

# Happy anniversary

For many subscribers, the Readers' forum is the key part of *Taxation* and this issue celebrates the 20,000th query. **Allison Plager** reflects on 95 years of the forum.

**W**hich two words are possibly the most associated with *Taxation* magazine? The answer is 'Readers' forum'. Many of our readers will say that the first pages they turn to every week when the magazine drops through their letter box are the questions and answers. They are a reflection of our readers' work – the subjects covered are enormous – from capital or revenue to only or main residence relief (definitely a favourite) to VAT registration – the list is endless.

Occasionally, a reader asks about more remote areas of tax. One that springs to mind was a question on Finnish tax ('UK taxation of "capital" income in Finland', 20 May 2021, page 22) – it will not come as a surprise to learn that answers to that particular query did not fly through the window but we persevered and published two replies which we hope were useful.

Given the forum's popularity, it is an area of the magazine that editors tweak at their peril. As editor-in-chief Andrew Hubbard said: 'When I first joined *Taxation* I asked former editor Mike Truman what advice he would give me. He was very clear: whatever else you do, don't touch Readers' forum. He was right, of course, and I heeded that advice. The forum has been working well now for 95 years and doesn't need any "improvement" from me.'

## But are they real?

It is impressive that over the past 95 years, readers have continued to send in so many varied queries to the forum. It is certainly true that sometimes, as with the Finnish tax query, no one feels inclined or even qualified to reply. But there is usually a band of readers who reply regularly – sometimes to more than one query each week. For some, writing replies can be the springboard to penning longer, technical articles. In the interests of anonymity, it would

### Key points

- The Readers' forum has been part of *Taxation* magazine since its inception in 1927.
- Queries reflect readers' work and cover a range of topics especially when new taxes are introduced.
- Two readers post replies to the first query published.
- Queries through the ages – a social history?



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be wrong to give away any names here, but this has been the case in the past and is still a useful way of building up confidence.

Former editor Malcolm Gunn said: 'The Readers' forum is unique. The idea that readers should send in their problem cases and get them solved by other readers was a brilliant one when *Taxation* started in 1927 and it has stood the test of time ever since. It saved the editor, or some other poor soul, the task of replying.'

'In my time as editor my recollection is that we paid the grand sum of £10 per published reply. There was an unappointed team of people who for this small reward enjoyed replying to all the queries every week even though only one or two of the replies would be published, and sometimes none of them. There was a general principle that you replied anonymously which meant, I suppose, that you could come up with rather far-fetched solutions and not be criticised.

'I remember that one of this team of people answering every week was a retired Inland Revenue district inspector and he came up with the most inventive ideas which rather surprised me given his working background. He was so keen that I had to drive to his home and collect his answers during a postal strike. Another of this panel sent in answers many of which were well below an acceptable standard, or just plain wrong, and it was a constant problem trying to turn at least one of them each week into something which could be published.'

We are sometimes asked if the questions are genuinely from readers. The answer is that they are – at least 99.9% of the time.

### Fred Butler

As somewhat of a new contributor when it comes to answering the Readers' forum questions, we always find them of high quality, interesting and fun to answer. Also we like helping fellow tax advisers wherever we can.

*Fred Butler, tax director, Butler & Co.*

**Rob Durrant-Walker**

I first contributed to Readers' forum on a mutual trading query in 2009 because ... well no one had come up with an answer and, with the deadline pressing, the editor asked me nicely. Readers' forum is often the window into the dizzying real life complexities that clients get themselves into, or where the legislation doesn't cleanly cover a situation. The curve-ball questions that sometimes get thrown out are the challenging appeal of applying your technical knowledge and sometimes ethical judgment. Space is usually too short to permit the full answer that you'd like to give, so there's a discipline in writing and picking out what you think is most important. Seeing the contrasting replies and views on the same problem – whether you have contributed to the forum or not – can be enlightening.

*Rob Durrant-Walker, tax director, Crane Dale Tax.*

Andrew Hubbard said: 'I can assure readers that we have a steady stream of queries coming to the *Taxation* inbox and we have no need to make them up. On very rare occasions I or a member of the team might put in a question ourselves, but that is because we want to get readers' views on that topic. So be assured that the questions really do reflect the issues which readers are facing.

