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# TAX AND THE CITY

## CLIENT BRIEFING

March 2026

The Court of Appeal in *Sintra* decides that where a taxpayer appeals a penalty and in its defence challenges the underlying tax liability, the taxpayer bears the burden of proving that liability is incorrect. HMRC publishes initial guidance on the tax adviser registration requirement including the dates for registration and announces a delay until 2027 for registration of in-house tax advisers of financial services firms. An NAO report shows that HMRC's approach to large business tax compliance is delivering good value for money.

### *Sintra:* burden of proof on taxpayer to show underlying tax liability underpinning penalty was wrong

The Court of Appeal in *Sintra Global and P. Malde v HMRC* [2025] EWCA Civ 1661 reversed the decision of the Upper Tribunal (UT) and held that, when a penalty is underpinned by an underlying tax liability, a taxpayer arguing in defence that the underlying liability is incorrect must prove that to be so. This aligns the burden of proof with that in an appeal against the tax assessment itself which is based on the premise that the taxpayer should normally have access to all the information needed to resolve their tax affairs.

A simplified version of the facts (focused on the VAT aspects) is that HMRC alleged that Sintra Global (a Panamanian company controlled by Mr Malde, a UK resident) engaged in alcohol diversion fraud to evade VAT and excise duty on alcohol supplied in the UK. Sintra Global had not registered for VAT in the UK because according to Mr Malde, it did not need to as it never sold any alcohol for consumption in the UK. HMRC assessed Sintra Global to VAT on a "best of judgment" assessment of around £8.9m and to a penalty of around £8.7m for failure to register for VAT and the same amount, as an alternative, for submission of an inaccurate nil-VAT return. HMRC also issued personal liability notices (PLNs) to Mr Malde for the penalties as an "officer" of the company.

Sintra Global did not challenge the "best of judgment" VAT assessment because to do so, it would have had to pay the VAT upfront or establish hardship, which it failed to do. But it did challenge the decision of HMRC that Sintra Global was liable to be registered for VAT and the registration penalty as the "pay to play" provisions did not apply to these challenges. Mr Malde appealed against the PLNs.

The Court of Appeal accepted that civil tax penalties likely fall within the "criminal charge" limb of Article 6 ECHR, placing the burden on HMRC to prove the facts justifying a penalty, but concluded this does not extend to proving the underlying tax liability. Limited exceptions arise where statute shifts the burden or where HMRC must prove a particular state of mind, such as dishonesty.

The Court of Appeal also decided that the UT did not correctly apply the materiality test to the error of law of the First-tier Tribunal (FTT) in compartmentalising the evidence when determining the place of supply. The FTT had treated the place of supply issue without reference to the question whether Mr Malde was in control of Sintra Global and other key corporate entities at the material times when it should have considered the evidence as a whole. The UT recognised this as an error of law but concluded it was not material as the FTT would not have made a different decision even if it had not misdirected itself in law. The Court of Appeal held that the UT was wrong to have assessed materiality on a subjective rather than objective basis. The test is whether an error is objectively capable of being material.

There will be more to come on this case as the Court of Appeal has remitted the case to a differently constituted FTT for a rehearing but this will be stayed pending the outcome of the taxpayers' permission to appeal to the Supreme Court.

### Tax adviser registration: HMRC guidance and key dates

An aspect of the registration requirement that people have been puzzling over is how it applies to in-house tax teams providing tax services to group entities. Although Finance Bill 2026 does now contain an exclusion (in Schedule 20) for where a tax adviser interacts with HMRC regarding a client who is a group undertaking in relation to the adviser,

which will be the case for many corporate groups, if the tax adviser has any other interactions with HMRC that are not listed in the Schedule 20 exclusions, the registration requirement would be triggered so some may decide to register anyway to be on the safe side. It is the legal entity that interacts with HMRC which must register, not the individual employees.

It is unclear from the draft legislation whether the advisory tax function of a PE fund would need to register as this will depend on whether the entities they advise (such as funds, JV entities and portfolio companies) are outside the corporate group. The definition of "group undertaking" is narrower than the grouping test for many tax purposes as it uses the Companies Act definition with its own specific criteria where, for example, beneficial ownership is not relevant. It is hoped that HMRC guidance will make this clearer.

Given these uncertainties, the delay until 31 March 2027 to the registration requirement for in-house tax advisers in financial services reported by UK Private Capital on 6 March is to be welcomed. Although it is not clear yet how "financial services" will be defined.

HMRC guidance on the conditions to register and if and when to register was provided on 17 February and will be amended to reflect the delay for financial services but it is quite high level and does not resolve areas of uncertainty in the draft legislation, although further guidance is expected by May.

