

TAX NEWS

PODCAST

November 2025



Zoe Andrews	Welcome to the November 2025 edition of Slaughter and May's "Tax News" podcast. I am Zoe Andrews, Head of Tax Knowledge. While my regular co-host, Tanja Velling, is on maternity leave, I have lined up various members of the Tax team to join me in hosting the podcast, starting today with Alex Sim. Hi Alex, thanks for joining me.
Alex Sim	Hi Zoe. I'm pleased 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.
Zoe Andrews	We will discuss the First-tier Tribunal's decisions in three cases: <i>Dialog</i>, <i>Boulting</i> and <i>Ferrero</i>, HMRC's campaign on management expenses and HMRC's policy on VAT deduction on insurance intermediary services supplied outside the UK following the FTT's decision in <i>Hastings Insurance</i>. We will also take a look at the report commissioned by UK Finance on the total tax contribution of banks. Turning to international developments, we will discuss the OECD's recent APA/MAP awards and France's proposal to double the rate of its digital services tax which, unsurprisingly, has not been well received by the US. The podcast was recorded on the 18th of November 2025 and reflects the law and guidance on that date.
Alex Sim	So let's start with <i>Dialog</i>. It's an FTT decision about the CGT treatment of a break fee received in a takeover, which is a difficult topic that does come up in practice from time to time. The FTT concluded that the break fee was not subject to CGT, but (rather frustratingly) only in relation to one particular sub-section of the legislation that HMRC and the taxpayer had asked the FTT to opine on, explicitly leaving open the possibility that the break fee might have been subject to CGT on a different basis. The break fee in question had been paid to the bidder (<i>Dialog</i>) by the target company (<i>Atmel</i>) because <i>Atmel</i> received an unsolicited higher offer from a third party after it had already entered into a merger agreement with <i>Dialog</i> and so had terminated the agreement with <i>Dialog</i>. The judge accepted that the primary function of the break fee was compensation for <i>Dialog</i>, even though it was set much higher than <i>Dialog</i>'s actual costs (at around 3% of the deal value) and also had a deal protection function. The CGT question was whether the break fee was a "capital sum derived from an asset" for the purposes of section 22 of TCGA 1992, which deems there to be a disposal of the underlying asset for a consideration equal to any such capital sum, with the asset in this case being <i>Dialog</i>'s rights under the merger agreement. Section 22(1) contains a general statement that there is a disposal of assets where a capital sum is derived from an asset, but then goes on to give four specific cases that this applies to (without limiting the general rule).

	HMRC had issued a closure notice to Dialog relying only on the specific case in section 22(1)(c), where a capital sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights. HMRC and the taxpayer had then asked the FTT for a decision only on this particular point as a preliminary issue.
Zoe Andrews	Do we know why HMRC had pursued the case on such a narrow ground?
Alex Sim	Not exactly - it is a bit odd. The FTT suggests that HMRC wanted to rely on the timing rule in section 22(2), which says that the timing of a disposal is when the capital sum is received, but only applies to the specific cases in (a) to (d) and not the general wording at the start of section 22(1), so HMRC had to rely on one of the specific cases (sub-section (c) in this case). In relation to sub-section (c), the FTT decided that Dialog had not received the break fee for forfeiting or surrendering rights because Dialog did not take any action that led to the loss of its rights under the merger agreement - that was instead caused by Atmel's acceptance of the higher offer and the break fee was simply a consequence of that. That was enough to decide the appeal in the taxpayer's favour, but it does not give much assistance to taxpayers and advisors trying to work out whether a break fee may in fact be taxable. The FTT explicitly noted that the decision is not authority for whether such a fee would be a capital sum derived from an asset under the general wording at the start of section 22(1), and the judgment also notes that HMRC had not considered the particular case in section 22(1)(a) as opposed to (c), where a capital sum is received by way of compensation for the loss of an asset. So despite being at first glance a helpful case for taxpayers looking for guidance in a complicated area, the decision unfortunately does not provide a complete answer on the taxation of break fees.
Zoe Andrews	Let's move on to <i>Boulting</i> where the FTT concluded (in a mere 11 pages!) that a purchase of own shares was for the benefit of a relevant trade and therefore subject to capital gains tax rather than income tax. This meant Mr Boulting could benefit from the reduced rate of CGT as a result of Entrepreneurs' Relief. A family-owned company ran a training business. The father (the taxpayer) and the son had different views on how the business should be run and the taxpayer kept blocking investment in IT and improvements to the premises. As the taxpayer had a veto over decisions and would not relinquish control, it became difficult to move the business forward and there were concerns about the future profitability of the company. It was agreed that the taxpayer would retire and exit the business. As the company had only £5m of cash reserves, but the taxpayer wanted a price for his shares that reflected their value, the taxpayer agreed to gift most of his shares to his son and grandchildren with just eight shares being bought back by the company. The price agreed, based on a negotiated £60m valuation of the company, was £4.8m for these eight shares. Section 1033 CTA 2010 provides that a purchase of own shares by an unquoted trading company, or by an unquoted holding company of a trading group, is not to be treated as a distribution if one of two conditions are satisfied. In this case it was just the first requirement of Condition A that was