'I think that that is why the forum has been so successful over the years – a historian of tax in the UK would find plenty of insights from our pages. As far as possible we print the queries as they are sent to us. Sometimes we do make small editorial changes for clarity or ask the questioner to give a few more facts, but as far as possible we allow the querists to speak for themselves.

**Keith Gordon**

In 1996, I was a newly-qualified ACA studying for what has since become the CTA qualification. A colleague mentioned that he tested his technical expertise each week by attempting to respond to each of the four printed queries and I took this as good advice. Over the subsequent weeks I started submitting my tentative responses (by fax) and distinctly recall the thrill at seeing my first published response to a query back in 1997. I contributed fairly regularly and was soon invited by the then editor, Malcolm Gunn, to write fuller articles, the first of which was published in early 1998.

I occasionally tried to submit a reply to all four queries in one issue (each using a different pseudonym). I am pretty sure I scored three out of four on at least a couple of occasions – I do not recall ever getting a full set.

Once I became a full practising member of the Bar in 2006, I started to respond to Readers' forum queries using my own name, rather than a pseudonym, and I believe that over the past 15 years, many regular contributors have made a similar switch.

Lack of time prevents me from responding anywhere near as often as I used to. However, I look forward to reading the published responses each week, often picking up points that might have slipped my knowledge (if I ever knew them in the first place).

Many congratulations on notching up 20,000 queries. I look forward to seeing query number 25,000 (I am not sure how many more milestones I am going to see).

*Keith Gordon, barrister, Temple Tax Chambers.*

**Melanie Lord**

As I have to handle VAT in all kinds of situations, I originally started trying to answer all of the VAT queries as a way of keeping myself on my toes. We've also used it for staff training and exam prep. I have become much less diligent and much more sporadic but whenever I do sit down to answer one, as I never have enough time in a day, it's by way of a kind of 'ready steady write' mental agility test. It's a great way to test my knowledge and sometimes makes me think about things I haven't come across before which is always a good thing.

*Melanie Lord, director, AVS VAT.*

'We are also asked how we go about getting answers. Over the years we have built up a very strong team of people whom we can approach for answers on a regular basis but a lot of answers come in without us having to do anything. It is a proud boast that, at least in living memory, we have never failed to print an answer to a question, though occasionally it has been touch and go and it has been all hands to the deck as we try to find somebody who has the necessary expertise. But more usually we are spoilt for choice and we often put extra responses on our website – [taxation.co.uk](http://taxation.co.uk).

“It is a proud boast that, at least in living memory, we have never failed to print an answer to a question.”

'As far as possible we print the answers in the form that they are submitted to us. We often find that respondents have taken different views, particularly where matters of judgment are concerned. That is all to the good; we all know that tax is rarely black and white and I think that readers enjoy seeing a range of opinions. Just occasionally we do find that somebody has misunderstood a question or overlooked a piece of legislation and thus gone down a blind alley. I find that a gentle hint to the author that they might want to have another look at the answer is always appreciated. But, as I say, this doesn't happen very often. I am constantly amazed by the knowledge and experience that our respondents bring to their answers.'

Readers may have noticed that respondents increasingly send in their replies under their own names rather than using pseudonyms as was the tradition. We continue to be happy to print whichever the replier prefers and would never reveal the name of the actual person.

Former editor Mike Truman said: 'Without, obviously, giving away any names, it always struck me back in the days when everyone used a pseudonym that people would be amazed at the quality (and charge-out rate) of the people who replied, and was surprised that we didn't get a bulging post bag of questions each week. If I was asked questions I couldn't answer when lecturing, which was most of them, I'd suggest they wrote in to the magazine, but comparatively few did.

