

UK Tax Disputes Digest

Contents

- 3 **Introduction**
- 4 **In focus**
 - The Challenges and Opportunities Facing UK Tax Policy in 2025 – What Does it Mean for You?
- 8 **Other notable tax cases**
 - Court of Appeal finds in favour of HMRC in a decision concerning the scope of the VAT exemption for insurance intermediary services: *WTGIL Limited v HMRC* [2025] EWCA Civ 399
 - Court of Appeal considers the tax treatment of dividends paid from share premium account of a Jersey company: *Beard v HMRC* [2025] EWCA Civ 385
- 10 **Interesting decisions from the tribunals**
 - Taxpayer successfully argues for the application of the Tour Operators' Margin Scheme to ride-hailing services: *HMRC v Bolt Services UK Limited* [2025] UKUT 100
 - FTT invokes Ramsay in an SDLT context: *Sajedi and others v HMRC* [2025] UKFTT 297 (TC)
 - Positive outcome for taxpayers in relation to claims for overpaid tax: *Christian Peter Candy v HMRC* [2025] UKFTT 416 (TC)
 - Upper Tribunal considers overpayment relief provisions: *L-L-O Contracting Ltd and others v HMRC* [2025] UKUT 127 (TCC)
 - FTT accepts that licence fee payments made as part of a self-cancelling finance arrangement are not taxable as 'income': *The Vaccine Research Limited Partnership and another v HMRC* [2025] UKFTT 402 (TC)
- 17 **Other developments**
 - Spring Statement 2025
 - Tax Update Simplification Administration and Reform
 - Postponement of the consultation on the tax treatment of predevelopment costs
 - Changes to interest rates for late payments and repayments
 - Apparent change to HMRC's view on second remittances
 - PAC report: The cost of the tax system
 - OECD issues an updated commentary on the GloBE rules
 - Clarification on HMRC's view regarding Condition C of the salaried member rules, the targeted anti-avoidance rule and capital contributions
 - HMRC's compliance approach regarding Condition B of the salaried member rules and the Court of Appeal's decision in *Bluecrest*
 - Latest HMRC nudge letter campaigns

Introduction

Welcome to the summer 2025 edition of our UK Tax Disputes Digest: a high-level summary of key developments in contentious tax over the last few months for tax and legal in-house professionals.

As with previous editions, we have seen a continued increase in HMRC activity across various areas. Both individual and corporate taxpayers would be well-advised to check their tax position as soon as possible to prepare for any potential HMRC investigation into their tax affairs.

In this edition, we look at just a few of these developments, including the latest in relation to the challenges and opportunities facing UK tax policy and what it means for you.

We also cover a number of notable tax cases and other interesting procedural decisions. This includes the most recent case law development in the context of ride-hailing and an important development in relation to claims for overpaid tax.

About the team

The CMS Tax Disputes and Investigations team provides a full-service contentious tax offering. This includes advising both corporate and private clients on all areas of direct and indirect tax covering tax dispute prevention, management and resolution. We seek to protect against tax risk, manage interaction with HMRC and conduct litigation at all stages of the courts and tribunals system including the Supreme Court.

With 17 partners, the CMS tax team is one of the largest in the City and advises high-profile clients across a wide range of sectors and all areas of tax. The UK team works alongside the CMS global network which has tax capability in over 70 offices to assist clients with international issues.

For more information on our team and the type of work we undertake, please see [here](#).

Key contacts



Nicola Hine

Partner, United Kingdom

T +44 20 7367 2543

E nicola.hine@cms-cmno.com



Stephen Hignett

Partner, United Kingdom

T +44 207 067 3397

E stephen.hignett@cms-cmno.com



Sam Dames

Partner, United Kingdom

T +44 20 7367 2470

E samantha.dames@cms-cmno.com



Elizabeth Sherwood

Of Counsel, United Kingdom

T +44 20 7367 2385

E elizabeth.sherwood@cms-cmno.com

With thanks to Hannah Jones, Marek Lukasik and Rachel Hii for their contributions.





In focus: The Challenges and Opportunities Facing UK Tax Policy in 2025 – What Does it Mean for You?

HMRC celebrated its 20th birthday on 18 April 2025. At HMRC's 20th anniversary we take a look at recent commentary and statistics on HMRC's performance, drivers of tax policy in the UK and internationally and what comes next.

The Treasury Committee concluded in April 2000 that the merger of the Inland Revenue and Customs and Excise would *"improve compliance with taxation, reduce businesses' compliance costs and reduce the Government's revenue collection costs"*. Additionally, it was considered important for *"potential improvements in customer service, effectiveness and efficiency"*. At a time when fiscal constraints are particularly tight, it is apt to consider whether HMRC has fulfilled its potential.

HMRC performance

A recent report from the House of Commons Public Accounts Committee ("**PAC**") suggests growing concerns over HMRC's rising tax administration costs, declining trust among taxpayers, outdated IT systems and reduced compliance productivity. The report urged HMRC to lay out realistic plans to simplify the tax system and address taxpayers' concerns, as their costs rise and trust in them falls.



HMRC's tax collection costs rose by £563 million (15%) in real terms from 2019–20 to 2023–24, with costs per taxpayer also increasing across major tax types. HMRC's compliance productivity has fallen with returns declining from over £1.4m per compliance worker pre-pandemic, to £1.27m in 2023-24.

The PAC report contained particular criticism of HMRC's processes, noting that approximately 70% of correspondence is still by post, which is, "Slow, costly and inconvenient".

