# Tax Talk

Simplifying the complexities of Tax

**March 2024**

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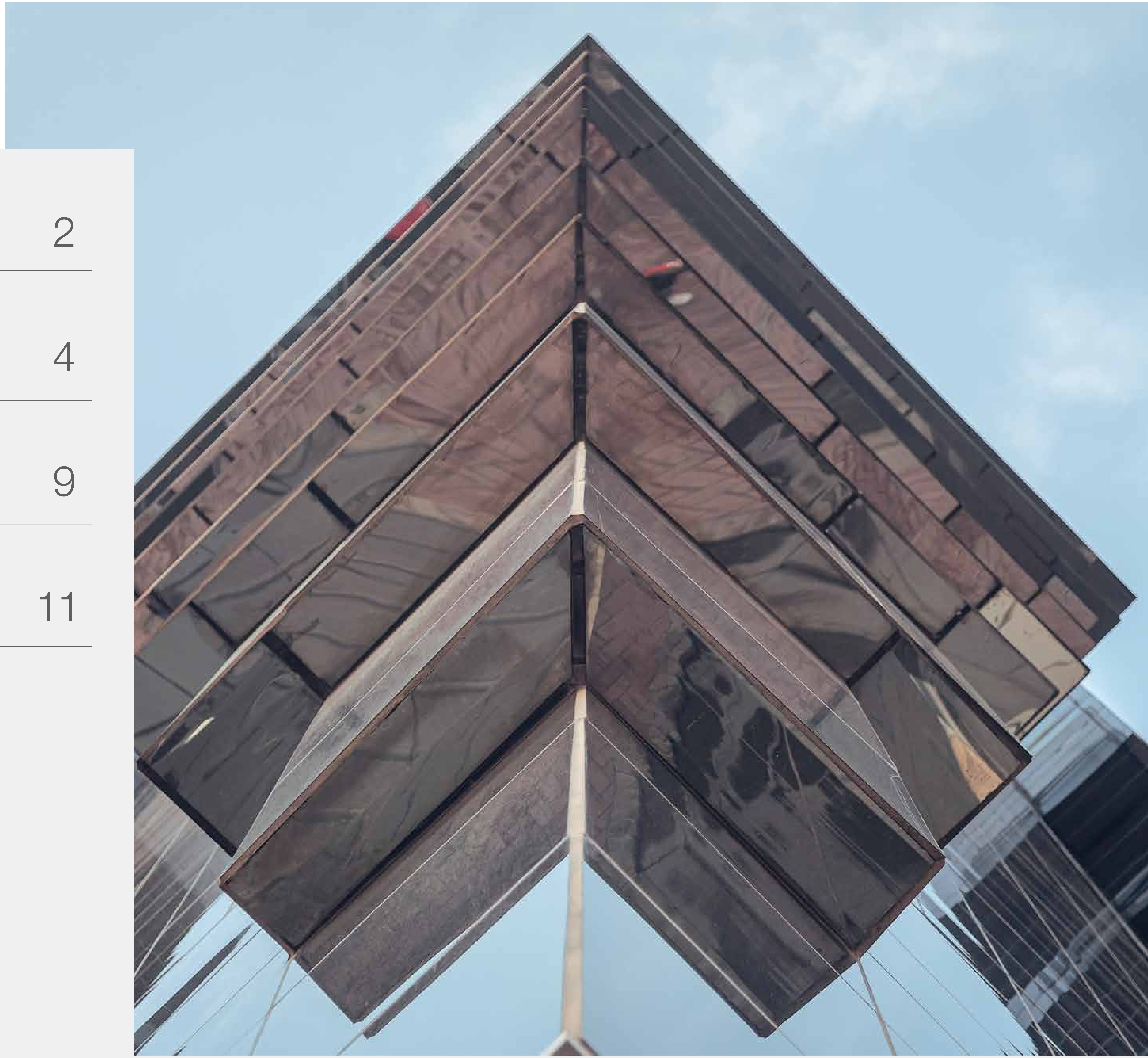
# TaxTalk: March 2024





# A VAT development that could spell trouble

Following a relatively unnoticed change to VAT law on 1 January 2023 which is likely to bring significant revenue to HMRC in future years, we provide an example to illustrate how these changes can affect your business.

A UK VAT-registered widget manufacturer sells part of the business to another UK VAT-registered widget manufacturer. It does this by way of a sale of trade and assets for a price of £100m, £60m of which is related to a factory.

Both parties think the sale is obviously a VAT-free 'transfer of a business as a going concern' (TOGC). So the seller doesn't charge VAT to the buyer, and therefore does not pay it to HMRC. The seller does not ask a VAT advisor to consider the VAT treatment of the sale, nor read HMRC's VAT Notice on TOGCs. But just in case VAT is due, the sale contract states the price is "exclusive of any VAT due".

