



## Tax Points – February 2024

### Highlights

- The main event of the month was the Spring Budget.
- The Finance Act 2024 has now received Royal Assent.
- HMRC has launched a call for evidence as the latest stage of the Tax Administration Framework Review.
- The Court of Appeal has dismissed taxpayers' appeal in relation to the Aikido avoidance scheme, which will affect many cases stayed behind it.
- The Court of Appeal has also allowed an appeal by an NHS trust and confirmed it could recover output tax on car parking charges.

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## 1. Upcoming hearings

**High Court - Eclipse trial:** The long-awaited High Court trial against HSBC on behalf of over 500 investors in relation to the promotion of the Eclipse Partnerships film scheme is underway. Stewarts are acting in one of the group actions against the bank. City A.M. has [reported](#) on the case.

**CA: Blackrock Holdco 5 LLC v HMRC** (Case ID: CA-2022-001918) – Hearing date: 5 March 2024 – Unallowable purpose on loans and transfer pricing.

**CA: Hargreaves Property Holdings Ltd v HMRC** (Case ID: CA-2023-001517) – Hearing date: 12/13 March 2024 – UK withholding tax on interest.

**SC: Centrica Overseas Holdings Ltd v HMRC** (Case ID: UKSC 2022/0183) – Hearing date: 19 March 2024 – Capital allowances.

**CA: HMRC v Hotel La Tour Ltd** (Case ID: CA-2023-001883) – Hearing date: 10 April 2024 – VAT recovery on professional fees incurred from subsidiary share sale.

**CA: Kwik-Fit Group Ltd & Ors v HMRC** (Case ID: CA-2023-000429) – Hearing dates: 16-17 April 2024 – Unallowable purpose loan relationship regime contained in the CTA 2009.

**CA: Beech Developments (Manchester) Ltd v HMRC** (Case ID: CA-2023-000952) – Hearing dates: 23-24 April 2024 – Construction Industry Scheme.

**CA: HFFX LLP and others v HMRC** – Hearing date: 9 or 10 July – Deferred remuneration arrangements.

**CA: Peter Marano v HMRC** – Hearing date: 16 or 17 July – Late filing penalties and special circumstances.

## 2. Legislation and consultations

**Budget 2024:** The Chancellor delivered the Spring Budget on 6 March 2024. Highlights include:

- **Non-doms:** Non-dom tax status will be [abolished](#) from April 2025 and replaced by a residence-based regime. Stewarts explain the implications of these changes [here](#).
- **Capital allowances:** The [full expensing](#) regime allowing businesses to write off the cost of certain capital expenditure on new plant and machinery will be extended to leased assets.
- **Tax reliefs:** The [cultural tax reliefs](#) will be permanently set at 40% and 45%. A new [Independent Film Tax Credit](#) has been introduced, with a 53% rate of credit.
- **Furnished holiday lettings:** The furnished holiday lettings regime will be abolished.
- **VAT:** The VAT registration threshold will be [raised](#) from £85,000 to £90,000.

**Finance Act 2024** received Royal Assent on 22 February. Amongst other provisions, the Act contains the new “merged” R&D scheme, the abolition of the pension lifetime allowance, and the long-anticipated special rules on the interpretation of EU-derived legislation in the field of VAT and excise duties.

**Consultation – Tax administration framework:** HMRC has launched a [call for evidence](#) as the latest stage of the Tax Administration Framework Review. The questions range widely in scope but include potentially revolutionary issues such as the merits of removing behavioural or knowledge-related conditions for issuing assessments in favour of a time-based approach. Stewarts have published an [article](#) on this.

**Consultation – Digital assets:** The Law Commission has launched [a consultation](#) on draft legislation confirming that digital assets may be recognised as property in law. This follows a lengthy period of consideration since 2021 which concluded that there was a need to provide recognition to “third category things” (things neither “in possession” nor “in action”).

### 3. HMRC guidance, campaigns and other news

**Salaried members rules:** HMRC has [updated](#) its Partnership Manual to include an example of the application of the salaried members rules to arrangements where members alter their capital contributions to ensure they do not meet Condition C (that an individual's capital contribution is less than 25% than the disguised salary which it is reasonable to expect will be payable in the relevant tax year). It has also [clarified](#) that the TAAR can apply if there is a main purpose of falling within the scope of the rules even if there is a genuine contribution by the individual to the LLP.

**Guidance collections:** HMRC has started publishing collections of guidance on various topics, which makes it easy to find all of its guidance notes in one place. Examples include collections of guidance on [capital allowances](#), [the Digital Services Tax](#), [landfill tax](#) and advice for [tax agents](#).

**EU import taxes:** HMRC has issued new guidance pages dealing with the administration of the VAT Import One-Stop Shop (IOSS) including on [how to register](#) and [complete a return](#). This is relevant to those who sell low-value goods to consumers in the EU and Northern Ireland.

**Double cab pickups:** HMRC has performed [a screeching U-turn](#) on the treatment of such vehicles as “cars” rather than “goods vehicles”. The change has implications for capital allowance purposes and the benefits in kind charge. The change to the Employment Income Manual was reversed after only a week.

