

# Tax update

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## 1. Private client

### 1.1 Interim dividend taxable on receipt

*Two taxpayers were in receipt of a dividend in separate tax years. HMRC sought unsuccessfully to argue that both payments were taxable at the earlier of the two receipt dates.*

Two brothers wished to extract a dividend from a company but in different tax years. One brother was non-UK resident in the year following receipt of the dividend by the other and therefore wished to delay receipt until after April 5. On advice, the directors were authorised to pay an interim dividend in accordance with these wishes. HMRC sought to tax the latter dividend at the earlier date and the taxpayer appealed.

A final dividend is usually taxable once declared by the company in general meeting, because such a declaration creates an enforceable right for the shareholder. By contrast, there is generally no enforceable right to an interim dividend before payment and thus it is only taxable on actual payment.

HMRC accepted that this was the general rule, but in this case, among other technical arguments, proposed that the shareholder who had not been paid on the occasion of the first distribution would have an enforceable claim for unfair prejudice against the company and thus the right to receive the dividend, making it taxable in the earlier year. The FTT did not

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accept this. The court remedy was discretionary and it was by no means certain, in the circumstances, that it would have ordered payment, if it was available at all.

Since the taxpayer had no enforceable debt until payment, this later distribution to him was taxable on receipt and his appeal succeeded.

*Gould v HMRC [2022] UKFTT 431(TC)*

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08647.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08647.html)

## 1.2 Taxpayer wins SDLT appeal on multiple dwellings relief

*Multiple dwellings relief (MDR) has been granted on the purchase of two adjacent properties, one a house and one that was being commercially let at the time of purchase. Mixed use relief was refused, as the lease was arranged specifically to avoid SDLT.*

The taxpayer purchased a house, and a separate property that happened to be on an adjacent piece of land. This second property had previously been an artist's studio, converted from a garage. He was advised that SDLT relief would be available if it was being used commercially when he bought it; so prior to the purchase, he was involved in finding a photographic studio that agreed to take a commercial lease on the property for 9 months. The taxpayer claimed mixed use relief from SDLT.

HMRC argued that, despite guidance stating that commercial tenancies would cause mixed use relief to apply, this did not have the force of law. It argued that the test should be whether or not the property was suitable for use as a dwelling, as the guidance had subsequently been amended to say. The FTT disagreed that, due to the lease, the property was not capable of being occupied as a dwelling at the point of purchase. It also found, however, that the anti-avoidance provisions meant that the lease should be ignored. In a further twist, the taxpayer was however allowed multiple dwellings relief, despite not having claimed it, as there is no statutory requirement to claim this in an SDLT return nor amendment to such.

*Ridgway v HMRC [2022] UKFTT 412 (TC)*

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08636.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08636.html)

## 1.3 Basis period reform update

*HMRC has released further detail on the practical implications of basis period reform; in particular, where a taxpayer files a tax return using provisional trading profit figures.*

Basis period reform will mean that where sole traders, partnerships or LLPs do not draw up accounts to 31 March, taxpayers may need to file their tax returns using provisional figures to report their business profits.

Currently, provisional figures must be updated as soon as final figures become available. HMRC has confirmed that this requirement will be relaxed and taxpayers will instead be able to amend their return to finalise the provisional figures in line with normal amendment time limits, generally by 31 January following the filing deadline.

While this will not ease the administrative burden, it does provide additional certainty around the process. If you would like to understand more about how these rules will affect you or your partners, get help on modelling the cash-flow impact in advance of the 31 January 2025 tax payment, or consider any actions such as changing your partnership's accounting year end to 31 March, please do [get in touch](#).

## 2. Business tax

### 2.1 Government responds to consultation on Mandatory Disclosure Rules

*The Government has included important decisions on the design of these rules in a response to the consultation.*

The Government is implementing the OECD's rules for the CRS (Common Reporting Standard) for avoidance arrangements and offshore opaque structures. This is basically to replace the previously introduced EU regime commonly known as DAC6, which will be repealed. The final regulations will be introduced in the first half of 2023.

The first key decision is that the look back for these rules will be to 25 June 2018, as opposed to the original October 2014 date. This is probably just as well as many companies will simply not have retained records that long.

To make life easier for HMRC, there will not be an online manual system for reporting, so businesses will be required to report to HMRC using XML. The Government says it has had to balance the costs faced by business with the additional time and costs for the Government of providing a manual system. The Government suggests that it has helped balance the potential burdens on businesses by shortening of the look back period. That, however, will of necessity only be temporarily true, at best.

[www.gov.uk/government/consultations/mandatory-disclosure-rules?](http://www.gov.uk/government/consultations/mandatory-disclosure-rules?)