## Hidden obstacles

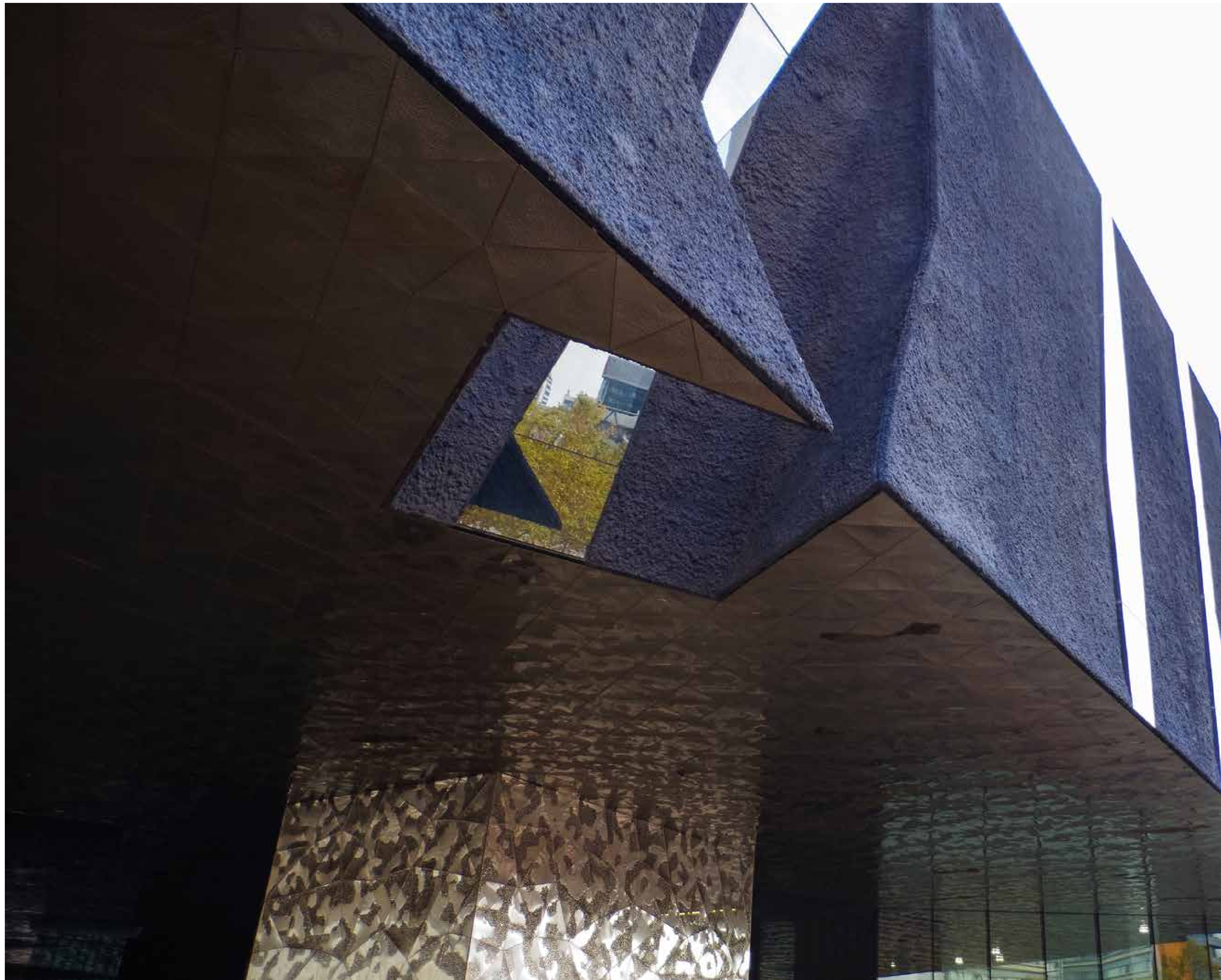
So far so good. But there's a catch. A VAT specialist review a year later, as part of an annual audit, showed the seller should have charged VAT on the property part of the assets transferred.

Therefore, the seller raises an invoice today for £12m of VAT to the buyer. The buyer will reclaim £12m of VAT from HMRC through its next VAT return, pay it to the seller and the seller will pay it to HMRC. You might conclude from all this that there is no issue to disclose in the seller's annual accounts, right? Unfortunately not.

