STEP Guernsey conference
12 June 2024

Tax Dispute Trends for 2024 and Beyond

HMRC strategy

Jon Claypole & Becky Hartley
BDO LLP, Tax Dispute Resolution

IDEAS | PEOPLE | TRUST

BDO

Introduction

Jon Claypole
Partner

Tax Dispute Resolution

Becky Hartley
Director

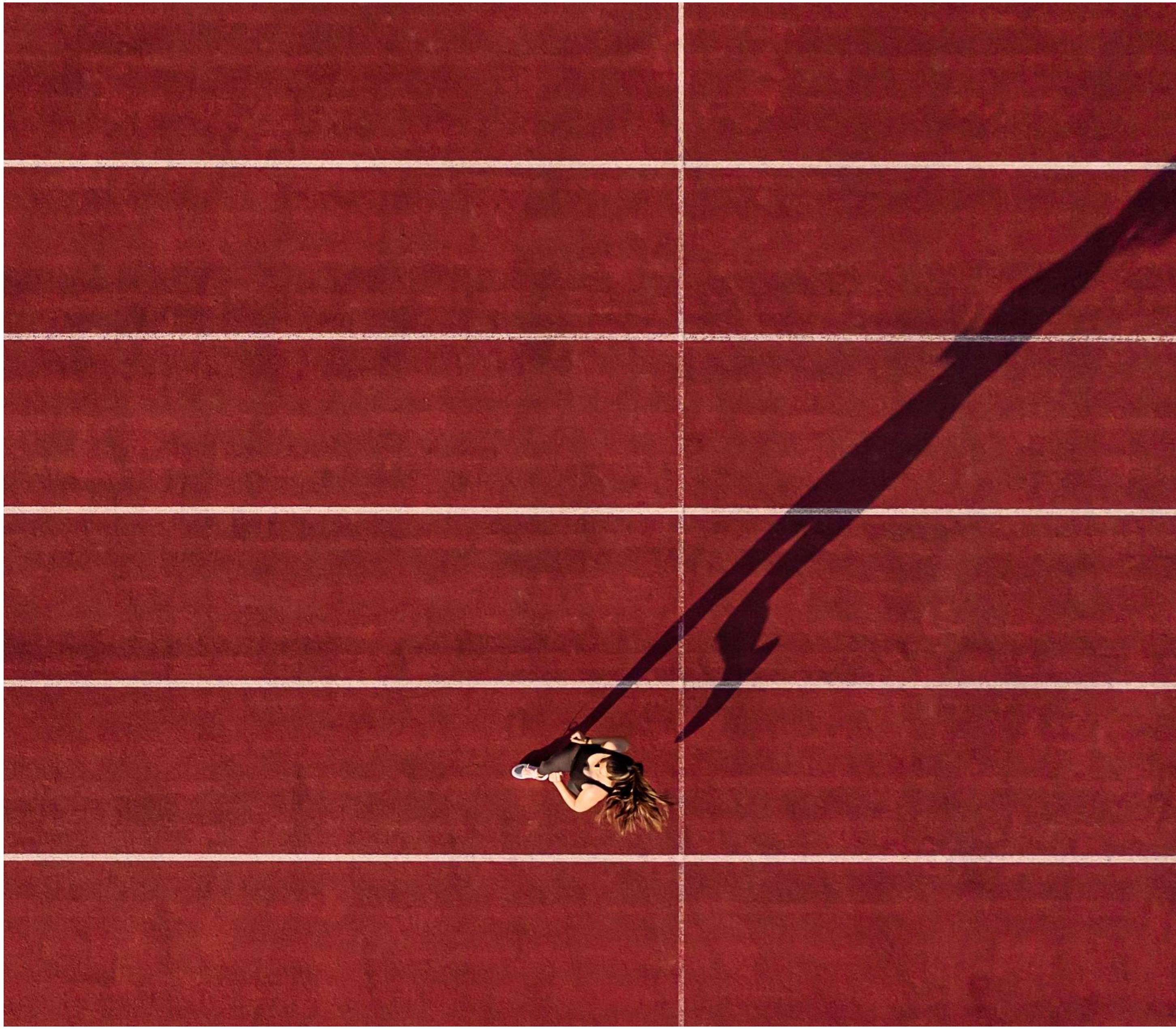
