PKF

Tax Talk

Simplifying the complexities of Tax

March 2022

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Tax Talk: March 2022

New Corporation Tax (CT) rules: why QIPs may apply

Next year's increase in CT rates may affect the way your company pays its tax bills. That depends on size. We help you plan early for the changes that could affect your cash flow.

Readers will be aware of the forthcoming rise in CT rates, from 1 April 2023, from 19% to 25%. This includes the introduction of the small profits rate (SPR) and Marginal Relief calculations. (For more details on the upcoming changes to CT, see our June 2021 Tax Talk article: A welcome marginal change in corporation tax).

But it's easy to overlook the effect the new legislation may have on quarterly instalment payments (QIPs) and cash flow for associated companies.

As the new rules come in next year, it will be important for companies to begin factoring them into their financial forecasting and cash flow - if they haven't already done so.

QIPs – current rules

Most companies must pay their CT bill within nine months and one day of the end of the relevant accounting period. But where a company is deemed to be 'large' or 'very large', it must pay the tax in four quarterly instalments. The deadlines for QIPs for 'very large' companies differ from 'large' companies, as we explain.

Whether a company is deemed to be large or very large depends on thresholds provided by legislation. These relate to a company's 'augmented profits'. Here, augmented profits refer to a company's total taxable profits for the period, including dividends received by UK companies (excluding group companies).

Large companies

A company is considered large if its augmented profits in an annual accounting period exceed £1.5m (pro-rated for shorter accounting periods).

The deadlines for payments for large companies under the QIPs regime are as follows:

- first payment due six months and 14 days after the start of the relevant accounting period
- remaining three payments due at three-monthly intervals, with the last one due three months and 14 days after the end of that accounting period.

An exclusion applies for a company for the first accounting period in which it qualifies as a large company (that is, with profits over £1.5m). That means payment can be made at the normal due date.

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There are additional conditions which need to be considered if the profits exceed £10m.

But in the following accounting period (if the £1.5m threshold is breached), the company will need to make payments to HMRC via QIPs.

The £1.5m and £10m limits are pro-rated for accounting periods shorter than 12 months and reduced by the number of 51% related group companies plus one.

Very large companies

Companies are deemed to be very large if augmented profits exceed £20m. This limit is also pro-rated for shorter accounting periods and reduced by the number of 51% related group companies plus one.

The deadlines for very large companies to make payments under QIPs all fall within the relevant accounting period (unlike for large companies). The first payment is due two months and 14 days after the start of the relevant accounting period. Then the remaining three payments are due at three-monthly intervals. That means all payments made to HMRC are based on estimated profits.

Unlike for large companies, companies that breach the 'very large' threshold will be liable to QIPs in the same year the threshold is breached.

Impact of the rule changes

As we've said, under the existing rules the thresholds for determining whether a company is large or very large are divided by the number of related 51% group companies plus one.

From 1 April 2023, the related 51% group company test for QIP purposes will be replaced by the 51% **associated** company rules.

This could mean that a company that was not previously considered large, would be large under the new rules.

Under the existing rules, a company is related to another company (including overseas companies) where:

- one company is a 51% subsidiary of another, or
- both companies are 51% subsidiaries of the same company.

This means that two companies held separately by the same individual will not be in a 51% related group.

From 1 April 2023 a company is associated to another company (including overseas companies) where:

- one has control of the other (>50% of the voting power, share capital or distribution rights of the company)
- both companies are under the control of the same person or persons.

We demonstrate the impact this has from a QIPs perspective in the example below:

Person A owns 100% of six companies. Companies 1 to 3 are unrelated companies, while companies 4 to 6 are 51% subsidiaries of each other. Under the current rules, the QIPs threshold will be £1.5m for companies 1 to 3 (being unrelated companies) and £500,000 for companies 4 to 6 (being £1.5m divided by 3).

From 1 April 2023, as all six companies are under the control of person A, and are therefore associated companies for QIPs purposes, the threshold for all six companies reduces to £250,000. This may push some or all companies into the QIPs regime, dependant on their level of profits.

For all these reasons, it's important to conduct proper tax planning now, in advance of the rules coming in. This will ensure that UK companies are prepared, both with planning and cash flow, if QIPs do become applicable to them from 1 April 2023.

For more information about the issues raised in this article, please contact Ivy Ojediran or your usual PKF contact.

