Tax Talk

Simplifying the complexities of Tax

May 2022

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When must influencers pay tax?

HMRC is beginning to crackdown on social media influencers who may hide their earnings or be unaware of how their activities are taxed. We explain what to look out for.

The meteoric rise of social media is impossible to ignore. So, too, is the emergence of a new type of professional – the social media influencer.

These influencers have taken platforms like Instagram by storm. Connecting with their thousands, sometimes millions, of followers they have the ability to link companies with a wide audience in seconds through a social media post.

As with any profession, operating as a social media influencer brings with it tax implications that they should be aware of.

What could they be taxed on?

An influencer will usually be paid a fee to promote a specific product or service through their social media platform. Any fee received in respect of advertising should be reported to HMRC as taxable income.

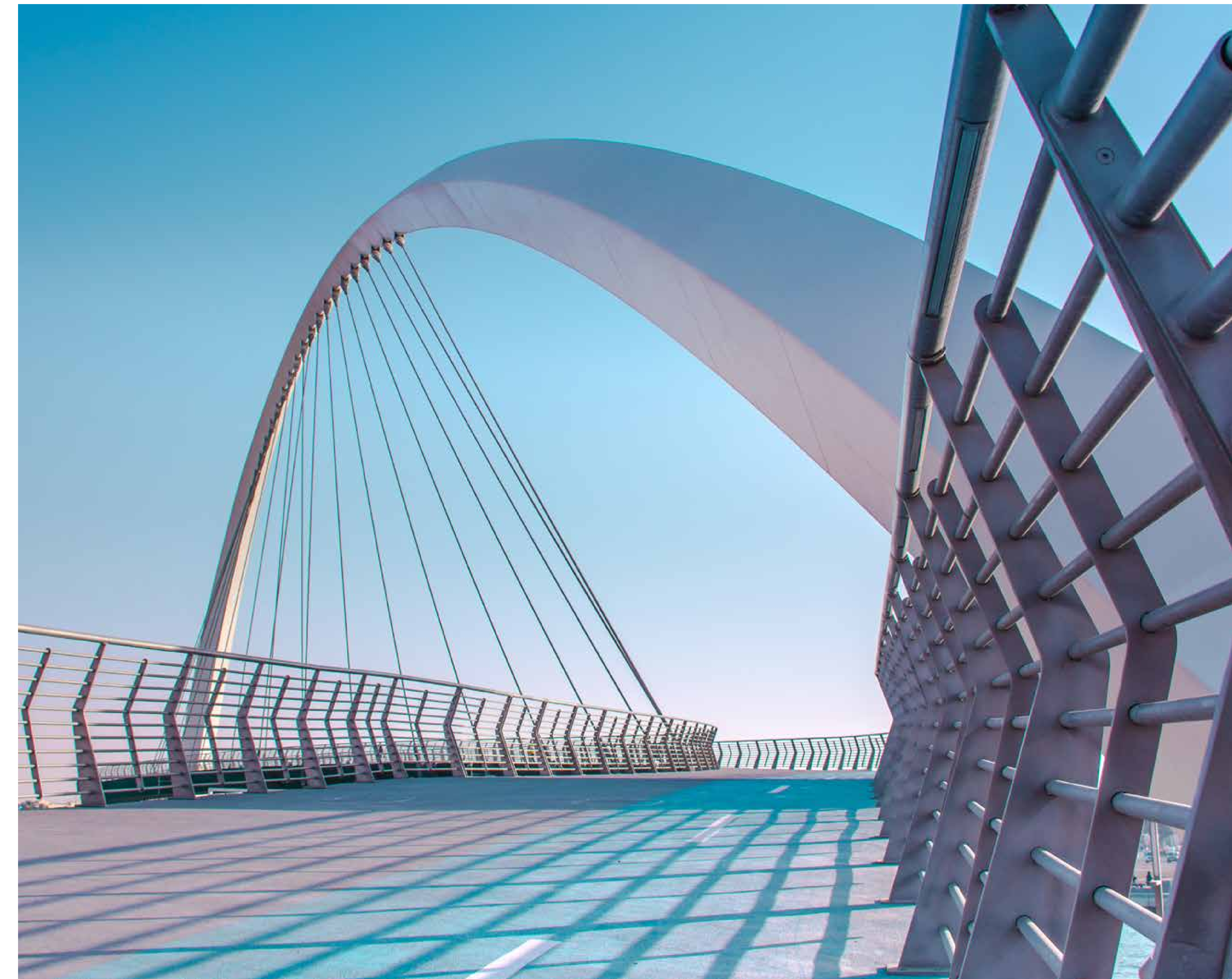
The situation is more complex when the reward is not cash. But if an influencer receives a product or service from a company in return for an advertisement or 'influence', the value of this will likely be taxable.

