October 2021 Budget Highlights

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A view from the market

The Autumn Budget and Spending Review could have had huge potential significance, although financial markets are so far unimpressed. Faster growth this year created the headroom for increased spending plans but some of the positive factors are likely transient. An increased tax burden has been left to take the strain, projected to reach levels not seen since the former USSR launched its first Sputnik satellite. Any disturbance to economic growth next year, perhaps from COVID or overly aggressive rate hikes, could take us back to WW2 levels of taxation, creating a difficult backdrop for the next general election, which could come as soon as 2023.

The UK Budget of autumn 2021 was always thought to be significant as the first Budget able to give a glimpse of the end-of-the-beginning of the COVID-19 pandemic including inevitably some sighting shots on the answer to the question: "who pays for the COVID emergency measures?".

Significant also because it coincides this time with the (roughly) triennial spending review at which the government sets out its longer-term plans for overall and departmental spending.

In the end, so far as the immediate financial market response, it proved something of a damp squib. While the Chancellor delivered his speech the FTSE100 market barely moved, gilt yields eased by only a handful of basis points and sterling nudged a fraction higher against the dollar.

That muted response may have been in part due to the lack of material surprises (beyond the easing of cuts to Universal Credit) given the degree of briefing ahead of the event. If so the trends over the prior week (covering the period of pre-briefing) may be more instructive: gilt yields and sterling down and FTSE100 up somewhat more decisively. It's a pattern consistent with easing fears of rate hikes.

Through that lens, perhaps the most significant numbers produced today were those from the Office of Budget Responsibility (OBR) which raised its GDP growth forecast for the current year but cut it in the following year (2023) followed by a sharp slowdown to 2% or below from 2023 onwards.

That growth profile does two things: it provides greater leeway for increased spending in the near-term and lowers forecast inflation back to the Bank of England target rate of 2% by 2024 assuming only "modest" monetary tightening (rate increases), a "stabilisation" of energy prices and an easing of "supply bottlenecks" – taken together sufficient to offset the fiscal easing announced today.

But the growth profile also fires a cautionary shot across the bows of rate setters and indeed across the bows of expected increases in tax revenues as a proportion of GDP to fund the various initiatives announced today.

OECD data show its measure of consumer confidence falling recently in the UK and most major economies around the world. In a sense that's hardly surprising after hitting sometimes record highs ahead of the transition from the sprint of the recovery phase from the pandemic to the marathon of longer-term, steady-state growth rates.

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Falling consumer confidence is not a robust backdrop to hikes in interest rates and it may be that even modest ones, as expected in financial markets for the UK, to dampen the inflation spikes could disturb what prove to be still fragile growth forecasts for next year – and with them the tax revenues anticipated in today's announcements.

Productivity clearly plays its part in the overall mix and here the picture is decidedly mixed. The OBR's new forecasts show an encouraging improvement in the degree of COVID "scarring" to UK GDP – from a hit of 3% to GDP as at its March 2021 forecasts to 2% in the current set and an important contribution to the additional headroom used by the Chancellor in his increased spending commitments today.

And more than half of that improvement came from an improvement to productivity – a vital component in the Prime Minister's ambition to "build back better" towards a "high wage, high skill, high productivity economy".

But the factors behind that improvement may prove transient: they include the assuaging impact of government support schemes – now being withdrawn – and the "potential boost … from the closing of less productive firms."

Lasting improvements to productivity have defied all efforts since the Global Financial Crisis (GFC); the Office for National Statistics (ONS) calculates that, by the time the pandemic hit in early 2020, productivity had more or less flat-lined around its level immediately prior to the GFC for the whole of the intervening decade. Without lasting improvements to productivity, it is hard to see a general increase in real terms wages across the whole economy and that could come back to haunt the government as the next general election draws closer – perhaps as early as 2023.

Altogether the Chancellor, especially a Conservative Party Chancellor, has a delicate balancing act for today's announced spending plans already push the UK's tax-to-GDP ratio up to over 36% by 2026/27 … a full 1 percentage point higher than the OBR's March forecast and the highest level for almost 70 years – since the time of Harold Macmillan as UK Prime Minister; since the former USSR launched Sputnik and since the USA sent its first troops to Vietnam.

If growth falters in 2022, perhaps from overly aggressive rate increases or renewed localised COVID lockdowns, that tax burden could rise further still and closer to WW2 levels!

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Company Taxation

Tax rates and allowances

As previously announced and enacted in Finance Act 2021, the rate of corporation tax will remain at 19% for 2022/23, but there will then be an increase 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.

Finance Act 2021 introduces a small profits rate (SPR) of 19% 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 details of the bank surcharge, see Bank Surcharge below.

For a table of the main tax rates and allowances for 2022/23, see page 30.

Corporate re-domiciliation

A key feature of the Chancellor's Budget was attracting more overseas investment; part of that plan includes making it easier for companies to move to the UK through a new re-domiciliation regime. Re-domiciliation has been implemented in around 50 other countries and jurisdictions including Canada, New Zealand and several US states. However, it is not currently possible for a company to transfer incorporation to the UK and retain the same legal identity. Accordingly, the government has launched a consultation seeking views on the introduction and implementation of a re-domiciliation regime to provide for companies to re-domicile and subsequently relocate to the UK.

The government's rationale for re-domiciliation is to attract foreign companies to relocate to the UK by enabling continuity of operations through a shift in a company's place of incorporation whilst maintaining its corporate history, management structure, assets, IP and property rights, contracts, and regulatory approvals. Currently, a relocation of a foreign entity to the UK can trigger complex, lengthy and costly administrative or regulatory issues, including re-negotiations of contracts, or might result in complex group structures having to be maintained when they may otherwise be rationalised. However, it should be noted that for a company to redomicile, generally it must be also be permitted in the company's originating jurisdiction. As noted above, this currently stands at 50 countries and jurisdictions, however some of these do not have outward re-domiciliation as part of their regimes or are limited to investment funds only (such as Singapore and Ireland).

Generally, the government is keen to understand the degree to which these issues currently pose barriers for companies, and how a re-domiciliation regime would help overcome them. Additionally, the consultation seeks to assess the demand for such a regime, the advantages (and disadvantages) of re-domiciliation and, in generally which aspects to replicate or avoid from other implemented regimes. Questions within the consultation request suggestions for appropriate checks and entry requirements, including solvency criteria and whether additional powers for the registrar are necessary.

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Moreover, HM Treasury and HMRC are also considering, and have requested responses as to whether changes are required to UK tax law as well as any implications that a re-domiciliation regime may have in respect of:

- avoiding UK tax;
- material risk of loss importation;
- capital gains and intangible asset base cost on inward re-domiciliation;
- personal taxation for owners of companies;
- stamp taxes on shares and securities; and
- VAT.