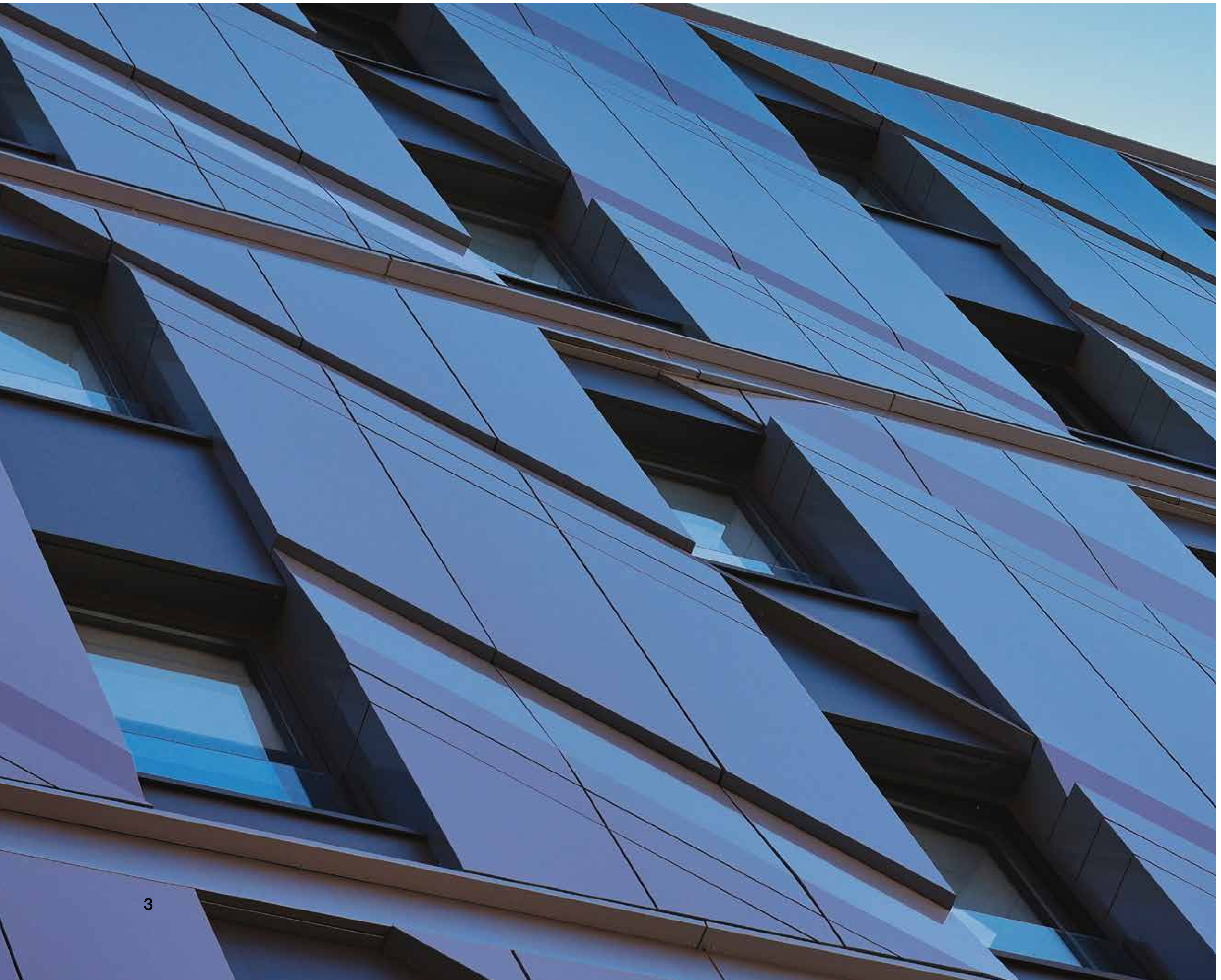
Here's what happens next:

- The seller has to submit a VAT error correction notice to HMRC in respect of the £10m of VAT that it should have paid to HMRC a year ago, i.e. the 20% VAT element of the £60m sale proceeds received at the time.
- HMRC issues assessments to the seller for the following:

| | |
|---|---|
| VAT | £10m |
| Interest (currently 7.75%) for a year | £775,000 |
| Penalty (the maximum of 30% of the VAT) – it turns out the seller has made lots of other VAT return errors in the past | £3m |



# A VAT development that could spell trouble



- The seller appoints a VAT advisor who manages to persuade HMRC to suspend the £3m penalty for 12 months. One of the suspension conditions is that the VAT advisor reviews the seller's VAT returns before they are filed to HMRC.
- After receiving a VAT invoice from the seller, the buyer reclaims £12m of VAT from HMRC via its VAT return form, then pays it to the seller.
- HMRC issues a VAT assessment on the seller for £10m and the seller pays £10m to HMRC.
- The seller pays the additional £2m of VAT to HMRC as part of its next VAT return payment.

## What about the £775,000?

Before 1 January 2023, HMRC would normally have waived the interest charge. This was because the buyer could reclaim the VAT in full from HMRC upon receipt of a proper VAT invoice from the seller. But UK VAT law changed on 1 January 2023.

Now, interest is due to HMRC in full, regardless of whether the buyer can reclaim from HMRC some or all of the VAT that the seller should have charged to the buyer.

The only way under the new VAT law to ask for a review of, or appeal, the interest charge is if HMRC has incorrectly calculated it and / or it was HMRC's own fault the VAT wasn't paid to it at the right time.

So, the seller now has a £775,000 interest charge that it has to pay to HMRC. Whilst the sale contract allows the seller to pass on the VAT charge to the buyer, it makes no mention of associated late payment interest and any penalties that the seller has to pay to HMRC at a later date.

Fortunately, provided HMRC's suspension criteria are met, the penalty will not be due. But the seller now has a £775,000 HMRC interest cost which is not a deductible expense for tax purposes.

# A VAT development that could spell trouble

## Reduce the risk of interest charges

If you are the seller in this situation, how can you avoid an interest charge for late payment of VAT to HMRC?

There are several different ways to potentially reduce that risk:

If in doubt, try to charge VAT to the buyer.

If that's not possible (because the buyer considers your sale to be VAT-free) then try to put a clause in the sale contract that allows you to increase the price, not only for VAT due but also interest and any penalty that you have to pay to HMRC (should HMRC disagree with the buyer's view of the VAT treatment of the sale).