'But above all I remember being constantly amazed that such talented and experienced people were prepared to put so

**Capital or income**

*If it is not too early to submit queries, we shall be glad of opinions on the following case: A firm of auctioneers and estate agents bring into their accounts sums received from the sale of properties they have purchased at times varying from six months to sixteen years ago. They still own about twenty houses, which they purchased in 1908, and we are of the opinion that the profits from the sale of premises which have been held for more than, say, five years should be eliminated from the computation of liability. The Inspector will not agree to this. – F.S.A.A.*

Sadly, the inspector is almost certainly correct. The leading authority on capital or income is probably the House of Lords decision in *Lionel Simmons Properties Ltd (in liquidation) v CIR* 53 TC 461 where Lord Wilberforce said: 'Trading requires an intention to trade: normally the question to be asked is whether this intention existed at the time of the acquisition of the asset.'

Accordingly, if the properties were acquired with the intention of reselling them, they will have been acquired as trading stock. If something is acquired as trading stock, it remains trading stock however long it is held unless and until a positive change of intention takes place. Mere effluxion of time does not demonstrate a change of intention. In *Tempest Estates Ltd v Walmsley* [1976] STC 10, land acquired in 1946 as trading stock was held still to be trading stock when it was sold in 1963, almost 20 years later. HMRC (and the tribunals) will look for strong evidence to show a change of intention. At a minimum, a firm (which I take to mean a partnership) needs to minute the decision to change its intention and the new intention needs to be reflected in its accounts.

A tax charge arises on a change of intention because, when a property ceases to be held as trading stock, it must be treated as being disposed of at its market value at the time it ceases to be held as trading stock. This follows from the House of Lords decision in *Sharkey v Wernher* 36 TC 275, which has since been given statutory effect by ITTOIA 2005, s 172B.

It is not clear why a firm of auctioneers and estate agents would have acquired properties for resale rather than to generate income. It may be that the accounts are incorrect in having brought the acquisition and disposal of properties into the profit and loss account. FSAA could look to see if there is any evidence to show why the properties were acquired.

However, as it is for the taxpayer to displace the assessment, even if he can find evidence he will need to convince HMRC that previous years' accounts, which would have been approved by the partners, were in fact incorrect. I doubt that he will be able to convince HMRC but if the main partners are prepared to go to the tribunal and give evidence as to their intention, he might have a better chance with the First-tier Tribunal.

– Robert Maas.

*With my 1927 hat on*

The King's consolidated Income Tax Act 1918 determines that such properties would be assessed under Schedule A on their annual value and on income derived from such holdings including rents. The question is whether the repeated activity of buying and selling properties amounts to income derived from property under Schedule A, or a trade under Schedule D, rather than being treated as capital gains. Capital gains are not taxable of course.

The case of *Pickford v Quirke* 13 TC 251 which has just been decided this month of October 1927 gives a fresh interpretation on this point. The Special Commissioners decided that a series of four transactions within a short period – being the buying of and liquidation of shares in cotton spinning companies – constituted a trade and that the taxpayer was assessable to income tax under Schedule D. Rowlatt J said: 'It is very well known that one transaction of buying and selling a thing does not make a man a trader, but if it is repeated and becomes systematic, then he becomes a trader and the profits of the transactions, not taxable so long as they remain isolated, become taxable as items in a trade as a whole.'

It is true that there is a certain repetition to the transactions for F.S.A.A.'s client, similar to *Quirke*. However, we can distinguish F.S.A.A.'s case from *Quirke* due to the much longer time over which most of the assets were held, being over many years. Particularly if a rental income was derived from a property in the interim it is suggestive that 'systematic trading' in the buying and selling of such properties was absent. F.S.A.A. should hold fast in the argument with the inspector, though may have to budge somewhat on some of the shorter term property trades.

*With my 2022 hat on*

First, my apologies to *Taxation* for being 95 years' late in replying to this 1927 query. I see that since then we have introduced capital gains tax in 1965, independent taxation of husband and wife a mere quarter of a century after that, and we are still referencing the *Pickford v Quirke* case, including HMRC in its *Business Income Manual* at BIM20235.

Since 1927 we have had numerous tax cases on similar themes around that capital/income divide. Derived from those we have developed the 'badges of trade' concept, for instance around profit motive, number of transactions, changes to the asset, etc. The facts and motives behind each transaction should be considered, and it could be the case that some of the very short-term property disposals amount to a trade in the nature of 'flipping' and would be subject to income tax. It sounds as if the remaining 20 properties will have been held for 16 or more years, so F.S.A.A. should stick with a non-trading position for those (and capital gains tax treatment were those transactions to be present day).