Tax Dispute Resolution

Agenda

1 The backdrop to HMRC activity

2 Tax dispute trends for 2024 and beyond

3 The future of HMRC
- a new government

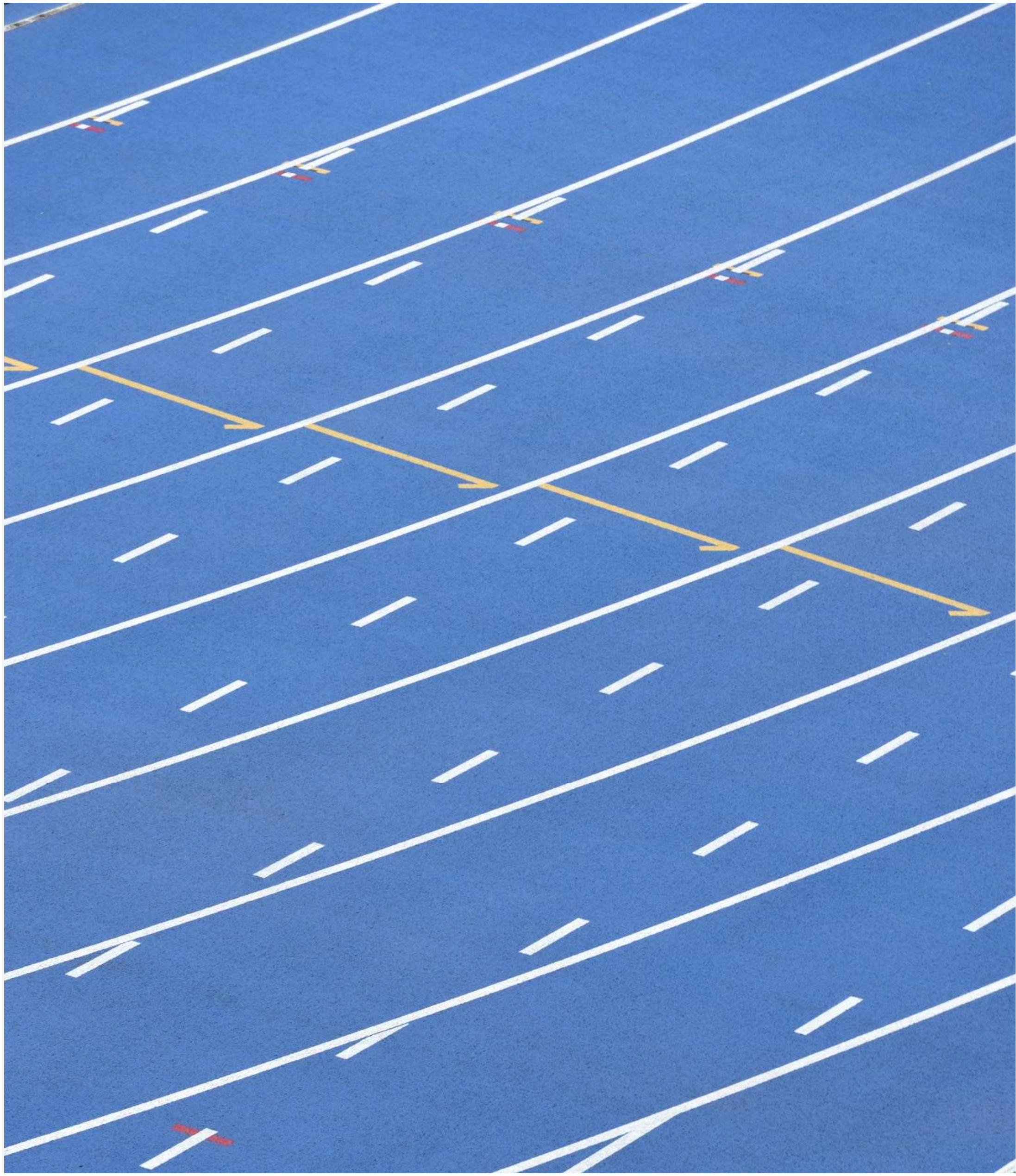


The backdrop to HMRC activity

The backdrop to HMRC activity

HMRC annual report 2022 to 2023:

