SLAUGHTER AND MAY/

# TAX NEWS

## PODCAST

October 2025

| | |
|---|---|
| **Zoe Andrews** | Welcome to the October 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.<br><br>We will discuss the Supreme Court's decision in *Prudential Assurance*, the CJEU's decision in *Arcomet Towercranes*, three cases and one OECD report concerning the use of AI and a few other UK developments.<br><br>The podcast was recorded on the 7th of October 2025 and reflects the law and guidance on that date. |
| **Zoe Andrews** | But first, I'm excited to tell you that last month's special guest, Sarah Osprey, has joined us again. Sarah is one of our tax partners. Her practice encompasses advisory, transactional, and contentious matters across the full spectrum of UK corporate tax law. And it's the latter that she has joined us to talk about. Sarah, what does your contentious work include? |
| **Sarah Osprey** | Hi Zoe, it's lovely to be back again. Yes, I advise on a wide range of contentious matters. They can range from transfer pricing and other corporation tax matters or diverted profits tax to employment and pensions tax, so anything really. |
| **Zoe Andrews** | Over the last few weeks (and across ten posts on the European Tax Blog), you and other members of Slaughter and May's market-leading tax disputes team have shared your insights and practical tips on managing disagreements with HMRC. The last post in particular had some interesting insights into an area that, I suspect, most of us would rather not think about – and would certainly never wish to come into contact with: HMRC's criminal investigation powers. |
| **Sarah Osprey** | It is rather horrible when it comes up in practice but it is certainly a topic of growing importance – earlier this year, the government committed to increasing the number of positive charging decisions for the most harmful fraud by 20%, and a recent update noted that the number of wealthy individuals under criminal investigation by HMRC had already increased from around 50 in 2016-17, to 275 at the end of 2024-25. HMRC have also recently secured the first charging decision under the corporate criminal offence of failing to prevent the facilitation of tax evasion which was introduced in 2017. We have also started to see HMRC exploring the use of their criminal investigation powers if they don't like the information provided to them in response to information requests, and at the same time, HMRC's criminal sanctions arsenal is set to grow with the proposal to introduce an offence for failing to notify a transaction under DOTAS. |

| | |
|---|---|
| **Zoe Andrews** | But increased criminalisation is not just a trend in the UK, is it? |
| **Sarah Osprey** | That's true, and in certain respects other countries have gone further than the UK and introduced rules which make it mandatory to consider or commence a criminal investigation in certain circumstances. Even where it is clear that there should not ultimately be any criminal sanctions, this of course can be very disconcerting. |
| **Zoe Andrews** | Much like it could be disconcerting to be moved into HMRC's COP8 or COP9 procedure even though it is ultimately found that there was no aggressive planning or fraud. But these procedures are discussed in more detail on the European Tax Blog.<br><br>One thing that the blog series hasn't addressed - and I wanted to ask you about - is whether there are any particular tax risk areas. Have you seen any trends or themes, any particular focus for HMRC enquiries? |
| **Sarah Osprey** | Beyond government announcements that there is going to be a continued focus on tax compliance by large business and the wealthy, to be honest, there isn't much in terms of official statements that HMRC are focussing on a particular area. But there do appear to be some trends.<br><br>HMRC can be expected to scrutinise (and potentially challenge) large deductions – this has been borne out in a range of cases from challenges to the deductibility of interest, deal fees or payments in lieu of penalties or the eligibility of expenditure for capital allowances. A high level of compliance activity can also be expected to continue in respect of remuneration arrangements for partners or members of an LLP, especially in the financial services and private equity sectors, and of course transfer pricing quite clearly continues to be an area of focus for HMRC. In fact, it seems that it should only be a matter of time until we see the first proper transfer pricing case hit the FTT. |
| **Zoe Andrews** | That was super informative! Thank you, Sarah. |
| **Tanja Velling** | Yes, Thank you.<br><br>Zoe, shall we now move on to discuss some cases? Perhaps we can start with the one you covered for the European Tax Blog, the Supreme Court's decision in *Prudential Assurance*? |
| **Zoe Andrews** | Sure, yes. The case concerns the interaction between two deeming rules in the VAT legislation. But let's start with an overview of the facts.<br><br>Silverfleet had provided fund management services to Prudential at a time when Silverfleet was a member of Prudential's VAT group. But part of the payment for those services was dependant on how well the managed funds performed and, at the time Silverfleet invoiced for these performance fees and received the payments, it was no longer part of the VAT group. |
| **Tanja Velling** | What are the two deeming provisions at issue here? |

