Tolley®CPD

Finace Bill 2021-22

CONTENTS

Rates and allowances – 2022/23 **(Lecture P1291 – 10.91 minutes)**

Clause 1 charges income tax for 2022/23 and Clause 2 confirms that the main rates of income tax for that year are unchanged. This means the basic rate is 20%, the higher rate is 40% and the additional rate is 45%. These rates apply to non-savings, non-dividend income of taxpayers in England and Northern Ireland.

Clause 3 confirms that the default rates of income tax and the savings rate of income tax are also unchanged, being the same as the rates shown in the above paragraph.

Clause 4 confirms that the tax rates on dividend income over the £2,000 dividend allowance will increase for the tax year 2022/23 by 1.25%.

Band	2022/23	2021/22
Basic rate	8.75%	7.5%
Higher rate	33.75%	32.5%
Additional rate	39.35%	38.1%
Rate for discretionary trusts	39.35%	38.1%

It should be noted that this change has the effect of raising the rate of tax charged under s455 CTA2010 to 33.75% since this is automatically linked to the higher rate of dividend tax. This applies where loans to participators are still outstanding nine months after the end of the company's accounting period.

The addition is related to the increases in National Insurance Contributions and the introduction of the Health and Social Care Levy described further below and is intended to ensure that individuals who work through companies and take their profits as dividends rather than salary cannot avoid paying the charge.

However, it will also apply to dividends from passive investments, as well as from personal companies. They apply across the UK as a whole, as the Scottish Parliament and Welsh Assembly do not have devolved responsibility for these taxes.

Profit extraction for owner-managed companies

With the increase in tax rates on dividends and changes in the limits for Class 1 NIC, a shareholder-director of an OMB should consider taking a salary of £9,880 per annum (£823 per month) if the company is entitled to the Employment Allowance of £4,000.

If the director is the only employee, then they should instead take a salary of £9,100 per annum (£758 per week).

They should then extract the minimum level of dividends from the company to fund their living costs, bearing in mind the increased rates of tax applying to these.

For a single director/shareholder company where the director takes a salary of £8,840 and the balance of £41,430 as dividends (up to the basic rate threshold) in 2021/22, the tax would be £2,677.50 with dividend tax being levied on £41,430 less £3,730 (being within the basic rate band) less the £2,000 (dividend allowance) x 7.5% = £2,677.50.

In 2022/23, with a salary of £9,100 and dividends of £41,170, the tax payable on the dividends would be (£41,170 minus £3,470 remaining PA, minus £2,000 dividend allowance) i.e. £35,700 taxed at 8.75%, i.e. £3,123.75, an increase of £446.25 over 2021/22.

Clause 5 confirms that the starting rate for savings remains at £5,000. Although not within the Finance Bill, the starting rate itself is 0% and the personal savings allowance remains unchanged.

Also not within the Finance Bill, but included here for completeness, it was announced in the March 2021 Budget that the income tax bands and main allowances would be frozen at their 2021/22 levels until the end of 2025/26, instead of their usual inflationary increases each year. Although this means that someone with the same income will pay the same tax year on year, the effect of inflation on salaries and business profits means that this represents a significant tax increase over the period (£8 billion in extra government receipts forecast for 2025/26 compared to annual increases in bands and allowances).

As a reminder, the personal allowance is set at £12,570 and the basic rate band at £37,700 (except in Scotland) so that the income at which a person starts to pay higher rate tax is £50,270. The additional rate threshold is £150,000. The income limit before the personal allowance begins to be reduced is still £100,000. The reduction is 50% of income above this limit so it will be fully withdrawn when income is £125,140. Income for this purposes, means after deduction relief for grossed-up gift-aid and pension contributions made, so using these to reduce income if it is set to be above £100,000 can achieve a marginal tax saving of 60%.

As announced at the time of the October 2021 Budget, other personal allowances and income limits have increased in line with inflation:

Allowance	**2022/23**	**2021/22**
Blind person's allowance	£2,600	£2,520
Married couple's allowance (MCA)	£9,415	£9,125
Income limit	£31,400	£30,400
Minimum married couple's allowance	£3,640	£3,530

MCA is available where one of the spouses or civil partners was born before 6 April 1935 (so will be 87 or older in the tax year 2022/23). It is a tax reducer saving tax at 10%.

Normally MCA is awarded to the husband, but where the couple married on or after 5 December 2005, it is given to the partner with the highest income (and restricted by their income where relevant).

There are no changes to the income levels at which the High Income Child Benefit Charge begins to claw back Child Benefit receipts (£50,000) and the rate of clawback (£100 for every complete 1% increase in income above £50,000, so that it is fully clawed back when income is above £60,000).

The Scottish Parliament sets its own tax rates and thresholds for Scottish taxpayers for non-savings, non-dividend income. It will announce its Budget for 2022/23 on 9 December.

The Welsh Government has similar powers for Welsh taxpayers but has not yet varied the main UK rates. Their Budget is on 20 December so they could still set different rates for 2022/23.

Corporation tax

No changes are made to the proposals enacted in FA2021 in relation to corporation tax so that the increase from 19% to 25% from 1 April 2023 is still going ahead at this stage.

As noted above, following the increase in the higher rate of tax applicable to dividends, a rate of 33.75% rate will also apply to the tax payable by close companies on loans to participators which are not repaid within 9 months of the end of the accounting period.

Capital gains tax

As announced in the March 2021 Budget, the annual exempt amount will be fixed at its 2020/21 level of £12,300 until the end of 2025/26. No changes have been announced to the rates at which gains are taxed.

Inheritance tax

The March 2021 Budget fixed the IHT nil rate band at £325,000 until the end of 2025/26.

Holding the threshold at the same amount for 17 years (from 6 April 2009) will bring far more people into the scope of the tax. However, the introduction of the 'residential nil rate band enhancement' on death transfers can reduce the impact where it applies.

A married couple are now potentially able to leave up to £1 million free of IHT to their direct descendants (£325,000 plus £175,000 from each parent), but this can depend on the value of the property being left and the value of assets of the deceased at their death.

The prospect of the nil rate band being fixed for the next 4 years increases the importance of proper IHT planning.

Bank surcharge (Lecture B1292 - 19.07 minutes)

Clause 6 alters the rate of banking surcharge and the surcharge allowance.

For accounting periods beginning on or after 1 April 2023, the bank surcharge rate will be reduced to 3% (from 8%) and the surcharge allowance will be increased to £100 million (from £25 million).

Where a company's accounting period straddles 1 April 2023 the period will be split on a time apportionment basis for the purposes of the allowance and the reduced rate, with each period being treated as a separate accounting period.

A review of the surcharge was announced at Spring Budget 2021. When this rate change is taken alongside the increase in the headline rate of corporation tax from 19% to 25% from April 2023, banks will be taxed at a combined rate of 28% on their profit.

Abolition of basis periods (Lecture B1291 – 15.15 minutes)

Clause 7 introduces Schedule 1 which contains provisions for the abolition of basis periods.

For sole traders and individuals who are members of partnerships (including limited liability partnerships), currently the profits assessable in a tax year are those arising in the 'basis period' for that year, which is normally the accounting period ending in the tax year. Special rules apply on commencement and cessation of trade, as well as on a change of accounting date. These produce complications, such as some profits being assessed twice ('overlap profits'). The double charge then has to be relieved later, usually on cessation of trade, but also sometimes where the business changes its year-end.

The new provisions will amend s7 ITTOIA 2005 so that the trading income charged will that which arises in the tax year. The provisions also apply to professions and vocations. Chapter 15 ITTOIA 2005 which contained the substantive provisions relating to basis periods is repealed.

New 7A ITTOIA 2005 contains provisions relating to apportionment of profits where the period of account does not coincide with the tax year. The apportionment must be done by reference to the number of days in the overlapping periods of accounts although the trader may use a different way of doing the apportionment if it is reasonable to do so and they use the alternative method consistently.

New s7B ITTOIA 2005 applies where a trade starts after 31 March in any tax year and does not permanently cease in the tax year. In this case, there is no need to apportion any profits or losses to the earlier year as it is all treated as falling in the subsequent year. New s7C ITTOIA 2005 confirms that an accounting date of 31 March or 1, 2, 3 or 4 April will be treated as 5 April and no apportionment will be required to determine the profits for the relevant tax year. An election can be made to disapply either s7B or s7C for a period of five years or, if sooner, until the tax year before the trade ceases.

The provisions relating to use of cash basis are amended so they now make reference to tax years rather than basis periods. There are, however, no substantive changes to the way in which the cash basis rules work within these amended provisions.

There are a large number of consequential amendments to various parts of the legislation to remove references to 'basis periods' and replace them with 'tax years' as well as removing references to overlap profits and overlap relief. No underlying technical principles are amended in making those amendments.

These provisions will apply for 2024/25 and subsequent years. However, they will apply from 2023/24 for any person starting to trade in that year who does not also cease to trade in that year.

2023/24 will be a transitional year for moving from the old to the new basis of assessment.

Anyone who starts to trade in 2023/24 will be taxed from commencement up to 5 April 2024.

For all other traders who did not commence in 2023/24, the basis period for that year will begin immediately after the end of the basis period for 2022/23 and end on 5 April 2024.

The basis period is divided into the 'standard' part of the basis period which is 12 months from the beginning of the period and the 'transition' part which is the remainder. If the accounting date is 31 March or 1, 2, 3 or 4 April, then this is taken to be 5 April for these purposes unless the trader elects to disapply this.

For this year, where the basis period is longer than 12 months, the relevant maximum for the purposes of the cash basis election will be proportionately increased.

A deduction is allowed in the transition year for any overlap profit which would have been allowed as a deduction from profits on the assumption that the trade had permanently ceased on 5 April 2024 or a deduction that was allowed, but not made, in an earlier accounting period where there had been a change of accounting date. Effectively all unused overlap profit will be deducted against the profits in the transition year.

If there is no transition part of the basis period for 2023/24 (because the standard part ends on or after 31 March 2024 and there is no election to use actual profits for the year) then the overlap profit is simply deducted from the profits for the year.

If there is a transition part of the basis period, then there are a series of steps to calculate the figures for the transition year as a whole:

1. calculate the profits for the standard part of the basis period;

2. calculate the profits attributable to the transition part of the basis period;

3. deduct the overlap profit from the profits attributable to the transition part of the basis period (step 2 profits);

4. add the figures at step 1 and step 3. If the amount of step 3 is a loss, then the profits for 2023/24 are this figure. If the amount of this step is a loss, then the profits are nil and the use of the loss is discussed below. If it is greater than nil, proceed to steps 5 and 6;

5. calculate the 'transition profits' which is the lesser of the step 3 figure and the step 4 figure;

6. the profit for 2023/24 is either the amount of the transition profits brought into account for the year (if the step 1 figure is nil or less than nil) or the sum of step 1 and the transition profit being brought into account. The amount brought into account is the amount according to the spreading rules below.

If there are transition profits at step 5 of the above calculation, these are spread over five years beginning with 2023/24. The first four years will bring into charge an amount equal to 20% of the transitional profits with the balance being taxed in the fifth tax year. If the trade permanently ceases before the whole of the amount has been brought into charge, any balance is taxed in the year of cessation.

The trader may make an election for an additional amount of profits to be treated as arising for any tax year where there is a charge relating to the 2023/24 transition profits. This election has to be made on or before the first anniversary of the self-assessment filing date for the tax year to which it relates. The election would specify the amount of profits to be treated as arising in that year.

The amount of transition profits for any subsequent tax year is then reduced by the formula A x 5/T where:

- A is the additional amount of transitional profit treated as becoming chargeable, and

- T is the number of tax years remaining in the five-year spreading period.

If a loss is made in 2023/24 due to the deduction of overlap profit (or the loss is greater due to the deduction of overlap profits) then the amount of the loss/increased loss can be claimed as terminal loss relief as if the trader had permanently ceased to carry on the trade on 5 April 2024.

Example1

John has an accounting period to 31 December each year. In the year ended 31 December 2023 he made profits of £58,613. His profits to 31 December 2024 are £47,236 and he is carrying forward 3 months' overlap profits of £9,214.

The profits from 1 January 2023 to 5 April 2024 are:

£58,613 plus (96/366 x £47,236 less £9,214) = £58,613 + £3,175 = £61,788

The transitional profit is £3,175 and so only 20% of this is taxed in 2023/24 = £635 so the total taxable profit is £59,248. The balance of the transition profit is taxed over the next 4 years (subject to any election being made to recognise additional amounts in a future tax year).

Example 2

Georgina has an accounting period to 31 December each year. In the year ended 31 December 2023 she made profits of £58,613. Her profits to 31 December 2024 are £17,855 and she is carrying forward 3 months' overlap profits of £9,214.

The profits from 1 January 2023 to 5 April 2024 are:

£58,613 plus (96/366 x £17,855 less £9,214) = £58,613 + (£4,531) = £54,082.

The transitional profit is nil so the total taxable profit is £54,082. No profits are taxed in subsequent years.

Example 3

Sadiq has an accounting period to 31 May each year. In the year ended 31 May 2023 he made a loss of £10,349. His profits to 31 May 2024 are £47,236 and he is carrying forward 10 months' overlap profits of £9,214.

The profits from 1 June 2022 to 5 April 2024 are:

(£10,349) plus (310/366 x £47,236 less £9,214) = (£10,349) + £30,794 = £20,445.

The transitional profit is £20,445 and so only 20% of this is taxed in 2023/24 = £4,089. The balance is taxed over the next four tax years (subject to any election being made).

Example 4

Phyllis has an accounting period to 31 December each year. In the year ended 31 December 2023 she made a loss of £10,349. Her profits to 31 December 2024 are £47,236 and she is carrying forward 3 months' overlap profits of £9,214.

The profits from 1 January 2023 to 5 April 2024 are:

(£10,349) plus (96/366 x £47,236 less £9,214) = (£10,349) + £3,175 = (£7,174)

There is no taxable profit for 2023/24 and no transition profit. The loss of £7,174 can be utilised in the same way as any trading loss for a tax year.

Example 5

Maurice has an accounting period to 31 December each year. In the year ended 31 December 2023 he made profits of £4,629. His profits to 31 December 2024 are £7,855 and he is carrying forward 3 months' overlap profits of £9,214.

The profits from 1 January 2023 to 5 April 2024 are:

£4,629 plus (96/366 x £7,855 less £9,214) = £4,629 + (£7,154) = (£2,525)

There is no taxable profit for 2023/24 and no transition profit. The loss of £2,525 can be utilised either in the same way as any trading loss for a tax year or a terminal loss relief claim can be made.

Example 6

Jasmine has an accounting period to 31 May each year. In the year ended 31 May 2023 she made a loss of £10,349. Her profits to 31 May 2024 are £7,236 and she is carrying forward 10 months' overlap profits of £9,214.

The profits from 1 June 2022 to 5 April 2024 are:

(£10,349) plus (310/366 x £7,236 less £9,214) = (£10,349) + (£3,086) = (£13,435)

There is no taxable profit for 2023/24 and no transition profit. The loss of £13,435 can be utilised in the same way as any trading loss for a tax year or £3,086 can be the subject of a terminal loss relief claim.

