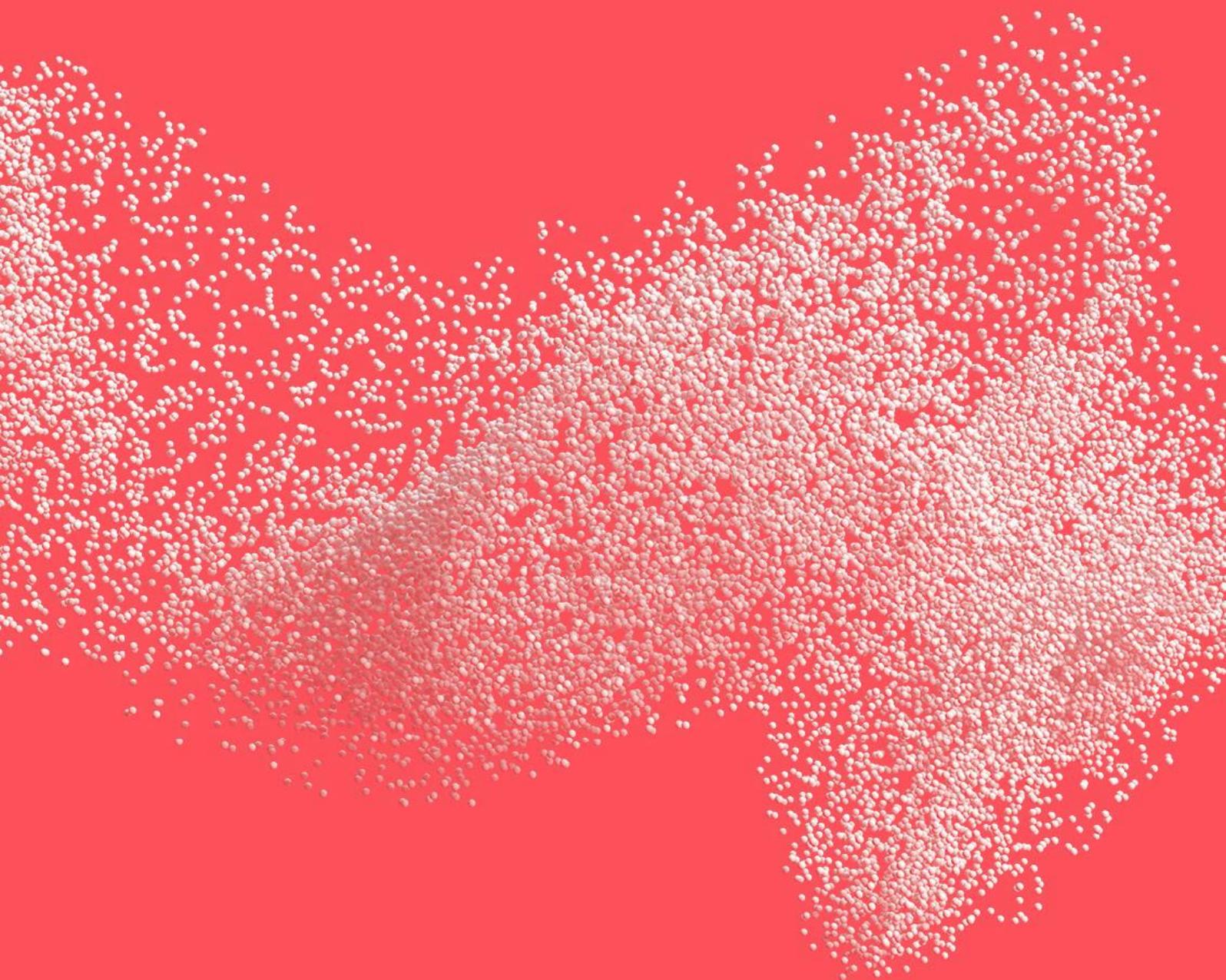


# March 2021 Budget Highlights

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## A view from the market

The UK economic recovery is still in its early and fragile stages and the Chancellor has sought to nurture it in the near term with an extension of most existing fiscal support measures and the introduction of some new ones. But the warning signs are already clear beyond the horizon, both as to national debt levels and longer-term growth rates. That tension looks set to continue through the current parliament while the introduction of longer-term structural initiatives including 'freeports' and a 'green' investment bank get underway. Elsewhere lie the seeds perhaps of an early general election.

Financial markets were largely unchanged over the course of the Chancellor's well-trailed budget speech to the House of Commons - although the announcement of a return to a 25% corporation tax rate caused an initial frisson of concern!

Such movement as there was (notably the small rise in gilt yield) was consistent with a very modest reflationary boost in the early years of the forecast period - although the Office for Budget Responsibility cut its forecast for GDP growth in 2021 to 4% (from 5.5%), it increased the number for 2022 to 7.5% (from 6.6%) and brought forward the point at which it expects UK GDP to recover its pre-pandemic level to the middle of 2022.

The good news of course lies in the promise of renewed recovery as the benefits begin to flow from the various vaccination programmes, amongst which the UK's is one of the fastest in the world.

All else equal, modestly faster growth should mean modestly higher inflation and the OBR has raised its forecast accordingly to 1.5% this year (from 1.2%) rising to 1.8% in 2022 and then gradually rising to the Bank of England Target Rate of 2% by 2025.

As an aside to the Budget commentary, there is little in those forecasts (if met) to suggest any urgent need either for significant interest rate increases: the last Bank of England Monetary Policy Report (February, 2021) showed its projections for the UK Bank Rate staying close to present levels until 2024. The OBR is a little more hawkish and expects a rise to 0.25% by the end of 2023 and to 0.5% by 2026.

Given that Bank Rate is currently only 0.1% there must be some risk also, at least theoretically, of a cut into negative interest rate territory if there was any material disturbance to the UK's vaccine roll-out programme and/ or Prime Minister Johnson's "irreversible" relaxation from lockdown. The IMF has just published analysis suggesting that the so far eight years' experience of negative rates has proved sceptics wrong and that negative interest rates "have worked".

Indeed, the macro conditions which set the background for this budget are at least as challenging as those for Alistair Darling, the Labour Party chancellor in 2009/10 as the Global Financial Crisis unfolded. The UK economy and those of all other countries today are coming to the end of only the third quarter of recovery from the deepest recession in many decades.

And while that recovery has been initially sharp, bolstered by the fiscal support measures, the recent pace has slowed under the weight especially of the further lockdowns at the end of 2020 and the start of 2021. As the chancellor made clear in his speech, the recovery is still in its early stages and thus vulnerable.

The good news of course lies in the promise of renewed recovery as the benefits begin to flow from the various vaccination programmes

According to an OECD Weekly Tracker of Economic Activity ,which we follow here at Simmons & Simmons, UK activity has recently been running at a rate equivalent to GDP contraction at an annualised rate of 8.4%, weighed down by the latest lockdown and, along with Germany (negative 8.3%) among the lowest economic activity rates in the G20.

Hence Chancellor Sunak's concern not to threaten such a fragile recovery with any premature fiscal tightening. Instead, rather than curtail existing fiscal support measures he extended the majority of them (albeit freezing existing personal tax thresholds) and the significant tightening measures he announced, notably the increase in corporation tax, are not due to take effect in the near-term - their virtue today is in their signalling. In the short term, measures such as the "super-deduction" and a review of R&D tax reliefs are clearly aimed at getting businesses back on their feet and investing, in particular, for 'green growth'.

#### *Clouds on the horizon - and an early election?*

Given the scale of the pandemic in its economic effects, and the much greater human tragedy, any pace of recovery to pre-pandemic levels is to be welcomed - even although the rate of recovery for the UK and (on IMF forecasts) the euro-bloc is expected to be slower than for the 'V-shaped' global average, led by Asia.

But thereafter the OBR expects UK GDP growth of only 1.7%, 1.6% and 1.7% in years starting 2023 ... those are low and reinforce concerns around low U.K. productivity and thus low 'trend growth'.

They also reinforce concerns over debt/ GDP levels - the other side of Sunak's balancing act with nurturing growth. Despite the drop back in GDP growth rate after 2022, the OBR projects the ratio of public sector net debt-to-GDP to fall from a peak of 110% in 2023/24 only to some 105% by 2025/26.

