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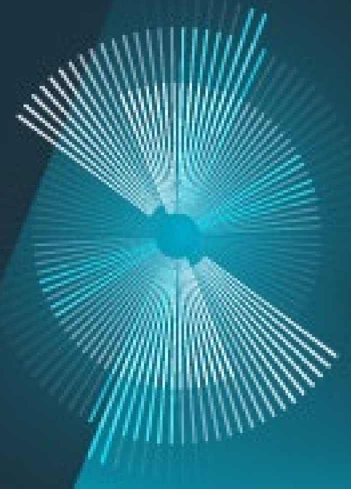

Zoe Andrews	Welcome to the March 2025 edition of Slaughter and May's "Tax News" podcast. I am Zoe Andrews, Head of Tax Knowledge.
Tanja Velling	And I am Tanja Velling, Tax Knowledge Counsel. Today, we are joined by tax associate Stephanie Mullins to discuss the UK Supreme Court's decision in *Royal Bank of Canada*. Then Zoe and I will talk about the First-tier Tribunal's decision in *Lloyds Asset Leasing* and the High Court's decision in a VAT-related judicial review. We'll share updates on the salaried members rules, changes to inheritance tax reliefs and business rates and a National Audit Office report on the administrative cost of the tax system, before we move on to developments from across the pond. The podcast was recorded on the 4th of March 2025 and reflects the law and guidance on that date. Let's start with the Supreme Court's decision in *Royal Bank of Canada*. Steph, do you want to take us through the facts?
Stephanie Mullins	Absolutely - the facts are a little complicated, so I'll try to keep it high-level. The Royal Bank of Canada had made a loan to a Canadian company, Sulpetro, to finance the exploration of the Buchan Field in the UK continental shelf. But UK licencing rules at the time meant that Sulpetro couldn't do the exploration itself. Instead, it was done by a UK subsidiary, and that subsidiary and Sulpetro entered into what was referred to as the "Illustrative Agreement" under which Sulpetro had all the economic benefits and risks. Sulpetro later sold the subsidiary and other assets to BP and, as part of the deal, BP agreed to make payments to Sulpetro in respect of all production from the Buchan Field broadly equal to half the amount by which the market value of each barrel of oil exceeded US$20. Sulpetro went into receivership and still owed RBC CAD$185 million. The right to the payments from BP were then assigned to RBC under a Canadian Court order. (I'll continue to refer to the "payments from BP" for the purpose of this podcast even though BP later novated the contract to Talisman).
Zoe Andrews	So what was the issue here?
Stephanie Mullins	BP treated the payments as deductible in computing the ring-fence profits from their UK oil exploration trade. But RBC saw them as income of its Canadian banking business, paying only Canadian and no UK tax. So, HMRC raised discovery assessments, arguing that RBC was liable to tax