**Draft R&D guidance:** HMRC has published [draft guidance](#) on contracted-out research & development activity and overseas rules.

**VAT on funeral services:** HMRC has updated its [guidance](#) on the VAT treatment of funeral services and related activities to clarify that the supply of live web streaming of funeral services is exempt from VAT.

**Nudge letters – Inferred distributions:** HMRC has started sending [nudge letters](#) to taxpayers who may

need to declare income from distributions of dividends. HMRC is deciding who to contact based on company accounts that show a drop in reserves indicating that the taxpayer may have received a distribution or dividend.

**Nudge letters – Annual Investment Allowance:** HMRC has started sending [nudge letters](#) to mid-sized businesses prompting them to review their group Annual Investment Allowance claims to ensure they have not exceeded the £1m allowance for the year.

**Tobacco smuggling:** HMRC and Border Force have published a joint policy paper, [“Stubbing out the Problem”](#), setting out a new strategy to crack down on illicit tobacco which is smuggled into the UK untaxed and sold illegally to consumers.

**Transition period:** HMRC has published [new guidance](#) to assist taxpayers affected by the new tax year basis period reform with calculating transition profit for 2023/24.

**Cooperative jurisdictions:** The EU Council has removed the Bahamas, Belize, the Seychelles, and the Turks and Caicos Islands from its list of non-cooperative jurisdictions for tax purposes. 12 other jurisdictions remain.

**OECD – Report on “Amount B” of Pillar One:** The OECD/G20 Inclusive Framework has published a [report](#) on a simplified approach to approximating arm's length outcomes for in-scope baseline marketing and distributions activities.

**List of avoidance schemes:** HMRC has [added](#) Flex Payroll and Accounting Services Ltd (t/a Flex PAS) and Paystone Services Ltd (t/a Artifact Services) to the list. Both are umbrella company providers active in the healthcare sector. HMRC has also [published](#) details of a complex offshore avoidance scheme linked to businessman Darren Patrick Green, which involved contractors joining Procorre LLP, a Singapore business, to avoid paying income tax and NICs.

**Unexpected windfall:** [Figures](#) from the Office for National Statistics show tax receipts for January 2024 exceeded spending by a record £16.7bn. The windfall is believed to reflect the deadline for self-assessment payments and lower debt interest payments. National debt nonetheless stood at 96.7% of GDP, up 1.8% from January 2023.

## 4. Recent decisions – Direct tax

**Avoidance scheme:** [Clipperton & another v HMRC](#) [2024] EWCA Civ 180 (For the taxpayer: Michael Jones KC. For HMRC: Aparna Nathan KC and Laura Poots.) – The taxpayers entered into a marketed tax avoidance scheme called Aikido which aimed to allow them to extract funds from their company without paying any income tax on them, on the basis that the funds passed from the company to the taxpayers without giving rise to a distribution. The FTT, UT and CA all dismissed the taxpayers’ appeals on the basis that the scheme did not work. Applying the *Ramsay* principle of purposive interpretation to the wording “distribution... in respect of shares”, the CA held that the meaning of the expression was wide enough to catch the distribution in this case, which reached the taxpayers despite the complicated arrangements.

It is rare for appeals dismissed by the Tribunals and the CA to be given permission to appeal to the Supreme Court, so this is likely to be the end of the matter. This is the lead appeal on the Aikido scheme, with other cases stayed behind it, which HMRC will now no doubt pursue.

**CGT double taxation relief:** [Haworth & others v HMRC](#) [2024] UKUT 58 (TCC) (For the taxpayer: James Rivett KC and Ben Elliott. For HMRC: Christopher Stone and Hitesh Dhorajiwala.) – The taxpayers were the settlors of family trusts that engaged in a “round the world” tax planning scheme aimed to avoid CGT on disposal of shares on the flotation of a company. The question was whether the place of effective management (POEM) of the trusts was the UK or Mauritius. The UT considered the FTT had applied the right test in determining the POEM and upheld its decision to dismiss the appeals on the basis that the POEM of the trusts was the UK.

The decision helpfully sets out the relevant case law on POEM and clarifies that the Tribunal must determine “in which state the real top level management (or the realistic, positive management) of the trustee qua trustee is found”.

**Partnership taxation:** [The Boston Consulting Group UK LLP and others v HMRC](#) [2024] UKFTT 84 (TC) (For the taxpayer: Sam Grodzinski KC and Marika Lemos. For HMRC: Rupert Baldry KC and Thomas Chacko.) – The taxpayers were partners of a management consulting firm who argued that payments received on disposals of capital interests in the partnership should be taxed on a CGT basis. The FTT held that they should be taxed as miscellaneous income under s. 687 of ITTOIA 2005, as the payments were made under the terms on which the interests were allocated to the partners. However, the FTT largely allowed the appeals because the discovery assessments were invalid.