Which begs a question: if growth rates are falling and debt/GDP is also falling then net debt must be falling faster - which points to a rising tax burden. OBR forecasts suggest that by 2025/26, corporation tax receipts will have risen to over 3% of GDP - the highest level since 1989; and that the overall tax burden (take) will have risen to over 35% of GDP - the highest level since 1969.

Among many other implications is this one by way of a final thought for this section: newspaper headlines calling out record high tax rates would be an unwelcome backdrop to a General Election, currently scheduled for December 2024.

Watch this space for developments on the Fixed-terms Parliaments Act 2011 which determines the fixed 5-year interval between elections. It is a commitment of the Conservative Party manifesto to repeal that Act and a Bill to achieve that is currently working its way through the UK parliament. Spring 2024 or even Autumn 2023 anyone?

...newspaper headlines calling out record high tax rates would be an unwelcome backdrop to a General Election

# Company Taxation

## Tax rates and allowances

The rate of corporation tax will remain at 19% in 2021/22.

Although the Chancellor announced the 19% rate will remain in place for 2022/23, there will then be a planned increase in the main corporation tax rate to 25% from April 2023 applying to profits over £250,000. The rate of the diverted profits tax will rise at the same time to 31% to maintain the differential with mainstream corporation tax.

A small profits rate (SPR) of 19% will be re-introduced for companies with profits of £50,000 or less from April 2023. Companies with profits between £50,000 and £250,000 will pay tax at the main rate reduced by a marginal relief providing a gradual increase in the effective corporation tax rate. The lower and upper limits will be proportionately reduced for short accounting periods and where there are associated companies. The SPR will not apply to close investment-holding companies.

For a table of the main tax rates and allowances for 2021/2022, see page [29](#).

## R&D tax reliefs

The government has announced a consultation on a wider review of the research and development (R&D) tax reliefs regime for the private sector in the UK to ensure that the reliefs remain fit-for-purpose in a rapidly changing R&D environment, whilst being competitive and well-targeted. This follows the outcome of the consultation in 2020 where respondents from industry groups, businesses across several sectors, accounting professionals and individuals were strongly in favour of extending the scope of R&D tax reliefs to cover expenditure on data and cloud computing whilst emphasising the importance of reviewing the overall regime.

The consultation will focus on definitions, eligibility and scope of the current reliefs to ensure they reflect how R&D activity is conducted today by traditional and digital businesses, improvements to the ways reliefs operate for businesses and HMRC through the two existing schemes (the research and development expenditure credits (RDEC) and SME scheme)) and targeting the reliefs to maximise the value of the type of R&D undertaken. The consultation runs until 2 June 2021.

This is an important opportunity for the government to take stock of the current state of the R&D tax relief regime in the UK by initiating an end-to-end review aligning with the broader objective for the UK to boost productivity, promote growth and drive innovation on the global stage. This prospect will be welcomed by many businesses, advisers and researchers across industries as a chance to simplify and improve the relevance of the regime to R&D activities today.

This is an important opportunity for the government to take stock of the current state of the R&D tax relief regime in the UK...

## Disapplication of the EU Interest and Royalties Directive

The EU Interest and Royalties Directive exempts from withholding taxes (WHT) any intra-group payments of interest and royalties within the EU. The UK continued to apply this, through domestic law, in the immediate aftermath of the end of the Brexit transition period. However, Budget 2021 announced that the domestic law provisions that implemented the EU Interest and Royalties Directive will cease to apply in the UK from 1 June 2021. This is part of the government's stated post-Brexit policy of aligning the UK's tax treatment of EU companies with its tax treatment of the rest of the world.

However, the practical effect of the UK's withdrawal from the EU Interest and Royalties Directive is only limited, as the Directive was rarely relied on for withholding tax exemption in practice. This is in large part because there are already other routes to WHT exemption on cross-border interest and royalty payments that are much more commonly used eg treaty exemption. Further, the EU Interest and Royalties Directive only applies in a relatively narrow range of circumstances where the interest or royalties are paid intra-group, whereas treaty and QPP exemptions apply much more widely to include payments to third parties. Accordingly, this change should have limited impact in structuring future transactions, and is forecast to raise only very modest amounts of additional revenue and for only a temporary period. So it appears to be driven more by a political desire to "signal" the UK's post-Brexit alignment of the EU with the rest of world than as a substantive revenue-raising measure.

Any existing transactions which have relied on the EU Interest and Royalties Directive and will continue beyond 1 June 2021 will be affected by the change and hence need to be reconsidered, as there is no grandfathering for already existing transactions. The UK has tax treaties with all EU Member States, and many (but not all) of these provide for full exemption from WHT on both interest and royalties. So in many cases it is likely to be possible to switch to treaty exemption instead. However, the position needs to be verified carefully, as some treaties do not provide full exemption from WHT for either or both of interest and royalties, and all treaties impose conditions for exemption which would need to be checked. In addition, in the case of interest (but not royalties) a treaty clearance from HMRC is needed before treaty exemption can be applied at source to allow interest to be paid without deduction of WHT. In view of the limited time available before 1 June 2021, and HMRC's reduced responsiveness during the COVID pandemic, any such treaty clearance processes should be commenced without delay. The QPP exemption is unlikely to be suitable to address any transactions which have relied on the EU Interest and Royalties Directive to date, as the QPP exemption does not apply to connected party transactions of the nature typically covered by the EU Interest and Royalties Directive.

The change includes an anti-forestalling rule ie in the event any step is taken with a main purpose of ensuring WHT exemption under the EU Interest and Royalties Directive still applies (such as acceleration to before 1 June 2021 of payments that would otherwise been due on or after that date), then the EU Interest and Royalties Directive instead stops applying to the relevant payments from Budget Day (3 March 2021) instead of 1 June 2021.

... there are already other routes to WHT exemption on cross-border interest and royalty payments that are much more commonly used

## Temporary extension of carry back of trading losses

In a bid to further assist those who may have suffered losses as a result of the pandemic, legislation will be introduced in Finance Bill 2021 to temporarily extend the period over which companies may carry back trading losses.

Under the proposed rules, trading losses incurred in accounting periods ending between 1 April 2020 and 31 March 2022 can be carried back as follows:

- one year without a cap (same as under current rules); and
- a further two years, but against more recent years first and subject to a cap of £2m of losses arising in accounting periods ending in the 1 April 2020 to 31 March 2021 period (financial year 2020) and a separate cap of £2m losses arising in accounting periods ending in the 1 April 2021 to 31 March 2022 period (financial year 2021). This is the “extended relief”.

Claims for extended relief, unless below a de minimis of £200,000, will be required to be made in a tax return.

Other loss reliefs and (Part 4 CTA 2010) restrictions apply. For example, any unrelieved losses can be carried forward in the usual way. The proposal does not involve any changes to group relief rules, so any losses carried back cannot displace existing group relief claims (the time limit for group relief claims remains two years from the end of the relevant accounting period).

A group for the purposes of the extended relief means a group for allocation of the group deductions allowance for loss restriction (in section 269ZZB CTA 2010). The members of the group will be those in the group as at 31 March 2021 and 31 March 2022. Where the group cap applies and any company in the group’s allocation will exceed the de minimis, a nominated company will be required to submit an allocation statement to HMRC showing which companies have been allocated the £2m cap. Where every company in the group is only able to make de minimis claims, neither the group cap nor the allocation statement requirement will apply.

A similar extension is being introduced for trade losses of unincorporated businesses. For trade losses of tax years 2020/021 and 2021/22, it is intended to allow unrelieved losses to be carried back and set against profits of the same trade for the three prior tax years, with a £2m cap on losses (for each of the 2020/2021 and 2021/2022 tax years) that can be carried back to the earliest two years. There will be no partnership level cap.

## Amendments to the reform of loss relief

Following an evaluation of the corporation tax loss reforms introduced in 2017, HMRC has identified a number of areas where they consider changes to be desirable. A key change will be to correct an “unintended consequence of the legislation... not in line with the policy objective” where groups are prevented from accessing an allowance to which they are entitled following an acquisition or demerger. Other “improvements” have been identified in the following areas: transfer of a trade where there has been a change of ownership, group relief, loss restriction computation and the deductions allowance, including the group allocation statement. Legislation detailing the amendments will be introduced in Finance Bill 2021.

