Tolley®CPD

Finance Bill 2021

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Tax rates and allowances

Income tax

The main rates of income tax, the default rates of income tax and the savings rate of income tax remain at 20%, 40% and 45% (Clauses 2 and 3). The savings rate limit remains at £5,000 as the legislation specifically removes the indexation of that figure (Clause 4).

SI 2021/11 had set the personal allowance and basic rate limit for 2021/22 as £12,570 and £37,700 respectively. These will continue to apply until 5 April 2026 with the provisions for indexation of these amounts specifically disapplied (Clause 5).

The impact of this change will depend on the extent to which wages rise in the next few years. If we calculated an average 2% pay rise in each year for someone who was earning £50,270 in 2021/22, their earnings would have increased to £54,413 by 2025/26. This would mean that £4,143 of income would be pushed into the higher rate band, with additional tax at 20% = £828.60. However, they would also have saved 12% (£497.16) in Class 1 primary National Insurance contributions as the Upper Earnings Limit is also aligned with the higher rate threshold so the additional cost is £331.44 or £27.62 per month. Over the four years as a whole, around £10,257 would be taxed at the higher rate.

For a self-employed trader, the increase in income tax in 2025/26 of £828.60 as above would be mitigated by a saving in Class 4 National Insurance contributions of 7% (£290.01), giving an additional net cost of £538.59.

If inflation remains very low, however (it was 0.5% in the year to September 2020 which formed the basis of the allowances for 2021/22), the personal allowance and higher rate thresholds would not have escalated very much to 2025/26 anyway.

For example, if CPI remained at 0.5% per annum, the personal allowance would be £12,750 and the higher rate threshold would be £51,280 in 2025/26.

As there is no exclusion for the change in the blind person's allowance and married couples' allowance, they are both indexed by CPI (SI 2021/111).

Blind person's allowance is indexed to £2,520 for 2021/22 (from £2,500 in 2020/21).

The married couples' allowance (MCA), where available, increases to £9,125 (from £9,075). The income limit before tapering increases to £30,400 (from £30,200) and the minimum entitlement increases to £3,530 (from £3,510).

MCA is available where one of the spouses or civil partners was born before 6 April 1935 (so will be 86 or older in the tax year 2021/22). 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).

The Scottish Government have set the rates and bandings in Scotland for general income. Scottish taxpayers pay tax at the rates set for the rest of the UK on interest, dividends and capital gains and national insurance is also based on rates and bandings in the rest of the UK.

The Welsh Assembly has the power to set income tax rates in Wales but has chosen not to do so before the Welsh Assembly election in May 2021.

Corporation tax rates (Lecture B1251 – 16.53 minutes)

Main rate of corporation tax

For 2021 and 2022, the main rate of corporation tax (for non-ring-fenced profits) will remain at 19% (Clause 6(2)(a)).

From 1 April 2023, this rate will increase to 25% for companies with augmented profits (see below) over £250,000 (Clause 6(2)(b) or whose profits are ring fence profits (from production and sale of hydrocarbons in the North Sea).

The 25% rate will also apply to Real Estate Investment Trusts whose profits and/or gains arising from its residual business are charged to corporation tax, as well as open-ended investment companies (OEICs) and authorised unit trusts.

Small profits rate

Companies with augmented profits of £50,000 or less will continue to be taxed at 19% (Clause 7(2)(a)).

Close investment-holding companies

A close investment-holding company will pay tax at the main rate of 25% from 1 April 2023. A close company will be a close investment-holding company unless it exists

1. To carry on a trade or trades on a commercial basis, or
2. To invest in land or estates in land for letting commercially, or
3. To hold shares and securities of, or to lend money to companies which are qualifying companies or is an intermediate holding company of a trading/letting group, or
4. To co-ordinate the administration of two or more qualifying companies (i.e. a management services company) or to make the investment in land for a qualifying company or its parent company.

Letting commercially is any letting unless the tenant is a person connected to the company or their spouse, civil partner or relative (plus the spouse's or civil partner's relatives and their spouses and civil partners).

If a company is wound up and was not a close investment-holding company in the accounting period immediately before winding up commences, it is not treated as a close investment-holding company in the winding up period (e.g. if the liquidator had sold its trade or investment property).

Non-resident companies

Non-resident companies are not eligible to use the small profits rate, nor are they entitled to marginal relief. This means that they will be liable to 25% corporation tax on their UK profits chargeable.

This would cover UK permanent establishments and UK property business profits of non-resident companies.

Controlled foreign companies

Part 9A TIOPA 2010 charges UK resident companies corporation tax on their share of the profits of controlled foreign companies in some circumstances.

From 1 April 2023, the tax charged will be at 25% as the TIOPA 2010 legislation refers to the 'main rate'.

Augmented profits

Augmented profits are the profits chargeable to corporation tax plus any exempt distributions of a qualifying kind received by the company that are not excluded (future s18L CTA 2010).

An exempt distribution of a qualifying kind is a distribution for corporation tax purposes because (and only because) it falls within paras A, B, G or H of s1000(1).

This includes not only regular dividends, but also other distributions in respect of shares, the transfer of assets or liabilities treated as distributions in specie and bonus issues following repayment of share capital.

Dividends received from subsidiaries or other group companies of which the recipient is a 51% group company are excluded.

For this purpose, "A" is a 51% subsidiary of "B" if

1. B beneficially owns (directly or indirectly) more than 50% of the ordinary share capital of the subsidiary, <u>and</u>
2. B is entitled more than 50% of the profits available for distribution to the equity holders of B, <u>and</u>
3. B would be beneficially entitled to more than 50% of the assets of A available for distribution to its equity holders on a winding up

Shares owned indirectly for trading purposes by other group companies are ignored.

Dividends received from

1. a trading company (i.e. it wholly or mainly carries on one or more trades), or
2. a relevant holding company (i.e. it wholly or mainly holds shares in, or securities of, 90% trading subsidiaries)

which is a 'quasi-subsidiary' of the recipient company are also excluded.

A quasi-subsidiary is one owned by a consortium in which the recipient of the dividends is a member but is not a 75% subsidiary of any company and there is no arrangement by which it could become a 75% subsidiary of any company.

A company is owned by a consortium if at least 75% of its ordinary share capital is beneficially owned by at least two companies, each of which

1. owns at least 5%, and
2. would be entitled to
    - at least 5% of the dividends available for distribution to equity holders, and
    - at least 5% of the assets available to equity holders on a winding up.

Marginal relief

Schedule 1 re-introduces the rules on marginal relief that existed until 31 March 2017.

Where augmented profits fall between £50,000 and £250,000, the tax rate will be 25%, but companies will be able to claim marginal relief.

The marginal relief is calculated as:

$$\text{MR fraction} \times (\text{Upper profit limit} - \text{Augmented profits}) \times \frac{\text{Taxable profits}}{\text{Augmented profits}}$$

The profit limits will be divided by the number of *associated companies* (not the number of 51% group companies).

The limits are also reduced if the chargeable accounting period is less than 12 months.

