



This is a summary of the key tax events for the week ended 10 February 2019. It has been compiled by Anita Monteith, Jane Moore and Ian Young.

This newsire contains all the individual postings we have made to the Tax Faculty website over the past seven days. It includes both news items ([ion.icaew.com/taxfaculty](http://ion.icaew.com/taxfaculty)) and new discussions ([ion.icaew.com/Taxforum](http://ion.icaew.com/Taxforum)).

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### Amendments to tax returns

ICAEW has responded to the [Call for Evidence: Amendments to tax returns](#) published by HM Revenue & Customs (HMRC) on 7 November 2018. The response is published as [ICAEW REP 22/19](#).

ICAEW supports the government's ambition for an amendments process that is simple and transparent, while noting that it is the complexity of the underlying tax rules which often makes an amendment necessary, particularly where the original tax return was prepared by a non-tax professional.

In straightforward cases, we would expect a system which allows (or requires in the case of VAT) digital filing, requires subsequent in time amendments by the same method (which software must be able to facilitate), which retains an audit trail of such amendments, and which HMRC can override to allow late amendments by exception where necessary. We do not consider it possible at this time to implement a digital method of correction that works for all tax returns and all taxes.

Any digital solution must also accommodate the digitally assisted and excluded, which will mean that amendments must also be possible on paper or by telephone.

It is important that taxpayer rights are neither diluted nor limited as a result of any changes following this call for evidence. In particular:

- the ability of taxpayers to protect themselves from discovery assessments
- the ability to make unprompted disclosures

- the availability of overpayment relief. In the case of overpayment relief, extending the right to amend tax returns to within the four year overpayment relief window would be an administrative simplification.

## **Capital allowances for structures and buildings**

ICAEW has responded to the Technical Note, [Capital allowances for structures and buildings](#), published by HM Revenue & Customs (HMRC) on 29 October 2018. This representation is available as [ICAEW REP 21/19](#) and follows a round table with HMRC and HM Treasury in December 2018 in which members related their own experiences and views.

We have welcomed the reintroduction of a tax relief for the construction cost of structures and buildings and note that it has been made effective from the date its announcement on 29 October 2018. However, a change of this magnitude should have begun with a full and open discussion with specialists from business before being implemented. While we understand the government's desire to encourage businesses to begin qualifying investment as soon as possible, delegating the specifics of this relief to secondary legislation, does not give the clarity and certainty the tax system needs.

We are particularly concerned about the absence of balancing adjustments on disposal. Although the simplicity of the remaining allowances passing to the next owner is attractive in straightforward cases, for many commercial situations this creates far more complexity. Our understanding is that any SBA already given will be used to reduce cost when the taxpayer's chargeable gain is calculated. This would in fact mean that rather than being a new additional allowance, the SBA is merely a timing benefit, with any benefit being clawed back when the property is sold.

We understand that the final interaction with chargeable gains is still being considered. The grant and assignment of leased property produces some complexities of its own, and the interaction with capital gains for wasting leases are not completely explained.

We note the need to retain a record of original construction costs for 50 years, even after a property has changed hands and been extended several times, or where the property is located overseas.

We are unclear how the SBA can continue to be given for a building which has been demolished.

We are concerned that this new relief is being financed in part through the reduction to the rate of WDA on special rate pool assets which is being reduced to 6% per annum. This was the rate used when long life assets were first introduced to cover assets with an expected economic life of over 25 years.

The Industrial Buildings Allowance (IBA) was abolished in 2008. While IBAs were restricted to particular types of buildings, the system had the advantage of having been defined and tested over many years. When we met representatives of HMRC and HM Treasury teams responsible for the new SBA policy, the 20 or so capital allowances specialists we assembled to represent ICAEW agreed unanimously that the reintroduction and tweaking of the old IBA legislation would be preferable to a proposed new allowance, with a completely new set of rules, and the inevitable teething problems that would result. It is highly likely that the biggest part of these teething problems will be where the legislation doesn't interact as intended with other existing tax legislation, but which the IBA legislation had already dealt with.

## **Higher rate of SDLT for non-UK residents buying a home in England or Northern Ireland**

Following an announcement in Budget 2018, the government has launched a consultation, [Stamp Duty Land Tax: non-UK resident surcharge consultation](#), to consider a 1% Stamp Duty Land Tax (SDLT) surcharge on non-UK residents purchasing residential property in England and Northern Ireland. The government is concerned that purchases of property by non-UK residents is pushing up house prices for UK residents.

