention contains 28 articles and is accompanied by two draft protocols, one on cross-border services and one on tax disputes. The protocols in particular are attracting a lot of attention because they could have practical effect even if the Framework Convention itself ends up containing relatively soft commitments. Protocol 1 would create new source-based taxing rights over services, digital services and insurance premiums, while Protocol 2 tackles tax dispute resolution and the highly contentious issue of mandatory binding arbitration. Rather than starting from scratch, Protocol 1 is adapting and extending provisions already found in the 2025 UN Model Tax Convention, potentially taking source-country taxation of services far beyond today's rules for technical and digital services and going further than the OECD proposals. Zoe, what is the UK's stance on this?
ZOE ANDREWS	The UK is probably best described as being "at the table, but not on board". It continues to emphasise the OECD framework and its bilateral treaty network, and whether it ultimately signs up may depend on issues such as decision-making, treaty overrides and the flexibility of the final text. UK businesses could still be affected even if the UK stays outside the Convention, though, because although Protocol 1 itself operates only between participating states, trading partners may adopt similar source-based taxes in their domestic law. Whether those taxes could apply to a UK supplier would depend on that domestic law and any applicable UK tax treaty. There is still much to be discussed and agreed and there is another negotiating session in Nairobi in December. What have we got coming up, Steph?
STEPHANIE MULLINS	The main event on the Tax horizon is, of course, the Autumn Budget on 28 October. Whether it turns out to be a bumper Budget or a relatively restrained affair remains to be seen, with commentators divided on how much the new Chancellor will want to do in a first Budget. Until then, there will no doubt be plenty of speculation as to the Budget content!
ZOE ANDREWS	And that leaves me to thank you for listening. If you have any questions, please contact Steph 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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