This case follows the CA decision in *BlueCrest Capital Management LP and others v HMRC* [2023] EWCA Civ 1481, which also considered the partnership taxation rules but was found not to be determinative in this case. Nevertheless, the conclusion that disposals of capital interests in a partnership are taxable as miscellaneous income will have broader application. Other businesses that structure themselves in a similar way should take note of this decision.

**R&D penalty:** [H&H Contract Scaffolding Ltd v HMRC](#) [2024] UKFTT 151 (TC) – This was an appeal against a penalty for a careless inaccuracy in a scaffolding company’s CT return, which was imposed after HMRC refused the company’s R&D tax relief claim. The company’s director had met an R&D consultant who advised him to submit a claim. The FTT allowed the appeal on the basis that the taxpayer had taken reasonable care in submitting the return, as he engaged apparently reputable R&D consultants whose advice appeared sensible on the face of it. The FTT was critical of HMRC, who had sought to argue that the existence of an inaccuracy in a return automatically meant that the inaccuracy was careless.

R&D tax reliefs have been in the spotlight for a while now, with HMRC activity in this area showing no signs of abating. While the outcome of this case is not surprising, it illustrates the forceful approach that HMRC sometimes take in these investigations, including in relation to penalties.

## 5. Recent decisions – Indirect tax

**NHS car parking:** [Northumbria Healthcare NHS Foundation Trust v HMRC](#) [2024] EWCA Civ 177 (For the taxpayer: Michael Firth. For HMRC: Howard Watkinson.) – An NHS trust appealed against HMRC’s refusal of its claim for repayment of output tax it had overaccounted for on car parking charges at its sites. The trust’s argument was that it supplied car parking facilities as a non-taxable person under a “special legal regime”. The CA agreed with the trust and allowed its appeal, overturning the decisions of the FTT and the UT. It held that it met the two conditions for treatment as a non-taxable person under s. 41A of VATA 1994, namely that it supplied car parking in the context of activities it engaged in as a public authority, and the supply did not result in a significant distortion of competition.

This is a lead case for around 50 other appeals involving NHS trusts. Given the important point of principle around the application of the special legal regime, we may well see it go to the SC.

**Low value consignment relief:** [Jersey Choice Ltd v HM Treasury](#) [2024] UKSC 5 (For the taxpayer: Aidan O’Neill KC and Nicholas Gibson. For HMRC: Jessica Simor KC and Amy Mannion.) – The appellant supplied horticultural products from Jersey to customers in the UK. Prior to 2012, these goods attracted low value consignment relief, which operated to exempt goods valued below £15 from import VAT. In 2012 the UK removed the relief, and the appellant brought a *Frankovich* damages claim against HM Treasury, including on the grounds that the removal of the relief amounted to a charge having equivalent effect to a customs duty in violation of Articles 28 and 30 of the TFEU. The SC rejected the appellant’s arguments and upheld the decision of the High Court and Court of Appeal to strike out its claim.

Low value consignment relief was removed in 2012 as it was thought to create a loophole allowing UK businesses to export low value goods from the Channel Islands. The decision will be of interest to EU law enthusiasts, though it will have limited practical application, especially in light of Brexit.

**Sports nutrition:** [DuelFuel Nutrition Ltd v HMRC](#) [2024] UKFTT 104 (TC) (For the taxpayer: Max Schofield. For HMRC: Howard Watkinson.) – The taxpayer supplied packets, each containing a flapjack intended to be eaten prior to a workout, together with a brownie or cake slice intended to be eaten after a workout. The taxpayer argued that these were all cakes and therefore did not fall within the exclusion for zero-rating, or alternatively if they were not cakes that they were not to be regarded as confectionery. Based on a multifactorial test of the ingredients, taste, packaging, marketing, and pattern of consumption of the packets, the FTT concluded that an ordinary person would not consider them to be cakes. On the alternative ground that the packets were not confectionery, the FTT concluded (on the basis of the legislative note to Group 1) that the packets were confectionery within the meaning of the note and therefore were excluded from the zero rate.

Whilst the FTT found that the products were confectionery within the meaning of the legislation, interestingly it held that on general principles an ordinary person would not regard them as confectionery. This is a good illustration of the difficulties that arise in classifying new food products and the application of the multifactorial assessment.

**Evidence of export:** [H Ripley & Co Ltd v HMRC](#) [2024] UKFTT 125 (TC) (For the taxpayer: David Southern KC. For HMRC: Laura Stephenson.) – The taxpayer appealed against HMRC’s decision to deny its input tax claim to zero rated output tax in respect of supplies of scrap metal to customers in Belgium on the basis that it had not provided valid commercial evidence within three months of supply that the scrap metal had been removed from the UK. The FTT dismissed the appeal. Having scrutinised the taxpayer’s orders, invoices, transport slips, emails and WhatsApp messages, it accepted that the goods had been sold to a foreign customer, but this did not necessarily mean they had actually left the UK.

The decision highlights how important it is for taxpayers to retain the correct documentation required to support their VAT claims in case these are challenged by HMRC, in this case not only evidence demonstrating sale but also evidence demonstrating export within three months of supply.

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