

# Tax Update

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## 1. General

### 1.1 Tax administration and maintenance day

*The Government has published several consultations and tax policy documents with a view to simplify and modernise the tax system and tackle the tax gap.*

Key points include:

- Looking at giving national insurance credits to parents who would have been eligible but for not claiming child benefit.

- A proposal to modify the off-payroll working rules such that tax paid by the wrong entity can be offset after a status determination.
- Requiring tax agents to be registered with HMRC in order to claim repayments.
- Potential for new tax administration policy and processes to be introduced for pilot groups first.
- A call for evidence on information and data powers.
- A consultation on modernising stamp taxes on shares.
- A consultation on crypto-asset transactions.

[www.gov.uk/government/collections/tax-administration-and-maintenance-spring-2023](https://www.gov.uk/government/collections/tax-administration-and-maintenance-spring-2023)

## 2. Private client

### 2.1 Special dividend part income and part capital

*The FTT found that a US special dividend paid on merger should be treated for UK tax as consisting of the same ratio of income to capital as under the US tax documents.*

When Dr Pepper, a US company, went through a merger, a special dividend was paid out in July 2018. This taxpayer declared the whole payment as capital. The documentation he had been given about the dividend described it as part income and part capital, in roughly a 30:70 ratio.

When HMRC received this information under international information sharing agreements, it enquired into his return, and issued a discovery assessment treating the dividend as part income in the same proportion as the documentation. On internal review, another HMRC officer varied this to assess the whole dividend as income for UK tax purposes.

The FTT decided that the original 30:70 split was the correct treatment, so the original discovery assessment was upheld, and HMRC criticised for the review decision. The tax treatment in UK law derives from the character of the dividend under US law, which was clear here. The 'capital' part of the dividend was treated for US tax purposes as a capital payment, and specifically not paid out of earnings and profits.

*Buckingham v HMRC* [2023] UKFTT 358 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08784.html](https://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08784.html)

### 2.2 Application to make late appeal not allowed

*An unrepresented taxpayer was refused permission to make late appeals against assessments and penalties totalling over £360,000. HMRC had reminded him repeatedly of the deadline, but there was a limit to the resources it could devote to one taxpayer.*

The taxpayer was the only director and owner of an estate agent company. HMRC investigated him and the company for fraud under COP9, and issued VAT assessments, surcharges, and penalties, as well as income tax related penalties and assessments. Some of these were withdrawn by HMRC.

The FTT refused to allow him to enter late appeals. Some of them were entered over four years after the deadline, and all the delays were serious and significant. His reasons, including mental ill health and a claim that the HMRC investigation and appeal process were unclear, were not reasonable excuses. HMRC had explained the appeal process and reminded him of the need to appeal more than once, including by phone, and then explained how to make a late appeal. The judge agreed that HMRC was entitled to say that there was a limit to the resources they could devote to one taxpayer. The investigation had faced various difficulties, with the taxpayer remaining unrepresented throughout.

*Tolla v HMRC* [2023] UKFTT 00400 (TC)

<https://financeandtax.decisions.tribunals.gov.uk/Aspx/view.aspx?id=12727>

## 2.3 Partial win for taxpayer on child benefit

*A taxpayer was found not to have a protected case under the new retrospective legislation for his high income child benefit charge (HICBC) appeal, as his appeal had been made on different grounds.*

The taxpayer was issued with HICBC assessments for four years. He had appealed them before the deadline for cases to use the same argument as *Wilkes*, but on the grounds of fairness, and issues with the HMRC investigation including lack of clarity.

The FTT found that his appeals were not protected against the retrospective legislation brought in to counteract the *Wilkes* argument. In order to win a case using the *Wilkes* precedent, a taxpayer must have appealed their HICBC assessment by 30 June 2021, as he had. They must also however have raised the argument in their appeal that child benefit was not income so could not be assessed under the income tax provisions.

This meant that two of the assessments were valid, as raised within the normal enquiry window. The FTT allowed his appeal against the other two assessments, as HMRC needed to prove carelessness to issue a valid assessment later. His income had only risen above the threshold after the birth of his child, so he had not failed to take reasonable care.