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Annual Tax on Enveloped Dwellings (ATED): an update

Sometimes considered a 'mansion tax', ATED can affect any company owning residential properties. Here's the latest, to make sure you are home and dry when it comes to taxes.

This annual charge came into effect in 2013 and subsequent legislative changes have meant it applies to many more property owners than before. It's vital you know what is happening and what your liabilities are or will be.

Since 1 April 2013, if your company owns residential property that is worth £2m or more, or a share of such property, you may already be liable to annual charges. Later changes mean the charges now affect properties from £500,000 in value. PKF can help you to understand whether you are affected, identify your liabilities and make sure you stay compliant.

Who is affected?

The charge applies to UK and non-UK resident companies, as well as collective investment schemes and some partnerships (referred to as non-natural persons (NNPs)). In all cases, it is the value of the property that makes it liable to ATED. So if your company owns a property of a certain value (see below), even if you own it jointly with someone else, it still counts. It is the overall value, rather than the company's interest, which is relevant.

What are the charges?

The charge for each property is based on its value, on a rising scale. This currently starts at £500,000.

Property value	Annual chargeable amount 2022/23	Annual chargeable amount 2021/22
£500,000+ to £1m	£3,800	£3,700
£1m+ to £2m	£7,700	£7,500
£2m+ to £5m	£26,050	£25,300
£5m+ to £10m	£60,900	£59,100
£10m+ to £20m	£122,250	£118,600
£20m+	£244,750	£237,400

Threshold changes

Before 2015/16, the lowest threshold was £2m. New bands were then introduced, reducing the minimum chargeable value to more than £1m (from April 2015) and more than £500,000 (from April 2016).

Which residential properties qualify?

ATED applies to residential properties located in the UK, including mixed use properties, gardens, grounds and buildings within them.

But some types of property are not affected. These include hotels, guest houses, boarding school accommodation, hospitals, student halls of residence, military accommodation, care homes and prisons.

Reliefs can also be claimed for:

- property rental businesses
- property developers
- property traders
- financial institutions acquiring dwellings in the course of lending
- dwellings open to the public
- occupation by certain employees or partners of a qualifying trade or a qualifying property rental business
- farmhouses
- social housing
- housing co-operatives (from 1 April 2021).

Annual Tax on Enveloped Dwellings (ATED): an update

When are the due dates?

An ATED return and payment is due within 30 days of the acquisition of a high value residential property by a company or other NNP. For existing properties, an annual ATED return and tax payment is due by 30 April during the tax year. For 2022/23 the return and payment will be due on 30 April 2022.

How and when to value a property

The owner company is responsible for assessing the property value. You can do this with the help of a professional valuer if you prefer. But HMRC has the right to challenge a value and enforce additional tax, interest and penalties if this value is found to be wrong.

A valuation at 1 April 2017 will be required for 2018/2019 and subsequent years, and at five-year intervals thereafter. The previous valuation date for properties was 1 April 2012, which applied for ATED returns up to 2017/2018.

So the next revaluation, on 1 April 2022, will apply for the 2023/24 ATED year and up to and including 2027/28.

If the property was not owned on any of the valuation dates, it will be calculated at the date it was acquired.

HMRC can confirm your view of the property's banding if you submit your valuation for a pre-return banding check. This service is only available if you believe your property falls within a 10% margin of a different band.

Other changes to property taxes

If your company owns residential property, you also need to be aware of some other recent changes that may affect your tax liability.

Since 6 April 2019 property sales are liable to Corporation Tax. Companies not already registered for Corporation Tax must register within three months of the chargeable date. Any tax due must, in most cases, be paid within three months and 14 days of the disposal.

Higher UK Stamp Duty Land Tax rates apply to purchases of residential property by companies and some trusts. From April 2017, Inheritance Tax will be due on the value of UK residential property held by foreign-registered companies or excluded property trusts.

Our expert team can help you understand everything you need to know about UK property tax, and make sure you are compliant.

To find out more, please contact Shaharan Deen or your usual PKF contact.

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NIC and dividend rate changes: what to look out for

It may be tempting to adopt measures that compensate for the increases in NIC and dividend rates, but companies must weigh up the pros and cons.

Hopes that the planned 1.25% increase in National Insurance Contributions (NICs) which was announced in the Autumn 2021 budget as part of the Health and Social Care reform bill and due to take effect from 6 April 2022, would be either scrapped or delayed were dashed by the government last month.