The marginal relief fraction will be 3/200ths (Clause 7)(2)(b)) and the marginal rate of tax between the lower and upper limit will be 26.5% in the absence of any dividend income. If the company has relevant dividend income, the marginal rate of tax between the lower and upper limits is even higher than this.

There are special rules for calculating marginal relief where a company has both ring-fence and non-ring-fence profits; these ensure that the marginal relief only applies, where applicable, to non-ring fence profits.

Associated companies

A company (whether UK resident or not) is associated with another company at a particular time if, at that time in the chargeable accounting period

a) One company has control of the other, or

b) Both companies are under the control of the same person or group of persons.

Control is defined in s451 CTA 2010. It exists where a person exercises, or can exercise, or can acquire direct or indirect control over a company's affairs. This includes where the person owns or can acquire

1. More than 50% of the share capital or issued share capital, or
2. The majority of the voting rights, or
3. Entitlement to the majority of the distributable profits, or
4. Entitlement to more than 50% of the assets available for distribution to participators

This includes situations where two or more persons together satisfy the conditions above.

If there is no substantial commercial interdependence between the companies, the normal attribution of rights held by certain connected persons (s451 CTA 2010) is ignored. Regulations will prescribe the factors that constitute substantial commercial interdependence but in the past these have consisted of financial, economic and organisational links between the companies.

Business partners' shares have, in the past, caused problems with the small profit rate. Where director/shareholders of a company have entered into tax avoidance schemes that involved being a member of an LLP, they may have had no idea who their fellow members were, but they still counted as business partners.

If each of these partners owned their own companies, then the companies were associated. It was often impossible to calculate the number of associate companies in this situation, so each company had to pay tax at the main rate.

It is expected that the same issues will arise from 1 April 2023.

Fixed-rate preference shares held by a company are ignored if the holder is not a close company, takes no part in managing the issuer and subscribed for the shares in the ordinary course of a business which includes the provision of finance.

Association through a loan creditor

A company is not under the control of its lender if there is no other connection and either the lender is not a close company or its relationship with the borrower arose in the ordinary course of the lender's business.

This applies equally for two companies controlled by the same lender only by virtue of the amounts lent to them.

Exclusions

Companies that have not carried on a trade or business at any time in the accounting period (or for the part for which they were associated) are ignored.

This includes ‘passive’ holding companies that do not carry on a trade and which hold at least one 51% subsidiary.

A passive company

1. Has no assets in the period apart from shares in 51% subsidiaries;

2. Has no income in the period other than exempt dividends of a qualifying kind, as defined above;

3. Has no chargeable gains in the period (the disposal of its subsidiaries will be exempt if they meet the conditions for substantial shareholdings exemption);

4. Has no expenses of management in the period;

5. Did not make any deductible charitable donations in the period; and

6. Redistributes at least the amount of dividend income in the period to at least one shareholder

If exempt dividend income arises, any asset representing it is not treated as an asset for the purpose of 1. above, so that it would not breach the conditions for the company to be excluded.

This would be the case where the company accrues the dividend because the subsidiary has legally declared it payable but hasn’t paid it to the company by the end of the period.

Examples

Example 1 – single company, no dividend income

ABC Limited has a year ended 31 March 2024. It has chargeable profits of £190,000 and no dividend income.

In this case the taxable profit and augmented profit are both £190,000.

As the profit is between the lower profit limit of £50,000 and the upper limit of £250,000, marginal relief applies.

Its corporation tax liability for the year will be:

	£
Tax at 25% on £190,000	47,500
Minus: 3/200ths x (250,000 – 190,000) x 190,000 ÷ 190,000	(900)
	46,600

This could also be calculated as:

	£
First £50,000 taxable at 19%	9,500

Remaining £140,000 taxable at 26.5%	37,100
	46,600

Example 2 – single company, exempt dividend income

DEF Limited has a year ended 31 March 2024. It has chargeable profits of £190,000 and foreign dividend income from a non-group company of £50,000 which is net of 5% withholding tax deducted by the payer.

In this case, the taxable profit is £190,000 and the augmented profit is £240,000 (we include the dividend received as the withholding tax is irrecoverable).

Its corporation tax liability for the year will be:

	£
Tax at 25% on £190,000	47,500.00
Minus: 3/200ths x (250,000 – 240,000) x 190,000 ÷ 240,000	(118.75)
	47,381.25

The marginal rate of tax on the excess profit above £50,000 is greater than 26.5% as a result of the foreign dividends.

	£
£50,000 @ 19%	9,500.00
£140,000 @ 27.058% (balancing rate)	37,881.25 (balance)
	47,381.25

Example 3 – single company, exempt dividend income

DEF Limited has a year ended 31 December 2023. It has chargeable profits of £190,000 and foreign dividend income from a non-group company of £50,000 net of 5% withholding tax deducted by the payer.

Again, the taxable profits are £190,000 and the augmented profits are £240,000.

Its corporation tax liability for the year will be:

	£
1 January 2023 – 31 March 2023:	
(£190,000 x 90 ÷ 365) = £46,849 x 19% =	8,901.31

1 April 2023 – 31 December 2023:

Upper limit =	250,000 x 275 ÷ 365 = £188,356
Taxable profits =	190,000 x 275 ÷ 365 = £143,151
Augmented profit =	240,000 x 275 ÷ 365 = £180,822

Tax:	£143,151 x 25%	35,787.75
Minus: 3/200ths x (188,356 – 180,822) x 143,151 ÷ 180,822		(89.47)
		44,599.59

Example 4 – group of companies

GHI Holdings Limited is the parent company of a multi-company group. There are 9 subsidiaries, 3 of which are non-UK resident trading companies, 2 are dormant and the remaining 4 are UK resident trading companies.

GHI Holdings does not trade itself. It is a pure holding company, receiving dividends from its subsidiaries and paying these on to its shareholders. It incurs no other expenditure and has no assets apart from its shareholdings in subsidiaries.

The four UK resident trading companies have the following taxable profits for the year ended 31 March 2024:

JKL Limited	£140,200
MNO Limited	£24,450
PQR Limited	£6,420
STU Limited	£78,110

None of the four subsidiaries receives any dividend income.

Analysis

The lower and upper profit limits need to be divided by the number of associated companies. GHI Holdings Limited is excluded as are the two dormant subsidiaries, so the limits need to be divided by 7 (the 4 UK resident trading companies and the 3 non-UK resident trading companies).

The lower limit is therefore £7,143 and the upper limits £35,714.

This means that JKL Limited and STU Limited will pay tax at the main rate of 25%. PQR Limited will pay tax at the small company rate of 19% and MNO Limited will be eligible for marginal relief.

Their tax liabilities will therefore be:

JKL Limited: 25% x £140,200	£35,050.00
MNO Limited: 25% x £24,450	6112.50
Minus: 3/200 x (35,714 – 24,450)	(168.96)
	£5,943.54
PQR Limited: 19% x £6,420	£1,219.80

STU Limited: 25% x £78,110 £19,527.50

Consequential amendments

Corporation tax instalment payments

The Corporation Tax (Instalment Payments) Regulations 1998 will be amended for accounting periods beginning on or after 1 April 2023.

