



## Tax Updates – March 2023

### Highlights

- The Chancellor delivered the Spring Budget on 15 March 2023. The Spring Finance Bill has also been published and had its second reading.
- HMRC has launched a nudge letter campaign in relation to super-deductions.
- Two important IR35 decisions have been issued by the UT and FTT in relation to Eamonn Holmes and Gary Lineker, respectively.
- Two reports on tax avoidance in football and carried interest published by Tax Policy Associates have received a lot of press attention, although others have rejected any suggestion of tax avoidance in either of those contexts.

### Contents

Pages 2-3 – Upcoming hearings, legislation and consultations

Page 4 – HMRC guidance, spotlights and nudge letters

Page 5 - Recent decisions – Direct tax

Page 6 – Recent decisions – Indirect tax

Page 7 – Media

## 1. Upcoming hearings

**UT:** *George Mantides Limited v HMRC* (Case ID: UT-2020-0122) – Hearing date: 4, 5 or 6 April 2022 – IR35 hypothetical contract interpretation.

**UT:** *United Grand Lodge of England v HMRC* (Case ID: UT-2022-00009) – Hearing date: 24-25 April 2023 – VAT exempt supplies relating to membership fees charged to Freemasons.

**UT:** *John Lancashire v HMRC* (Case ID: UT/2021/00049) – Hearing date: 8, 9 or 10 May 2023 – Transfer of Assets Abroad.

**CA:** *Royal Bank of Canada v HMRC* (Case ID: CA-2022-000812) – Hearing date: 17 May 2023 – Taxation of oil royalties received by overseas bank and applied to outstanding debt of insolvent borrower.

**UT:** *Scottish Power (SCPL) Ltd v HMRC* (Case IDs: UT-2022-000045 and UT-2022-000051) – Hearing date: 15, 16 or 17 May 2023 - Deductibility of payments in settlement of regulatory breaches.

**UT:** *Gunfleet Sands Ltd and others v HMRC* (Case ID: UT-2022-000053) – Hearing date: 5-8 June 2023 – Capital allowances on plant and machinery.

**UT:** *Hotel La Tour v HMRC* (Case ID: UT-2022-000031) – Hearing date: 12-14 June 2023 – VAT on professional fees connected to the sale of shares in subsidiary company.

## 2. Legislation and consultations

**Budget 2023:** On 15 March 2023, Chancellor Jeremy Hunt delivered the Spring Budget. Tax Journal has prepared a [detailed report](#) of the announced tax measures, which include the following:

- The corporation tax rise to 25% from April 2023 will go ahead as planned.
- A capital allowance will be introduced enabling companies to deduct 100% of their spend on IT equipment, plant and machinery in the year of investment ([policy paper](#)).
- A new rate of R&D tax credit will be introduced for R&D intensive SMEs, as long as at least 40% of their total expenditure relates to R&D ([policy paper](#)).
- Tax reliefs of 45% and 50% for theatres, orchestras and museums have been extended for two years ([policy paper](#)).
- The new multinational top-up tax and domestic top-up tax will be introduced in line with OECD Pillar Two ([policy paper](#)).
- The pension lifetime tax-free allowance will be abolished and the annual allowance will increase from £40,000 to £60,000.

HMRC has also published an [overview](#) of the tax legislation and rates announced at Spring Budget and previously announced measures to be included in the Spring Finance Bill 2023.

**Spring Finance Bill 2023:** The [Finance \(No. 2\) Bill](#) has been published, together with [Explanatory Notes](#), and had its second reading on 29 March. The Bill reflects the measures announced at Spring Budget.

**Economic Crime Bill:** The [Economic Crime and Corporate Transparency Bill](#) has been amended to introduce further "failure to prevent" offences, including failure to prevent economic crime, criminal financial offences, fraud and sanctions evasion. The Bill is currently at the Lords Committee Stage.

## THE LITIGATION SPECIALISTS

**Economic crime levy:** The [Economic Crime \(Anti-Money Laundering\) Levy \(Amendment\) Regulations 2023](#) came into force on 28 March. These set out further provisions in relation to the assessment, payment, collection and recovery of the levy, as well as potential penalties, including for failure to submit a return or late payment.

**R&D:** The [Research and Development \(Prescribed Activities\) Regulations 2023](#) were made on 9 March 2023. These implement the revised guidelines on the meaning of R&D, which state that mathematical advances are treated as science for the purposes of R&D tax relief.