– Rob Durrant-Walker, formerly 'Cello Boy', *Crane Dale Tax*.

much time into answering such tricky questions for such a paltry financial reward, but being equally grateful that they did.'

However, be warned: anonymity is not always within our power and may not be guaranteed – although equally, an educated guess will not inevitably provide the real identity.

As Readers' forum regular respondent Gardener relates: 'I had finished a lecture to general tax practitioners at a location where I had never been before – the audience were all strangers to me. As is normal, a short line formed to ask me questions at the end – a little free consultancy on the

basis of very limited information, part of a tax lecturer's life. I worked through four or five, and looked up enquiringly at the last person. "What is your question?" I asked, half an eye on my watch, taxi booked in a few minutes. I was not expecting him to come out with: "Are you Gardener?" Apparently my speaking style is very similar to my writing style...

'Naturally I had to use the neuralyzer I had stolen from the *Men In Black* to protect my secret identity. It is a pity that the perceptive accountant remembers nothing of that day – even if it was a good lecture.'

**Pete Miller**

I enjoy answering the questions for the sheer intellectual challenge. After 34 years, I still find tax endlessly fascinating, as well as sometimes frustrating, and it's also helpful and sometimes intriguing to see what issues are causing problems to taxpayers in the real world. Very occasionally, there is a pleasant bonus, such as the case where the taxpayer concerned called me and asked me to help with taking his case to the First-tier Tribunal, where he won handsomely (mainly through his own efforts, not mine). It reminds me that, while I might find these intellectually stimulating, these questions also involve real tax payable by real people; they're not just an abstract concept, like a crossword puzzle.

*Pete Miller, director and head of corporate tax, Jerroms Miller Specialist Tax.*

**Meg Saksida**

Every time I see a question in my area on the forum, I think 'Ooh – good question. I could never answer that – I have no idea'. The forum questions have come from our learned members who are all super astute on the workings of the legislation and case law, so I always think, if they don't know the answer then I don't have a chance of knowing it either. But then, the inquisitive and stubborn part of my personality comes to the fore and I think 'I'll just have a little look'. Two or three hours later, having been in the 'zone' (where you lose track of time and don't hear or see anything else around you), I have a solution that I believe in. It is very satisfying and energising to know that I found a solution in the first place, but also that I was able to help, albeit in a small way, other members of our wonderful profession.

*Meg Saksida, freelance author, editor, CPD speaker and tax examiner.*

**Long history**

The forum has been part of the magazine since its inception on 1 October 1927. The first issue contained four queries and the replies to those were printed in the next issue dated 5 October 1927. It was initially called 'Readers' queries and replies' before morphing many years later into its current title of 'Readers' forum'. The number of queries has been limited to four for each issue for many years, but this was not always the case. In my research for this article, I found that in volume XXI (2 April 1938 to 24 September 1938) there were five new queries and sets of replies in each issue. Indeed, the number of published queries has varied from only three to eight.

We republished the first four queries in 'Ask me anything' (*Taxation*, 23 June 2022, page 8) and, to see how they compared to the 1927 responses, invited replies to any of them which piqued readers' interest. The original replies appear on [taxation.co.uk](http://taxation.co.uk) as an attachment to this article but we are

**Annette Morley**

Why have I offered replies to Readers' forum queries? Facetious answers abound to this question, but fundamentally I am fascinated by the idea of both the process and the result of following the paths of tax legislation and interpretation to arrive at a solution that clears a client's dilemma and removes their worry.

Which abiding memories have I of replying to queries over the years?

First, there are the obviously complex ones. It is only possible to reply if you have immediate time available and the tax looks irresistibly interesting. Envisage this: a development company with joint venture agreement, failing targets, LLP including company and disposal of partnership interest. That's fun!

Second, beware the ones that look simple although I always failed to resist them. Diving into the detail you spot the 'grey area' of tax lurking there. Unravelling the legislation threads you mentally congratulate the querist for delegating the task.

