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CLIENT BRIEFING

February 2026

The Court of Appeal in *Watts* decides that the purpose of the legislation was to allow a claim for relief where the taxpayer has suffered a real commercial loss as a result of transactions in gilt strips. The FTT in *Ripe Limited* concludes the taxpayer was entitled to a deduction for amortisation of the acquisition costs of an intangible fixed asset incorrectly described as "goodwill". The Pillar Two Side-by-Side package delivers a wide-reaching safe harbour that currently benefits only US-headed groups plus a new Simplified ETR Safe Harbour, with UK implementation requiring primary legislation in Finance Bill 2027 effective from 1 January 2026. HMRC update their guidance on transfer pricing compliance (GfC7) to include value chain analysis and offshore procurement hubs.

Watts: purposive construction of legislation and application to the transactions as a whole

The Court of Appeal in *T. Watts v HMRC* [2025] EWCA Civ 1615 had to consider whether a gilt strip scheme created a tax-deductible loss for the taxpayer. The taxpayer bought a gilt strip for £1.5 million and granted an option to a trust (of which he was a life tenant and beneficiary) to purchase the gilt strip for an exercise price of £150,400. The trust, however, paid just under £1.34 million for the option and then sold it to a third party (Investec) for £1,346,200. Investec then exercised the option and acquired the gilt strip.

The idea behind the scheme was to create a tax-deductible loss of around £1.3 million, being the difference between the amount paid by the taxpayer for the gilt strip and the exercise price received by the taxpayer under the option. The success of the scheme hinged on the question: what is "the amount payable on the transfer" of the gilt strip? In order to succeed, that amount had to be just the exercise price paid to the taxpayer, and not the exercise price plus the amount paid by Investec to the trust to acquire the option (as argued for by HMRC). The FTT and UT both concluded that "the amount payable on the transfer" comprised both payments and the Court of Appeal, applying *Rossendale* [2021] UKSC 16, agreed with this conclusion.

Although the legislation has since been amended to deal expressly with this type of scheme (see ITTOIA 2005, s 449), this case is of interest from the perspective of the principles of purposive construction and the need to look at the facts holistically. As Lord Justice Miles includes in his list of guidance to be drawn from the case law, both the interpretation of the legislation and the application of the legislation to the facts "share the need to avoid tunnel-vision" and "the facts must be looked at in the round".

It is worth bearing in mind, however, that the holistic approach has its limits (see *UBS* [2016] UKSC 13 paragraph 68). In some cases (the Supreme Court in *UBS* gave the examples of *Macniven* [2001] UKHL 6 (meaning of "payment") and *BMBF* [2004] UKHL 51 (conditions for capital allowances claim in leasing transaction)), there is no scope for applying a composite approach because the legislation requires focus on a specific transaction so that other transactions, even though they are related, are unlikely to have a bearing on the application of the legislation. A more recent case that would also be at home on this list is *Bostan Khan* [2021] EWCA Civ 624 where the Court of Appeal concluded that the relevant legislation asked who was entitled to or who actually received a distribution and was not "concerned with the overall economic outcome of a series of commercially interlinked transactions" which meant Mr Khan was saddled with income tax of almost £600,000 on nearly £2 million paid into his bank account and then paid out almost immediately in respect of connected share sale and buy-back transactions.

Ripe Limited: an undocumented licence to use a client list was an intangible fixed asset

The substantive issue the FTT in *Ripe Limited v HMRC* [2025] UKFTT 01606 (TC) had to determine was whether Ripe Limited had acquired an intangible fixed asset (IFA) under the pre-2015 IFA rules for which deductions for amortisation of capitalised expenses could be claimed.

Mr and Mrs Glazer left the firm of accountants where they had been partners and set up a new business with a third individual, taking with them certain of their clients. Mr

Glazer paid the accountancy firm for a licence to use the client list, data and information related to the clients on the list, to avoid being in breach of a non-compete clause in the partnership agreement. Mr Glazer then assigned this licence to Ripe Limited (a company wholly owned by Mr Glazer and his wife) for an amount outstanding on loan account. Neither the grant of the licence nor the assignment was in writing.

Ripe Limited then exploited the licence by giving permission for another entity, Ripe LLP, of which Mr Glazer and his wife were the sole members, to use the list in its accountancy business in return for consideration. The licence was recorded in the accounts of Ripe Limited as "goodwill" and, under the IFA rules at the time, Ripe Limited claimed debits for losses recognised in the accounts each year in respect of the amortisation of the asset. HMRC raised discovery assessments disallowing the deductions on the basis that the licence was not an IFA for corporation tax purposes.

