



Tax Matters

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Welcome to the latest edition of the TLT Tax Team's "Tax Matters". In this edition, we have covered recent developments across the taxes including SDLT, capital allowances, VAT and withholding tax. If you would like to discuss any item in further detail, please speak to a [key contact](#).

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Case studies

Capital allowances unavailable for windfarm developments studies: Orsted West of Duddon Sands (UK) Limited and others v HMRC

Legal issue

The taxpayer companies set up windfarms off the UK coastline to generate and sell electricity, incurring significant expenditure on environmental impact, technical and engineering studies and project management costs (the **Expenditure**). The main issue for the Supreme Court was whether the Expenditure was expenditure “on the provision of plant and machinery” so that capital allowances were available under section 11 of the Capital Allowances Act 2001 (**CAA 2001**).

Case detail

Studies (including environmental, metocean, geophysical and geotechnical, telecoms and radar interference and noise assessment) were conducted prior to the fabrication and installation of the windfarms.

HMRC accepted that each taxpayer was entitled to capital allowances on the costs incurred on the fabrication and installation of the wind turbines themselves and on the connector cables connecting the turbines (together the **Generation Assets**), but argued that the Expenditure was too remote from, and not on the provision of, the Generation Assets and did not qualify for capital allowances.

The First Tier Tribunal found that some types of study qualified for capital allowances and some did not. The Upper Tribunal subsequently determined that none of the studies qualified for capital allowances. On appeal, the Court of Appeal rejected the narrow interpretation of “on the provision of” plant in section 11 CAA 2001 adopted by the Upper Tribunal, concluding that the taxpayers’ expenditure on the studies was incurred “on the provision of” the Generation Assets with the result that capital allowances were available.

HMRC appealed to the Supreme Court.

Case outcome

The Supreme Court agreed with the Upper Tribunal that the requirement that the expenditure must be “on” the provision of plant indicates a narrow test. The ordinary meaning of the requirement that the expenditure be “on the provision” of the plant connoted a close connection between the expenditure and the plant. This means that costs of carrying out studies and surveys which provide the business with advice about how to choose or design plant is not expenditure “on the provision” of the plant.

The Supreme Court therefore allowed HMRC’s appeal finding that none of the studies fell within the statutory wording of section 11 CAA 2001.

Why it matters?

The decision of the Supreme Court is significant for business clients undertaking capital-intensive projects because it confirms that the costs incurred on preparatory and feasibility studies will not qualify for capital allowances unless they have a

sufficiently close connection to the actual provision of plant and machinery. This potentially increases the after-tax cost of major infrastructure and energy projects. Businesses will therefore need to assess the categorisation of early-stage project costs and factor in the limited availability of capital allowances when modelling project viability and cash flow.

Read the judgment [here](#).

Valuing compensation for loss of share options: Andrew Dixon v GlobalData Plc

Legal issue

The High Court considered how to calculate the compensation due to a former employee who was promised that he could retain share options after leaving employment but was subsequently prevented from exercising them.

Case detail

The taxpayer, Mr Dixon, was granted unapproved share options while employed by a subsidiary of GlobalData PLC (**Global**). The terms of the options allowed Global to exercise a discretion to permit the taxpayer to

retain his share options following termination.

On termination in September 2014, Global's CEO confirmed that he could retain his share options and this was reflected in a settlement agreement. By entering into the settlement agreement, the taxpayer agreed to work until the end of 2014 and be bound by restrictive covenants, putting him out of the employment market for several months. When some of the options vested in 2020 (**Tranche A**), Global refused to allow the taxpayer to exercise them. The taxpayer also held some unvested options (**Tranche B**). In 2020, Global established a new option plan to give employees with unvested options an equivalent number of new options, but no new options were granted to the taxpayer. In 2022, when the Tranche B options vested, Global refused to allow the taxpayer to exercise them.