| | |
|---|---|
| **Zoe Andrews** | The taxpayer argued that, as a matter of fact, the services were supplied while Silverfleet and Prudential were members of a VAT group. So, the VAT grouping rules – which tell us that supplies between members of a VAT group are to be disregarded - should be the start and the end of the analysis. So, no VAT would be due on the performance fees.<br><br>But then there's also Regulation 90 of the VAT Regulations 1995 which HMRC relied on. Regulation 90 provides that continuous services are to be treated as supplied at the time of the invoice or payment, not when they were actually supplied. This meant that, here, the performance fee would be subject to VAT because it was invoiced and paid, and so Regulation 90 deemed the supplies to have been made, after Silverfleet had left Prudential's VAT group. |
| **Tanja Velling** | What did the Supreme Court decide? |
| **Zoe Andrews** | That the performance fees were properly subject to VAT. The Supreme Court considered that the VAT grouping rules don't constitute a comprehensive code. They do not include rules that determine when a supply takes place; that's the function of the time of supply rules, including Regulation 90. These also apply to identify the time of supply for the purpose of determining whether the supply took place while the supplier and the recipient were members of the same VAT group. |
| **Tanja Velling** | When we previously discussed the case, you mentioned the earlier Court of Appeal decision of *B J Rice*. In that case, services were provided by Mr Rice at a time when he was not registered for VAT but were not paid until 4 years later, when he was registered for VAT. HMRC had argued the services were supplied at the time they were paid, at which point they should have been subject to VAT. But the Court of Appeal in *B J Rice* determined that the time of supply rules cannot take a non-chargeable supply and make it chargeable.<br><br>I recall that the majority of the Court of Appeal in *Prudential Assurance* had held that *B J Rice* was no longer good law, whereas Lord Justice Nugee would have decided *Prudential Assurance* in favour of the taxpayer on the basis of this case. What did the Supreme Court say? |
| **Zoe Andrews** | The Supreme Court agreed with the majority of the Court of Appeal that *B J Rice* has been undermined by later House of Lords decisions and that the decision must be confined to its own facts. |
| **Tanja Velling** | Did the Supreme Court say anything else of interest about how Regulation 90 applies? |
| **Zoe Andrews** | Yes! The Supreme Court considered the provisions in the Principal VAT Directive that Regulation 90 implements and relevant CJEU jurisprudence to conclude that Regulation 90 did not go further than permitted by EU law. The Supreme Court concluded that EU law did not require the application of the Regulation 90 rule to be restricted to the circumstance where the performance of the services was ongoing at the time of payment. It can apply wherever the nature of the supplies justifies payment in instalments. This would also be the case where, as here, the consideration for the services is uncertain or contingent at the time when the provision of the services has been completed. So, in respect of the performance fees, Regulation 90 could apply here to deem the services to have been supplied after Silverfleet had left Prudential's VAT group. |