If that's not possible, you should try to obtain HMRC's view of the VAT treatment as soon as possible after the sale completes. There are two ways to do this. You could seek a VAT clearance from HMRC (which usually produces a non-committal response a long time after the request is made). Or pay VAT to HMRC out of the sale proceeds, and seek a refund of that VAT from HMRC afterwards. This involves a detailed VAT repayment claim submission disclosing all the relevant facts and the sale contract.

From the buyer's perspective, it should not reclaim via its VAT return any VAT that may have been incorrectly charged by a seller. If the buyer recovers from HMRC any 'incorrectly charged VAT', it will face its own HMRC interest charge and potential penalty. These are not normally recoverable from the seller, unless there are clauses in the sale contract that allow this.

## So what to do next?

- Seek specialist support as early as possible from a VAT advisor – not after the sale is completed or on the day before it is about to happen.
- Involve the advisor in the drafting of the sale contract. This should ensure it contains VAT clauses that protect you as far as possible from any future HMRC interest and penalties relating to the VAT charged (or not charged) on the sale.
- Follow the VAT advice you are given in order to minimise the risk of HMRC interest and penalty charges being levied on you, or to at least keep the value of them as low as possible.

For further information or advice in relation to any of the issues raised in this article, please contact Mark Ellis.

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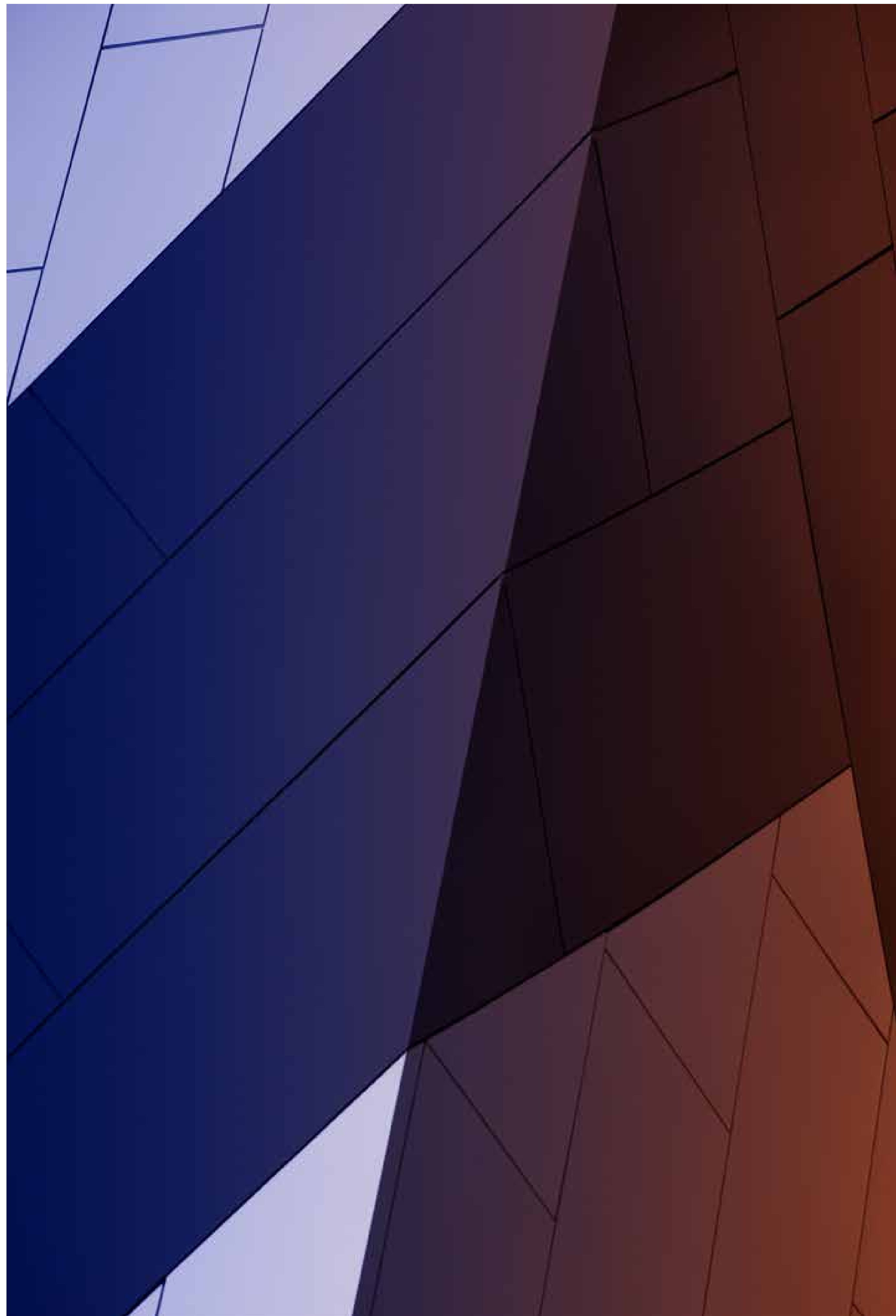


# Charities tax: what's the latest?

HMRC has been consulting on key tax issues for charities and community amateur sports clubs (CASCs). Here's our guide to the main considerations, recent changes and future proposals.