The deadline for responses to the consultation is 07 January 2022.

Notification of uncertain tax treatment by large businesses

Following two consultations, the government has confirmed it will introduce legislation in Finance Act 2022 to place an obligation on large businesses to notify HMRC when they take a position in their tax filings which is subject to uncertain tax treatment.

The regime will require large businesses to notify HMRC of any uncertain tax treatments, defined by reference to specified triggers, where the aggregate tax advantage is £5m or more in a year. It will apply to corporation tax, income tax (including PAYE) and VAT. The new regime is due to be introduced with effect for relevant returns filed on or after 1 April 2022.

It was expected that there would be three triggers. However, the government has now confirmed that initially only two of the three proposed triggers will apply. The two triggers that will apply are as follows:

- where a provision has been made in the accounts for the uncertainty; or
- where the tax treatment applied is not in accordance with HMRC's known position.

The government has stated that it is committed to further consideration of the third proposed trigger (where there is a substantial possibility that a tribunal or court would find the taxpayer's position to be incorrect in material respects) for possible inclusion later. This is a welcome narrowing of the requirements (at least initially) as the third proposed trigger was the most subjective and therefore contentious during the most recent round of consultation.

The regime is a significant tax development that will affect all large businesses in the UK. At the very least, it will require further due diligence and add to the administrative and compliance burden of the tax function. Although the rules do not come into force until April 2022 – and may still change in their passage through the Finance Bill – businesses should already be considering their approach given that the rules may well be relevant to transactions being entered into now.

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Abolition of cross-border group relief

Following the UK's exit from the EU, the government is bringing the group relief rules relating to EEA-resident companies into line with those for non-UK companies resident elsewhere in the world.

As a result of the controversial ECJ decision in *Marks & Spencer*, claims involving companies established in the EEA are currently subject to more favourable loss relief rules. Having now left the EU the UK is no longer required to maintain these rules.

Accordingly, the government has announced that it will repeal the legislation that permits EEA based companies to surrender losses as group relief to UK companies. The government will also amend legislation to restrict the circumstances in which EEA companies can surrender as group relief losses of UK permanent establishments. This measure is intended to align the group relief rules for EEA companies with those for non-UK companies established in other jurisdictions.

The measure will have effect for accounting periods ending after 27 October 2021. Where a company's accounting period straddles this date, it will be deemed as separate accounting periods for these purposes.

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Structures and buildings allowance

Businesses claiming Structures and Buildings Allowance (SBA) are currently required to hold an allowance statement containing certain information to be eligible to claim SBA. SBA was introduced with effect from 29 October 2018 aiming to relieve costs for new structures and buildings used for qualifying purposes.

Under current SBA rules, the allowance statement includes certain details such as the date that the building is first brought into non-residential use (which is typically the date from which the SBA allowance period of 33 and one-third years commences). However, where qualifying expenditure is incurred (or treated as incurred under the simplification rules) after the building is brought into non-residential use, the allowance period starts from this later date. The government is proposing to introduce a requirement for the allowance statement to include the date that qualifying expenditure is incurred in situations where the allowance period commences from this later date.

This new measure will allow businesses to more easily and accurately assess their entitlement to SBA, ensuring subsequent owners do not stop claiming SBA earlier than they are entitled.

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Annual investment allowance

The limit of the annual investment allowance (AIA) will be temporarily increased from £200,000 to £1,000,000 for qualifying expenditure on plant and machinery incurred during the period from 1 January 2022 to 31 March 2023.

The AIA was introduced from April 2008 and a permanent limit was set at £200,000 from 1 January 2016. The AIA was previously temporarily increased to £1,000,000 for two years from 1 January 2019 and then, following the Spring 2021 Budget, for an additional year from 1 January 2021. Legislation will be introduced in Finance Act 2022 to maintain the current temporary £1,000,000 AIA limit for an additional one year and three months from 1 January 2022, which will align the end of the temporary AIA limit with the end of the super-deduction.

DPT and interaction with CT closure notices

The government has announced an amendment to the legislation to ensure that taxpayers can still use certain relieving provisions to amend their company tax returns and bring taxable diverted profits into charge to corporation tax during the Diverted Profits Tax (DPT) review period. This measure also legislates to ensure the interaction of DPT review periods and the closure of a corporation tax enquiry functions as intended. This amendment is very timely given the recent decision of the First-tier Tribunal in the case *Vitol Aviation UK Ltd v HMRC*.

To recap, DPT was introduced in 2015 to prevent the avoidance of UK tax by multinationals operating in the UK by deterring and counteracting activities that divert profits from the UK to low tax jurisdictions. DPT is imposed at a penal rate currently set at 25% on diverted profits but which is set to increase to 31% from April 2023. It is common for taxpayers with transfer pricing enquiries to also receive DPT charging notices and therefore, to have to manage a CT enquiry in parallel with a DPT review for the same period. Often the outcome of a DPT review is the calculation of diverted profits which are typically equivalent to the transfer pricing adjustment which should be made for CT purposes. The taxpayer is required to pay the DPT upon HMRC issuing a charging notice and then engage with HMRC to agree on the appropriate amount of diverted profits during a 15 month review period.

The amendment now allows the taxpayer up to 14 months (instead of 12 months) of the review period following the issuance of a DPT charging notice to be able to amend their CT return by making a transfer pricing adjustment to reduce the amount of DPT due. This means the amount is not taxed at the DPT penal rate and instead is only subject to the CT rate.

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In addition, a new section in the legislation is introduced where a taxpayer has received a charging notice for DPT for an accounting period and the 15 month review period has not ended. In this case, HMRC will not issue a final or partial closure notice in relation to the CT return and the taxpayer cannot apply for a tribunal direction for HMRC to issue a closure notice until the review period has ended. This change directly targets the conclusion of the *Vitol* case as it appears to allow HMRC to refuse issuing closure notices on CT returns until the DPT position is finalised. This is contrary to the Tribunal's decision where the continuing DPT review period should not be a reason to deny issuance of a closure notice.

This conflicting view from HMRC's change to the legislation and the Tribunal on the *Vitol* case only seeks to highlight that the interaction between DPT review periods and open CT enquiries will continue to be a complex area which will depend on the specific facts and circumstances of each taxpayer. Taxpayers will need to carefully navigate the legislation, HMRC guidance and case law to consider their tax management strategy in these situations.