According to the current guidance, registration is being staggered over three stages between May 2026 and February 2027 and requires creation of an agent services account (ASA). Agents who already have an ASA do not need to register again but HMRC will contact such advisers for information to check they meet the registration conditions. The first wave of registrations is from 18 May to 18 August for new tax advisers or those already interacting with HMRC without an ASA or self-assessment or corporation tax account.

Tax advisers who already have a self-assessment or corporation tax account but do not have an ASA, need to register between 18 August and 18 November. Tax advisers who provide third-party payroll services on behalf of clients and do not interact with HMRC in any other way, need to register in the third wave, between 18 November 2026 and 18 February 2027. Following the delay reported by UK Private Capital, in-house tax advisers in the financial services industry will not need to register until 31 March 2027.

## NAO report: tackling large businesses

The NAO's Taxing large businesses report concludes that HMRC's large business directorate provides good value for money, returning £95 for every £1 spent on staff pay. The report highlights the importance of both the tax contribution and the tax collection role played by large businesses (two-fifths of the total taxes HMRC collect come through large businesses). HMRC's risk-based approach to compliance results in HMRC being more hands-on with large business than with other taxpayers because of the complexity of the businesses and the amount of tax at stake. Given this background, it is unsurprising that HMRC are investigating around half of all large business groups at any one time (at October 2025 £70.1 billion of large business taxes were under consideration by HMRC).

There has been increased focus in recent years on closing the tax gap and HMRC have had some success closing the large business tax gap. According to the report, half of the remaining gap comes from large business interpreting the law differently from HMRC which explains the focus of HMRC on improving guidance to reduce legal uncertainty and the introduction of HMRC's guidelines for compliance 13 recommending taxpayers disclose to HMRC, when filing a tax return, any tax positions which are "finely balanced" or which rely on an untested view of the law.

The time taken to close interventions is down to 17 months from 35 months in 2021-22 during the COVID-19 pandemic. Interestingly, 30% of the interventions that the large business directorate closed in 2024-25 resulted in no yield and these zero-yield interventions take on average twice as long to conclude as those that result in some yield. Although this is down from 38% zero-yield in 2021-22, it seems to be an obvious area where both HMRC and taxpayers would benefit from further improvement to bring cases to a quick resolution if yield is not likely. Yet the report notes that the large business directorate has not reviewed its zero-yield interventions to identify learning since 2013-14 and this is not part of HMRC's performance metrics.

Large business is generally supportive of the cooperative compliance approach, although frustrations can understandably arise when CCMs are moved around and continuity is lost. It is interesting that HMRC are exploring whether to expand the cooperative compliance approach to smaller but complex businesses and is developing a method to identify complexity in businesses which can be used to target cooperative compliance. Will this stretch HMRC's resources even further and result in a worse experience for large businesses which currently have a CCM? The report suggests some lower-risk or less complex large businesses will be treated as requiring a lower level of CCM support as a result of automated data profiling to identify more risks among lower-risk business rather than this being done by regular and close contact with CCMs. The report notes that successful investment in IT infrastructure is essential to enable this because the legacy IT systems limit HMRC's ability to use bulk data profiling speedily and effectively. HMRC received £1.6 billion in the 2025 Spending Review to modernise its IT structure which is expected to improve risk assessment, bulk data profiling, and productivity.

The NAO makes a number of recommendations to HMRC's large business directorate and the one that caught our eye as being particularly helpful to business is that HMRC

should be precise and circumspect with requests for data and communicate the clear purpose of data it requests in compliance investigations. Given the high administrative cost for business of complying with requests from HMRC for considerable volumes of data, it is good to see that HMRC are planning to agree expectations with businesses at the start of an intervention and to share an action plan setting out how it expects to investigate the issue as this may help to keep requests more targeted.

**What to look out for:**

- Royal Assent to the Finance Bill is expected later this month.
- On 24 or 25 March the Court of Appeal is scheduled to hear HMRC's appeal in the *MR Currell* case on the income tax treatment of payments to an EBT that were loaned to a director.
- As announced at Autumn Budget 2025, Shadow Advance Corporation Tax (ACT) will be repealed by statutory instrument with effect from 1 April 2026. The government will consult on the future of the remaining ACT regime in early 2026 including what will happen with remaining surplus ACT balances.
- A number of changes legislated for in the Finance Bill take effect from 6 April 2026 including the revised tax regime for carried interest and the following rate changes:
    - the rate of CGT increases from to 18% (from 14%) for business asset disposal relief and investors' relief; and
    - the ordinary rate and upper rate of income tax applicable to dividends will be increased by two percentage points (the additional rate will remain unchanged) and the notional tax credit provided for in ITTOIA 2005 s 399 for non-UK residents on UK dividends will be abolished.

*This article was first published in the 13 March 2026 edition of Tax Journal.*

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