



## Tax Updates – September 2022

### Highlights

- The mini-budget was published on 23 September. A further medium-term Fiscal Plan will be announced on 23 November and a full Budget in spring 2023. (Page 2)
- HMRC has started sending nudge letters to offshore corporates owning UK property and individuals listed as Persons of Significant Control within unquoted companies (Page 4). This is in addition to existing campaigns such as the one in relation to cryptoassets.
- There seems to be a theme of improving the standard of advice provided to taxpayers (Pages 3-4). The EU is also considering targeting tax advisors who engage in aggressive tax planning (Page 7).

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## 1. Upcoming hearings

**UKSC:** *News Corp UK & Ireland v HMRC* (Case ID 2021/0047) – Hearing date: November 2022 – VAT zero rating of digital editions of The Times, The Sunday Times and The Sun.

**CA:** *Good v HMRC* (Case ID CA-2022-000042) – Hearing date: 18 October 2022 - Film avoidance scheme.

**UT:** *Mirza v HMRC* (Case ID UT/2021/000053) – Hearing date: 20 October 2022 - Default surcharge for non-payment of VAT.

**UT:** *HBOS & Lloyds Banking Group [2022] UKUT 139 (TCC)* – Hearing date: 24-26 October 2022 – Liability of HMRC to pay interest on VAT bad debt relief in relation to periods before that relief had been claimed.

**UT:** *M Group Holdings Ltd v HMRC* (Case ID UT-2021-000106) – Hearing date: 7-9 November 2022 – Availability of Substantial Shareholdings Exemption (SSE) where the relevant shares owned for less than 12 months.

**UT:** *Prudential Assurance Company Limited v HMRC* (Case ID UT-2021-000175) – Hearing date: 14-17 November 2022 – VAT on supply of investment management services between companies that are part of the same VAT group.

**UT:** *Scanwell Logistics (UK) Limited v HMRC* (Case ID: UT-2021-000195) – Hearing date: 25 November 2022 - Onward Supply Relief (“OSR”) on goods imported to the UK from China for onward transport to EU countries.

**UT:** *Whyte (Heather) v HMRC* (Case ID UT-2021-000179) – Hearing date: 15-16 December 2022 – CGT treatment of building plots in a mansion’s grounds were acquired as part of an estate, as a capital asset.

## 2. Legislation and consultations

**Fiscal event:** The mini-budget was unveiled on 23 September. The main points are set out below, and Tax Journal has published a [fuller summary](#).

- Basic rate of income tax will be cut to 19% from April 2023.
- The 45% additional rate of income tax will be abolished from April 2023.
- The NICs increase will be reversed from 6 November 2022.
- The 25% corporation tax increase will be cancelled and corporation tax will remain at 19%.
- IR35 rules relating to contractors will be simplified.
- No stamp duty will be payable on the first £250,000 on the purchase of property, rising to £425,000 for first time buyers.
- VAT-free shopping for overseas visitors will be reintroduced and modernised.
- Proposed increases to duties on beer, cider, wine and spirits will be cancelled.

**Fiscal timetable:** The government will set out its medium-term [Fiscal Plan](#) on 23 November. There will then be a Budget in spring 2023. There is no indication as to whether these will include any new tax-related measures.

**New Bill:** The government has introduced the [Retained EU Law \(Revocation and Reform\) Bill 2022](#), which will end the status of retained EU law from the end of 2023 and allow the government to amend, repeal and replace retained EU law via secondary legislation. Tax Journal has summarised this in [more detail](#).

**New Bill:** The government has introduced the [Economic Crime and Corporate Transparency Bill](#), which aims to strengthen the UK’s response to economic crime and prevent the use of companies to abuse the UK’s open economy. The Bill will include increased enforcement powers (including to seize cryptoassets), reforms to Companies House and changes to money laundering requirements.

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**Hybrid and mismatch rules:** HMRC has confirmed that new regulations will come into effect from 1 January 2023 to ensure that the existing [exemption from counteraction under the hybrid and other mismatch rules](#) for certain hybrid capital and debt instruments issued by banks will continue to apply (it had originally been set to expire).