The £1.5 million and £20 million profit limits for testing whether a company has to make quarterly instalment payments will be divided by the number of associated companies, rather than the number of 51% group companies.

This may cause some companies that are under the common control of natural persons to become liable to pay tax by instalments. However, in the first year that this happens, the 'grace period' provisions should delay the instalments until the following accounting period.

Regulation 3 of The Corporation Tax (Instalment Payments) Regulations 1998 (SI 1998/3175) states that a company is not a large company for this purposes if

a) Its profits do not exceed £10,000,000, and

b) Its was not a large company in the twelve months prior to this accounting period

Example

Adam Chan owns 100% of AC Properties Limited and 100% of AC Consultancy Limited. Both companies have made profits in their year ended 31 March 2021 accounts in the region of £1 million to £1.2 million and are expected to do so for the foreseeable future.

Explain when these companies will need to pay their corporation tax over the next 3 years.

Analysis

Accounting period	Corporation tax payment date(s)
Year ended 31 March 2021	1 January 2022
Year ended 31 March 2022	1 January 2023
Year ended 31 March 2023	1 January 2024
Year ended 31 March 2024	**1 January 2025**
Year ended 31 March 2025	**14 October 2024 (25%), 14 January 2025 (25%),**
	14 April 2025 (25%), 14 July 2025(25%)

The profit limit for quarterly instalments for the year ended 31 March 2024 is (£1.5m ÷ 2) £750,000, so both companies exceed the profit limit for instalment payments. However, they were not large companies in the previous 12 months (when we only consider 51% group companies, so each was not

large if its individual profit was less than £1.5 million), so instalment payments will not commence until the following year.

The first instalment of tax for year ended 31 March 2025 is due before the tax for the previous year and the second instalment is due two weeks after the due date of the tax for the previous year. This advancement of cash outflows will need to be budgeted for and managed well in advance of them falling due to avoid any financial distress.

Long-life assets

The monetary limit in s99 CAA 2001 of up to £100,000 for which expenditure is excluded from being a long-life asset will be divided by the number of associated companies rather than the number of related 51% group companies for accounting periods beginning on or after 1 April 2023.

Patent box small claims treatment

S357BN CTA 2010 permits a company to make some simplifying elections when calculating its patent box deduction. These are a notional royalty election (s357BNA), a small claims figure election (s357BNB) and a global streaming election (s357BNC).

To qualify to make these elections, the qualifying residual profit of the trade for an accounting period must not exceed the greater of

1. £1,000,000 and
2. The relevant maximum for the accounting period

The relevant maximum for an accounting period for a company which is not part of a group is £3,000,000.

This is currently divided by the number of related 51% group companies. For accounting periods beginning on or after 1 April 2023, it will be changed to the number of associated companies.

Insurance companies carrying on long-term business

S102 FA2012 is amended so that the policyholders' share of the I – E profit from 1 April 2023 is omitted in determining the augmented profits and taxable total profits of the company for the accounting period, for the purpose of determining if the company has small profits.

Diverted profits tax

The diverted profits tax rate will be increased to 31% from 1 April 2023 (currently 25%), maintaining the 6% differential between it and the main rate of corporation tax (Clause 8).

Capital allowances (Lecture B1252 and B1253 – 19.08/ 14.33 minutes)

Super-deductions and other first-year allowances

Clause 9 provides for

1. Expenditure qualifying for a 130% super-deduction (Clause 9(2))
2. Expenditure qualifying for a first-year allowance of 50% (Clause 9(3)), and
3. Expenditure qualifying for a first-year allowance of 100% (Clause 9(4))

Conditions common to all three items

This only applies to expenditure incurred by a company within the charge to corporation tax between 1 April 2021 and 31 March 2023. It includes qualifying assets acquired under a hire-purchase contract.

However, if a contract for the expenditure was in place before 3 March 2021, the expenditure date is treated as being the order date so that it will not qualify for these allowances.

The assets acquired must be on plant and machinery which is unused and not second hand.

The assets must not be within the general exclusions of s46(2) CAA 2001

- Expenditure incurred in the period when the trade is discontinued,
- Cars
- Long-life assets
- Lessors
- Where the expenditure is connected with a change in the nature or conduct of the trade or business by someone other than the purchaser of the asset and obtaining a first-year allowance is one of the main benefits from making the change
- Plant and machinery bought initially for a non-qualifying activity (or used for a long funding lease), then later used in a qualifying activity
- Plant and machinery used previously for one property letting business (including furnished holiday lettings) and then used for another property letting business where the market value is used to determine the expenditure for the new property letting business

Super-deductions

Expenditure qualifies for a super-deduction of 130% of the cost if, in addition to the above conditions

1. It is not special-rate expenditure (which is addressed by Clause 9(3))
2. It is not special-rate expenditure for use wholly or partly for a ring fence trade

To understand some of the adjustments that are needed on the purchase or disposal of a super-deduction asset, the idea of it seems to be to give (nearly) a 25% tax saving on the expenditure before

the main rate of corporation tax changes to this from 1 April 2023 (130% deduction multiplied by the tax rate up to 31 March 2023 of 19% is 24.7%), to encourage companies not to delay capital investment until the main rate changes.

If the expenditure is incurred before 1 April 2023 but in an accounting period that straddles that date, an adjustment is made to the qualifying cost to ensure that the 130% relief and 25% rate of corporation tax are not both available at the same time.

The rate of super-deduction will be pro-rata to the number of days of the accounting period that fall before 1 April 2023, with the final amount being 100% plus (30% x days of the period before 1 April 2023 ÷ total days in the accounting period) (Clause 11).

Example

A company incurs qualifying super-deduction expenditure on 25 February 2023 of £698,540. It has a year ended 31 December 2023.

The rate of super-deduction is 100% + (30% x 90 ÷ 365) = 107.40% (rounded to 2 decimal places).

The company will be able to claim a super-deduction on (£698,540 x 107.40%), i.e. £750,213 (based on the unrounded percentage).

This will save corporation tax at 19% of £142,540, an effective tax saving of (142,540 ÷ 698,540) 20.4% overall.

Additional VAT liabilities

If there is an additional VAT liability treated as capital expenditure after the plant and machinery has been purchased (for example, under the capital goods scheme for computer equipment costing more than £50,000), a similar calculation will be made to the example above where the extra liability arises before 1 April 2023.

If it arises on or after 1 April 2023, the extra VAT liability will qualify for 100% capital allowance only. This is because s236(2) CAA 2001 treats an additional VAT liability caused by an adjustment to capital items as incurred on the same plant and machinery and qualifying for the same first-year allowance.

However, the date of expenditure is the end of the period when the VAT adjustment is made, which is usually 30 September, 31 October or 30 November for capital goods scheme purposes depending on when the company's usual VAT return periods run to.

If, by this time, the rate of corporation tax is 25%, then the company will get a 100% deduction for the extra VAT so it will save 25% tax on the extra VAT cost.