Publishing the report, Sir Geoffrey Clifton-Brown MP, Chair of the PAC, labelled the tax authority, "A lumbering dinosaur" and suggested that HMRC needs to, "Do much more to restore trust and confidence" among taxpaying consumers.

The PAC had warned in 2023 that HMRC had lost sight of the need to put taxpayers at the heart of changes. There have since been a number of research projects to understand taxpayers' experience of dealing with HMRC. This includes a HMRC Research Report entitled, "Understanding experiences of dealing with corporation tax", which was published on 24 April 2025. The report aims to identify improvements to Corporation Tax administrative processes which would "improve the customer journey" for SMEs. Amongst the report's conclusions are that the improvements to Corporation Tax which SMEs would value most were the provision of clearer and more accessible guidance and the reduction of bureaucracy.

The tax system has grown more complex, with 240 tax policy changes between 2022 and 2024, costing HMRC and businesses £875 million and £913 million

respectively. This complexity was also noted recently by the Tony Blair Institute for Global Change, which commented that, "The business-tax system is a barrier to growth in the UK. Poor tax design has led to an over-complicated system that reduces investment, with many expensive reliefs that have little positive effect on growth".

Since higher economic growth is a key policy objective of the Government, it may be expected that the Government will be especially keen to address any such barriers to growth. Additionally, simplification should assist both the taxpayer to pay the right tax when due and HMRC to collect it, thereby supporting the funding of a highly leveraged state and closing the tax gap.

Modernisation and reform

A number of recent or open consultations relate to proposed modernisation and reform of the tax administration framework – the broad system of instructions, guidelines and obligations underpinning the tax system. The framework establishes some of the core interactions that take place between HMRC and taxpayers and sets out the obligations of each.

In the summary of responses to "The Tax Administration Framework review: New ways to tackle non-compliance", HMRC undertook to take forward, for further consideration, longer-term work to develop and test policy options to harmonise and simplify compliance powers across tax regimes.

More recently, a consultation ("The Tax Administration Framework Review – Improving HMRC's approach to dispute resolution") seeks views on options for simplifying, modernising and reforming HMRC's

approach to dispute resolution, focusing on ease of access and use of HMRC's alternative dispute resolution and statutory review processes.

It seems clear that both the Government and HMRC are conscious of the current risks and issues with the tax administration and are looking to improve this. As progress is made on consultations and a clearer way forward is determined with actionable measures to implement, we will report on developments.

Closing the tax gap

Aside from modernisation and reform, a key aim of the Government is to close the tax gap i.e. the difference between the amount that is theoretically due to HMRC and the amount that is actually collected. As part of this, in the 2024 budget HMRC received funds to recruit 5,000 additional compliance employees and 1,800 debt management staff and to modernise IT and data systems.

One aspect of closing the tax gap focuses upon greater clarity of compliance obligations. Since 2022 HMRC have published a series of Guidelines for Compliance including, for example, in relation to common risks in transfer pricing, VAT compliance costs and patent box computations.

In addition, there continues to be a focus upon tax risk management, including risk assessment of large businesses through the Business Risk Review process. There is a continuing trend of using "one to many" approaches to smaller businesses.

Key UK tax policy drivers

As mentioned above, the Government has a clear tax policy agenda. It is keen to secure economic growth, including by attracting inward investment, and close the tax gap. An aspect of this is the provision of a stable and predictable tax environment for businesses and investors. Modernisation and reform, including that needed to improve customer service, will continue to be a key strand going forward. It remains to be seen whether tax rises will be needed in order to meet the Government's fiscal rules.

The OECD has downgraded its UK growth estimate and considers that the Treasury's "very thin fiscal buffers" could be insufficient if there are adverse economic shocks, which may require reducing spending and increasing taxes

Challenging times internationally

However, no domestic tax regime exists in a vacuum. At the time of writing, the US House of Representatives has just approved the "One Big Beautiful Bill Act" which includes proposals for retaliatory measures against jurisdictions (including the UK) which have "unfair" tax rules. This potentially has extremely wide-ranging implications, including in regards to BEPS Pillar Two.

With the US seemingly stepping back from international tax cooperation, tax policy has rarely before been such a key part of the macro-political agenda, even before considering the US imposition of tariffs. The UK's (and other jurisdictions') tax policy may need to respond at speed to international developments, which has clear potential to undermine the Government's stated aim of delivering tax stability.

Keys areas of tax controversy in 2025 and beyond

HMRC have had much success in the courts in relation to the legislation relating to loan relationships for unallowable purpose, having taken an increasingly wide view of its application. Further disputes in this area are anticipated, including HMRC challenging taxpayers using main purpose tests elsewhere in the tax code and anti-avoidance provisions more generally. Where fact-heavy purpose tests may be relevant, it is important to ensure that evidence is retained for an appropriate length of time.

Research and development continues to be a key contentious area, with Additional Information Forms now being used to risk assess, and in some instances deny, claims.

International issues, including transfer pricing, are clearly a key area of ongoing focus for HMRC. Withholding tax challenges, for example based on beneficial ownership, continue to be a hot topic within Europe and wider afield. The implementation of BEPS Pillar Two – the OECD's global minimum tax rules – seems likely to give rise to tax disputes. This complex new regime was enacted in haste and is only now being tested against certain fact patterns. The scope for disputes, particularly in complex cross-border cases, seems clear.

