



Tax Updates – April 2023

Highlights

- On 27 April, also known as the Tax Administration and Maintenance Day, the government announced a raft of technical proposals and consultations designed to improve tax administration.
- The government has backtracked on its plan to scrap all retained EU law by the end of the year.
- On 1 April, the UK celebrated 50 years of VAT.
- HMRC is writing to taxpayers with liabilities under the loan charge and to businesses believed to have used Electronic Sales Suppression systems.
- The Tribunal has issued a number of substantive and procedural decisions in relation to various tax avoidance schemes.

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1. Upcoming hearings

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

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 appeal.

UT: *Gunfleet Sands Ltd and others v HMRC* (Case IDs: UT-2022-000053, UT-2022-000054, UT-2022-000056, UT-2022-000057 and UT-2022-000055) – Hearing date: 5-8 June 2023 – Appeal in relation to capital allowances on plant and machinery.

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

UT: *BlueCrest Capital Management (UK) LLP v HMRC* (Case ID: UT-2022-000110) – Hearing date: 27-29 June 2023 – Appeal on salaried members rules.

UT: *HMRC v Hippodrome Casino Ltd* (Case ID: UT-2022-00081) – Hearing date: 3 October 2023 – Appeal on partial exemption and residual input tax.

UT: *Coconut Animated Island Ltd v HMRC* (Case ID: UT-2022-000123) – Hearing date: 16 October 2023 – SEIS relief appeal.

CA: *HMRC v Pickles and another* (Case ID: CA-2022-002497) – Hearing date: 9 November 2023 – Appeal in relation to income tax on partnership distributions.

UT: *HMRC v Innovative Bites Ltd* (Case ID: UT-2023-000007) – Hearing date: 21 November 2023 – Appeal in relation to VAT on marshmallows.

2. Legislation and consultations

Economic Crime Bill: The Economic Crime and Corporate Transparency Bill has been amended to introduce a corporate offence of failing to prevent fraud. The amendments will be considered at the Lords Committee Stage by 11 May 2023. The government has also published a [factsheet](#) explaining the rationale behind the offences and summarising their scope.

VAT on medical services: The Value Added Tax Act 1994 (Schedule 9) (Exemptions: Health and Welfare) (Amendment) [Order](#) 2023 has been made, extending the VAT exemption for healthcare to medical services carried out by staff directly supervised by registered pharmacists. HMRC has also published a [policy paper](#).

VAT margin schemes: The Value Added Tax (Margin Schemes and Removal or Export of Goods: VAT-related Payments) (Amendment) [Order](#) 2023 has been made, making changes to how late payment and repayment interest apply to claims under the margin scheme by businesses which do not have a business establishment in the UK.

Tax administration: The second ever Tax Administration and Maintenance Day took place on 27 April 2023. The government published a number of technical tax proposals and consultations, which are summarised in a [policy paper](#) and include the following:

- [Call for evidence](#) on information and data powers: As part of the Tax Administration Framework Review, HMRC is seeking views on updating its information and data-gathering powers to enable digital transformation of taxpayer services, improve compliance, and reduce administrative burdens.
- [Consultation outcome](#) on the data HMRC collects from customers: HMRC will proceed with collecting new data and will include powers to do so in a future Finance Bill.
- [Consultation](#) on creating innovative change through new legislative pilots: HMRC is seeking views on how to develop and improve testing legislative changes prior to wider roll out, as this is currently limited by legislative inflexibility.

THE LITIGATION SPECIALISTS

- [Consultation outcome](#) on the tax treatment of Decentralised Finance (DeFi) lending and staking, and a further [consultation](#): HMRC has reviewed the responses to the previous consultation and published a new consultation to seek views on the viability, scope and policy design of rules whereby the potential disposal of beneficial ownership for tokens lent or staked in a DeFi transaction is disregarded for CGT purposes.
- [Consultation](#) on Stamp Taxes on Shares: HMRC is seeking views on proposals to modernise and simplify the framework for Stamp Duty and Stamp Duty Reserve Tax by merging the two into a single tax on securities.
- [Consultation](#) on the Reserved Investor Fund (RIF): The government is proposing to introduce a new type of investment fund that would be structured as an unauthorised co-ownership contractual scheme.
- [Consultation](#) on off-payroll working (IR35): HMRC is consulting on a potential change to allow it to account for tax already paid when calculating PAYE due by a deemed employer where an error has been made in applying the IR35 rules.
- [Consultation](#) on tougher consequences for promoters of tax avoidance: HMRC is seeking views on making the failure to comply with a POTAS Stop Notice a criminal offence and to expedite the disqualification of directors of companies involved in the promotion of tax avoidance.
- [Consultation](#) on the Construction Industry Scheme (CIS): HMRC is consulting on proposed reforms to CIS, including strengthening the tests for Gross Payment Status and amending the rules to reduce administrative burdens.
- [Consultation outcome](#) on modernising tax debt collection: HMRC previously sought views on the approach to taxpayers who do not engage with HMRC to pay their tax debts. In light of the responses received, HMRC will focus on four proposals: extending Taking Control of Goods Powers to in-house leasing and to those with no