MAP decisions relating to DPT

The government has announced that DPT will be included as part of the list of taxes in respect of which, subject to the terms of the relevant double tax treaty between the UK and the corresponding territory, a Mutual Agreement Procedure (MAP) outcome can potentially be implemented with effect from 27 October 2021. DPT has always been defined as a separate, standalone charge on diverted profits and is not income tax, capital gains tax or corporation tax and hence not covered by double tax treaties. Therefore, it has not been possible to make it the subject of a MAP to provide the taxpayer relief on double taxation suffered or address the issue which is contrary to the double tax treaty in respect of the transaction subject to DPT.

Historically, many DPT cases may often be concluded as a transfer pricing assessment covering corporation tax, as opposed to a DPT assessment, which means that the assessment is still subject to MAP through the relevant double tax treaty. Nevertheless, this is a welcome decision as it allows taxpayers the opportunity to obtain relief more directly and mitigates the need to identify an alternative route to access MAP.

Asset holding companies – new tax regime

The proposed UK tax regime for qualifying asset holding companies (QAHCs) is a key element of the ongoing UK fund review, intended to support UK competitiveness and establish the UK as a favourable domicile in which to establish and operate the asset holding companies that are typically seen in private fund structures investing in private equity, infrastructure, credit and real estate. An intensive phase of engagement with stakeholders has followed the release on 20 July 2021 of the government response to the second stage consultation and draft legislation for the new regime, and it is pleasing to see a number of positive developments in the Autumn Budget announcements.

Amongst the most noteworthy developments are the following:

- permitting corporation tax deductions for certain interest payments that would typically be treated as distributions in a broader range of circumstances than proposed in the draft legislation;
- switching off the late paid interest and deeply discounted securities rules to facilitate relief for relevant payments on an accruals rather than a paid basis;
- a broader exemption to disapply the obligation to withhold income tax at the basic rate on payments of interest by a QAHC;
- enabling any premium paid on a repurchase of shares by a QAHC from an individual to be treated as capital rather than an income distribution;
- permitting certain amounts paid to qualifying remittance basis users by a QAHC to be treated as non-UK source, based on the underlying mix of income and assets of the QAHC;

The proposed UK tax regime for qualifying asset holding companies (QAHCs) is a key element of the ongoing UK fund review

- exempting repurchases of shares and loan capital by a QAHC from stamp duty and stamp duty reserve tax.

The regime is expected to contain detailed eligibility criteria together with entry and exit provisions that will apply when a company joins or leaves the QAHC regime, with a new accounting period commencing at transition and with certain assets being rebased.

We are pleased to have participated in the working groups supporting the development of the QAHCs regime and that HM Treasury and HMRC have engaged in a positive manner in response to feedback from stakeholders. Whilst there will inevitably be points that have not been reflected or which may need to be addressed through guidance or further dialogue, the introduction of the proposed new regime underlines the importance of the asset management sector to the UK. For further details of the QAHC regime as originally proposed in July 2021, see our article UK asset holding companies regime: government response.

Review of funds regime

The government has announced that it remains committed to its ongoing review of the UK's funds regime and, in addition to its announcements in respect of asset holding companies and REITs reforms, it will publish its response to the call for input on the broader elements of the UK funds regime review, as well as a consultation on options to simplify the VAT treatment of fund management fees, in the coming months.

Given the continued focus on UK competitiveness and facilitating the growth of the UK as a fund domicile, we hope that there will be positive developments to come, particularly to remove the VAT disadvantage that exists currently for UK managers that manage relevant UK funds.

The government has announced that it remains committed to its ongoing review of the UK's funds regime

REITs – targeted reforms

As part of the UK fund review, the government received feedback that certain aspects of the UK REIT regime continued to act as barriers to the wider adoption of UK REITs as vehicles through which UK real estate could be held. In the government response to the second stage consultation on asset holding companies on 20 July 2021, the government identified certain targeted reforms that should be addressed as a priority, with wider reforms being dealt with subsequently.

In Autumn Budget 2021, the government confirmed that they would move forward with the targeted reforms (with certain changes since the July announcement), with the intention that these would take effect from 1 April 2022. The key elements of the reforms are:

- removal of the requirement for REIT shares to be admitted to trading on a recognised stock exchange where institutional investors hold at least 70% (rather than the previously proposed "wholly or almost wholly" requirement) of the REIT's ordinary share capital;
- amendments to the "foreign REIT equivalent" limb of the institutional investors definition, so that this considers the equivalence of the foreign entity itself, rather than the relevant foreign regime – this will open up institutional investor status to a greater range of foreign REITs, which may in turn result in simplification of holding arrangements;

- removal, as previously proposed, of the "holder of excessive rights" charge where the relevant investors to whom property income distributions are paid are entitled to gross payment - again this will facilitate the simplification of a number of existing structures where holdings have been fragmented between a number of SPVs that each hold less than 10% of the REIT;
- amendments to the balance of business test, including to disregard non-rental profits arising from certain planning obligations, together with a simpler gateway test that, where satisfied, will not require preparation of the full statements by the REIT in order to meet the full balance of business test.

Since the introduction of the original REIT regime with effect from 1 January 2007, there have been several previous rounds of reforms that have resulted in almost 100 REITs now benefitting from the regime. We expect that the targeted reforms confirmed in Autumn Budget 2021 will result in a number of additional REITs being established, as well as enabling the holding structures adopted for some existing REITs to be rationalised, both of which will underline the continued attractiveness of the REIT regime as a vehicle for holding UK investment property.

Amendments to loss relief rules

The government announced a technical amendment to the corporation tax loss reform rules that were introduced in 2017. The rules provide an exemption from the restriction on relief for carried-forward losses for companies in financial distress. The exemption applies where carried-forward losses are used to offset profits arising as a result of the accounting treatment of an onerous lease where provisions for net losses arising in respect of such lease are reversed as a result of lease renegotiations as part of a corporate rescue. In these circumstances, the exemption will apply such that the losses will be capable of being set off against all of the profit arising, as opposed to 50% of any profits under the general loss restriction rules. Changes to the way leases are accounted for under IFRS 16 have resulted in companies in financial distress being denied this exemption.

The changes announced in Autumn Budget 2021 are intended to ensure that companies adopting IFRS 16 continue to benefit from the exemption outlined above, so that companies accounting under pre-existing accounting standards and IFRS 16 will benefit from substantially the same treatment. The amendments will apply retrospectively and will have effect for accounting periods beginning on or after 01 January 2019.

We expect that the targeted reforms confirmed in Autumn Budget 2021 will result in a number of additional REITs being established

Research and development (R&D)

Following the consultation launched at the Spring Budget 2021, the government has announced that reforms will be introduced to R&D tax reliefs. R&D tax reliefs will be reformed to support modern research methods by expanding qualifying expenditure to include data and cloud costs, to more effectively capture the benefits of R&D funded by the reliefs through refocusing support towards innovation in the UK and to target abuse and improve compliance.