Example 7

Nigel has transitional profits arising of £42,743. £8,548 (i.e. 20%) of this is treated as arising in 2023/24 and the same amount is added to his profits in 2024/25.

His profits are reduced in 2025/26 so he decides that he wants to include £15,000 of transition profit in that year.

The transition profit is reduced by the formula A x 5/T. A = £6,452 (being £15,000 less £8,548 so the excess being paid in this year) and T = 2 as there are two remaining years in the spreading period. The outcome of this calculation is £16,130. The transition profit is therefore treated as reduced to £42,743 less £16,130 = £26,613 so that the final two profit additions are 20% of this which is £5,323 per year.

In summary, the £42,743 transitional profit is spread as follows:

2023/24	£8,548
2024/25	£8,548
2025/26	£15,000
2026/27	£5,323
2027/28	£5,324
	£42,743

No amount of transition profit for the tax year 2023/24 and arising in any subsequent tax year is to be taken into account in determining the relevant profits for the purposes of averaging for farmers and creative artists.

There are specific provisions to determine the liability to income tax on the transition profits in subsequent years.

Looking at the steps in s23 ITA2007, the amount of transition profits is left out of the calculation at step 2. The difference between the tax liability calculated at step 5 and the tax liability that would have arisen if the amount left out of step 2 had not been left out is then added at step 7.

The limit on reliefs under s24A ITA2007 (which restrict loss and other reliefs to the greater of £50,000 or 25% of net income) does not apply to losses generated through overlap relief and that also applies to losses generated in the transitional year.

These rules also apply to partners in partnerships and the methodology for calculated trading profits is also applied to a notional business of a partner, which applies where there is untaxed non-trading income. The basis period for that notional business in the transitional year will be the same as for the trading partnership income with deductions for overlap profits as required. Any loss generated in the notional business will be deducted from the partner's income.

Profits of property businesses: late accounting date rules

Clause 8 introduces a change for property businesses where the accounting date is between 31 March and 4 April. It allows the profits falling after the end of the accounting period to fall into the next tax year rather than having to apportion the profits into exact tax years. In reality, it is probably the case that this happens anyway but this legislation confirms that this is appropriate.

The legislation also allows a property business which starts after 31 March, and does not cease in the same tax year, to treat the profits up to the end of the tax year to fall into the following year.

These provisions will apply from 6 April 2023 and there is provision to allow the person carrying on the business to disapply the provisions so that the actual tax year profits are assessed in each year.

Such an election would have to be made by the first anniversary of the filing date of the tax year in which this is to take effect. So for 2023/24, the election would need to be made by 31 January 2026.

Pensions **(Lecture P1292 – 12.22 minutes)**

The tax reliefs for pension contributions remain unchanged.

As announced in the March 2021 Budget, the Lifetime Allowance, which is the maximum amount that a person can save in tax-advantaged pension schemes before extra tax charges arise on drawing benefits and at the age of 75, is frozen at its 2020/21 level of £1,073,100 until the end of 2025/26.

Liability for annual allowance charge

Contributions to a registered pension scheme by individuals and their employers are restricted by the Annual Allowance (AA). Where this is exceeded, an AA charge arises.

The taxpayer can choose to ask the pension scheme to pay an AA charge if it exceeds £2,000, reducing the future pension benefits instead of having to meet the liability personally.

The current provisions state that the individual must notify the scheme administrator no later than 31 July in the year following that in which the tax year ends. The scheme administrator must then report this to HMRC in the Accounting for Tax (AFT) return for the quarter ended 31 December in the same year, which has to be delivered by 14 February in the following year (ie within 45 days).

Under Clause 9, the default position will remain the same so that the normal notification date is not changing. However, it is acknowledged that this deadline may not be achievable in some cases, such as where there is a delay in the individual receiving the information that shows they are liable to the charge.

Where the individual receives the information during the ‘relevant time’ then the notification deadline is extended. The ‘relevant time’ means a time falling on or after 2 May in the year following that in which the tax year in question ends and before the end of the period of 6 years beginning with the end of the tax year in question.

If this applies, the individual must give the notice before the earlier of:

- The end of 3 months beginning with the day on which they receive the information;
- The end of 6 years from the end of the tax year in question.

The administrator then has until the end of the period following the period in which they receive notification to include the charge in their AFT return, if this is later than the normal deadline.

For example, if a pension administrator notifies a taxpayer that they have a charge arising for 2020/21 but does not tell them until 15th December 2022, this would need to be notified to the administrator by 14th March 2023 and would be included in the AFT return by the pension fund for the period ended 30 June 2023, with the charge being due 14 days after the end of this quarter.

The new rule takes effect from 6 April 2022, but it also has retrospective effect to 6 April 2016.

The scheme administrator may elect for the tax due to be treated as being due in an earlier period although it is unclear when this might be something that would be of benefit to the pension fund.

Increase in normal minimum pension age

The minimum age at which most people can first access their tax-advantaged pension scheme benefits is 55. Under Clause 10, this will be increased to 57 with effect from 6 April 2028 and will therefore affect those who are born on or after 6 April 1973.

This is the date at which the state pension age for all will be 67 so this is 10 years before the state pension age.

This does not apply to members of a uniformed services pension scheme (being members of the armed forces including reservists, police and firefighters) and there is protection for pension savers who had a right to take their pension at a particular age which was confirmed on or before 22 April 2021. The way the protection operates is not straightforward but individuals are likely to be notified by their pension funds if the new minimum pension age will not apply to them.

The Explanatory Notes state that there will be some transitional issues addressed before this legislation becomes live for example where an individual does not have a protected pension age, has reached 55 before 6 April 2028 and has started but not completed the process of taking pension savings.

Public service pension schemes

The public sector pension scheme was reformed in 2015 but the changes were challenged successfully on the basis that there was age discrimination and potential indirect sex and race discrimination. Amendments were made to remedy the anomalies (which include some choices being made by those affected) and the Government has been consulting on various aspects of this, including the tax treatment.

Clause 11 gives the power to put in place regulations to modify 'relevant tax enactments' (which are specified) as it applies to 'relevant persons' in connection with the rectification provisions.

A relevant person is someone who:

- Had pensionable service during the period 1 April 2015 and 31 March 2022 under a public service pension scheme (called 'remediable service'), subject to certain conditions;

- Has any rights or obligations relating to someone else's remediable service (this is most likely to apply to scheme dependents); or

- Owes an amount (e.g. contributions) or is owned an amount (e.g. compensation) relating to the rectification of the unlawful discrimination which arose from the reforms.

Examples of the likely changes which may be introduced by secondary legislation include:

- Provision of an exemption from tax on compensation an individual may receive if, following the remedies, they are still owed money;

- Allowing an individual to protect their pension rights from lifetime allowance charges calculated on the higher of the two pension choices available to them;

- Additional annual allowance being made available so that an individual will not pay more annual allowance charge than they would have done if they had accrued their chosen benefits in the relevant tax years;

- Where a scheme has paid lifetime allowance or annual allowance charges on behalf of the individual, but that accrual is now under a different scheme, for the payment to be deemed to have been paid by the latter scheme; and

- Ensuring that payments of pensions and lump sums that would have been authorised payments had they been made at the relevant time, are treated as meeting the conditions to be authorised.

Capital allowances **(Lecture B1292 - 19.07 minutes)**

Annual investment allowance

Clause 12 extends the 100% Annual Investment Allowance (AIA) available for qualifying expenditure on P&M up to £1 million until 31 March 2023, rather than being reduced to its former level of £200,000 after 31 December 2021 as previously announced (which had already been extended from 31 December 2020).

The limit will be subject to transitional rules where accounting periods straddle 31 March 2023. These transitional provisions are the same as have applied when the rate of AIA has changed previously.

<u>Example</u>

A company has a year end 30 June 2023.

The total maximum AIA for the period will be (£1,000,000 x 274/365) + (£200,000 x 91/365), i.e. £750,685 + £49,863 = £800,548.

For expenditure between 1 July 2022 and 31 March 2023, the actual maximum expenditure that can qualify for AIA is the £800,548.

But the maximum expenditure that can qualify between 1 April 2023 and 30 June 2023 is only (£200,000 x 91/365) £49,863.

If the company incurs special rate expenditure of £750,000 on 31 March 2023 it will qualify for 100% AIA, saving (at 20.5% if its profits exceed the upper limit of £250,000 p.a. after 31 March 2023), i.e. £153,750 in corporation tax for the period. The company would likely prefer this to claiming a 50% SR allowance to which it would be entitled if there are no other assets against which the AIA would be better used.

If the expenditure is incurred on 2 April 2023, the business would only be able to claim an AIA of £49,863 AIA plus a writing down allowance on the balance of 6% x (£750,000 - £49,863) in first-year allowances, i.e. £91,871, which would only save £18,834 in corporation tax.

Getting the timing wrong would cost the company extra tax for its year ended 30 June 2023 of (153,750 – 18,834) £134,916.

For unincorporated businesses, with no SR allowance or super-deduction, the difference in timing would be far more punitive. If the asset was bought by (say) an LLP on 2 April 2023, it would receive

£49,863 AIA plus 6% WDA on the balance of (750,000 – 49,863) i.e. £91,871 allowance, instead of £750,000 if incurred before 1 April 2023.

Structures and buildings allowances

S270IA CAA 2001 requires the current owner to obtain an 'allowance statement' from the vendor to be eligible to claim structures and buildings allowances (SBA) on the asset they have acquired.

Currently this allowance statement needs to identify the building or structure to which it relates and:

a) The date of the earliest contract for the construction of the building or structure

b) The amount of qualifying expenditure incurred on its construction or purchase, and

c) The date on which the building or structure is first brought into non-residential use.

Where the subsequent (current) owner is entitled to claim SBA it is on the same qualifying expenditure as the person who incurred the original qualifying expenditure and allowances stop after 33 years and 4 months (the allowance is 3% per annum, straight-line).

In order for the current owner to know when to stop claiming allowances, they have to know when the previous owner(s) incurred the qualifying expenditure but this is not currently a required piece of information.

Clause 13 therefore adds the requirement that where qualifying expenditure is incurred on the construction or acquisition of the building or structure after the date when it is first brought into non-residential use, the 'allowance statement' must contain the date on which the expenditure was incurred.

This requirement is mandatory where the qualifying expenditure is incurred from the date of Royal Assent of Finance Act 2022, or where it is treated as being incurred from that date by virtue of s270BB(3) CAA 2001.

S270BB(3) CAA 2001 permits capital expenditure on construction of a building to be treated as incurred on

a) the latest day on which capital expenditure on the construction is incurred, or

b) the first day of the chargeable period after this date, or

c) the first day of the chargeable period in which the day on which the expenditure is actually incurred falls.

Reliefs for investments (Lecture B1294 – 22.41 minutes)

From 1 April 2022 a new tax regime for qualifying asset holding companies (QAHCs) and some of the payments they make will be introduced. The regime will apply to certain QAHCs that are used in a range of collective and institutional investment structures to hold investment assets.

It will also apply to investment funds, institutions and individuals that invest in these structures. A qualifying AHC will have to be at least 70% owned by diversely-owned funds or certain institutional investors and carry out mainly investment activity with no more than insubstantial ancillary trading.

The broad intention behind this regime is to ensure UK competitiveness as a location for asset management and investment funds.

It operates so that investors are taxed broadly as if they had invested in the underlying assets and the intermediate holding companies pay no more tax than is proportionate to the activities they perform.

Conditions for being a QAHC (Para 2, Schedule 2)

The company must:

a) be UK resident;

b) meet the ‘ownership condition’ (see below);

c) meet the ‘activity condition’ (see below);

d) meet the investment strategy condition;

e) not be a REIT;

f) not have equity securities listed or traded on any recognised stock exchange, or any other public market or exchange; and

g) have an entry notification in force (see below).

Ownership condition (Para 3, Schedule 2)

A company is deemed to meet the ownership condition in its first two years as long as it will meet the ownership condition thereafter.

The condition is met if:

a) the sum of ‘relevant interests’ held by persons who are not Category A investors does not exceed 30%; and

b) where securities have been issued that entitle holders to a greater proportion of assets or profits of a particular class (‘an enhanced class’), than to the other profits or assets of the company, the sum of the relevant interests in that class of profits or assets held by non-Category A investors must be no more than 30%.

Category A investors are a:

a) QAHC;

b) a qualifying fund– i.e. a non-close fund with genuine diversity of ownership;

c) a relevant qualifying investor– e.g. long-term insurance businesses, UK REITs, persons not liable for tax on grounds of sovereign immunity, a non-UK equivalent of a UK REIT, collective investment vehicles, trustees or managers of pension schemes, charities unless controlled by their main donors;

d) an intermediate company; and

e) a public authority – UK government ministries or departments, local authorities, any health authority, public transport bodies (e.g. TfL).

Relevant interests include direct or indirect interests in the QAHC, being profit available for distribution to equity holders, the assets used wholly or partially for the QAHC business available for distribution to equity holders in a winding up, or the voting power and is take as the highest of these percentage interests.

For enhanced classes, a person has a relevant interest of the higher of its direct or indirect interest in the profits of that class distributable to equity holders, or the assets of that class available for distribution to equity holders in a winding up.

The interests of connected persons (as defined in ss1122-1123 CTA 2010) are aggregated with the person unless the connected person is a Category A investor.

The definition of securities includes ordinary shares and non-commercial loans.

Where a person has a beneficial entitlement to profits that arises under investment management profit-sharing arrangements (i.e. a variable profit share related to the services provided), it is necessary to use the maximum proportional entitlement that could arise over the life of the arrangements, instead of the actual proportion at any particular time.

Notification (Paras 14 - 16)

A company must notify HMRC that is intends to be a QAHC, specifying the date and that it meets all the conditions, or all but the ownership conditions. As noted above, it is deemed to meet the ownership condition for the first two years as long as it reasonably expects this condition to be met within the next two years.

The date specified must be no earlier than 1 April 2022 and is normally the day after the notification date after this but can be later than this.

If the company is non-resident, the notification must state where it is resident, its registration number in that territory and the date on which it will become UK resident (presumably by moving central control and management to the UK).

Corporation tax consequences of becoming a QAHC (para 17 et seq.)

An accounting period ends the day before the company becomes a QAHC and a new one begins.

Where the assets below enter the QAHC ring fence business (see below), there is a deemed disposal (at market value) outside the ring fence business, and reacquisition inside it, of

a) any overseas land the company owns;

b) any loan relationship or derivative contract the company is party to for the purposes of an overseas property business; and

c) any qualifying shares.

Similarly, when one of the above assets leaves the ring fence business, there is a deemed disposal at market value within the ring fence and a deemed acquisition outside it.

If the QAHC holds a substantial shareholding in c) above, but at the date of the deemed sale, the 12 months ownership condition was not met for the purposes of SSE, but subsequently they are held for at least 12 months and, at that time, a disposal would qualify for SSE, no gain is deemed to arise on becoming a QAHC on those shares.

If the company was non-resident and became UK resident in the 30 days before it became a QAHC, no deemed disposals arise.

QAHC ring fence business (Para 20)

Once the company has become a QAHC, its qualifying activities are treated as separate and distinct from all other activities it carries on now, any activity it carried on before becoming a QAHC and any activity it will carry on after it has ceased to be a QAHC.