## What are the key tax considerations for charities?

### The Gift Aid scheme

The Gift Aid scheme (Gift Aid) enables charities to increase the value of every donation received by 25%, assuming a 20% basic tax rate applies.

HMRC requires charities to keep an audit trail of their Gift Aid procedures and has published guidance on how to do this effectively. The most important record to keep is the Gift Aid declaration. No repayment claim can be made without it.

Gift Aid does not apply to:

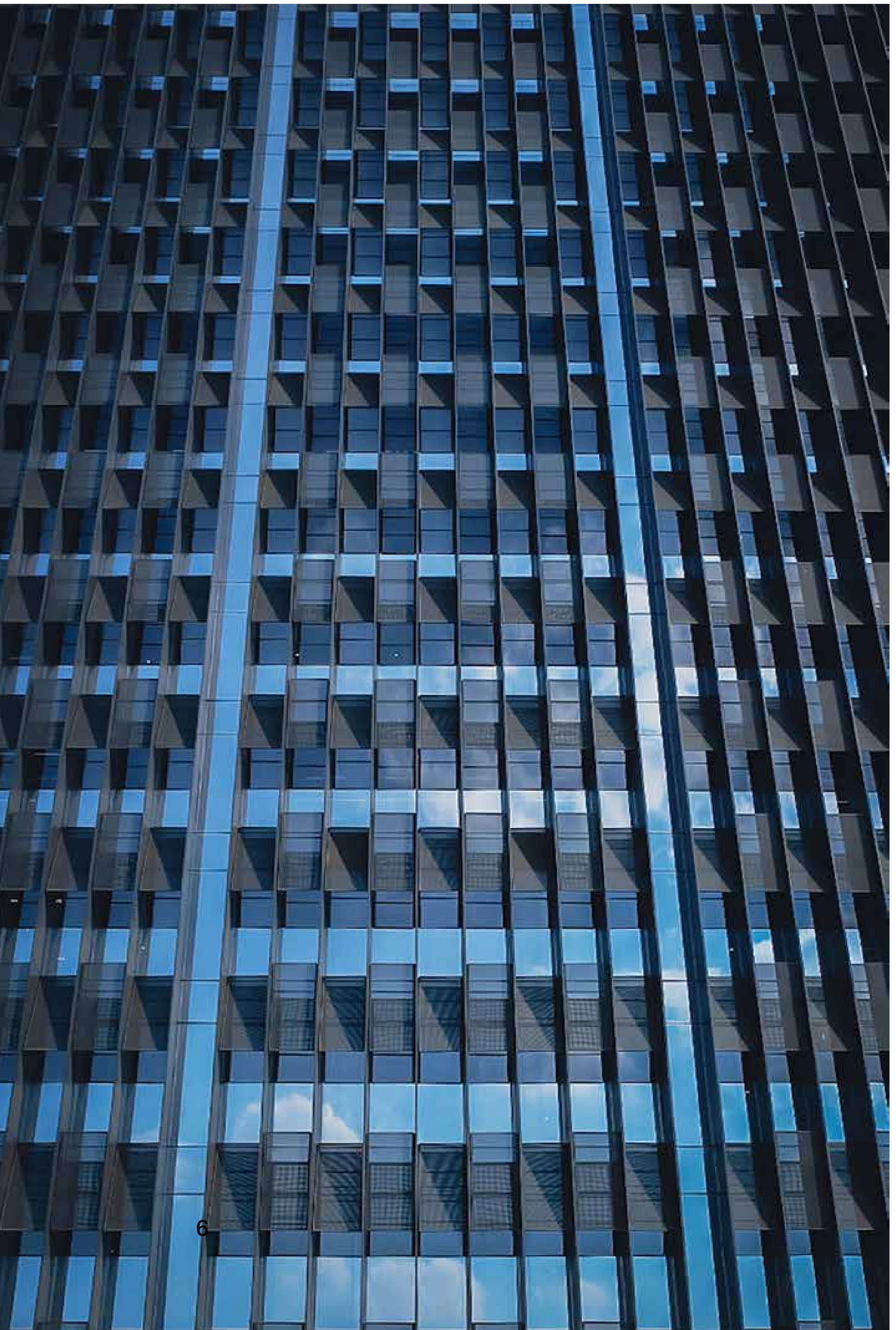
1. Payments made under the payroll deduction scheme (individuals only).
2. Donations relating to the acquisition of property involving the donor or someone connected to them e.g. where a donor gives £100,000 to charity and the charity reclaims tax of £25,000 (assuming a 20% basic tax rate) and then it purchases property from the donor for £125,000
3. Where the benefit in relation to the gift exceeds the following limits:
   a. Donations ≤ £100 - the limit is 25% of the donation
   b. Donations > £100 - the limit is £25 plus 5% of the amount exceeding £100
4. Gifts of unlisted shares, or a company gifting shares in itself.

A donor company receives tax relief for a donation in the period when it is paid, unless it is owned by the charity solely or with other charities. Here, the company has an extra nine months from the end of the accounting period to make the payment.