Case outcome

In an earlier High Court hearing, it was held that the formal discretion to allow the taxpayer to retain his options had not been exercised. However, the Court found that the taxpayer succeeded in a claim for proprietary estoppel based on the CEO's assurance, the taxpayer's reliance on it and the detriment to the taxpayer that had

resulted from that assurance, being the entry into the settlement agreement.

At the remedies hearing, the court ruled that:

- the compensation for the Tranche A options should reflect the price achieved in a bulk broker sale for other employees exercising their options at the same time, and not a later higher market value. This was because the taxpayer had an expectation based on the CEO's assurance that he would be treated in the same way as the other option holders; and
- the assurance given to the taxpayer was that he would continue to be able to exercise his options on the same basis as other option holders. This meant that he should be compensated for Global's failure to grant replacement Tranche B options.

Why it matters?

This decision is a useful reminder for employers that informal assurances made during exit negotiations – particularly when reflected in a settlement agreement – around equity incentives can create binding obligations, even where formal plan discretions have not been exercised.

The case also provides practical guidance on how compensation may be assessed in such circumstances: the court will seek to reflect the employee's expected treatment (including timing), rather than allowing recovery based on more favourable hindsight valuations. Businesses should ensure that communications about post-termination equity rights are carefully controlled, clearly documented and aligned with plan rules.

Read the judgment [here](#).

No abuse in withholding Tax relief case: Burlington Loan Management DAC v Revenue and Customs Commissioners

Legal issue

The main issue for the Court of Appeal was whether relief from UK withholding tax on interest under the UK-Ireland double tax treaty (**Treaty**) was available to an Irish tax resident company, or whether the anti-abuse provision in the Treaty applied.

Case detail

A company resident in the Cayman Islands (**SICL**), was in liquidation but was the owner of a debt claim which would give rise to a significant sum of UK source interest. The UK-Cayman Islands double tax arrangement provides relief for UK withholding tax on interest on debt claims by way of credit against Cayman Islands tax but since SICL was in liquidation this would have given rise to an irrecoverable tax cost.

It was agreed that the taxpayer, Burlington Loan Management DAC (**Burlington**), an investment company tax-resident in Ireland, would take an assignment of the rights to the debt claim from SICL. The UK payer of the interest withheld UK tax at 20% from the interest payable to Burlington and paid it to HMRC. Burlington claimed repayment of the withheld UK withholding tax on the basis that, as an Irish tax-resident owner of the debt claim, it was exempt from UK withholding tax under Article 12(1) of the Treaty.

Article 12(1) of the Treaty provides that interest derived and beneficially owned by a resident of a contracting state is only taxable in that state. However, that provision does not apply if the main purpose, or one of the main purposes, of the assignment is to take advantage of Article 12(1).



The First Tier Tribunal allowed Burlington’s appeal against HMRC’s refusal of the relief claim, and the Upper Tribunal dismissed HMRC’s subsequent appeal. HMRC then appealed to the Court of Appeal.

Case outcome

The Court of Appeal dismissed HMRC’s appeal, finding that:

- to “take advantage of” an article in the Treaty had to mean obtaining the benefit in a way that was contrary to the object and purpose of the Treaty;
- finding an element of artificiality is not a condition for the anti-abuse rule to apply – the fact that parties have genuine commercial reasons for entering into an assignment does not mean that the anti-abuse rule cannot apply. However, the presence (or absence) of artificial features remains relevant when assessing whether the arrangement is consistent with the Treaty’s purpose;
- the fact that an arrangement results in reduced UK tax revenues is not, in itself, indicative of abuse, as it is not part of the object and purpose of Article 12 to maximise tax revenues;

- on the facts, Burlington’s acquisition of the debt claim and its reliance on treaty relief were consistent with the Treaty’s purpose. It was an independent Irish resident company acting at arm’s length and engaging in genuine commercial activity.

Why it matters?

This decision provides helpful clarity on the scope of treaty anti-abuse provisions. However, businesses should note that genuinely commercial transactions can still be challenged and should therefore carefully assess purpose and substance when structuring assignments of debt or similar arrangements to ensure alignment with treaty intent.