For taxation purposes they will need to determine the financial worth of the transaction, which could be difficult to ascertain. This might be the cash value equivalent of the product or service.

For example, a one-week stay at an exclusive resort in the Caribbean worth £3,000, paid for by the hotel company, is likely to be taxable if they are required to post on social media about their stay as part of the agreement.

Similarly, if they receive a fee from a company to provide social media posts advertising their products and that company sends a thank you gift for the hard work, they may be subject to tax on the value of the gift. This applies even if the company had no legal obligation to provide the influencer with the gift.

Note that HMRC has no specific guidance for influencers as to what is and isn't taxable. But existing guidance for writers and athletes may be useful in some circumstances.



When must influencers pay tax?

How will they be taxed?

The taxation of an influencer's income is based partly on whether they are considered trading or non-trading.

This in turn depends on factors such as the frequency of their advertising posts on social media and whether there is a profit-seeking motive to their activities.

If non-trading, the value of any cash, taxable products, services or gifts they receive from their influencer activities is treated as miscellaneous income and subject to tax at their marginal rate: 20%, 40% or 45%.

If they are considered a trading influencer, their trading income minus allowable expenses is treated as profits. Whilst also taxed at their marginal rate, they may be subject to Class 2 and Class 4 National Insurance contributions. And, if turnover is above £85,000, they will need to register for VAT.

But a gross income from influencing of £1,000 or less may be covered by the trading allowance and no tax will be due.

Is a freebie always a freebie?

For those considered to be trading, it's likely the value of any freebies will be treated as taxable income. This could mean being left with a substantial tax liability and no cash to pay it. This is important to bear in mind when negotiating an agreement with a company.

If non-trading, where there is an existing agreement in place, the value of any gifts from a company will normally be treated as taxable. But if the influencer receives a freebie from a company without their prior knowledge and there is no contractual obligation, the voluntary gift is potentially tax-free.

HMRC will likely increase its interest in social media influencers over the next few years. If you are receiving an income from your social media posts or products, services and gifts in lieu of cash, you should take professional advice, as you may need to register with HMRC and complete a Self Assessment tax return.

For more information about the issues raised in this article, please contact Andrew McCready.