**Mandatory disclosure rules:** The UK's mandatory disclosure rules came into effect on 28 March. These are set out in the [International Tax Enforcement \(Disclosable Arrangements\) Regulations 2023](#), which implement OECD rules requiring taxpayers, promoters and advisers to disclose details of avoidance arrangements which use opaque offshore structures, or which circumvent the reporting of financial information under the common reporting standard.

**Consultations:** A number of consultations have been published this month:

- [Consultation](#) on simplifying and modernising HMRC's income tax services as part of the Tax Administration Framework review;
- [Consultation](#) on the taxation of ecosystem service markets and the potential expansion of agricultural property relief from inheritance tax.
- [Consultation](#) on proposed changes to expand the VAT energy saving materials relief to include additional technologies and expand the relief to installation of energy saving materials in buildings intended solely for a relevant charitable purpose;
- [Consultation](#) on the Value Added Tax (Amendment) Regulations 2023, which introduce rules in relation to VAT accounted for as part of drink deposit return schemes.

### Consultation outcomes:

- The government has published a [summary of responses](#) to the consultation on audio-visual tax reliefs.
- The government has published a [summary of responses](#) to the consultation on how the Enterprise Management Incentives scheme is operating and whether it should be reformed.
- The government has published a [response](#) to the call for evidence on a proposed scheme that will refund landfill tax in order to encourage the redevelopment of brownfield sites and contaminated land.

### Consultation responses:

- CIOT has [responded](#) to the [consultation](#) on a single R&D relief scheme. While CIOT agrees that having a single scheme would simplify the tax code, this would not necessarily be simpler for all SMEs, particularly given the two rates of CT in effect from April 2023. CIOT also considers that the implementation date of April 2024 is too soon, especially given the other changes to the regime announced at the Spring Budget. ATT's [response](#) highlights similar concerns, including that a single scheme would not take into account the differences between the needs of companies of different sizes.
- CIOT has also [commented](#) on the [draft HMRC R&D guidance](#). Key comments include: (a) the definition of qualifying overseas expenditure is unclear, (b) the aspect of the test for qualifying overseas expenditure in relation to whether it is "wholly unreasonable" to conduct the R&D overseas should only apply to facilities operated by the claimant, not third parties, and (c) descriptions in the guidance are inconsistent with the legislation.

### 3. HMRC guidance

**MDR:** HMRC has published new guidance on how to [register](#) to report a cross-border arrangement under the Mandatory Disclosure Rules (MDR) and how to submit such a [report](#).

**IR35:** HMRC has published new guidance on the off-payroll working rules (IR35). Three guidance notes have been published: (1) on off-payroll working for intermediaries and contractors providing services to the [public sector or medium/large clients](#) in the private sector; (2) on off-payroll working for intermediaries and contractors providing services to [small clients](#) in the private sector; and (3) on off-payroll working [for clients](#).

**Interest rates:** Following the Bank of England's decision to increase the base rate to 4.25%, HMRC's late payment interest rate for most taxes will be [increased](#) to 6.75% and the repayment interest rate to 3.25%. The increases apply from 3 April 2023 for quarterly instalments and 13 April 2023 for non-quarterly instalments.

**Charitable tax reliefs:** As announced at the Spring Budget 2023 and in the Treasury's [policy paper](#), charities and community amateur sports clubs based in the EU and EEA no longer qualify for charitable tax reliefs. The aim of this measure is to support UK charities. The corresponding [HMRC charities guidance](#) has also been updated to reflect this.

**Guidelines for Compliance (GFCs):** Following a 2021 [government review](#) of tax administration for large businesses, HMRC has introduced GFCs which are designed to mitigate uncertainty and to provide practical guidance and transparency in relation to tax administration. Over time, HMRC intends to develop a suite of GFCs that clarify its view on novel areas of the tax code. This month, HMRC published [guidelines](#) on the apportionment of consideration for VAT.

**Climate Change Levy:** HMRC has updated its [guidance](#) on the Climate Change Levy (CCL). This highlights that taxpayers within the scope of CCL must submit a return even if they have nothing to pay or are due a refund.

**VAT refunds:** HMRC updated the principles in its [internal manual](#) regarding evidence required to substantiate historical claims for the recovery of input tax. This follows the Supreme Court decision in *NHS Lothian* [2022] UKSC 28.

**Oil taxation:** HMRC has added a new chapter for the energy profits levy on companies' ring-fence profits and the associated investment allowance in its [Oil Taxation Manual](#).