... legislation will be introduced in Finance Bill 2021 to temporarily extend the period over which companies may carry back trading losses

## Temporary tax reliefs on qualifying capital asset investments

Increased reliefs for expenditure on plant and machinery will apply to qualifying expenditure incurred from 1 April 2021 up to and including 31 March 2023.

The increased reliefs include a 'super-deduction' providing first-year allowances of 130% for new plant and machinery investments that ordinarily qualify for 18% main rate writing down allowances and a first-year allowance of 50% for new plant and machinery investments that ordinarily qualify for 6% special rate writing down allowances.

In addition to the general exclusions to first-year allowances, there will be exclusions from the increased reliefs for used and second-hand assets and expenditure on contracts entered into prior to 3 March 2021. Assets used wholly within a ring-fence trade (oil and gas) will be excluded from the super-deduction and assets used partly in a ring-fence trade will temporarily qualify for a 100% first-year allowance. Plant and machinery expenditure incurred under a hire purchase or similar contract must meet additional conditions to qualify for the increased reliefs.

The rate of the super-deduction will need to be apportioned if an accounting period straddles 1 April 2023.

New disposal rules will apply to assets that have been claimed to these allowances. Disposal receipts should be treated as balancing charges (taxable profits), instead of being taken to pools. For assets claimed under the super-deduction, the disposal value for capital allowance purposes should take the disposal receipt and apply a factor of 1.3, subject to adjustment where disposals occur in accounting periods straddling 1 April 2023.

In addition to existing anti-avoidance rules, an anti-avoidance provision will apply to counteract arrangements which are contrived, abnormal or lacking genuine commercial purpose.

## Temporary increase in annual investment allowance

The limit of the annual investment allowance (AIA) will be temporarily increased from £200,000 to £1,000,000 for expenditure on plant and machinery incurred during the period from 1 January to 31 December 2021.

The AIA was introduced from April 2008 and a permanent limit of the annual amount was set at £200,000 from 1 January 2016. The AIA was temporarily increased to £1,000,000 for two years from 1 January 2019 and legislation will be introduced in Finance Bill 2021 to maintain the current temporary £1,000,000 limit for one additional year from 1 January 2021.

The increased reliefs include a 'super-deduction' providing first-year allowances of 130% for new plant and machinery investments

## Restoring plant and machinery leases to pre-COVID treatment

Capital allowances anti-avoidance legislation that would normally be triggered when the term of certain plant or machinery leases is extended will be automatically disapplied when the extension to the term of the lease is related to COVID-19, unless a party to the lease elects to disregard this measure.

This measure will apply to long funding operating leases and short leases where the 'new' period would be of sufficient length to create a long funding lease, where the date of the change in consideration for a lease which results in an extension to the lease lies between 1 January 2020 and 30 June 2021.

The change to the lease must have been made for a reason related to COVID-19 and after the change the consideration under the lease must be substantially the same as, or less than, the consideration under the lease before the change. Additionally, there must be no other substantive changes to the terms of the lease and the lessor and lessee must not have made any arrangement in connection with any changes to capital allowances relating to the lease arising as a result of the extension of the lease due to COVID-19.

The government will be able to amend the end date of this legislation via secondary legislation to adapt to future circumstances as they become clearer.

## Freeports

Following a government consultation and Freeport bidding process during 2020 and the beginning of 2021, the government has today announced the creation of eight Freeport areas within England. The Freeport concept is a significant part of the UK's post-Brexit landscape which the government hopes will:

- (i) provide hubs for enhanced trade;
- (ii) promote investment;
- (iii) encourage the creation of high-skilled jobs; and
- (iv) drive the regeneration of economically deprived areas.

The Freeport areas announced today include Solent, Liverpool City Region and East Midlands Airport.

Freeports are used worldwide and are generally customs zones located at or near ports where business can be carried out inside a country's land border. They can reduce administrative burdens and tariff controls, provide relief from duties and import taxes, and ease tax and planning regulations. The new UK Freeport model involves the creation of a geographically distinct areas, which will be contained within a "Freeport outer boundary" and include one type of port - sea, rail or air. This geographical area may encompass a number of different zones within the overall Freeport, including one or more designated tax sites. These tax sites will normally be a single contiguous site within the Freeport, no larger than 600 hectares, and will be created through the introduction of new legislation in Finance Bill 2021. This will allow one or more tax sites to be designated within any Freeport from 9 March 2021. Businesses operating within such a Freeport tax site may benefit from the Freeport specific tax reliefs detailed below:

... the government has today announced the creation of eight Freeport areas within England

**Enhanced Capital Allowances (ECA):** The government will introduce the new ECA for companies which incur qualifying expenditure on plant and machinery (P&M) primarily for use within a Freeport tax site. Such P&M must be new or unused and be for the purpose of a qualifying activity. This accelerated relief will allow companies to reduce their taxable profits by the full cost of the qualifying investment in the same tax period the cost was incurred. Companies investing in the Freeport tax site will be eligible to benefit from the relief where the qualifying expenditure is incurred on or after the date that the tax site is designated until 30 September 2026. The legislation implementing the new ECA will include a five year clawback, whereby ECA claimed may be clawed back in the event that the primary use of any P&M changes from a use inside the relevant tax site to one outside of such tax site within 5 years of such P&M 's acquisition or the date it is brought into use.

**Enhanced Structures and Buildings Allowance (SBA):** The government will offer an enhanced SBA rate, providing enhanced tax relief for companies incurring qualifying expenditure on the construction of new, or renovation of existing, structures and buildings for non-residential use within Freeport tax sites. This accelerated relief is intended to allow firms to reduce their taxable profits by 10% of the qualifying expenditure every year for ten years, compared with the standard 3% per annum over 33 and a third years. This relief will be claimable where qualifying expenditure is incurred, the first contract for construction is entered into and the qualifying asset is brought into qualifying use between the date of the designation of the Freeport tax site and 30 September 2026. The legislation introducing this enhanced SBA rate will also allow for a just and reasonable apportionment of qualifying expenditure for structures and buildings which are partly within and partly outside of the relevant tax site.

**SDLT:** The government will offer SDLT relief on purchases of land and buildings situated within Freeport tax sites in England where that property is acquired for use, and used, in a "qualifying manner" (as yet undefined). This will be subject to a "control period" of up to 3 years. The government will introduce measures to allow HMRC to require claimants to provide information to ensure that such relief continued to be available to the claimant during this 3 year control period, where such availability is dependent upon the future actions of the claimant. This SDLT relief will be available for qualifying transactions with an effective date from the date the Freeport tax site is designated until 30 September 2026. A provision will also be included in the legislation implementing this relief to allow the government to clawback such relief where the purchaser fails to use such property in a "qualifying manner".

## Tax deductibility of business rates repayment

The government will introduce legislation in Finance Bill 2021 so that businesses which repay coronavirus support or relief, which has previously been provided to them by the government and which they no longer require, can claim an income tax or corporation tax deduction equivalent to the quantum of that repayment.

This measure aims to provide neutrality and fairness in respect of a business's tax outcome. This is on the basis that the sums that a business repays to the government will count as an allowable expense (if the expenses covered by the relief would have originally been an allowable deduction). It also allows a deduction in the same accounting period as the original liability would have been due and paid. The quantum will be limited to the original liability.

In order to benefit from this measure a business must have had a liability which would have been deductible in calculating the profits of the business for income tax or corporation tax purposes had the liability not been removed through coronavirus support or relief. The original liability must have been removed by a public authority purely for the purpose of supporting business in connection with coronavirus.

This measure will have retrospective effect once enacted.