*Hextall v HMRC* [2023] UKFTT 390 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08804.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08804.html)

*Wilkes v HMRC* [2022] EWCA Civ 1612

[www.bailii.org/ew/cases/EWCA/Civ/2022/1612.html](http://www.bailii.org/ew/cases/EWCA/Civ/2022/1612.html)

## 2.4 Failure of loan contractor scheme

*A taxpayer who entered into a loan contractor scheme has lost his appeal to have it treated not as employment income. His initial disclosure was not clear enough to prevent a discovery assessment being raised.*

The taxpayer entered into schemes where instead of a salary he received loans from offshore employee benefit trusts. The promoters had made disclosures under the disclosure of tax avoidance schemes (DOTAS) rules. HMRC assessed the amounts received as employment income in line with the decision in *Rangers*. The FTT agreed, finding that the SC decision on redirected employment income applied here, so dismissed the appeal.

The taxpayer had sought to distinguish his case, as he had repaid some of the loans so argued that this showed that they were real loans. The FTT dismissed this argument, as it is not the receipt of the loan that gives rise to the tax charge, but the entry of the funds into the scheme structure, as that is effectively the salary payment.

An important point raised in this case was around the taxpayer's white space disclosure, which the FTT found was also not clear enough to prevent HMRC raising a discovery assessment.

*Sheth v HMRC* [2023] UKFTT 368 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08790.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08790.html)

*RFC 2012 Plc (formerly The Rangers Football Club Plc) v Advocate General for Scotland* [2017] UKSC 45

[www.bailii.org/uk/cases/UKSC/2017/45.html](http://www.bailii.org/uk/cases/UKSC/2017/45.html)

## 2.5 Taxpayer win on non-resident trust tax credits

*The CA has overturned a judicial review, finding for a taxpayer that extra-statutory concession (ESC) B18 allows a UK resident beneficiary a tax credit on payments from a non-UK resident trust regardless of when that income arose. HMRC had argued that there was a six year time limit.*

UK resident beneficiaries of non-UK resident trusts are not automatically entitled to tax credits on payments from the trust. There is however an ESC, B18, that allows the beneficiary to claim a UK tax credit if the underlying source of the payment is income on which the trustees paid UK tax.

This ESC has three different strands of concession. There is a six year time limit included in the ESC, but it was not clear whether or not this time limit applied to the 'third' concession, which was the one relevant here.

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The taxpayers in this case wished to claim a credit for older tax, of about £4million, and asked the HC to conduct a judicial review to determine whether or not the ESC really did impose a six year limit. The HC had found that it did, on consideration of the wording of the ESC. This has been updated several times since being introduced in 1978, and the taxpayers argued that on a strict reading the six year limit did not apply to this third concession.

The CA overturned the HC finding. While there is a six year time limit included in ESC B18, the CA found that there was no six year time limit in relation to this strand of the three-strand concession.

*Murphy & Anor v HMRC* [2023] EWCA Civ 497

[www.bailii.org/ew/cases/EWCA/Civ/2023/497.html](http://www.bailii.org/ew/cases/EWCA/Civ/2023/497.html)

## 3. PAYE and employment

### 3.1 Taxpayer had not given consideration for employment related securities

*The FTT has found that restricted share units related to the taxpayer's employment, rather than being consideration for sale of his shareholding.*

The taxpayer had shares in his employer company. On sale of that company, he was given restricted stock units (RSUs) in the company that bought it. On the first and second anniversaries of this grant he received shares as the RSUs vested, with total value of \$10million. It was common ground before the FTT that these were employment related securities.

HMRC argued that the two receipts of shares should be charged to IT and NIC on the taxpayer. The taxpayer argued that he had given consideration of \$9million for them, so was not taxable on the whole amount.

On consideration of the documents governing the sale and share agreements, the FTT agreed with HMRC that the RSUs were granted as part of an employee incentive scheme. They were not part of the consideration for the sale of his shareholding in the first company, though he had declared them as proceeds taxable to CGT on that basis.