### 4. HMRC spotlights and nudge letters

**Super-deductions:** HMRC has launched a [nudge letter campaign](#) in relation to super-deductions, i.e. capital allowances available to companies investing in qualifying new plant and machinery. Two types of letters are being sent: one in relation to assets that the company has leased out, and one in relation to contracts to buy the plant and machinery entered into before 3 March 2021, as the super-deduction does not apply to either of these situations.

**VAT penalty point notices:** HMRC has started issuing VAT penalty notices for late filing and late payment. However, CIOT [notes](#) that HMRC has removed customer details from copies of notices sent to taxpayers' agents, to address GDPR concerns. Such notices will only show the VRN.



## 5. Recent decisions – Direct tax

**Group relief:** [VolkerRail Plant Ltd and others v HMRC](#) [2023] EWCA Civ 210 (For the taxpayer: Nicola Shaw KC and Kelly Stricklin-Coutinho instructed by EY. For HMRC: David Ewart KC, Mark Fell KC and Harry Winter) – The Court of Appeal dismissed the appeals and held that the taxpayers were not entitled to group relief on losses made by the UK branch of a Dutch group member. The Court also held that, while there was a restriction on freedom of establishment, this was justified and proportionate.

**Disclosure:** [Mark Mitchell and Paul Bell v HMRC](#) [2023] EWCA Civ 261 (For the taxpayer: Julian Hickey instructed by Levy & Levy and Barrie Akin instructed by Hill Dickinson. For HMRC: Jenny Goldring and Aparna Rao.) – The Court of Appeal held that HMRC had discretion to disclose information arising from its investigation into one taxpayer to another taxpayer, in circumstances where their appeals were being heard together.

**Discovery assessments:** [Norton and another v HMRC](#) [2023] UKUT 48 (TCC) (For the taxpayer: Keith Gordon instructed by Jackson & Grimes. For HMRC: Sadiya Choudhury.) – The UT held that discovery assessments cannot be issued while an enquiry window remains open.

**IR35:** [Red White and Green Ltd v HMRC](#) [2023] UKUT 83 (TCC) (For the taxpayer: Keith Gordon and Ximena Montes Manzano instructed by Alliotts LLP. For HMRC: Adam Tolley KC and Christopher Stone.) – Eamonn Holmes appealed against the FTT’s decision that contracts between his personal services company and ITV amounted to an employment relationship. The UT dismissed his appeal and held that all the employment status factors were present, including mutuality of obligations and a sufficient framework of control to indicate employment.

**Partnerships:** [HFFX LLP v HMRC](#) [2023] UKUT 73 (TCC) (For the taxpayer: Kevin Prosser KC and David Yates KC instructed by Macfarlanes. For HMRC: Thomas Chacko and James Kirby.) – An LLP entered into a scheme to defer its members’ entitlement to part of their profit shares by allocating them to a corporate partner which had

discretion to allocate the sums as special capital to members. The UT held that the scheme did not work and income tax was payable on the profits.

**IR35:** [Gary Lineker v HMRC](#) [2023] UKFTT 34 (TC) (For the taxpayer: James Rivett KC and Georgia Hicks instructed by Clintons LLP. For HMRC: Akash Nawbatt, Christopher Stone and Ishaani Shrivastava.) – Gary Lineker entered into agreements with the BBC and BT Sport for the provision of his services. The agreements were signed by Mr Lineker and his then wife trading as a partnership. The FTT held that IR35 applies to partnerships, but allowed the appeal as Mr Lineker had signed the contract as principal and IR35 does not apply to direct contracts.

**Intangible fixed assets:** [Muller UK & Ireland Group LLP v HMRC](#) [2023] UKFTT 221 (For the taxpayers: Peter Trevett KC and Francis Fitzpatrick KC instructed by EY. For HMRC: Christopher Tidmarsh KC, Imran Afzal and Tomos Rees.) – The FTT dismissed the appeal and held that the taxpayers were not entitled to relief on amortisation debts incurred in relation to intangible fixed assets and goodwill acquired from them by an LLP of which they were members.

**Discovery assessments:** [Robson v HMRC](#) [2023] UKFTT 226 (TC) – The taxpayer’s agent had filed returns and made fraudulent EIS claims on behalf of the taxpayer without his knowledge. The FTT allowed the appeal and held that HMRC had not validly made discovery assessments because the returns which had led to the tax loss could not be said to have been submitted.

**Closure notices:** [Hitchins and others v HMRC](#) [2023] UKFTT 127 (TC) (For the taxpayer: Keith Gordon instructed by Crowe UK. For HMRC: Sadiya Choudhury.) – The FTT considered an application for closure notices. It held that HMRC’s questions were “fishing expeditions” and ordered HMRC to close the enquiries within six weeks.