These changes will be legislated for in Finance Act 2022 and take effect from April 2023. Further details of these changes are still awaited and the Budget documents merely state that the next steps for the review will be set out in due course.

Bank surcharge

The bank surcharge is reducing from 8% to 3% from April 2023, and the profit threshold from which it applies increased from £25m to £100m. But overall this still involves a slight increase rather than a cut to the tax rate on bank profits (above the first £100m per annum).

Banks are currently subject to an 8% bank surcharge on their profits above £25 million, in addition to the existing 19% corporation tax on their profits, for a 27% effective corporate tax rate on their profits. In the Spring Budget 2021, the Chancellor 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, the Chancellor announced a review of the surcharge with 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".

As expected, the Chancellor today confirmed that that the bank surcharge will be significantly reduced from 1 April 2023 when the increased rate of corporation tax begins. The reduction will be from 8% to 3% to compensate for the 6% increase in the corporation tax rate. In addition, the profit threshold above which the bank surcharge is levied, is increased from £25m to £100m from 1 April 2023. But in the bigger picture, the Chancellor is still applying a tax increase on bank profits above £100m in April 2023, not a tax cut. There is however a net tax cut on the portion of a bank's profits between £25m and £100m – as this will change from the existing 27% aggregate to just the 25% increased corporation tax rate – due to the increase in the threshold before bank levy starts to apply. There is a more substantial increase in tax rate on the first £25m of a bank's profit – that element of profit has never been and will continue not to be subject to the bank surcharge, so suffers the full effect of the rise in mainstream corporation tax rate from 19% to 25% in the same manner as businesses in other sectors.

This looks like a carefully calibrated decision founded as much in politics as economics. The Chancellor can still tell the electorate that the tax rate on banks is going up not down in April 2023, but the modest scale of the increase is likely to stifle the bulk of the objections from the banking sector and bring relief to those who feared a worse increase. Additionally, the increase in threshold means the measure amounts to a tax cut for banks with profits in the £25m to £100m range, which is being spun as a measure supporting growth for small and medium-sized "challenger" banks and promoting competition in the banking sector. It also perhaps reflects the receding political justification for additional bank taxes in recognition of government support for the sector during the financial crisis – which grows progressively more distant and has already become only "the last but one" crisis of public finances...

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Economic crime levy

The Autumn Budget 2021 has confirmed details of the new economic crime levy to be introduced from April 2022.

In September 2021, HM Treasury published proposals for a new tax on medium and large professional firms and financial institutions: the Economic Crime (Anti-Money Laundering) Levy (economic crime levy). The amount of the levy will be based on the revenue of the regulated entity and its collection will be the responsibility of the Financial Conduct Authority, the Gambling Commission and HMRC.

The government intends for the levy to raise about £100m a year to help meet the costs of new and upgraded capacity to tackle money laundering. The rates of the levy will be reviewed to ensure that it yields the intended level of government revenue.

The Autumn Budget 2021 announced that there will be four size bands:

- small (under £10.2m UK revenue);
- medium (£10.2m – £36m);
- large (£36m - £1bn);
- very large (over £1bn).

All small entities will be exempt, whilst: medium entities are expected to pay a fixed fee in the region of £5,000 to £15,000; large entities a fee in the region of £30,000 to £50,000; very large entities a fee in the region of £150,000 to £250,000. It had been expected that the fixed fees would be announced as part of the Autumn Budget 2021 but they will now be set out in the final legislation in the Finance Bill.

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Residential property developer tax

As announced earlier this year, a new tax, the residential property developer tax (RPDT) will be introduced in April 2022 to help fund remediation work in relation to cladding. The RPDT will apply to companies and groups undertaking UK residential property development activities in the UK.

Draft legislation for this measure has previously been published for consultation. For further details please refer to our article, Residential Property Developer Tax: draft legislation. A subsequent iteration of this draft legislation included a specific exclusion from RPDT for non-profit registered providers of social housing and their wholly owned subsidiaries, subject to an RPDT exit charge where a corporate body benefitting from the exemption ceases to qualify for it.

Alongside Autumn Budget 2021, the government has published its response to the original consultation on the detailed design of the RPDT, confirming the basis on which it will legislate for the RPDT. This response is aligned with the draft legislation previously published, whilst confirming a number of key points on which the legislation was silent.

RPDT will only be chargeable on relevant profits in excess of a group-wide annual allowance - the level of that allowance has now been confirmed as £25m. In addition, the rate of RPDT has been confirmed at 4%. Finally, the original consultation proposed that build to rent (BTR) investors should be subject to RPDT through taxing some measure of deemed development profit, resulting in a "dry" tax charge. As widely publicised earlier in October 2021, following substantial lobbying from stakeholders the government has accepted that BTR should not be included within the scope of RPDT in this way. The government's consultation response confirms this, whilst reserving the government's position to keep this position under review as the market evolves.

RPDT will only be chargeable on relevant profits in excess of a group-wide annual allowance - the level of that allowance has now been confirmed as £25m. In addition, the rate of RPDT has been confirmed at 4%.

The RPDT is separate from the new "Building Safety Levy" on developers seeking permission to construct certain high-rise buildings, which has been the subject of a consultation which closed on 15 October 2021.

Response to accounting changes for insurance contracts

Tax changes have been announced in response to the introduction of IFRS 17, the new international standard for insurance contracts, which is expected to become mandatory for insurance companies using IFRS for periods of account beginning on or after 1 January 2023. The government has proactively announced that regulations will be introduced allowing it to:

- provide for the transitional impacts of IFRS 17 to be spread for tax purposes; and
- repeal the current requirement on life insurance companies to spread acquisition expenses over seven years for tax purposes.

A consultation on the regulations will be launched in the coming weeks. The intention is to mitigate cashflow and regulatory impacts of the introduction of IFRS 17 by spreading transitional profits and losses for tax purposes, ie allowing insurers to depart for a transitional period from the usual position that their corporation tax liabilities follow their accounting profits. This measure will no doubt be welcomed by the insurance sector. Affected insurers and their advisers should consider responding to the consultation (when launched) to ensure that their views are taken into account.

This enabling power will have effect on and after the date of Royal Assent to Finance Act 2022.

Business rates

The government has published its final report following the Business Rates Review, initially announced in March 2020. The report sets out a range of measures which the government will introduce with the intention of reducing "the burden of business rates in England". In particular, the report indicates that the measures are designed to focus on supporting the retail industry and the high street and encouraging investment and improvement to existing properties which may otherwise not be pursued due to a resulting increase in business rates.

