

# Tax Update

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## 1. General

### 1.1 Spring Budget 2023

*In his first full Budget, Chancellor Jeremy Hunt has announced significant reforms to pension allowances, the capital allowances regime, and research and development tax relief. You can read our full coverage and analysis of what it means for different taxpayers at the link below.*

Some of the key announcements are:

- [Pension lifetime allowance limit abolished and annual allowances increased](#)
- [Full 100% expensing for qualifying plant and machinery](#)
- [Loss-making R&D-intensive SMEs to receive £27 for every £100 of qualifying R&D expenditure](#)

The Spring Finance Bill 2023 is due to be published on 23 March 2023.

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More technical announcements are expected on tax administration and maintenance day, which is to be held later this Spring.  
[www.evelyn.com/budget/spring-budget-2023/](http://www.evelyn.com/budget/spring-budget-2023/)

## 1.2 HMRC official rate of interest to increase

*The official rate of interest (ORI) will rise to 2.25% per year from 6 April 2023. This is used in calculations including those for employee loan benefit charges.*

The ORI is not the same as the HMRC late payment and repayment interest rates. It is currently 2%.

It is used to calculate the benefit received by an employee who receives an interest-free loan from their employer, or the use of an asset. It is also used to when beneficiaries receive loans from offshore trusts, to calculate how much interest is due to prevent this becoming a taxable distribution.

[www.legislation.gov.uk/ukxi/2023/216/made](http://www.legislation.gov.uk/ukxi/2023/216/made)

# 2. Private client

## 2.1 Share transactions found not to be a trade

*A taxpayer who made losses on his personal investments has been denied loss relief against his income, as his activity did not meet the criteria to be a trade, and was not carried on commercially.*

The taxpayer bought and sold shares starting in 2006. Some transactions were carried out by him personally, and some by his financial advisers without his input. All were treated as capital until he retired in 2016, having inherited a large sum. His case was that thereafter he was able to focus on making a living from buying and selling shares.

Most of his investments were held in a professionally managed portfolio, which he did not claim formed part of the trade. He made a loss in the first two years under appeal and a small profit in the third. He restricted his sideways loss relief claims for the cap for work in a non-active capacity as he could not demonstrate that he spent over 10 hours a week on it. He explained that he conducted research and made trades for 1 to 2 hours a day.

HMRC assessed these to be capital losses and profits, and the FTT agreed. On average, he only made one transaction a week, and had not increased this greatly from his busiest year before retirement. He spent very little time on the activity, fitting it around the rest of his commitments. He did not have a clear plan for the activity, nor did he conduct it in an organised way similar to a business. Overall, this was not a trading nor a commercial activity, but simply managing a portfolio of personal investments, with an aim for growth rather than income.

*Henderson v HMRC* [2023] UKFTT 281 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08755.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08755.html)

## 2.2 Residence appeal dismissed as ties to UK not 'substantially loosened'

*The FTT has upheld a £1m CGT assessment on a taxpayer who moved to Australia in 2012. Under the pre-statutory residence test rules, he had not reached the point where his ties to the UK were 'substantially loosened' until after the start of the 2012/13 tax year.*

The taxpayer moved to the UK in 1988 but always intended to return to Australia in the long-term and bought property there. He reached the decision to return in 2010 and moved to Australia in October 2011. He returned to the UK temporarily on 29 April 2012 to make final arrangements for his UK assets, but thereafter visited infrequently. HMRC assessed him to CGT of over £1m in respect of his UK property disposals in 2012/13. As this was before the statutory residence test was introduced, he would be UK resident if his ties to the UK had not been 'substantially loosened' before 6 April 2012. He had been under the impression that he could spend up to 45 days in the UK in a tax year without becoming resident and declared Australian tax residency in 2012.

The FTT considered the course of his gradual move to Australia. It took into account his professional work, including appearances on reality TV in the UK and Australia, the running of his businesses in the UK and Australia, and the properties he

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owned in each country. It also looked at the fact that he changed his executive assistant to an Australian resident in late 2012, the dates his personal belongings were shipped and his pets, and cars were moved, given away, or sold. Further considerations were administrative points such as closing bank account, council tax and the electoral register, and the details of his travel and residence declarations during that.

Overall, his appeal was dismissed. The FTT accepted that in 2011/12 he had increased his ties to Australia substantially, but this did not necessarily mean that he ceased UK residence. He still had the majority of his belongings in his UK home after 6 April 2012 and was chairman and shareholder of his UK business. His girlfriend and his dog were still in the UK until after the relevant date, and many matters of everyday life such as his registration with a UK doctor were still active. It was only after this that his ties met the 'substantially loosened' test.

*Lyons v HMRC* [2023] UKFTT 294 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08765.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08765.html)

## 3. Business tax

### 3.1 New R&D regulations

*New regulations on prescribed activities for R&D has been issued to ensure that the legislation refers to the latest version of the 'BEIS' guidelines.*

New guidelines on the meaning of R&D for tax purposes were issued by the Secretary of State for Business and Trade on 7 March 2023. The guidelines confirm that mathematical advances are to be treated as science from 1 April 2023.

The regulations come into force on 31 March 2023 and have effect, for CT purposes, in relation to accounting periods beginning after 31 March 2023.