- Read the judgment [here](#).

Legislation and Guidance



Currently, a UK resident company is subject to UK corporation tax on the profits of its foreign PEs. However, it is possible for the UK resident company to make an election to exempt the profits of its foreign PEs. This means that:

- future profits of the UK resident company's foreign PEs are not subject to UK corporation tax; and
- future losses of the UK resident company's foreign PEs cannot be used to offset the UK profits of the company for corporation tax purposes.

HMRC is concerned that, where a UK resident company does not make an election, it may lose UK corporation tax revenue. This is because losses from foreign PEs can be offset against the UK company's profits, reducing or even eliminating its UK tax liability, while the profits of those foreign PEs may fall outside the UK tax net. This mismatch can arise where the foreign PE's profits are fully relieved by double taxation relief.

To address this issue, the government intends to make the Foreign PE Exemption mandatory. The changes will be published in draft legislation over Summer 2026 (alongside an anti-avoidance rule) and are intended to have effect:

- from 1 September 2026 for UK-resident companies with foreign PEs that carry on activities in connection with the exploration or exploitation of oil and gas; and
- for accounting periods beginning on or after 1 January 2027 for all other companies.

Mandatory foreign permanent establishment exemption announced

On 21 May 2026, HMRC published a policy paper on the Foreign Permanent Establishment Exemption (the **Foreign PE Exemption**) announcing the government's intention to make the Foreign PE Exemption mandatory for UK resident companies that conduct part of their business through foreign permanent establishments (**PEs**).

Why it matters?

This forthcoming change removes flexibility in how UK groups manage the tax position of their foreign PEs and could materially affect their effective tax rate and cash flow. In particular, companies will no longer be able to use foreign PE losses to shelter UK taxable profits, which may accelerate UK tax liabilities for groups with loss-making or volatile overseas operations.

The measure also reduces planning opportunities arising from the current elective regime. Groups with international footprints will need to reassess their structures, forecasts and use of losses ahead of the proposed commencement dates - especially those in the oil and gas sector, where the rules will apply sooner.

Read the policy paper [here](#).

Targeted advance assurance for SME R&D tax relief claims

In May 2026, HMRC published guidance on a targeted advance assurance service (also known as the advance assurance pilot) that allows eligible small or medium-sized enterprises (**SMEs**) to request clarity on up to two specific complex or high-risk areas of a Research and Development (**R&D**) tax relief claim.

Some of the key questions covered by the guidance are set out below.

Who can apply for assurance?

A company can apply for the targeted advance assurance process if it:

- is an SME;

- is carrying out R&D, or is planning to carry out R&D in the accounting period assurance is being requested for;
- has not yet claimed R&D tax relief for the period the advance assurance is being requested for; and
- has not already received assurance on the two areas of its R&D work or project for the same period.

What information must be disclosed to HMRC?

The company will need to disclose details of the project in relation to which the assurance is sought, including:

- the start date of the project and of the accounting period in which the R&D relief will be claimed;
- an overview of the project;
- the forecasted expenditure;
- the project duration;
- what written records have been retained.

What are the areas on which assurance can be sought?

Each application can only include one project and one area of R&D relief.

The areas of R&D relief on which assurance can be sought are:

- whether the project meets the definition of R&D for tax purposes;
- whether overseas expenditure qualifies for relief;
- whether the company can claim R&D relief where work is contracted from one company to another; and
- whether the company qualifies for exemption from the PAYE and National Insurance Contributions cap.

Who can submit an application?

An application can be submitted by an agent, R&D adviser or officer within the company.

How long does the process take?

HMRC aim to process applications within 40 calendar days of the application being made, subject to full and accurate information having been provided.

HMRC will send a letter confirming whether advance assurance has, or has not, been granted. If an application is not granted, the company cannot appeal the decision nor apply for advance assurance again in relation to the same project and R&D claim.