	in dispute: it was for the taxpayer to show that the purchase was made wholly or mainly for the purpose of benefiting a trade carried on by the company or any of its 75% subsidiaries.
Alex Sim	I remember this case - HMRC had given a clearance that the purchase of own shares would be subject to CGT only but then enquired into the taxpayer's tax return and issued a closure notice treating the sale as subject to income tax. HMRC's reason for this was that the share value used by the company was materially greater than market value and, as this had not been disclosed in the clearance application, nor had it been disclosed that the taxpayer was gifting most of his shares, HMRC were not bound by the clearance. The taxpayer brought an application for judicial review of HMRC's decision to void the clearance but the High Court dismissed the application, following <i>Glencore</i>, on the basis that there is an alternative means of recourse in the form of an appeal to the FTT against the closure notice.
Zoe Andrews	That's right. The taxpayer then appealed to the FTT against the closure notice and won - the FTT found that Condition A was met. According to the FTT, the evidence was clear that the share purchase was undertaken to remove the taxpayer from the business and that section 1033 required the arrangement to be looked at as a whole (including, in this case, the gifts to the family) and not just the share buyback in isolation. It was clear that the taxpayer was not going to gift away all of his shares and expected the company to pay a fair price for the shares bought back. The agreed purchase price was that which the board of directors believed was required to obtain Mr Boulting's agreement to exit the company. The FTT had to consider why the company purchased the shares, not why it paid £4.8m for them.
Alex Sim	This case makes you wonder if there's any point in getting an HMRC clearance if you can't enforce it with judicial review but have to go to the FTT on the merits anyway. But that's an issue for discussion another time! Now it's time for the latest VAT classification case - <i>Ferrero</i> - in which the FTT had to determine whether Nutella biscuits are "partly covered with chocolate or some product similar in taste and appearance". We take our research here very seriously and so have in front of us the Nutella biscuit in question. What do you think Zoe - would you say it is partly covered with a chocolate-like substance?
Zoe Andrews	Well, there's a biscuit cup, filled with Nutella, with a biscuit lid on top and the only chocolate-type product you can see before biting into it is a very small ring between the cup base and the lid. So no, I wouldn't say this is "partly covered" in chocolate.
Alex Sim	And that's what the FTT concluded. The term "partly covered" is not defined in the VAT legislation and so its meaning is to be determined by considering its usual meaning in everyday language, taking account of the context in which it occurs and the purpose of the VAT rules. The FTT concluded that what you have here is similar to the sandwich structure of bourbon biscuits with the ring of the Nutella biscuit holding the two parts of the biscuit together. Although the ring is partially visible, it is lower than the outer surface and the FTT concluded it does not form part of the outer surface which consists entirely of the biscuit cup and disc lid. The ring does