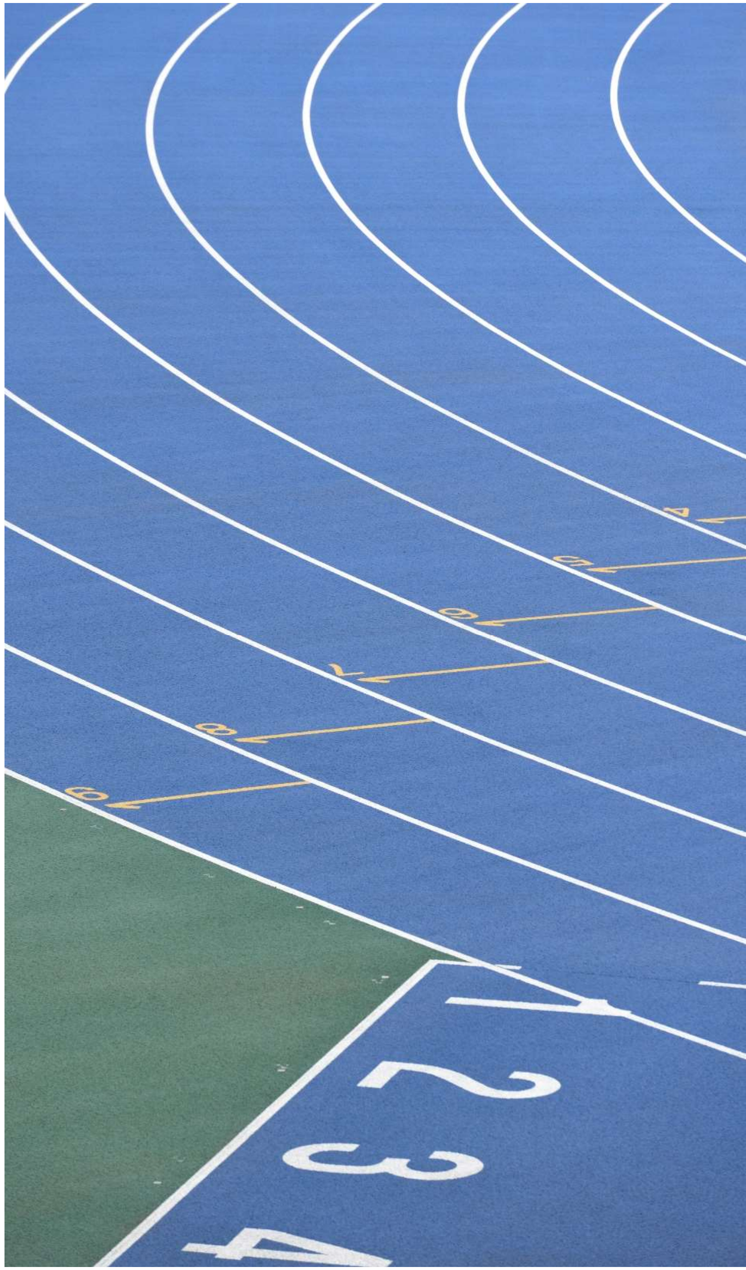
- £814bn total tax revenues
- £34bn additional tax generated through tackling avoidance, evasion and other non-compliance
- £35.8bn (4.8%) estimated tax gap in 2021 to 2022 (not including 'offshore' which HMRC are yet to quantify)
- £45.9bn agreed and uncollected debt
- £5.7bn managed under Time to Pay arrangements with 912,000 taxpayers
- HMRC late payment interest currently set at 7.75%
- Spring Budget 2024 announced £140m investment to improve HMRC's ability to manage tax debts.



The backdrop to HMRC activity

Increasing sources of third-party data

- FATCA/CRS bank account data
- UK Trust Register and Register of Overseas Entities
- Information requests under OECD
- The J5 (Australia, Canada, the Netherlands, USA and UK) sharing information globally
- Data leaks e.g. Pandora Papers
- **Coming soon** – crypto asset and online platform data exchange globally
- CONNECT system – phone numbers, bank accounts, DVLA
- Online open sources: social media, press
- Crypto assets accounts
- Tax Returns/voluntary disclosure programmes
- Financial Information notices to force bank data
- Other government agencies - Border Force, Home Office
- Travel records – boat/plane logs.



The backdrop to HMRC activity

- Public pressure and external criticisms
- Uncertainty of Government – Conservative vs Labour policies
- HMRC target the resourcing on a cost v benefit basis. High value investigations and lower value lower effort interventions (i.e. nudge letters)
- Offshore matters continue to be of focus to HMRC even absent of an ‘offshore tax gap’. This is unlikely to change and indeed an area of focus in proposed Labour reforms
- Competing priorities - HMRC transformation – Making Tax Digital, operational issues, resourcing etc.