[www.legislation.gov.uk/uksi/2023/293/contents/made](http://www.legislation.gov.uk/uksi/2023/293/contents/made)

[www.gov.uk/government/publications/guidelines-on-the-meaning-of-research-and-development-for-tax-purposes/meaning-of-research-and-development-for-tax-purposes-guidelines](http://www.gov.uk/government/publications/guidelines-on-the-meaning-of-research-and-development-for-tax-purposes/meaning-of-research-and-development-for-tax-purposes-guidelines)

## 4. VAT and indirect taxes

### 4.1 Changes to the VAT treatment of goods and services provided as a 'bundle'

*Following a consultation, HMRC has announced changes to the rules governing supplies of goods and services that are supplied for a single price as part of a package or bundle.*

As a result of the consultation, HMRC has issued a Revenue and Customs Brief outlining changes to existing guidance on the valuation rules.

Currently, where a taxpayer supplies goods and services that are subject to different VAT liabilities, but that are supplied for a single price as part of a package, the taxpayer can use different methods to determine a blended VAT rate to take into account the different VAT liabilities of the goods and services included in the package.

The Revenue and Customs Brief confirms that HMRC will revise existing guidance on the methods that can be used, with some guidance updated already, and further guidance will follow.

[www.gov.uk/government/publications/revenue-and-customs-brief-2-2023-vat-and-value-shifting-consultation-update/vat-and-value-shifting-consultation-update-apportionment-of-consideration](http://www.gov.uk/government/publications/revenue-and-customs-brief-2-2023-vat-and-value-shifting-consultation-update/vat-and-value-shifting-consultation-update-apportionment-of-consideration)

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## 4.2 Changes to the VAT treatment of local authority leisure services

*As a result of numerous VAT tribunal challenges, leisure services provided by local authorities are now considered to be non-business activities.*

HMRC has announced it now accepts that these services are non-business activities for VAT purposes, which means that VAT may be claimed under the recovery provisions for local authorities and other qualifying bodies.

Affected local authorities can now revisit its historical VAT position and apply for refunds of VAT as appropriate.

[www.gov.uk/government/publications/revenue-and-customs-brief-3-2023-changes-to-vat-treatment-of-local-authority-leisure-services/changes-to-vat-treatment-of-local-authority-leisure-services](https://www.gov.uk/government/publications/revenue-and-customs-brief-3-2023-changes-to-vat-treatment-of-local-authority-leisure-services/changes-to-vat-treatment-of-local-authority-leisure-services)

## 4.3 UT finds for HMRC on supplies between VAT group members

*The UT has ruled that supplies between VAT group members did not take place for VAT purposes while both entities were in the VAT group and were therefore subject to VAT.*

The taxpayer provided investment management services to a fellow VAT group member, however, some payments for the services were made and invoiced after the taxpayer had left the VAT group.

The taxpayer argued that the time of supply was when both members were part of the VAT group, rather than when the payments were made, or invoices raised.

The FTT initially found in the taxpayer's favour. The UT found however that the FTT had erred in law and remade the decision in favour of HMRC, citing that caselaw relied upon by the FTT was not directly applicable to the taxpayer's circumstances, and ruled that the relevant legislation determined that the time of supply was when the invoices were raised or paid.

*HMRC v The Prudential Assurance Company Ltd* [2023] UKUT 54 (TCC)

[www.bailii.org/uk/cases/UKUT/TCC/2023/54.html](https://www.bailii.org/uk/cases/UKUT/TCC/2023/54.html)

# 5. Tax publications and webinars

## 5.1 Tax publications

*The following Tax publications have been published.*

- [Spring Budget 2023: Business Tax](#)
- [Spring Budget 2023: Capital Tax](#)
- [Spring Budget 2023: Income Tax](#)
- [Spring Budget 2023: Payroll and employee incentives](#)
- [Spring Budget 2023: VAT, indirect and environmental taxes](#)
- [Spring Budget 2023: What does it mean for UK fintech?](#)
- [Spring Budget 2023: Tactical rather than strategic for the financial services sector](#)
- [Spring Budget 2023: What does it mean for transactions?](#)
- [Spring Budget 2023: investing for future growth](#)
- [Spring Budget 2023: Major changes to the pension lifetime allowance and the pension annual allowance](#)
- [Spring Budget 2023: What does the Budget mean for landowners and rural businesses?](#)
- [Spring Budget 2023: Energy Security and Net Zero](#)
- [Spring Budget 2023: Entrepreneurs and business owners](#)
- [Spring Budget 2023: No further changes for non-doms](#)

## 5.2 Webinars

*The following client webinars are coming up soon.*

- 28 March - [Editions by Evelyn Partners – Big Changes to the UK's R&D Tax Regimes – Are you ready?](#)

## 6. And finally

### 6.1 Not many rabbits

Well, that was a quiet Budget (1.1). For tax at least, we can't say we pay much attention to the rest. The lifetime allowance going is a pretty big rabbit out of the Chancellor's hat, but this could easily hop back in if the Government changes at the next election.

Final confirmation of the axing of the Office of Tax Simplification is expected but very sad news. Given that it only has until Royal Assent of the Finance Bill from this Budget a daring rescue from the executioner's block is likely now confined merely to our daydreams.

Any Budget would however seem quiet after the flurry of announcements in the latter part of 2022 - and really, we can't call that a bad thing.

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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Tax legislation is that prevailing at the time, is subject to change without notice and depends on individual circumstances. You should always seek appropriate tax advice before making decisions. HMRC Tax Year 2022/23.

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