If it was incurred before 1 April 2023, the company would have qualified for 130% deduction, but saving tax at 19%, which, as discussed above, is an effective saving of 24.7%.

Example

A company with a 31 December year end spends £1,506,000 plus (20%) £301,200 VAT, on a new computer system on 30 October 2021, having contracted for it on 15 March 2021. It prepares quarterly VAT returns to 31 January, 30 April, 31 July and 31 October each year.

The company's partial exemption recovery rate has been:

Quarter to 31 October 2021:	73%
12 months to 30 April 2022:	68%
12 months to 30 April 2023:	60%

Calculate the capital allowances on the asset for the years ended 31 December 2021 to 31 December 2023.

Analysis

Year ended 31 December 2021

The company would claim a 130% super-deduction on the cost, including irrecoverable VAT.

The cost is £1,506,000 plus 27% irrecoverable VAT at 20%, i.e. £1,587,324.

The super-deduction will be 130% x £1,587,324, i.e. £2,063,521 and this will save corporation tax at 19%.

Year ended 31 December 2022

There was a partial exemption adjustment to the VAT recovery on 30 April 2022, calculated as:

£301,200 x (68% - 73%) i.e. an extra VAT liability of £15,060.

This increase of £15,060 is capital expenditure on the original computer system and is eligible for a super-deduction of 130% as it falls in an accounting period ending before 1 April 2023.

Year ended 31 December 2023

There was a capital goods scheme adjustment to the VAT recovery for the year to 30 April 2023 and this would have been made in the VAT quarter to 31 October 2023. The adjustment is calculated as follows:

£301,200 x (60% - 68%) ÷ 5 (years), i.e. an extra VAT liability of £4,819.

This extra expenditure is treated as incurred on 31 October 2023. As this falls on or after 1 April 2023, it is entitled to a 100% deduction only (Clause 11(3) – 11(5)).

Disposals of super-deduction assets (Clause 12)

A balancing charge will always arise on the disposal of a super-deduction asset.

If the disposal takes place in an accounting period ending before 1 April 2023 (which is perhaps unlikely in practice), the **relevant proportion of the proceeds** are grossed up by a factor of 1.3 (i.e. 130% of the relevant proportion of the proceeds is taxed).

The relevant proportion of the proceeds ensures that only the part that relates to the original expenditure that qualified for super-deduction is grossed up.

For example, the asset purchased may have contained expenditure that qualified for another first-year allowance (such as the special rate expenditure allowance of 50%), or which was pooled instead because it was a component that was not new and unused.

This ensures that the proceeds are effectively taxed at 24.7% (130% of the proceeds taxed at 19%), the same effective rate of relief that was obtained when the plant and machinery was purchased.

If the chargeable period ends on or after 1 April 2023, the proceeds are grossed up by a factor of (0.3 x number of days in period before 1 April 2023 ÷ total days in the period) plus 1.

Mathematically, this means that if the plant and machinery is disposed of in an accounting period which falls wholly after 1 April 2023 (for example, the year ended 31 December 2024), there is no grossing up of the proceeds as they will be charged to corporation tax at 25% by then (or rather, it is assumed they will be – if the company has profits below £250,000 it will be taxed at a lower rate than this).

Example

A company with a year ended 31 January incurs expenditure on a large item of plant and machinery on 23 June 2021, paying £2,402,340. This includes expenditure which is not eligible for the super-deduction of £341,260 – the annual investment allowance is allocated to this expenditure.

A super-deduction of 130% of £2,061,080 (2,402,340 – 341,260) was claimed.

The item is sold on 5 October 2023 for total proceeds of £894,570.

What adjustments are made to the tax calculations as a result of the disposal?

Analysis

The relevant proportion of the proceeds related to the super-deduction asset is (2,061,080 ÷ 2,402,340) x £894,570, i.e. £767,493. This means that the balance of £127,077 is allocated to the AIA part of the asset.

The disposal takes place in the year-ended 31 January 2024, of which 59 days fall before 1 April 2023. The factor to gross up the super-deduction proceeds is therefore (0.3 x 59 ÷ 365) plus 1, i.e. 1.048493.

There is therefore a balancing charge on the disposal of (767,493 x 1.048493) £804,712.

The balance of the proceeds identified above which does not relate to a super-deduction asset (£127,077) is deducted from the pool to which the expenditure that did not qualify for super-deduction was allocated.

50% first-year allowance

This is available for special rate expenditure ("SR expenditure") which meets the common conditions above. The 50% FYA is known as an "SR allowance".

Special rate expenditure includes expenditure on long-life assets, features integral to a building, cushion gas (the initial gas fed into a pipeline or other facility to enable the asset to start functioning) and solar panels.

The company is permitted to instead allocate the AIA to all or some of the expenditure on the asset and claim 100% on this.

Disposal of SR allowance assets (Clause 13)

A balancing charge will arise on the disposal of any SR allowance asset on the relevant proportion of the proceeds.

This is the proportion of the total disposal value based on the ratio of the original expenditure that qualified for the SR allowance divided by 2 (to compensate for the fact that the original allowance was only 50% of the qualifying cost), compared to the sum of:

1. The relevant SR expenditure, plus
2. Any expenditure on which any other first-year allowance was made, plus
3. Any other expenditure which was allocated to a pool for any chargeable period in respect of the asset (including any subsequent expenditure)

Any proceeds from the sale that are not attributable to the balancing charge are deducted from the appropriate capital allowances pool (almost certainly the special rate pool, although the legislation does not specify this, perhaps because part of the expenditure might have qualified for general pool allowances instead or because the company allocated AIA to part of the expenditure).

It is not possible to defer the balancing charge under s135(1) CAA 2001 (shipowners disposing of ships).

Example

A company with a year-end of 31 December purchased a special rate pool asset on 17 May 2021 for £2,140,000. It allocated its £1,000,000 annual investment allowance to the purchase and claimed a 50% SR allowance on the balance.

It disposes of the asset on 9 September 2024 for proceeds of £490,200.

Calculate the capital allowances and balancing charges for the years ended 31 December 2021 to 31 December 2024 assuming that the balance on the special rate pool at 1 January 2021 was £126,481.

Analysis

A table showing the detailed calculation ss given on the next page.

Year ended			**AIA asset**	**FYA asset**	**Special Rate Pool**	**Total allowances**
31 December 2021						
Balance b/fwd					126,481	
Addition			1,000,000	1,140,000		
WDA		6%			(7,589)	7,589
AIA		100%	(1,000,000)			1,000,000
FYA		50%		(570,000)		570,000
				570,000		1,577,589
Transfer to SR pool				(570,000)	570,000	
Balance c/fwd					688,892	
31 December 2022						
WDA		6%			(41,334)	41,334
					647,558	
31 December 2023						
WDA		6%			(38,853)	38,853
					608,705	
31 December 2024						
Balancing charge	(working)					(130,567)
Disposal proceeds	(working)				(359,633)	
					249,072	
WDA		6%			(14,944)	14,944
Balance c/fwd					234,128	
Balancing charge net of WDA						(115,623)

Disposal working

Original SR expenditure	1,140,000
Other expenditure	1,000,000
	2,140,000

Balancing charge = disposal value x (SR expenditure ÷ 2) ÷ total expenditure

490,200 x 570000 ÷ 2140000 130,567

Disposal proceeds from SR pool (balance) 359,633

490,200

Anti-avoidance rule

Clause 14 provides for the counteraction of a relevant tax advantage from claiming a super-deduction or SR allowance, or avoiding a balancing charge on disposal.