## Taxation of banks

Banks are currently subject to an 8% bank surcharge in addition to the existing 19% corporation tax on their profits, for a 27% effective corporate tax rate on their profits. Budget 2021 recognised that the increase in corporation tax rate to 25%, coupled with the existing 8% bank surcharge, would produce an effective corporate tax rate of 33% for UK banks – which would make them uncompetitive and damage a key export. Accordingly, Budget 2021 announced a review of the surcharge during 2021, with proposals to be announced in the Autumn. Budget 2021 indicated generic objectives of ensuring that the combined rate of tax on banks' profits does not "increase substantially from its current level", that UK bank tax rates remain "competitive with our major competitors in the US and the EU", and that the UK tax system is "supportive of competition in the UK banking sector". But no details are provided behind these relatively vague statements.

It seems likely that the bank surcharge will be significantly reduced from 1 April 2023 when the increased rate of corporation tax begins – but the announcement appears to have been crafted carefully to avoid promising a full and immediate 6% reduction down to 2% to compensate for the 6% increase in the corporation tax rate. This perhaps leaves room for the government to seek to increase banks' effective corporate tax rate a little above the current 27% while still claiming the increase is not "substantially" above its current level. Alternatively, it is possible the government might seek to phase in the reduction in the bank surcharge over time to create a temporary increase in banks' effective corporate tax rates during the transition (as it did previously when reducing the rate of bank levy at the time the corporation tax surcharge was introduced). Or it might seek to increase the bank levy rate to recoup some or all of the revenue lost from the reduction in bank surcharge – as the published language that there will not be a substantial increase in the tax rate "on banks' profits" appears to have been crafted to avoid implying any commitment on the bank levy.

Budget 2021 also announced that the government would be given powers, by statutory instrument, to change the definition of "bank" for various bank-specific tax rules. These include the bank levy, the bank surcharge to corporation tax, the bank loss relief restriction rules, the restriction on tax relief for compensation payments paid by banks, and the bank tax Code of Practice. The government proposes to consult on the regulations later this year. However, this is not currently anticipated to result in substantive change to the scope of these bank-specific tax rules. Instead it has been announced to be a purely technical change. The current scope of "bank" to which these bank-specific tax rules apply is based on the Financial Conduct Authority's current Handbook, which is being replaced from 1 January 2022 by the introduction of the new Investment Firm Prudential Regime. So the intention appears to be for the regulations to maintain the tax status quo through these regulatory changes. Unusually, the government is to be given power to introduce these technical changes retrospectively – regulations made up to 30 June 2022 can have effect from 01 January 2022.

It seems likely that the bank surcharge will be significantly reduced from 1 April 2023 when the increased rate of corporation tax begins

Finally, Budget 2021 announced that the government will legislate in Finance Bill 2021 to deal with the withdrawal of LIBOR and reform of bank interest rate benchmarks following its 12 November 2020 policy paper on “The tax impact of the withdrawal of LIBOR and other benchmark rates”.

## Enterprise management incentives: call for evidence

The government has launched a call for evidence on the operation and potential extension of the tax-advantaged Enterprise Management Incentive (EMI) scheme that follows an announcement at Budget 2020 that the EMI scheme would be reviewed. Responses must be submitted by 26 May 2021. The stated intention is ensure that the EMI scheme provides support for “high-growth” companies to recruit and retain the best talent so they can scale up effectively, and to examine whether a wider population of companies should be eligible to access the scheme.

The EMI scheme is intended to increase the ability of SMEs to attract and retain talent by using tax-advantaged share-based remuneration in the form of qualifying share options. The rationale is that SMEs can struggle to reach their growth potential where they may not have the resources to offer competitive cash remuneration packages to employees and potential employees. The call for evidence is intended to elicit views on the following broad topics:

- whether the EMI scheme is currently fulfilling its policy objectives and actually helps eligible businesses to grow and to attract and retain talent
- if companies which have outgrown the current eligibility criteria of the EMI scheme are experiencing structural recruitment and retention issues that EMI could help to address
- if those eligibility criteria should be extended so that more companies are able to access the EMI scheme.

The post-Brexit framing of the call for evidence (the government “wants to make the UK the best country in the world to start and grow a business”) is perhaps inevitable, but the potential expansion of the EMI scheme should be a popular move with many smaller businesses.

## Enterprise management incentives: extension of COVID-19 relaxation

Employees participating in an EMI scheme must in most cases meet a “committed working time” requirement of 25 hours working time per week or 75% of working time to be eligible for tax benefits. In 2020, the small list of exceptions was extended on a temporary basis to ensure that furloughed employees, those on unpaid leave and those working reduced hours in each case because of the pandemic, would not lose EMI benefits by virtue of a failure to meet the committed working time requirement. The extension was initially scheduled to expire on 5 April 2021, but will now not expire until 5 April 2022.

The government has launched a call for evidence on the operation and potential extension of the tax-advantaged Enterprise Management Incentive scheme

## Social investment tax relief

Social investment tax relief (SITR) was introduced in 2014 to incentivise investment in qualifying social enterprises, and provides income tax relief and capital gains tax hold-over relief for investors. Following a call for evidence in 2019, the original “sunset” clauses which would have withdrawn SITR with effect from April 2021 will be extended to April 2023. The government explains that this decision was taken in light of the responses received to the 2019 call for evidence, and a response document will also be published.

## Changes to the hybrid and other mismatches regime

The government has confirmed changes it will be making to the UK’s hybrid and other mismatches regime, which has applied for corporation tax purposes since 1 January 2017.

The legislation governing this regime sought to implement in full the recommendations of Action 2 of the OECD Base Erosion and Profit Shifting (BEPS) project. It did so in a manner which was (for taxpayers and advisers alike) bewilderingly lengthy and complex, and which, as it turns out, produced outcomes which were disproportionate or unintended in view of the regime’s aims.

The changes announced result from the government’s consultation with stakeholders on potential areas of improvement following the Spring Budget 2020. These changes are, in essence, tinkering with technical details to address some of the disproportionate or unintended effects of the regime. They in no sense represent a simplification of the regime - indeed, quite the opposite, based on the draft legislation published to date.

Given the highly technical nature of the changes, taxpayers potentially affected by the hybrids regime will need to closely scrutinise these changes to understand any impact on their particular position under the rules. Some will be relieved to find they may now drop outside the scope of the regime entirely or that, whilst still in the scope of the rules, certain adverse consequences are mitigated. For example, following these changes it should be less likely that small investors in tax transparent funds will suffer adverse effects under this regime and some of the more substantial changes should allow the regime to apply more fairly in circumstances where US parents own UK subsidiaries which have been checked “open” for US federal income tax purposes.

In reviewing these changes, taxpayers will need to consider whether any improvement to their position is only prospective; whilst certain of the changes will have retrospective effect from 1 January 2017, others will only have effect from Royal Assent to Finance Bill 2021.

Given the highly technical nature of the changes, taxpayers potentially affected by the hybrids regime will need to closely scrutinise these change

# Income Tax and NICs

## Income tax rates and allowances

No changes were announced to the income tax rates so that the basic rate of income tax for 2021/2022 will remain at 20%, the higher rate at 40% and the top (or additional) rate of income tax at 45% for English, Welsh and Northern Irish taxpayers (different rates apply to Scottish taxpayers).

However, the Chancellor announced plans to fix a number of allowances and thresholds. Legislation will be introduced in Finance Bill 2021 to set the personal allowance for 2022/23 at £12,570, and the basic rate limit for 2022/23 at £37,700. These thresholds will remain set at £12,570 and £37,700 for 2023 to 2024, 2024 to 2025, and 2025 to 2026, rather than rising in line with CPI.

For a table of the main tax rates and allowances for 2021/2022, see page [29](#).

## National insurance contributions

No changes to the rates of national insurance contributions were announced for 2021/22. However, in line with the Conservative Manifesto pledge, the 2020 Budget announced the increase in the NICs threshold from £9500 to £9,568 from April 2021. Ultimately, the ambition is to raise the threshold to £12,500, in line with the income tax personal allowance. The national insurance contributions Upper Earnings Limit and Upper Profits Limit are set at £50,270 for 2021/22 and will remain at that level in line with plans to freeze the income tax thresholds.

## Off-payroll working (IR35) rules from April 2021

Following last year's postponement, changes to the off-payroll working (IR35) rules placing the obligation to operate the rules on medium and large private sector end clients are coming into force on 6 April 2021.