Procedural issues continue to be of relevance with a number of procedural tribunal decisions appearing in this edition. In practice, HMRC are looking to assess for longer periods and take a strict approach to compliance, including using tools such as threats of criminal sanctions or winding up, where they are able to, for perceived non-payment or non-compliance.

HMRC released statistics on key areas of focus both in terms of taxes and sectors in their annual report for the year. The next edition of this publication will report on those updates.

What does it mean for you?

With increased resource and increased scrutiny upon performance, HMRC compliance activity can only be expected to increase. Against a background of ever increasing tax complexity, and rapidly developing international tax policy, challenging times for businesses may be ahead, wherever they are headquartered.

CMS offers specialist tax dispute and tax dispute risk management services. Please contact us to discuss how we can assist you.





Other notable tax cases

WTGIL Limited v HMRC [2025] EWCA Civ 399

The Court of Appeal considered the VAT treatment of services of an insurance intermediary which provides and fits devices to the cars of young drivers, which record and transmit information about how the car is being driven.

The taxpayer claimed that the provision and fitting of the devices were taxable supplies and therefore that recovery of input tax should be permitted. HMRC disagreed, arguing that the relevant supplies were exempt.

The Court of Appeal agreed with HMRC, concluding that the provision and fitting of the devices was part of the single exempt supply of insurance intermediary services. This conclusion was reached on the basis that providing and fitting the devices was an integral and essential element of the relevant insurance transactions, so that it would be artificial and unrealistic to exclude them. It is interesting to note that the devices were fitted only after the conclusion of the contract between the policyholder and the insurer, which had given rise to an argument that the taxpayer's activities were not preparatory to the conclusion of contracts of insurance. However the Court rejected a strictly temporal construction, instead noting that the insurance could not operate as intended unless and until the device had been fitted.

Beard v HMRC [2025] EWCA Civ 385

The Court of Appeal has considered the tax treatment of distributions paid from the share premium account of Glencore PLC (listed in Jersey) to a UK resident individual shareholder. The taxpayer had argued that the distributions fell outside of the charge to income tax, on the basis that they were "*dividends of a capital nature*" (s 402(4) ITTOIA 2005).

However the Court disagreed, concluding that the mechanism by which a dividend is paid (as opposed to its source) is key. The distributions had been made under a mechanism in Jersey law that treats share premium as freely distributable. The Court therefore concluded that the distributions had the character of income dividends, with the result that s 402(4) did not apply. Therefore the taxpayer's appeal was dismissed.





Interesting decisions from the tribunals

In HMRC v Bolt Services UK Limited [2025] UKUT 100 (TCC), the Upper Tribunal upheld the First-tier Tribunal's ("**FTT**") decision that Bolt's mobile ride-hailing services fell within the Tour Operators' Margin Scheme ("**TOMS**") for VAT purposes. This means accounting for VAT on the margin only (i.e. the difference between the price charged to the traveller and the cost to Bolt).

Background

Bolt is a licensed private hire vehicle ("**PHV**") operator, which provides on-demand ride-hailing services through a smartphone application. Bolt acts as principal in the re-supply of passenger transport services, buying these services from self-employed PHV drivers and re-supplying them to customers. TOMS is a special scheme for VAT purposes. TOMS treats relevant transactions as a single supply by the taxpayer to the traveller.

Bolt submitted that its relevant services fell within TOMS, but HMRC disagreed. The issue was brought before the FTT which found in favour of Bolt. HMRC appealed to the Upper Tribunal which upheld the FTT's decision, albeit with a slight difference in reasoning.

Decision

The Upper Tribunal addressed two main issues, (the first of which included several sub grounds of appeal in relation to the FTT findings):

- Whether Bolt's services are of a kind commonly provided by tour operators or travel agents; and
- Whether Bolt's services are supplied without material alteration or further processing.

The Upper Tribunal found it was correct to adopt a high-level approach, concluding that the supplies made by the drivers, bought in by Bolt, were for the direct benefit of travellers. It was not disputed that Bolt's customers were travellers for the purposes of TOMS. These supplies were not materially altered as the additional services provided by Bolt, such as on-demand reservation or in-app payment services, do not affect the nature of the transport service supplied by the drivers and received by the customers.

Comment

This case continues the debate on the tax treatment of ride-hailing services. Due to the potential for wider application by similar providers, HMRC almost certainly will appeal. The continuation of legal challenges may be expected where other providers see the opportunity to follow this case for their facts and circumstances.

A 2024 consultation by HM Treasury was undertaken on VAT for PHVs. The outcome of the consultation is awaited. This could bring further changes to the private hire sector, including by way of legislative amendments. The consultation requested submissions on, inter alia, whether drivers should contract with customers directly and floated the idea of a new margin scheme. We expect the outcome of *Bolt* is of relevance to the consultation.

Similarly, *Bolt* should be viewed in conjunction with another case, *HMRC v Sonder Europe Ltd* [2025] UKUT 14 (TCC), which also concerned the application of TOMS to non-traditional companies supplying services to travellers. Sonder entered into long leases as lessee on apartments and granted licenses to occupy serviced accommodation to its customers for periods ranging from one night up to a month. In that case, the Upper Tribunal considered that Sonder's supplies did not fall within TOMS. Sonder has sought leave to appeal to the Court of Appeal. Questions may also arise as to whether the TOMS provisions appropriately reflect modern travel services.