Finally, when key information is missing, there is no alternative to outlining solutions to each variation. It is not possible to set the querist some homework and come back next week. It's also challenging to keep the reply word count within the preferred limits. Yet, you're in it for the challenge, so there's satisfaction when all is complete.

*Annette Morley, Annette Morley Advising.*

delighted that two readers chose to reply to the first query – 'Capital or income' – perhaps because this issue continues to cause advisers as much vexation today as it evidently did 95 years ago. We are delighted to publish our two new replies – from Robert Maas and Rob Durrant-Walker – to whom many thanks – in *Capital or income*.

**Valuable results**

Most of the time, we do not know how the problem in the query is ultimately resolved, although it would be interesting to know and readers are welcome to send in updates if they have time and inclination.

Some queries develop a life of their own. We referred to one in our article 'Ask me anything' (23 June 2022, page 20). Pete Miller had responded to a query 'Timely disposals' (19 March 2020, page 25) concerning entrepreneurs' relief for a disposal made in stages. The querist, Christopher Thomson, then contacted Pete who helped prepare his appeal for the First-tier Tribunal. This had a successful outcome, as Pete Miller revealed in his article 'Wrong answer' (3 March 2022, page 8).

Another case concerned pension planning. Former editor Richard Curtis said: 'I have always been interested in the dusty corners of the tax legislation, but one instance sticks in my mind. My interest was piqued by a Readers' forum question, "Spouse's pension", the replies to which were published in March 2011 ([tinyurl.com/yckkjtb](http://tinyurl.com/yckkjtb)). Prudence wondered whether a company might make a pension contribution for the non-working spouse of the owner, which would be allowed for corporation tax purposes and taxed as a benefit on the

**Paula Sparrow**

I think what stands out for me on Readers' forum is that what at first glance looks like an easy question invariably throws up curve balls as you work through it, while other times I have been asked to have a go at a question because no one else 'fancied it' and once you work through the problem it isn't as difficult as it seems at first glance. I have certainly learned a lot through contributing answers as well as reading other replies. It is also a useful tool whenever something comes up in the office that is a bit left field. It's my one must read every week.

*Paula Sparrow, tax director, Butt Miller.*

**Mike Thexton**

I am running an introductory course for new recruits who know very little about tax, and probably even less about what working as a tax adviser involves. I use Readers' forum as an invaluable source of lecture examples – short, practical problems that give me an almost infinite range of technical issues to choose from, helping my class to have some understanding of the things that clients ask about and how they will, when they have learned some more, go about giving advice. The fact that the answers are provided makes them even more ideal for my purpose.

*Mike Thexton, director, Thexton Training Ltd.*

working spouse. The question elicited only one reply which discussed various aspects of the issue.

'I wanted to know whether an employee might sacrifice part of their salary, with their employer paying the amount given up into a pension scheme for their spouse who was not an employee of the business. That question, "Another pension" was published in May 2011. Constance asked whether an employee receiving a salary of, say, £150,000 might instead ask for £100,000 and £50,000 to be paid into a pension scheme for their spouse.

“ I do still wonder whether the publicity given to this matter in *Taxation* had anything to do with this loophole being closed shortly afterwards.”

'I sat back to await the replies, but again these were a little inconclusive. One reply suggested that this arrangement would work, while two suggested not. In desperation, and before we went to print, I had to ask a very good friend of mine, Brumus (he likes dogs and the Jefferson Airplane), to look into this. Brumus reviewed the legislation in ITEPA 2003, s 307 and s 308 and came to the conclusion that there was no reason that this arrangement would not work, with the employer obtaining relief and no tax charge being made on the employee. I do still wonder whether the publicity given to this matter in *Taxation* had anything to do with this loophole being closed shortly afterwards by FA 2013, s 11.'

**Back in time**

My exploration of the many, dusty, ancient volumes of *Taxation* proved fascinating. By pure chance, the first query I happened on was called 'Damsel in distress' (3 October 1991). To be honest, the reason this sprung out was because in the second paragraph, the querist states she had never 'lived anywhere north of Tunbridge Wells', my home town. Although she was not 'disgusted of Tunbridge Wells', it was good to see the royal spa town appearing in *Taxation*.