**Museums and galleries VAT refund scheme:** The [VAT refund scheme](#) will reopen for new applications to support free entry to museums and galleries. The scheme was last open to new applicants in 2018/19. This is part of government plans to boost visitor numbers and give more people access to arts and culture.

**Hybrid and remote working:** The OTS has launched a [call for evidence on hybrid and distance working](#) including across borders. The review will consider whether the tax and social security rules are flexible enough, and the new ways of working that businesses, advisors and other bodies are seeing. It has been announced that OTS would continue to gather evidence on this review before it is shut down.

**Consultation responses:** CIOT has responded to a number of live HMRC consultations, as follows:

- The consultation on [raising standards in tax advice](#) to protect taxpayers who claim tax repayments via repayment agents. The response welcomes measures which ensure taxpayers pay the right amount of tax, and states that agents perform a “potentially useful role” in ensuring people benefit from available reliefs. However, it highlighted that there is insufficient taxpayer awareness of available tax reliefs.
- The call for evidence on the [taxation of Decentralised Finance](#) involving the lending and staking of cryptoassets. CIOT has recommended

a complete overhaul of the legislation and guidance on cryptoassets and their UK tax treatment.

- The informal consultation on [review of treaty policy positions](#) in relation to changes to article 5 of the OECD Model Tax Convention and to the permanent establishment implications of remote working. CIOT has suggested that it is too early to assess the practical implications of the changes to article 5, and also that HMRC should issue guidance on remote and hybrid working to assist businesses and advisors.
- The HMT consultation on [sovereign immunity for direct taxation](#). CIOT has welcomed proposals to put the UK’s sovereign immunity from direct tax on a statutory footing, but warns of unintended consequences, e.g. on the tax treatment of UK real estate for non-UK residents.
- CIOT also [wrote to the new PM](#) to identify three strategic priorities to improve the tax system: sustained investment in HMRC to improve performance, a review of existing digitalisation plans and a more ambitious tax simplification agenda.

**VAT penalties:** A reminder that the [new VAT penalties and interest regime](#) will apply to VAT periods starting on or after 1 January 2023 for businesses who submit VAT returns late or pay late. This will replace the current default surcharge regime.

**DTAs:** A new Protocol to the [Germany-UK DTA](#) has been published and the first round of negotiations for a [Brazil-UK DTA](#) has taken place.

### 3. HMRC guidance

**Tax agents:** HMRC has published [guidance](#) on how to choose a tax agent. This sets out what taxpayers should check before appointing an agent to deal with HMRC on their behalf. Coupled with the consultation on raising standards in tax advice (see above), it seems a crackdown is coming on rogue tax agents.

**Offshore tax non-compliance:** HMRC has published [additional guidance](#) on the requirement to correct offshore tax non-compliance. The initial deadline for the requirement to correct was 30 September 2018, but any taxpayers with undeclared tax are still encouraged to disclose it to HMRC. The new guidance includes NICs, the remittance basis and the scope of the reasonable excuse defence.

**Trusts:** HMRC has published updated guidance on [reporting trust discrepancies](#) and [asking HMRC for information about a trust](#).

**Plastic packaging tax:** HMRC has updated its [guidance](#) on the Plastic Packaging Tax on amending a previous tax return. Taxpayers who have met the 10-tonne threshold and registered their liability must submit a return four times a year. If a return is submitted with incorrect information, it must be corrected as soon as possible and within 4 years of the return date.

### 4. HMRC spotlights and nudge letters

**Offshore corporates owning UK property:** HMRC has launched a [campaign](#) to tackle non-compliance linked to offshore corporates owning UK property. HMRC has identified non-resident corporate owners of UK property that may not have met certain UK tax obligations, including CT, CGT and ATED liability. Nudge letters will be issued to companies that either currently own or have disposed of UK property.

**Persons of Significant Control and share disposals:** HMRC's Wealthy External Forum has started sending [nudge letters](#) to individuals listed as Persons of Significant Control within unquoted companies. These are individuals who HMRC say disposed of some or all of their companies' shareholdings in 2020/21 but did not record the disposal on their tax return. Recipients of the letter are advised to check the position and amend their tax return by 31 January 2023 to avoid an HMRC enquiry.