Issues may arise where a company uses its accounting profits to determine its Gift Aid payments. As a company pays tax on its taxable profits, this amount must be used to calculate Gift Aid.

A company donating to its parent company is a 'distribution' under company law. This means the company must have sufficient distributable reserves at the date of payment. Any portion of the donation that exceeds the distributable reserves is repayable to the company. It cannot be deducted when calculating its taxable profits.

# Charities tax: what's the latest?



### Tainted charity donation rules

The tainted charity donation (TCD) rules deny tax relief to donors for amounts paid to charities or CASCs where the main purpose is financial advantage for the donor or someone connected to them.

The TCD rules do not apply in the following situations:

- Where the financial advantage falls within the Gift Aid benefit limits (see above) for donations made under the Gift Aid scheme
- Where the benefit was taken into account when calculating the tax relief due for donations of shares, securities, real property or trading stock
- Where the person receiving the financial advantage applies it to charitable purposes
- Where the donation is made by a 'qualifying charity-owned company', or 'relevant housing provider' linked with the charity to which the donation is made.

A qualifying charity-owned company is one wholly owned by one or more charities, where one of these is the charity to which the donation was made (or a connected charity) that the donor didn't control during the previous four years.

A relevant housing provider is a non-profit registered provider of social housing or a body entered on a register maintained under specified Housing Acts. It is 'linked' to a charity in the sense that one is wholly owned or controlled by the other, or both are wholly owned or controlled by the same person.

## What has changed recently?

### Charity and CASC definitions

The change to the definition of a charity and a CASC means only those located in the UK will qualify for charity tax relief from 15 March 2023. Previously, charities in the EU and EEA were also eligible. The change applies to income tax, VAT, CGT, corporation tax, IHT, stamp duty, stamp duty land tax, stamp duty reserve tax, annual tax on enveloped dwellings and diverted profits tax.

A UK charity is one that comes within the jurisdiction of the High Court in England, Wales and Northern Ireland or the Court of Session in Scotland. It must also meet the definition of a charity in Finance Act 2020.

A UK CASC is one situated in the UK which provides facilities for eligible sports in the UK. It must also be registered (or have applied to register) as a CASC under Corporation Tax Act 2010.

While transitional measures were introduced to extend the relief for another year to certain charities or CASCs, HMRC confirmed that only a small number took advantage of these.

### Gift Aid on loan waivers and refunds

Previously, a charity could not claim Gift Aid on loan waivers or waived refunds on the cost of tickets for subsequently cancelled events, unless it repaid the amount to the donor first and the donor then donated it back.

# Charities tax: what's the latest?

Due to the pandemic and pressure from the Charity Tax Group (CTG), HMRC now accepts that the waiver of a refund or loan is eligible for Gift Aid where the following criteria are met:

- There is a legally enforceable document to record the waiver. The CTG intends to issue a template for this; and
- It meets all the general conditions to qualify for tax relief under Gift Aid.

### Abolition of social investment tax relief

The social investment tax relief (SITR) scheme was introduced in Finance Act 2014 for investments in 'qualifying social enterprises'. The scheme provided income tax relief of 30% of annual investments up to £1m, where certain conditions were met.
It also allowed a deferral of CGT where gains were re-invested into a qualifying SITR scheme. But since 5 April 2023, the SITR scheme is no longer available.

## What has HMRC proposed in its consultation?

On 27 April 2023, HMRC announced it would discuss with the charities sector a reform of the tax rules to address issues of non-compliance. The measures under review are:

### Tainted charity donations

HMRC believes the TCD rules are not sufficiently robust to cover certain tax avoidance arrangements and has outlined three possible courses of action:

1. Completely rewriting the TCD rules
2. Removing the 'main purposes' test. This would enable HMRC to challenge arrangements where there is an incidental benefit to the donor or someone connected to them
3. Changing the wording in the 'main purpose' test to refer to 'financial assistance' instead of 'financial advantage'. This would make it easier for HMRC to challenge arrangements made to benefit donors.

The CTG supports option 3, which would amend the rules rather than completely change them.

### Charitable investment rules

Investments made by a charity are generally regarded as non-charitable expenditure unless they fall into one of the 12 approved charitable investments categories.

The first 11 categories are considered 'safe' investments and HMRC approval is not required. Category 12, however, is a catch-all and requires HMRC approval.

HMRC would like to abolish the automatic approval of categories 1-11. But the CTG has suggested a more targeted approach, rather than HMRC's blanket proposal.

### Non-charitable expenditure rules

Where a charity incurs expenditure for non-charitable purposes, HMRC may claw back tax reliefs claimed in the accounting period when the expenditure arose. If there is any excess expenditure, tax reliefs from the previous six years can also be clawed back.

# Charities tax: what's the latest?

HMRC proposes increasing the carry back period to more than six years. But the CTG has argued against the extension, noting the risk that HMRC may end up clawing back relief that was not granted in the first place.

## Sanctions for failing to meet filing and payment obligations

Only larger charities are required to submit tax returns annually. For other charities, HMRC issues notices to file a tax return periodically. HMRC notes that some charities fail to meet this obligation and continue to claim tax reliefs such as Gift Aid. In response, it proposes withholding these tax reliefs for charities that have not met their filing obligations.