**HMRC litigators:** [Asset House Piccadilly Limited v HMRC](#) [2023] UKFTT 279. (For the taxpayer: Rory Mullan KC and Stephen Hackett instructed by Griffin Law. For HMRC: Phillip Simpson KC.) – The FTT held that HMRC officers were allowed to conduct Tribunal proceedings and that the Legal Services Act 2007 did not require those conducting Tribunal proceedings to be legally qualified.

## 6. Recent decisions – Indirect tax

**Online platforms:** [Fenix International Ltd v HMRC](#) (Case C-695/20) (For the taxpayer: Valentina Sloane KC and Max Schofield instructed by BDO. For HMRC: Andrew Macnab.) – The taxpayer, who operates the OnlyFans online platform, tried to challenge the validity of EU law which required an online platform for content creators to account for VAT on the full charges paid by users.

**Option to tax:** [Mouldsdale v HMRC](#) [2023] UKSC 12 (For the taxpayer: Philip Simpson KC and David Small instructed by Harper Macleod LLP. For HMRC: David Thomson KC, Elisabeth Roxburgh and Ross Anderson.) – The Supreme Court dismissed the taxpayer's appeal and held that the taxpayer had to account for VAT on the sale of a property that the taxpayer had opted to tax, despite the anti-avoidance provisions in the option to tax legislation.

**SDLT:** [Fanning v HMRC](#) [2023] EWCA Civ 263 (For the taxpayer: Julian Hickey and Rebecca Sheldon instructed by Levy & Levy. For HMRC: Elizabeth Wilson KC and Admas Habteslasie.) – The Court of Appeal held that a widely marketed SDLT avoidance scheme failed, as the SDLT sub-sale provisions did not apply where the taxpayer granted a third party an option to later purchase the property.

**VAT groups:** [HMRC v The Prudential Assurance Company Ltd](#) [2023] UKUT 54 (TCC) (For the taxpayer: Zizhen Yang instructed by Baker McKenzie. For HMRC: Peter Mantle.) – The UT allowed HMRC's appeal and held that VAT was payable on services supplied while the company was a member of a VAT group but invoiced and paid for after it had ceased to be a member.

**Procedural fairness:** [Kingston Maurward College v HMRC](#) [2023] UKUT 69 (TCC) (For the taxpayer: Michael Firth instructed by VATangles. For HMRC: Peter Mantle.) – The UT held that an FTT decision dismissing the appellant's appeals had been fairly determined, as HMRC's statement of case was not inadequate and it was not unfair for the FTT to determine all issues including on quantum.

**Education:** [Fareham College v HMRC](#) [2023] UKFTT 214 (TC) (For the taxpayer: Michael Firth instructed by VATangles. For HMRC: Peter Mantle.) – The

taxpayer appealed against HMRC's refusal to repay VAT on supplies made to the public from its training restaurant, hair salons and performing arts centre. The FTT held that the PVD excluded the supplies made from the training restaurant and salons from the scope of the exemption for supplies closely related to supplies of education. However, the supplies from the restaurant were exempt as they were not made for additional income.

**Bad debt relief:** [Allegion \(UK\) Limited v HMRC](#) [2003] UKFTT 273 (TC) (For the taxpayer: David Southern KC instructed by RSM. For HMRC: Sarah Black) – The taxpayer appealed HMRC's refusal of its claim for historical VAT bad debt relief. The FTT dismissed the appeal as the taxpayer had not satisfied the requirements for a valid bad debt relief claim as it could not produce the relevant contracts showing it had used reservation of title clauses.

**Temporary reduced VAT rates:** [The Young Driver Training Limited v HMRC](#) [2023] UKFTT 271 (TC) (For HMRC: Edward Waldegrave.) – The taxpayer argued that the temporary reduced VAT rates (introduced as a response to the Covid-19 pandemic) applied to the provision of driving lessons to children under 17. The FTT dismissed the appeal and found that the reduced rate did not apply as the customers paid for the driving experience, not an admission fee to the site.

**VAT penalties:** [CPR Commercials Ltd v Revenue and Customs](#) [2023] UKUT 61 (TCC) (For the taxpayer: David Bedenham instructed by Rainer Hughes. For HMRC: Karen Robinson.) – The taxpayer submitted VAT returns showing zero-rated export transactions in respect of which it had no evidence of export, and HMRC issued a penalty for deliberate inaccuracy. The Upper Tribunal allowed the taxpayer's appeal and held that it was instead liable to a penalty for careless inaccuracy, as it did not know the return contained an inaccuracy at the time of submission.