In *Sajedi and others v HMRC* [2025] UKFTT 297 (TC) the FTT has countered perceived avoidance of stamp duty land tax (“**SDLT**”), on the basis of the *Ramsay* line of case law, in circumstances where that went beyond the parties’ submissions.

Background

When a new main residence (the “**New Dwelling**”) is purchased and the previous main residence (the “**Old Dwelling**”) has not been sold, ‘higher rates’ of SDLT are payable, which include a surcharge. However, buyers subsequently disposing of the Old Dwelling in the three years after the purchase of the New Dwelling can claim back the surcharge. Since 22 November 2017, new legislation stipulated that the disposal could not be such that the purchaser or their spouse/civil partner retained an interest in the Old Dwelling.

In this case, prior to 22 November 2017 a couple had jointly purchased a New Dwelling and paid SDLT based on the higher rates of SDLT, as they still had their Old Dwelling at the point of acquisition. Towards the end of the three-year period and after 22 November 2017, one partner effectively transferred a 1 percent interest in the Old Dwelling to the other, with the intention that this represented the disposal of a major interest in the Old Dwelling required for the reclaim of the surcharge to be available.

Decision

The parties’ submissions had focused on whether the legislation precluded a reclaim. The FTT agreed with the taxpayer that, because the relevant taxable transaction

is the acquisition of the New Dwelling, it is that transaction which is the ‘land transaction’ in question. As that transaction was prior to 22 November 2017, the claim was held not to be precluded.

However the FTT considered that it was required to determine overall whether the refund of SDLT was due and could not be constrained by the limited scope of the parties’ submissions.

The FTT applied the *Ramsay* principle of statutory interpretation, stemming from *Arrowtown*, that, “*The ultimate question is whether the relevant provisions, construed purposively, were intended to apply to the transaction, viewed realistically*”. The FTT considered that it would be contrary to the purpose of the provisions for a disposal to result in relief from the surcharge where the disposal did not have a real-world impact on the property ownership position. Concluding that there was no real-world disposal, the FTT said that there had been only a “*technical disposal...without any real-world effect*”.

Comment

This decision is interesting for its illustration of HMRC’s willingness to look outside of the scope of the parties’ submissions, in order to defeat perceived tax avoidance.



In *Christian Peter Candy v HMRC* [2025] UKFTT 416 (TC) the FTT has provided good news for taxpayers in relation to claims for overpaid tax, in a case relating to SDLT but which should be of wider interest.

Background

Mr Candy had an initial liability to SDLT (in the sum of £1,920,000) triggered by substantial performance of a contracted-out lease. This SDLT liability was declared in a return and paid. The contract was subsequently extinguished due to novation and not carried into effect. This happened after the expiry of the normal 12 month time limit for amending the return.

Mr Candy made separate claims for SDLT relief in the alternative. A claim for relief under section 44(9) Finance Act 2003 (the “**s44 Claim**”) and an overpayment relief claim under paragraph 34, schedule 10, Finance Act 2003 (“**para 34**”) (the “**Overpayment Relief Claim**”). Different time limits apply to both claims. A s44 Claim should be made by amending a land transaction return within 12 months of the filing date. An Overpayment Relief Claim should be made not more than 4 years after the date of the transaction and should not be made within a land transaction return.

The s44 Claim was made beyond 12 months of the filing date of the return. The Overpayment Relief Claim was made within time due to the longer limitation period. It was common ground between the parties that, had the s44 Claim been made within time, relief for SDLT would have been available.

In separate proceedings, which progressed first, the s44 Claim was found to be invalid for limitation reasons (see *Christian Peter Candy v HMRC* [2022] EWCA Civ 144). As such, a stay was lifted on the alternative Overpayment Relief Claim, which forms the subject of the present appeal.

The issue for determination by the FTT was whether overpayment relief was available under para 34 in a situation where SDLT would have been repayable under s44(9), but the s44 Claim was out of time.

HMRC contended that the Overpayment Relief Claim must fail because it is prevented from applying by the existence of an alternative remedy in section 44(9). In essence because section 44 provides an exclusive statutory remedy. Further, HMRC contended that if a claim under para 34 were possible, that would undermine the time limit to which section 44(9) is subject.

The Appellant submitted that para 34 is a stand-alone provision which provides a “*back stop remedy*” where relief cannot be claimed on any other statutory basis (including due to the expiry of a time limit).



Decision

Overpayment relief claims are subject to restrictions in para 34A. For example, overpayment relief is limited where the claimant can seek relief by taking other steps under the relevant Part of the Act. HMRC did not contend that any of the para 34A restrictions applied here.

The FTT agreed that para 34 had a “*potentially wide application*” once its threshold provisions were met and its procedural requirements satisfied. Relevantly, para 34 relief would be possible where a claimant is out of time to claim relief for SDLT under another relieving provision.

It held that Mr Candy was entitled to bring an Overpayment Relief Claim under para 34. The purpose of para 34 was to provide a final statutory remedy when no other remedy exists. This would be a back stop where all other statutory relief provisions had been exhausted.

Comment

This case will be of interest to those claiming repayments of SDLT, but equally in relation to overpayment relief for other taxes. Para 34 is specific to SDLT but similar overpayment relief provisions apply within the wider tax code (such as for corporation tax at Part VI of the Finance Act 1998). Exclusions from overpayment claims also apply to other taxes.

Although at first glance this case may be considered to have limited application, that would ignore the wider background to overpayment relief, which was never intended to be a primary remedy.