	on the payments as profits from oil exploration in the UK continental shelf. The amount of tax at stake was around £19m (without interest). HMRC relied on Article 6 of the UK/Canada double tax treaty which gives the right to tax income from immoveable property to the State in which the property producing such income is situated. Article 6(2) of the treaty provides an expanded definition of what is "immovable property" which includes rights to payments "as consideration for the working of, or the right to work…natural resources." There were three issues before the Supreme Court, but I propose that we focus on the first and most interesting (not least because that's where the Supreme Court judges disagreed). That first issue was whether, under the Illustrative Agreement, Sulpetro had acquired the "right to work" the Buchan Field within the meaning of Article 6(2).
Zoe Andrews	What had the First-tier Tribunal, the Upper Tribunal, and Court of Appeal decided in that respect?
Stephanie Mullins	The FTT and the UT both found that Sulpetro did have the "right to work" the Buchan Field within the meaning of Article 6(2) as, on a realistic view of the facts, the Illustrative Agreement meant that Sulpetro was the one "working" the oil field. The Court of Appeal disagreed and took a narrower interpretation of Article 6(2) finding that Sulpetro did not have a right to work the oil field, only its subsidiary (as licence holder) had that right and the rights conferred on Sulpetro through the Illustrative Agreement did not amount to a right to work the Field.
Zoe Andrews	Where did the Supreme Court come out?
Stephanie Mullins	The majority of the Supreme Court agreed with the Court of Appeal (with Lord Briggs dissenting). The majority found that, under the Illustrative Agreement, Sulpetro had the right to require its UK subsidiary to work the oil field, and indeed provided the funds and equipment for it to do so, and bears the risk of losing that investment if no oil is found, but that did not mean that it had the right to work the resources itself, which only the subsidiary as licensee could have.
Zoe Andrews	What did Lord Briggs say?
Stephanie Mullins	Lord Briggs found himself in "lonely disagreement" (his words!) and said that the treaty should be treated as analogous to a taxing statute and the *Ramsay* principle of purposive construction should be applied. This required him to ascertain the purpose of Article 6(2) of the treaty and to apply that interpretation to the facts of the case. He concluded, in line with the FTT and UT, that the rights that Sulpetro enjoyed under the Illustrative Agreement, when viewed realistically and in the round, meant that Sulpetro was indeed "working" the Buchan Field. The role of *Ramsay* here is an interesting one and Lady Rose discussed this in her judgment as well.

	Lady Rose noted (and I quote) “there has been a greater tendency of the courts to neutralise the effect of tax avoidance schemes by looking at the reality of a transaction to see whether it is a transaction that was intended to be caught by a particular taxing provision.” She went on to say that “no one here has suggested that the *Ramsay* principle has any application to the present facts and nothing in this judgment casts doubt on the efficacy of those principles where they apply”. She then discussed how the interpretation of the treaty here does not involve a difference between something being taxed and tax-free, but is simply relevant to the question of whether the UK or Canada has taxing rights. It appears that Lord Briggs had some concerns that Lady Rose’s judgment was narrowing the scope of the *Ramsay* principle. Lord Briggs emphasised that *Ramsay* is not limited to avoidance cases but is a general principle of statutory construction, and no different in substance from the principles applicable to the interpretation of a treaty. He accepted that there was no tax avoidance in this case, but went on to say that he “cannot agree with Lady Rose that the task of deciding whether the Payments fall within the confines of Article 6(2) is not illuminated by taking a realistic view of the transaction pursuant to which they were made, merely because its parties were not engaging in tax avoidance.”
Zoe Andrews	Where does that leave us?
Stephanie Mullins	There is some concern that this judgment and the seemingly conflicting views of Lady Rose and Lord Briggs have caused ambiguity over the application of the *Ramsay* principle in non-tax avoidance scenarios. Should those differences be put down to Lord Briggs thinking *Ramsay* should be applied to treaties, whereas Lady Rose (and the majority) do not? Or does Lady Rose’s judgment go further than that and narrow the scope of the *Ramsay* principle? It can only be hoped that the Supreme Court will take the opportunity to clarify these points in the *HFFX* partnership remuneration structure case. We shall wait for the hearing date to be set.
Tanja Velling	Thank you, Steph; it was great to have you on the podcast! And now, for a short discussion of a very lengthy decision from the FTT. What is *Lloyds Asset Leasing* about and why is the decision so long?
Zoe Andrews	The *Lloyds Asset Leasing* case is about the cross-border loss relief provisions that were enacted in UK legislation to make the group relief rules compliant with EU law following the *Marks & Spencer* CJEU case. These cross-border loss relief provisions were repealed following Brexit. They provided that losses incurred in one jurisdiction, e.g. Ireland, could be surrendered to UK group companies so long as the qualifying loss conditions were met (broadly, there had to be no possibility of using the losses in the territory where they were incurred, or in any territory outside the UK that owned share capital in the surrendering company) and the group relief was not excluded by the anti-avoidance provision. In this case, BOSI, an Irish subsidiary of Lloyds Banking Group, had substantial losses and was a drain on the group’s resources. After considering various options, arrangements were put in place to exit Ireland through a cross-border merger under which BOSI’s assets and liabilities were transferred to a UK group company, BOS, and BOSI ceased to exist. The Irish losses were then