This means that:

1. the ring fence business is treated as a separate company distinct from any other activity it carries on for the purpose of calculating corporation tax (though it only files a single CT600 for all its activities);

2. no loss arising outside the ring fence business can be set off against the profits of that business; and

3. no loss arising within the ring fence business can be set off against any profits of any other activity outside the ring fence (including before it became a QAHC and after it has ceased to be one), although they can be group relieved against QAHC ring fence profits of other 75% group companies.

Just and reasonable apportionments are needed for assets, receipts, losses and gains which relate to both the QAHC ring fence business and the other activities.

Transfers of chargeable gains and allowable losses between a 75% group company and a QAHC are treated as arising outside of the QAHC ring fence business.

A distribution received by a QAHC received from a REIT that is treated as a profit from a UK property business is received outside the QAHC ring fence business (and is therefore taxable on the QAHC).

Part 7ZA CTA 2010 (limiting deduction of losses brought forward) does not apply to a QAHC ring fence business.

Extra return required

A QAHC must send a return to HMRC for each accounting period (separate to its CT600) with:

1. its name and UTR;

2. the name, UTR (if any) and address of any person (if a partnership, the details of the partnership not the particular partner who provided the services) who has provided investment management services to the QAHC;

3. an estimate of the market value of the assets within the QAHC ring fence business as at the end of the accounting period;

4. the gross proceeds from disposals of assets from ring fence business in the accounting period;

5. payments made by the QAHC to redeem, repay or purchase its own shares.

This return must be provided to HMRC before the end of the filing date for the CT600 for the accounting period. Failure to meet this deadline will mean a £300 penalty which is appealable and subject to a reasonable excuse defence.

Ceasing to be a QAHC

A company can notify HMRC that it wishes to leave the QAHC regime by serving it with an ‘exit notification’, stating its name, UTR and the date on which its entry notification no longer has effect (but cannot be retrospective).

A QAHC must notify HMRC if it ceases to meet a relevant condition as soon as is reasonably practicable after becoming aware of it. It must set out:

1. a description of the breach;

2. the date on which it occurred;

3. the date on which the QAHC first became aware of it; and

4. where the breach is a breach of the ownership condition to which a ‘cure period’ (see below) could apply and whether it intends to rely on this cure period (and if so, what steps it intends to take to meet the ownership condition by the end of the cure period.

Cure periods

If the breach of the ownership period is not deliberate, the company has notified HMRC of it as above and the breach has ceased as soon as reasonably practicable, the breach is treated as not having occurred.

A breach is deliberate if the QAHC, a director or manager of the QAHC, an owner with a relevant interest of at least 25% (or a person who directs or manages the owner) does anything that they knew would lead to a breach of the ownership condition and it would have been reasonable for the person to avoid doing that thing.

A cure period of 90 days from when the QAHC became aware of the breach applies to the breach of ownership condition if:

1. the breach was not deliberate;
2. Category A investors still hold more than 50% relevant interest in the QAHC;
3. the company took reasonable steps to monitor compliance; and
4. the QAHC has notified HMRC that is intends to rely on the cure period.

HMRC can extend the 90-day period at its discretion.

Where a cure period applies, no breach is treated as having occurred.

Wind-down period

If the breach of the ownership condition was as a result of an investor ceasing to be Category A, or because the QAHC purchased or redeemed a relevant interest and at the time it intends to cease the ring fence business soon as practicable, it can notify HMRC that it is entering a 'wind-down period' (i.e. that it expects to have sold all the ring fence assets within two years of the QAHC becoming aware of the breach).

During this period, its ring fence business will still fall within the QAHC regime, despite being in breach of the ownership condition.

The wind-down period is generally two years from the company becoming aware of the breach but it can be extended by HMRC, but if the QAHC acquires assets or raises capital in that period (which must be notified to HMRC), the wind-down period ceases immediately unless these actions were connected with the wind-down or to prevent the insolvency of the QAHC during the wind-down period.

Ceasing to be a QAHC (Para 29 et seq.)

Generally, a company ceases to be a QAHC immediately after a condition ceases to be met, unless the breach can be cured or it enters a winding-down period as set out above.

If a breach of the ownership condition is not cured, the company ceases to be a QAHC at the end of the cure period, unless the cure period ceases to apply because Category A investors' relevant interest falls to 50% or less, in which case the company loses its QAHC status immediately after this occurs.

If the company has entered a wind-down period, it ceases to be a QAHC at the end of that period.

When a company ceases to be a QAHC a chargeable accounting period ends and a new one begins the following day.

The QAHC is treated as disposing of (at market value) the relevant assets discussed above (land, certain loan relationships and derivatives and qualifying shares) within the QAHC ring fence and then reacquiring them outside the ring fence.

Any interest payable on securities issued by the company, which is in connection with the transfer of relevant interests as a result of which the company ceased to be a QAHC, is treated as made while it was a QAHC if it was paid on the same date it ceased to be one, but after this cessation occurred.

Group aspects (Part 4)

If overseas land, relevant loan relations or derivative contracts, qualifying shares or any other asset that will be within the QAHC ring fence business are sold to the QAHC by other 75% capital gains group companies, or vice-versa, the normal intra-group rules on tax-neutral transfers are disapplied.

As the companies are connected, the disposals will be treated as taking place at market value.

Ownership periods of shares transferred to a QAHC by a group company are aggregated for the purposes of establishing if a later disposal by the QAHC qualifies for substantial shareholding exemption (Schedule 7AC TCGA 1992). This applies even if the recipient company has ceased to be a QAHC by the time it disposes of the shares. However, for the purposes of this law, any shareholdings owned by other group companies are ignored in determining whether the QAHC owns at least 10% of the share capital and voting power.

There are provisions relating to de-grouping gains where a QAHC disposes of shares which are exempt as a result of it being a QAHC. Normally, where a gain or loss would have been adjusted as a result of s179(3D) or (3E) TCGA 1992 for the transferor of the asset previously transferred to the QAHC, the gain or loss accruing is treated as accruing to the QAHC outside of its ring fence business.

Loans to participators

If a QAHC lends to a participator, it is deemed to be a close company for the purposes of s455 tax.

Exchange gains and losses

If a QAHC has a loan relationship asset or liability, which it either fair values or uses in a designated fair value hedge of foreign currency risk, and it is denominated in a foreign currency, the exchange gain or loss for the accounting period is the change in the fair value attributable only to changes in:

1. the spot rate between the currency of the instrument <u>or another currency relevant to the value of the asset or liability</u>; and

2. the base currency of the QAHC.

This flexibility will be used typically where a QAHC borrows in one currency and then uses this money to make a number of investments which are denominated in different currencies.

Connected company loan relationships

The normal rule in s349 CTA 2009 that amortised cost must be used for connected company loan relationships is disapplied if the QAHC lends the money as part of its investment activities and accounts for the loan using fair value accounting.

Transfer pricing

The participation condition in s148 TIOPA 2010 is extended so that the transfer pricing rules in Part 4 TIOPA 2010 apply to arrangement between a QAHC and

1. investors with a relevant interest in the QAHC; or

2. any person for whom the participation condition would be met in relation to their relationship with those investors.

The small and medium-sized enterprise exemptions do not apply to transactions involving a QAHC.

Corporate interest restriction

If a QAHC owns a subsidiary and chooses to account for it at market value under the 'investment company exemption' in IFRS 10, the subsidiary and any of its subsidiaries do not form part of the worldwide group in which the QAHC sits.

Instead, the subsidiary and any of its own subsidiaries form their own worldwide group for CIR purposes.

If a QAHC has a wholly owned subsidiary which is itself a QAHC and is not accounted for as a market value investment, the two companies are included in the same worldwide group for CIR purposes.

Treatment of certain amounts payable by a QAHC

The loan relationship rules treat certain amounts of interest payable as distributions, where they are payable on 'special securities' in certain cases.

Para 44 prevents such amount being treated as distributions where the securities fall within Conditions B, C and D of s1015 CTA 2010 (convertible securities, interest linked to the results of the company, securities connected with shares in the company) and a QAHC is party to the security for the purpose of its ring fence business.

If the security is used partly for the ring fence business and partly for other purposes, a just and reasonable apportionment of the amount payable must be made.

Application of hybrid mismatch rules

Where the payer treats an instrument as debt (giving rise to interest payable) but in the recipient jurisdiction, the corresponding amount receivable is treated as a distribution, this can give rise to a hybrid financial instrument deduction/non-inclusion mismatch (Chapter 3 Part 6A TIOPA 2010) in which it is possible for the interest payable to be disallowed.

Para 45 ensures that the amount payable in Para 44 above remains deductible, notwithstanding how it is treated in the recipient's jurisdiction.

Where a QAHC receives a payment and is obliged to make a relevant distribution which is not treated as distribution for tax purposes in accordance with Para 44, the amount received used to make the distribution is treated as ordinary income for the purpose of Chapter 3 Part 6A TIOPA 2010.

Payments of distributions etc. to individuals taxed on remittance basis

If the QAHC pays interest or makes a distribution to an individual who is taxed on a remittance basis, or the individual disposes of shares in the QAHC, the foreign portion of these amounts is treated as relevant foreign income or a foreign chargeable gain if the individual has provided investment management services to the QAHC.

The foreign proportion is the proportion of the QAHC profits derived from foreign sources (on a just and reasonable basis) in the relevant period. For this purpose, the QAHC includes any profits that would have arisen had it disposed of all of its assets at market value immediately before the end of the period (i.e. it includes mark-to-market gains and losses on its assets in its profits).

Profits are 'foreign source' based on the underlying income or assets to which the profits relate, not just the direct source. For example, if the income and gain in value of an investment in another UK company derive from the investee's profits arising outside the UK, this is foreign source income for the QAHC.

If the company has been a QAHC for at least three accounting periods, the relevant period is the three most recent complete accounting periods. If not, it is the period from when the company became a QAHC to when the income or chargeable gain arose on the individual.

Purchase of own shares

If a QAHC makes a payment on the redemption, repayment or purchase of its own shares, this is not generally treated as a distribution for tax purposes.

There is an exception for 'qualifying' employment-related securities. These are securities acquired by an employee who is not a fund manager in relation to the QAHC which were made available as a result of employment either by the QAHC or a company in which the QAHC has at least a 25% interest.

If the payment, redemption, repayment or purchase of own shares takes place in a cure period, Para 47 will not apply (so the receipt will be generally taxed on the recipient as a distribution) if the payment is made to a non-Category A investor where the relevant interests of non-Category A investors total more than 30% (or 30% of an enhanced class) and the person increased their relevant interest in the QAHC on or after the date this limit was exceeded.

This rule applies even if the breach leading to the cure period is rectified such that it is not treated as a breach of the ownership condition.

Transactions in securities rules

Para 49 largely disapplies the T-i-S rules in relation to holdings in a QAHC. It would be inappropriate to introduce uncertainty for individuals where the QAHC rules clearly state that buy-backs of shares are not treated as distributions.

The rules continue to apply in full to qualifying employment-related securities, reflecting the non-availability of capital treatment on buybacks of such securities.

Late paid interest

The late paid interest rules in s373(1) CTA 2009 does not apply where interest is payable by a QAHC on a loan relationship to which it is a party for the purpose of its QAHC ring fence business.

Interest payable must be apportioned where the loan relationship is partly for the purpose of the QAHC ring fence business (on a just and reasonable basis).

Deeply discounted securities

S409 CTA 2009 (postponement until redemption of debits of close companies' deeply discounted securities) does not apply to a qualifying debit (where the debit relates to the amount of the discount and the security for the purpose of its QAHC ring fence business).

Again, apportionment is made where the QAHC is party to the deeply discounted security partly for the purpose of the ring fence trade on a just and reasonable basis.

Overseas property income

There is no liability to corporation tax on overseas property profits to the extent that these profits are taxable (at a rate greater than 0%) in a foreign jurisdiction.

This exemption extends to profits arising from loan relationship and derivative contracts held by a QAHC for the purposes of an overseas property business which is itself exempt.

Disposals of overseas land and certain shares

A gain on disposal of overseas land by a QAHC is exempt for corporation tax purposes.

Similarly, gains on shares are exempt unless the shares derive at least at least 75% of their value from UK land.

Shares for this purpose includes stock, other membership interests in a company, an interest as a co-owner of shares, right of a unit holder in a unit trust, units in transparent funds treated as assets under s103D(3) TCGA 1992 and derivatives where the underlying asset is shares (such as share options, share warrants etc.).

Stamp Duty and Stamp Duty Reserve Tax

The transfer to a QAHC of its own shares or loan capital is exempt from all stamp duties if:

a) the transfer does not form part of disqualifying arrangements (i.e. the QAHC buys back, then issues new shares or loan capital to a different person where this was the main or one of the main purposes of the arrangement to avoid stamp duties on an effective transfer from one party to another of the shares or loan capital);

b) it does not take place when arrangements for a substantial sale (at least 90% of the relevant interests) of the QAHC exist; and

c) the QAHC delivers a return to the registrar of the purchase of its own shares (as required by s707 CA 2006).

This exemption includes where the company ceases to be a QAHC as a result of the purchase of its own shares or loan capital.

Exemption from withholding tax

A QAHC does not need to deduct withholding tax from payments of interest, however this interest arises.

Real Estate Investment Trusts

REITs are companies with shares listed and traded on a recognised stock exchange that invest in properties to rent out. They were created in 2007 to provide tax-efficient vehicles through which people could invest indirectly in real estate.

A REIT must meet certain qualifying conditions, including

1. Not being a close company (unless closely held by institutional investors),

2. Investing in at least 3 properties with no property accounting for more than 40% of the total value of properties held in the property business

3. At least 75% of the REIT's gross assets and at least 75% of its accounting profits (computed using IFRS principles) must relate to the property rental business

4. Distributing at least 90% of its tax-exempt income profits (not capital gains), as well as 100% of any property income distributions received from other REITs it may have invested in, by the filing date for its corporation tax return (usually 12 months after the end of the chargeable accounting period). The distribution can be a scrip dividend (issuing shares instead of cash)

5. Maintaining a ratio of profit to financing costs of at least 1.25:1

Profits and gains from its property business are exempt from corporation tax if it meets the qualifying conditions.

Profits and gains from its non-property business profits (such as property trading, property development, asset management fees and gains on disposals of shares) are taxable under normal corporation tax rules.

Distributions by REITs out their property business profits are treating as property business income received by the shareholders. Generally, the REIT must withhold 20% tax at source, unless it is paying a UK pension scheme or UK resident company.

Several amendments are made in Clause 15 and Schedule 3 to ease the administrative burden on REITs and apply to accounting periods beginning on or after 1 April 2022.

Para 3A is inserted into s527 CTA 2010. It disapplies s528A (further conditions relating to shares – that they are listed throughout the accounting period) where Condition C in s528(3) CTA 2010 applies.

S528(3) is amended so that Condition C now reads:

a) That the shares forming the company's ordinary share capital are admitted to trading on a recognised stock exchange, or

b) At least 70% of the shares forming the company's ordinary share capital are owned by one or more institutional investors

This means that the company no longer needs to be a listed company if at least 70% of its ordinary share capital is owned by institutional investors.