| | |
|---|---|
| **Tanja Velling** | I suppose that this does clarify the interaction between the VAT grouping and time of supply rules, even if not in the way that the taxpayer might have hoped.<br><br>There's another case on VAT – this time on the interaction between VAT and transfer pricing – that I think is worth mentioning, the CJEU's decision in *Arcomet Towercranes*. The clue here is in the name; the case concerns the arrangements between entities in a crane hire group and, more specifically, whether a Romanian entity had to account for VAT under the reverse charge in respect of invoices issued by a Belgian entity.<br><br>The arrangements within the group were such that the Belgian entity undertook most of the commercial responsibilities and bore the associated risks. An appropriate profit margin range for the Romanian entity was determined accordingly for transfer pricing purposes, and all of this was set out in a contract between the Belgian and the Romanian entities. The contract also provided that, if the Romanian entity's profits for a period exceeded the predetermined margin, the Belgian entity would issue an invoice for the excess. (Conversely, the Romanian entity would issue an invoice to the Belgian entity, if its losses exceeded what was permissible under the predetermined margin range.) |
| **Zoe Andrews** | The question here then was as to the VAT treatment of the Belgian entity's invoices intended to remove excess profits from the Romanian entity, and the CJEU indicated that the amount invoiced would seem to be consideration for services provided by the Belgian to the Romanian entity and therefore subject to VAT. In other words, this decision indicates that, at least in certain circumstances, a transfer pricing adjustment could constitute consideration for VAT purposes. |
| **Tanja Velling** | To what extent do you think HMRC would agree with this decision? Is there anything in HMRC guidance? |
| **Zoe Andrews** | I think HMRC's views as expressed in the International Manual (at INTM486010) are compatible with this decision. The Manual does state that balancing payments under the transfer pricing provisions in the Taxation (International and Other Provisions) Act 2010 "do not in themselves create taxable supplies" for VAT purposes, but it goes on to say that "if a balancing payment is specifically made as consideration or further consideration for a supply, then, dependant on the precise circumstances and whether the relevant supply was a taxable supply, a VAT liability may arise." I think *Arcomet Towercranes* could be read as an example of such circumstances where the contractual framework meant that the transfer pricing adjustment resulted in a VAT liability. |
| **Tanja Velling** | That makes sense and that is where we shall leave the world of VAT to enter an entirely different sphere. With quite a few developments over the last few months, we thought it's time to take a look at the world of AI.<br><br>Tax authorities are certainly harnessing the technology. The OECD's recent report "Governing with Artificial Intelligence" noted that 29 out of 38 OECD members reported using AI in tax administration, with the most common use case being the detection of tax evasion and fraud. One example given in the report which was also widely discussed in the news some time ago is the French tax authority's use of AI to analyse aerial photos for undeclared developments including swimming pools and it sounds as if Greece is adopting a similar approach. |

| | |
|---|---|
| **Zoe Andrews** | But tax authorities are also using AI to assist with filings and improve taxpayer services – the OECD's report refers to a chatbot deployed by the tax authorities in Singapore which potentially saved 11,666 taxpayer hours in 2024.<br><br>Tax authorities further deploy AI to help with decision-making and, in that respect, the General Regulatory Chamber of the UK's First-tier Tribunal issued an interesting decision in *Thomas Elsbury v The Information Commissioner*.<br><br>Mr Elsbury, the founder of a business specialising in research and development tax reliefs had become concerned that HMRC were using AI to make decisions about R&D reliefs – either as a matter of policy or through individual officers on an unauthorised basis. He had seen letters that bore signs of AI use - including American spellings and prose that sounded convincing, but did not align with the facts, and so made a request under the Freedom of Information Act 2000 that HMRC disclose how large language models are used in this area and certain further information, including on the selection process, data security and impact assessments.<br><br>HMRC's refusal to provide this information was initially upheld by the Information Commissioner, but the Tribunal has now ordered HMRC to confirm whether they hold the requested information and, if so, either provide it or serve a reasoned refusal notice. |
| **Tanja Velling** | How come the Tribunal reached a different conclusion to the Information Commissioner? |
| **Zoe Andrews** | The Tribunal was ultimately persuaded by Mr Elsbury that the balance of the public interest lies in disclosure. It considered that "transparency on HMRC's part is particularly important when AI's role in decision-making is a pressing concern globally" and HMRC had not done enough to satisfy "the requirement for transparency and accountability so as to facilitate public debate on the matter of HMRC's use (or not) of AI and LLMs in respect of R&D tax relief."<br><br>This chimes with one of the risks highlighted in the OECD's report, namely that a lack of transparency could undermine the rule of law, taxpayers' rights (including to dispute a decision) and ultimately taxpayers' trust in the system. And to help tax authorities ensure that AI is rolled out in a transparent and trustworthy manner, the OECD Forum for Tax Administrations is "piloting a framework to support tax administrations in their deployment of AI systems". The report states that the Forum plans to publish its findings from this work in 2026. |
| **Tanja Velling** | Tax authorities aren't the only ones using AI, though – as evidenced by two other recent cases.<br><br>First, we have *Gunnarsson*, a case concerning coronavirus support payments. The taxpayer used AI to prepare his skeleton argument and included three made-up cases in the version he sent to HMRC. Having spent time trying (and obviously failing) to find the cases on relevant databases, HMRC challenged the references, and the taxpayer amended the skeleton argument to remove them.<br><br>Fortunately for the taxpayer, the Upper Tribunal had some sympathy and did not consider him "highly culpable" here, considering that he had no legal training and was not subject to the same duties as a regulated lawyer or other professional representative. But it did caution that "in the appropriate case the UT may take such matters very seriously" and may sanction the misuse of AI. So, when using AI, it's imperative to check the output as it continues to be your responsibility! |