**Contractors employed by umbrella companies:** HMRC published a [spotlight](#) warning agency workers and contractors employed by umbrella companies about the tax avoidance arrangements used by such companies. HMRC has concerns that some umbrella companies use disguised remuneration schemes to claim that payments such as loans, salary advance or annuities made to agency workers and contractors are not taxable, if paid directly or indirectly through a chain of companies, partnerships or trusts. We understand that over 8,000 Regulation 80 notices for 2018/19 will be issued in the coming weeks, and HMRC are taking a particular interest in smaller contractors with an intermediary.

**Tax avoidance:** HMRC has used new powers for the first time to [publicly name](#) directors of 15 companies promoting tax avoidance. Customers have been warned to leave these schemes or run the risk of large tax bills. HMRC has also issued a "stop notice" to a tax avoidance promoting company to prevent the promoter from selling their scheme or face penalties of up to £1 million.



## 5. Recent decisions – Direct tax

**SEIS:** [Coconut Animated Island Ltd v HMRC](#) [2022] UKFTT 303 (TC) (For the Appellant: Harriet Brown and Rebecca Sheldon) - The FTT dismissed an appeal against HMRC's refusal to authorise the issue of a Seed Enterprise Investment Scheme (SEIS) compliance certificate (thus denying relief to investors under the scheme) because the shares were issued and the money spent in relation to disqualifying arrangements.

**Treaty shopping:** [Burlington Loan Management DAC v HMRC](#) [2022] UKFTT 290 (TC) (For the Appellant: Sam Grodzinski KC instructed by Simmons & Simmons. For HMRC: John Brinsmead-Stockham and Ronan Magee.) – The FTT allowed the appeal and held that the taxpayer was entitled to the exemption from UK withholding tax under the Ireland-UK DTA. This was because it did not meet the anti-avoidance treaty shopping provision in the DTA, as neither the Cayman seller nor the Irish buyer established a main purpose of taking advantage of the exemption in the DTA.

**Business asset disposal relief:** [The Quentin Skinner 2015 Settlement L and others v HMRC](#) [2022] EWCA Civ 1222 (For the Appellants: Michael Firth instructed by direct access. For HMRC: Akash Nawbatt KC and Michael Ripley.) – The CA held that trustees were entitled to business asset disposal relief even though the beneficiaries had been qualifying beneficiaries of the trusts for only four months. The CA considered the drafting of s. 169J of the TCGA 1992 and found that the three ingredients of a qualifying disposal of trust business assets were present. The CA restored the original FTT decision allowing the taxpayers' appeal.

**Remittances from indemnity transactions:** [R Sehgal and another v HMRC](#) [2022] UKFTT 312 (TC) (For the Appellant: Michael Firth. For HMRC: Christopher Stone and Bayo Randle.) – The taxpayers were UK-resident non-domiciled individuals who claimed the remittance basis. They sold their shareholding in a Luxembourg company and provided an indemnity in respect of the company's debt, which was then triggered. The FTT allowed the appeal holding that the settlement of the debt indemnity did not give rise to a remittance under s. 809L of ITA 2007.

**Capital loss claim:** [E Cumming-Bruce v HMRC](#) [2022] UKUT 233 (TCC) (For the taxpayer: Michael Sherry instructed by Edwards Greene Chartered Accountants. For HMRC: Imran Afzal.) – The issue was whether the taxpayer's capital loss claims were stand-alone or formed part of their tax returns. This was relevant to the validity of the enquiries: if they were stand-alone, HMRC would have had to open enquiries under Sch 1A to TMA 1970, not s. 9A. The UT upheld an FTT decision dismissing the appeal on the basis that capital loss claims made as in-time amendments to a tax return form part of that return. HMRC's enquiry was valid.

**Market value of employment benefit:** [HMRC v Mr and Mrs Pickles](#) [2022] UKUT 253 (TCC) (For the taxpayer: Conrad McDonnell. For HMRC: Laura Poots.) – The UT clarified the meaning of "market value" in s. 1020 of the CTA 2010 and the correct approach when determining the market value of the benefit received by the taxpayers.