The explanatory notes to the Finance (No. 2) Bill 2010 that introduced the relevant form of para 34 indicate that the provision is intended to cover an overpayment or overassessment situation where there is no other means of reclaiming the overpayment. This use has been confirmed by the FTT in *Candy*.

The overpayment relief provisions were intended to provide an exclusive statutory regime for overpayments, for which the tax tribunal was the relevant forum.

In light of this background, it is somewhat difficult to understand the fairness of HMRC’s position in this case. If HMRC were correct this would narrow the ability for taxpayers to obtain recourse for overpaid or over-assessed taxes across income tax, CGT, SDLT and corporation tax and potentially result in overpayment claims never being valid. The 4 year period for bringing overpayment relief claims reflects the standard time limit for HMRC to raise discovery assessments (although longer limitation periods apply in some situations). As such, to restrict relief to a much shorter period would have provided an uneven playing field in favour of HMRC. It remains to be seen if HMRC will seek to appeal the decision.

Taxpayers should consider their procedural options where they have overpaid tax for previous years. There may be options to obtain relief, whether by making overpayment relief claims or otherwise.



In *L-L-O Contracting Ltd and others v HMRC* [2025] UKUT 127 (TCC) the Upper Tribunal has considered the application of overpayment relief provisions and, specifically, whether ignorance of multiple dwellings relief (“**MDR**”), resulting in a failure to claim MDR within the standard timeframe and by the usual mechanism, prevented MDR being awarded by way of an overpayment relief claim. Although this case concerns SDLT it should be of wider interest to those claiming overpaid tax due arising from a mistake.

Background

The Appellants (“**LLO**”) purchased residential properties and failed to claim MDR in their original land transaction returns as they had not known of its availability. LLO later sought to claim overpayment relief in respect of SDLT under paragraph 34 of Schedule 10 of the Finance Act 2003 (“**para 34**”) after the normal time limit for amending the returns had expired. HMRC rejected the claims. HMRC relied on Case A within paragraph 34A of Schedule 10 of the Finance Act 2003 (“**para 34A**”), which provided relevantly that HMRC were not liable to give effect to a claim if the overpayment resulted from a mistake in making or giving, or failing to make or give, a claim or election.

The FTT had directed that certain issues were heard as preliminary issues in this case. It was common ground between the parties before the FTT that an overpayment relief claim could be made validly pursuant to para 34 in respect of MDR. Additionally, the FTT found that there was an overpayment of tax where a valid claim to MDR was not made in a return (or amendment to a return). HMRC did not challenge that finding. The FTT found that Case A excluded overpayment relief in this case because there had been a mistake in failing to make an MDR claim in the return (or amendment to a return). LLO’s appeal was struck out with no prospect of success. LLO appealed to the Upper Tribunal (“**UT**”).

Decision

On appeal, the UT considered the meaning of ‘mistake’ in Case A. The UT found that, in ordinary language, a mistake can happen due to ignorance and not simply a failure to make a claim where the taxpayer was aware of the availability of relief. The UT considered that if ignorance were excluded from the meaning of a mistake in Case A, it would undermine the statutory requirement to claim MDR in the return as the taxpayer could claim overpayment relief following the expiry of the usual MDR deadlines. This would reward ignorance of the law by allowing a much longer time limit to claim relief. Additionally, the UT found that by considering the other types of cases in the exclusions in para 34A, Parliament did intend to include ignorance in using the word ‘mistake’ in Case A.

The UT dismissed the appeal, finding that LLO’s claims for overpayment relief were excluded by Case A. The overpayments resulted from failures to make timely claims for MDR, regardless of whether LLO was aware of that relief or not at the time.

Comment

This case is a useful addition to the case law on the parameters of overpayment relief claims. It is an important clarification of how Case A is intended to operate in practice and the limits of obtaining relief. It is clear that there would be an unfair distinction between ignorance of a relief available in a return and failure to make a claim with knowledge if the taxpayer had been successful. This illustrates the importance of obtaining advice on the availability of reliefs and making appropriate claims under the correct procedure and within time.



In *The Vaccine Research Ltd Partnership and another v HMRC* [2025] UKFTT 402 (TC), the FTT considered the meaning of “income” and whether licence fees receivable by a partnership as part of a circular, tax-driven arrangement were taxable for the purposes of section 683 or section 687 the Income Tax (Trading and Other Income) Act 2005 (“**ITTOIA 2005**”).

Background

In 2006, a limited partnership entered into a convoluted arrangement which was part of a circular, self-contained financing arrangement intended to generate income tax losses by way of research and development capital allowances. An earlier tribunal hearing decided that only £14 million of the expenditure was considered payment for genuine research services and therefore eligible to claim capital allowances as opposed to the £193 million originally claimed.

In this further appeal, the only issue for determination was whether the licence fees receivable by the partnership as part of a circular, tax-driven arrangement were taxable as income either as “*annual payments*” under section 683 of ITTOIA 2005 or as “*income not otherwise charged to tax*” under section 687 ITTOIA 2005.

Decision

The FTT concluded that the payments were not income and so neither taxing provision could apply.