There had been hope that the squeeze on household income caused by the soaring cost of domestic energy would add enough 'fuel to the fire' of the arguments made by MPs from all parties, business professionals and economists that now was not the right time to increase the tax burden, but the government have confirmed that the increase will take effect as planned from 6 April 2022.

Shared pain

The 1.25% increase applies to all classes of NIC. Class 1 NICs is the main class of NIC that is due on employment earnings and benefits, and is payable by both the employee (primary contribution) and employer (secondary contribution). The 1.25% rate increase applies to both rates of NIC meaning that, unusually, businesses and individuals will suffer the effects of this added cost in equal measure.

Unfortunately, a problem shared is not always a problem halved.

NIC	Rates to 5 April 2022	Rates from 6 April 2022
Employer (Class 1, 1A and 1B)	13.8%	15.05%
Employee (Class 1) Main Rate	12%	13.25%
Employee (Class 1) Higher Rate	2%	3.25%
Self-employed (Class 4) Main Rate	9%	10.25%
Self-employed (Class 4) Higher Rate	2%	3.25%

Although 1.25% does not sound like a significant increase for a business or individual to bear in isolation, in the wider context of a fragile post-pandemic recovery, rising inflation and Brexit, this added cost could stretch some companies and families too far.

Despite the potential for only a modest saving of 2.5% in total, some companies are looking at ways they might legitimately avoid the extra NICs by bringing forward the payment of some earnings normally due after 6 April 2022 so that the monies are paid in the 2021/22 tax year (before the increase applies).

NIC and dividend rate changes: what to look out for

Accelerating the payment of earnings in a way that is effective for tax or NIC purposes, but preserves the nature and intention of the payment, may not be as straightforward as it seems. There are a number of things that companies and individuals need to consider.

When are payments taxed?

Tax rates have generally been static or gone down in recent years. But we may remember a similar situation following the introduction of the 50% rate of tax on earnings over £150,000 (which represented a 10% income tax rise at the time), so there is a precedent for accelerating payments to try to mitigate a tax rise. The key issue to consider is “when are payments liable to tax”?

Legislation dictates that earnings in the form of money are treated as ‘received’ by the employee, and therefore liable to tax at the earliest date of:

1. when a payment of earnings is actually made or when a payment on account of earnings is made
2. the time when a person becomes entitled to payment of earnings or a payment on account of earnings

There are further criteria for company directors which bring the following into the assessment:

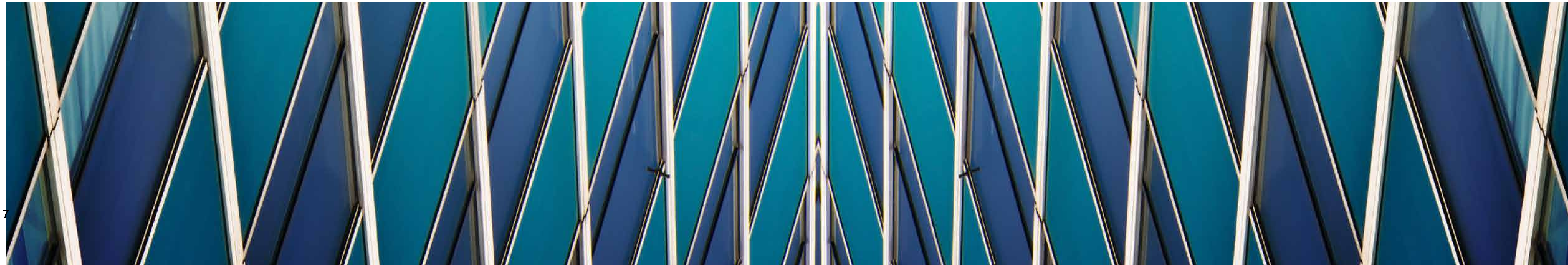
3. the date when earnings are credited in the company’s accounts or records
4. where the amount of the earnings is determined before the end of the period to which they relate, the date that period ends
5. where the amount of the earnings is determined after the end of the period to which they relate, the date the amount is determined.

Apart from the additional criteria for directors, you might assume this means you can pay an employee early some of the earnings that would normally be due after 6 April 2022, and achieve the desired result. Sadly it’s not that simple.