	surrendered to the taxpayer and over 100 other group companies, but this was challenged by HMRC on the ground that the conditions for cross-border loss relief were not met, or if they were, the anti-avoidance provision applied to exclude relief. The decision runs to 183 pages but two thirds of this covers the evidence which the Tribunal had to set out to provide the context for the further findings of fact because the parties had not agreed a statement of agreed facts or a chronology of key facts.
Tanja Velling	The case initially caught my eye for its discussion of the purpose test in the anti-avoidance provision and comparisons with the loan relationships unallowable purpose rule, but it is more generally of interest for anyone involved in tax enquiries or tax litigation because of what was said about witness evidence and adverse inferences. The FTT was less than impressed by the witness evidence in this case, wasn't it?
Zoe Andrews	That's right. The evidence showed that, following a strategic review of BOSI in March/April 2009, the strategy for BOSI stated in June 2009 was to manage for value in the near term with a view to managing down when markets improved. However, following advice from accountants in June 2010 on how to access the several billion pounds of losses trapped in BOSI, focus turned to exiting Ireland by the end of 2010 in order to access the substantial tax losses from 2010. The FTT found that the decision to exit Ireland and the method chosen to effect this was based on the potential tax benefits and that commercial reasons were then sought to justify the decision to exit. There was no documentary evidence demonstrating that the commercial decision to withdraw from Ireland was taken before exploring the exit options. Attempts by the witnesses to come up with commercial reasons for meeting the 31st December 2010 deadline that were not referenced in the contemporaneous documents did not persuade the FTT that the timing was not driven by the tax benefits. Now how is your memory of events from years ago?
Tanja Velling	Not great - I rely a lot on lists and notes!
Zoe Andrews	Exactly! A written document, particularly when written contemporaneously with events, is more accurate than witness recollection because of the unreliability of human memory. The FTT considered case law on (I quote) "the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed". There were three witnesses in this case, but their witness statements made minimal reference to the contemporaneous documents and great reliance was placed upon their recollection of the events between 2009 and 2012. The FTT "found elements of their witness evidence troubling" as even when taken to the relevant documents, they were unwilling to accept that their recollection was incorrect and were reluctant to accept what the document clearly stated or recorded. They were frequently argumentative and keen to advance the legal case. The witnesses gave evidence that the potential tax benefits were insignificant and irrelevant, but the FTT did not accept this as it was contradicted by the documentary evidence.
Tanja Velling	So, what is the value of the witnesses then?

Zoe Andrews	The FTT cited Justice Legatt (as he then was) in the *Gestmin* case before the High Court where he said the value of witness testimony lies largely (I quote) “in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."
Tanja Velling	The FTT had concerns about who was not selected to be witnesses, too, didn’t it?
Zoe Andrews	Yes - the three witnesses for the taxpayer were the group CEO, Group Executive Director and Group Finance Director but none of the six senior individuals (including members of the tax team) who repeatedly appeared or were referred to in the correspondence and documents were called when, in the FTT’s judgment, their evidence would be relevant to the role that tax and tax planning played in the timing and in the manner in which the group exited from Ireland. Some of these six persons were actually present at the hearing and available to give evidence if required, so the FTT drew the inference that, if they had been called to give evidence, it would not have supported the taxpayer’s case.
Tanja Velling	And finally, I would add that the FTT had some issues with the documentary evidence too. Legal advice had been disclosed on the cross-border merger method that had been adopted but the legal advice on another method that had been considered, a total return swap, was not disclosed. The FTT drew an adverse inference that the failure to disclose the legal advice was because it did not assist to support the taxpayer’s case. This sort of cherry-picking on which legal advice privilege is waived is not permitted. If a party wishes to waive privilege in respect of a piece of legal advice to rely on it, they have to waive privilege on other related advice. Another concern the FTT had with the documentary evidence was that references to tax planning and tax benefits were removed from final versions of documents and face-to-face or telephone conversations had been held to avoid references to tax in emails and meeting notes to “downplay the importance of tax in the decision making process”. So, it is unsurprising that, on these facts, the FTT held that the main purpose or one of the main purposes of the arrangements put in place to exit Ireland via the cross-border merger on the 31st of December 2010 was to secure cross-border group relief for BOSI’s accumulated losses in the period to the 31st of December 2010. But now, thinking back to our university days - did you spend much time in the student union bar?
Zoe Andrews	I think I’d prefer to not answer that question! But what I can tell you this: at the time, I certainly wouldn’t have pondered this crucial VAT question – whether the establishment run by the student union is a café or a bar.
Tanja Velling	How’s that relevant?