One of the grounds for appeal that the appellant relied on was the Ramsay principle. The appellant argued that the scheme must be viewed as a single composite transaction, and on a realistic view of the facts, as confirmed by a previous ruling, the licence fees were

part of a self-cancelling financing arrangement, i.e. most of the funds that were borrowed and contributed to the partnership as capital by the individual partners were used to pay for the licence fees, which were subsequently used to repay the full capital and interest payments incurred by each partner on their borrowings. Applying the “*fruit and branch*” analogy from the Court of Appeal judgement in *HMRC v Bluecrest Capital Management LP and other companies* [2023] EWCA Civ 1481, the Court concluded that there was no ‘fruit’ for the individual partners. The circular flow of funds meant that the licence fees did not amount to ‘income’ for the purposes of section 683 or section 687 of ITTOIA 2005.

Comment

The Court noted that it is uncommon for a taxpayer to rely upon *Ramsay*, particularly in an avoidance context. However it was noted that the identity of the party seeking to rely upon *Ramsay* principles ought not to be the determining factor. The Court commented that the application of the principle is driven by the statutory provision in question.

It is worth noting that the Supreme Court is due to consider section 687 ITTOIA 2005 in the forthcoming appeal in *HMRC v HFFX LLP and others* [2024] EWCA Civ 813.



Other developments

Spring Statement 2025

As expected, the Chancellor's Spring Statement of 26 March 2025 did not include any major tax raising (or reducing) measures, with the primary focus on spending.

However, the Government did take the opportunity to release a number of tax consultations and documents. This included consultations on:

- A new process to give major projects increased tax certainty in advance, as originally announced in the Corporate Tax Roadmap. It was also confirmed that businesses will be able to obtain certainty on the transfer pricing treatment of Cost Contribution Arrangements ("**CCAs**") through the UK's existing Advance Pricing Agreement arrangements ("**APAs**");
- A new system of advance clearances for research and development;
- Options to simplify and strengthen behavioural penalties which can be charged for inaccuracies and failure to notify;
- New measures to 'close in' on promoters of tax avoidance, including increasing the scope of the DOTAS regime and granting HMRC stronger information powers;
- Strengthening HMRC's powers and sanctions for taking action against professional advisers who facilitate non-compliance relating to their client's tax affairs; and
- Improving the quality of data acquired from third parties under HMRC's bulk data gathering powers.

In addition, the Government:

- Released a technical note on Making Tax Digital ("**MTD**") for income tax, to extend MTD to a wider range of businesses, to introduce MTD improvements, and setting out increases to late payment penalties for VAT taxpayers and income tax self-assessment taxpayers as they join MTD from April 2025 onwards;
- Released further technical information in relation to the Private Intermittent Securities and Capital Exchange System ("**PISCES**"), including a draft statutory instrument providing for exemption from Stamp Duty and Stamp Duty Reserve Tax ("**SDRT**") for PISCES share transactions; and
- Confirmed several resource-increasing measures, including recruiting an additional 500 HMRC compliance staff, further investing in HMRC's debt management capacity, overhauling its approach to 'wealthy' offshore tax avoidance (including increasing resource for this area by approximately 500 people) and enlarging anti-fraud capabilities to increase the number of annual charging decisions for the most harmful fraud by 20%.

Tax Update Simplification Administration and Reform

On 28 April 2025, the Government made a number of announcements in relation to tax simplification, administration and reform, under the banner of "*Tax update spring 2025: simplification, administration and reform*".

These included:

- A policy paper setting out the Government's planned amendments to UK legislation dealing with transfer pricing, permanent establishment and diverted profits tax ("**DPT**"). Under these proposals:
 - The status of DPT as a separate tax would be removed and brought into the corporation tax framework by creating a new charging provision for unassessed transfer pricing profits ("**UPPT**"), with a redrawn scope;
 - The definition of "*permanent establishment*" in UK domestic legislation will be aligned with the OECD Model Tax Convention. In addition, the UK's Investment Manager Exemption will be broadened to make clear that commercial investment structures should not be impacted;
 - There are several proposed changes to transfer pricing rules, including an exemption for UK-UK transactions where there is no risk of loss of tax, and amendments to the participation condition and rules for financial transactions;
- A consultation covering two proposals concerning changes to the UK's transfer pricing rules, being (i) bringing medium-sized enterprises into the scope of transfer pricing; (ii) introducing a requirement for in-scope multinationals to report certain information to HMRC via an International Controlled Transactions Schedule;
- A consultation proposing a new single remote gambling duty;



- A summary of responses regarding the consultation "*Tax Administration Review: New ways to tackle non-compliance*", including a statement that HMRC will consider further reform of revenue correction powers and approaches to taxpayer self-correction, and that HMRC will test policy options to "*harmonise and simplify*" compliance powers across taxes;
- A new consultation as part of the Tax Administration Framework Review on "*Improving HMRC's approach to dispute resolution*", focusing on ease of access to and use of HMRC's alternative dispute resolution and statutory review processes;
- A summary of responses to the Modernisation of Stamp Taxes Framework Review – including a confirmation that the Government intends to introduce a single tax to replace the current stamp duty and SDRT framework. In addition, a new consultation was issued to seek views on aspects of the 1.5% higher rate charge which applies to certain transfers of UK securities overseas;
- A proposed simplification of the Capital Goods Scheme, including increasing the capital expenditure value of land, buildings and civil engineering work from £250,000 to £600,000 (excluding VAT);
- A consultation on promoting e-invoicing across UK businesses and the public sector;
- A proposal to simplify the process for transferring an employer's NICs liability to an employee acquiring employment related securities;
- An announcement, following feedback from stakeholders, that the introduction of mandatory payrolling of income tax and Class 1A National Insurance contributions on benefits in kind and taxable employment expenses will be delayed to 6 April 2027, instead of 6 April 2026; and
- A commitment to explore reform of the rules which require online marketplaces to account for VAT in certain circumstances.