This would be where the purpose, or one of the main purposes of the arrangements is to obtain a relevant tax advantage and either:

1. it is reasonable to conclude that the arrangements are, or include steps that are contrived, abnormal or lacking a genuine commercial purpose, or

2. it is reasonable to regard the arrangements as circumventing the intended limit of reliefs under CAA 2001, or otherwise exploiting its shortcomings.

It could be thought that if CAA 2001 had shortcomings, these should be fixed by amending the law rather than providing for them by an anti-avoidance rule.

100% first-year allowance (Clause 9(4))

This is available for expenditure that meets the common conditions above and is incurred in acquiring plant and machinery for use partly in a ring fence trade and partly for another qualifying activity, but not special rate expenditure.

The expenditure must be allocated between the ring fence trade (non-qualifying) and the other qualifying activity on a just and reasonable basis.

Extension of temporary increase in annual investment allowance (AIA)

As previously announced, Clause 15 extends the AIA limit of £1,000,000 to 31 December 2021.

Unless extended further, it will revert to £200,000 from 1 January 2022. For businesses and companies that do not have 31 December year-ends, this can create significant transitional issues in normal situations, but because of the availability of the super-deduction and 50% first-year allowance for special rate expenditure it will have less impact than normal for companies.

<u>Example</u>

A company has a year end 31 March 2022.

The total maximum AIA for the period will be (£1,000,000 x 275/365) + (£200,000 x 90/365), i.e. £753,425 + £49,315 = £802,740.

For expenditure between 1 April 2021 and 31 December 2021, the actual maximum expenditure that can qualify for AIA is the £802,740. The policy paper issued as part of the Budget press releases indicates that the AIA for this period is limited to £753,425 which is at odds with its previous policy documents when the rates changed in the past. It also states that there are more detailed transitional rules for businesses subject to income tax, but we are not aware of any.

But the maximum expenditure that can qualify between 1 January 2022 and 31 March 2022 is only (£200,000 x 90/365) £49,315.

If the company incurred special rate expenditure of £750,000 on 31 December 2021 it would qualify for 100% AIA, saving (at 19%) £142,500 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 January 2022, the business would only be able to claim an AIA of £49,315 AIA plus a special rate allowance on the balance of 50% x (£750,000 - £49,315) in first-year allowances, i.e. £399,658, which would only save £75,935 in corporation tax.

Getting the timing wrong would cost the company extra tax for its year ended 31 March 2022 of (142,500 – 75,935) £66,565.

It would then receive 6% on the reduced balance of expenditure in the special rate pool in future years as seen earlier.

General decommissioning expenditure

Mining, oil and gas companies can claim a 100% capital allowance for qualifying decommissioning costs.

Clause 16 amends s163 CAA 2001 to include expenditure incurred in anticipation of the approval of an abandonment programme. This includes expenditure to preserve plant or machinery, the reuse or demolition of which is reasonable to assume will be required as part of the approved abandonment programme.

(New) s163A disqualifies some of the expenditure if the asset on which the expenditure is incurred is not included in an approved abandonment programme, or covered by a specific agreement, within 5 years of the end of the accounting period in which the expenditure was incurred.

Extensions of plant and machinery leases because of coronavirus

Lease extensions caused by Covid-19 could cause lessees to lose capital allowances under the long-funding lease rules. Clause 17 inserts s70YCA for situations where the change can be ignored.

S70YCA(2) will state that the usual rules on extensions will not apply, by election, where:

1. there is/was a change in the payments under the lease on or after 1 January 2020 that would have been payable on or before 30 June 2021 caused by coronavirus (the Treasury can change the 30 June 2021 date by regulation), and
2. the effect of which is to extend the term of the lease after the change, and
3. the consideration for the lease is substantially the same as, or less than, the consideration before the change, and
4. there are no other substantive changes to the terms of the lease, and
5. the lessor and lessee have not made any arrangement in connection with any changes to capital allowances as a result of the change in the lease payments

Condition 3. is the same wording used in the accounting amendment to IFRS 16 Leases when, as a concession, the lessee does not need to consider if the change in lease payments is a modification of the lease, but rather just recognise the reduction as a variable lease payment recognised in profit or loss.

'Substantially the same' is not defined and would therefore take its ordinary meaning. Often, in accounting terms, this means no more than 10% different and this would be a good rule of thumb to use for tax purposes as well.

S70YCA(3) provides that the anti-avoidance rules can be ignored, irrespective of whether the conditions in S70YCA(2) above are met, by election by either the lessor or the lessee under new s70YCA CAA2001. Any election binds the other party.

The elections are irrevocable and must be made within 21 months after the end of the period when the change in the payments under the lease were made. As well as notifying HMRC, the party making the election must also notify the other party and send a copy of the election sent to HMRC.

If a party to the lease makes or amends a tax return for a period in which the rentals were changed because of coronavirus, it must include any election made with the return (or amended return).

In practice, it is likely to be the lessee that makes the election to preserve its entitlement to capital allowances on the leased asset.

Reliefs for business

Loss carry-back (Lecture P1251 – 12.19 minutes)

Clause 18 and Schedule 2 introduce extended loss carry-back provisions for both income tax and corporation tax purposes.

Income tax

The normal provisions under which an individual can make a claim to set a trading loss sideways against their other income is s64 ITA 2007.

The extended carry back applies in relation to 2020/21 if the person is entitled to make a claim under s64 and either of the following conditions is met:

- Condition A is that the person makes a claim under s64 for relief for either or both of tax years 2019/20 and 2020/21

- Condition B is that the total income for those two years is nil or does not include any income from which a deduction could be made under a s64 claim.

The unrelieved loss will be either the amount of the loss allowable under s64 which cannot be relieved under the claim (if condition A is met) or the total loss (is condition B is met). This can be carried back and offset against previous *profits arising from the trade* in 2019/20 (assuming this has not already been dealt with under the s64 claim), 2018/19 and 2017/18, using it against later years before earlier years. The maximum amount that can be set off in 2018/19 and 2017/18 is £2,000,000.

The claim must be made by 31 January 2023.

The same provisions apply in relation to a loss made in 2021/22 except that the years all roll forward by one year and the claim has to be made by 31 January 2024.

These provisions do not apply if any of the following restrictions apply:

- S66 ITA 2007 restriction where trading is not commercial

- S67 – 70 ITA 2007 restriction on losses relating to farming and market gardening trades

- S74ZA – 74ZD ITA 2007 – losses arising in consequence of using relevant tax avoidance arrangements

- S74E ITA 2007 – restriction on losses where cash basis is used

- S75 – 79 ITA 2007 – certain losses arising from capital allowances

- S80 ITA 2007 – losses associated with ring fence trades.