Another fascinating query 'Wife's jewellery' appeared in the 23 October 1965 issue. No ordinary wife this though. The query begins: 'The wife of one of our clients, prior to marriage, had had several *affaires* with wealthy gentlemen who, as a sign of appreciation, presented her with jewellery.'

**Neil Warren**

It is fantastic that the reader queries include at least one VAT question every week, invariably a practical problem arising from everyday business deals and transactions. International challenges; land and property dilemmas; the minefield of partial exemption – all aspects of these mind-blowing topics have been well-covered in the magazine query pages since the nation's favourite tax was introduced to our shores over 49 years ago.

I have always been very impressed with the quality of replies to the VAT questions, particularly the person who regularly replies under the pseudonym of Gardener. That person definitely earns their £40 fee for the quality of their replies.

My favourite VAT queries are those where clients make bizarre suggestions to their accountant about VAT schemes, along the lines of: 'My mate at the pub says I could save VAT by doing A, B and C.' The suggestions are often so ridiculous that the accountant thinks there must be some truth in them, so check them out by submitting a query to *Taxation*. I also enjoy the questions where clients want to claim VAT on costs linked to a hobby. For example: 'I've just bought a speed boat for £200,000 plus VAT – if I put my company logo on the side of the boat to advertise my business, can I claim £40,000 input tax on my next VAT return?' Brilliant!

*Neil Warren, independent VAT consultant and author.*

Well – who knew *Taxation* had a racier side? I was hooked. She had later sold the jewellery to help her husband establish his business and the inspector was investigating the client. The querist wanted to know how far the inspector was entitled to go 'in requesting the disclosure of names and other embarrassing information'.

In part of his reply, Lane said: 'As to how the lady came by the jewellery, this has no bearing on the tax affairs of her husband, and there seems no reason why a lady should not have received gifts from friends over the years without the need for the inspector to ask for details. What impertinence: he is at liberty to draw his own inferences...'

Going back a few more years to 1938 – the year of King George VI's coronation – a query concerned a client who let their premises to an independent firm to provide 'seating accommodation to view the coronation procession'. The hope appeared to be that the income received would not be assessable.

This remains a topical issue today – how many times have advisers come across similar situations, for example concerning the letting of property in London SW19 to tennis players during the Wimbledon fortnight? Then, as would be likely now, the respondents agreed that there were no arguments to combat the inspector's contention that – at least in that case – this was trading income.

**War years**

The years 1939 to 1945 inevitably gave rise to many World War II related queries. In the 7 October 1939 issue of *Taxation*, a question concerned grants for air raid shelters. Specifically, owners of factories, mines and commercial buildings were required by the Civil Defence Act 1939 to provide air raid shelters for persons working or living in those premises. The government gave a grant 'equal to a proportion of so

**John Woolley**

To me, Readers' forum queries demonstrate that for some questions, there might not be an answer. Questions can arise in the world of tax where there is simply no definitive answer – either in the legislation, case law or HMRC practice. In such cases, a practical view is needed to determine the best approach to take to deal with the problem. For a number of the Readers' forum questions, there is no definitive answer. But the person providing the answer may well have experienced the problem before and so the forum provides the opportunity to share that experience.

*John Woolley, director, Trustee Support Services Ltd.*

much expenses of a capital nature incurred in providing the shelter' but the Act failed to define how the payment would be made. The querist wanted to know if it would be allowed as a deduction against the business's income tax (there was no corporation tax until 1965) for 1939-40. The replies were non-conclusive – in essence it seemed that how the grant was to be paid was undecided. *Plus ça change plus c'est la même chose...*

Another query – from *Taxation* dated 3 June 1944 – asked about the tax residence status for a prisoner of war. The querist set out the client's war history – in itself a stark reminder of the incredible deeds carried out by ordinary people. The client had left the country on active service on 3 September 1940, become a prisoner of war in April 1941, escaped from the prisoner of war camp in Italy in September 1943, and rejoined 'our lines' in October 1943. Thankfully, he returned to the UK in December 1943.