UK assets or assets at a principal place of business, extending Direct Recovery of Debt to digital wallets, and requiring security deposits to recurring non-paying businesses.

- A consultation will follow in May on simplifying and updating the legislation on DPT, transfer pricing and PE.
- [Guidance](#) on the introduction of a requirement for repayment agents to register with HMRC within a three-month window from 2 May 2023.

CIOT has [welcomed](#) these developments, but expressed concern that the proposed changes were “quite niche” and would not make the system “simpler and more effective”, as the government had promised. The only potential exception is the consultation on the CGT treatment of DeFi lending and staking, which it found [encouraging](#) in terms of clarifying the tax treatment of such transactions.

Consultation responses:

- CIOT has [responded](#) to the Treasury [consultation](#) on proposals for the financial services regulatory regime for cryptoassets. While CIOT does not normally comment on regulation, it took this as an opportunity to call on the Treasury to address the definition and treatment of cryptoasset transactions and on HMRC to legislate on the tax treatment of cryptoassets.
- CIOT has [responded](#) to HMRC's [proposed changes](#) to the rules on CGT on share for share exchanges involving non-UK companies. CIOT suggested that the legislation should not just apply to individuals but also to e.g. trustees and partnerships. It also flagged that individuals who were non-resident at the time of the exchange and later became UK resident would not know they needed to make an election at the time of the exchange.

3. HMRC guidance

Draft R&D guidance: Following the consultation published in December 2022, HMRC has updated its [draft guidance](#) on R&D tax reliefs taking into account the responses received and clarifying aspects of the reforms announced in the Spring Budget, including in relation to restrictions on overseas expenditure and the extension of the definition of R&D to include pure mathematics.

R&D claim notification: Ahead of the reforms to R&D tax relief submissions on 1 August 2023, HMRC has issued [guidance](#) on when a company needs to notify HMRC that it intends to make an R&D relief claim, as well as [guidance](#) on the information to be provided with the early notification.

Review and appeals for direct taxes: HMRC has updated its [internal manual](#) to provide its officers more guidance on what checks need to take place when a customer appeals against HMRC's decision. The guidance reiterates that if the taxpayer has not appealed to HMRC, the tribunal has no jurisdiction to consider the matter.

Upper Tribunal e-filing: E-filing will become mandatory for professional users when issuing new proceedings. HMCTS is hosting a webinar on the e-filing process on [11 May](#) and [17 May](#).

Digital Disclosure Service: From 6 April 2023, HMRC's Digital Disclosure Service has migrated to a more accessible [platform](#), which breaks down the process into smaller sections.

Reporting a trust discrepancy: Following the Spring budget, HMRC has updated its [guidance](#) requiring relevant persons to report trust discrepancies to HMRC. A relevant person must ask for a trust's proof of registration either at the beginning of a new business relationship or as part of ongoing monitoring and must report any material discrepancies in the information it holds on the trust.

GAAR: Two new GAAR Advisory Panel opinions have been issued, [one](#) on arrangements to reduce the value of an estate for IHT purposes and [one](#) on arrangements to minimise SDLT on the purchase of a residential property. The GAAR found both arrangements to be unreasonable.

Landfill tax rates: The standard and lower rates of landfill tax have been [updated](#) from 1 April 2023.

Plastic Packaging Tax: HMRC has published new [guidance](#) on PPT penalties which sets out when penalties may be charged, the amount of any penalties and how they are calculated. PPT penalties are levied for failure to register or late registration, failure to submit a return or late return, late payment, inaccurate returns, or failure to meet another PPT requirement.

Gaming machines: HMRC has updated [Revenue and Customs Brief 12 \(2021\)](#) to confirm that it will not pay out VAT refunds in relation to income from crane grab, coin pushers and penny fall game machines, as these were not held to be exempt in *Rank Group plc* [2021] UKFTT 241 (TC).