The government has announced a technical change to the off-payroll working rules to ensure the legislation operates as intended from 6 April 2021. When the new off-payroll working rules were enacted in Finance Act 2020, there was an unintended widening of the conditions required to be met for the rules to apply in relation to a company intermediary. This would have meant that all agency, umbrella company and secondment arrangements would potentially have been in scope of the off-payroll working rules, which went beyond the intended scope of the policy.

As a result, the government has confirmed that the off-payroll working rules will not apply where either:

- the worker providing services to the end client has no interest in the company intermediary; or
- the worker providing services to the end client has an interest in the company intermediary but that interest is 5% or less and all payments by the intermediary to the worker are taxed as employment income and subject to PAYE.

This should mean that many third party agency, umbrella company and secondment arrangements now fall entirely out of scope of the off-payroll working rules meaning that there is no need to carry out CEST analysis or issue status determination statements where the above conditions are met.

... changes to the off-payroll working (IR35) rules placing the obligation to operate the rules on medium and large private sector end clients are coming into force on 6 April 2021

The government has also announced some changes to the provisions governing information flow in supply chains and the provision of fraudulent information. These should assist in the flow of accurate information within supply chains in relation to the operation of the off-payroll working rules.

## Coronavirus and employment taxes

The government has announced a number of employment tax relaxations in relation to coronavirus and increased home working by employees.

- **Easement for employer provided cycles exemption** – Employees who joined a Cycle to Work scheme and were provided with a cycle or cycling equipment on or before 20 December 2020 will not have to meet the requirement that the cycle and cycling equipment are used mainly for journeys to or from work or in the course of work until 05 April 2022. The usual requirements continue to apply for employees who joined a Cycle to Work scheme and were provided with a cycle or cycling equipment on or after 21 December 2020.
- **Exemption for employer provided and employer reimbursed coronavirus antigen tests** – The income tax and national insurance contributions exemption for employer provided and employer reimbursed coronavirus antigen tests will be extended to cover both the 2020-2021 and 2021-2022 tax years. The exemption does not apply to coronavirus antibody tests.
- **Exemption for employer reimbursed home office expenses** – The temporary income tax and national insurance contributions exemption for employer reimbursed expenses for home office equipment necessary to work from home during the coronavirus pandemic will be extended to 5 April 2022.

# Capital Gains Tax

## Tax rates and allowances

The annual exemption for 2021/2022 will remain at £12,300 and the Chancellor announced that the annual exemption will remain at this amount for the tax years 2021/22 to 2025/26.

No changes were announced to the rates of capital gains tax with the higher rate remaining at 20% and the basic rate at 10%. The 28% and 18% rates continue to apply to chargeable gains made on the disposals of residential property and the receipt of carried interest, however. The broader question of how carried interest should be taxed was not addressed in the Budget 2021 releases.

For a table of the main tax rates and allowances for 2021/2022, see page [29](#).

## Gifts of business assets

The Chancellor's Budget on 3 March 2021 might be viewed by some as the gift that keeps on giving. But one aspect of the Budget offers no gifts to taxpayers in that it focuses instead on the tightening of the existing anti-avoidance rules regarding the gifting of capital assets.

The starting point under the capital gains tax rules is that gifts are treated as a disposal for tax purposes, with that disposal being made at market value. However, a special relief referred to as "gift hold-over relief" may be provided under sections 165 to 169G TCGA 1992. Under section 165(4) TCGA 1992, where the relief is available it results in the following outcomes:

- it relieves the donor from capital gains tax on its disposal of the asset; and
- it passes that gain on to the donee, who is able to deduct the gain from the base cost of the asset.

The policy paper released on 3 March 2021 states that Finance Bill 2021 will make an amendment to an anti-avoidance rule relating to gift hold-over relief, which currently prevents gift hold-over relief where the recipient of the gift is a company which is controlled by a person who is not tax resident in the United Kingdom and connected with the donor.

The existing anti-avoidance rule has been clarified to ensure that it also applies when it is the non-UK resident donor of the asset that controls the recipient company. This is to address an issue identified in the case of *Reeves v HMRC*.

The change is therefore a clarificatory one to ensure that the existing anti-avoidance provision can operate effectively. The result is that gift hold-over relief is now unavailable where a donor gifts an asset to a foreign-controlled company which is controlled either:

- by another non-UK resident with whom they are connected; or
- by the donor itself.

The existing anti-avoidance rule has been clarified to ensure that it also applies when it is the non-UK resident donor of the asset that controls the recipient company

# Stamp Duty and SDLT

## Rates

The main rates and thresholds for stamp duties and stamp duty land tax (SDLT) on both residential property and non-residential property remain unchanged for 2021/2022. However, a 2% surcharge on non-UK residents purchasing residential property in England and Northern Ireland comes into effect from 1 April 2021.

For a table of the main tax rates and allowances for 2021/2022, see page [29](#).

## Extension to the temporary increase in the SDLT nil rate band for residential property

To reinvigorate the UK housing market following the first national coronavirus lockdown, the government temporarily increased the nil rate band for SDLT on residential property from £125,000 to £500,000 for the period 8 July 2020 to 31 March 2021. This measure has enabled buyers to make SDLT savings of up to £15,000.

As a second shot in the arm for the housing market, the government has now announced that the temporary increase in the nil rate band to £500,000 will continue in place until 30 June 2021. This will be replaced with a £250,000 threshold for the period 1 July 2021 to 30 September 2021, after which the nil rate band will return to £125,000.

The first of these extensions will alleviate concerns for the fate of house sales which are in the pipeline and which, for whatever reason, may not be completed by the original 31 March 2021 end date. It can also be expected to continue to buoy the housing market for three further months. However, for transactions completing between 1 July 2021 and 30 September 2021, the SDLT savings are much more modest (at most £2,500), so it remains to be seen whether the third 'dose' will continue to support higher transaction volumes.

As a second shot in the arm for the housing market, the government has now announced that the temporary increase in the nil rate band to £500,000 will continue in place until 30 June 2021

# Value Added Tax and indirect taxes

## Thresholds

The standard rate of VAT remains at 20%. For a table of the main tax rates and allowances for 2021/2022, see page [29](#).

A temporary reduced rate of 5% applies to certain supplies of hospitality, hotel and holiday accommodation and admissions to certain attractions from 15 July 2020 to 31 March 2021. The Chancellor announced in Budget 2021 that this reduced rate would be extended until 30 September 2021. From that point, a 12.5% rate will apply for a further six months until 31 March 2022.

The VAT registration and deregistration thresholds will remain at £85,000 and £83,000 respectively from April 2021. In particular, the government previously announced that, on the basis of the recommendations of the Office of Tax Simplification (OTS) concerning the distortions created by the high registration threshold in the UK, the registration threshold would be frozen until April 2022 pending further consideration of the issue. The Chancellor has now announced that these thresholds will now be frozen for a further two years until April 2024.

## Extension of Making Tax Digital for VAT

HMRC are continuing with the roll-out of Making Tax Digital (MTD) extending these provisions for all VAT registered businesses for their first VAT period on or after 1 April 2022 with respect to maintaining digital records and providing VAT return information through Making Tax Digital software.

This will extend the measures to many businesses which may previously have not been required to comply with MTD.

HMRC are continuing with the roll-out of Making Tax Digital (MTD) extending these provisions for all VAT registered businesses for their first VAT period on or after 1 April 2022

## Legislating for the VAT deferral new payment scheme

The government is legislating the commitment previously announced by the Chancellor on 24 September 2020 that businesses which had deferred their VAT payments until 31 March 2021 could split their repayment into 11 smaller interest-free instalments.

As part of this, the government is introducing the “New Payment Scheme” which enables businesses to pay the deferred VAT by instalments using a direct debit.

A penalty of 5% has been announced for any business which has not paid in full, opted into the New Payment Scheme or made alternative arrangements by 30 June 2021. The standard Default Surcharge regime will not apply in respect of this VAT payment.

The earlier businesses enter the scheme, the more payments by instalments can be made. Reviewing the current position proactively is therefore important.