Zoe Andrews	Well, when universities supply catering, this is exempt because it's closely linked to their supply of education. By concession, HMRC extended this to student unions providing catering on behalf of a university, but importantly this concession does not apply to supplies made in a "bar". That's exactly the issue that Anglia Ruskin Students' Union was facing in respect of an establishment called "92". HMRC had decided that it was a bar, and therefore outside the concession. The Students' Union tried to challenge that decision through judicial review.
Tanja Velling	Did they get permission?
Zoe Andrews	Not really, no. They were initially refused permission, but then renewed their application and the oral renewal was treated as a "rolled-up" hearing, considering permission and the merits together. The Students' Union argued for a narrow meaning of the term "bar", proposing, for instance, that this referred only to establishments that don't supply catering. The High Court disagreed; "bar" had to take its ordinary meaning and HMRC had applied the test correctly, taking into account the food and drink offered and the layout and advertising of the establishment. So, the Students' Union lost. It was a bit of a shame that, unlike the First-tier Tribunal in VAT classification cases, the High Court in this judicial review context did not go into the facts in more detail. I would have enjoyed a more detailed discussion of the precise features that made this establishment a bar rather than a café…
Tanja Velling	And I suppose you'd more readily admit to having frequented the latter…?! Anyway, let's move on to HMRC's U-turn on a U-turn that we spoke about exactly a year ago in the March 2024 edition of this podcast.
Zoe Andrews	Is this about Condition C in the salaried members rules?
Tanja Velling	Yes, indeed! These rules are anti-avoidance provisions which tax the partners of an LLP as employees if three conditions are met. The third condition, "Condition C", is met if the partner's contribution to the LLP is less than 25% of the "disguised salary" expected to be payable to the partner for their performance during the year. There is then also a Targeted Anti-Avoidance Rule or TAAR which requires that you ignore arrangements with a main purpose of securing that the individual is not a salaried member. Now, it was common practice for LLPs to require capital contributions of 25% or more to ensure Condition C did not apply, and historically, HMRC had expressly accepted this. The U-turn we discussed in March 2024 was a change to HMRC guidance to suggest that the TAAR would apply to an arrangement where members can increase their capital contributions in each period to avoid meeting Condition C. HMRC have now confirmed that they intend to effectively reverse this change. The Chartered Institute of Taxation has published a statement that includes the following sentences (I quote): "In relation to Condition C specifically, HMRC also accept that an arrangement which results in a genuine contribution made by the individual to the LLP, intended to be enduring and giving rise to