Specific changes to the calculation of business rates and available reliefs, include:

- Freezing the multiplier in England for 2022/23. The multiplier is the figure by which the rateable value of a property must be multiplied in order to determine the amount of business rates payable – any available reliefs are then deducted from this amount.
- Introducing a further temporary business rates relief for retail, hospitality and leisure business in England for 2022/2023, to replace the business rates reliefs implemented for these industries in 2020/21 and 2021/22. This new temporary measure will see eligible properties receive business rates relief of 50% up to a cash value cap of £110,000 per business and is in addition to the multiplier freeze. Eligibility criteria identifying who will benefit from this relief have not yet been published, but are anticipated later in 2021.
- The introduction, from 2023, of an 'improvement relief' to business rates, which would see 100% relief from higher business rates bills for 12 months, where 'eligible improvements' made to an existing property have increased the rateable value of that property. A consultation on the implementation of the relief is planned.
- Exemption from rates, from 2023 to 2035, for eligible plant and machinery used for the purpose of onsite renewable energy production and storage – for example electric vehicle charging points, or solar panels. 100% relief from rates will also apply to eligible low carbon heat networks where those networks have their own rates bill.

No existing business rates reliefs are being removed as a result. Transitional Relief for small and medium businesses and the Supporting Small Business scheme, which act to restrict the percentage by which rates bills can increase each year, have also been extended for a further year and will now apply until the end of 2022/23.

Additionally, the government announced an increase in the frequency of revaluation for business rates purposes, by moving to a three-year cycle for revaluations. This is intended to ensure that the applicable rates for each property are more in line with economic reality. The next re-valuation is in 2023, with the subsequent review now set to take place in 2026. As a result of more frequent revaluations being required, an additional £0.5bn of funding is being provided to the Valuation Office Agency. Further administrative changes, including additional notification requirements for taxpayers, are also being pursued in order to support the valuation system with implementing the more frequent revaluations.

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Finally, the government's report announces a further consultation on the introduction of an online sales tax. Where such a tax is introduced following the consultation, the report indicates that revenue raised from such tax would be used to reduce business rates for retailers with physical properties in England in order to "help rebalance the tax burden" between physical and online retail outlets. For further information, see Online Sales Tax below.

Tonnage tax

As pre-announced by the Treasury in advance of Autumn Budget 2021, from April 2022 flying the UK flag will give global shipping companies more chance to be accepted when applying to join the UK's tonnage tax regime. Tonnage tax can be used instead of corporation tax for working out the tax owed on profits, with tonnage tax calculated on a fixed notional profit based on the net tonnage of ships, instead of actual profits from shipping activities.

Under the plans, from April 2022 ships that fly the Red Ensign and those who help the UK reach net-zero will both be more likely to be accepted when applying to the UK's tonnage tax regime. Rules regarding the type of ships that can qualify will also be expanded to reflect the UK's net zero ambitions. This includes ships that lay cables to help create wind farms and scientific research vessels. Companies that bring value to the UK, by investing in decarbonisation, will also be more likely to be accepted if they apply to the UK's regime. In addition, HMRC practice guidance will raise from 10% to 15% the permitted limit for qualifying secondary income.

The Autumn Budget 2021 also announced two further proposed amendments. Firstly, the provisions governing Tonnage Tax elections at Part 2 of Schedule 22 to Finance Act 2000 will be amended to reduce from ten years to eight years the period for which a Tonnage Tax election remains in force from the beginning of the accounting period in which it is made. In addition, HMRC will be given the power to admit elections made outside the normal period allowed for election where there appears to be a good reason to do so. Secondly, legislation will be introduced in Finance Act 2022 to simplify the rule which, subject to conditions, includes dividends or other distributions of overseas shipping companies in relevant shipping profits.

The government will also review whether to include ship management within the scope of the regime and whether the existing limit that can be claimed as capital allowances by organisations leasing ships to tonnage tax participants remains appropriate.

The government will also review whether to include ship management within the scope of the regime

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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 2022/2023 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).

As previously announced and enacted in Finance Act 2021, a number of allowances and thresholds have been fixed for a number of years. These include setting 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 2023/24, 2024/25, and 2025/26, rather than rising in line with CPI.

As part of the introduction of the Health and Social Care Levy, the rates of tax on dividends will increase by 1.25% (see Health and Social Care Levy below).

For a table of the main tax rates and allowances for 2022/23, see page 30.

National insurance contributions

As part of its plans to introduce a new Health and Social Care Levy (see below), the government will temporarily increase the rate of NICs for one year from April 2022 for employees, self-employed and employers by 1.25%. The increase will apply to Class 1 (Employee, Employer) and Class 4 (Self-Employed, including partners) National Insurance, and to the main and higher rates. The increase will not apply to Class 2 NICs (the flat rate paid by the Self-Employed with profits above the Small Profits Threshold, which is currently £6,515 per year) or Class 3 NICs (voluntary contributions for taxpayers to fill in gaps in their contributions' records to qualify for benefits).

As a result, Class 1 NICs for employees will temporarily rise to 13.25% with the additional 2% rate increasing to 3.25%, whilst employers' Class 1 NICs will increase to 15.05%. From April 2023, the 1.25% Health and Social Care Levy will be formally separated from NICs and NICs rates will return to the earlier levels.

The government will use the September 2021 CPI figure of 3.1% generally as the basis for uprating National Insurance limits and thresholds for 2022/23. This excludes the Upper Earnings Limit and Upper Profit Limit which will be maintained at 2021/22 levels in line with the higher rate threshold for income tax.

As part of its plans to introduce a new Health and Social Care Levy (see below), the government will temporarily increase the rate of NICs by 1.25%.

Health and Social Care Levy

The government has previously announced plans to introduce a new Health and Social Care Levy at 1.25% in order to pay for increased spending on health and social care measures, including a cap on social care costs. In addition, taxes on dividends will be increased by the same amount. The measures were included in the Government's document putting forwards its proposals for health and social care reform, "Build Back Better".

In the short term, the new tax will take the form of increased NICs, for both employers and employees (see above). From 2023, the increased NICs will be formally replaced by the new Health and Social Care Levy, which will also apply to those above State Pension age who are still in employment. Revenues from the Levy will be ringfenced for health and social care. Together with the increase to the rates of dividend tax, the Levy is expected to raise an additional £12bn per year for health and social care across the UK.

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The government will also increase the rates of tax on dividends by 1.25% from April 2022. This change will see dividend rates increase from 7.5%, 32.5% and 38.1% (ordinary rate, upper rate and additional rate) to 8.75%, 33.75% and 39.35% from April 2022. The dividend trust rate will also be increased to 39.35% from April 2022. The revenue from this increase is also intended to help to fund the increased spending on health and social care costs (though is not formally ring-fenced). However, many smaller investors will be unaffected due to the £2,000 tax-free dividend allowance. As a result, the government estimates around 60% of individuals with dividend income outside of ISAs (which are not subject to tax) are not expected to pay any dividend tax or be affected by this change in 2022/23. Dividend income from shares is not subject to NICs (or the Levy) and no doubt the Government is concerned that many business owners would simply choose to pay themselves increased dividends rather than salary in the absence of a matching increase.