## Landfill tax (LFT)

There were no announcements in respect of Landfill Tax in Budget 2021 as the annual increases in the standard and lower rates of Landfill Tax were set out in Budget 2014 to be in line with inflation (based on Retail Prices Index (RPI)) rounded to the nearest 5p. From 1 April 2021, the new standard rate will be £96.70 per tonne and the lower rate £3.10 per tonne.

## Climate change levy (CCL)

There were no announcements in respect of CCL in Budget 2021. In Budget 2020 the government set the rate of CCL for both 2020/21 and 2021/22 which reflect the government's commitment to rebalance the main rates paid for gas and electricity.

From 1 April 2021 the gas rate will increase so it reaches 60% of the electricity main rate. Other fuels, such as coal, will continue to align with the gas rate. The discount for sectors with Climate Change Agreements will change to reflect the change in CCL main rates.

## Carbon Price Support (CPS)

The government announced that they intend to maintain the freeze on Carbon Price Support rates at £18 per tonne of carbon dioxide in 2022/23. The government also announced that it is committed to carbon pricing as a tool to drive decarbonisation and intends to set out additional proposals for expanding the UK Emissions Trading Scheme over the course of 2021. This follows the government's announcement that the UK Emissions Trading System rather than the Carbon Emissions Tax would be the UK's carbon pricing policy from 1 January 2021. The government response to a consultation in summer 2020 on the tax is being published on 23 March 2021. The government will introduce legislation in Finance Bill 2021 to repeal the provisions relating to the Carbon Emissions Tax, which were not commenced.

## Aggregates levy

The government announced that it will continue to freeze the rate of the aggregates levy for 2021/22 at £2/tonne but intends to return to index-linking in the future.

## Plastic packaging tax

Following an additional consultation in 2020, the government has confirmed that it will introduce new legislation in Finance Bill 2021 to establish a plastic packaging tax (PPT) in order to address concerns with plastic packaging and waste.

From 01 April 2022, the PPT will apply to plastic packaging (ie packaging that is predominately plastic by weight) containing less than 30% recycled plastic at a rate of £200 per metric tonne of plastic packaging, in circumstances where such packaging is manufactured in, or imported into, the UK.

The PPT will apply to UK manufacturers who produce finished plastic packaging components or UK companies that import finished plastic packaging. If imported, plastic packaging will be liable to PPT regardless of whether such packaging is filled or unfilled. However, producers and importers of small amounts of plastic packaging (ie those which manufacture or import into the UK less than 10 tonnes of plastic packaging per annum) will be exempt from liability to the tax and, therefore, will not be required to register for the PPT.

... the government has confirmed that it will introduce new legislation in Finance Bill 2021 to establish a plastic packaging tax

The legislation is set to be published in Finance Bill 2021 and will go into further detail on:

- (i) the exact scope of the tax by reference to the type of taxable product and recycled content;
- (ii) who will be liable to pay the tax and, as a result, be required to register with HMRC;
- (iii) how HMRC will collect, recover and enforce the tax; and
- (iv) (how the tax will be relieved on exports).

The PPT is intended to “tackle the scourge of plastic waste” and should deter businesses from manufacturing plastic packaging with non-recycled plastic. It is hoped that this will, in turn, create a higher demand for recycled plastic and result in increased levels of recycling of plastic waste.

This measure is expected to affect around 20,000 manufacturers and importers of plastic packaging in the UK. The overall impact on affected businesses will be significant and they will need to think about the one-off costs associated with familiarisation with the rules, training of staff, HMRC registration requirements and developing an internal reporting framework to complete the necessary tax returns alongside any continuing costs. Consumers will not be impacted by the PPT unless businesses pass on the tax charge (albeit this will be small as plastic packaging only constitutes a small fraction of the total cost of goods).

There will be both civil and criminal penalties for failing to comply with the tax, including penalties for failure to register with HMRC, file the relevant returns or failure to pay the tax.

## Pensions and investments

### Lifetime allowance for pensions

The government has announced that it will maintain the Lifetime Allowance at its current level of £1,073,100 until April 2026.

Freezing the lifetime allowance for five years effectively brings more people into the pensions tax net over time, as the effect of inflation to pension savings is not offset with an increase in the lifetime allowance as it was in recent years. It is also likely to impact many of those in the NHS workforce who have been supporting the country throughout the COVID-19 pandemic, as the numbers of those in the medical profession caught by the allowance will effectively be extended.

The government has announced that it will maintain the Lifetime Allowance at its current level of £1,073,100 until April 2026

### Consultation on charge cap for pension schemes

The government has announced it will consult on whether certain costs included within the charge cap affect schemes' ability to invest in a wider range of assets. The Department for Work and Pensions will also consider draft regulations to make it easier for schemes to take up opportunities within the charge cap by smoothing certain performance fees over a multi-year period.

The potential reform of these rules may broaden the types of investments that pension schemes can invest in, in particular to include more illiquid assets. While this is under consultation, and there are regulatory hurdles to overcome, it is a welcome move as pension savings can potentially be directed to other areas of the economy which may have been hit by the COVID-19 pandemic.

### ISAs

The ISA annual subscription limit for 2021/22 will remain unchanged at £20,000. The annual subscription limit for Junior ISAs and Child Trust Funds for 2021/22 will also remain unchanged at £9,000.

## Inheritance Tax

### Tax rates and allowances

The government has announced that the inheritance tax (IHT) threshold will remain frozen at £325,000 until 2025/2026. In addition, the residence nil-rate band will also be frozen at £175,000. When added to the IHT threshold of £325,000, it allows each individual to pass on £500,000 with no IHT payable - or £1m per couple. There is a tapered withdrawal of the additional nil-rate band for estates with a net value of more than £2m. This is at a withdrawal rate of £1 for every £2 over this threshold.

The rate of IHT remains at 40%.

For a table of the main tax rates and allowances for 2021/2022, see page [29](#).

# Tax Administration

## Investment in HMRC

The government has announced that it will invest a further £180 million in 2021/22 in additional resources and new technology for HMRC. This is forecast to bring in over £1.6 billion of additional tax revenues between 2021/22 and 2025/26 by enabling HMRC to:

- invest in IT systems to enable taxpayers to more easily access tax services and update accounts digitally and make the collection of tax and payments to taxpayers easier (including digitalising business rates)
- recruit additional compliance staff to increase HMRC's ability to target non-compliance
- continue to fund compliance work on the loan charge, historic disguised remuneration cases and early intervention to encourage individuals to exit tax avoidance schemes.

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## Review of tax administration for large businesses

Alongside more concrete changes to the business tax environment, Budget 2021 announced a forthcoming review of tax administration for large business, playing to the dual themes of competitiveness and investment and with one eye no doubt on the UK's position post-transition period.

After the furore triggered by last year's consultation on the introduction of a notification regime for uncertain tax positions, subsequently deferred to April 2022, the acknowledgement in the Red Book that a review is desirable should be considered a positive. In particular, the decision to investigate whether sufficient "early certainty" is provided to business will be an opportunity for stakeholders to make representations on areas for improvement, for example to advocate for a more robust and efficient clearance regime giving business the certainty that is needed in these uncertain times. Other aspects of the review, including the "efficient resolution of disputes" and to promote "a collaborative and constructive approach to compliance", will also require careful attention – previous efforts in these areas have been seen to favour HMRC rather more than business.

The timelines for implementation of any reforms following the conclusion of the review are unclear. Notwithstanding the government's framing of the review as forming part of its 10-year Tax Administration Strategy, launched last year, it is to be hoped that matters can be progressed rather more quickly than that....

## OECD mandatory disclosure rules

Following the surprise New Year's Eve announcement that the UK was, in large part, repealing its implementation of the EU DAC6 rules on the disclosure of reportable cross-border arrangements, Budget 2021 confirmed the plan for the government to consult later in 2021 on the implementation of the OECD Mandatory Disclosure Rules (MDR) under UK domestic law.

The MDR flow from BEPS Action 12, which provided recommendations for the design of rules to require taxpayers and their advisers to disclose aggressive tax planning arrangements. The MDR are narrower in scope than DAC6, focussing on Common Reporting Standard avoidance arrangements and on the disclosure of structures that seek to disguise the beneficial owners of assets held offshore. Under the MDR, intermediaries (both promoters and service providers) have the primary obligation to report to relevant tax authorities in the jurisdiction where they have a relevant nexus, with a fallback obligation on relevant taxpayers. The information reported will then be exchanged with relevant other tax authorities. Jurisdictions such as Gibraltar and Mexico have already implemented the MDR under their domestic laws, in addition to the EU27 member states, which have implemented their version of MDR through the category D hallmarks under DAC6.