The surcharge would apply to freehold and leasehold purchases of residential property by non-UK resident individuals and certain non-natural persons.

This latest addition to SDLT rates follows other recent changes, including:

- higher rates of SDLT on additional dwellings, introduced in April 2016
- first time buyers' relief, introduced at Autumn Budget 2017.

In designing the non-resident SDLT surcharge, the government has been guided by two key principles:

- the surcharge will apply on top of existing SDLT rates
- as far as possible it will rely on rules currently found elsewhere in SDLT and the wider tax system.

In outline, the government is proposing to treat individuals as non-UK resident for the purposes of the surcharge if they spent fewer than 183 days in the UK in the 12 months ending with the date the transaction occurs. A person will be deemed to have spent a day in the UK if they are here at the end of a day (midnight).

Although SDLT is only payable on property or land purchased in England and Northern Ireland, for the purposes of the SDLT residence test, it is days spent in the whole of the UK that will be relevant, not just days spent in England or Northern Ireland.

The government proposes that where an individual who has been subject to the surcharge spends 183 days or more in the UK in the 12 months following the effective date of the transaction, they will be eligible for a refund of the surcharge. There are special rules where there are joint purchasers of a property.

This consultation will last for 12 weeks until 6 May 2019. Comments for inclusion with the ICAEW response should be emailed to Sue.Moore@icaew.com before 15 April 2019.

## **ATED returns and payment for 2019-20**

The annual tax on enveloped dwellings (ATED) has to be declared and paid by 30 April 2019 for 2019-20 and the rates for this upcoming charge have just been published.

ATED was introduced with effect from 1 April 2013 to tackle the avoidance of stamp duty land tax (SDLT). The charge relates to residential property owned by a non-natural person, generally a company or a partnership with a corporate member. Initially the charge was just for properties with a value in excess of £2m but the threshold is now £500,000.

The charge for 2019-20 (that is, the year 1 April 2019 to 31 March 2020) is based on the value of the property at 1 April 2017 or the value at the date it is acquired if later; the increase in the charge is linked to the consumer price index.

<b>Property value</b>	<b>Annual charge 2019-20</b>	<b>Annual charge 2018-19</b>
More than £500,000 up to £1m	£3,650	£3,600
More than £1m up to £2m	£7,400	£7,250
More than £2m up to £5m	£24,800	£24,250
More than £5m up to £10m	£57,900	£56,550
More than £10m up to £20m	£116,100	£113,400
More than £20m	£232,350	£226,950

## House of Lords Report on the Powers of HMRC – HMRC responds

The House of Lords Economic Affairs Committee published, in early December 2018, a report into the recent extension of HMRC powers and the absence of appropriate taxpayer protection. We published a [review](#) at that time

HMRC has now published the [Government Response](#) with a [covering letter from Mel Stride](#) Financial Secretary to HM Treasury and with responsibility for HM Revenue & Customs.

The Mel Stride letter also refers to the HMRC response to another House of Lords report which you can read about here [Making Tax Digital for VAT: Treating small businesses fairly](#)

The HMRC response to the House of Lords report on the powers of HMRC is disappointing.

Frank Haskew, Head of Tax Faculty, commented on the original report as follows:

“The House of Lords has highlighted a number of concerns about the current balance between HMRC’s powers and taxpayer rights. Since the comprehensive review of HMRC’s powers concluded in 2012, we have slowly seen a shift in the balance being in favour of more powers for HMRC which are not always matched by corresponding taxpayer safeguards, for example the power to appeal against an accelerated payment notice. The report makes a number of recommendations which include a proposed new review of powers to consider the cumulative effect of recent changes and to identify what is needed as tax administration goes digital. ICAEW, which gave evidence to the committee, would be happy to support and contribute to such a review.”

The HMRC response states:

“Although since 2012 HMRC’s powers have evolved to tackle the changing nature of avoidance and evasion, there has been no fundamental change to the operation of the Department which would justify a further review at this time.”

## Your Charter and the new Customer Experience Committee

HMRC published a new Taxpayer Charter, called Your Charter, in 2009 and at the same time set up an oversight Committee which was known initially as the Charter Advisory Committee.

The original Your Charter was amended in 2016 as a result of the work of a review group including Ian Young and John Whiting. At that time the oversight Committee became the Charter Committee. Ian Young stepped down as chair of the Charter Advisory Committee: but took on an advisory role to the new Charter Committee for a 12 month period.