Why it matters?

The targeted advance assurance service is significant for eligible SMEs because it provides a practical route to reduce uncertainty and risk in R&D tax claims relating to specific high-risk or technically complex projects at an early stage. This means that businesses can plan the financial aspects of a project with greater accuracy and the likelihood of later enquiry or challenge to an R&D claim is reduced. However, the absence of any appeal process if assurance is refused, means businesses will need to prepare applications carefully and be strategic about the issues they put forward.

Read the guidance [here](#).

The role of tax governance in avoiding tax disputes

Recent HMRC initiatives point to a continued shift towards greater transparency, better data quality, stronger governance and more structured tax reporting. HMRC is placing growing emphasis not just on the technical correctness of tax positions, but on how and why those positions were reached. In this environment, businesses are increasingly expected to demonstrate

a clear and contemporaneous audit trail of decision-making.

The following FAQs explore what this means in practice and how businesses can respond.

Why do many tax disputes arise in practice?

Many disputes arise not because the technical analysis was incorrect or aggressive, but because businesses cannot, years later, evidence why a particular decision was taken. The issue is often not interpreting the legislation but reconstructing the decision-making process after the commercial context has changed and the individuals involved have moved on.

What are HMRC's expectations when reviewing tax positions?

HMRC expects taxpayers to be able to demonstrate:

- why a position was taken;
- how uncertainty was identified and assessed;
- what advice was relied upon;
- how that advice was reflected in the return; and
- what governance processes supported the decision.

This reflects a shift towards assessing the quality of judgement and governance, rather than purely the technical merits.

What do HMRC's Guidelines for Compliance (GfC13) require in practice?

While GfC13 is often viewed as guidance on getting tax returns "right", in practice it goes further.

It requires businesses to evidence how decisions were made, including documenting uncertainty, advice received and governance processes. This effectively elevates the importance of maintaining a clear audit trail for tax decisions.

How does this fit within wider tax governance expectations?

This focus on evidence forms part of a broader trend in tax governance, including:

- Senior Accounting Officer (SAO) regime – requiring appropriate tax accounting arrangements that operate effectively in practice;
- Business Risk Review Plus (BRR+) – assessing how tax risk is embedded in commercial decision-making; and
- Guidelines for Compliance 17 (GfC17) – emphasising the need for clear and structured group information.

Why are historic tax decisions particularly vulnerable?

Tax decisions often span multiple years and contexts. A transaction or arrangement may be implemented in one period, reviewed during due diligence later and challenged in an enquiry years afterwards. By that stage, different advisers or internal teams may be involved, and ownership of the original rationale may be unclear. However, HMRC, buyers and tribunals will expect a single, coherent narrative explaining why the decision was made.

What is the “lifecycle problem” in tax governance?

The lifecycle problem arises because tax decisions do not align neatly with accounting periods or organisational structures. Without deliberate governance, the audit trail of reasoning can become fragmented across adviser reports, emails and individual recollections. This makes it difficult to present a clear and consistent explanation under scrutiny.

What does good tax governance look like in practice?

In practice, strong tax governance is often straightforward and focuses on maintaining

a contemporaneous audit trail.

Key steps include:

- logging key advisory decisions;
- ensuring compliance processes reference those decisions;
- recording short notes where judgement or uncertainty exists; and
- retaining documentation in an accessible “governance pack”.

This creates a clear link between advice, reporting and future review.

Why it matters?

For tax functions, this is a record-keeping and process challenge. For CFOs and boards, it is a broader risk management issue.

While good governance does not eliminate tax risk, it significantly improves a business’ ability to defend its tax positions when they are reviewed or challenged.

If you’re interested in learning more, you can access the recording of our recent webinar on this topic [here](#).

HMRC guidance on the VAT treatment of certain public funds received by further education institutions

HMRC has issued a briefing setting out its response to the ruling of the Court of Appeal earlier this year in the case of HMRC v Colchester Institute Corporation (the **Colchester case**).