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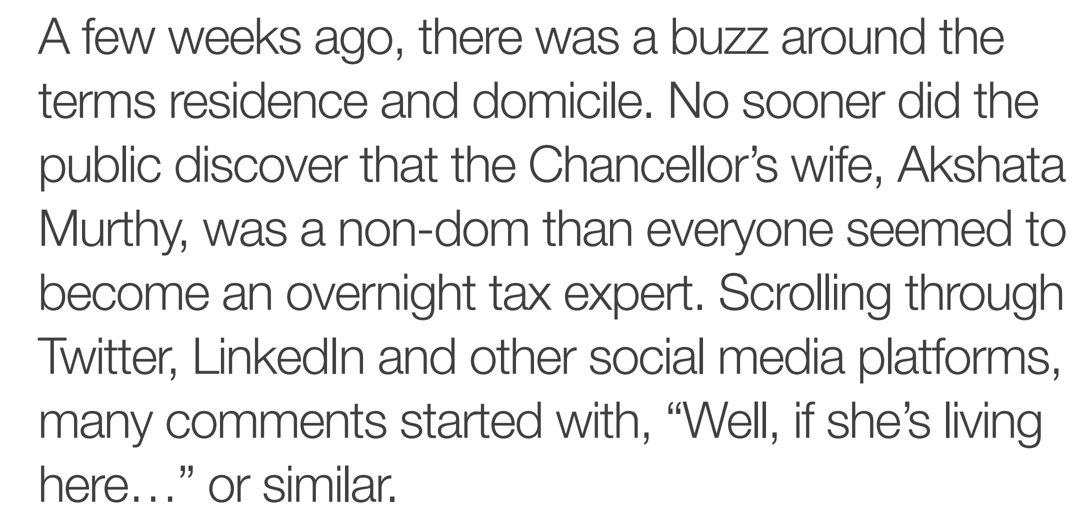
When domicile doesn't translate to residency

Recent questions about the tax status of Rishi Sunak's wife have turned the spotlight on the meaning of resident and domicile. Phil Clayton explains.



A few weeks ago, there was a buzz around the terms residence and domicile. No sooner did the public discover that the Chancellor's wife, Akshata Murthy, was a non-dom than everyone seemed to become an overnight tax expert. Scrolling through Twitter, LinkedIn and other social media platforms, many comments started with, "Well, if she's living here…" or similar.

The concept of domicile is much more complex than where someone lives, and the debate around domicile and residence often conflates the two.

Stepping back from the political and ethical discussions around Ms Murthy, let's look at the facts and the claims she had available to her as a result of her position.

UK tax residence

Some may see residence as 'where someone lives', or 'where someone spends most of their time'. But it's not always that simple. People could be considered UK tax resident whilst only being present here for a couple of months in a tax year.

The UK's Statutory Residence Test (SRT) is one of the most detailed and complex residence tests in the world. HMRC's guidance and legislation runs to over 150 pages. The complicated rules and tests applied to an individual's circumstances could mean two people spending the same time in the UK end up with a different residence status.

We would strongly suggest taking professional advice if your UK residence position is relevant to your tax affairs. For more details, see the guide: [UK tax residency for individuals].

What exactly is domicile?

Domicile, on the other hand, is not always specifically related to where an individual currently lives. It is a concept based on where a person 'belongs', or where their 'spiritual home' is, even though they may not own or have access to any property there.

Other jurisdictions may have different rules to determine domicile. Here are the rules relating to England and Wales.

There are three basic types of domicile:

1. Domicile of origin

This is the domicile that an individual acquires at birth - it is normally their father's domicile. There are additional rules to determine the domicile of origin where the circumstances are not straightforward.

2. Domicile of dependence

As the name suggests, this is where an individual is dependent on someone else, so they follow their domicile. For example, a child usually follows the domicile of their father (if living together) until they reach sixteen.

3. Domicile of choice

An individual can acquire a new domicile of choice. This means abandoning their domicile of origin and voluntarily fixing their sole or chief residence in a particular place for an unlimited time, with no intention to leave.

But it can easily be the case that someone is resident in a country for a substantial period of time and does not become domiciled there, because their stay has a temporary purpose.

When domicile doesn't translate to residency

What is the effect on taxes?

Once someone is considered a UK resident for the tax year, their *default* position is to be taxed in the UK on their worldwide income and gains.

But if they are considered non-UK domiciled, they can elect to be taxed on the remittance basis.

As a UK resident non-dom taxpayer, choosing the remittance basis means you only pay UK tax on your UK source income and gains, and on any offshore income and gains remitted to the UK in a tax year. However, you may miss out on certain tax allowances available to non-remittance basis users.