4. HMRC spotlights and nudge letters

Loan charge: HMRC is [writing](#) to taxpayers affected by the loan charge with assessments for additional tax that HMRC considers due for the tax year ended 5 April 2019. HMRC will try to collect the tax from their employers first, but some taxpayers may also have to pay an additional tax charge under section 222 of ITEPA 2003.

ESS: HMRC has started to issue [nudge letters](#) to companies that may not have paid the correct amount of tax due to misuse of their till systems, known as Electronic Sales Suppression. The letters started to be issued in April 2023 and the campaign will continue for the next year. The aim is to provide an opportunity for businesses to get their tax affairs in order, by coming forward voluntarily and disclosing undeclared sales.

Making Tax Digital for VAT: HMRC has started sending emails to businesses and agents highlighting the need for all VAT-registered businesses to submit VAT returns using Making Tax Digital. Penalties may be issued to businesses that fail to do so.

5. Recent decisions – Direct tax

BPRA: [London Luton Hotel BPRA Property Fund LLP v HMRC](#) [2023] EWCA Civ 362 (For the taxpayer: Malcolm Gammie KC and Jonathan Bremner KC instructed by DWF LLP. For HMRC: Jonathan Davey KC, John Brinsmead-Stockham KC, Nicholas Macklam and Sam Chandler.) – The Court of Appeal allowed HMRC’s appeal and dismissed the taxpayer’s appeal in relation to whether expenditure incurred amounted to capital expenditure on or in connection with a conversion of a former flight centre into a hotel under the Business Premises Renovation Allowance (BPRA). The Court has narrowed the scope of BPRA, which will impact existing BPRA enquiries and other capital allowance claims.

Judicial knowledge: [Spring Capital Ltd v HMRC](#) [2023] UKUT 91 (TCC) (For the taxpayer: Michael Upton and Timothy Haddow. For HMRC: Andrew Webster KC and Sadiya Choudhury.) – The UT dismissed the taxpayer’s appeal and held that Scottish law is a matter of judicial knowledge for the UT and FTT, as it is not foreign law, and it is not a matter on which expert evidence is necessary or admissible.

Discovery assessments: [Danapal v HMRC](#) [2023] UKUT 86 (TCC) (For the taxpayer: Quinlan Windle instructed by Amirthan & Suresh Solicitors. For HMRC: Rebecca Sheldon.) – The UT overturned discovery assessments issued to a doctor as the FTT had failed to give adequate reasons for a finding that the taxpayer’s accountants had been careless in completing his tax returns. The decision sets out a summary of the burden of proof rules and the principles for establishing careless or deliberate behaviour.

Tax avoidance: [Northwood v HMRC](#) [2023] UKFTT 351 (TC) (For the taxpayer: Harriet Brown instructed by Griffin Law. For HMRC: Hui Ling McCarthy KC.) – A dentist made contributions to a Baxendale-Walker remuneration trust with the aim of reducing the taxable profits from his business. The FTT held that the arrangements were a sham, as contributions to the trust were used to make loans to the taxpayer and the accounts were not in accordance with UK GAAP.

Pension scheme: [Dalriada Trustees Ltd and others v HMRC](#) [2023] UKFTT 314 (TC) (For the taxpayers:

Michael Jones KC instructed by Pinsent Masons, Rebecca Sheldon and A Brooks. For HMRC: Laura Poots, Sam Chandler and Ronan Magee.) – The FTT held that a pension liberation scheme did not work and upheld HMRC assessments on the scheme and the individuals.

Pension scheme: [Morgan Lloyd Trustees Ltd and others v HMRC](#) [2023] UKFTT 355 (TC) (For the taxpayer: Philip Simpson KC. For HMRC: Laura Poots, Jamie Muir Wood and Sarah Black.) – The FTT upheld assessments on unauthorised payments from a pension scheme. Under the scheme, companies that were unable to raise external borrowings sold assets to the scheme, but the assets were trademarks, domain names or website that did not have the values attributed to them.

Contractor loan scheme: [Sheth v HMRC](#) [2023] UKFTT 368 (TC) (For HMRC: Marika Lemos and Thomas Westwell.) – The FTT held that a Sanzar contractor loan scheme did not work as it involved a redirection of earnings, such that the contributions were employment income on which income tax was due.