The provisions equally apply to professions and vocations.

Example

An individual has income as follows:

2017/18 Trading profits £1.4m; Property income £75,000

2018/19 Trading profits £1.8m; Property income £55,000

2019/20 Trading profits £250,000; Property income £60,000

2020/21 Trading losses (£4,000,000); Property income £100,000

The losses can be offset as follows:

Utilise against income in 2020/21 and 2019/20 without any restriction = £410,000

£1.8m set off against trading income in 2018/19

Balance of £200,000 set off against trading income in 2017/18

Balance of loss of £1,590,000 will be available to carry forward and offset against future profits.

The individual would not have to claim against both 2019/20 and 2020/21 – the conditions only require for one year to be offset but with figures in this amount, it is likely that the s64 claim would be applied for both years.

Corporation tax

S37 CTA 2010 allows for trade losses to be utilised against profits of the same or earlier accounting periods but only where the previous accounting period falls wholly or partly within the period of 12 months immediately before the loss-making period. This legislation extends that to 3 years.

Whilst the policy paper issued at the time of the Budget clearly stated that the extended carry back was only against profits from the same trade, there is no reference to this in the Finance Bill.

The examples in this section therefore assume that the loss can be carried back against total profits of CY-2 (the ante-penultimate year) and CY-3 (the earliest year to which losses can be carried back).

The accounting periods to which this relates are those which end in the period beginning with 1 April 2020 and ending with 31 March 2022.

Definitions

The legislation refers to '2020 claims' and '2021 claims' as well as '2020 groups' and '2021 groups'. There is also the concept of 'de minimis' claims.

A '2020 claim' means a claim in relation to a loss incurred in an accounting period beginning with 1 April 2020 and ending with 31 March 2021; a '2021 claim' means a claim in relation to a loss incurred in an accounting period beginning with 1 April 2021 and ending with 31 March 2022.

A ‘2020 group’ means two or more companies which, at the end of 31 March 2021, are a group within the meaning given by s269ZZB CTA 2010; 1 ‘2021 group’ means two or more companies which, at the end of 31 March 2022, are a group within the meaning given by s269ZZB CTA 2010. This definition establishes a group via a 75% relationship.

A ‘de-minimis claim’ means a claim which, in total for either 2020 or 2021, is under £200,000. This limit is measured assuming that the company makes all claims available to it (e.g. capital allowances), does not surrender any amounts as group relief, and the claim is for all the relief available to the company in respect of losses made. It is after the carry back into the previous accounting period.

Example

A company has losses before capital allowances of £750,000 in the year to 31 October 2020. It has profits of £400,000 in the previous year. In the 2020 year, it could claim capital allowances of £100,000. There is also a fellow group company that has made profits of £275,000 in the same period which could absorb group relief of that amount.

If it carries back losses to the previous year, it has remaining losses of £350,000. The capital allowances must be added which gives a figure of £450,000. If the £275,000 was surrendered as group relief this would bring us below the £200,000 threshold for a de minimis claim. However, we are not able to reduce the figure by this group relief claim so it is a non-de minimis claim.

Standalone companies

If the company is not a member of a 2020 group, any 2020 claim is only valid if the total value of 2020 extended carry-back claims made by the company is under £2,000,000. The same applies to 2021 claims if the company is not a member of a 2021 group.

Example 1

A company has a loss of £4.2m in the year to 31 December 2020. Its profits are as follows:

31 December 2019 £1.5m

31 December 2018 £800,000

31 December 2017 £1.9m

The loss can be offset against the 2019 profits, leaving £2.7m of loss available to carry back. Only £2m of this is available to carry back to 2018 and 2017, so £800,000 would be used in 2018 and the balance of £1.2m used in 2017. £700,000 is then carried forward against future profits.

Example 2

Company has the following profit/loss profile and has a 31 December year end:

	Years ended 31 December			
	2017	**2018**	**2019**	**2020**
Trading profit / loss	2,074,091	1,149,400	3,921,114	(7,130,210)
Other income and gains	350,328	195,098	432,120	123,245

How can the losses be used?

	Years ended 31 December					
	2017	**2018**	**2019**	**2020**	**Loss tracking**	
Trading profit / loss	2,074,091	1,149,400	4,353,234	-	7,130,210	
Other income and gains	350,328	195,098	432,120	123,245	-123,245	(1)
	2,424,419	1,344,498	4,785,354	123,245	-4,785,354	(2)
1. Current year relief				(123,245)	2,221,611	
2. Carry back 12 months			(4,785,354)		-1,344,498	(3)
3. Carry back (CY-2)		(1,344,498)			877,113	
4. Carry back (CY-3)*	(655,502)				-655,502	(4)
Final profits chargeable	1,768,917	0	0	0	221,611	c/fwd

CY-2 and CY-3 carry-back is limited to a total of £2,000,000 so there is a restricted set-off in 2017. The loss carried forward to later periods is £221,611.

Groups

Where a company is a member of a group, non-de minimis claims can only be made if the total claims are less than £2,000,000 being the aggregate of:

- The claim in question
- Any other claims (as appropriate) made by the company for the same year (i.e. either 2020 or 2021)
- Any claims made by other members of the group for the same year (i.e. either 2020 or 2021).

In this calculation, you have to include de minimis claims. No group cap exists if there are no claims which are non-de minimis.

A loss allocation statement has to be submitted by the group. Anti-avoidance provisions apply where a company ceases to be a member of a group with the main purpose (or one of the main purposes) being to increase the amount of relief that might be available under these provisions.

Example

A company is a member of a group with 4 other members, each has losses of less than £200,000 after amounts have been carried back to the previous year. No group cap exists as each is less than the de minimis limit.

Suppose the figures differed such that the loss after carry back was as follows:

Company A	£100,000
Company B	£200,000
Company C	£500,000
Company D	£100,000
Company E	£1,500,000

If companies' A – D claim the maximum relief, then the extended loss carry-back for Company E would be (2,000,000 – 100,000 – 200,000 – 500,000 – 100,000) £1,100,000.

Example

A group of companies has the following results with each having a year end of 31 December. All profit derives from trading activities.

	Years ended 31 December			
	2017	**2018**	**2019**	**2020**
A Ltd	84,342	94,278	40,150	(235,420)
B Ltd	64,902	59,293	32,632	(131,006)
C Ltd	71,454	58,344	90,164	(244,932)
D Ltd	89,231	62,782	67,344	(248,553)
E Ltd	1,435,395	1,643,988	867,343	(4,517,573)
				(5,377,484)

The loss available after carry-back to 2019 is as follows:

A Ltd	195,270
B Ltd	98,374
C Ltd	154,768
D Ltd	181,209
E Ltd	3,650,230
	4,279,851

For A – D, these are de minimis claims and, on initial calculation, it would appear that the maximum amount that can be carried back for E Ltd is £1,370,379 which £2,000,000 less the sum of the amounts for the other companies. However, when the figures are worked through, not all of these companies can utilise all of their carried back losses, so the amount that is actually available to carry back for E Ltd is £1,441,195.