The replies stated that 'the general rule is that if a prisoner of war is absent from this country for a complete year of assessment ... and he does not maintain a residence in this country, then he will be treated as not-resident and not ordinarily resident for the period of his absence'.

The year 1944 was also interesting because on 1 March the Income Tax (Offices and Employments) Act 1944 received royal assent. This introduced PAYE for all employees. It will be no surprise to learn that this development gave rise to problems and readers' queries reflected these.

Indeed the issue dated 1 April 1944 included a query on the tax treatment of 'spare-time waiters' (now they would be known as casual weekend and evening staff). In essence, the querist wanted to know whether PAYE applied to the earnings and tips of the spare-time waiters. Interestingly – and rather differently from now – one of the replies quoted from an Inland Revenue PAYE publication which stated that 'where tips form the greater part of the income, it may not be possible to apply PAYE at all, and other arrangements will be made to ensure payment of tax during the year'.

**Nothing new in this world**

Other topics that cropped up that could just as easily appear today include whether the cost of travelling between home and work is allowable – spotted in the 9 July 1955 issue.

The circumstances were particular: the client, who was a baker, had to leave home at four o'clock in the morning when there was no public transport available (again very much in line with many parts of the UK except perhaps the major cities). In this query, the client had therefore to use his own car

and the querist asked whether the inspector was right to say this was not business use.

The two replies gave different responses. The first gave an example of two clients who carried on business in Covent Garden – which then was London's main fruit and vegetable market. The replier explained that after pointing out to the Inland Revenue that 'it was part and parcel of the business' for the clients to be in Covent Garden at four o'clock in the morning, so the cost of travel was a business expense, the inspector allowed it. Therefore the querist should persevere and should be successful. On the other hand, the second replier – probably more in line with the replies that would be expected today – said: 'As is well known, the cost of travelling from a private residence to the business premises is not an allowable expense either for Schedule D or E purposes.' The use of the individual's own car, rather than say a taxi, did not make the cost any more allowable.

“ The client, who was a baker, had to leave home at four o'clock in the morning when there was no public transport available.”

The treatment of payments in lieu of notice arose in *Taxation* dated 23 July 1960. In this instance, the employer intended either to pay six months' salary in lieu of notice (as stated in the employee's contract) and six months' salary 'as an appreciation of past services', or it would amend the contract to pay him 12 months' salary in lieu of notice. The first replier said the six months' salary payment in lieu of notice would be subject to tax because it was an emolument from the office, but the additional payment would not be taxable because it was in effect a gift and would not necessarily be received by every holder of that office of employment.

Indeed, on the idea of amending the contract, the replier said: 'Why go out of the way ... to colour a gift as salary? A gift, even though calculated as an additional six months' salary, if it is truly given to this particular man because of his personal qualities, past services and faithfulness and so on, will not be taxable.'

Readers may recall the subject of gifts to employees has appeared twice in the Readers' forum this year – 'Tax treatment of one-off employee reward payments' (10 March, page 24) and 'Tax treatment of payment to personal assistant/friend' (7 April, page 26). Even now, the correct treatment seems unclear with opinions divided.

**New taxes**

The introduction of capital gains tax and corporation tax in 1965 gave readers more cause for concern. Capital gains tax queries, for example, asked about the valuation of assets and whether there was a concession for gains accruing while a person was non-resident.

Another tax milestone came in 1996 with self assessment. A query asked about the Revenue's interpretation of what constituted proper books and records under the new

regulations. In this case the business expenses were recorded in the books and records with the cash account balance in the accounts being posted to drawings. However, the Revenue seemed to be stating that a record must be kept of all drawings. Delightfully, one of the repliers opened his response with: 'This is exactly the kind of pernicious nonsense that should be resisted.'

### IR35

And let us not forget IR35. This has been with us since 6 April 2000 but has been providing food for queries since its inception in the March 1999 Budget. For example, a query in the 9 March 2000 issue (page 523) said they had a client who operated by way of a personal service company but the contract with the employer company would be terminated on 31 March 2000. The contract provided for nine months notice to be given of termination and the employer company would pay the personal services company for the balance of the notice period until by the usual monthly payments. The querist was concerned that, even though the contract ended before the new rules came into force, because the payments were contractual they would fall foul of the new rules.