A payment for the purposes of this legislation happens only when money comes within the control of the employee, so that they can dictate how it is used and enjoyed.

To count as a payment from employer to employee (for tax purposes), the employer can have ‘no right of recovery’ over the money. Simply paying an employee’s salary early, but including a payback condition should they leave the employment before a set date (the end of the future month the salary is being paid to), would not be seen as a ‘payment of earnings’ and therefore would not achieve its objective.

Similarly, take a company whose performance year ends on 31 March, with annual performance bonuses paid on 30 June, subject to employees still being in employment on 30 June. The company may consider bringing forward bonus payments, so they are paid on or before 5 April 2022.



NIC and dividend rate changes: what to look out for

For this to be effective, the company would have to abandon the condition of ongoing employment on 30 June. This however carries a HR risk, as their employees are no longer 'tied' to the company for the usual three months from April to June. More staff may resign who would otherwise not have left the business until after 30 June.

That's the dilemma.

Is the 1.25% saving in NICs (from which the company would benefit) worth the risk of losing an employee sooner or making employees less committed to their work because they have already been paid?

Dividend rates up

Similarly, the dividend rate is increasing by 1.25% to echo the change in NICs. The dividend allowance of £2,000 remains the same and this will continue to be taxed at 0%. Above this amount, the dividend rates will increase as follows:

Tax Band	Rates to 5 April 2022	Rates from 6 April 2022
Basic Rate	7.5%	8.75%
Higher Rate	32.5%	33.75%
Additional Rate	38.1%	39.35%

Where dividends are usually paid after 6 April, there could be benefit in accelerating these into the current tax year. Another idea is to increase other planned dividends before 6 April 2022 if there are multiple payment dates. In the simplest form, a £100,000 dividend paid before the tax year end could save the individual up to £1,250 in taxes compared to it being paid on 6 April 2022 or later.

But this could increase the individual's payments on account due for the 2022/23 year, so they may need to make a claim to reduce these if the increased dividends are not planned to continue.

Related considerations

So it may be possible to facilitate payment of earnings before 6 April 2022 in order to make the 2.5% (combined) NIC saving, or 1.25% on a dividend payment. But there are other factors for companies and employees to weigh up in deciding whether to do this.

Payment of earnings before 6 April will, of course, increase the earnings reported and taxed in the 2021/22 tax year. If this takes the employee into a higher tax bracket, they will likely be worse off overall.

NIC and dividend rate changes: what to look out for

When it comes to dividends, companies must consider all the shareholders receiving these dividends. Inadvertently pushing a shareholder from basic rate to higher rate, or higher rate to additional rate, could be more expensive for their personal tax position than the potential saving of 1.25%. It's therefore quite challenging to gauge, where the shareholders are in different tax bands, whether this would be beneficial. This can also apply for an individual's bonus.

There are several other earnings barriers for individuals to consider:

• The first is £100,000. Taxable income over this amount creates a restriction to the personal allowance for that tax year. It would be illogical to lose a tax-free allowance in order save 1.25%, pushing an individual into the 'hidden' 60% tax bracket.

• Those earning between £50,000 to £60,000 per annum. Not only is £50,000 broadly the start of the 40% tax band, but child benefit received during the tax year has to be paid back to the Government via the High Income Child Benefit Charge (HICBC) if income exceeds £50,000. Over £60,000 the full amount is reclaimed thus any increase in income for individuals already in this tax bracket will mean they pay back more via the HICBC than they would otherwise.

• Similarly, this could affect an individual's ability to pay into their pension (the Annual Allowance). Higher earners may have their pension contribution limits restricted and, where contributions have already been made, this could lead to a pension savings tax charge on the over contribution at 45%.

So, there are many pros and cons for a company, its employees and the shareholders if they change the way earnings are paid to avoid the extra taxes.

We do expect some employers to do this for select employees with special types of pay. But most will probably conclude that the work involved and the potential HR risks far outweigh the potential 1.25% saving. Whereas, smaller, family owned companies may see the benefit in additional dividends.

Overdrawn company director loan accounts

An additional consideration for smaller companies may be to settle their outstanding director's loan account (DLA). Where a shareholder has an outstanding loan with the company at the end of the accounting period, which is not settled within nine months, there is a Corporation Tax charge (known as s455 tax). This is directly linked to the higher rate of Dividend Tax, so will increase from 32.5% to 33.75% from April 2022.