	not represent a cover “applied to the outer surface of the finished Biscuit”. HMRC have confirmed that they will not be appealing and so this decision is final. These cases may be entertaining, and give us the excuse to taste products we might not otherwise include in our diet, but on a serious note they also illustrate the lack of sensible policy behind some of the distinctions made under the zero-rating rules and it is high time someone reviewed them and made them fit for purpose!
Zoe Andrews	Back to more serious matters! Deductibility of management expenses is the latest risk area to be highlighted by an HMRC educational campaign. You may recall HMRC previously ran a similar campaign on unallowable purpose. HMRC have sent nudge letters to certain UK holding companies of overseas subsidiaries which they consider could be at risk of incorrectly deducting management expenses. These letters set out HMRC’s view of the tests which determine deductibility of management expenses where they are incurred by holding companies, but which have a distinct benefit to a connected party. In light of this campaign, holding companies should review their arrangements and consider how such costs have been accounted for and what documentary evidence there is to support their claim that particular costs are deductible as management expenses. If you would like advice on the tests for deductibility of management expenses or how to respond to an HMRC challenge, please contact Alex or me or your usual Slaughter and May contact.
Alex Sim	Before we move on to Revenue and Customs Brief 6 (2025), let’s take a look at the case behind it. Earlier this year, the FTT in <i>Hastings Insurance</i> made it quite clear that the offshore looping rules were incompatible with the Principal VAT Directive (PVD) at the time in question. The structure first came to the attention of the FTT in 2016. Hastings (a UK company) claimed input tax recovery in relation to supplies of insurance intermediary services it made to Advantage (a Gibraltar company) which enabled Advantage to provide insurance to persons in the UK. The FTT held that Hastings’ supplies were made in Gibraltar, that Hastings did not constitute a fixed establishment of Advantage in the UK and that, accordingly, Hastings could recover the input tax. This created an uneven playing field in favour of Hastings/Advantage compared to other insurance companies because the relevant input tax would have been irrecoverable for Hastings if it had instead supplied the intermediary services to a UK insurer to insure the same UK persons. What the FTT referred to here as the “Offshore Looping Regulations” were made to address this. The PVD requires the UK to allow the deduction of input VAT on supplies and used by insurance brokers/agents to make supplies of services related to insurance and reinsurance transactions where the customer is established outside the EU. HMRC contended that “customer” here meant the “final consumer” i.e. the insured person, and that the Offshore Looping Regulations were compatible with the PVD. Hastings brought a second appeal, challenging the compatibility of the Offshore Looping Regulations with the PVD. In March 2025, the FTT agreed with Hastings that “customer” here should have its ordinary meaning as the direct recipient of a supply and on this basis the Offshore Looping Regulations were incompatible with the PVD. For the periods under dispute, the PVD had direct effect and could be relied on by Hastings which meant the regulations were ineffective in preventing input tax recovery.

Zoe Andrews	HMRC have accepted the FTT’s decision and did not appeal. They say in the Brief that “This means that insurance intermediaries supplying services outside the UK can rely on direct effect of EU law to recover relevant input tax incurred prior to 1 January 2024, whether the insured party is in the UK or not.” When we discussed the case on the April podcast, we wondered what position HMRC would adopt for input tax incurred post-January 2024. The Brief makes it clear that HMRC’s policy is that the Offshore Looping Regulations are effective to prevent VAT from 1 January 2024 for insurance intermediary services where the final consumer (the insured party) belongs in the UK. This is on the basis that the effect of the Retained EU Law (Revocation and Reform) Act 2023 is that businesses will no longer be able to rely on the direct effect of EU law. In the words of the Brief: “Section 28, Finance Act 2024 means that UK VAT and excise legislation will continue to be interpreted in the same way as it was before 1 January 2024, with the exception that businesses will no longer be able to rely on the ‘direct effect’ of EU law. It is no longer possible for any part of UK legislation to be quashed or disapplied on the basis that it is incompatible with EU law, as UK law is now supreme.”
Alex Sim	The interaction of EU law and UK law in the VAT context may not be as clear cut as the HMRC Brief implies and I would not be surprised if a case is subsequently brought before the FTT on the post-1 January 2024 position.
Zoe Andrews	Let’s take a look at the report commissioned by UK Finance on the total tax contribution of banks, which also compares the total tax rate of a model bank in London with model banks in other major financial centres. Does London look like a competitive place to locate a bank?
Alex Sim	No, not really when compared with other major financial centres! The report estimates the total tax contribution of the UK banking sector for 2024/2025 to be £43.3bn and shows that London’s total tax rate (or TTR) is much higher than other major finance centres and is projected to rise further. The report shows that the TTR for a model bank in London is 46.4% in 2025 but rising to 46.6% in 2026 to reflect the full year impact of the change to employer’s NICs. Other financial centres in the study have significantly lower TTRs: such as Frankfurt (at 38.9%), Dublin (at 28.9%), and New York (at 27.9%).
Zoe Andrews	Banks have been lobbying over the summer against any further taxes on banks and it is hoped that the Chancellor has heeded the concerns about increasing bank taxation and the need to make the UK a competitive location to attract banking business as part of the government’s growth agenda. We will have to wait and see what is in the Budget!
Alex Sim	What are you hoping to see in the Budget?
Zoe Andrews	There are a number of proposals we already know are on the table because of consultations which concluded earlier in the year or previous announcements and I would hope to see an update on those. There are two I am particularly interested in. The first is on advance tax clearances for