The rules for what is treated as a 'remittance' are quite wide. They cover any way in which value from funds or assets are brought to, or used in, the UK. So, individuals electing to be taxed on the remittance basis should be very careful and aware of these details. This could mean non-UK income and gains are kept outside the scope of UK taxes.

For the first few years of UK residency, there is no charge for choosing to be taxed on the remittance basis (although some allowances and exemptions are unavailable).

But once an individual has been resident for seven out of the previous nine tax years, they must pay a Remittance Basis Charge (RBC) of £30,000. And this rises to £60,000 once resident for 12 out of the previous 14 tax years.

If someone has been resident for 15 out of the previous 20 tax years, they can no longer claim the remittance basis, and are treated as a 'UK deemed domicile' taxable on their worldwide income and gains.

Akshata Murthy's position may have been debated in the court of public opinion and there may be moral issues linked to her particular position as the Chancellor's wife. But the claims she made are likely perfectly legal. Indeed, they are in keeping with the type of tax planning we would advise many clients in a similar position to make in order to reduce their UK tax liability.

Although there have been changes to the remittance basis in this century, it remains, as it is known to encourage foreign investors and individuals to the UK. With recent news that a change in Government could have it scrapped, how long will it last?

If you want to discuss your own residence or domicile position, please contact Phil Clayton.

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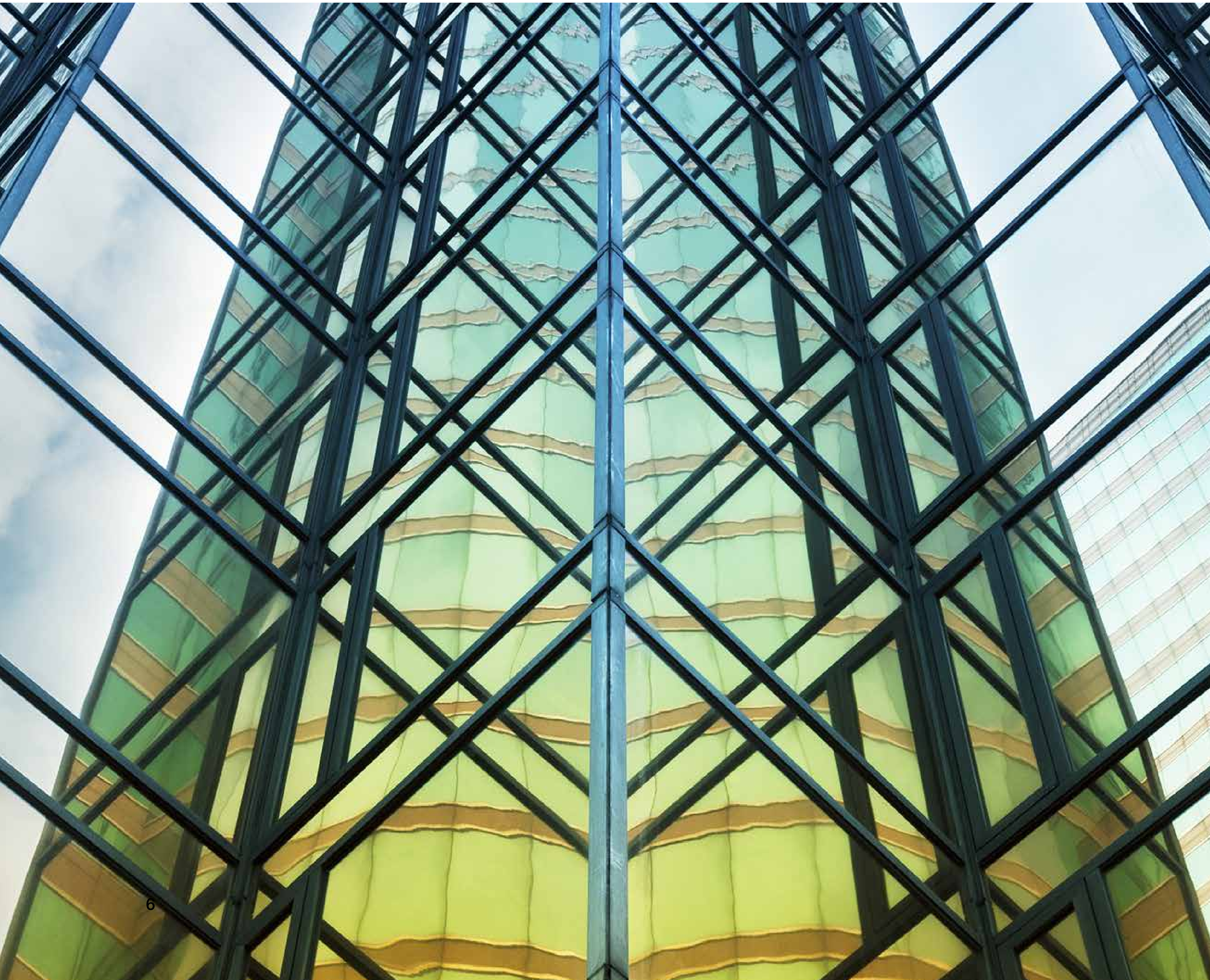
VAT: who is liable?