Although significantly less onerous than DAC6, some criticism has been levied at MDR, in particular concerning the extent of the hallmark aimed at the obscuring of beneficial ownership. Whilst the MDR commentary takes a pragmatic approach to limiting the operation of this hallmark in practice, it is to be hoped that HMRC will similarly take steps through the consultation to identify and address concerns over the scope of the disclosure obligations for relevant UK intermediaries and taxpayers in the legislation that is ultimately adopted, with this being supplemented by the helpful approach to guidance that had been followed in respect of DAC6.

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## Tax conditionality

Tax conditionality was first announced as a principle for tackling tax losses in the hidden economy by requiring those who need licences to operate to demonstrate that they are properly registered for tax in Autumn Budget 2017. Budget 2020 then announced that the government would legislate in Finance Bill 2021 to make the renewal of certain licences conditional on applicants completing checks that confirm they are appropriately registered for tax.

These government has announced that these new rules will take effect in England and Wales from 4 April 2022 and will apply to licences to: drive taxis and private hire vehicles (for example minicabs); operate private hire vehicle firms; and deal in scrap metal. Licensing bodies will have to obtain confirmation that an applicant has completed the check before making a decision on their renewal application.

These are interesting steps, though as the Low Incomes Tax Reform Group (LITRG) pointed out in its responses to the 2018 consultation, the measures will not affect those that operate illegally without the appropriate licences or indeed ensure that those who are registered are actually compliant.

## Reporting rules for digital platforms

New reporting obligations are to be imposed on “digital platforms in the UK that facilitate the provision of services by UK and/or other taxpayers”. HMRC’s policy paper clarifies that “digital platforms” will include “apps and websites which facilitate services such as the provision of taxi and private hire services, food delivery services, freelance work and the letting of short-term accommodation” – in practice, the great majority of the ‘gig economy’.

The information to be reported by the platform focuses on the sellers and providers of goods and services, and in particular, their incomes derived from the platform. This information will be shared with other tax authorities under the auspices of the existing OECD-derived information sharing arrangements.

The provision of this information has an obvious domestic function in helping to ensure tax compliance within the gig economy. While HMRC has a right to request this data from digital platforms, this change will greatly increase the information that HMRC is in practice able to review. Looking internationally, this measure looks very much like the EU’s DAC7 programme and appears consistent with the intention of the OECD’s ‘Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy’.

It remains to be seen whether this information is put to any use beyond checking compliance. For example, with this data to hand, will the government look again at a much broader digital sales tax?

The information to be reported by the platform focuses on the sellers and providers of goods and services

## Tackling promoters of tax avoidance

HMRC has published its summary of the responses to its consultation on ‘Tackling Promoters of Tax Avoidance’, which was opened at Budget 2020.

Finance Bill 2021 is set to contain a series of amendments that will “strengthen the existing anti-avoidance powers and tighten the rules designed to tackle promoters and enablers of tax avoidance schemes.” This will include:

- Powers to seek information about avoidance schemes not notified under the Disclosure of Tax Avoidance Schemes (DOTAS) regime;
- The power to issue a ‘Stop Notice’ to promoters of tax avoidance schemes at an earlier stage, with new penalties for non-compliance;
- The extension of the Promoters of Tax Avoidance Schemes (POTAS) regime to allow HMRC to issue notices to new vehicles used by serial promoters of avoidance schemes;
- An increased availability of HMRC’s powers under Schedule 36 Finance Act 2008 to require the provision of information;
- The application of the General Anti-Abuse Rule (GAAR) to partnerships, with safeguards allowing taxpayers who are partners in an abusive partnership to take corrective action in relation to their own tax liability.

The amendments were broadly treated as uncontroversial by the respondents to the consultation and we do not expect them to be seriously challenged during the passage of the Finance Bill. They are also – were it needed – confirmation that the government is determined to deploy a formidable legislative arsenal in combatting tax avoidance.

## Follower notices and penalties

Follower notices are issued when multiple taxpayers have used what HMRC considers to be a similar tax avoidance scheme to one that HMRC has defeated in litigation. They require the other taxpayers to take “corrective action”: to take steps to bring the tax saving back within the charge to tax. A failure to do so exposes the taxpayer to the risk of a penalty, currently 50% of the avoided tax. This provided, quite deliberately, a significant disincentive to litigate.

HMRC has consulted on a reduction of that 50% penalty to 30%, with a further 20% penalty liable to be imposed where the taxpayer’s litigation is found by a tribunal to be vexatious, without merit or time-wasting. Respondents to the consultation were supportive of the concept of reducing the 50% penalty to 30%. There was a greater split in opinion about the proposed 20% penalty for vexatious litigation: it had some support, but was subject to serious criticism, both practical (a finding that litigation has been brought vexatiously is a very rare thing in practice, so how likely is this new power to be used?) and principled (HMRC should not be given the power to impose a tax-geared penalty when what is criticised is not the filing of the return, but rather, the conduct of the taxpayer in litigation). One respondent powerfully made the point that it would not be right to accept the principle that HMRC has any business imposing a penalty on taxpayers for their conduct in litigation, which would have a chilling effect on tax disputes even regardless of the merits of the taxpayer’s case if applied outside this context by some subsequent Finance Act. In our view the point can be taken further: to give HMRC the power to sanction taxpayers it has defeated in litigation is to usurp the power of the tribunal to regulate the conduct of litigation – something the tribunal already does through its power to impose a costs order against an unsuccessful party. As to the latter objection, HMRC has confirmed that the proposed “legislation sets out precise and narrow conditions which have to be met before the further penalty can be charged and they could have no application outside these circumstances. The government has no plans to extend this approach to other regimes” will be watched closely by practitioners and their representative bodies.

## Financial institution notices

Financial Institution Notices (FINs) simplify the process for HMRC to request information about taxpayers from financial institutions. The road to their creation has been relatively long – the proposal was first subject to consultation in 2018 – but with Finance Bill 2021, FINs have finally arrived.

Where HMRC wishes to obtain information during the course of an enquiry, or in response to a request from a foreign tax authority, it issues a ‘Schedule 36 notice’ – a notice under Schedule 36 Finance Act 2008 that requires the provision of information to HMRC, on pain of penalties. Where HMRC wishes to obtain that information from a taxpayer, it can issue the notice and it is binding on the taxpayer without anything more. Should HMRC request the information from a third party, however, it needs either the consent of the taxpayer in question or of the tax tribunal in order for its request to bind the third party.

Financial Institution Notices (FINs) simplify the process for HMRC to request information about taxpayers from financial institutions

FINs will change that position. They will allow HMRC to make requests of financial institutions without the consent of either taxpayer or tribunal. Financial institutions that do not provide the requested information are subject to penalties, which can be appealed to the tax tribunal. While the default position will be that the taxpayer will be notified of the request, HMRC may seek an order from the tax tribunal dispensing with that requirement; that order would also prevent the financial institution from telling its customer that it has provided its records to tax authorities.

Financial institutions will be used to receiving requests for information from HMRC. It remains to be seen whether an increased number of requests will follow, given the simplified procedure open to HMRC. Financial institutions also need to be careful, in circumstances where HMRC has sought an order from the tribunal preventing disclosure, to ensure that they do not make their customers aware of the existence of a request in a FIN.

## Penalties for late filing and payment

The government is reforming the rules on penalties for late filing and late payment. There are also changes to the rules on late payment interest and repayment interest. The changes announced today apply to VAT and income tax self-assessment (ITSA).

Under the current rules, for VAT:

- The default surcharge regime in s59 VATA 1994 serves as a combined late filing and late payment sanction.
- If a return is not filed or if an amount of tax shown on the return as due is not paid (defined as a 'default') HMRC can issue a surcharge liability notice. The surcharge liability notice specifies a 'surcharge period', typically running for 1 year from the end of the VAT accounting period to which the default relates. Any subsequent default in the surcharge period gives rise to a surcharge of between 2% and 15% of the tax that is outstanding in respect of the period to which the subsequent default relates. The rate at which the surcharge is calculated depends on the number of VAT accounting periods during the surcharge period for which there has been a default.