**Retrospective penalties:** [Priory London Limited v HMRC](#) [2022] UKUT 225 (TCC) (The taxpayer was unrepresented. For HMRC: Joshua Carey.) – The UT confirmed that daily penalties for failure to make ATED returns could be issued retrospectively.

**Freedom of establishment:** [Gallaher v HMRC](#) (Case C-707 – AGO) – The Attorney-General stated that the right to freedom of establishment was not breached by the imposition of a domestic UK tax charge on a transfer of assets by a UK-resident company to a related company in Switzerland, where those companies were subsidiaries of the same parent company which was resident in another member state, and where the transfer would have been tax-neutral if the related company were UK-resident.

**Costs:** [GC Field & Son Ltd v HMRC](#) [2022] UKFTT 314 (TC) – The taxpayers applied for costs for HMRC's unreasonable behaviour. HMRC sought to assess the taxpayers in respect of an SDLT avoidance scheme, but it was outside the time limits and could not prove failure to take reasonable care in the substantive FTT appeal. The FTT found that HMRC's conduct of the case had been unreasonable, but only awarded costs of £1 on the basis that the Appellants had already had a "lucky strike", as the scheme did not work and a costs award "would be to compound their luck and to double jeopardise the general body of taxpayers for HMRC's failure".

## 6. Recent decisions – Indirect tax

**Financial services:** [Emerchantpay Ltd v HMRC](#) [2022] UKFTT 334 (TC) (For the Appellant: Hui Ling McCarthy KC and Sarah Black instructed by Grant Thornton. For HMRC: Eleni Mitrophanous KC) – The Appellant was a payment services provider which subcontracted payment services (including due diligence on merchants, payment processing, support and customer services) to a Bulgarian company within its corporate group. The FTT held that the services constituted a single composite supply which was essential in introducing merchant acquirers to merchants with a view to the former providing financial services to the latter. As a result, the services fell within the financial intermediation exemption under Item 1, Group 5 of Schedule 9 to VATA 1994.

**Non-emergency ambulances:** [E-Zec Medical Transport Services Ltd v HMRC](#) [2022] UKFTT 302 (TC) (For the Appellant: Melanie Hall KC instructed by Pinsent Masons. For HMRC: Joanna Vicary) - The FTT decided that non-emergency ambulances could qualify for zero-rating, rather than being treated as exempt from VAT. (Victor wrote about this case in [Tax Journal](#).)

**Lease break payment:** [Ventgrove Ltd v Kuehne+Nagel Ltd](#) [2022] CSIH 40 – The Inner House of the Court of Session held that a break payment made by a tenant to terminate a lease early was subject to VAT and the landlord did not have a legitimate expectation that HMRC would not seek to impose a VAT charge.

**Penalties for deliberate inaccuracies:** [C F Booth Ltd v HMRC](#) [2022] UKUT 217 (TCC) (For the Appellant: Conrad McDonnell. For HMRC: Howard Watkinson and Joshua Carey.) – The FTT had previously denied a VAT repayment claim on the basis of *Kittel*. The Appellant argued that HMRC could only impose a penalty for deliberate inaccuracy if the taxpayer had been dishonest. The UT disagreed and restated the test in *Auxilium Project Management Ltd v HMRC* [2016] UKFTT 249 (TC) that deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document. The UT rejected the suggestion

that the Supreme Court judgment in *Raymond Tooth v HMRC* [2021] UKSC 17 affected that conclusion.

**Penalty reduction:** [The Great British Takeaway Ltd v HMRC](#) [2022] UKFTT 315 (TC) (For the Appellant: Arnold J Homer CA CTA instructed by Marneros Marcus & Co.) – The FTT held that, in order to obtain a penalty reduction for “telling”, it is not enough for the taxpayer to simply provide information to HMRC, but that information must explain what the inaccuracy was and how it arose.

**Late assessment:** [Nottingham Forest Football Club Ltd v HMRC](#) [2022] UKFTT 305 (TC) (For the Appellant: Colin Smith of The Independent Tax and Forensic Services LLP) – The FTT held that a taxpayer had not proved that a VAT assessment was issued late under s. 73(6)(b) of VATA 1994, as it had failed to show that evidence provided more than a year before the assessment was issued was sufficient for HMRC to identify a tax shortfall.