Tax dispute trends for 2024 and beyond

IDEAS | PEOPLE | TRUST

Tax dispute trends for 2024 and beyond

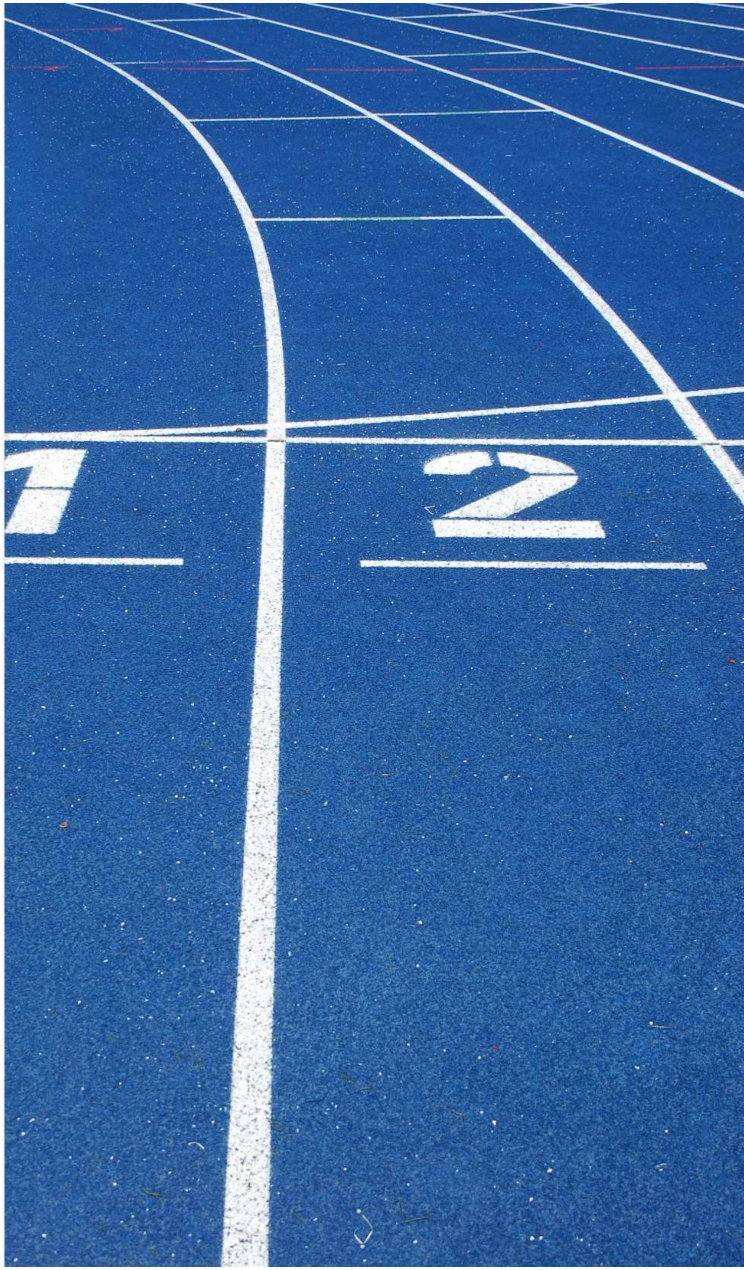
For high-net-worth individuals and Trustees

Top Trends:

1. Domicile and Tax Residence Enquiries
2. Complex Tax Investigations
3. Transfer of Assets Abroad
4. Penalties

Watch this space:

5. Online trading, social media and e-sports
6. Crypto assets
7. Register of Overseas Entities
8. Withholding Taxes



1. Domicile and Tax Residence Enquiries

The domicile status of long-term UK resident individuals continues to be a high-risk area for HMRC.

Do the Spring Budget 2024 announcements mean the end of domicile enquiries? Not just yet...

HMRC may open an enquiry into a tax return up to 12 months after that return is filed

If the announced changes take place (in whatever form) from 6 April 2025 the returns for the 2024/25 period are potentially open to enquiry and therefore challenge until 31 January 2027

HMRC also have discovery powers with a standard limit of 12 years for 'offshore matters'

After the concept of domicile there will be residency enquiries

Evidence for both domicile or residency checks is paramount!

Domicile recent case law

Increasing success for HMRC in the Tribunals..

HMRC won the following domicile cases in 2023

1 Jeremy Coller v HMRC [2023] UKFTT

- Taxpayer born in the UK
- Father acquired domiciled of choice in UK prior to his birth - UK domicile of origin
- Had never given serious thought to where he might permanently settle
- Significant weight placed on actions of deceased individuals rather than written statements.

2 Shah v HMRC [2023] UKFTT (deceased)

- Non-UK domicile of origin but taxpayer acquired a domicile of choice in the UK
- Acquired British citizenship and relinquished Indian citizenship
- Vague intentions to return to India
- Despite various trigger events to leave, remained in the UK.