*Moore v HMRC* [2023] UKFTT 399 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08806.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08806.html)

### 3.2 Taxpayer found to have met terms of its dispensation

*The FTT has found that HMRC cannot claim that an issued dispensation does not apply if a taxpayer has not met conditions set by HMRC.*

HMRC issued a company with PAYE and NIC determinations and decisions for subsistence payments made to employees. The company had a dispensation to make tax-free payments to employees for some meals, on condition that it kept records to show entitlement, and made routine checks. HMRC argued that this dispensation could not be used for the payments, as these requirements had not been followed.

The FTT found for the taxpayer. These were not round sum allowances, but represented amounts actually spent. The taxpayer had complied with the conditions, and as the dispensation existed then it would have been exempt whether or not it had complied with the conditions.

*NWM Solutions Ltd v HMRC* [2023] UKFTT 364 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08788.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08788.html)

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## 4. Indirect taxes

### 4.1 FTT confirms admission to charity annual agricultural show VAT exempt

*The FTT has allowed a taxpayer's appeal. Admission to a charity annual agricultural show is VAT exempt as fundraising. HMRC also raised the VAT assessment out of time.*

Yorkshire Agricultural Society is a registered charity that organises an annual agricultural show. The taxpayer treated admission to the show as subject to VAT at the standard rate. It subsequently submitted an error correction notice to HMRC, in respect of admission to its 2016 show, on the basis that the supply falls under the fundraising VAT exemption and treated its 2017 and later shows as VAT exempt. HMRC rejected the reclaim for 2016, on grounds that the show was not promoted as being primarily for fundraising purposes and raised a VAT assessment for later periods.

The FTT allowed the taxpayers appeal, concluding that, in line with legislation, the admission to the show was exempt for VAT purposes as the event was organised for charitable purposes with the primary purpose of raising money. Both flyers and programs stated "The Great Yorkshire Show raises funds for the Yorkshire Agricultural Society to help support farming and the countryside".

Notwithstanding the supplies being VAT exempt the FTT found that the VAT assessment for 2017 had been raised out of time. HMRC had had to raise this within one year after the evidence of facts for the assessment came to HMRC's knowledge.

The case confirms that where charities are raising money the exemption for events can be construed widely, even for events that may not be considered normal fundraising. It also serves as a reminder that, in some circumstances, HMRC can be out of time to raise any assessments.

*Yorkshire Agricultural Society v HMRC* [2023] UKFTT 389 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08803.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08803.html)

### 4.2 Consultation on plastic packaging tax

*The Government has launched a consultation on allowing a mass balance approach for chemically recycled content for plastic packaging tax.*

This is a very significant development for the plastic packaging sector. Chemically recycled plastic has a similar quality to virgin plastic and is increasingly used, especially for food contact applications and other uses where hygiene is critical.

Strictly speaking chemically recycled content is allowed to be classed as recycled content for plastic packaging tax purposes but proving its use in practice has been impossible. HMRC needs taxpayers to prove the recycled content of individual components. Chemically recycled material tends to be added to the same silo as virgin material, making it impossible to track and trace its use.

A mass balance approach and/or certification scheme would help to remove the barriers to chemically recycled material qualifying as recycled for plastic packaging tax, further incentivising the adoption of recycled material in the supply chain.

[www.gov.uk/government/consultations/draft-regulations-the-plastic-packaging-tax-general-amendment-regulations-2023](http://www.gov.uk/government/consultations/draft-regulations-the-plastic-packaging-tax-general-amendment-regulations-2023)

### 4.3 VAT second-hand motor vehicle payment scheme: cars moved from GB to NI

*Following revisions to the Northern Ireland (NI) Protocol under the Windsor Agreement, Parliament has now legislated to allow sellers of second-hand cars purchased in GB, and subsequently moved to NI for resale, to receive a payment equal to one sixth of the gross purchase price from 1 May 2023.*

In the UK, where VAT has not been incurred or reclaimed on the purchase of a used car, businesses such as car dealers can calculate VAT on the sale using the second-hand car margin scheme, rather than the full selling price. As NI is EU territory under the protocol, this scheme will not apply to equivalent sales in NI.

The UK has now implemented a new scheme, allowing purchasers of second-hand cars for resale in NI to receive a payment equal to VAT on the purchase price, regardless of whether or not the seller actually charged any VAT.