Two court cases demonstrate the subtleties of VAT in the context of agents and principals.



Discovering a gripping French TV series during lockdown added a touch of glamour to my tax day job as well as a dose of inspiration for today's topic. Call My Agent follows the ups and downs of demanding actors and their weary agents. These frequently fraught interactions remind us that the agent versus principal relationship can be complex from a VAT perspective.

UK legislation does not define the term "agent". But in essence an agent is someone who acts for, or represents, someone else (the principal) to arrange supplies of goods and services. The relationship between the principal and agent can be disclosed or undisclosed to the third party customer. A disclosed agent acts in the name of the principal, whereas an undisclosed agent acts in their own name.

How is VAT applied with a disclosed agent?

Here, the supply of goods or services takes place directly between the principal and the customer. The principal accounts for VAT on its supply to the customer in line with the relevant VAT law.

The agent supplies its 'agency services' (whatever they may be) to either or both of the principal and the customer, and its services are subject to VAT accordingly.

Is it different for undisclosed agents?

In this case the principal and agent must pretend (for VAT purposes) that the principal supplied the goods or services to the agent, and the agent then supplied them to the customers. The agent's purchase price is typically the sales price to the customer less the agent's fees and/or commission. The agent must then account for VAT on these deemed (for VAT purposes) purchases and supplies in accordance with the applicable VAT law.

Agent or principal?

There have been many cases over the years where a business has thought itself to be acting as an agent arranging supplies for another party. But the reality is that it is acting as the principal in a supply chain.

VAT: who is liable?

The 2014 UK Supreme Court (UKSC) decision in Secret Hotels2 provides guidance on the distinction between an agent and a principal. Secret Hotels arranged non-UK hotel accommodation through its website for UK travellers.

HMRC sought to apply VAT to Secret Hotels on the basis that it was a travel agent acting as an undisclosed agent. In other words, it was effectively acting as a principal for VAT purposes. This would have meant that it had to pay VAT in the UK. Secret Hotels maintained that it acted as an agent and was only supplying 'agency services' to non-UK hoteliers, so it didn't owe any UK VAT.

The UKSC, basing its decision on a strict interpretation of the appellant's written contracts with hoteliers and the customer terms and conditions on its website, ruled that it was a disclosed agent. It also helpfully confirmed that the written contractual relationship between the parties ultimately governs the VAT treatment. Unless, of course, those written contract terms are a sham or are significantly different to the economic and commercial reality - in other words they are just plainly incorrect.

Uber interesting

Even though it's an employment law case, the UKSC's decision in Uber BV and others v Aslam and others, in 2021, also raises an interesting VAT question. The legal structure of Uber's arrangements is that it acts as an agent for customers and drivers by introducing them to each other through the use of its app.