3 Strachan v HMRC [2023] UKFTT

- Taxpayer had not acquired a domicile of choice elsewhere i.e. remained UK domicile of origin
- 'Chief residence' - multi-factorial test
- Intention of continuing to reside in UK for an unlimited time but "end his days" in Massachusetts
- Considered all relevant factors e.g. where he kept important documents and valuable possessions.

Record Keeping - Tax Residence

Keeping accurate records and evidence is essential!

Examples of evidence to support having a home:

- Utility bills and broadband usage
- Parking permits
- TV/satellite subscriptions and streaming services
- Insurance - building and contents
- Post
- Address on a UK driving license
- Registered with GP
- Bank/credit card statements
- Services - cleaning, gardening etc.
- Rental agreement.

Examples of evidence to support day count and working:

- Travel log of all international travel including reason for travel
- Visas, booking confirmations, tickets and boarding passes
- Hotel/accommodation bookings
- Taxi receipts
- Daily work diary/calendar or timesheet
- Details of work undertaken and time spent working
- Contract of employment
- Phone records.

2. Complex Tax Investigations

Ongoing crackdown on major tax evasion and avoidance by HMRC

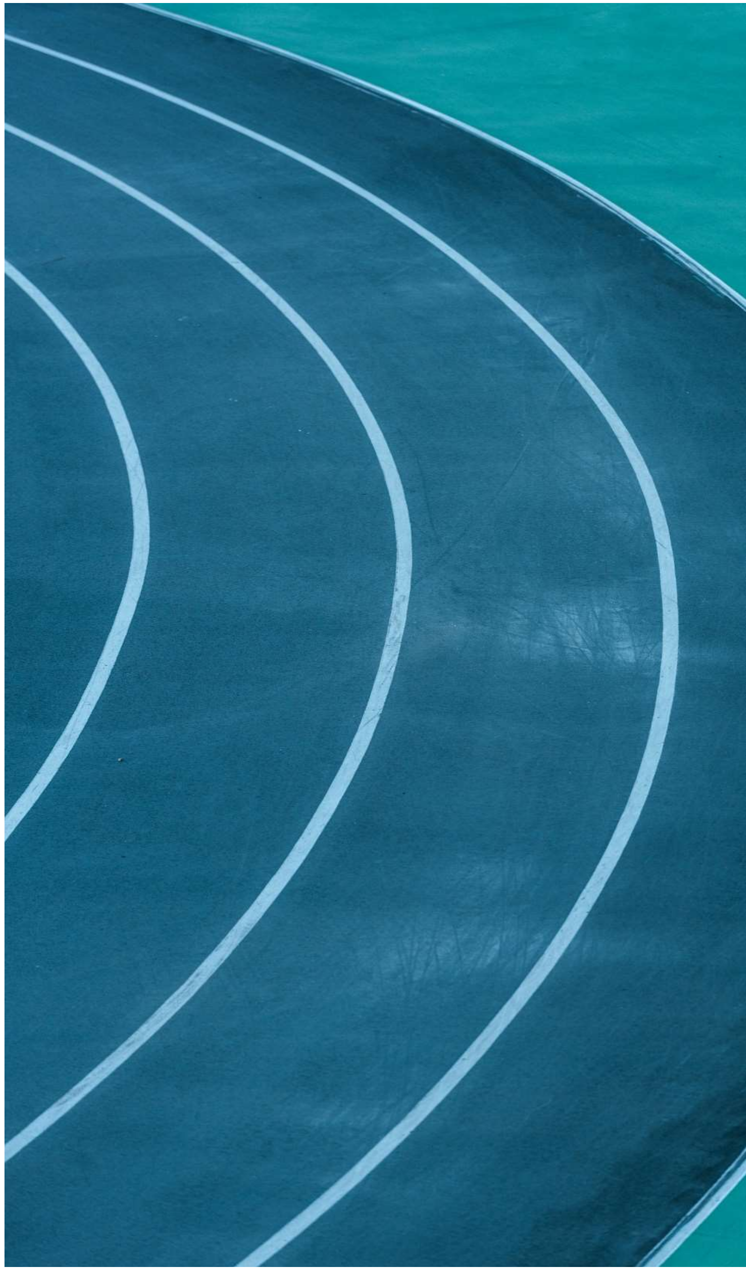
- HMRC opened 1,091 of its most serious tax investigations in past year

- **Code of Practice 8 (COP8)**
  - Complex technical disputes, tax avoidance, no fraudulent behaviour

- **Code of Practice 9 (COP9)**
  - Taxpayers suspected of committing tax fraud i.e. “deliberate” behaviour
  - 20-year assessable time period
  - Protection from prosecution <u>unless</u> failure to cooperate..