“Thank you to everyone who has ever submitted a query and to our amazing repliers who are prepared to share their knowledge so generously.”

Another querist (22 June 2000, page 321) said they had heard that trading through a limited partnership would escape the personal service company provisions – the idea being that a central company would be created and the company would enter into limited partnerships with those potentially affected by IR35.

Perhaps a not dissimilar question arose much more recently (8 July 2021, page 26) concerning the off-payroll working rules which came into force for the private sector in April 2021. A querist had several companies owned by the same persons. They said that, according to HMRC, they were required to add the accounting results of these companies to see if the size criteria is breached for off-payroll working purposes. Most of the companies were small if looked at independently, but would appear to be medium or large if all considered together. Some were connected but others operated completely differently.

The responses seemed to be inconclusive with one saying they always knew 'that IR35 was complicated, that the public sector rules made it more complicated, and that the extension of those rules to the private sector made it more complicated still' and the other suggesting that it might be worth the querist seeking the advice of their auditors or a corporate lawyer.

Reader, I could go for days – so many topics, so little time. All of us who work in tax are familiar with the cry from non-tax people 'how can you find tax interesting?'. Well, I defy anyone not to find the past 95 years of readers' queries anything but fascinating. Quite apart from the tax issues, they are an incredible source of social history.

### 20,000th query

#### Is donor's stay in gifted property a GWRB?

My client's mother, who has always been cunning and manipulative, gave them her home in November 2019. The deeds were changed with the land registry and all the utilities, etc were put in my client's name who has paid all the bills since receiving the gift. Just before she was meant to move out she fell and broke her hip and was thus not well enough to relocate on the day of the completion of the gift.

My client remained in their home and their mother stayed in the house until the end of January when her GP said she would be well enough to move. Just before she was due to move out, however, the washing machine spontaneously flooded at the (empty) flat that she was going to move into, so she had nowhere to go. She had to wait three months to get the engineers out as Covid-19 had hit. When her flat was ready to move into in May 2020, she allegedly caught Covid-19 and was unable to move for a month. While unwell, she developed a fear of leaving her house and is now an (undiagnosed) agoraphobic, claiming she is simply unable to move out.

My client thinks that her mother was never going to move out and has been using everything she can find as an excuse while they continue to pay all the insurance, council tax and utilities. She has now been diagnosed with cancer and been given two years to live.

Will the house remain in her estate as a gift with reservation of benefit, or will she be able to rely on events out of her control forcing her to stay in the home?

– MaternalGrief.

### Big reveal

Finally, it is time to reveal the winning entry for the 20,000th query – the whole point of this celebration of the Readers' forum. Thank you to everyone who submitted an entry and, after much deliberation, the winner comes from MaternalGrief. It is reproduced in *20,000th query* but also appears in the New queries page this week.

We also received a fascinating entry from Pete Miller whose query is number 19,999 as well as a more general question from John Woolley who asks: 'What, in today's climate, is "acceptable" tax avoidance?' While we have not included this as a new query, we would be delighted to hear readers' views – please email [taxation@lexisnexis.co.uk](mailto:taxation@lexisnexis.co.uk).

So our celebration of 20,000 readers' queries comes to a close. Thank you to everyone who has ever submitted a query and to our amazing repliers who are prepared to share their knowledge so generously. Please keep them coming – queries and replies – they are the backbone of *Taxation* magazine.

Editor-in-chief Andrew Hubbard promises: 'I know that saying that something is "safe in my hands" can be seen as the kiss of death but the forum will continue to be an integral part of the magazine for as long as I have any say in the matter.'

Here's to another 20,000 queries! ●

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- Readers' forum's 20,000th query: [tinyurl.com/4m324wfr](https://tinyurl.com/4m324wfr)
- Chris Thomson case: [tinyurl.com/2zrfzm66](https://tinyurl.com/2zrfzm66)
- Coding out SA balancing payment: [tinyurl.com/4brxamwj](https://tinyurl.com/4brxamwj)