Passengers are not contracting with Uber to get them from one destination to the next. Instead, Uber is providing the passenger with use of its app so they can contract with the driver to supply transport services directly to the passenger. So, the driver supplies the transport services as principal and Uber is the agent. Uber also provides a service to the driver which enables them to provide their transport services.

The responsibility for charging VAT to the passengers rests on the driver as the supplier of the transport services. That said, many Uber drivers will not breach the annual UK VAT registration threshold of £85,000, and so the ride is VAT-free.

The court concluded (from an employment law perspective) that the drivers are workers and are hired to perform the bidding of Uber, which effectively provides the transport service to the passenger as principal. So, in theory, Uber should pay UK VAT on its supplies of transport services to UK passengers that are delivered by its 'employees', the drivers.

But the UKSC's comments in the Secret Hotels case indicate that the current VAT treatment by Uber and its drivers is the right one.

With the rise of the gig economy, it is probably only a matter of time before a similar VAT case comes knocking on the Tribunal's door. In the meantime, PKF is well versed in the VAT issues and opportunities relating to agency arrangements and we'd recommend seeking advice before concluding contracts in such cases.

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Capital allowances: exclusions, pitfalls and transition rules

The so-called 'super-deduction' and special rate first-year allowance were introduced in the 2021 Budget. Their aim is to encourage firms to grow post-Covid by investing in productivity-enhancing plant and machinery assets. But what should you look out for?

The two allowances took effect for the period 1 April 2021 to 1 April 2023. You can read our initial overview here. But in this article we look in more detail at the possible limitations and pitfalls of the relief.

As the temporary rules will end in the next year, it's important to understand how the rules will transition and what comes next.

Date expenditure is incurred

The rules for timing of relief were tweaked specifically for the announcement of the new capital allowance rules. Usually, if spend occurs before a company begins trading, it's treated as being incurred on the first day the activity is carried on and attracts the allowances available on that date. But this doesn't apply to the super-deduction and special rate first-year allowance. The expenditure must be incurred during the specified period 1 April 2021 to 31 March 2023.

What are the exceptions?

There are various assets that don't qualify for the super-deduction or special rate allowance:

- used and second-hand assets
- expenditure on contracts entered into before 3 March 2021
- assets used for a ring fence trade
- expenditure incurred in the chargeable period in which the qualifying activity is permanently discontinued
- cars
- buildings and structures (except integral features)
- expenditure excluded from long life asset treatment by 'grandfather provisions'
- expenditure on the provision of plant and machinery for leasing
- if the claim is in connection with a change in the nature or conduct of a trade or business carried on by a person other than the person incurring the expenditure (only if claiming the super-deduction is one of the main benefits expected to arise from the change).

Capital allowances: exclusions, pitfalls and transition

Anti-avoidance rules

There are anti-avoidance rules that counteract any arrangements where their purpose, or one of their main purposes, is to obtain a tax advantage. That could be in relation to the super-deduction, the special rate allowance or the avoidance of a balancing charge. The rules apply when the arrangements are contrived, lack a genuine commercial purpose or are intended to avoid the limits of the relief.

Transition from super-deduction and special rate allowance

The super-deduction and special rate allowance will no longer be available from 1 April 2023. Instead, the capital allowance rules in place before 1 April 2021 will apply.

Plant and machinery will qualify for main pool allowance at 18% per annum and special rate pool items will be deductible at 6% per annum.
The Annual Investment Allowance (AIA) will also be available to relieve expenditure after 1 April 2023.

The maximum AIA that can be claimed will be £200,000 per annum (time apportioned accordingly for shorter periods).

The super-deduction available in a chargeable accounting period that ends on or after 1 April 2023 will be proportionately reduced. This is to prevent overlap with the period where the Corporation Tax rate increases to 25%.