This change will apply UK-wide and will be legislated for in the next Finance Bill.

The government will also increase the rates of tax on dividends by 1.25% from April 2022

Basis period reform

Following government consultation during 2021, the government has today announced that it will be reforming the income tax basis period system for unincorporated businesses, including trades conducted through partnerships and LLPs. The aim of this new measure is to simplify the method for allocating trading profit to specific tax years by taxing profits arising during the tax year. This will involve changing the basis period from a 'current year basis' to a 'tax year basis' such that a business's profit or loss for a tax year would be the profit or loss arising in the tax year itself, regardless of its accounting date. The reform will take effect for the 2024/25 tax year with a transition year in the 2023/24 tax year. This will impact individuals, trusts, partnerships (including trading LLPs) and other unincorporated entities with trading income that is subject to income tax.

For businesses that do not draw up their accounts to 31 March or 5 April, there will be an apportionment of profits to determine the profits treated as arising in the tax year. Introducing the 'tax year basis' for trading income will also bring the payment of tax closer to the time that profits are earned.

Legislation in Finance Act 2022 will introduce special rules for the one year transition period (2023/24) which will impact the way that the basis of taxable profits for the 2023/24 tax year is determined - for example, the basis period for a business with a 30 September year end will comprise (i) taxable profit for the year ended 30 September 2023, plus (ii) a transition component consisting of taxable profit from 1 October 2023 to 5 April 2024. Any overlap profits will need to be relieved in full in 2023/24 and will not carry forward into the tax year basis.

For businesses with higher profits in 2023/24 due to the change in basis, the government is legislating to automatically spread the transitional period additional profits over a period of five years (with the option for businesses to elect out of spreading the additional profits, accelerating the charge, if preferred). It seems, however, that a number of points stakeholders had raised, such as the request for spreading to operate over a longer period of ten years, or for spreading to apply to the tax due on the additional profits rather than the profits themselves, may not be reflected in the draft legislation when released.

Power to make temporary modifications to taxation of employment income

The government has confirmed it will introduce legislation to allow HM Treasury, under ministerial direction, to make regulations to make temporary modifications to Parts 3, 4 and 5 of the Income Tax (Earnings and Pensions) Act 2003 for a period of up to two tax years in the event of a disaster or emergency of national significance as determined by HM Treasury. The power will only be able to be exercised in a way that is wholly relieving to the taxpayer and will not be able to be used to create a tax charge.

The changes will enable the government to support taxpayers, for example by:

- exempting benefits in kind of a specified description from income tax where appropriate;
- changing the qualifying conditions for exemptions on benefits in kind;
- exempting specified reimbursements from the charge to income tax;
- providing relief for specified expenses.

The changes are presumably intended to allow the government to react nimbly to emergency situations such as COVID. Changes were made to various employment tax measures on a temporary basis in response to COVID, including in relation to the provision of COVID tests by employers to employees and the reimbursement by employers of employees' expenses for home office equipment. The existing legislation only allows changes to be made through regulations rather than statute in limited circumstances. The changes announced today should therefore enable the government to respond quickly to future disasters or emergencies in relation to employment taxes.

The changes are presumably intended to allow the government to react nimbly to emergency situations such as COVID

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Capital Gains Tax

Tax rates and allowances

As previously announced, the annual exemption will remain at £12,300 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.

Equally, those awaiting a government response to the recent Office for Tax Simplification (OTS) reports on capital gains tax were left wanting, at least for now.

For a table of the main tax rates and allowances for 2022/23, see page 30.

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Dormant Assets Scheme expansion

The Dormant Assets Scheme (DAS) allows financial institutions to give money from dormant bank and building society accounts to good causes. Where amounts have been transferred into the DAS, holders of dormant accounts can make claims to the scheme's administrators for repayment of the relevant amounts. The tax position of dormant account holders who successfully make such claims is the same as it would have been in the absence of the DAS, and specifically a transfer to the DAS does not give rise to a disposal for capital gains tax purposes, and statutory rights under the DAS are treated as the same asset as the rights that the account holder would originally have had against the bank or building society. Accordingly, a CGT disposal gain or loss only crystalises when proceeds are reclaimed or repaid to the dormant account holder, and not when a transfer is made into the DAS.

The current Dormant Assets Bill is set to expand the scope of the DAS to include additional classes of assets, allowing certain assets from the pensions, insurance, investment and wealth management and securities sectors to also be used for public benefit where asset owners cannot be located. The government announced in today's Budget that section 26A of the Taxation of Chargeable Gains Act 1992 will be amended to match this broadened scope, such that when a relevant asset is monetised and the resulting cash proceeds included in the DAS, the gain or loss that would otherwise accrue for the relevant individual will only crystallise when that individual makes a successful claim for repayment of those proceeds. The change will take effect once the Dormant Assets Bill becomes law and the necessary commencement order has been made.

Extension of capital gains tax returns

As a result of changes introduced by Finance Act 2019, a UK resident making a disposal of UK residential property on or after 6 April 2019 which results in a gain liable to capital gains tax has been required to deliver a CGT return to HMRC and to make a payment on account of CGT within 30 days of completion of the disposal. In addition, a non-UK resident making a direct or indirect disposal of UK land on or after 6 April 2020 has been required to deliver a CGT return to HMRC (regardless of the type of property or whether tax is due) and to make a payment on account of any CGT within 30 days of completion of the disposal.

The government has announced that the Finance Bill 2021 will extend these 30 day time limits for filing CGT returns and making payments on account of tax to 60 days with effect for disposals that complete on or after 27 October 2021, in line with recommendations from the Office for Tax Simplification. The existing legislation will also be amended to make clear that, where a gain arises to a UK resident from the disposal of a mixed use property, it is only the gain attributable to the residential element which must be reported and for which payment on account of CGT must be made.

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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 2022/23.

For a table of the main tax rates and allowances for 2022/23, see page 30.

Stamp duty/SDRT on notes issued by securitisation companies and insurance-linked securities

Autumn Budget 2021 suggests HMRC is finally gearing up to provide a long awaited relaxation on stamp duty and stamp duty reserve tax (SDRT) treatment of notes issued by securitisation companies and insurance-linked securities (ILS). But the form such relaxation will take still remains unclear.