Under the current rules for ITSA:

- FA 2009 schedules 55 and 56 provide different penalty regimes for late filing and late payment.
- A late filing penalty of £300 is charged as soon as the return is late. If the return remains outstanding after 3 months, daily penalties of £10 are charged up to 6 months from the filing date. A penalty of £300 or 5% of the tax liability (whichever is greater) is charged 6 months after the filing date and again at 12 months.
- A separate late payment penalty of 5% of the tax liability is charged on tax that is outstanding, generally speaking, 30 days after the due date (referred to as the 'penalty date'). A further 5% penalty is charged on tax outstanding 5 months from the penalty date, and another 5% at 11 months from the penalty date.

The government is reforming the rules on penalties for late filing and late payment

### *The new rules*

The default surcharge regime and the ITSA rules on late filing and payment penalties are being replaced with a points-based system.

Where a return is submitted late:

- In general, a taxpayer will incur 1 point for every missed submission deadline. Points will accrue separately for VAT and ITSA.
- A taxpayer incurs a fixed penalty of £200 once they reach the relevant points threshold. The threshold depends on the submission frequency: annual submission = 2 points / quarterly submission = 4 points / monthly submission = 5 points.
- Points expire after 24 months provided the taxpayer remains below the relevant threshold.
- Points do not continue to accrue once the taxpayer reaches the threshold. Instead a fixed penalty of £200 applies for each further missed submission.
- Once the points threshold is reached, points will only expire if the taxpayer meets all filing obligations for a set period of time, again based on submission frequency: annual = 24 months / quarterly = 12 months / monthly = 6 months.

In relation to late payments:

- The new late payment penalties consist of two separate charges. The first charge is payable 30 days after the payment date and is levied at between 0% and 4% of the late paid tax. The second charge applies from day 31 to either the date of payment or the date on which TTP is agreed, at a rate of 4% per annum.
- The first charge operates so that no penalty is payable if the tax is paid or if TTP is proposed within 15 days of the due date. If the tax is paid or TTP is proposed between day 16 and day 30, the penalty is charged at 2%. If there is still tax unpaid and no TTP proposed by day 30, the penalty is charged at 4%.

As with all penalties, HMRC has discretion to reduce or not charge a penalty. Similarly, HMRC should agree not to assess a penalty if the taxpayer has a reasonable excuse for the late filing or late payment. The existing appeals and review processes will apply to both points and penalties. HMRC will be subject to time limits after which it cannot give a point for late filing and there are special rules that apply where a taxpayer changes its filing frequency.

The rules on late payment interest and repayment interest for VAT and ITSA are also being aligned so that:

- Late payment interest will accrue from the due date regardless of whether a penalty is also due, at the Bank of England base rate plus 2.5%.
- Where a taxpayer has overpaid tax, repayment interest will accrue from the later of the date on which the payment was due to HMRC or the date of the actual overpayment, at the Bank of England base rate less 1%, subject to a minimum rate of 0.5%. This is subject to certain exceptions where a VAT repayment return is filed.

The new rules will take effect:

- In relation to VAT, for VAT accounting periods beginning on or after 1 April 2022
- For ITSA taxpayers with business or property income over £10,000 per annum (who are required to submit digital quarterly updates through Making Tax Digital for ITSA), for tax years beginning on or after 6 April 2023
- For all other ITSA taxpayers, for tax years beginning on or after 6 April 2024

The points-based system for late filing is said to be more proportionate, and designed to penalise only the small minority that miss filing dates persistently, rather than those who make occasional mistakes. In this respect it aligns the ITSA late filing penalty system, which currently applies an automatic penalty as soon as a return is late, with the VAT default surcharge regime, which required a second default before a surcharge was levied.

The new late payment penalties are said to be designed to link the penalty directly with both the tax outstanding and the length of delay, to encourage faster compliance following a missed payment.

It is said to be expected that over time the overall number of penalties will reduce. However the measure is expected to raise an additional £155 million per annum from 2024/25 when it comes into full effect.

The points-based system for late filing is said to be more proportionate, and designed to penalise only the small minority that miss filing dates persistently

## HM REVENUE & CUSTOMS TAX RATES AND ALLOWANCES FOR 2021/22

Income tax allowances	2020/21 (£)	2021/22 (£)
Personal allowance	12,500	12,570
Higher rate threshold	50,000	50,270
Income limit for personal allowance <sup>1</sup>	100,000	100,000
Transferrable marriage allowance <sup>2</sup>	1,250	1,260
Blind person's allowance	2,500	2,520

(1) The individual's personal allowance is reduced where their income is above this limit. The allowance is reduced by £1 for every £2 above the limit.

(2) The marriage allowance cannot be transferred to a recipient spouse liable to income tax at the higher or additional rate.

Other allowances/thresholds	2020/21 (£)	2021/22 (£)
Capital gains tax annual exempt amount for individuals etc.	12,300	12,300
Inheritance tax threshold	325,000	325,000

Income tax bands	2020/21 (£)	2021/22 (£)
Starting savings rate 0% <sup>3</sup>	5,000	£5,000
Basic rate 20%	1 – 37,500	1 – 37,700
Higher rate 40%	37,501 – 150,000	37,701 – 150,000
Additional rate 45%	Over £150,000	Over £150,000

(3) If non-savings taxable income exceeds the starting rate limit, the starting savings rate will not apply to savings income.

### Corporation tax profits<sup>4</sup>

Main rate	2020/21 (£)	Main rate	2021/22 (£)
19%	Whole of profits	19%	Whole of profits

(4) From 01 April 2023, the main rate of corporation tax will increase to 25% for profits in excess of £250,000. From the same date, a 'small profits rate' of 19% will apply to profits up to £50,000. For businesses with profits between £50,000 and £250,000, corporation tax will be charged at the main rate, subject to marginal relief provisions which will provide a gradual increase in the effective corporation tax rate.

### Stamp duty land tax

Rate	Residential <sup>5 6 8 9</sup>		Non-residential or mixed use property	
	2020/21 (£)	2021/21 (£)	2020/21 (£)	2021/21 (£)
<b>Total value of consideration</b>				
0%	0 – 125,000	0 – 125,000	0 – 150,000	0 – 150,000
2%	125,001 – 250,000	125,001 – 250,000	150,001 – 250,000	150,001 – 250,000
5%	250,001 – 925,000	250,001 – 925,000	Over 250,000	Over 250,000
10%	925,001 – 1,500,000	925,001 – 1,500,000	N/A	N/A
12%	Over 1,500,000	Over 1,500,000	N/A	N/A
15% <sup>7</sup>	Over 500,000	Over 500,000	N/A	N/A

(5) Stamp duty land tax is charged at a rate of 3% above the current stamp duty land tax residential rates from 01 April 2016 on purchases by individuals of additional residential properties (such as second homes and buy-to-let properties), and by non-natural persons (companies, partnerships including companies or collective investment schemes) of a residential property, even if they do not own another residential property.

(6) For purchases by first-time buyers of property worth £500,000 or less from 22 November 2017, the stamp duty land tax rate for a property valued £0 – 300,000 is 0% and for a property valued £300,001 – 500,000 is 0% on the consideration up to £300,000 and 5% on the remainder.

(7) The 15% rate applies to certain acquisitions of residential property by "non-natural persons" (a company, a partnership including a company or a collective investment scheme).

(8) A 2% surcharge will take effect from 01 April 2021 on non-UK residents purchasing residential property in England and Northern Ireland.

(9) A temporary reduction in SDLT applies to purchases of residential property between 8 July 2020 and 30 June 2021 pursuant to which a purchaser only pays SDLT on amounts above £500,000. Between 01 July 2021 and 30 September 2021, purchasers of residential property will only be required to pay SDLT on amounts above £250,000. SDLT will return to the above stated rates from 01 October 2021. This relief temporarily replaces the relief for first-time buyers (see note 6 above).

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