If a company was owned at least 70% by institutional investors, but this is no longer the case, new para 3B treats the company as meeting Condition C for the 12 months after condition in s528(3)(b) is no longer met.

Institutional investors

S538(4A)(j) is amended so that a non-UK resident person who is the equivalent of a UK REIT is treated as an institutional investor. Previously, it had to be equivalent to a UK REIT under the laws of its territory. This meant that if the foreign jurisdiction did not have laws equivalent to the UK REIT laws, it could not previously have been considered an institutional investor.

S528ZA CTA 2010 is inserted and applies to the 70% test in new S528(3)(b) inserted above.

A person 'owns' ordinary share capital if the person owns it directly, indirectly or a mixture of the two, using the definitions of this in ss1155 – 1177 CTA 2010, but where references to a body corporate should be treated as including

a) An exempt authorised unit trust,

b) A UK property rich collective investment vehicle, etc – per Schedule 5AAA TCGA 1992, para 46(12), and

c) An authorised contractual scheme which is a co-ownership scheme

References to ordinary share capital are taken to include reference to units or corresponding interests in the entity concerned.

Where a partnership owns ordinary share capital of a company, each partner is treated as owning a proportion of that share capital based on the partner's proportionate interest in it, except for a limited partnership which is a collective investment scheme and meets the genuine diversity of ownership test (in new s528ZB(2) – see below).

S528ZB is inserted dealing with the listing requirement in relation to collective investment schemes.

Para 1, referring to new s528(3)(b) above (the 70% test) states that where shares are owned by a person acting on behalf of a limited partnership which is a collective investment scheme as mentioned in section 528(4A)(c), the person is to be treated as an institutional investor only if the collective investment scheme meets the genuine diversity of ownership condition.

Para 2 defines what is meant by genuine diversity of ownership, that is it meets:

a) The conditions in regs 75(2), (3) and (4)(a) of the Offshore Funds (Tax) Regulations 2009 (SI 2009/3001); or

b) The condition in reg 75(5), assuming that reg 75(4)(b) was omitted;

whether or not it is an offshore fund.

The fact that the capacity of the vehicle to receive investments is limited does not prevent reg 75(3) from being met unless the limited capacity is fixed by documents of the vehicle and a pre-determined number of specific persons, or specific groups of connected persons, make investments in the vehicle that collectively exhaust all, or substantially all, of that capacity.

For funds constituted before 1 April 2022, the statement required in reg 75(2) prepared by a scheme manager available to investors and HMRC is treated as meeting reg 75(2) on or after that date.

Requirement for financial statements

The changes modify rules that require provision of financial statements to demonstrate that a REIT has met the test that at least 75% of a UK REIT's profits and assets relate to its property rental business.

They provide for simplified requirements for group REITs which, if met, remove the need to perform certain calculations and provide full financial statements for each group member.

Financial statements no longer need to specify separate amounts for each member of the group, just the group figures unless the profits for the group's property business are less than 80% of the total profits including the residual business of the group (new paras 1B and 1C, s533 CTA 2010).

Profits of residual business resulting from compliance with planning obligations under s106 of the Town and Country Planning Act 1990 are disregarded when performing the 75% profit test.

Where the sum of the value of the assets relating to property rental business plus cash and relevant REIT shares relating to the residual business is less than 80% of the total value of assets held by the group, the amount of profit from complying with planning obligations above must be specified separately for each member of the group (new paras 1F and 1G, s533 CTA 2010). These assets exclude derivative assets where held for hedging purposes and assets used in activities outside the group's ordinary business.

Assets of residual business of members of the group or of the company held solely as a result of compliance with planning obligations, derivative assets and liabilities used for hedging and assets and liabilities used in activities outside the group or company's ordinary business are excluded from the 75% assets test.

As a result of the amendments to the profits and assets tests, reg 7 of the Real Estate Investment Trusts (Financial Statements of Group Real Estate Investment Trusts) Regulations (SI 2006/2865) is repealed.

Holders of excessive rights

The ‘holders of excessive rights’ rule in s551 CTA 2010 is designed to protects a loss of tax on property income distributions (PIDs) paid to non-resident corporate entities holding at least 10% of the ordinary share capital, or entitled to at least 10% of the distributions made, or holding at least 10% of the voting power in the REIT making the distribution.

It levies a tax charge on the REIT of the profit, calculated as the excessive rights holder’s share of the REIT’s profits x the basic rate of tax (currently 20%) ÷ the main rate of corporation tax (currently 19%).

S553 CTA 2010 defines a holder of excessive rights and currently includes any company, UK or non-UK resident.

The rules are amended so that investors in UK REITs who are entitled to payment of PIDs without tax being deducted, such as UK companies, will not be treated as holders of excessive rights and consequently no charge will arise on the UK REIT under section 551 for distributions made from 1 April 2022.

Cultural reliefs **(Lecture P1293 – 11.03 minutes)**

The Government created special tax relief schemes for the arts many years ago which enable companies producing artistic output such as films, high-end TV programmes, theatre and orchestral performances to claim enhanced deductions for production costs and claim payable tax credits for losses caused by these production costs.

Each scheme has its own conditions and rules.

The Finance Bill proposes amendments to these schemes, principally to increase the rate of payable tax credits but also makes other changes.

Film Tax Relief: films produced to be TV programmes

Under Clause 16, for accounting periods ending on or after 1 April 2022, new s1196A in inserted into CTA 2009, allowing companies to claim film tax relief only when the film

a) is intended for theatrical release (i.e. shown to the paying public at a commercial cinema); or

b) broadcast as a television programme to the general public if it meets conditions A to D (a ‘relevant programme’) in s1216AB CTA 2009.

As long as the film meets these conditions at the end of an accounting period then it is treated as meeting them throughout the period.

If it does not meet the conditions at the end of the period, it cannot be treated as meeting them in any future period (though relief would still be available for any previous period in which it met the conditions).

It also prevents companies from claiming film tax relief if television tax relief is available on the same expenditure.

If principal photography has been completed by 1 April 2022, or if the film was ineligible in a prior period due to not intending a theatrical release, the film cannot qualify for relief under the amended rules above.

This change gives flexibility to companies who have commenced production intending to show a film through commercial cinemas to change so that it is shown on television without losing previous film tax reliefs.

Temporary increase in theatre tax credit

Eligible theatre productions (plays, operas, musicals, ballets) where the performances are live and all or a high proportion will be to paying members of the public or provided for educational purposes, can claim a tax credit for losses caused by core production costs.

To qualify at least 25% of the core expenditure must be on goods and services provided in the UK or EEA (this latter point might be amended in future legislation but was not removed following the UK's withdrawal from the EU).

Core expenditure relates to producing and closing the production.

The company can claim an additional deduction against its income of the smaller of

1. 80% of the total core expenditure, or
2. The core expenditure on goods and services provided from the EEA

If this creates or augments a loss, the company can surrender the loss for a payable tax credit.

Prior to the Finance Bill, this was 20% for non-touring productions and 25% for touring productions.

Clause 17 temporarily increases these rates for accounting periods beginning on or after 27 October 2021.

The increased rates are:

Accounting period	Touring productions	Non-touring productions
Ending between 27 October 2021 and 31 March 2023	50%	45%
Ending between 1 April 2023 and 31 March 2024	35%	30%

Where the accounting periods straddle these dates the period before and the period after are considered to be two separate accounting periods. Losses must be apportioned on a just and reasonable basis to establish the losses eligible for the increased rates of tax credit.

Theatrical productions tax relief

The qualifying conditions are extended to include the fact that each performance is intended to be given to an audience of at least five individuals.

A ‘dramatic production’ is currently worded as a play, opera, musical or ‘other dramatic piece’. This phrase is replaced by the term ‘relevant dramatic piece’ as is now defined as a ‘dramatic piece (other than a play, opera or musical) that tells a story or number of related or unrelated stories’.

Under Clause 18, a production that is produced for training purposes is not now considered to be a theatrical production so cannot qualify for tax relief.

Commercial purposes condition

The ‘commercial purposes’ condition in s1217GA CTA 2009 is extended by inserting three new paragraphs after Para 2.

New Para 2A requires that the performance be separately ticketed and that a significant proportion (which is not defined) of earnings from the performance should be obtained from this ticketing.

New Para 2B allows the ticket to cover incidental items as well (such as programmes and food consumed during the performance) if the ticket price can be reasonably apportioned.

New Para 2C defines what is meant by a performance being provided ‘for educational purposes’ (s1217GA(1)(b)) – that is where it is provided mainly for the purpose of educating the audience.

Core expenditure

New s1217GC(3) CTA 2009 clarifies that where the production phase begins on or after 1 April 2022, expenditure by an educational body (defined in s71 CTA 2009) on teaching or training participants in a production is expenditure on a matter not directly involved in producing the production, except to the extent that the teaching or training takes place as part of a rehearsal for the production.

As such, it does not qualify as core expenditure.

Temporary increase in orchestra tax relief

A company can claim Orchestra Tax Relief if it is a qualifying orchestral production company putting on a qualifying orchestral concert.

A qualifying orchestral concert is one which:

1. is performed by an orchestra, ensemble, group or band consisting wholly or mainly of instrumentalists who are the primary focus of the concert;

2. consists of a minimum of 12 instrumentalists;

3. all or the majority of the instruments are not electronically amplified;

4. is intended to be performed live for the paying public or for educational purposes;

5. at least 25% of core expenditure is on goods or services provided from within the European Economic Area (EEA).

Core expenditure does not include expenditure on the actual performance.

The company must also be:

- responsible for putting on the concert from start to finish, including employing or engaging the performers;
- actively engaged in planning and decision-making;
- directly negotiate, contract and pay for rights, goods and services.

A qualifying orchestral company can claim an additional deduction of the lower of either:

1. 80% of total core expenditure; or

2. the amount of UK core expenditure.

If the (enhanced) core production costs create or augment a loss, the loss caused by the enhanced core expenditure can be surrendered for a payable tax credit. The rate of tax credit has been 25%.

Clause 19 temporarily increases the rate where the production process began on or after 27 October 2021.

The increased rates are:

Accounting period	**Rate**
Ending between 27 October 2021 and 31 March 2023	50%
Ending between 1 April 2023 and 31 March 2024	35%

Where the accounting periods straddle these dates the period before and the period after are considered to be two separate accounting periods. Losses must be apportioned on a just and reasonable basis to establish the losses eligible for the increased rates of tax credit.

The rate of tax credit reverts to 25% from 1 April 2024.

Orchestra tax relief (Clause 20)

Under Clause 20, an orchestral concert that is produced for training purposes can no longer qualify for tax relief.

Commercial purposes condition

The ‘commercial purposes’ condition in s1217RA CTA 2009 is extended by inserting three new paragraphs after Para 2.

New Para 6A requires that the performance be separately ticketed and that a significant proportion (which is not defined) of earnings from the performance should be obtained from this ticketing.

New Para 6B allows the ticket to cover incidental items as well (such as programmes and food consumed during the performance) if the ticket price can be reasonably apportioned.

New Para 6C defines what is meant by a performance being provided ‘for educational purposes’ (s1217GA(1)(b)) – that is where it is provided entirely or mainly for the purpose of educating the audience.

Core expenditure

New s1217RC(4) CTA 2009 clarifies that where the production phase begins on or after 1 April 2022, expenditure by an educational body (defined in s71 CTA 2009) on teaching or training participants in a production is expenditure on a matter not directly involved in producing the production, except to the extent that the teaching or training takes place as part of a rehearsal for the production.

As such, it does not qualify as core expenditure.

Temporary increase in museums and galleries exhibition tax credit

A charitable company which maintains a museum or gallery or a company wholly owned by a charity or local authority.

To qualify for relief, a primary company must:

1. make an effective creative, technical or artistic contribution;
2. be actively engaged in planning and decision-making;
3. directly negotiate, contract and pay for rights, goods and services;
4. be responsible for producing and running the exhibition at a venue.

If the exhibition is held at more than one venue, the primary company must be responsible for at least the first of those venues.

If the exhibition is held at two or more venues, there may be secondary production companies.

A secondary production company must be responsible for producing and running the exhibition at a venue and be actively engaged in decision-making in relation to that venue. It is possible to have more than one secondary production company in relation to an exhibition.

A qualifying exhibition is a curated public display of an organised collection of objects or works considered to be of scientific, historic, artistic or cultural interest. This can be of a single object, but the exhibition must have at least 25% of core expenditure spent on goods or services that are provided from within the European Economic Area (EEA).

Core expenditure is spent on producing the exhibition and uninstalling and closing the exhibition if it only open for up to one year.

An additional deduction is available, which is the smaller of:

1. 80% of total core expenditure ;
2. the amount of core expenditure on goods or services that are provided from the EEA.

Losses caused by core expenditure can be surrendered for a payable tax credit which has been 20%, or 25% for touring exhibitions.

A touring exhibition is one where:

1. the exhibition is held at more than one venue;
2. at least 25% of the objects or works displayed at the first venue are displayed at every subsequent venue;
3. there is no more than 6 months between uninstalling at one venue and installation at the next venue;
4. there is a primary production company for the exhibition, which is within the charge to Corporation Tax;
5. the primary production company intended that the exhibition would be touring from the planning stage;

Clause 17 temporarily increases these rates where the production stage begins on or after 27 October 2021.

The increased rates are:

Accounting period	**Touring exhibitions**	**Non-touring exhibitions**
Ending between 27 October 2021 and 31 March 2023	50%	45%

Ending between 1 April 2023 and 31 March 2024	35%	30%

For accounting periods beginning 1 April 2024, the rates revert to 20% (non-touring) and 25% (touring).

Where the accounting periods straddle these dates the period before and the period after are considered to be two separate accounting periods. Losses must be apportioned on a just and reasonable basis to establish the losses eligible for the increased rates of tax credit.

Museums and galleries exhibition tax relief (Clause 22)

Clause 22 inserts Para 3A in s1218ZAA CTA 2009 to clarify that a display of an object or work is not an exhibition to the extent that the public display of the object or work is subordinate to the use of the object or work (or of anything of which it forms part) for another purpose.

For touring exhibitions, the primary company now needs only to be responsible for the exhibition at one or more locations (instead of being responsible for the first exhibition).

Para 6A is inserted in s1218ZCA to clarify that company that is responsible for an exhibition does not, of itself, mean that the company has to maintain a museum or gallery.

These changes apply where the production stage begins on or after 1 April 2022.

This relief was due to expire on 1 April 2022 but it is now extended by two years and will expire on 1 April 2024.

Capital gains tax: disposals of UK land **(Lecture P1291 – 10.91 minutes)**

Returns for disposals of UK land etc. (Clause 23)

Two amendments are made to the requirements to submit a separate return to report gains on disposal of UK residential property.

1. The time limit for submitting the return is extended from 30 days after completion to 60 days.
2. Where land and building are partly residential and partly non-residential, the return only needs to report the gain attributable to the residential part. This had been assumed to be the case previously, but the amendment puts it beyond doubt.

Cross-border group relief **(Lecture B1292 - 19.07 minutes)**

Group relief allows losses within the scope of UK corporation tax to be surrendered from one company in a group for relief against profits within the scope of UK corporation tax of another ‘75%’ group company.