- Former Formula 1 boss Bernie Ecclestone recently failed to cooperate in full with a COP9 investigation. He was convicted of fraud and narrowly escaped prison with a 17-month sentence suspended for two years (as well as a £650m tax bill!)

- Both Labour & Conservative parties have pledged to increase tax investigations of high-net-worth individuals



3. Transfer of Assets Abroad (‘TOAA’)

Anti-avoidance legislation

What is it?

Targets individuals (‘transferors’) who transfer assets (cash or non-cash) to a non-UK entity (e.g. non-UK trust, non-UK company etc.), and income becomes payable to that non-UK entity as a result of the transfer (or ‘associated operation’).

What is the effect of TOAA?

Where the transferor can benefit, TOAA effectively ‘looks through’ the structure and treats the income of the ‘non-UK entity’ as belonging to the UK resident individual.

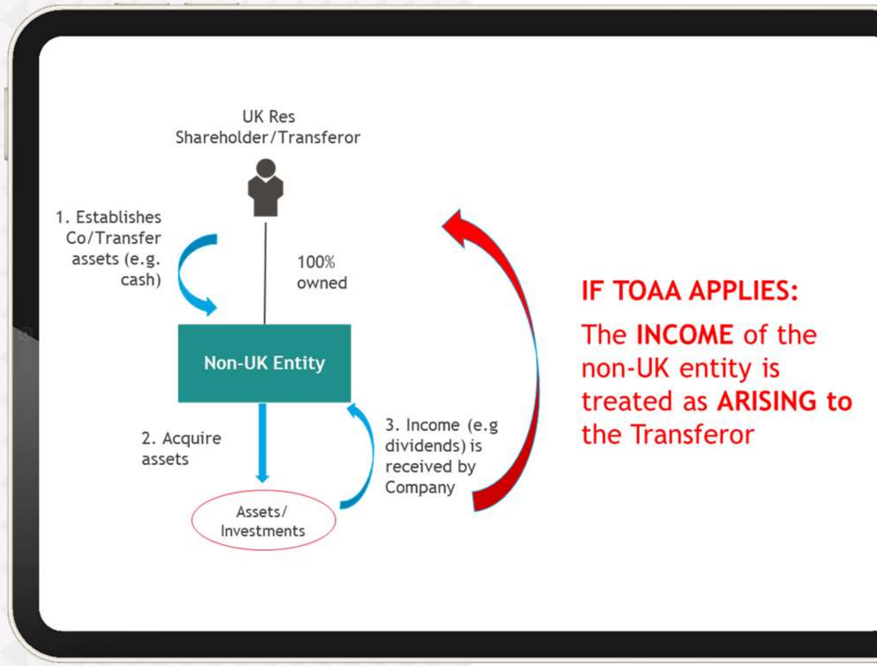
When does it apply?

TOAA can only apply when there has been a ‘relevant transfer’ to a ‘person’ abroad unless ‘motive defence’.

Update on TOAA following from the Spring 2024 Budget

Following the Fisher case, the UK Government will legislate in the Spring Finance Bill 2024 to ensure shareholders of close companies which make transfers will be treated as making the transfer themselves.

The changes will have a retroactive effect and apply to income arising to affected structures from 6 April 2024.



Transfer of Assets Abroad ('ToAA')

ToAA enquiries

Frequency

- TOAA enquiries are becoming more more common.

Information gathering

- The nature of the technical issues means that the information gathering stage of an enquiry can last much longer and be much broader
- HMRC must only request information that is reasonably required to check a taxpayer's tax position.

Enquiry Inspectors -

- Often work on the advice of technical specialists who operate in the background
- Useful to identify this at an early stage to be aware of who you are dealing with
- Technical specialists are not always forthcoming in dealing with agents and attending meetings. Important to engage with them and seek a joined up HMRC approach where possible.

Responding to HMRC - care is required

- Providing information – is the information reasonably required? Are HMRC asking the right questions? Is the information in the client's power and possession?
- Are HMRC in time to assess any liabilities in any event? – Consider offshore time limits now extended to a minimum of 12 years
- Technical position – often complex and detailed consideration needed before committing to a technical response.