This is the final analysis of the losses claimed for each company:

		Years ended 31 December				**Amount claimed**	
Loss claims	**2017**	**2018**	**2019**	**Total**	**Loss c/fwd**	**CY-2 and CY-3**	
A Ltd	(84,342)	(94,278)	(40,150)	(218,770)	(16,650)	(178,620)	
B Ltd	(39,081)	(59,293)	(32,632)	(131,006)	0	(98,374)	
C Ltd	(71,454)	(58,344)	(90,164)	(219,962)	(24,970)	(129,798)	
D Ltd	(89,231)	(62,782)	(67,344)	(219,357)	(29,196)	(152,013)	
E Ltd	0	(1,441,195)	(867,343)	(2,308,538)	(2,209,035)	(1,441,195)	balance
	(282,091)	(1,713,874)	(1,095,614)	(3,097,633)	(2,279,851)	(2,000,000)	

The total losses of the group (being £5,377,484) are used £1,095,614 in 2019, £2,000,000 in 2017 and 2018 and losses of £2,279,851 are carried forward.

Claims

A non-de minimis claim (so one in excess of £200,000) for 2020 cannot be made before 31 March 2021 and for 2021 cannot be made before 31 March 2022. These claims must be made in the company tax return for the accounting period in which the loss is incurred. Any earlier accounting periods which are affected will be treated as amended accordingly.

R&D tax credits for SMEs (Lecture B1254 – 9.12 minutes)

A company which has claimed an enhanced deduction for qualifying costs under the SME R&D scheme may claim a payable tax credit if it has losses which are created or enhanced by the R&D costs.

Clause 19 and Schedule 3 introduce a cap on the amount of tax credit that could otherwise be claimed by limiting the amount to the sum of £20,000 plus three time the 'relevant expenditure' in the relevant accounting period. The 'relevant expenditure' is broadly the PAYE and NIC costs of the company, but this is discussed further below.

The £20,000 is proportionately reduced if the accounting period is less than 12 months.

Example

A loss-making SME has R&D spend of £100,000 which would attract an enhanced deduction of £130,000 giving total R&D costs of £230,000. Its losses exceed this amount.

The tax credit which could be claimed is 14.5% of the surrenderable losses so without the cap, the potential claim is £33,350.

The PAYE and NI expenditure for the year is £3,000.

The cap therefore limits the amount which can be claimed to £20,000 plus (3 x £3,000), i.e. £29,000.

'Relevant expenditure' is:

- The total of the PAYE and NIC liabilities for the payment period less any disregarded amounts (to avoid double counting);
- If the company is connected with another company and has incurred qualifying expenditure on externally provided workers, the relevant proportion of any staffing costs for the payment period incurred by the connected company in providing any of those workers for the company; and
- If the company is connected with another company and has incurred qualifying expenditure on contracted out R&D, any staffing costs incurred by the connected company in undertaking the contracted out R&D.

Staffing costs in this context is given its normal definition as per s1123 CTA 2009 so it includes remuneration (excluding benefits in kind), pension contributions and reimbursed qualifying expenses. However, care needs to be taken as whilst this appears to suggest it is the total staffing costs which are used, the calculation shows it is just the PAYE and NIC costs that the connected company has incurred in respect of the externally provided workers or the contracted out R&D.

The relevant proportion of the staffing costs that can be claimed where there is provision of externally provided workers is calculated as follows:

Step 1

Calculate the expenditure incurred by the connected company in providing the externally provided workers, that has been incurred on staffing costs and forms part of the total PAYE and NIC liabilities for the payment period.

Step 2

Calculate the appropriate percentage being R/T x 100, where

- R is the amount of qualifying expenditure on the externally provided worker which is taken into account for the purposes of the R&D claim, and
- T is the total qualifying expenditure on the externally provided worker.

Step 3

The amount found at step 1 is multiplied by the percentage found at step 3 to give the amount that can be relevant expenditure for the cap on the tax credit.

<u>Example</u>

A loss-making SME has R&D spend of £100,000 which would attract an enhanced deduction of £130,000 giving total R&D costs of £230,000. Its losses exceed this amount.

The tax credit which could be claimed is 14.5% of the surrenderable losses so without the cap, the potential claim is £33,350.

The R&D claim includes £50,000 of payments to a connected company for externally provided workers. The actual payment made for those workers is £60,000 but the connected company's costs are only £50,000 so the qualifying expenditure for R&D credit purposes are limited to this amount. The total PAYE and NIC liability of that company is £5,000.

The claimant company has no staff of its own undertaking R&D work.

The cap therefore limits the amount which can be claimed to £20,000 plus (3 x (£5,000 x 50,000/60,000)) = £32,500.

The relevant proportion of the staffing costs where there is provision of subcontracted R&D is the amount of the PAYE and NIC liability incurred on staffing costs for the purposes of undertaking the subcontracted R&D.

Example

A loss-making SME has R&D spend of £100,000 which would be attract an enhanced deduction of £130,000 giving total R&D costs of £230,000. Its losses exceed this amount.

The tax credit which could be claimed is 14.5% of the surrenderable losses so without the cap, the potential claim is £33,350.

The R&D claim includes £50,000 of payments to a connected company for subcontracted R&D. The staff are working 75% on the subcontracted R&D. The total PAYE and NIC liability of that company is £5,000.

The claimant company has no staff of its own undertaking R&D work.

The cap therefore limits the amount which can be claimed to £20,000 plus (3 x (£5,000 x 75%)) = £31,250.

New S1058B CTA 2009 makes it clear that the PAYE and NIC liabilities we are looking at here are the amounts which have to be paid over to HMRC under the PAYE regulations plus the amount of Class 1 NICs which have to be paid over to HMRC. In calculating the figures, it is necessary to disregard deductions in respect of tax credits and statutory payments.

An anti-avoidance provision is introduced to stop double-counting of costs. An example given in the guidance notes considers a situation where Company A subcontracts R&D activities to Company B, which also carries out R&D in its own right for which it claims tax credit. Company B would calculate the cap based on its total PAYE and NIC liabilities but Company A might also include some of those costs in the calculation of its cap. In this case, Company A would get the right to include the PAYE and NICs in its calculations.

Exceptions to cap

The cap does not apply if the company meets conditions A and B:

Condition A is met if the company is engaged in

- Taking or preparing to take steps which will means that relevant IP will be created
- Creating relevant IP
- Performing a significant amount of management activity in relation to relevant IP it holds

These activities are only relevant if they are undertaken by the employees of the company. IP is only relevant IP if the whole or a greater part of the whole was created by the company, which means created in circumstances in with the right to exploit it vests in the company, either alone or jointly with others. IP means patents, trademarks, registered designs, copyright, design rights or plant breeders'

rights or similar. Management activity means formulating plans and making decisions in relation to the development or exploitation of the IP.

Condition B is met if the amount of expenditure on externally provided workers and/or subcontracted R&D, where there is a connection between the company and the provider or subcontractor as appropriate (or where an election has been made for connected party treatment to apply), does not exceed 15% of their qualifying R&D expenditure.