| | |
|---|---|
| **Zoe Andrews** | It is good then that the other case we thought worth highlighting appears to be an example of responsible AI usage. In *VP Evans*, the First-tier Tribunal judge used AI in producing the decision and I think his level of transparency about this is commendable.<br><br>He explained why he considered the case suitable for the use of AI, noting that "It is a discrete case-management matter, dealt with on the papers, and without a hearing. The parties' respective positions on the issue which I must decide are contained entirely in their written submissions and the other materials placed before me. I have not heard any evidence; nor am I called upon to make any decision as to the honesty or credibility of any party."<br><br>The judge explained how he used it - principally to summarise documents. He treated those summaries as first drafts and checked their accuracy.<br><br>And he made clear that he retained full responsibility for the decision. |
| **Tanja Velling** | That does sound like a good example of – to use the OECD's words – "trustworthy, transparent and accountable" deployment of AI. It remains to be seen whether this is the start of wider judicial use of AI and how that might play out – including whether it might give rise to new grounds of appeal.<br><br>The case is also interesting as an example of a decision on an application for HMRC to disclose documents to the taxpayer. One category of documents that the taxpayer sought to be disclosed was internal documents, including correspondence with the relevant overseas tax authorities, in respect of HMRC's view on the availability of relief under two tax treaties. The judge declined to order disclosure of these documents because they were not obviously relevant, it was not clear whether they would "shed any light on the primary facts which the Tribunal will have to decide" and disclosure was "unlikely to be probative of primary facts".<br><br>The judge considered further that "legitimate concerns regarding the confidentiality of state-to-state communications, especially in relation to mutual consultation as to the working of" a double tax treaty also counted against ordering disclosure here, although confidentiality is not in principle a bar to disclosure. |
| **Zoe Andrews** | Those are good points to bear in mind when considering whether to request disclosure of documents from HMRC and, potentially, when HMRC are asking you for documents.<br><br>But going back to AI: I'm also pleased to report that Tanja and I are going with the times, too – no, don't be alarmed; this podcast was still all us. But we've started to use AI to help us write LinkedIn posts and wondered – have you noticed a difference or spotted which ones were written with AI assistance and which weren't?<br><br>Tanja, what UK development caught your eye last month? |
| **Tanja Velling** | HMRC published a technical note on the RIF (Reserved Investor Fund) regulations providing commentary on the main rules that apply to schemes that have given a valid entry notice into the RIF regime and the tax rules applicable to investors (referred to as "participants"). HMRC's Investment Funds Manual will be updated to provide more detailed guidance and further worked examples. The RIF is a new type of co-ownership investment fund developed in response to industry demand for a UK-based unauthorised contractual scheme with lower costs and more |