The relevant allowance percentage in the final period where the super-deduction is available is calculated by dividing the total number of days in the chargeable period (up to 31 March 2023) by the total number of days in the whole period.

This is then multiplied by 30% and 100%.
For example, the relevant percentage for the period ended 31 December 2023 would be as follows:

(90/365 x 30%) + 100% = 107.4%

This rate is then applied to all qualifying additions in the period.

If you would like to discuss any issues raised in this article, please contact Ivy Ojediran or James Cooper.

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Global Indirect Taxes Webinars

We are delighted to invite you to register for a free series of Global Indirect Taxes webinars

The series will help you and your organisation navigate the significant changes that have been made to indirect taxes globally and provide an overview of technical and commercial considerations across all key jurisdictions.

Our webinars will also cover e-commerce, cross-border services, the concept of an establishment from a VAT and direct tax perspective, and customs duties. Attendees will be provided with real-world examples of how to minimise cross-border indirect tax issues.

Each event will be led by VAT Director, Luigi Lungarella who will be joined by indirect tax experts from across the PKF International global network, including the USA, Russia and the EU.

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Session 2 - eCommerce – Goods and Marketplaces - Watch on demand
Session 3 - Cross-border services – navigating local requirements - Watch on demand
Session 4 - 6th April 2022 - Watch on demand
Session 5 - 8th June 2022 - Cross-border goods – The hidden costs and challenges of Customs

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PKF is one of the UK's largest and most successful accountancy brands.

We provide a full range of audit, accountancy, tax and advisory services, and are experts at simplifying complexity – we're particularly well-known for working with large, high-profile businesses with challenging issues in fast-moving and highly technical areas.

We are also an active member of PKF International, a global network of legally independent accounting firms that gives us an on the ground presence in 150 countries around the world.

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£182.5 million annual fee income

2,035+ UK partners and staff

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Our tax services At a glance

"By bringing together the extensive expertise and experience of our tax specialists we can provide a fully rounded service that offers excellent value for money."

We offer comprehensive tax compliance and advisory services to a range of clients, both in the UK and globally, helping them find their way in the increasingly complex world of tax.

We find practical solutions that we use to our clients' advantage. Our team of experts supports individuals, and businesses ranging from start-ups and SMEs to large international groups, both listed and privately owned.

Where understanding of our clients' sector makes the difference, our experts invest their in-depth industry expertise to provide invaluable support and insights.

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Our Business Tax team will ensure that you are both tax compliant and efficient.

We provide specialist corporate and business tax advice on both a local and international level, which includes senior accounting officer and large business compliance, transaction services, due diligence, R&D tax relief, employer solutions and global mobility. We also support both the personal and business affairs of partnerships and LLPs.

Read more

Personal tax and wealth management

Our team will guide you through the complex world of taxes, helping you meet all filing requirements and identifying risks and opportunities to help mitigate tax liabilities.

We advise individuals, the self-employed, partners, trustees and executors with their UK and international tax affairs. Our services include all aspects of tax, including Self Assessment, Capital Gains Tax, Inheritance Tax, property (both residential and commercial), trusts, family wealth and estate planning, residence and domicile issues.

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VAT and Indirect taxes

Our indirect tax team will support you in meeting your VAT compliance objectives and advise you on any VAT issues that your business faces.

We can ensure that your VAT risk is assessed and managed, and that your VAT recovery is optimised. We can also provide advice and compliance services on other indirect taxes, such as Insurance Premium Tax, Customs duty, and Air Passenger Duty.

Read more

Tax disputes

HMRC is increasing the number and scope of tax investigations into both individuals and businesses, covering all aspects of potential underpayments of tax, including offshore investments, personal and corporate Self Assessment Tax Returns, PAYE and NIC compliance and VAT.

If an issue arises, our trusted advisors will match the right specialists with your needs to provide you the necessary support – whether for a routine HMRC enquiry or a more complex investigation.

Read more

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