Information notice: [Asset House Piccadilly Ltd v HMRC](#) [2023] UKFTT 385 (TC) (For the taxpayer: Rory Mullan KC instructed by Griffin Law. For HMRC: Philip Simpson KC.) – The FTT upheld an information notice issued as HMRC suspected the appellant had been an enabler of abusive tax arrangements. The scheme involved a Baxendale-Walker remuneration trust with fiduciary receipt arrangements. This case is being hard-fought: last month, the FTT [refused](#) the taxpayer’s application to bar HMRC from proceedings on the basis that its two litigators were not solicitors and could not have conduct of the case.

Requirement to Correct: [Scott v HMRC](#) [2023] UKFTT 360 (TC) (For the taxpayer: Ross Birkbeck.) – The FTT held that HMRC had raised discovery assessments in time under the Requirement to Correct (RTC) legislation that extended assessment time limits for offshore non-compliance.

Time limits: [Cranham Sports LLP v HMRC](#) [2023] UKFTT 373 (TC) (For the taxpayer: Simon Browne. For HMRC: Marianne Tutin.) – The FTT refused an application to bring a late IR35 appeal where the accountants continued to “lock horns” with HMRC after the decision, submitting the appeal 60 days late.

Recent decisions – Indirect tax

Turmeric shots: [Innate-Essence Ltd \(t/a The Turmeric Co\) v HMRC](#) [2023] UKFTT 371 (TC) (For the taxpayer: Max Schofield instructed by Grant Thornton.) – The FTT held that a turmeric shot was not a beverage, as it did not meet the test in HMRC’s manual and should therefore be zero-rated as a food product.

Football agents: [Sports Invest UK Ltd v HMRC](#) [2023] UKFTT 376 (TC) (For the taxpayer: Jonathan Bremner KC instructed by Joseph Hage Aaronson. For HMRC: Isabel McArdle.) – The FTT held that fees paid by a football club to an agent for the transfer of a player related to services supplied by the agent to the club, such that the place of supply was that of the club (Italy). The payment was not third party consideration and was therefore not subject to UK VAT.

Option to tax: [Rolldeen Estates Ltd v HMRC](#) [2023] UKFTT 359 (TC) (For the taxpayer: Salman Ali of Abram & Co.) – The taxpayer had exercised the option to tax for 8 years, but then sold properties without charging VAT. HMRC issued an assessment. The taxpayer did not appeal it, but later argued that the option to tax was not valid in the circumstances. HMRC exercised its discretion to deem the option to tax to be valid. The FTT held that there was no right of appeal against HMRC’s exercise of discretion.

SDLT: [The How Development 1 Ltd v HMRC](#) [2023] UKUT 84 (TCC) (For the taxpayer: Patrick Boch instructed by Cornerstone Tax. For HMRC: James Henderson.) – The UT held that woodland purchased together with a property formed part of the property’s grounds.

Customs: [Ocean Choice International Ltd v HMRC](#) [2023] UKFTT 289 (TC) (For the taxpayer: Valentina Sloane KC. For HMRC: Joanna Vicary.) – The taxpayer’s end-use authorisation expired and, upon applying for a new one, a condition was imposed by HMRC that required a guarantee to cover potential liability for customs debt. The FTT held that a customs debt arose as the condition had not been complied with, but that remission should be granted as HMRC’s confused approach had contributed to the customs debt liability.

Excise: [Eveleigh v HMRC](#) [2023] UKFTT 356 (TC) (For the taxpayer: Harriet Brown. For HMRC: Rupert Davies.) – The FTT held that HMRC did not have a discretion to decide not to issue an excise duty assessment to a person liable to the duty, and that the scheme for assessing duty under s. 12 of the Finance Act 1994 was proportionate.

Out of time appeal: [Uddin v HMRC](#) [2023] UKUT (TCC) (For the taxpayer: Howard Watkinson instructed by ASW Solicitors. For HMRC: Isabel McArdle.) – The UT upheld the FTT’s decision to dismiss the taxpayer’s application for permission to appeal out of time. The UT held that, even though the appeal concerned a company in liquidation, there was no duty on the FTT to consider practical difficulties arising from the liquidation that led to a delay in appealing.

Strike out: [Mediability Ltd v HMRC](#) [2023] UKFTT 315 (TC) (For the taxpayer: Michael Ripley instructed by Nigel Gibbon and Co Ltd. For HMRC: Isabel McArdle.) – The FTT struck out the appeal on the basis of no reasonable prospect of success given an earlier decision that found the arrangements to be abusive. The FTT held in the alternative that it would be an abuse of process to allow the appeal to proceed.