The securitisation companies and ILS tax regimes provide simplified corporation tax regimes for companies which qualify for them – which is important for the competitiveness of UK SPVs in the securitisation and ILS market. However, at present they are still subject to the full complexities of UK stamp duty and SDRT rules (with the exception of a helpful but insufficient provision permitting limited recourse provisions to be included in "capital market investments" without being treated as "results dependent" and hence losing the benefit of the loan capital exemption). The UK stamp duty and SDRT issues are a significant downside for UK securitisation and ILS vehicles compared to competitor regimes, such as Ireland and Luxembourg. They raise minimal tax revenue, since it is a commercial necessity to structure securitisation and ILS notes to be exempt from stamp duty/SDRT. So currently the main practical effect of the existing rules is to restrict the types of notes which securitisation companies and ILS issuers can issue and to add additional cost frictions to the implementation of a UK securitisation or ILS issuance in navigating the complexities. For example, securitisation SPVs in Ireland or Luxembourg can issue "hoover" notes which extract any residual cash remaining at the bottom of the payment waterfall after other creditors have been paid. Whereas UK SPVs are unable to do this because of the adverse stamp duty/SDRT consequences, so need to use more complex deferred purchase price mechanisms to extract such surpluses instead.

This has led to increasing calls from the UK securitisation industry to provide a UK stamp duty and SDRT exemption for securitisation companies and ILS issuers, to put UK issuance vehicles on a level playing field with their Irish and Luxembourg counterparts, particularly in response to a public consultation on reform to the taxation of securitisation companies published in March 2021. Autumn Budget 2021 does not yet announce any specific exemption or relaxation in this field, so formally speaking there is still no substantive news. However, it does announce that Finance Bill 2021 will give HM Treasury power to make changes by secondary legislation to the stamp duty and SDRT treatment of securitisation and ILS issuers. This appears to be a welcome precursor to the long-awaited stamp duty and SDRT reform – as it seems very likely that the power to reform by statutory instrument is being introduced with the intention of using it. But it is still too early to know what direction the reforms will take, and whether the much hoped for exemption of securitisation and ILS notes from stamp duty and SDRT will finally be granted. So, watch this space.

Autumn Budget 2021 suggests HMRC is finally gearing up to provide a long awaited relaxation on stamp duty and stamp duty reserve tax (SDRT) treatment of notes issued by securitisation companies

There is however a silver lining to the current opacity. In practice, HM Treasury and HMRC tend to consult more extensively on statutory instruments in the securitisation sector, increasing the opportunity for adaptation to meet the industry's needs – whereas the procedural constraints and legislative timetables for Finance Bills can reduce the opportunity for and effectiveness of such consultations in relation to primary legislation. So in the longer term, leaving as much as possible to be clarified by secondary legislation may ultimately mean more suitable legislation.

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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 2022/23, see page 30.

A temporary reduced rate of 5% applied 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 the March 2021 Budget that this reduced rate would be extended until 30 September 2021 with a 12.5% rate applying 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 2022. In particular, the government has previously announced that, on the basis of the recommendations of the OTS concerning the distortions created by the high registration threshold in the UK, the registration threshold would be frozen until April 2024.

VAT treatment of fund management fees

The Autumn Budget 2021 announced that the government will consult on options to simplify the VAT treatment of fund management fees.

Autumn Budget 2021 announced that the government will consult on options to simplify the VAT treatment of fund management fees

Online sales tax

Autumn Budget 2021 restates the government's intention to consult on the introduction of an Online Sales Tax. No further details have been provided at this stage of this potentially important development beyond the fact that the consultation will explore the arguments for and against its introduction.

VAT and free zones

This measure will affect VAT registered businesses operating in the customs site (free zone) of a Freeport. It creates a VAT exit charge for goods which have benefited from a zero-rated supply whilst in the free zone and where there is no onward taxable supply of the goods within a specific time limit. This has the impact of preventing businesses from benefiting from zero-rated costs whilst in the free zone whilst never triggering a corresponding output tax charge or where the free zone procedures are breached. Businesses for which the measure will apply will need to adopt processes to account for the exit charge.

Imports of dental prostheses

The current exemption for dental prostheses only applies to domestic supplies. Imported prostheses do not at present benefit from the same exemption and are therefore subject to import VAT when supplied between GB and NI. As the supply of dental services is exempt from VAT this import VAT cannot be recovered and this may otherwise result in a price increase for the end customer. This measure which has retrospective effect will amend this unintended consequence of the Northern Ireland Protocol. Whilst the detail has not yet been published, a declaration of entitlement to exemption is likely to be required..

Simplified rates for personal imports

HMRC have introduced simplified rates of customs and excise duty which will apply to personal goods which are being brought in the UK either for your own use or to be given as a gift. The online service can be used in advance of arrival and will calculate the duties owed. Individuals can make an oral declaration to Border Force on arrival in the UK using the customs tariff rates and the main excise duty rates if they consider that this will lead to a preferential result.

VAT one stop shop regimes

VAT (Distance Selling and Miscellaneous Amendments) Regulations 2021 and VAT (Distance Selling and Miscellaneous Amendments No.2) Regulations 2021 – these two SIs address issues in the application of the import one stop shop and the one stop shop as they apply to businesses either importing low value goods in consignments worth up to £135 into the EU or Northern Ireland or selling goods to final consumers based in EU member states or Northern Ireland. The SIs address various transitory issues, terminology, procedures, records and various points concerning the Isle of Man.

Landfill tax (LFT)

The rates of Landfill Tax for 2022 will rise in line with inflation based on Retail Prices Index (RPI) rounded to the nearest 5p. From 1 April 2022, the new standard rate will be £98.60 per tonne and the lower rate £3.15 per tonne.

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 and 2023/24.

Aggregates levy

The government announced that it will continue to freeze the rate of the aggregates levy for 2022/23 at £2/tonne but intends to return to index-linking in the future.

Pensions and investments

Consultation on further changes to DC charges

The government has announced that it will consult later this year on further changes to the charge cap that applies to defined contribution auto-enrolment pension schemes.

The consultation will consider amendments to the scope of the cap to better accommodate performance fees, which in turn should remove a key barrier to defined contribution pension schemes investing in illiquid assets (also known as "productive finance"), including through the new UK Long Term Asset Fund vehicle.

Further details on the proposals for the Long Term Asset Fund, and Simmons & Simmons response, can be found in our article, LTAF – Coming Soon. Final rules in force from 15 November 2021.

The consultation will consider amendments to the scope of the cap to better accommodate performance fees

State pension uprating

The government will suspend the earnings element of the "Triple Lock" for State Pension uprating next year, meaning that for 2022/23 State Pension will only be "Double Locked" – and increased by the higher of CPI and 2.5%.

The suspension of the earnings element of "Triple Lock" is designed to avoid an unintended windfall benefit for pensioners driven by a distortion in earnings data resulting from the pandemic.