The Colchester case concerned the VAT treatment of public monies received by further education institutions to fund the provision of free education to eligible students. Historically, HMRC considered that these monies were a grant. The funding was therefore income from a non-business activity and outside the scope of VAT.

In the Colchester case, monies were received by the Colchester Institute Corporation, a further education college, from two government agencies - the Education Funding Agency and the Skills Funding Agency. Colchester Institute Corporation argued that the funding from those agencies represented third party consideration paid by the funding agencies for the supply of education to students and the Court of Appeal agreed.

The Court found that funding was paid in consideration of Colchester Institute Corporation delivering approved courses to eligible students, not just as general support. This meant that the funding represented income from a business activity (instead of non-business income).

HMRC has confirmed in the recent briefing that it will not be appealing the ruling of the Court of Appeal and will now be considering the terms of the judgment in consultation with relevant stakeholders. Any policy change will be announced by way of a Revenue and Customs Brief accompanied by updated guidance.

Following the Upper Tribunal's decision in the Colchester Case, HMRC had given institutions the option of either:

- applying the third-party consideration position; or
- continuing to treat education as non-business.

The briefing confirms that for institutions that have not previously adopted the third-party consideration position, any change to the VAT treatment of this funding will only apply

prospectively from a future date yet to be announced. Those institutions can continue to use appropriate VAT reliefs until the date of any change. However, those institutions that chose to adopt the third-party consideration position should continue to do so.

Why it matters?

This briefing signals a potentially significant shift in HMRC's approach to the VAT treatment of public funding, with wider relevance beyond the education sector. By accepting that certain funding can constitute consideration for a supply (rather than a non-business grant), the decision increases the risk that similar funding arrangements in other sectors could fall within the scope of VAT, affecting both VAT recovery and output tax liabilities.

Businesses that receive third-party or government funding should therefore review their arrangements to assess whether they may be treated as making taxable supplies, while also noting that HMRC may introduce changes prospectively following further consultation, creating both planning opportunities and future compliance considerations.

Read the briefing [here](#).



HMRC launches a close company loans to participators tool

Certain loans made by a close company to its participators (broadly shareholders and loan creditors) in an accounting period are subject to a charge to corporation tax. Any such loans must be declared by the company in its company tax return for the relevant accounting period and the tax is due on the day following the end of the period of 9 months from the end of the relevant accounting period.

However, relief is available from the tax charge on a loan to a participator if the loan is repaid to the company or is released or written off within 9 months of the end of the accounting period in which the loan was made. HMRC may ask the company to confirm that participators have fully repaid any loans declared in its company tax return for an accounting period to ensure that relief from the loan to participator charge is due.

To assist taxpayers, HMRC has launched a new tool to enable close companies to

provide information about repaid participator loans. The tool can be used by an officer of the company, a participator or an agent authorised to act for the company.

Why it matters?

The new tool should make it easier for businesses (and their advisers) to provide evidence that loans have been repaid within the required timeframe, potentially reducing administrative friction when dealing with HMRC enquiries. However, it also signals a more structured compliance approach by HMRC, meaning businesses should ensure that participator loans are carefully tracked, timely repaid or otherwise cleared, and accurately reported in tax returns to avoid unexpected tax liabilities and delays in obtaining relief.

Tax implications of worker mobility - proposed OECD proposal

In November 2025, the OECD launched a public consultation on the global mobility of individuals to consider the tax challenges that arise in connection with cross-border working. Whilst cross-border working is not new, it has increased in scale over recent years. Topics considered by the consultation included:

- the personal income tax challenges for individual cross-border workers, such as whether cross-border working is resulting in double taxation, are these arrangements creating risks of no or low-taxation and what compliance burdens are created for businesses (e.g. tracking employee movements, multiple filing obligations and tax withholding obligations); and
- the corporate income tax challenges for businesses engaging such workers such as the risk of creating a permanent establishment in another jurisdiction, profit attribution to a permanent establishment and transfer pricing issues.