The current law distinguishes between companies established in European Economic Area (EEA) states and companies from non-EEA states. There are two specific sets of provisions.

The first relates to the surrender of losses generated by UK permanent establishments (PEs). In specific circumstances, EEA companies can surrender UK losses of a PE as group relief to UK companies on more favourable terms, in that they do not have to consider if they can use the loss for non-UK tax purposes *in any period* (which includes all future periods).

For accounting periods ending after 27 October 2021, Clause 24 amends the law in CTA 2010 to remove the separate rules for EEA-resident companies so that all non-UK resident companies can only surrender losses of a UK permanent establishment as group relief if it is not possible for the loss to be deducted from non-UK profits of any person for any period.

An identical change is made in s188BI CTA 2010 for brought forward losses since 1 April 2017 which can be group relieved.

Where a company's accounting period straddles 27 October 2021, it will be notionally split into two separate accounting periods for these purposes, one up to 27 October and the second from 28 October to the end of the period.

The second provision relates to the theoretical ability to allow EEA losses to be group relieved to 75% UK group members, following the ECJ decision in Marks & Spencer plc v David Halsey (C-446/03). This is repealed. In practice, it was almost impossible to meet the conditions set out in Chapter 3, Part 5 CTA 2010.

Tonnage tax

The tonnage tax regime means that a company operating qualifying ships may choose to have its shipping profits calculated by reference to the tonnage of those ships, rather than their accounting profits. They are still subject to corporation tax; it is just the measure of the taxable profits which is different. It is an elective regime and an election lasts for ten years. If a company is a member of a group, all qualifying companies within the group must be subject to the election. The election can be renewed and any election remains in place until the company no longer qualifies for tonnage tax or have entered into tax avoidance.

The provisions have been reviewed as part of consideration of legislation post-Brexit and Clause 25 makes various amendments to the legislation to make it simpler and more flexible. The provisions apply from 1 April 2022.

The changes, in brief, are as follows:

- The election to enter into tonnage tax must be made within 12 months from the company becoming a qualifying company. A new provision is included to permit an election to be made outside of the usual period, provided consent is given by an officer of HMRC, which can only be given if there is a reasonable excuse for the failure to make the election in time.
- The period for which an election is valid (unless renewed) is reduced to eight years for elections made on or after 1 April 2022.
- Flexibility is introduced into the renewal process by bringing in the concept of a 'bridging renewal election' where a previous election has expired (and only if it has expired rather than coming to an end in any other way) and an officer of HMRC gives consent to the election to be treated as continuing where nothing has happened in

the interim which would have bought the election to an end. The previous election is then treated as remaining in force. Consent must be sought without delay after the company becomes aware that the previous election has expired.

- Complex flagging and registration rules introduced to comply with EU law are removed although vessels will remain subject to conditions that they are strategically and commercially managed in the UK.
- One requirement to be included in the tonnage tax regime is that companies prove compliance with safety, environmental and working conditions on qualifying ships. Legislation is changes so that the Secretary of State may amendments to these rules via secondary legislation.
- There is an amendment to the provisions relating to whether dividends and other distributions comprising overseas shipping income is relevant income for the purposes of the tonnage tax regime. This is amended so that is only applies if more than 50% of the voting power of the overseas company is held by a company or companies resident in the UK.

Hybrid mismatch rules (Lecture B1292 - 19.07 minutes)

Chapter 7, Part 6A TIOPA 2010 deals with hybrid payee deduction/non-inclusion ("D/NI") mismatches (which would involve a charge made between related parties where the income is recognised by a hybrid entity – one which is opaque for tax purposes in one jurisdiction but transparent in another jurisdiction).

S259GA sets out the conditions for Chapter 7 to be in point, including:

A. there is a payment or quasi-payment made under, or in connection with, the arrangement;

B. The recipient must be a hybrid entity (it is treated as opaque for tax purposes in one of the jurisdictions and transparent in the other);

C. The payer is within the scope of UK corporation tax, or the investor in a hybrid payee is within the charge to UK corporation tax, or the hybrid payee is an LLP.

S259GB then discusses the extent of the D/NI mismatch. It includes a deeming provision in para 3, so that the relevant amount of the excess deduction is taken to arise where:

a) The payee is a hybrid entity (e.g. an LLP or an entity liable to US tax where a 'check the box' election has been made rendering it tax transparent);

b) There is no territory where the payee is resident for tax purposes or there is no territory where ordinary income arises to the payee by virtue of it having a permanent establishment in that territory and no income arises by virtue of a CFC charge (or foreign equivalent).

Para 4 then quantifies the relevant amount of the excess (deduction) as the smaller of:

a) The amount of the excess; or

b) An amount equal to ordinary income that would arise from the payment or quasi-payment to the payee for UK corporation tax purposes if:

    i. The payee was a company; and

    ii. The payment/quasi-payment was made in connection with a trade carried by the payee through a UK permanent establishment.

Para 4A then assumes that where Para 4(b) applies, no ordinary income arises to the payee if:

a) A partner in the partnership is entitled to the amount; and

b) The payee would not be regarded as a hybrid entity under the law of the territory where the partnership is established and the under the law of the territory where the partner is tax resident.

The amendment in Clause 26 creates a new category of ‘relevant transparent entities’ which are treated the same as partnerships for the purpose of this Chapter of TIOPA 2010. This change is retrospective to 1 April 2017 when the hybrid mismatch rules were introduced.

A relevant transparent entity (s259GB(4C)) is, broadly, an entity which is not a partnership, and which is constituted in a jurisdiction other than the UK which is not a zero-tax jurisdiction and which sees the entity as transparent.

Examples would include many US Limited Liability Companies (LLCs) and S Corporations which have not been “checked closed” for US tax purposes (the default tax treatment for these entities under UK tax law is that they are transparent and their income and expenses are treated as their investors’ income and expenses).

In addition, new ss259GB(4AA) and 4(AB) are inserted to ensure that the changes do not prevent the existing rules working where a hybrid entity is established in a zero-tax jurisdiction or where the structure including the hybrid payee involves more than one tier of hybrid entities. These changes are prospective as they could create hybrid adjustments which would not have arisen under the original law.

For example, where a payee which is a relevant transparent entity is owned by another relevant transparent entity which is in turn owned by investors some of which see the relevant transparent entities as opaque and some of which see them as transparent.

In such cases, if the parent relevant transparent entity is not a payee (which it may well not be on general principles), under the existing legislation it may not be the case that any mismatch arises by reason of one or more payees being hybrid entities such that it will fall within Section 259GB(1)(b).

The new provisions will effectively treat the parent relevant transparent entity as a payee for the purposes of Section 259GB(1)(b) alone, so in the example above it will then be the case that the mismatch caused by the investors’ differing views of the entities will arise by reason of one or more payees being hybrid entities.

Diverted profits tax (Lecture B1292 - 19.07 minutes)

Mutual agreement procedures (Clause 27)

Double tax agreements provide for the two tax authorities to make a mutual agreement to resolve a case brought by a person to one of the authorities concerning their liability to tax otherwise than in accordance with the double tax arrangements in the agreement.

S114A is inserted into Part 3 Finance Act 2015 to extend the scope of a mutual agreement procedure to diverted profits tax. It has effect in relation to solutions arrived at, or mutual agreements made by HMRC on or after 27 October 2021.

A cross reference to s114A is inserted into s124 TIOPA 2010 (in new para 5) which deals with mutual agreement procedures.

Closure notices etc. (Clause 28)

S101A FA 2015 provides a window for amending a corporation tax return where a charging notice has been issued to a UK or non-UK company for a DPT matter involving entities or transactions lacking commercial substance.

The present law gives the company the chance to amend its corporation tax return to reduce the taxable diverted profits arising (which are taxed at a rate 6 percentage points higher than the corporation tax rate – currently 25%) at any time during the first 12 months of the review.

Clause 28 extends the deadline to all but the last 30 days for the review period.

An identical amendment is made to s101B FA 2015 which deals with a charging notice issued to a foreign company for avoiding a taxable presence in the UK.

New s101C is inserted into FA 2015 to clarify that a closure notice (nor a partial closure notice) may not be issued where the review period for a charging notice has not ended. It is then further clarified that a Tribunal direction to issue a closure notice also cannot be issued until the review period has ended. This is treated as having to come into force on 27 October 2021 and applies to any Tribunal direction gives on or after this date unless the application for the direction was made before 27 September 2021.

Insurance contracts and IFRS 17

Under Clause 29 and Schedule 5, IFRS 17 will become mandatory in the UK for accounting periods beginning on or after 1 January 2023, assuming that it is endorsed by the UK IFRS Endorsements Board.

It will radically change the way in which insurance entities recognise income, primarily for long-term insurance products such as life insurance.

The new rules involve the discounting of future cash inflows and outflows expected during the life of the policy including estimated claims and costs of claims handling which gives the contractual service margin of the product.

An adjustment is needed for 'non-financial risk' which is the inherent uncertainty of the cash flows.

An interest amount is calculated each period on unwinding the discount and a portion of the contractual service margin and adjustment for non-financial risk is recognised as income over the life of the policy.

Cash flow forecasts are re-estimated each year which is generally reflected in future income recognition.

Preparers are required to restate their comparatives when first adopting the new standard and this will give rise to a transitional adjustment to accumulated profits recognised previously.

Schedule 5 gives the Treasury to power to make regulations to deal with the introduction and amendment of IFRS 17 such as the spreading of transitional profits or losses.

It then amends Part 2 of Finance Act 2012 dealing with insurance companies carrying on long-term business.

The calculation of BLAGAB management expenses is amended in ss76 – 128, primarily as a result of omitting Step 2 in s76 ("If the expenses calculated in accordance with step 1 include acquisition expenses for the purposes of section 79, reduce the amount given by step 1 in accordance with the rules in that section (which, in the typical case, provide for six-sevenths of the adjusted amount of those expenses to be disallowed for the accounting period and relieved instead as deemed BLAGAB management expenses for the next six accounting periods)."

There are consequential changes to s1297 CTA 2009 to delete references to spreading relief, as IFRS 17 spreads acquisition expenses as part of the accounting treatment, so presumably the amounts recognised as income and expenses will be taxable and deductible for corporation tax purposes, subject to any specific disallowances.

Corporate loss relief **(Lecture B1292 - 19.07 minutes)**

Clause 30 introduces legislation (to apply retrospectively for accounting periods beginning on or after 1 January 2019) to ensure that companies adopting IFRS 16 continue to benefit from the exemption from the loss carry forward restriction for companies in financial distress.

Under the 2017 loss relief provisions, the use of losses is limited to 50% of profits exceeding the deductions allowance. Where a lease becomes onerous, because the costs of meeting the obligations under the lease exceed the benefits that the company will receive in return, accounting standards require the company to recognise a tax-deductible provision for the net losses arising in respect of the lease.

If lease renegotiations result in a rent reduction or subletting of the property, then there may be a reversal of the provisions resulting in taxable profit. The loss provisions could prevent the losses generated by the original provision being offset against the profit on reversal.

To avoid this, there is an exemption from this rule where reversals of an onerous lease provision form part of a corporate rescue package. However, the wording of the exemption is very narrow in its current form and would not apply to companies that are required to adopt IFRS 16.

These proposed changes will allow companies that are required to adopt IFRS 16 to benefit from an increase in the deductions allowance where they enter into lease renegotiations to avoid insolvency. This will ensure that companies accounting under both the pre-existing accounting standards and IFRS 16 will, in substance, benefit from the same treatment.

Dormant assets scheme

Where an asset has not been used for many years and the provider cannot trace the owner (most commonly applying to bank accounts), the Dormant Assets Scheme allows the provider to transfer the funds to a scheme which manages the fund, retains sufficient funds for any potential reclaims and then distributes the rest to social and environmental initiatives.

The scheme was expanded in 2021 to include the possibility of including assets which have to be monetised before being transferred into the scheme.

Clause 31 introduces legislation such that any CGT charge arising on the disposal of the asset to enable funds to be transferred into the dormant asset scheme does not arise when the asset is liquidated (which occurs before the owner is traced) but would accrue if the proceeds are ever reclaimed and received by the individual to whom the asset belonged. No tax arises if the original asset was held within a tax-free wrapper such as an ISA.

This will come into account by subsequent Treasury order, when the expanded scheme becomes operative.

Residential Property Developer Tax **(Lecture B1295 – 14.27 minutes)**

As announced in February 2021, the government will introduce a new tax from April 2022 on the profits that companies and corporate groups derive from UK residential property development activities.

This is intended to ensure that the largest developers make a fair contribution to help pay for building safety remediation and is one of a package of measures specifically designed to enable the Government to raise funds to deal with unsafe cladding in high-rise buildings.

The legislation is in Clauses 32 – 52 and Schedules 7, 8 and 9 of the Finance Bill. It applies for accounting periods beginning on or after 1 April 2022, with any company having a normal accounting period straddling that date deemed to have separate periods with the second period starting on 1 April 2022. Anti-forestalling provisions apply if it is thought that profits have been accelerated as a result of an arrangement made on or after 29 April 2021 which was designed to avoid the new tax.

The tax is to be called 'Residential Property Developer Tax' or RPDT. The rate of this tax will be 4% and it will be charged on the 'residential property developer profits' to the extent that they exceed the 'developer's allowance'. The tax will be charged and collected as if it is corporation tax. All enactments applying generally to corporation tax will therefore apply to the RPDT too. This includes powers and rights in relation to returns, assessment, collection and payment of tax, appeals, general administration, penalties and interest on unpaid tax. RPDT is included within provisions for quarterly instalment payments and group payment arrangements.

If a sum is being paid which represents the RPDT, HMRC must be notified in writing of the amount of the payment. The company which must notify is the RP developer or the relevant company if there is a group payment arrangement.

Residential Property Developer

A company is a 'residential property developer' if:

- It carries on residential property development activities; or
- It (either alone or with other companies which are members of the same group) has a substantial interest (broadly, 10% or more) in a relevant joint venture company.

This will not include non-profit housing companies which is defined as non-profit registered providers of social housing and registered social landlords (or a wholly-owned subsidiary of one of these).

There is an exit charge when a company ceases to be a non-profit housing company without having distributed all of its assets to another non-profit housing company or companies. The charge is based on the profits made in the four years up to the date it ceases to be a non-profit housing company.

Residential property development activities

Residential property development activities are those which are carried on by the company in connection with land in the UK in which the company has an interest and for the purposes of, or in connection with, the development of residential property.

The legislation specifies that activities to be treated as in connection with development of residential property include dealing in residential property, designing it, seeking planning permission in relation to it, constructing or adapting it, marketing it, managing it or any activities which are ancillary to these.

A company can also be caught if it had an interest in land which it ceases to hold but it undertakes activities of designing, seeking planning, constructing or adapting the land (or activities ancillary to these) which were planned or anticipated at the time they ceased to have an interest as long as those activities do not relate solely with areas of land which do not constitute residential property.

An interest in land is defined in the same terms as applies for Stamp Duty Land Tax (and other stamp taxes) being 'an estate, interest, right or power in or over land' or the benefit of any obligation, restriction or condition affecting the value of those. Most commonly this will be freehold or leasehold interests. However, this legislation only applies where that land forms part of the trading stock of the company or any related company (being a 75% group company or relevant JV company) where the trade includes activities for the purposes of or in connection with the development of residential property. Security interests or licences to use land are excluded interests for these purposes.