The most recent [annual report of the Charter Committee](#), published in summer 2018, indicated that the Committee was going to change again into the Customer Experience Committee

HMRC published an 11 page leaflet [HMRC Independent Adviser](#) setting out the role of the independent advisers and the make-up of the new Committee : Jim Harra is joined by three HMRC Independent Board members as well as five of the new independent advisers.

The role of the new Committee is explained in the leaflet as follows:

“A sub-committee of the HMRC Board playing a crucial role in supporting and challenging the Executive on customer experience-related issues to help the Department in delivering its mission.

The Committee will examine key issues that the Executive Committee is grappling with and help HMRC in addressing them, ensuring the focus is on putting customers first.

Our agenda will clearly link with the agenda of the HMRC Board and Executive Committee, addressing high profile items which are of material interest to the Department's successful customer handling."

There has not been a great deal of other information about the new arrangements for Your Charter but there is some information in the [HMRC response to the House of Lords report on the powers of HMRC: treating taxpayers fairly](#).

The report notes that the independent advisers have now been appointed following an open competition.

The HMRC response also indicates that "HMRC is currently reviewing Your Charter"

If Your Charter and the work of the new Customer Experience Committee are going to play a key role in the working and behaviour of HMRC then it would be helpful if there was more transparency about what is going on rather than having to rely on the annual Your Charter report each July and ad hoc mentions in miscellaneous documents such as the current HMRC response to the House of Lords report.

## **New double tax treaties with Jersey, Guernsey and Isle of Man**

In the past few months new UK treaties with the three Crown Dependencies have come into force, see:

[Jersey](#)  
[Guernsey](#) and  
[Isle of Man](#)

You can read the debate of 13 November 2018 on the new treaties in the House of Commons Delegated Legislation Committee by [clicking here](#).

The treaties came into force on 19 December 2018 for the Jersey and Isle of Man treaties and 9 January for the Guernsey treaty.

The predecessor treaties date back to the 1950s and they have now been brought up to date and are broadly drafted in line with the OECD's 2017 edition of the Income and Capital Model Convention and Commentary.

Under the new treaties, full relief is provided for withholding tax suffered on qualifying interest and royalties, subject to the application of a new principal purpose test for treaty benefits (in line with Action 6 of the OECD's BEPS project). Companies looking to rely on this relief will therefore need to assess whether the principal purpose test is satisfied, based on their existing or proposed arrangements.

The new treaties also all now include a non-discrimination clause (Article 24) and should in principle be considered 'full treaty countries' for UK tax purposes going forward. Multinational enterprises should therefore look to consider the impact of this change in respect of double taxation relief claims, application of the branch exemption election, and the forthcoming offshore receipts in respect of intangible property legislation. The latter will be Schedule 3 of Finance Act 2019: the [Finance \(No 3\) Bill](#) which will become Finance Act 2019 had its 3<sup>rd</sup> reading in the House of Lords this month (February 2019).

## **How to successfully select MTD accounting software – free webinar**

Making Tax Digital (MTD) is making a fundamental change to the way the tax system works. From April 2019 VAT returns must be submitted to HMRC by means of a compatible software solution communicating digitally via HMRC's API platform. [Register for a free webinar at 10am on 15 February](#) for guidance on sourcing and selecting the right set of digital tools for you and your clients to manage HMRC requirements.

Presented by **BASDA** in partnership with ICAEW this webinar will offer guidance through “10 Things to Consider” to help businesses that are seeking to procure business software. It will help you navigate through the process of selecting software and implementing a solution that is right for your organisation and clients to ensure you are MTD for VAT ready.

There is no charge to register for this webinar. **Booking is now live** and we recommend you register even if you aren't able to watch live as you will be sent a direct link to watch the recording at your convenience.

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Training, developing and supporting accountants throughout their career, we ensure that they have the expertise and values to meet the needs of tomorrow's businesses.

Our profession is right at the heart of the decisions that will define the future, and we contribute by sharing our knowledge, insight and capabilities with others. That way, we can be sure that we are building robust, accountable and fair economies across the globe.

ICAEW is a member of Chartered Accountants Worldwide (CAW), which brings together 11 chartered accountancy bodies, representing more than 1.6 million members and students globally.

**About the Tax Faculty**

Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from more than 130 volunteers, many of whom are well-known names in the tax world.