Strike out: [Tasca Tankers Ltd v HMRC](#) [2023] UKFTT 372 (TC) (For the taxpayer: Tim Brown instructed by Independent VAT Consultants Ltd. For HMRC: Sam Way.) – The FTT dismissed HMRC’s application to strike out an MTIC appeal. The FTT held that HMRC had not established that the taxpayer had no reasonable prospect of rebutting HMRC’s case that it should have known its supplies of second-hand cars were connected to fraud.

Local authorities: [Gmina O](#) (Case C-612/21) and [Gmina L](#) (Case C-616/21) – The CJEU held that certain activities undertaken by two local authorities (for the installation of renewable energy systems and removal of asbestos and waste) were not business activities. The CJEU reached its decision based on a comparison of the position of the local authorities with that of a typical entrepreneur.

6. Media

Retained EU law: The government has [announced](#) that it plans to keep the majority of almost 4,000 pieces of retained EU law, contrary to previous plans to review and replace all EU law by the end of 2023. The proposed “sunset clause” under which EU law would automatically expire by 31 December 2023 will be removed from the Retained EU Law (Revocation and Reform) Bill.

Inheritance tax: The FT has [reported](#) on figures published by HMRC that show inheritance tax figures came to a record £7.1bn in 2022-23, a £1bn increase on 2021-22 figures. This is due to rising asset values and a freeze on the current inheritance tax threshold of £325,000, which is due to continue until 2028.

Windfall tax: Community Windpower, one of the UK’s largest onshore wind farm operators, has called on the government to scrap windfall tax for new renewable energy projects, according to [the FT](#). The company has repeated a previous threat to sue the government unless it amends the scope of the Electricity Generator Levy.

Failure to prevent: According to [City A.M.](#), HMRC has confirmed that it has not charged any firms with the failure to prevent tax evasion offence since it was introduced six years ago. However, HMRC has nine ongoing investigations under the failure to prevent legislation and is reviewing a further 26 cases for potential investigation.

Tax fraud: A Cardiff resident has received tax bills for 11,000 Chinese companies that fraudulently used his address to register for VAT, according to [the BBC](#). This highlights HMRC’s ongoing issues with compliance, as the irregularity was apparently not flagged by any of HMRC’s systems.

Crypto: HMRC has [entered](#) into a one-year contract with tech firm Chanalysis for the provision of a cryptocurrency investigation tool. The contract is valued at £850,000, which suggests HMRC is ramping up its efforts in this area. Separately, the National Police Chiefs’ Council has announced that it plans to invest almost £2m in technology that would enable police forces to investigate crime involving cryptocurrency and other blockchain technologies.

VAT’s birthday: 1 April 2023 marked 50 years since VAT was first introduced in the UK. Etienne Wong

lists 50 interesting things about VAT in an [article](#) published in Tax Journal.

VAT on food: The ATT has [suggested](#) that the government celebrate VAT’s birthday by reforming the rules on food and drink to address inconsistencies. For example, milkshake powders are taxed differently based on their flavour, as are different types of popcorn and shortbread.

DST: The Public Accounts Committee (PAC) has published a [report](#) into the Digital Services Tax (DST), welcoming its successful implementation but warning against a risk to future revenues based on HMRC’s poor record compliance. CIOT has [commented](#) on the PAC’s report, expressing concern that there is a “real risk” that the DST may become permanent due to a stalemate in OECD talks on Pillar One.

HMRC performance: HMRC has [published](#) Treasury Minutes in response to the PAC’s [report](#) “HMRC performance in 2021-22”, which was published in December 2022. HMRC has accepted most of the recommendations in that report, including that it should publish a formal compliance yield target, engage with other tax administrations to address VAT repayment fraud, and implement the single customer account by June 2025.

HMRC helpline: The ICAEW has [criticised](#) restrictions HMRC put in place for its Agent Dedicated Line to only deal with queries on self-assessment penalties and PAYE coding notices between 17 April and 2 June 2023. HMRC has introduced these restrictions to reserve capacity to support agents with enquiries on these issues, but the ICAEW is concerned this will make it more difficult for taxpayers and agents to reach HMRC.

OTS: Edward Troup has written a [paper](#) for the Institute for Government arguing that the OTS played an important role and an independent body is needed to fill the gap left by its closure. At the same time, the Chancellor [responded](#) to a letter from the Treasury Committee questioning the rationale behind the OTS closure. Professional bodies including CIOT, ATT and ICAEW have also written a [letter](#) to the Treasury with proposals to further the tax simplification agenda. This continued discussion suggests we may not have seen the last of OTS.