Residential property

This means a building or part of a building that is designed, adapted or is in the process of being constructed or adapted for use as a dwelling plus land that forms the garden or grounds of such a building. The legislation also includes an interest in or right over land which subsists for the benefit of the dwelling and land for which planning permission is being such that it will fall within any of the previous definitions.

Residential property does not include: anything which is to be used as a home providing residential accommodation for children or any person with personal care needs for any reason; residential accommodation for members of the armed forced or emergency services (including those working in hospitals); hospitals or hospices; temporary sheltered accommodation; prisons or similar; hotels, inns or similar; monasteries, nunneries or similar; or student accommodation (where it is reasonable to suppose that it will be occupied by students for at least 165 days p.a.).

Profits or losses

The RPD profits or losses for an accounting period are calculated as:

A + B – C – D – E

Where:

A is the adjusted trading profits/losses for the accounting period

B is the joint venture profits/losses attributable to the developer

C is the amount of allowable RPDT loss relief given for the period

D is the amount of allowable RPDT group relief claimed for the period

E is the amount of allowable RPDT group relief for carried forward losses claimed for the accounting period.

Each of these terms is then defined.

Adjusted trading profits and losses mean the profits and losses for corporation tax purposes ignoring:

- Profits other than those relating to RPD activities (apportioned on a just and reasonable basis);
- Profits of a charitable trade;
- Any amounts of loss relief, group relief or group relief for carried forward losses;
- Any credits or debits brought into account in relation to loan relationships or derivatives.

Attributable joint venture profits and losses are profits and losses attributable to the RP developer from a relevant joint venture company. Profits are only included in the calculation for the RP developer where they fall below the JV company's RPDT allowance for the period so that the JV company is not itself suffering the RPDT on those profits. The amount allocated is the percentage of the JV profits which the RP developer is entitled to with apportionment if the accounting periods are not co-terminus.

A relevant joint venture company for these purposes is a company which is a RP developer or the member of a same group as an RP developer which is not a 75% subsidiary of another company and where there are five or fewer persons who between them hold 75% or more of the ordinary share capital or (if the company does not have share capital) are beneficially entitled to 75% or more of the profits available for distribution to equity holders. In determining the application of the 'five or fewer persons' test members of the same group are treated as the same person.

JV profits or losses are only attributed to an RP developer if they have a substantial interest in the JV company. A substantial interest means that the RP developer owns at least 10% of the ordinary share capital of the JV or (if the JV company does not have share capital), is beneficially entitled to at least 10% of the profits of the JV that are available for distribution to equity holders of the JV.

Losses are only attributed if a joint election is made between the RP developer and the relevant JV company; the election needs to be made within 2 years from the end of the accounting period of the RP developer. Losses of the JV company which are attributed to the RP developer are not available to be carried forward or surrendered by the JV company. Any payment made by the RP to the JV company is ignored in determining each company's adjusted trading profit or loss.

There are then provisions for RPDT loss relief, RPDT group relief and RPDT group relief for carried forward losses.

The group relief provisions mirror those applying for general corporation tax purposes, but relate solely to RDPT.

There is a limitation on the amount of carried forward losses that can be set off against the profits of a later period for RPDT purposes ('C' and 'E' in the above formula). This means that the carried forward losses do not reduce profits above the annual 'developer's allowance' by more than 50%, similar to the way that the normal loss restriction works.

There is an allowance below which the RPDT is not payable. This 'developer's allowance' is £25m for a 12-month accounting period and this is allocated between group members where the RP developer is a member of a group, with particular rules existing for the allocation where the accounting periods are not co-terminus.

If no allocation is made because there is not a member of the group which has been nominated as the allocating member, the allowance is divided by the number of companies within charge to corporation tax that are members of the group to which the RP developer belongs.

Various administrative provisions exist for the allowance allocation process.

There are complex rules applying where an excluded body holds a substantial interest in a relevant JV company. An excluded body would be one that is not chargeable to corporation tax such as a sovereign wealth fund or pension fund.

The JV company's allowance is reduced by the relevant percentage, being the interest held by the excluded body but an exempt member will then be able to allocate its own annual allowance to its JV interests, up to the amount that has been reduced. The excluded body will have to submit a notional allowance statement.

No deduction is available for corporation tax purposes for RPDT paid. The transfer pricing provisions apply in relation to the calculation of profits arising from RPD activities.

Economic crime levy **(Lecture P1294 – 7.28 minutes)**

This is introduced by Clauses 53 – 66.

A new tax called the economic crime (anti-money laundering) levy (ECL) will be charged and collected by HMRC (unless the person is supervised by the Financial Conduct Authority or the Gambling Commission in which case they will collect the ECL).

The aim is to raise around £100m per annum to help fund anti-money laundering and economic crime reforms. Any entity which is subject to Money Laundering regulations (such as credit institutions, financial institutions, auditors, insolvency practitioners, accountants, tax advisers, legal professionals, estate agents, trust or company service providers, high value dealers, casinos) will be impacted but it will not apply to small entities (being those with UK revenue of up to £10.2m).

There will be three charging bands: medium (revenue of over £10.2m to £36m), large (revenue of over £36m to £1bn) and very large (revenue over £1bn). A flat rate charge will apply in each band. The fees as fixed are:

- Medium: £10,000
- Large: £36,000
- Very large: £250,000

These figures are reduced proportionately if the person is carrying on regulated business for only part of the financial year. The payment is not deductible for the purposes of calculating profits and losses for income tax or corporation tax payments.

The test is applied in relation to the relevant accounting period which is the person's accounting period which ends in the financial year, with specific provisions where there is more than one accounting period or no accounting period which ends in the financial year. The default if no accounting period can be determined will be the profits arising in the actual financial year.

The UK revenues are:

- For a UK resident person, all of their revenue other than amounts attributable to the activities of a permanent establishment outside the UK; and
- For a non-UK resident person, all of their revenue attributable to the activities of a UK permanent establishment plus
- Any amounts not included in the above which are liable to a charge to remote gaming duty

Regulations will be made in due course about assessment, payment, collection and recovery of the ECL. Schedule 36 FA2008 information powers are extended to cover the ECL.

Partnerships will be treated as a person liable to pay the levy as opposed to the individual partners although they have joint and several liability for the ECL.

It will be first charged for the year from 1 April 2023 to 31 March 2024, but not collected until after the year end.

Other taxes

Stamp Duty and Stamp Duty Reserve Tax

Clause 67 sees a power introduced to enable changes to be made to the SD or SDRT charge in relation to securitisation and insurance linked securities by way of secondary legislation, although no such change is currently anticipated.

It will give power to remove the SD or SDRT charge for transfers of relevant securities issued or raised by a securitisation company or qualifying transformer vehicle or transfers to or by a securitisation company.

Securitisation is the use of asset-backed securities to raise debt finance on the capital market. This legislation will allow the Government flexibility to make regulations to exempt certain transfers if they believe it will aid the UK to participate in such markets.

VAT for businesses trading in second-hand vehicles in Northern Ireland

Under the Northern Ireland Protocol, motor vehicle dealers in Northern Ireland may not use the VAT margin scheme for second-hand vehicles when vehicles are purchased in Great Britain and must therefore account for VAT on the full selling price.

Two measures have been announced with the intention of remedying changes to the VAT treatment of Northern Ireland businesses that deal in second-hand vehicles sourced in Great Britain.

Clause 68 is described as an interim arrangement. Where a vehicle was registered prior to the end of the transition period (11pm on 31 December 2020), is sourced in GB or the Isle of Man and then moved to Northern Ireland, the VAT margin scheme can be used as long as the only reason it cannot already be used is due to the Northern Ireland Protocol.

This arrangement will be brought to an end by regulation specifying an end date although it will remain available for vehicles moved before the end date although HMRC will be able to end its use even for those vehicles. Different end dates may be put in place for different cases.

It is intended that a more permanent solution is sought.

Clause 69 allows the Treasure to make an order for a refund to be claimed on goods exported from GB or moved to Northern Ireland in circumstances where, if the goods had remained within GB, they would have been subject to the second-hand margin scheme. A requirement for the refund is that person claiming this would have been a taxable person, the goods could have been resold in GB under the margin scheme and that the goods would have been supplied under the same conditions as they were in fact supplied.

The repayment will be equivalent to the VAT that would have been charged if the consideration for the goods were a VAT inclusive amount.

This should put businesses in a similar financial position to having access to the VAT margin scheme for these second-hand vehicles.

Clause 70 then disapplies the zero-rating of goods exported from GB or supply of goods which involve their removal from GB to Northern Ireland where they are sold under the motor vehicle second-hand margin scheme.

Relief on importation of dental prostheses

Clause 71 amends legislation so that all imports of dental prostheses by or on behalf of a registered dentist or other registered dental care professional are exempt from VAT. This measure will apply retrospectively from 1 January 2021.

The measure is intended to remedy an unintended consequence of the Northern Ireland Protocol which meant that transfers of dental prostheses between GB and NI are subject to VAT. The amendment is being retrospectively applied to ensure there is no gap in the fiscal position that existed prior to the end of the transition period.

Insurance premium tax

Legislation is to be introduced by Clause 72 setting out the criteria for determining the location of risk for insurance premium tax to provide clarity and ensure that risks located outside the UK remain exempt from insurance premium tax in the UK.

This is not new legislation it is just being moved into FA1994 from the Financial Services and Markets Act 2000.

Trade Remedies Authority (TRA)

There were 43 trade defence measures in operation from when the UK was in the EU customs union and which remained in place at the end of the transition period. The TRA is responsible for reviewing such trade remedies which protect UK industry against dumping of goods or subsidising the supply of goods into the UK market. Regulations allow for additional tariffs or quotas to be imposes on imported goods to protect domestic industries.

The TRA provide a recommendation to the Secretary of State on whether a measure should be revoked or varied, maintained or replaced. Under the current legislation, the Secretary of State has to either accept or reject a recommendation in its entirety.

As an example, the most recently launched enquiry is an anti-dumping review into Aluminium Road Wheels from China.

Changes are to be made by Clause 73 such that where the TRA has initiated a review which is yet to be completed, the Secretary of State may indicate that they wish to decide the outcome of the review. This outcome does not have to be based on any prior recommendations or decisions of the TRA. This is intended to give greater ministerial involvement in the TRA's review of existing and proposed trade remedies.

Introduction of public notice powers for non-duty tariff changes

Clause 74 seeks to amend the relevant legislation so that technical updates to tariff legislation, which do not alter the rate of an import duty, will be made by public notice instead of by regulations.

This measure will ensure routine technical changes to the UK's tariff schedule will be implemented more quickly and will have effect from the date of Royal Assent to Finance Bill 2022.

Rebated diesel and biofuels

Clause 75 and Schedule 10 amends the legislation that restricts the use of rebated red diesel and rebated biofuels from 1 April 2022.

This is the end point of a process which started in 2020 when it was announced that the government were going to remove the entitlement to use rebated diesel and biofuel from most sectors as part of climate change measures (as these have harmful emissions profiles).

The final legislation in FA2021 limited the use of rebated diesel and biofuels from 1 April 2022 to 'excepted vehicles' as follows:

- Vehicles used in agriculture, horticulture, fish farming and forestry;
- To propel passenger, freight or maintenance vehicles designed to run on rail tracks;
- For heating and electricity generation in premises used for non-commercial purposes such as places of worship, hospitals and town halls;
- For maintaining golf courses and community amateur sports clubs;
- As fuel for marine craft refuelling and operating in the UK except for propelling private pleasure craft in NI;
- For powering the machinery for travelling fairs and travelling circuses.

Whilst the legislation was included in FA2021, there are a number of technical amendments made to ensure the policy is implemented as intended. In particular:

- changes are made to clarify the specific circumstances where use of rebated diesel and biofuels will be allowed and specifying the penalties that apply for contravening restrictions. In summary, it will be unlawful, from 1 April 2022, to put rebated heavy oil in non-excepted machines, and to use rebated heavy oil and marked oil in non-excepted machines, unless:

    1. HMRC has licensed the user to use rebated fuel and the user has repaid the rebated amount; or

    2. the taking in of the fuel is lawful in the jurisdiction in which it was taken in

- Adjustment to provisions relating to private pleasure craft to reflect circumstances where the craft is refuelled in Northern Ireland before 1 October 2021 and in Great Britain at any time
- Adjustment of the definition applied to agricultural vehicles and when they may use rebated fuel. This will allow agricultural vehicles which are used for the purposes of agriculture, horticulture, fish farming and forestry, to use rebated fuel for any other activities on the land where they are kept to be used for those purposes. This will

also require vehicles, other than tractors and light, single-seat off-road vehicles, to have either built-in or permanently attached machinery for handling or processing agricultural produce or materials to qualify as an agricultural vehicle

- changes to allow the use of rebated fuel when a special vehicle is travelling to or from a golf course or land maintained by a community amateur sports club where it will be or has been used

- changes so that a travelling fair or travelling circus will have to demonstrate its equipment can be fully dismantled once a year and is transportable to other sites to qualify to use rebated fuel.

Tobacco duty

Increases in tobacco duty rates took effect from 6pm on 27 October 2021.

Clause 76 specifies the duty as follows:

- specific duty element on cigarettes goes up to £262.90 per thousand (from £244.78) and the percentage of the retail price remains unchanged at 16.5%. The minimum excise tax (MET) is £347.86 per 1000 cigarettes (from £320.90).
- the duty rate on cigars increases to £327.92 per kilogram (from £305.32).
- The duty rate on hand-rolling tobacco increases to £302.34 per kilogram (from £271.40).
- The duty rate on other smoking tobacco and chewing tobacco is increased to £144.17 per kilogram (from £134.24).
- The duty rate on tobacco for heating is increased to £270.22 per kilogram (from £251.60).

Vehicle excise duty rates for cars, vans, motorcycles

Vehicle excise duty rates for cars, vans, motorcycles, and motorcycle trade licences are to be increased in accordance with the retail price index with effect from 1 April 2022. Specific details are included in Clause 77.

Cabotage is the transport of goods between two places in the same country by a transport operator from another country (for the purposes of hire and reward). It is restricted both in the UK and abroad and the rules applicable to EU operators only currently allow two cabotage journeys within 7 days of entry into the UK. If this is breached, VED has to be paid in the UK by those operators.

Clause 78 includes a legislative change which is to take affect from 28 October 2021 to allow, until 30 April 2022, unlimited cabotage movements of heavy goods vehicles within Great Britain for up to fourteen days after arriving in the United Kingdom on a laden international journey.

The government will continue to freeze vehicle excise duty for heavy goods vehicles for 2022/23 and will continue to suspend the Road User Levy for heavy goods vehicles for another twelve months from 1 August 2022 (Clause 79).

Gaming duty

Clause 80 increases the gross gaming yield bandings for calculating gaming duty in accordance with the retail price index for accounting periods beginning on or after 1 April 2022.