Top-up payments for low-earning individuals from 2025

The government will increase income tax relief on pension contributions for certain lower earners in the 2025/26 tax year, for contributions made the previous tax year.

The background is that there are two main ways for individuals to receive income tax relief on pension contributions:

- net pay arrangements (NPA) – an individual receives tax relief when pension contributions are taken out of their pay by their employer before tax is calculated; or
- relief at source (RAS) – a pension scheme claims tax relief at the relevant basic rate from HMRC because individuals make pension contributions out of their earnings after tax has been calculated. Individuals who pay tax at rates higher than the basic rate can claim any extra relief directly from HMRC.

The issue is that those who pay little, or no, income tax still receive a 20% top-up to their pension contributions under a RAS scheme. Those contributing to a NPA scheme, however, only receive tax relief at their marginal rate – which can be as low as 0%.

The government therefore proposes to pay a top-up from the 2025/26 tax year to those in NPA schemes – and estimates that this will benefit 1.2 million pension savers by an average of around £53 a year.

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ISAs

The ISA annual subscription limit for 2022/23 will remain unchanged at £20,000. The annual subscription limit for Junior ISAs and Child Trust Funds for 2022/23 will also remain unchanged at £9,000. The same annual limit applies to Child Trust Funds.

Inheritance Tax

Tax rates and allowances

The government has previously announced that the inheritance tax (IHT) threshold will remain frozen at £325,000 until 2025/26. 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 2022/23, see page 30.

Tax Administration

Clamping down on promoters of tax avoidance

The government has announced four new measures targeted at the promoters and enablers of tax avoidance schemes. They are due to be included in Finance Act 2022.

- A power for HMRC to seek freezing orders preventing promoters from dissipating or hiding their assets in advance of proceedings for a Tribunal-assessed penalty under the Promoters of Tax Avoidance Scheme (POTAS), Disclosure of Tax Avoidance Schemes (DOTAS), and Disclosure of Avoidance Schemes for VAT and other Indirect Taxes (DASVOIT) regimes. The government is concerned that the current legal requirement to show a cause of action may enable promoters to dissipate assets before proceedings have commenced.
- Rules enabling HMRC to make a UK entity that facilitates the promotion of tax avoidance by offshore promoters subject to a significant additional penalty, subject to conditions. The legislation would apply to any UK entity that incurs a penalty or penalties under the POTAS, DOTAS or DASVOIT regimes of an aggregate value of at least £100,000. It would also apply to UK entities that incur penalties under the enablers penalty regime or for breaching a stop notice, without reference in either case to the value of the penalty.
- A power for HMRC to present winding-up petitions to the court for companies or partnerships involved in or associated with the promotion of tax avoidance that are operating against the public interest whether there is a debt or not. Currently, HMRC can only take action itself against promoter companies where there is a tax debt.
- Rules enabling HMRC to name those HMRC knows or suspects of being promoters of tax avoidance, including the entities and individuals that control or influence the promoter or others that are part of the promoter structure, details of the way they promote tax avoidance, and the schemes they promote, at the earliest possible stage, to warn taxpayers of the risks and help those already involved to leave avoidance arrangements. The proposed power would enable HMRC to name a particular scheme, its arrangements and how it is being made available to taxpayers or administered, from when HMRC first learns about it. The new power would also enable HMRC to publish any other information or documents relating to the arrangement, entities or individuals which HMRC reasonably believe will ensure that members of the public can identify the arrangements and understand them and the risks which attach to them. The rules would require HMRC to provide 30 days' notice to the entities or individuals concerned to allow them an opportunity to make representations.

These measures are targeted at the most persistent and determined promoters and enablers of tax avoidance. They provide further confirmation of the government's willingness to take strong action against those it considers promote and enable tax avoidance.

The government has announced four new measures targeted at the promoters and enablers of tax avoidance schemes

Discovery assessments

The government has announced that a measure will be included in Finance Act 2022, which will affect individuals who incur the High Income Child Benefit Charge (HICBC), tax charges relating to Gift Aid Donations and a number of different pension charges.

The measure will confirm that if taxpayers have failed to notify HMRC of these liabilities, and/or have failed to complete self-assessment tax returns relating to these liabilities, HMRC may lawfully issue a discovery assessment to recover the tax due. The change is made in light of a recent Upper Tribunal decision (*HMRC v Jason Wilkes*) which found that HMRC did not have the power to recover an individual's HICBC by issuing a discovery assessment. The legislation is intended to put beyond doubt that HMRC may use these discovery assessments to recover all of the above-mentioned tax charges.

Increasing independent representation on the OTS

The government has announced that it will legislate in Finance Act 2022 to increase the maximum independent representation on the OTS Board by two members, to a total overall membership of ten. The conclusions of HM Treasury's review of the OTS will be published in due course.

The conclusions of HM Treasury's review of the OTS will be published in due course

HM REVENUE & CUSTOMS TAX RATES AND ALLOWANCES FOR 2022/23

Income tax allowances	2021/22 (£)	2022/23 (£)
Personal allowance	12,570	12,570
Higher rate threshold	50,270	50,270
Income limit for personal allowance[1]	100,000	100,000
Transferrable marriage allowance[2]	1,260	1,260
Blind person's allowance	2,520	2,600

(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	2021/22 (£)	2022/23 (£)
Capital gains tax annual exempt amount for individuals etc.	12,300	12,300
Inheritance tax threshold	325,000	325,000

Income tax bands	2021/22 (£)	2022/23 (£)
Starting savings rate 0%[3]	5,000	£5,000
Basic rate 20%	1 – 37,700	1 – 37,700
Higher rate 40%	37,701 - 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[4]			
Main rate	2021/22 (£)	Main rate	2022/23 (£)
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 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. The bank corporation tax surcharge will reduce from 8% to 3% from the same date, so that the overall corporation tax rate payable by banks will be 28%.

Stamp duty land tax				
Rate	Residential [5 6 8 9]		Non-residential or mixed use property	
	2021/22 (£)	2022/23 (£)	2021/22 (£)	2022/23 (£)
Total value of consideration				
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%[7]	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 applies from 01 April 2021 on non-UK residents purchasing residential property in England and Northern Ireland (when combined with the additional 3% rate (see note 5 above), a 5% surcharge applies on non-UK residents purchasing additional residential properties).
(9) A temporary reduction in SDLT applied to purchases of residential property between 8 July 2020 and 30 June 2021 pursuant to which a purchaser only paid SDLT on amounts above £500,000. Between 01 July 2021 and 30 September 2021, purchasers of residential property were only required to pay SDLT on amounts above £250,000. This relief temporarily replaced the relief for first-time buyers (see note 6 above).

For additional information on our firm, please visit our website at **simmons-simmons.com.**

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