	major projects. I am interested to see HMRC's response to the feedback from the consultation. In particular, I am keen to see whether the clearance will be limited to the taxation of the project itself or if it will also cover the tax treatment of returns to UK investors and how the clearance process will work in practice to give the intended certainty. The second is an update on the design of the UK corporate re-domiciliation framework. The previous government commissioned an independent expert panel report which was published in October 2024 and the current government welcomed the panel's report and promised a consultation on the proposed regime design "in due course" so it would be helpful to know when this might come out and what timeline the government has in mind for making corporate re-domiciliation possible. How about you Alex - what do you want to see in the Budget?
Alex Sim	It would be helpful to have an update on Pillar Two giving HMRC's approach to the side-by-side solution being developed by the OECD Inclusive Framework to prevent certain aspects of the global minimum tax rules from applying to the low-tax profits of US-headed groups whilst protecting the integrity of the rules and keeping a level playing field. Those negotiations are ongoing and the Budget might be too soon to share how the UK legislation will be applied pending implementation of the agreed solution. A key question is whether UK-headed groups with US entities have to start applying the UK's undertaxed profits rule to those US entities from 1 January 2026 when the undertaxed profits temporary safe harbour runs out, or will the safe harbour be extended? What other international developments can you share, Zoe?
Zoe Andrews	The latest statistics from the OECD show that the Mutual Agreement Procedure (or MAP) is an effective remedy with approximately 76% of MAP cases in 2024 reaching full resolution of the issue for the taxpayers by either agreement or relief. There has been an increase in the number of jurisdictions reporting allowing bilateral APAs as a key tool for dispute prevention from 73 in 2023 to 80 in 2024 and the number of bilateral APAs filed in 2024 rose by 3%. The average time taken to grant APAs has increased to 39.6 months.
Alex Sim	What about the MAP and APA awards? How did the UK do this time?
Zoe Andrews	The UK did not come first in any awards this year! The UK came third (behind the Netherlands and Luxembourg) for large inventory MAP caseload management, and came second as a pair with the US for co-operation in transfer pricing MAP cases and second as a pair with the Netherlands for co-operation in other MAP cases. Ireland took the new title of the most improved jurisdiction for the number of APAs granted in 2024 compared with 2023 (going up from 1 to 10 APAs) and the US won most improved jurisdiction for cases closed with unilateral relief or full agreement in 2024 compared to 2023.
Alex Sim	As part of the 2026 budget bill, France's National Assembly voted last month to double the digital services tax from 3% to 6% and to raise the global revenue threshold from EUR 750 million to EUR 2

	billion. An earlier version sought a fivefold increase in the rate to 15% but this was lowered to 6% after strong opposition. The measure still needs final approval in the French Senate. The initial proposal of increasing the rate to 15% would have a significant impact on American tech giants and understandably drew criticism from the US and the threat of aggressive retaliatory action. It remains to be seen whether the amended measure now before the French Senate provokes any retaliatory action from the US.
Zoe Andrews	And what's happening with the UK's DST?
Alex Sim	The UK's DST is charged at 2% on the revenues of large businesses that provide social media services, internet search engines, or online marketplaces (excluding financial marketplaces and payment services providers), where the revenue thresholds are met. To be within the scope of DST a large business must generate more than £500m in global digital services revenues and £25m in UK digital services revenues. In-scope revenues exceeding £25m which are derived from UK users are then subject to DST. The UK government has committed to removing the DST once an appropriate international solution is in place but it doesn't look like this will be any time soon. In the meantime, there will likely be continuing pressure from the US to remove it. The UK's DST is due to be reviewed by HM Treasury before the end of 2025, and the outcome of that review which will be laid before Parliament.
Zoe Andrews	There's plenty to watch out for in the Autumn Budget on 26 November and in international developments then! Also coming up: • We expect the Finance Bill to be published following the Budget and that will be when we expect to see what changes have been made following consultation on the draft legislation published on L-day in July. • The OECD Inclusive Framework is hoping to agree a new Pillar Two permanent safe harbour by the end of the year to replace the temporary CbCR safe harbour which would be a welcome simplification and is aiming for agreement on the Pillar Two side-by-side system by the end of the year. • The Upper Tribunal has granted the taxpayer permission to appeal in <i>Syngenta</i> on the unallowable purpose test in the loan relationship rules but only on grounds relating to the FTT's treatment of evidence from a director of the taxpayer, regarding whether making a good investment was a main purpose of the loan. This is very fact-specific, however, so although we all love a loan relationship case, this one is unlikely to generate as much interest as the <i>Kwik-Fit</i>, <i>BlackRock</i> and <i>JTI</i> trilogy! • Supreme Court decisions are awaited in two key tax cases: <i>HFFX</i> (on deferred remuneration structure within an LLP) and <i>Hotel la Tour</i> (VAT recovery on deal fees where a subsidiary is sold to fund business expansion).

Alex Sim

And that leaves me to thank you for listening. If you have any questions, please contact Zoe 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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