	real risk will not trigger the TAAR. This means that a contribution made under a top-up arrangement will not, in HMRC's view, trigger the TAAR if the arrangement results in a genuine contribution made by the individual to the LLP, intended to be enduring and giving rise to real risk."
Zoe Andrews	That is good news in principle, although we will have to wait and see what the updated Partnership Manual will actually say. Our colleagues have extensive experience advising in this area, so please do get in touch for further information! In other news, HMRC have published a consultation on the application of reforms to inheritance tax agricultural property relief and business property relief in relation to trusts. It reiterates the government's intention to reduce the relief that can apply to AIM-listed shares from 100% to 50% in all circumstances, and that this reduction will apply to lifetime transfers from the 30th of October 2024 if the transferor dies on or after the 6th of April 2026 (and the period between the transfer and the death was less than 7 years).
Tanja Velling	The government also published a "Business rates: forward look" policy paper with an update on, and timelines in respect of, three points. • The current routine revaluation will be completed during the second half of this year. • As announced at Autumn Budget 2024, lower multipliers will be introduced for retail, hospitality and leisure from April 2026. The legislation is currently going through Parliament and the multipliers will be announced at the Autumn Budget 2025. • At that time, the government also intends to announce options for wider business rates reform. The initial stage of engagement on this has been completed, but further written representations on the priority areas for further reform set out in the "Transforming Business Rates" discussion paper of October 2024 can be submitted until the end of March. What else has been happening in the UK?
Zoe Andrews	We have seen ourselves how the tax system is becoming increasingly complex with every Finance Act bringing changes to existing legislation or introducing new taxes with consequently greater compliance burdens imposed on taxpayers. The National Audit Office (or NAO) has published a report on the administrative cost of the tax system. The accompanying press release was titled "Increasingly complex tax system burdens government and business with billions in admin costs".
Tanja Velling	Just how much does the report say costs have increased?
Zoe Andrews	According to the report, HMRC's costs of administering the tax system increased by 15% (£563 million) in real terms between 2019-20 and 2023-24, with tax revenue rising at a similar rate. The increase for HMRC was due to the increased complexity in the tax system, more people paying income tax (in part because of the thresholds remaining at 2022 levels) and spending on digital tools and on a more highly skilled workforce. HMRC estimates the annual costs on business to comply with the tax system is £15.4 billion, although HMRC recognises this is likely to be an understatement, and there is no equivalent estimate for individuals.

Tanja Velling	What does the NAO recommend?
Zoe Andrews	The NAO makes the point that HMRC should take a holistic view of the cost effectiveness of the tax system, rather than just looking at it from the perspective of HMRC. This would require HMRC to clarify estimated costs and benefits when placing increased requirements on taxpayers and, in some cases, spending more when this reduces the overall cost of the system. Gareth Davies, Head of the NAO said: "To get the most out of the money it spends on collecting taxes, HMRC must better understand how changes to the system affect the costs it incurs in administering taxes, as well as the financial burden on individuals and businesses."
Tanja Velling	HMRC is upgrading digital systems and using more digital tools so that should reduce administration costs for HMRC and taxpayers, shouldn't it?
Zoe Andrews	Well, £482 million was spent in 2023-24 on upgrading HMRC's digital systems, but the process has taken longer and has cost more than expected. HMRC has one of the largest and most complex IT estates in the UK and it faces a significant challenge to modernise its IT infrastructure to keep pace with changing technology. Progress on HMRC's 2020 strategy to build a modern, trusted tax system by 2030 has been mixed, and people with complex tax affairs may not reap the benefits of its new digital systems. Since the strategy was launched, for large business, trust in HMRC has fallen from 86% in 2020 to 70% in 2023.
Tanja Velling	So, the cost of the tax system is not reducing while at the same time trust in HMRC has fallen among some customer groups. What is HMRC doing about this?
Zoe Andrews	Given the mixed progress on the 2020 Tax Administration Strategy, HMRC told the NAO that, following the change of government, it is developing a new strategy. So, watch this space - although we already know that the new strategy will include measures to reduce the tax gap as the government announced in the Autumn Budget 2024 that additional funding would be given for this.
Tanja Velling	What about reducing administration costs by simplification of tax rules and administrative processes?
Zoe Andrews	Since the abolition of the Office for Tax Simplification, HMRC told the NAO it has begun to develop a more strategic approach to simplification as part of policy and system design. In addition, HMRC has been asking for simplification ideas from a range of stakeholder forums during 2024 from which it intends to develop a pipeline of potential measures. The government committed in the Autumn Budget 2024 to announcing a package of measures to simplify tax administration and improve the customer experience in Spring 2025. And what's been happening on international tax? Is there anything new from the US?
Tanja Velling	It seems as if there is a never-ending stream of news - just today, new or additional US tariffs on Canadian, Chinese, and Mexican goods went live! In terms of what else has been going on…