So it may be time to review settling some of this debt to avoid an increase in the tax charge after April 2022. But should the loan be repaid to the company after the tax has been paid, this tax can still be reclaimed.

If you would like advice on any of the issues raised in this article, please contact Phil Clayton or Daniel Kelly.

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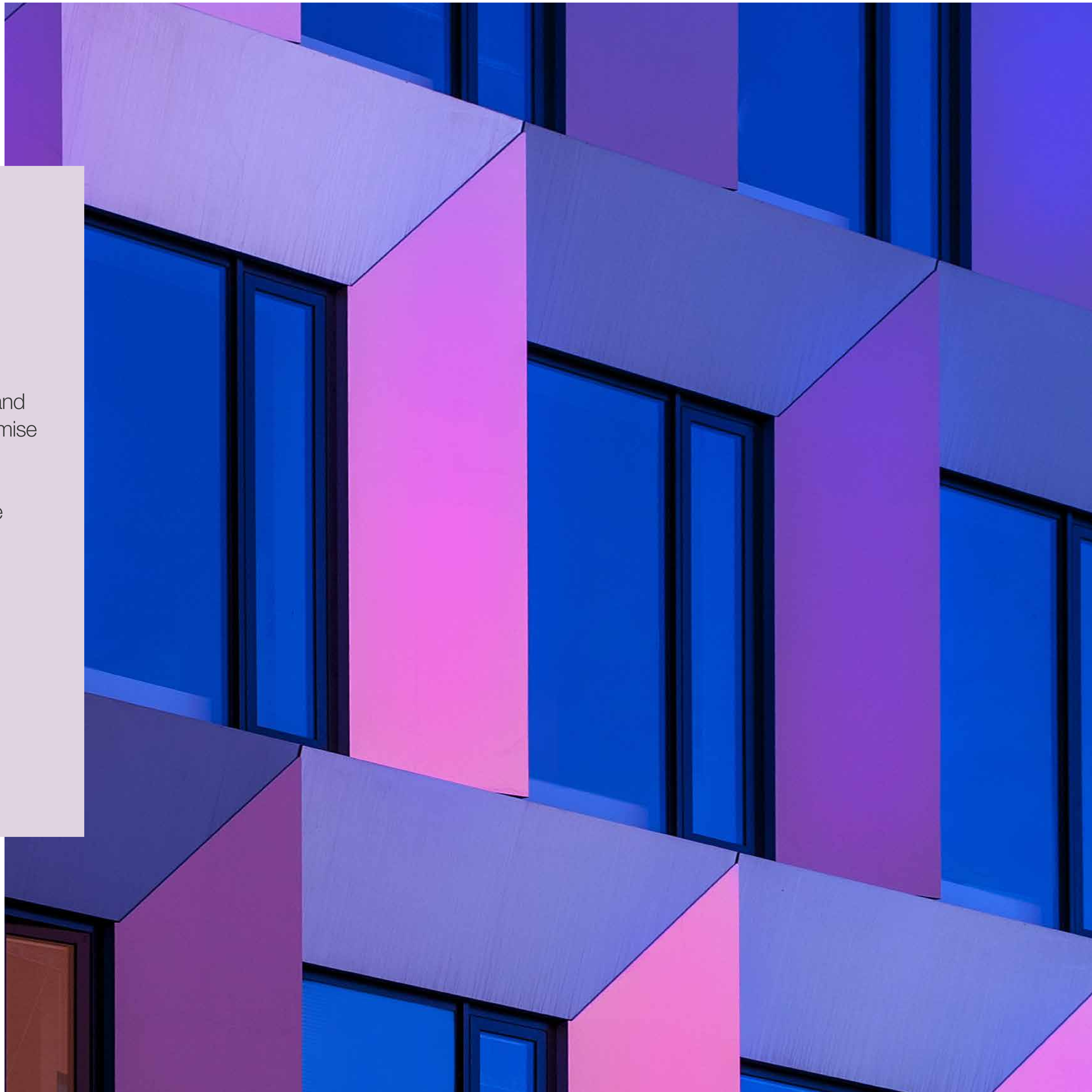
Global Indirect Taxes Webinars



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Session 4 - 6th April 2022 - The servitization of the economy and the importance of establishments
Session 5 - 8th June 2022 - Cross-border goods – The hidden costs and challenges of Customs

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