**Contracts and invoices:** [Star Services Oxford Ltd v HMRC](#) [2022] UKFTT 291 (TC) – The FTT dismissed a company’s claim for input tax on rent payments where the lease agreement was in the name of the sole trader. The FTT held that the trader and the company were separate legal entities, there was no supply to the company and the invoices were issued to the sole trader.

**Place of supply and burden of proof:** [HMRC v M Zaman](#) [2022] UKUT 252 (TCC) – HMRC issued a personal liability notice to a director of a company assessed to VAT on the basis that its supplies of alcohol took place in the UK and were therefore standard rated. The FTT held that HMRC had not proved that the place of supply was the UK. The UT held that that was the wrong test: HMRC must prove that the notice is correctly issued and, if it does so, it is then for the taxpayer to prove that the assessments on which the notice is based were excessive.

## 7. Media

**HMRC calls with wealthy taxpayers:** Back in April, HMRC launched a pilot scheme whereby HMRC asked up to 1,000 wealthy individuals with incomes exceeding £200,000 and assets of at least £2m to have a “pre-filing” conversation before they completed their tax returns. The FT has [spoken](#) with a few tax advisors whose clients have received such letters.

**Non-dom rules:** A new [paper](#) has been published by Warwick and LSE academics which looks at the impact of reforming the non-dom regime. According to the paper, abolishing the non-dom rules would raise an extra £3.2bn of income tax and CGT. Dan Neidle covered this in his [blog](#).

**Managed Service Companies (MSC):** WTT Consulting have published an [article](#) in Tax Journal on the MSC legislation, which brings disguised employees within PAYE for all of their receipts, including dividends. The article states that HMRC is focusing on this area and disputes may therefore arise.

**Corporate Interest Restriction (CIR):** Mayer Brown have published a detailed [article](#) in Tax Journal on the CIR regime and its impact on acquisition finance (i.e. CIR may limit tax deductions for interest on loans to finance the acquisition of a target group). This is worth bearing in mind for the future, as the CIR regime is very complex.

**Agricultural Property Relief:** There has been a recent crackdown on [Agricultural Property Relief claims](#), according to Boodle Hadfield. The number of HMRC investigations increased by 28% in the last year (from 217 up to 278). HMRC investigates these claims when it suspects land is not being farmed commercially.

**GAAR:** Back in July, the GAAR Advisory Panel published its first decision in favour of the taxpayer. It concerned a loan to a participator chargeable under s. 455 of CTA 2010 and its repayment through transactions involving group companies. BKL reviewed the decision in a Tax Journal [article](#).

**Tax advisors:** The OECD has published the [Tax Morale II report](#) “Building Trust between Tax Administrations and Large Businesses”, which looks at data on how tax administrations perceive the behaviour of multinationals towards tax compliance and sets out approaches on how to build trust and approach communications. One finding is that most tax administrations believe the Big Four try to exploit loopholes in the law, and only a quarter of tax officials think the Big Four consistently follow the spirit of the law. The findings of the report are summarised in an FT [article](#).

**More tax advisors:** The European Commission is [planning](#) to crack down on advisors who promote tax evasion and aggressive tax planning. The proposals include setting up a register of tax-evasion enablers and banning overly aggressive tax planning.

**Tax fraud gap:** Tax Watch has published an op-ed on [the tax fraud gap](#) in the “HMRC Enquiries, Investigations and Powers” magazine. This is based on [HMRC’s publication](#) on tax gap estimates for 2020 to 2021, which was published back in June.

**Windfall tax:** A windfall tax on UK oil and gas producers was [announced](#) back in May, but there has recently been [talk](#) of a more extensive windfall tax across the EU. The EU Tax Observatory has [proposed](#) an excess profits tax which would tax listed energy companies on 33% of the increase in their market capitalisation. Tax Policy Associates have [identified](#) a few issues with this proposal.

**IR35:** The announced IR35 reforms signalled a return to a system where contractors determine their own self-employment status. An FT [article](#) looks at what the proposed changes will mean for contractors and how they should prepare for them, e.g. by changing their contracts to reflect self-employment and control over their work. It remains to be seen if the reforms actually take place and to what extent HMRC will take enforcement action in this area.