The revised figures are:

Tax rate	Gross gaming yield
15%	First £2,686,000
20%	Next £1,852,000
30%	Next £3,243,000
40%	Next £6,845,000
50%	Remainder

Excise duties: penalties relating to free zones

There are free zone customs special procedures relating to excise duties and Clause 81 enables the excise wrongdoing penalty regime (in Schedule 41 FA2008) to apply where there are breaches relating to these procedures. This applies from 3 November 2021.

Landfill tax

Clause 82 increases the standard and lower rates of Landfill Tax in accordance with the retail price index with effect from 1 April 2022. This means the standard rate increases to £98.60 (from £96.70) and the lower rate increases to £3.15 (from £3.10) in both cases per tonne. The lower rate relates to less polluting qualifying material as designated by HM Treasury Order.

Landfill tax only applies in England and Northern Ireland as it is devolved to Scotland and Wales.

Plastic packaging tax

Clause 83 and Schedule 11 amends the plastic packaging tax legislation to ensure that the tax operates as intended, that the UK complies with international agreements, and that HMRC has the appropriate framework to administer the tax.

Avoidance (Lecture P1295 – 11.09 minutes)

Winding up provisions

Clause 84 introduces legislation enabling an officer of HMRC to present a petition to court for the winding up of a relevant body where it would be in the public interest to do so for the purposes of protecting public revenue.

A relevant body is anyone (including a partnership) that carries on a business as a promoter of tax avoidance schemes within Part 5 FA2014 or anyone connected with such a promoter.

This will apply from Royal Assent.

Publication of information

Clause 85 introduces provisions which will allow HMRC to publish information (including documents) about tax avoidance schemes which will inform taxpayers about the risks of those schemes or where it is appropriate to protect the public revenue. The details which HMRC can publish will include information identifying promoters or persons connected with promoting or implementing the schemes (unless the involvement may be protected by legal professional privilege). HMRC must notify any person who is to be identified and give them 30 days to make representations about the publication and information which is found to be incorrect or misleading will be withdrawn.

This will apply from Royal Assent.

Freezing orders

Clause 86 contains provisions which will allow HMRC to seek a court order to freeze the assets of a person where HMRC have commenced (or are about to commence) penalty proceedings relating to the Disclosure of Tax Avoidance Schemes, the Disclosure of Tax Avoidance Schemes for VAT or other Indirect Taxes, Promoters of Tax Avoidance Schemes and Enablers of Defeated Tax Avoidance regimes.

This will apply from Royal Assent and is aimed at preventing promoters from hiding assets to avoid paying penalties for breaching obligations to do with various tax avoidance schemes.

Clause 87 contains equivalent provisions for Scotland and Clause 88 contains equivalent provisions for Northern Ireland.

Clause 88 contains various provisions relating to all three of the above pieces of legislation. If penalty proceedings have not commenced already, the freezing order will not take effect unless HMRC commence penalty proceedings within 72 hours of the application for the freezing order being determined (disregarding Saturdays, Sundays, Christmas Day, Good Friday or any bank holiday).

Penalties - tax avoidance schemes involving non-resident promoters

Clause 90 introduces Schedule 12 which applies a new penalty to UK based entities which facilitate tax avoidance involving offshore promoters, which HMRC will find difficult to pursue. This also amends the legislation in Schedule 13 FA2020 which provides for joint and several liability for company directors so that it includes these penalties.

The penalties will only apply where various other penalties have already been levied and those penalties related to activities which involved non-resident promoters. A non-resident promoter is someone who carries on a business as a promoter and is resident outside the UK.

The additional penalty payable is equal to the total amount of all consideration received in connection with the facilitated arrangements, although HMRC may assess a lower amount if they believe that is just and reasonable. Consideration is defined within the legislation to cover ‘fees, remuneration and any other kind of consideration however received’ and there are provisions relating to how this is ascertained.

The penalties will be assessed by an authorised officer and the person can appeal. The Schedule 36 FA2008 information powers apply for the purpose of checking a person’s position as regards liability for a penalty under these provisions.

These measures will apply to activities carried out from Royal Assent.

Powers to tackle electronic sales suppression

Clause 91 introduces Schedule 13 which brings in new legislation to help tackle tax evasion by use of electronic sales suppression (ESS) software by making it an offence to possess, make, supply and promote ESS software and hardware. ESS software deliberately manipulates or hides individual transactions in EPOS systems.

Penalties of up to £50,000 can be levied where someone makes, supplies or promotes the use of an ESS tool. A person would not be liable for supplying an ESS tool if they can satisfy HMRC or the tribunal that they were unaware that it was an ESS tool. Someone who promotes the use of an ESS tool can be penalised each time they promote it.

A penalty of up to £1,000 can be levied on a person

1. who is in possession of an ESS tool unless they notify HMRC within 30 days that they no longer have that tool, or

2. they have been in possession of such a tool (and been levied a previous penalty) within the last five years.

Again, there is an exemption if the person can satisfy HMRC or the tribunal that they were unaware that they had the ESS tool.

A person who continues to possess the ESS tool having been notified of the initial penalty may be liable for an ongoing daily penalty not exceeding £75, although total liability under this section cannot exceed £50,000.

HMRC have two years to notify a penalty from the date at which they have sufficient information to indicate a penalty is due and the taxpayer can appeal against any assessment raised. The Schedule 36 FA2008 information powers apply for the purpose of checking a person’s position as regards liability for a penalty under these provisions.

These provisions apply from Royal Assent.

Tobacco Duty

Tougher sanctions are introduced by Clause 92 to tackle tobacco duty evasion with enforcement by HMRC and Trading Standards. The sanctions are linked to the Tobacco Track and Trace System (TTS) and the proposals include:

- power to issue financial penalties up to £10,000 for holding or possessing products that do not comply with TTS requirements
- making liable to forfeiture any TTS compliant tobacco products where they are found alongside non-compliant products
- withdrawal of a retailer's TTS ID where they persistently contravene rules
- the power to make future regulations to ensure the system works properly.

Treatment of goods in free zones

A free zone is a secure customs site within a wider Freeport area. Regulations were laid on 18 October 2021 to introduce a new Group 22 to Schedule 8 VATA1994 which provides for zero-rating of certain supplies of goods and services in free zones.

Clause 93 and Schedule 14 within the Finance Bill seek to ensure that this is not exploited. There will be a deemed supply where a person has received a zero-rated supply of goods or services but then after the supply one of the two conditions are met:

1. there is a breach of requirements relating to the free zone procedure without a new zero-rated free zone supply by that person of the goods that were previously supplied or
2. the goods supplied or the goods on or in relation to which the service is performed are imported without there having been a zero-rated free zone supply and within a period of three months from the date they are imported, the person does not make a taxable supply of the goods to another person in the course of their business.

This came into force from 3 November 2021.

Large business: uncertain treatments **(Lecture B1293 – 15.58 minutes)**

This legislation has been put out to consultation but there are some changes to the draft provisions that are contained within Clause 94 and Schedule 15.

The law will be changed to require very large companies and partnerships to notify HMRC where they take a tax position in their returns for VAT, corporation tax or income tax (including PAYE) that is 'uncertain'. The new rule will apply for returns filed with effect from 1 April 2022.

Companies and partnerships affected are those with either turnover in excess of £200 million of gross assets in excess of £2 billion. This is 'UK turnover' and 'UK balance sheet'.

For a UK company or partnership, the UK turnover is all of the turnover and the UK balance sheet is the balance sheet total (i.e. the total assets). If it is part of a group, the turnover figures include the turnover of any member of the same group as the company at the end of their previous financial year and within the charge to corporation tax on income at any time during the company's previous financial year.

The balance sheet figure is the aggregate of the UK balance sheet totals for the company and any other company that falls within the above. The group relationship is established through 51% subsidiaries and there are various exemptions within the definition.

For a non-UK company take the turnover and balance sheet which relates to activities in respect of which that company is subject to corporation tax. For a non-UK partnership, it is the turnover and balance sheet attributable to a permanent establishment within the UK.

The company or partnership has to notify HMRC if a relevant return includes an 'uncertain amount'. The use of the phrase 'includes an amount brought into account' can include the absence of an amount that would be been brought into account if it were not for the uncertain tax treatment so it can effectively be an amount of nil. If an amount becomes uncertain after the return is filed, then HMRC must be notified if it becomes uncertain by virtue of an accounting provision being made to reflect the probability of a different tax treatment applying.

The notification requirement also applies to amended returns. A separate notification is needed for each relevant tax that includes an uncertain amount but only a single notification is required if it is the same tax but there is more than one uncertain amount.

HMRC will, in due course, give notice of the format of the notification.

The deadline for notification is broadly the due date for the return but specifically:

- for a company return for a financial year, on or before the filing date or, if later, the last day for delivery of accounts to the registrar of companies;

- for a partnership return for a financial year, on or before the date on which the return is required to be made;

- for an amount included in a PAYE return for a financial year, on or before the date on which the last PAYE return for the financial year is required to be made;

- for an amount included in a VAT return for a financial year, on or before the date on which the last VAT return for the financial year is required to be made.

If the notification is required as a result of an amendment to the return, the notification must be made before the end of the period of 30 days from the day on which HMRC is notified of the amendment.

An 'uncertain treatment' is defined as arising either where a provision has been made in the accounts for the uncertainty, or the position taken in the accounts is contrary to HMRC's known position (as stated in the public domain or in dealings with HMRC).

A third trigger, that was proposed in revised draft legislation published in July 2021, which would be where there is a substantial possibility that a tribunal or court would find the taxpayer's position to be incorrect in material respects is not being included at this time. However, it is stated that the government remains committed to further consideration of its inclusion at a later date.

There is no notification requirement unless the threshold test is met. This is where the aggregate of all tax advantages relating to uncertain treatment is more than £5m. This is reduced proportionately if the accounting period is less than 12 months.

Tax advantage is defined in the normal way for income tax or corporation tax in terms of avoidance or reduction in charge; repayment or increased repayment; relief or increased relief; deferral of payment or advancement of repayment; avoidance of possible assessment and avoidance of obligation to account for or deduct tax. There are similar parameters for VAT purposes.

The value of the tax advantage is measured by comparing the uncertain amount in the return and the expected amount as defined in the legislation ignoring group relief (as well as group relief for carried forward losses) and relief for repayment of loans to participators.

If the tax advantage gives rise to a loss which is utilised, the relief is the measure of the tax advantage but if the loss is not used (or only partially used) the tax advantage is taken as 10% of any unused loss plus any tax saved by the part used. This will be nil if there is no reasonable prospect of the loss being used to reduce the tax liability of any person.

The expected amount in this formula is the tax liability calculated without the uncertainty. If there is more than one interpretation by HMRC, the one used is the one which gives the least amount of tax advantage. Where more than expected amount can be calculated as both of the triggers apply, the threshold test applies by reference to whichever gives the most tax advantage.

Where the return in question is a return under PAYE regulations, NICs are to be treated as income tax for the purposes of determining the aggregate value of tax advantages to measure against the threshold.

There is no notification requirement if it is reasonable to conclude that HMRC already have all the information which would need to be included in the notification. Specifically, this applies where HMRC have already been notified under DOTAS or similar.

There is also an exemption where transactions are between group companies and the net effect of the transaction is that the tax advantage obtained by the group as a whole is less than the threshold.

Penalties for failure to comply are:

- £5,000 for the first failure
- £25,000 for the second failure within three years of the financial year for which the relevant return requiring notification was delivered to HMRC
- £50,000 for any further failure within the three year period
- £5,000 where the failure relates to notification that an amount has become uncertain after the return has been filed.

No penalty arises if the person has reasonable excuse for the failure. Normal assessment and appeal procedures apply to the penalty.

To put this measure in context, the objective is to reduce the ‘legal interpretation’ portion of the tax gap which is estimated at £5.8bn with £3.2bn of this felt to be attributable to large businesses. It is intended to enable early identification of high risk disputes and encourage early interaction between large business and HMRC.

Discovery assessments (Lecture P1291 – 10.91 minutes)

The Upper Tribunal case of HMRC v Wilkes ([2021] UKUT 150 (TCC)) reported on 30 June 2021 established that HMRC cannot raise a discovery assessment to collect tax due as a result of the High Income Child Benefit Charge (HICBC).

This is because the HICBC amount is an amount chargeable to income tax and not, as currently required by the discovery legislation, an amount of income which ought to be assessed to income tax.

Whilst it is known that HMRC are appealing the decision in Wilkes, Clause 95 legislates to put beyond doubt that HMRC can raise valid discovery assessments in these circumstances.

This will have immediate and retrospective effect except that it will not apply retrospectively to individuals who submitted an appeal to HMRC on or before 30 June 2021 where the appeal was subject to a temporary pause which occurred before 27 October 2021 and the appeal was on the basis of the arguments considered by the Upper Tribunal.

An appeal will have been subject to a temporary pause if the appeal had been stayed by the tribunal, the parties to the appeal had agreed to it being stayed or HMRC have notified the appellant that they are suspending work on the appeal pending the determination of another case. These are called relevant protected assessments.

The legislation will apply equally to tax chargeable where there is insufficient income to cover Gift Aid relief and to certain pensions tax charges (such as unauthorised payment charges and surcharges, lifetime allowance charges, annual allowance charges and overseas transfer charges), to ensure that HMRC can recover all of these charges via discovery assessments.

Notification of liability to income tax and capital gains tax

Clause 96 amends S7 TMA 1970 to make it clear that there is requirement to notify chargeability to the high income child benefit charge as it applies to other income and gains. It will apply for 2021/22 onwards and is a clarification to ensure these provisions operate as originally intended.

The legislation will also make some minor technical changes, but without retrospective effect, to ensure that the requirement for an individual to notify chargeability to income tax in these circumstances operates as intended.

The effect of this is to clarify, for example, that a taxpayer who has never previously had to file a self-assessment tax return because their tax liability was dealt with through PAYE, must notify HMRC if they are liable to the HICBC which will prompt HMRC to require them to complete a tax return.

Tax liability relating to pensions

Clause 97 amends s30 ITA2007 which lists the charges to be brought into account at Step 7 of the income tax calculation at s23 ITA2007. It changes the wording relating to unauthorised payments charge and unauthorised payments surcharge for pension purposes to give consistency of treatment for all pension charges.

Power to vary taxable benefits and expenses (Lecture P1291 – 10.91 minutes)

Over the period of the Covid pandemic, the Government introduced various easements in respect of taxable benefits for example, exempting coronavirus testing provided by employers, relaxing requirements for working from home and changing the qualifying journeys rules in relation to cycle to work.

Each required a separate legal provision, often involving both primary and secondary legislation.

To resolve the issue in the future, Clause 98 grants HM Treasury a power which will enable them via a ministerial direction, to make temporary regulations in event of a disaster or national emergency, with those regulations lasting a maximum of two years.

It can only be applied in respect of taxable benefits, exemptions and allowable deductions in Parts 3 to 5, ITEPA 2003 and definitely cannot be used to increase or create a tax charge.

Vehicle CO_2 emissions

Clause 99 and Schedule 16 introduces legislation to amend the capital allowances legislation to allow for vehicles certified through a new comprehensive vehicle type approval scheme (due to be introduced in 2022) when determining the level of a vehicle's CO_2 emissions.

Similar amendments will be made to company car tax and Vehicle Excise Duty (VED).