**Director's Liability Notice:** [Trees v HMRC](#) [2023] UKFTT 339 (TC) (For HMRC: Christopher Kerr and Ben Hayhurst.) – In an appeal against a Director's Liability Notice issued following an unsuccessful MTIC appeal, the FTT allowed HMRC's application to strike out part of the evidence and to admit the FTT judgment in the previous MTIC proceedings. The FTT held that it had previously concluded that the appellant knew that its transactions were connected to fraud and that it would be an abuse of process to allow him to re-litigate that part of the appeal.

## 7. Media

**HMRC service levels:** Ahead of the Spring Budget, ten leading professional bodies including CIOT, ATT and ICAEW published an open [letter](#) on HMRC service levels, urging the chancellor to prioritise investment in that area.

**Tax evasion:** The FT has [reported](#) on UK prosecutions of tax evasion enablers, which have dropped by 80% in the last two years compared to previous years. The number of prosecutions fell over the pandemic, partly owing to court closures. There is a concern that a lack of enforcement by HMRC, which employs 5,000 people in its Fraud Investigation Service, weakens the deterrent effect of the legislation designed to prevent tax fraud.

**Covid-19 task force:** The FT has [reported](#) on HMRC's decision to decommission its task force which focused on recouping tax lost through fraudulent and faulty claims in relation to the government's Covid-19 support schemes. By March 2022, the agency had secured only £640,000, equivalent to just 0.03% of the estimated amount lost through such claims.

**IR35:** Tax receipts as a result of the UK's off-payroll work rules are set to double to £1.5bn per year, according to [the FT](#). This comes in light of the government's decision in 2016 to tighten the rules, meaning that thousands more workers are being treated as employees rather than self-employed.

**Investment tax reliefs:** Ahead of the Spring Budget, there was [MP scrutiny](#) of tax reliefs available to taxpayers investing in early-stage businesses through HMRC's venture capital schemes, including the Enterprise Investment Scheme (EIS). However, the government has not announced any restriction of these reliefs, with SEIS even being expanded ([policy paper](#)). Stewarts [looked](#) at what the EIS scheme is, who can benefit from the tax reliefs offered under the scheme and common disputes in this area.

**Carried interest:** Dan Neidle of Tax Policy Associates has published a [paper](#) in the British Tax Review suggesting that private equity funds are trading rather than investing for UK tax purposes and the carried interest earned by fund managers should be taxed as trading income, resulting in a tax loss of £600m per year. The FT has [published](#) an article on this. Macfarlanes, who currently chair the private

equity industry's tax committee, have issued a [rebuttal](#).

**Tax avoidance in football:** Tax Policy Associates have [suggested](#) that the dual representation agreements that are common between players, clubs and their agents amount to tax avoidance schemes which have resulted in £470m of lost tax since 2015. The BBC has also [reported](#) on this. The International Sports Tax Association has [rejected](#) this conclusion.

**R&D:** TaxWatch have published a [report](#) which shows that R&D tax reliefs are not working as intended. Hundreds of millions of pounds are lost each year due to R&D fraud and error, with many companies only applying for the relief after being contacted by tax advisers. [The Times](#) has also commented on this report.

**Crypto assets:** The FT has [reported](#) on changes to self-assessment tax return forms requiring taxpayers to declare any gains from crypto assets. [CIOT](#) welcomes the changes announced in the Spring Budget, as these will raise awareness of people's obligations to declare crypto asset transactions.

**OTS closure:** According to the [Tax Journal](#), the Commons Treasury Committee will write to the Chancellor questioning the upcoming closure of the Office of Tax Simplification. As part of its recent tax reliefs enquiry, the Committee held a session with the OTS (as [reported](#) by CIOT) on how its closure is likely to impact future effort to simplify the tax framework.

**VAT gap:** HMRC has [published](#) a second VAT gap estimate for the financial year 2021 to 2022. The VAT gap was £7.7bn, amounting to 5.4% of net VAT receipts.

**NFTs:** The European Commission has published a [working paper](#) on the VAT treatment of NFTs. The paper notes that the current view seems to be that NFTs are digital services, but this is not certain and there may be cases where the sale of NFTs should be regarded as a transaction in goods.

**Treaty shopping:** The OECD has published its [Fifth Peer Review Report on Treaty Shopping](#), which assesses the actions taken by OECD members to prevent tax treaty shopping and abuse, in accordance with BEPS Action 6. Jurisdictions are implementing the minimum standard on treaty shopping, mostly through the BEPS Multilateral Instrument.