Although the IFA rules in CTA 2010, Part 8 have changed significantly from those applied in this case, a number of practical points can be taken from the case that are relevant to the current rules applicable to the taxation of IFAs. First, the labelling of the asset in the accounts as "goodwill", although incorrect, was not fatal as the FTT looked beyond the label to the substance of the asset. The FTT concluded that there would have been no difference in accounting treatment if it had been correctly identified because although it was not goodwill, the asset still qualified for amortisation relief as it met the definition of an IFA under the legislation at the time. The appellant had the necessary control over the expected future benefits from the asset and had exploited it on a continuing basis in the course of its business for the purposes of the definition of IFA in CTA 2009 s 713.

Second, the lack of documentation of the grant of the licence to Mr Glazer or of the assignment of that licence by him to Ripe Limited did not matter because the witness evidence and other documents supported the existence of the licence and assignment. Best practice, however, would be to document both carefully rather than have to rely on witnesses and other evidence which may not always be available (or as credible) years later.

Pillar Two Side-by-side package and the UK

Much has been and will continue to be written about this package so we will constrain ourselves to observations on two parts of the package. Firstly, the new Side-by-Side (SbS) safe harbour which prevents the IIR and UTPR applying to in-scope entities but does not protect them from QDMTTs. Although the OECD is keen to stress this is not a "US carve-out" from the IIR and UTPR, the US is currently the only jurisdiction with a "Qualified SbS regime" listed on the OECD's Central Record and therefore currently only US-headed multinational groups can benefit from this safe harbour. The safe harbour has a very extensive reach and applies to all constituent entities in the US-headed group and any Joint Venture interest or Joint Venture subsidiary owned by a constituent entity in the US-headed group. Even partially owned parent entities owned by a CE in the US group can benefit from the safe harbour (assuming it is implemented in the relevant jurisdiction), as can stateless entities. It is important to note, however, that other JV partners which are not entities in a US-headed group are not supposed to be impacted by the safe harbour and their calculations under the global minimum tax should be unaffected.

The second area to catch our attention is the new Simplified ETR Safe Harbour (SESH) which, despite having "Simplified" in its title can still get pretty complicated. It is a spin-off from the temporary CBCR safe harbour (which is being extended for another year to give jurisdictions time to implement the SESH). According to the OECD, the simplicity of the CBCR safe harbour gave rise to volatility concerns and unreliable results whereas the SESH improves on the CBCR design and provides a more coherent, complete and stable mechanism. A key advantage of SESH over CBCR is that it does not inherit the CBCR's "once out always out" rule which was very harsh. Re-entry into the SESH is permitted after dropping out so long as there have been two consecutive years without a top-up liability for the relevant jurisdiction.

The changes required to the UK primary legislation to implement the package are outside the scope of the power in the UK legislation to amend the rules by regulation and so will be included in Finance Bill 2027 with effect from 1 January 2026. Draft legislation will be published for consultation.

GfC7: value chain analysis and offshore procurement hubs added to guidance on transfer pricing risk

HMRC's updated Guidelines for Compliance 7 (GfC7) expands its guidance on transfer pricing in two areas. Value chain analysis is recognised, in new part 2.2.8, as a valuable tool for understanding how value is created across an MNE, helping to clarify the economically significant functions, assets and risks within a group. Seven best practice steps for conducting a value chain analysis are included. Offshore procurement hubs are dealt with in new part 3.8 which sets out HMRC's view of the role performed by offshore procurement hubs and the appropriate transfer pricing methodologies depending on the functions of the hub and the value added and risks borne by the hub. HMRC describes these additions to GfC7 as reflecting "HMRC's evolving approach to identifying and mitigating compliance risks in increasingly complex multinational structures". Which sounds like there will be further updates to come…

What to look out for:

- The Public Bill Committee proceedings are scheduled to end by 26 February, after which the Finance Bill will need to complete the remaining Commons and Lords stages before proceeding to Royal Assent in March.
- On 2 March the Upper Tribunal is due to commence the appeal in the *GCH Corporation Ltd* case on whether an LLP was carrying on a trade or business with a view to profit for the purposes of TCGA 1992 s59A.
- The OECD is expected to produce further administrative guidance on the global minimum tax including simplifications for investment entities and minority owned constituent entities. Further permanent safe harbours for routine and de minimis profits are also being worked on.

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

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