| | |
|---|---|
| | flexibility than the existing UK alternatives. It is expected to be particularly attractive for investment by institutional investors, such as UK pension funds, in UK commercial real estate.<br><br>Did you find anything interesting in the latest corporation tax statistics? |
| **Zoe Andrews** | I'll let you be the judge of that! In September, HMRC published its latest corporation tax statistics which show that total receipts from all corporate taxes in 2024/25 were £97.2 billion (an increase of 4% from £93.7 billion in the previous year). This was in part due to the full effects of the main corporation tax rate increase feeding through to receipts.<br><br>Bank Surcharge receipts were down to £1 billion in financial year 2024/25, a decrease of £0.5 billion (or 33%) on the previous year, which can be largely explained by a reduction in the rate of Bank Surcharge and lower UK banking sector profits. Bank Levy receipts were £1.3 billion in 2024/25, a decrease of £0.1 billion (or 8%) on the previous year which follows a change in the scope of the bank levy in 2021 to apply to UK balance sheets only. The Financial and Insurance sector was the largest contributor with corporation tax receipts of £21.4 billion in 2024/25 accounting for nearly a quarter of the total.<br><br>And no podcast would be complete at this time of year without some pre-Budget speculation. What did Chancellor Rachel Reeves say about potential tax rises at the Labour Party Conference? |
| **Tanja Velling** | She gave a clear signal that tax rises are likely in the Budget but reiterated Labour's commitment not to raise the rates of the three major taxes affecting "working people": income tax, VAT and national insurance. But neither the Chancellor nor the Prime Minister categorically ruled out other changes to VAT when pressed by journalists. For example, a reduction of the VAT registration threshold could bring more small businesses into scope and the reclassification of some goods/services to the standard rate could raise significant amounts of additional VAT. |
| **Zoe Andrews** | The projected fiscal shortfall is reportedly between £30 and £40 billion, so that amount has to be raised from somewhere. Spending cuts are politically difficult and borrowing is constrained, so tax rises appear inevitable. If the manifesto promises are to be kept, rather than looking for ways to collect more tax on income, the government may be considering a shift towards taxing wealth and assets. A broad wealth tax has reportedly been ruled out, but there were other suggestions of targeted measures such as a mansion tax on high-value homes or new property levies to replace stamp duty land tax or introducing CGT on high-value primary residences. At the Labour Party conference, the Housing Minister, Steve Reed, ruled out overhauling council tax bands but there may be further increases in council tax rates. The government is also reportedly considering extending the scope of national insurance contributions to apply to rental income. |
| **Tanja Velling** | When considering the impact of any new taxes, and the desire to not adversely impact "working people" (whatever definition one may be inclined to use), the Chancellor may also want to be mindful of potential wider implications.<br><br>The EPR (extended producer responsibility), for instance, which came into force on the 1st of October, is already predicted to increase food inflation. The EPR makes producers of packaging pay for it to be recycled, shifting the burden of household packaging waste disposal from councils to producers. Fees are based on material type, weight and recyclability. The EPR applies to all packaging types (plastic, glass, metal and paper) if the business turnover of the producer is at |

| | |
|---|---|
| | least £2 million and the packaging is 50 tonnes or more per year. Unlike the plastic packaging tax which is a tax incentive penalising in scope businesses for using virgin plastic and encouraging the use of recycled materials, the EPR is not administered by HMRC, but by PackUK (on behalf of UK nations).<br><br>The British Retail Consortium estimates over 80% of the cost of the EPR will be passed to consumers. The Bank of England projects the EPR will add 0.5% to food inflation which is not good news for the Chancellor.<br><br>Are there any rumours of changes to corporation tax? |
| **Zoe Andrews** | The headline rate is capped at 25% for the duration of this Parliament (so until 2029 barring an early election) but sector-specific increases are a possibility (for example, an increase in bank surcharge or windfall tax on gambling). But again, although the rate is fixed, we cannot rule out tax base broadening measures such as changes to reliefs or allowances.<br><br>There is also speculation about a further raid on pensions, perhaps restricting salary sacrifice for pension contributions and reducing the 25% tax-free lump sum.<br><br>And what about business rates reform? |
| **Tanja Velling** | A review was launched at last year's Budget and an interim report published in September 2025 set out proposed reforms aimed at making the business rates system fairer, more predictable and investment-friendly. The Autumn Budget is expected to confirm or refine these proposals which include permanently lower tax rates for retail, hospitality and leisure properties with rateable values below £500,000 from April 2026. This decrease in rates would be funded by a new, high value multiplier for properties with a rateable value of £500,000 or above.<br><br>These new rates will be set at the Autumn Budget, in the context of the fiscal environment and upcoming revaluation outcomes. The government is also exploring a shift from a flat multiplier applied to the entire rateable value to a marginal rate system, similar to income tax bands. This would reduce disincentives for property improvements. The government will deliver a Transitional Relief package for the 2026 revaluation to support those seeing large rateable value increases and details of the package will be confirmed in the Budget.<br><br>The closing date for Budget representations is the 15th of October and the Autumn Budget will be on the 26th of November. |
| **Zoe Andrews** | And that leaves me to thank you for listening. If you have any questions, please contact Sarah or me, as Tanja will shortly be going on maternity leave, 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 |

# CONTACTS


Zoe Andrews
Head of Tax Knowledge
T: +44 (0)20 7090 5017
E: zoe.andrews@slaughterandmay.com

Tanja Velling
Knowledge Counsel
T: +44 (0)20 7090 3254
E: tanja.velling@slaughterandmay.com

Sarah Osprey
Partner
T: +44 (0)20 7090 3709
E: sarah.osprey@slaughterandmay.com



London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650