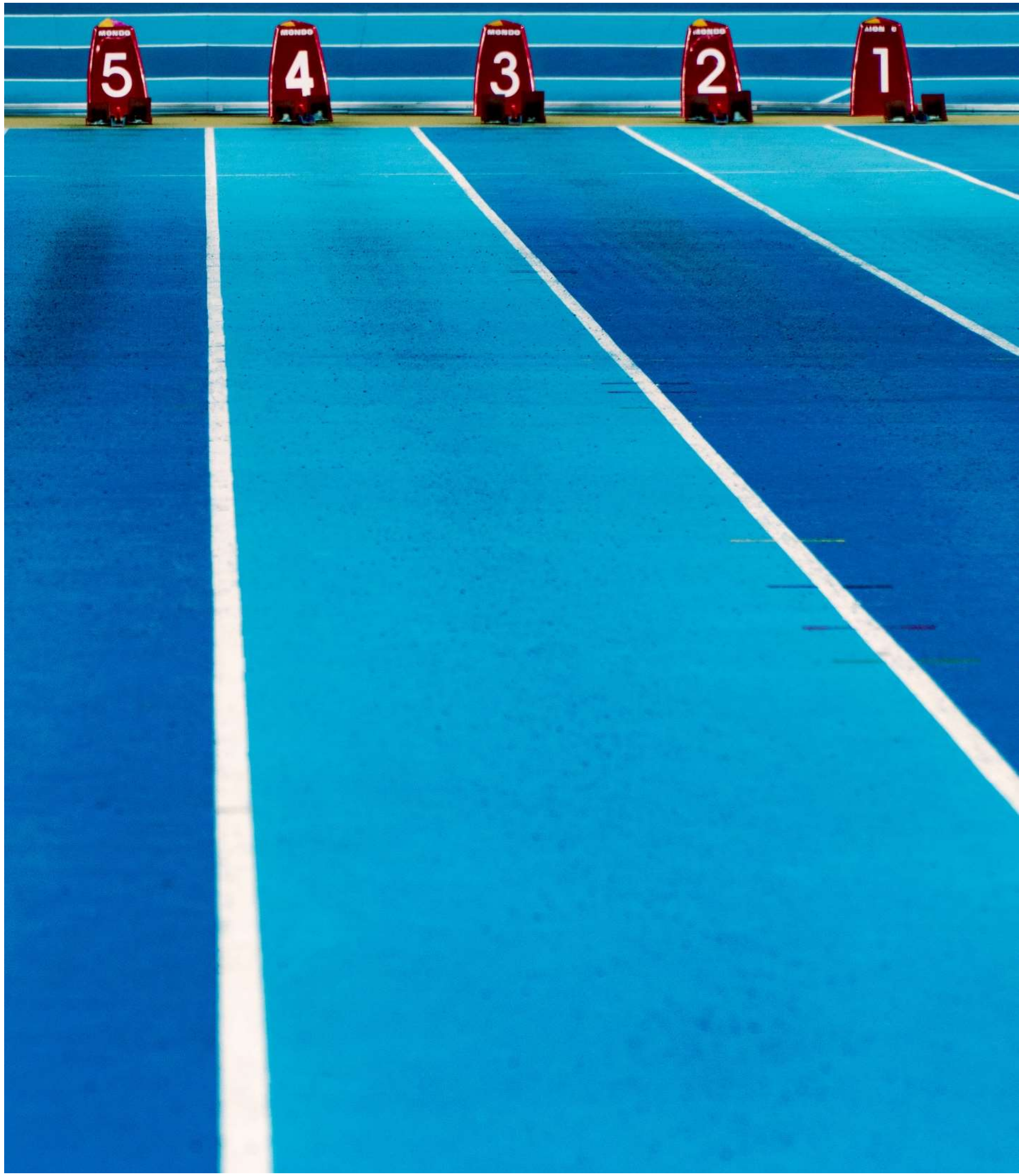
4. Penalties

HMRC taking a tougher stance on penalties

- Tax Avoidance
  - Now seeing HMRC charge penalties
  - Marlborough tax case – Remuneration Trust
  - “Deliberate” behaviour

- Failure to Correct
  - “Offshore”
  - Tax years up to 2015/16 – minimum 100% penalties
  - Reasonable excuse

- Offshore considerations:
  - Offshore penalty uplift
  - Offshore asset moves penalty
  - Prompted vs unprompted – CRS data
  - Territory categories



The future of HMRC - a new government

IDEAS | PEOPLE | TRUST

UK general election and change of government

Labours plan to close the tax gap

- Labour published a paper in April 2024 setting out their plans to tackle the tax gap
- Aiming to reduce the £35.8bn of uncollected taxes via an ‘invest to save’ plan
- If successful Labour plan to raise up to £5bn per year by the end of next parliament - by 2029
- The paper sets out a plan to invest £555m per year into HMRC