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The way the relief has been structured, with no reference to the value of VAT incurred on the purchase, raises many interesting possibilities for the future of VAT now that the UK is no longer bound by EU treaties.

[www.legislation.gov.uk/uksi/2023/68/contents/made](http://www.legislation.gov.uk/uksi/2023/68/contents/made)

#### 4.4 DIY housebuilders scheme: items qualifying as goods

*HMRC's actions in pursuing this case to a hearing were described as unsatisfactory by the FTT. Despite HMRC potentially gaining a windfall, the FTT only has jurisdiction to address the appeal presented to it.*

The taxpayer built a new dwelling, otherwise than in the course of business, and submitted a request for repayment to HMRC in relation to the goods incorporated into the building under the VAT DIY scheme. HMRC rejected some of the claim, about £37,000, on the basis that some of the suppliers should not have charged VAT on associated services provided to the taxpayer.

The FTT considered each individual invoice and the items within them to determine whether there was a supply of goods or services. It then allowed the reclaim on the items held to be goods under settled case law precedent, but disallowed the VAT on the services that under the VAT legislation should have been zero rated by the supplier.

Technically, where VAT is incorrectly charged, that VAT is not properly recoverable by the recipient of the invoice even though that VAT may have been declared by the supplier. Usually, HMRC only assesses in these circumstances where the supplier has not declared and paid the incorrectly charged VAT. This led the FTT to criticise HMRC.

*Mort v HMRC* [2023] UKFTT 387 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08801.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08801.html)

## 5. Tax publications and webinars

### 5.1 Tax publications

*The following Tax publications have been published.*

- [Summary of proposed changes to the UK R&D tax relief schemes](#)
- [Spring Budget 2023: what does it mean for UK inbound businesses?](#)
- [Indirect taxes newsletter April 2023](#)
- [UK government launches consultation on policies to address carbon leakage](#)
- [Agents' fees image rights HMRC and tax enquiries](#)

### 5.2 Webinars

*The following client webinars are coming up soon.*

- 24 May - [Talking Tax: Land Diversification](#)
- 25 May - [Editions by Evelyn Partners - Customs & Excise Duties: The cost of non-compliance](#)

## 6. And finally

### 6.1 Joy cometh in the small print

Regular readers may recall a big *And finally* bugbear: the fact that in choosing not to claim child benefit for which the household was ineligible, many of those caring for children full-time have been missing out on NI credits, with consequences for their state pension. The Alice in Wonderland-esque solution, that they should claim-but-elect-not-to-receive, was hardly going to become common knowledge.

Well, imagine our celebrations at finding the following in the TAMD announcements (1.1):

*The government recognises concerns that some eligible parents who have not claimed Child Benefit could miss out on their future entitlement to a full State Pension. The government will address this issue to enable affected parents to receive a National Insurance credit retrospectively. Further details of next steps will be set out in due course.*

[www.gov.uk/government/publications/tax-administration-and-maintenance-summary-spring-2023/summary-of-tax-administration-and-maintenance-spring-2023](https://www.gov.uk/government/publications/tax-administration-and-maintenance-summary-spring-2023/summary-of-tax-administration-and-maintenance-spring-2023)

Glossary				
Organisations		Courts	Taxes etc	
ATT – Association of Tax Technicians	ICAEW – The Institute of Chartered Accountants in England and Wales	CA – Court of Appeal	ATED – Annual Tax on Enveloped Dwellings	NIC – National Insurance Contribution
CIOT – Chartered Institute of Taxation	ICAS – The Institute of Chartered Accountants of Scotland	CJEU – Court of Justice of the European Union	CGT – Capital Gains Tax	PAYE – Pay As You Earn
EU – European Union	OECD – Organisation for Economic Co-operation and Development	FTT – First-tier Tribunal	CT – Corporation Tax	R&D – Research & Development
EC – European Commission	OTS – Office of Tax Simplification	HC – High Court	IHT – Inheritance Tax	SDLT – Stamp Duty Land Tax
HMRC – HM Revenue & Customs	RS – Revenue Scotland	SC – Supreme Court	IT – Income Tax	VAT – Value Added Tax
HMT – HM Treasury		UT – Upper Tribunal	LBTT – Land and Buildings Transaction Tax	

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