	Well, one of President Trump's priorities is to extend tax cuts that were included in his 2017 tax reform and are currently set to expire, and in the special December 2024 edition of this podcast, we discussed the way that tax legislation to achieve this would likely be passed with Arvind Ravichandran, tax partner at US law firm Cravath, Swaine & Moore LLP. The relevant process is called "Budget reconciliation": both Chambers of Congress must pass the same resolution to set the numerical parameters, then legislation is prepared to fit within those parameters. The House and Senate have both passed a Budget resolution, but they are not the same! The Senate's is more of an interim measure; the House's a more comprehensive package, envisaging a debt limit increase of $4 trillion and tax cuts of $4.5 trillion. For more information on the process and policy options that had been mooted before the election, have a look back at the special December edition of this podcast.
Zoe Andrews	Going back to tariffs, though… During his first Cabinet meeting President Trump reportedly said that he would impose 25% tariffs on the EU in the near future and voiced the opinion that the EU was formed to "screw" the US. Donald Tusk, Prime Minister of Poland which currently holds the EU's rotating presidency, took to X with the following rebuttal: "The EU wasn't formed to screw anyone. Quite the opposite. It was formed to maintain peace, to build respect among our nations, to create free and fair trade, and to strengthen our transatlantic friendship. As simple as that." Whether that'll suffice to dissuade President Trump from imposing tariffs remains to be seen. And this was not the only tariff threat, was it?
Tanja Velling	No. President Trump also announced a reciprocal trade and tariff policy whereby his Administration will seek to "counter non-reciprocal trading arrangements". Such arrangements could include tariffs on US goods and also (I quote) "unfair, discriminatory, or extraterritorial taxes…, including a value-added tax". The mention of value added tax is particularly concerning and somewhat baffling. In this respect, I quote the Q&As published by the European Commission in response to the announcement: "Value-Added Tax (VAT) is a consumption tax, similar to sales taxes in the United States, and is used in over 170 countries worldwide…VAT is not a trade measure, let alone a tariff. It is clearly not a measure applied exclusively to foreign goods like an import tariff." The Head of Trade Policy at the British Chamber of Commerce warned that "Plans to factor in countries' VAT regimes could lead to especially complex and costly tariff scenarios which upend established trade norms."
Zoe Andrews	The final US development that I wanted to mention is a presidential memorandum entitled "Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties" - parts of which will come as no great surprise. For instance, the US Trade Representative is instructed to consider renewing section 301 investigations into digital services taxes (including the one enacted by the UK) which had been terminated by the Biden Administration. It is likely that such renewed investigations would find the digital services taxes discriminatory and recommend trade sanctions. But the memorandum isn't limited to tax. It also requires the identification of other trade or regulatory practices with disproportionate effects on US companies and investigation whether any

	UK or EU policies lead to the use of US companies' products "in ways that undermine freedom of speech and political engagement or otherwise moderate content", in each case with recommendations for counteraction measures.
Tanja Velling	There's clearly a lot happening on the other side of the Atlantic, and over the next month, we're expecting more documents to be published, including the report on extraterritorial or discriminatory taxes required under the Global Tax Deal memorandum which had made clear the Trump Administration does not consider itself bound by the outcomes of the OECD's international tax reform project. Closer to home, we have the EU tax symposium on the 18th of March and the UK Chancellor will deliver the Spring Statement on the 26th of March.
Zoe Andrews	And that leaves me to thank you for listening. As I said before, please do get in touch with us (or your usual Slaughter and May contact), if you would like further information on the salaried members rules or any other partnership taxation topic or if have any comment or question. 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

Stephanie Mullins
Associate
T: +44 (0)20 7090 5392
E: stephanie.mullins@slaughterandmay.com

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For further information, please speak to your usual Slaughter and May contact.

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