Investment would include the following:

1

An additional 5,000 staff to run compliance checks claiming that each compliance offer accounts for £1.1m in additional revenue

2

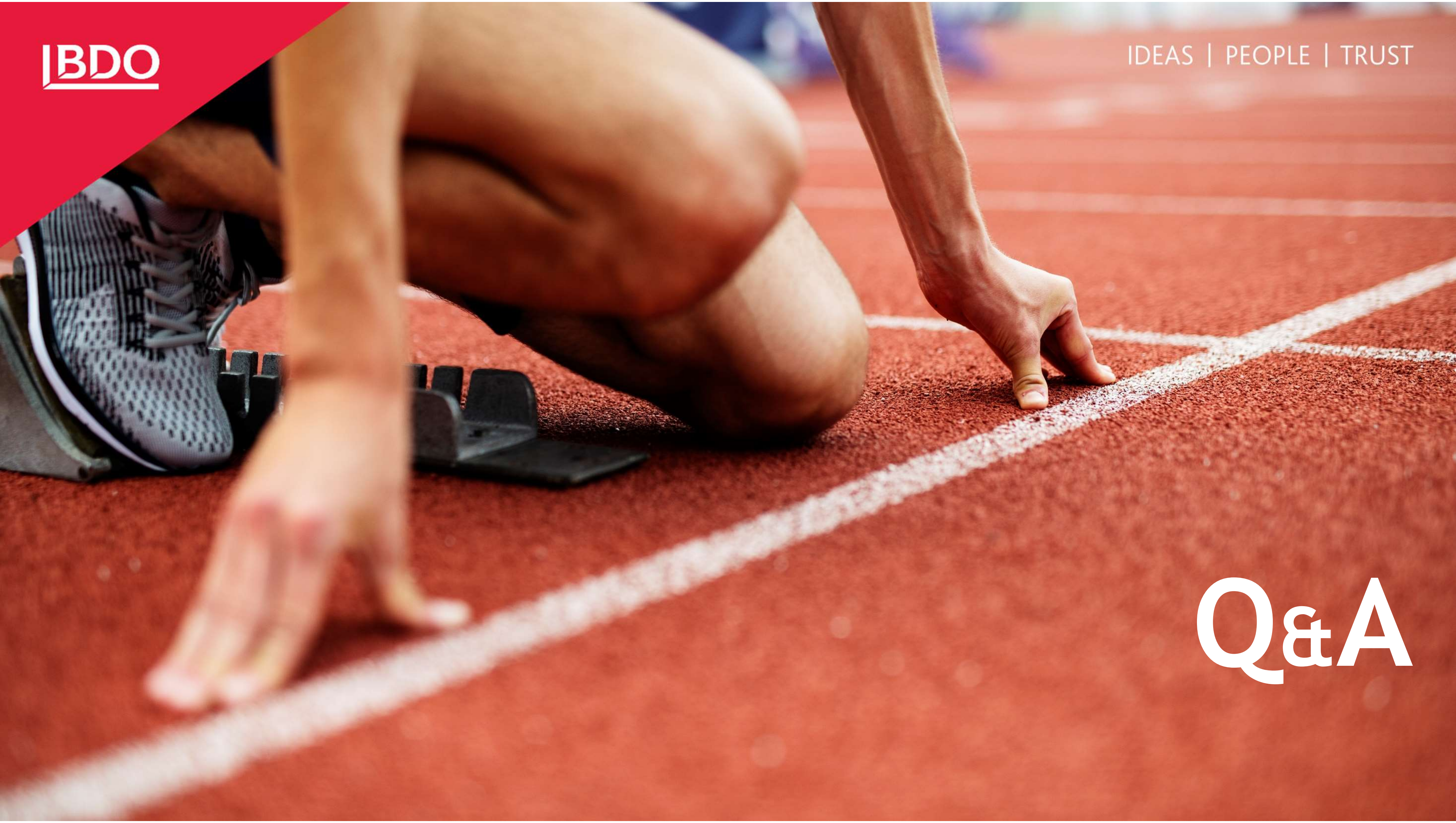
Digital transformation - investment and acceleration of the current programmes. Expected return of £2 for every £1 invested

3

‘Blockbuster fund’ - a ring-fenced budget to fund deterrent prosecutions

4

Offshore tax compliance - dedicated capacity to combat informed by the publication of the previously promised offshore tax gap


IDEAS | PEOPLE | TRUST
Q&A