Postponement of the consultation on the tax treatment of predevelopment costs

Part of the Corporate Tax Roadmap released at the Autumn Budget in October 2024 was a planned consultation on the tax treatment of predevelopment costs. In April, HM Treasury announced that this consultation has been postponed in order to give the Government time to consider the implications of the Court of Appeal judgment in *Orsted West of Duddon Sands (UK) Limited and others v HMRC* [2025] EWCA Civ 279 (also known as "**Gunfleet Sands**"), a decision relating to the availability of capital allowances in relation to predevelopment costs. The press release states that next steps will be determined in due course. HMRC has

lodged a permission to appeal application in relation to the Court of Appeal's decision in *Gunfleet Sands*, the outcome of which is awaited.

Changes to interest rates for late payments and repayments

In line with the Government's announcement at the Autumn Budget 2024, from 6 April 2025, the late payment interest rate has been set at the Bank of England base rate plus 4%, and for quarterly instalment payments, plus 2.5%. This is a significant increase from the prior position, where the late payment interest rate was set at the base rate plus 2.5%, or plus 1% for quarterly instalment payments.

In addition, a reduction in the Bank of England base rate from 4.50% to 4.25% was announced on 8 May 2025. As a result, the late payment interest rate for most taxes sits at 8.25%, effective from 28 May 2025 for non-quarterly instalment payments. Interest charged on underpaid quarterly instalment payments sits at 6.75% with effect from 19 May 2025.

Repayment interest continues to be set at base rate minus 1% (with a minimum floor of 0.5%) and is therefore, at the time of writing, 3.25% for most taxes and duties.

Apparent change in HMRC's view on second remittances

As a result of changes in the Finance Act 2025 to section 809P(12) of the Income Tax Act 2007, a provision dealing with second and subsequent remittances of foreign income and gains ("**FIG**"), it has come to light that HMRC's view is that a second remittance is only non-taxable where the first remittance has been charged to tax. This position now appears in HMRC's Remittance Basis and Domicile Manual. HMRC has stated that this was their "*long-standing view*", despite the fact that it has been generally accepted by practitioners and tax commentators that a second or subsequent remittance will not be subject to tax even if the first remittance is non-taxable (for example, because the individual was not resident during the year of the first remittance).

A limited relief for 're-remittances' has been introduced in the Finance Act 2025, in relation to second or subsequent remittances which occurred prior to 6 April 2025, subject to a number of conditions being met. However, on the basis of HMRC's view of the law to 5 April 2025, this legislation will not assist *all* taxpayers who made second or subsequent remittances prior to 6 April 2025. In addition, the legislation now appears to be clear that a second or subsequent remittance that occurs post-6 April 2025 will be taxable if the first or prior remittances was or were not taxable, nor qualified for the new 're-remittance relief'.



PAC report: The cost of the tax system

A new report from the House of Commons Public Accounts Committee ("**PAC**") suggests growing concerns over HMRC's rising tax administration costs, declining trust amongst taxpayers, outdated IT systems and reduced compliance productivity.

The PAC's report, urges HMRC to lay out "*realistic plans to simplify the tax system and address taxpayers' concerns*", as their costs rise and trust in them falls. Publishing the report, Sir Geoffrey Clifton-Brown MP, Chair of the PAC, labelled the tax authority "*a lumbering dinosaur*" and suggested that HMRC needs to "*do much more to restore trust and confidence*" in their taxpaying consumers.

The PAC makes recommendations in six areas. These include restoring taxpayers' trust in HMRC, learning lessons from Making Tax Digital and the rising cost of tax administration.

Other findings include:

- HMRC have allowed many of their IT systems to become out of date. Improving digital systems would help reduce calls to helplines;
- HMRC are not well-placed to benefit from new technologies like AI and e-invoicing due to legacy systems limiting data access and increasing vulnerability. They should write to the PAC setting out plans and timetable for addressing the factors that constrain their capability and capacity in this area; and
- Despite investment in digital systems and higher-skilled staff, compliance productivity has decreased. HMRC should explain the steps they will take to return compliance productivity to pre-pandemic levels as soon as possible and seek year-on-year improvements thereafter.

OECD issues an updated commentary on the GloBE rules

On 9 May 2025 the OECD published an updated version of the commentary on the GloBE rules, incorporating Agreed Administrative Guidance that has been released by the Inclusive Framework up until March 2025.

Clarification on HMRC's view regarding Condition C of the salaried member rules, the targeted anti-avoidance rule and capital contributions

In April, HMRC updated several pages in the Partnership Manual covering aspects of the LLP salaried member rules. These rules can lead to certain individual members of an LLP being treated for income tax and NIC purposes as employees receiving amounts of 'disguised salaries', rather than as self-employed partners receiving profit shares. The rules contain a targeted anti-avoidance rule ("**TAAR**"), which disregards the effects of arrangements "*the main purpose, or one of the main purposes, of which is to secure*" that one or more of the rules' three statutory conditions are not met.

The three statutory conditions are as follows. Condition A, more than 80% of the individual's remuneration from the LLP is 'disguised salary' (broadly, amounts that don't vary according to the overall profits of the LLP). Condition B, the individual does not have significant influence over the affairs of the LLP. Condition C, the individual's capital contribution to the LLP is less than 25% of their disguised salary.