The CTG has suggested more leniency for smaller charities which are often run by volunteers with limited knowledge of tax compliance matters. It has also urged HMRC to only withhold tax reliefs for non-compliance from charities that have deliberately and knowingly defaulted.

## Summary

As we can see, HMRC intends to apply more scrutiny to the charities sector going forward. In light of this, we recommend that charities undertake a review of their internal processes and procedures to ensure compliance with the existing rules and develop methods to deal with HMRCs proposed changes.

For further information or advice in relation to any of the issues raised in this article, please contact Sarah Kelsey or Jacinta Noone.

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# Benefits and more: how to stay compliant in reporting

As the 2023/24 tax year comes to an end, we provide key reminders and deadlines for employers to report accurately and on time.

## 1. Benefits in kind (BiKs) to employees

If you are an employer providing benefits or covering certain expenses for employees, you must send annual returns to HMRC, and make associated tax and National Insurance payments.

### 1.1 Forms P11D

Employers must report non-payrolled taxable expenses and BiKs using forms P11D/P11D(b). The deadline to submit these forms to HMRC is 6 July following the end of the tax year, with the payment of employer Class 1A NICs due by 19 July (22 July for electronic payments).

### 1.2 PAYE Settlement Agreements (PSAs)

A PSA is an agreement entered into between an employer and HMRC. Its purpose is to cover all the tax and National Insurance due on minor, irregular or impracticable expenses or benefits for employees which are neither payrolled nor included on the P11D. A PSA is often used to cover staff entertaining, where the employer does not want the employee to incur a tax charge on what is essentially a 'thank you'.

The application deadline for a 2023/24 PSA is 5 July 2024, with Income Tax and Class 1B NICs payment due by 19 October 2024 (22 October2024 for electronic payments).

### 1.3 Payrolling BiKs

Payrolling of benefits has been an option for employers for a few years now. All benefits can be put through payroll except employer-provided living accommodation and interest free/low interest loans.

Currently companies can choose to payroll benefits in kind but they must still complete a form P11D(b) and submit it by 6 July following the end of the tax year. Employers should also calculate Class 1A NICs. This means tax deductions are more accurate, as any adjustments to an individual's tax code are made in real time rather than at the end of the year when the P11D is submitted.

When opting to payroll benefits, you must register and notify employees in writing of your intention. You must send the notification by 1 June after the end of each tax year.

For those opting to payroll benefits for the 2024/25 tax year, the registration deadline is 5 April.

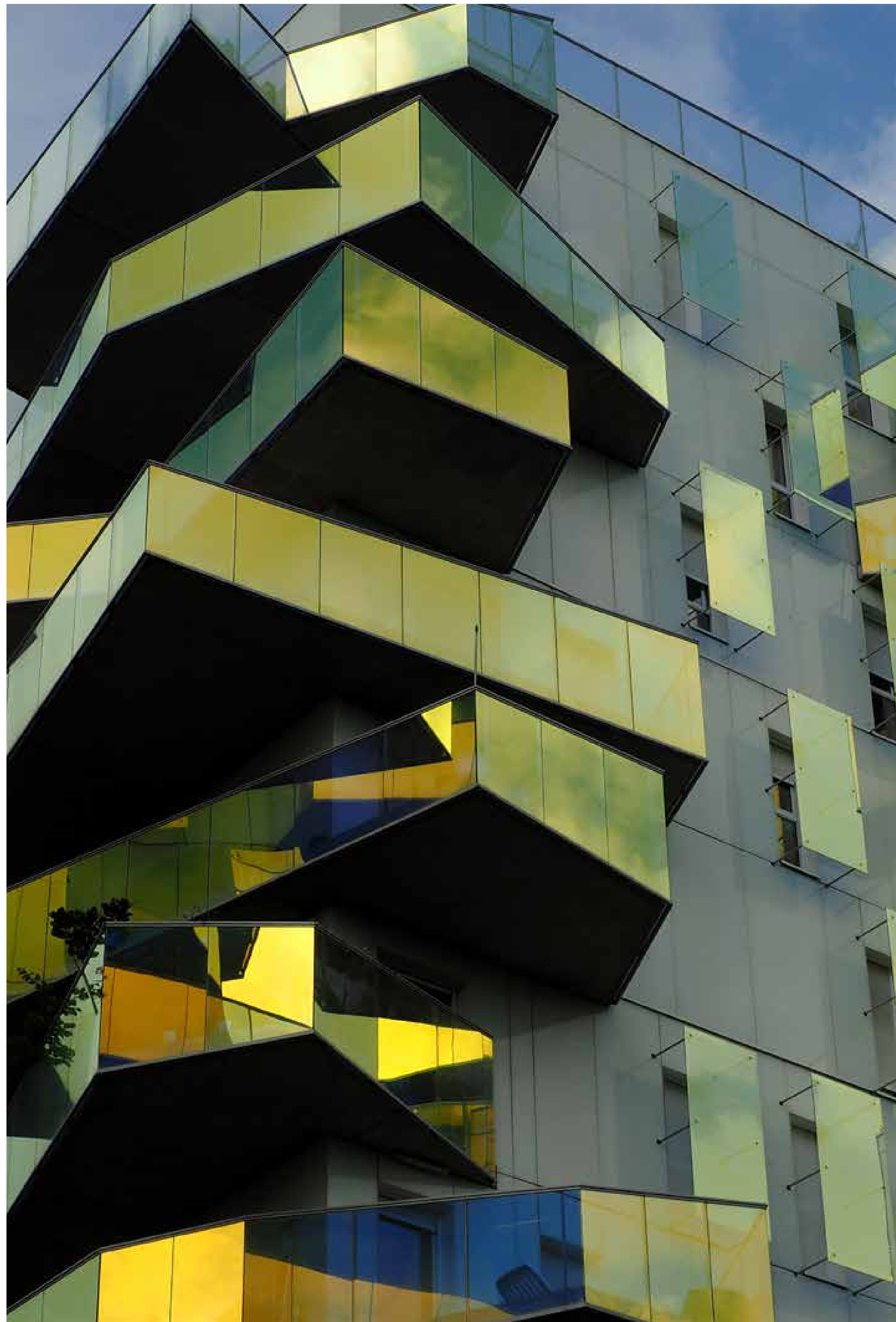
In a bid to simplify the tax system, HMRC has recently announced that the payrolling of BiKs will be compulsory from April 2026. The legislation is yet to be drafted and approved, but we encourage you to think about what you can do now to make the transition easier. We are happy to help with this, if you would like to explore the options.