For capital allowances, the legislation will also confirm the applicable CO_2 emissions figure to be used is that arising from the Worldwide Harmonised Light Vehicle Test Procedure (WLTP).

For capital allowances and company car tax, the legislation will take effect following Royal Assent. For VED, it will have effect for licences taken out on or after 3 November 2021.

Increasing independent representation on the OTS

Clause 100 increases the maximum independent representation on the Office of Tax Simplification (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.

Other Budget announcements not included within Finance Bill

National Insurance Contributions

The thresholds above which employer's and employee's National Insurance Contributions (NIC) become payable will increase in line with inflation in 2022/23 except than the upper limits for employee contributions which remain aligned with the point at which 40% income tax is payable and are frozen at that level until the end of 2025/26.

As announced on 7 September 2021, a new Health and Social Care Levy will be charged to raise £13 billion a year – dwarfing most of the other figures in the Budget policy decisions.

In 2022/23, this will be achieved by raising the NIC rates; in 2023/24, the levy will be formally separated from NIC and collected separately by HMRC and will also apply to earnings that are not charged to NIC (principally earnings of individuals who are above State Pension age).

From 6 April 2022, Class 1 NIC paid by employers and employees, and Class 4 NIC paid by self-employed people, will increase by 1.25%.

The thresholds are as follows:

	2022/23	2021/22
Weekly lower earnings limit	£123	£120
Weekly primary threshold	£190	£184
Weekly secondary threshold	£175	£170
Weekly upper earnings limit	£967	£967

The rates are as follows:

	2022/23	2021/22
Primary Class 1 main rate	13.25%	12%
Primary Class 1 higher rate	3.25%	2%
Secondary Class 1	15.05%	13.8%
Class 1A and Class 1B	15.05%	13.8%

The increase in the rates is offset to a very small extent by the increase in the thresholds below which no NIC are due. For example, the contributions for an employee with a salary of

£50,000 will rise from £4,852 to £5,316 (Class 1 primary) and from £5,680 to £6,155 (Class 1 Secondary).

For the self-employed, the lower profits limit increases to £9,880 (from £9,568 in 2021/22) but the upper profits limit remains aligned to the higher rate threshold at £50,270.

The rate of Class 4 contributions will increase to 10.25% on earnings between £9,880 and £50,270 and 3.25% above that.

The rates will revert back to their previous levels from 6 April 2023 when the separate levy is introduced.

The Class 2 rate, which is unaffected by the introduction of the levy, increases to £3.15 per week from £3.05 in the current tax year. The small profits threshold increases to £6,725 in 2022/23.

The voluntary Class 3 rate increases to £15.85 per week from £15.40.

Sole traders and partners whose profits are below the small profit threshold can still pay voluntary Class 2 contributions. This would be advisable to avoid gaps in their contribution record which could reduce the State Pension they would become entitled to.

The alternative would be to pay Class 3 voluntary contributions but these are much more expensive.

Company cars and fuel

No changes were made to the rates already announced in previous years, so cars first registered after 5 April 2020 and electric cars will see their benefit charge rise by one percentage point (subject to the maximum of 37%).

The rates for 2022/23 will be the same for cars registered before and after 5 April 2020 and will now remain fixed until the end of 2024/25.

The provision of a van available for private use gives rise to a tax charge on an income figure of £3,600 (2021/22: £3,500), plus £688 (2021/22: £669) if fuel is also provided without being fully reimbursed by the employee.

An electric van available for an employee’s private use does not give rise to a tax charge.

		2022/23	2021/22 percentage for petrol cars first registered	
CO_2 emissions g/km	**Electric range Miles**	**All cars %**	**Pre 06.04.2020 %**	**Post 05.04.2020 %**
0	N/A	2	1	1
1-50	>130	2	2	1
1-50	70 - 129	5	5	4
1-50	40 - 69	8	8	7
1-50	30 - 39	12	12	11

		2022/23	2021/22 percentage for petrol cars first registered	
CO_2 emissions g/km	**Electric range Miles**	**All cars %**	**Pre 06.04.2020 %**	**Post 05.04.2020 %**
1-50	<30	14	14	13
51-54	N/A	15	15	14

Then a further 1% for each 5g/km CO_2 emissions, up to a maximum of 37%.

Diesel cars that are not RDE2 standard suffer a 4% supplement on the above figures but are still capped at 37%.

Where the employer provides fuel for private motoring in an employer-owned car, the CO_2-based percentage from above table is multiplied by £25,300 for 2022/23 (2021/22: £24,600).

This fuel benefit applies unless the employee is required to, and actually does, reimburse the employer for all fuel used for private journeys by 6 July following the end of the tax year.

Unless non-business mileage (private journeys and ordinary commuting) in a company car is very high (typically at least 10,000 miles per annum), it will be cheaper for the employee to reimburse the cost of the fuel used than to pay the tax liability they would face on the benefit.

ISA limits

The investment limits for 2022/23 remain £20,000 for a standard adult ISA (within which £4,000 may be in a Lifetime ISA), and £9,000 for a Junior ISA or Child Trust Fund.

Household Support Fund Payments

Household Support Fund payments will be available to vulnerable households with essentials over the coming months, as the country continues its recovery from the COVID-19 pandemic.

It is a £500m fund to be distributed by councils in England and the devolved administrations outside of England.

The government will legislate in Spring 2022 by Statutory Instrument to clarify that payments made through the Fund, and through similar schemes in the devolved administrations, will be exempt from income tax.

No income tax will be collected on payments made from October 2021 (which is when the scheme is introduced) to the date the legislation takes effect.

Research & Development (R&D)

The Small and Medium-sized Enterprise (SME) R&D relief (a 130% enhancement of the expenditure) and the R&D expenditure credit (currently 13%) apply to ‘qualifying expenditure’ as defined in the legislation.

At present, this comprises:

- Staff costs
- Software used directly for the R&D
- Relevant payments to the subjects of clinical trials
- Consumable or transformable materials
- Subcontracted R&D costs
- Externally provided workers

Following a consultation launched in March 2021, R&D tax reliefs will be reformed to support modern research methods by expanding qualifying expenditure to include data and cloud costs.

At present there is no limitation on incurring the expenditure outside the UK, for example by subcontracting work to suppliers in other countries. The legislation will be amended to focus support towards innovation in the UK, which is likely to require qualifying expenditure, or at least a large percentage of it, to be incurred within the UK.

Other changes will be made to target abuse and improve compliance.

The changes to the law are intended to take effect for expenditure incurred from 1 April 2023.

Online sales tax

It has been announced that the government will consult shortly on an Online Sales Tax.

Although the announcement states that they will explore the arguments for and against the introduction of this, it is referred to in the Business Rates Review as being a possible partial replacement for Business Rates so it is clearly something that is being seriously considered.

Corporate redomiciliation

A consultation is to be launched regarding a proposal to allow companies to move their domicile to and relocate to the UK by enabling the re-domiciliation of companies.

A foreign incorporated company would be able to change its place of incorporation to the UK whilst maintaining its legal identity as a corporate body. This would be a much simpler approach to the current routes available to a company who wishes to relocate to the UK.

The consultation will seek views on:

- The advantages of enabling companies to redomicile
- The level of demand that exists, among which companies and sectors
- The appropriate checks and entry criteria
- The merits of establishing an outward redomiciliation regime and

- The tax implications associated with the introduction of a redomiciliation regime.

VAT Registration threshold

The VAT registration and deregistration thresholds will remain frozen at their present levels of £85,000 and £83,000 until 31 March 2024.

This will tend to require more businesses to register for the tax as they grow, and therefore represents a small tax-raising measure.

VAT reduced rate

No further changes have been announced relating to the reduced rate of VAT that has applied to qualifying supplies by hospitality, leisure and entertainment businesses to help offset the impact of the pandemic.

The rate reduced from 20% to 5% in July 2020 and increased to 12.5% with effect from 1 October 2021. It will revert back to the standard 20% rate on 1 April 2022.

HMRC says that there are no plans to introduce 'anti-forestalling rules' to counter the VAT saving enjoyed by someone who pays a deposit before the rate goes back up – on present plans, that will lock in the 12.5% rate of VAT to the extent that the supply is paid for before 1 April 2022, even if the actual supply takes place later.

VAT default surcharge

As announced in March 2021, the rules for late payment of VAT will be reformed for return periods beginning on or after 1 April 2022. Default surcharge will be replaced by interest on late payment and separate penalties for late filing of returns.

VAT treatment of fund management fees

The Autumn Budget and Spending Review 2021 included an announcement that there will be a consultation on options to simplify the VAT treatment of fund management fees in the coming months.

National Living Wage (NLW) and National Minimum Wage (NMW)

National Living Wage (for those aged 23 or older) and the National Minimum Wage are increasing from 1 April 2022.

	From 1 April 2022	**Up to 31 March 2022**
Over 23s	£9.50	£8.91
21 – 22	£9.18	£8.36
18 – 20	£6.83	£6.56
Under 18s	£4.81	£4.62
Apprentice Rate	£4.81	£4.30

The maximum permitted daily and weekly rate of accommodation offset in relation to the NMW is also increasing to £8.70 for daily offset (from £8.36) or £60.90 for weekly offset (from £58.52).

Net Pay Arrangements and the lower paid

There is also an important change to lower earners who are making pension contributions under Net Pay Arrangements (NPA).

The government will introduce a system to make top-up payments directly to lower earners (those with taxable incomes below the personal allowance) who are saving in pension schemes using an NPA from 2024/25 onwards.

These top-ups will be paid after the end of the relevant tax year, with the first payments being made in 2025/26 and continuing thereafter. This corrects an anomaly whereby employees contributing to Relief at Source schemes receive a top-up at 20% on their pension contributions, even if they pay no, or a lower rate of, income tax.

In contrast, employees contributing to an NPA scheme receive tax relief at their marginal rate, which for low earners is 0%.

As this is coming in for subsequent years, it will not be introduced in FB2022 and so no further details are available.

Making Tax Digital (MTD) for Income Tax

As announced on 23 September 2021, the government has decided to delay the requirement for sole traders and landlords with income over £10,000 to file income tax self-assessment (ITSA) information using MTD until the tax year 2024/25.

General partnerships will not be required to join the system until 6 April 2025.

As noted above, at the same time that MTD for ITSA is introduced, new penalties for late filing and late payment will apply to those within the new system.

Penalties for late submission and late payment of tax

It is confirmed that the new penalty regime for late submission and late payment of tax will come into effect on 6 April 2024 for taxpayers in income tax self-assessment (ITSA) who are required to submit digital quarterly updates through MTD and from 6 April 2025 for all other ITSA taxpayers.

Business rates

To reduce the burden of business rates in England, the government will:

- freeze the business rates multiplier for a second year, from 1 April 2022 to 31 March 2023;
- introduce a new temporary business rates relief for eligible retail, hospitality and leisure properties for 2022/23, giving 50% relief up to a £110,000 per business cap;
- extend transitional relief for small and medium-sized businesses, and the supporting small business scheme, for 1 year, restricting increases in rates bills, subject to subsidy control limits;

- introduce a 100% improvement relief for occupiers who make eligible improvements to an existing business property which increases its rateable value;
- introduce a targeted exemption for use of eligible plant and machinery for onsite renewable energy generation and storage and a 100% relief for eligible heat networks, for two years from 1 April 2023.

The government will reform the system of business rates by increasing the frequency of revaluations from 5 years to 3 years, starting in 2023.

English local authorities will be fully compensated for the loss of income as a result of these measures.

Recovery Loan Scheme

The Recovery Loan Scheme, which was introduced to help businesses recover from the impact of the pandemic, will be extended until 30 June 2022. The following changes will apply to all offers made from 1 January 2022:

- The scheme will only be open to small and medium-sized enterprises
- The maximum amount of finance available will be £2 million per business
- The guarantee coverage that the government will provide to lenders will fall to 70%

Apprenticeship funding

In England, the government will continue to meet 95% of the apprenticeship training cost for employers who do not pay the Apprenticeship Levy. The £3,000 apprenticeship hiring incentive payment (per new hire) has been extended by four months to 31 January 2022.

In Wales, apprenticeships are funded by the Welsh government, and apprenticeship incentive payments ranging from £1,500 – £4,000 are available until 28 February 2022.

In Scotland, the type of funding available depends upon the type of apprenticeship. Additionally, the Adopt an Apprentice scheme entitles employers to £5,000 for employing an apprentice who has been made redundant.

Universal Credit

The Chancellor announced two measures that are intended to benefit Universal Credit recipients:

1. reducing the taper rate at which extra earnings leads to a reduction in benefits (from 63% to 55%); and
2. increasing the Work Allowance by £500 per year.

These measures are intended to take effect not later than 1 December 2021. They will benefit some claimants by more than the £20 per week that has been recently taken away, but not everyone will qualify.

Annual Tax on Enveloped Dwellings (ATED)

ATED applies to residential property worth above £500,000 which is owned through companies and other corporate structures, unless the situation qualifies for a relief. The rates increase automatically each year in line with inflation: they will rise by 3.1% from 1 April 2022 in line with the September 2021 Consumer Price Index.

Taxable value	2022/23	2021/22
£500,001 to £1,000,000	£3,800	£3,700
£1,000,001 to £2,000,000	£7,700	£7,500
£2,000,001 to £5,000,000	£26,050	£25,300
£5,000,001 to £10,000,000	£60,900	£59,100
£10,000,001 to £20,000,000	£122,250	£118,600
£20,000,001 and over	£244,750	£237,400

The next 5-yearly revaluation of relevant properties is due on 1 April 2022, which may affect the ATED payable from 1 April 2023, if a property moves into a different valuation band as a result.

Air passenger duty

The following changes to air passenger duty are to take effect from 1 April 2023:

- a new domestic band for air passenger duty covering flights within the UK;
- a new ultra long-haul band, covering destinations with capitals located more than 5,500 miles from London.

The rates the for the new domestic band will be £6.50 for those travelling in economy class, £13 for those travelling in all other classes, and £78 for those travelling on aircraft with an authorised take-off weight of 20 tonnes or more with fewer than 19 seats.

The rates for the new ultra long-haul band will be £91 for those travelling in economy class, £200 for those travelling in all other classes, and £601 for those travelling on aircraft with an authorised take-off weight of 20 tonnes or more with fewer than 19 seats.

Alcohol duty

Alcohol duty rates will be frozen and it is intended that alcohol duty will be reformed. A consultation has been launched which will close on 30 January 2022.

The Chancellor devoted space in his speech to set out a number of measures that he intends to take to make the taxation of alcoholic drinks simpler and more rational.

This will include a 5% cut on duty for various drinks sold in pubs, and a relief for small producers of drinks below 8.5% ABV.

This is still subject to the consultation mentioned above.

Carbon Price Support rate and Climate Change Levy

The Carbon Price Support rate per tonne of carbon dioxide emitted will be £18 for 2023/2024, further extending the rate freeze introduced from 1 April 2016. There is an increase in the main rate of climate change levy.

Aggregates levy rate

The aggregates levy rate is to be frozen in 2022/2023 at a rate of £2 per tonne.

Fuel duty rates

Fuel duty rates will remain frozen for 2022/2023.

Soft drinks industry levy

The levy is unchanged with the standard rate remaining at 18p per litre and the higher rate at 24p per litre.