### 2.2 Unallowable purpose on debt restructuring upheld

*The UT has upheld the FTT decision to disallow interest deductions for a group. The group had reorganised its debt with the aim of claiming increased interest deductions and accessing significant losses much earlier than would otherwise be possible. Facilitating utilisation of existing losses is a tax advantage under the unallowable purpose provisions.*

The taxpayers were a group of companies that undertook a debt reorganisation. This involved assigning several intra-group loan receivables to one group company, increasing the interest rate on those loans, and issuing new loans. As a result, the creditor company was able to access and utilise brought-forward non-trade loan relationship losses of £48 million in two to three years, rather than an estimated 25 years. The group also incurred increased interest costs to set off against income. HMRC denied all tax deductions relating to these arrangements, on the basis that the loans were for an unallowable purpose.

The FTT found that the only purpose of the new loans was to secure a tax advantage by way of the group accessing losses earlier and claiming higher tax deductions for interest payments. All the debits in respect of the new loans were attributable to the unallowable purpose and disallowed. In relation to the pre-existing loans there were found to be two main purposes: the obtaining of a tax advantage, and the original commercial purposes for which the loans were first taken out. Debits in respect of these loans were also disallowed, but only to the extent of the increased interest rate. Both parties appealed to the UT.

The UT agreed with the findings of the FTT. It confirmed that utilisation of existing losses was a relief and thus a tax advantage under the unallowable purpose provisions. It was also clear from the substantial evidence available that the debt restructure was largely tax driven and there was a tax advantage to the group arising from the new arrangements. The FTT decision was therefore upheld in full, and the appeals dismissed.

*Kwik-fit Group Limited (and others) v HMRC [2022] UKUT 314 (TC)*

[www.bailii.org/uk/cases/UKUT/TCC/2022/314.html](http://www.bailii.org/uk/cases/UKUT/TCC/2022/314.html)

### 2.3 Regulations published on substantial commercial interdependence

*A statutory instrument (SI) setting out the rules on how to determine whether or not two companies are substantially commercially interdependent has been published.*

The SI explains that the factors to determine this are as set out in the NIC Act, rather than being newly determined. The SI is needed as the small profits rate of CT and marginal relief are coming back into force from 1 April 2023. The upper and lower limits of relief are proportionately reduced by the number of associated companies of a group. It will therefore be necessary to

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determine whether or not there is any substantial commercial interdependence between companies. More guidance on this is expected next year.

The regulations come into force on 1 April 2023.

[www.legislation.gov.uk/ksi/2022/1203/contents/made](https://www.legislation.gov.uk/ksi/2022/1203/contents/made)

## 3. VAT and other indirect taxes

### 3.1 CJEU rules free provision of vouchers to staff not subject to VAT

*The CJEU has ruled that providing vouchers to staff for free, in order to recognise and reward performance, was for business purposes and did not constitute a supply for VAT purposes.*

The taxpayer operated an employee rewards scheme under which the successful employee could select a retail voucher. Under UK VAT legislation, a charge to VAT would ordinarily arise on gifts that exceeded £50 to the same person within the same calendar year.

The taxpayer had argued that the relevant provisions did not apply, as the vouchers were provided for business purposes. The case was originally considered in the FTT, with a referral then made to the CJEU.

In early 2022, the Advocate General issued an opinion and agreed with HMRC's assessment that there was a deemed supply; however, the CJEU did not follow the AG's opinion; finding that the award of the vouchers was for business purposes and as such, not subject to a self-supply charge.

*GE Aircraft Engine Services [2022] EUECJ C-607/20*

[www.bailii.org/eu/cases/EUECJ/2022/C60720.html](https://www.bailii.org/eu/cases/EUECJ/2022/C60720.html)

## 4. Tax publications and webinars

### 4.1 Webinars

*The following client webinars are coming soon.*

- 8 December - [Retirement from the partnership](#)

## 5. And finally

### 5.1 No stone unturned

Chapeau! Hats off to HMRC in its unsuccessful quest to land Mr Gould's chunky dividend, [see item 1.1 above] and maybe the chase isn't over yet. But what dogged determination! HMRC unearthed and relied on a decision from, wait for it, the Principal Sheriff of Grampian, Highland and Islands. Before our Scottish readers take umbrage, we entirely accept that remoteness from London is hardly relevant when deciding the persuasiveness of a decision, or the authority of a court, but you have to admit, it's a romantically evocative title, only just behind that of the Sheriff of Nottingham.

It's just, we confess, that in all our long years, not only have we never seen a judgement of this court before, we didn't even know the court existed. Hands up, regular readers; did you? Once seen, though, never forgotten. One more thorough Google check before advising, then, everybody; HMRC will, it seems, also be checking.

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08647.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08647.html)

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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