## 2. Employment related securities (ERS)

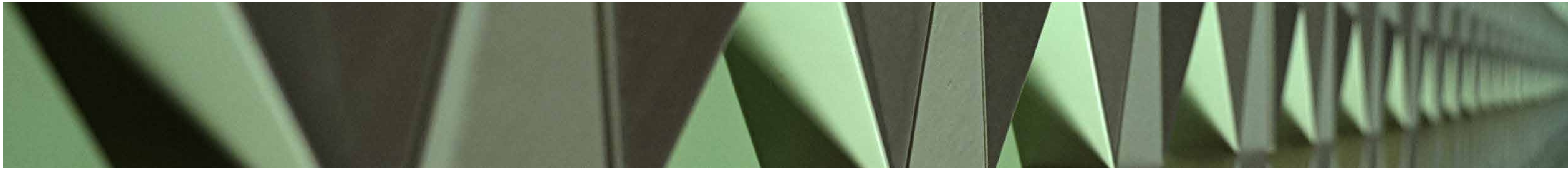
Employers operating a share plan or engaging in equity transactions with UK employees must report all transactions using the ERS return online. The submission deadline for the 2023/24 tax year is 6 July 2024.

Reportable transactions include acquisition of securities, vesting and exercise of securities, and taxable disposals of shares.

Employers must register each plan or arrangement with HMRC via the ERS Online Services. If there haven't been any reportable events during the tax year, a nil submission is still required.



# Benefits and more: how to stay compliant in reporting



For internationally mobile employees, the ERS reporting may be more complicated. The tax and social security treatment of the equity income will need to be determined based on the employees' tax residency and social security position throughout the relevant sourcing period.

## 3. Internationally mobile employees

There are specific reporting requirements for employers with internationally mobile employees, depending on their circumstances.

### 3.1 Modified payrolls

For expatriate non-domiciled employees under a tax equalisation agreement, the Appendix 6 modified payroll arrangements provide flexibility.

Under the scheme, HMRC allows the employer to report estimated UK taxable income on the payroll during the tax year and reconcile at the end of the tax year. The reconciliation payroll submission must be completed by 19 April, with the tax payable on the same day (22 April for electronic payments).

Similarly, the Appendix 7a or Appendix 7b arrangement with HMRC allows employers to pay estimated National Insurance Contributions (NICs ) for expat employees during the tax year. Employers must submit the NICs Settlement Return and pay any outstanding NICs by 31 March.

### 3.2 Short-Term Business Visitors (STBV)

For overseas employees visiting the UK for business from countries with a double taxation agreement with the UK, the payroll obligation can be relaxed if the employer has an STBV Agreement with HMRC. The agreement requires annual reporting. The deadline for submission for 2023/24 is 31 May 2024.

Visitors from non-treaty countries cannot be included in the STBV Agreement. However there are special arrangements, that can be entered into with HMRC's approval. Appendix 8 is an annual PAYE scheme which allows for a one-off payroll submission at the year-end. Applications for the 2023/24 Appendix 8 payroll and tax payments are due by 31 May 2024 following the end of the tax year.

So it's essential for employers to navigate these reporting requirements. Understanding the nuances of each deadline ensures compliance with HMRC regulations.

For further information or advice in relation to any of the issues raised in this article, please contact Louise Fryer.

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# Simplifying complexity for our clients

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 Global, an international network of legally independent accounting firms that gives us an on the ground presence in 150 countries around the world.

## PKF in the UK

**11th largest** Tax practice in the UK

**£153 million** annual fee income

**1450+** UK partners and staff

**5th** ranked auditor of listed companies in the UK

# 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.

## We offer the following specialist tax services:

### Corporate and business taxes

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, transfer pricing, 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.

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### 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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