The consultation was followed by a public consultation meeting earlier this year.

The Deputy Secretary-General of the OECD has recently acknowledged that the rapid expansion of remote work is reshaping where economic activity takes place, turning cross-border mobility into a structural feature of the global economy and raising new challenges for tax systems.

It is understood that by the end of this year, the OECD will present a proposal to the members of the inclusive framework on how to address the tax implications of cross-border working mobility.

Why it matters?

As remote and hybrid working continue to drive more employees to work across jurisdictions, businesses face increasing uncertainty around issues such as permanent establishment risk, payroll compliance, and allocation of taxing rights. An OECD-led proposal - particularly one endorsed by the Inclusive Framework - could lead to greater coordination between tax authorities but may also introduce new reporting obligations or restrictions. Businesses with internationally mobile workforces should therefore monitor developments closely and begin assessing where their current operating models could give rise to additional tax exposure or compliance burdens.





The Renters' Rights Act and SDLT on residential leases

In late April, a Written Ministerial Statement was issued by the government, to address a concern relating to the SDLT treatment of assured tenancy residential leases.

The concern arises from amendments to the Housing Act 1988 made by section 1 of the Renters' Rights Act 2025 (**RRA**) (which came fully into force on 1 May 2026) which abolish fixed-term assured shorthold tenancies. Instead, all tenancies will be periodic, with tenants able to stay in their property until they decide to end the tenancy by giving two months' notice.

Since the calculation of SDLT on the grant of a lease is based on the net present value of the rent, fixed-term assured shorthold tenancies often had a value less than the SDLT threshold of £125,000 with the result that no SDLT was payable. The value of a periodic tenancy will likely be greater than that of a fixed-term assured shorthold tenancy, since the SDLT will be calculated on the basis that the lease continues indefinitely, potentially bringing more tenancies into the SDLT net than previously.

The Written Ministerial Statement confirms that the government intends to legislate in the Finance Bill 2026-2027 so that any

residential tenancy which will be considered an assured tenancy under the Housing Act 1988 (as amended by the RRA) will not give rise to an SDLT charge on the rent element. The government will set out the detail of the legislation at or before this year's Budget but it is understood that the legislation will apply retrospectively from 1 May 2026.

Why it matters?

The government's clarification is important for businesses - particularly landlords, investors and those operating in the private rented sector - because it removes a potentially significant and unintended SDLT cost arising from the shift to periodic tenancies under the Renters' Rights Act. The government's commitment to legislate (with retrospective effect from 1 May 2026) provides welcome certainty and preserves the previous economic position, ensuring that routine residential letting activity is not subject to unexpected SDLT charges and allowing businesses to proceed with confidence when structuring and pricing their rental arrangements.

Read the Written Ministerial Statement [here](#).

Looking ahead

Key tax developments to look out for over the next quarter

1 July 2026

- Electricity Generator Levy rate will increase from 45% to 55%

5 July 2026

- Deadline for filing Non Resident Landlord Scheme annual return for the year from 1 April 2025 to 31 March 2026

6 July 2026

- HMRC filing deadline for employment-related securities annual returns for the tax year 6 April 2025 to 5 April 2026

6 July 2026

- Deadline for notifying HMRC about the grant of EMI options in the tax year 6 April 2025 to 5 April 2026

Key contacts

Our specialist Tax and Incentives team operates out of our offices in Bristol, London, Manchester and Dublin.

We have years of experience providing clear, commercial advice to national and international corporate groups, joint ventures, management and HR teams, partnerships, and funders.

We offer a tax structuring and advisory service to clients as part of our national reach, as well as transactional support on business and real estate transactions dealing with all the main UK business, real estate and employment taxes.

Our experienced incentives lawyers advise on implementing and operating employee share plans and incentives as well as bonus, deferred bonus and salary sacrifice schemes.

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