Because Condition C offers a seemingly straightforward route to certainty of tax treatment, some LLPs sought to prescribe the required capital contribution so that Condition C failed and this was generally understood not to be contentious.

However in early 2024 the position changed. HMRC revised their guidance to indicate that the TAAR would apply where decisions on the amount of capital contributed by an individual member to an LLP were made with a view to failing Condition C. This guidance caused widespread concern.

HMRC's guidance has recently been revised again, to indicate that arrangements to increase capital that "*result in the individual making a genuine contribution to the LLP which is tended to be enduring and giving rise to real risk*" should not trigger the TAAR. The expanded guidance goes on to set out HMRC's views on what it means for a contribution to be genuine and involve real risk to the member.

HMRC's compliance approach regarding Condition B of the salaried member rules and the Court of Appeal's decision in *Bluecrest*

On 16 April 2025, HMRC issued an update regarding its approach to Condition B of the salaried member rules following the Court of Appeal's decision in *HMRC v Bluecrest Capital Management (UK) LLP* [2025] EWCA Civ 23 ("**Bluecrest**"). As indicated above, Condition B is met if the mutual rights and duties of the members and the LLP do not give the individual 'significant influence' over the affairs of the LLP. The Court of Appeal in *Bluecrest* ruled that such significant influence must arise solely from the right and duties set out in the statutory and contractual framework that governs the operation of the LLP, and that *de facto* influence should not be taken into account.

HMRC have indicated in their correspondence to LLPs that they are required to apply the law in accordance with their Litigation and Settlement Strategy (LSS) and that their compliance work on Condition B will continue on a case-by-case basis. HMRC will continue to gather relevant facts and documents, including requesting copies of LLP agreements. Where appropriate, HMRC will agree not to seek the taxpayer's views on whether significant influence derives from the contractual framework until the Supreme Court decides on the application for permission to appeal in *Bluecrest*.

On 9 May 2025, the Supreme Court granted permission to appeal in part in *Bluecrest*. Further developments are therefore awaited.

Latest HMRC nudge letter campaigns

The behavioural science of 'nudge theory' has become an increasingly used weapon in HMRC's arsenal over the last decade or so – i.e. the idea that people can be better directed towards a desired course of action through suggestion rather than obligation. UK taxpayers may have noticed the same concept at work when completing their online tax returns, where certain information is now pre-populated based on figures held by HMRC (the idea being that the taxpayer will likely accept those figures by default).

Over the last few months, HMRC has launched several new nudge letter campaigns on various issues, as summarised below.

Electronic Sales Suppression (March 2025)

HMRC are sending letters to individuals and businesses which they suspect have engaged in electronic sales suppression, also known as 'till fraud'. Recipients are requested to respond to the letter by making an online disclosure in relation to any undeclared sales, including with a 'nil disclosure' if they believe they have declared all sales correctly. The letter warns that those who do not respond risk further investigation, tax assessment, penalties and interest on unpaid tax, and potential criminal investigation. Two versions of the letter are being sent, with two different examples to demonstrate the impact of 100% penalties on differing amounts of unpaid tax.

Claims for research and development tax relief (May 2025)

HMRC are writing to retail businesses who sell goods by mail order or online, to warn them that agents and other third parties are targeting businesses in this sector to encourage them to make R&D relief claims, despite such businesses generally being ineligible to claim that relief. The letter sets out how such agents operate, explains why generally retail businesses are ineligible to claim R&D relief, and cautions against providing any tax details to such agents.

Any taxpayers who receive nudge letters, even those confident of their tax position, should seek professional advice as soon as possible. Whilst nudge letters do not make specific accusations and are rarely overtly threatening in tone, they are generally based on actual data held by HMRC. Taxpayers who ignore these letters do so at their peril – failure to take action or respond is likely to mean that there is an imminent risk of HMRC starting an investigation (either under civil procedures or, in cases of suspected fraud, using their criminal powers). Early disclosure may also mitigate penalties.

CMS Law-Now™

Your free online legal information service.

A subscription service for legal articles
on a variety of topics delivered by email.

cms-lawnow.com

.....
CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000

F +44 (0)20 7367 2000

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Cameron McKenna Nabarro Olswang LLP is a limited liability partnership registered in England and Wales with registration number OC310335. It is a body corporate which uses the word "partner" to refer to a member, or an employee or consultant with equivalent standing and qualifications. It is authorised and regulated by the Solicitors Regulation Authority of England and Wales with SRA number 423370 and by the Law Society of Scotland with registered number 47313. It is able to provide international legal services to clients utilising, where appropriate, the services of its associated international offices. The associated international offices of CMS Cameron McKenna Nabarro Olswang LLP are separate and distinct from it. A list of members and their professional qualifications is open to inspection at the registered office, Cannon Place, 78 Cannon Street, London EC4N 6AF. Members are either solicitors or registered foreign lawyers. VAT registration number: 974 899 925. Further information about the firm can be found at cms.law

© CMS Cameron McKenna Nabarro Olswang LLP

CMS Cameron McKenna Nabarro Olswang LLP is a member of CMS LTF Limited (CMS LTF), a company limited by guarantee incorporated in England & Wales (no. 15367752) whose registered office is at Cannon Place, 78 Cannon Street, London EC4N 6AF United Kingdom. CMS LTF coordinates the CMS organisation of independent law firms. CMS LTF provides no client services. Such services are solely provided by CMS LTF's member firms in their respective jurisdictions. CMS LTF and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS LTF and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.