Commencement

This applies for accounting periods beginning on or after 1 April 2021 although any periods straddling that date will be split.

Northern Ireland companies

Schedule 4 provides separate legislation for the cap on the tax credit which would apply if the Northern Ireland Assembly were to vary the rates of Corporation Tax for Northern Ireland companies. This is designed to ensure that the value of the relief remains the same for Northern Ireland and non-Northern Ireland companies.

Social investment tax relief (Lecture B1254 – 9.12 minutes)

Social investment tax relief encourages individuals to invest in qualifying social enterprises and trading charities by offering tax reliefs similar to those which apply for Enterprise Investment Scheme companies.

When it was introduced in 2014, it was designed to be short-term and it was intended that it would finish in 2019. It was extended to 5 April 2021 by F(No.2)A 2017 and Clause 20 of this Finance Bill extends the end date so that investment made before 6 April 2023 will qualify assuming all conditions are met.

Employment income and pensions (Lecture P1252 – 14.21 minutes)

Off-payroll working

From 6 April 2021, the 'off-payroll' working rules (which pre-6 April 2021 only affect public sector work) are extended to the private sector, where the client is a medium or large entity (unless that client has no UK connection).

Unlike the IR35 rules, which require the worker's intermediary (normally a PSC) to potentially account for payroll taxes on its fee income if there is a deemed employment relation with the end-client, the off-payroll working rules require the end-client to decide whether there is a deemed employment relationship with the worker and, if there is, the fee-payer must account for the worker's payroll taxes.

The substantive rules were included in FA2020, but these are now amended so that they work as intended, with additional provisions introduced to tighten up the impact of the rules. All of these provisions are within Clause 21 and take effect from 6 April 2021.

Definition of intermediary

For the off-payrolling rules to apply, there has to be an intermediary, which is most commonly a company (this is the 'personal service company'). To within the provisions the personal service company has to meet certain conditions. The intermediary is caught if the worker either has a material interest in that company or is receiving income from the intermediary which represents payment for services rendered but is not taxable as employment income. This latter provision prevents avoidance by diluting shareholdings below the material interest figure to avoid the rules applying. These have been in place for IR35 since it was introduced in 2000.

The FA2020 rules updated these conditions so that the company could be caught where the worker has a non-material interest in the intermediary but receives payment for services from anyone within the supply chain (such as where they get direct payment from the end client), but the wording was such that it applied in all cases where a worker was getting a payment from elsewhere in the supply chain. The legislation is being amended so it now makes reference to situations where a worker receives payments which are not already wholly taxed as employment income.

The definition of 'non-material interest' is having:

- 5% or less of the ordinary share capital,
- Having entitlement to receive 5% or less of any distributions that may be made by the company, or
- Where the company is a close company having entitlement to receive 5% or less of the assets available for distribution on a winding up.

Information provisions

Another change relates to provision of information within the supply chain. There is current requirement for the worker to provide information to the potential deemed employer (normally the end client) regarding the application of the off-payroll working rules, which basically requires the worker to notify the deemed employer that the basic structure is such that these rules might apply (eg the worker has a material interest). This is amended so that the intermediary (i.e. the personal service company) will have a requirement to provide the necessary confirmation where the worker does not do so. The changes will bring the intermediary into the process of confirming whether a worker is potentially caught by the off-payroll working rules. It should be noted that if no confirmation is given by the worker or intermediary, it can be assumed by the end client that the rules apply.

Fraudulent provision of information

There are specific provisions where fraudulent information is provided so that the person providing that information becomes liable for any taxes which arise by virtue of their actions. This currently only applies to the worker or anyone connected with the worker but will be extended to cover any UK-based party in the supply chain.

Targeted Anti-Avoidance Rule

There is a new Targeted Anti-Avoidance Rule. This will apply where at least one relevant person within the supply chain is involved in a 'relevant avoidance arrangement'. These are arrangements where the main purpose (or one of the main purposes) is to gain a tax advantage by circumventing the conditions of the provisions such that the IR35 rules do not apply.

If these conditions apply, the person who has entered into the arrangements will be treated as the deemed employer and will become liable for the taxes due on payments to the worker. Where more than one relevant person participates in the avoidance arrangements, HMRC will treat the higher person in the supply chain (assuming there is a realistic prospect of recovering the tax) as the deemed employer. This could be the worker or intermediary if other members of the supply chain no longer exist.

Payments on termination

In 2018 provisions were introduced which amended the termination payment provisions such that an amount of any non-contractual payment in lieu of notice (PILON) could be taxed as earnings, rather than as a termination payment. The amount which is taxable is the 'Post-Employment Notice Pay' (PENP).

FB2021 makes two amendments to these provisions. Both apply for payments made on or after 6 April 2021 in connection with termination of employment that takes place on or after that date.

Non-residents

S27 ITEPA 2003 applies to earnings for a tax year when an employee is not resident in the UK. It treats as employment income any earnings in respect of duties performed in the UK or earnings from overseas Crown employment, so they are subject to UK tax. This section is amended by Clause 22 to add a third category of earnings which can be subject to UK tax, being amounts which fall to be treated as general earnings under s402B ITEPA 2003 as PENP.

This is designed to ensure that if the earnings would have been taxable under s27 if the employment had not been terminated then the termination payment is also taxable. The percentage of the PENP which is taxable under this section is:

$A/B \times 100$

Where B is the total amount of general earnings that it is reasonable to assume that the employee would have received in respect of the post-employment notice period if the employment had not been terminated and A is the amount of those earnings that would have been taxable earnings under s27.

Example

Nicos is a non-resident individual who undertakes duties in the UK, where he spends 4 days a month (out of total working days of 20 days per month). It is agreed that 20% of his employment income is subject to tax under s27 ITEPA 2003.

His employment is terminated and he receives a PILON of which £25,000 would be PENP if the whole of the amount was subject to UK tax. Based on the above formula, (20%) £5,000 of this would fall within the new s27 provisions and would be taxed as earnings in the UK.

Calculation of PENP

The new legislation includes an alternative calculation for PENP for employees who have a pay period defined in months but where either a notice period is defined in weeks or days or the post-employment notice period is not a whole number of months.

The PENP is calculated as:

$$\left(\frac{BP \times D}{P}\right) - T$$

Where:

- BP is the employee's basic pay in the last pay period before the trigger date (basically the date that notice is given or employment ceases)
- P is the number of days in the last pay period, and
- D is the number of days in the post-employment notice period (which is the number of days after the employment is terminated up to the end of the notice period).

This calculation can use whole months if all of the periods are in full months but this was not always possible. Clause 21(7) amends the provisions so that if the employee is on a fixed monthly salary, the calculation of the basic pay uses an average daily pay as the pay of the previous month divided by 30.42 (which is the average length of a month). This removes the variation in the calculation which would have depended on the length of the previous month.

Although this provision comes in on or after 6 April 2021, HMRC will continue to allow this mechanism to be used for payments before that date if it is advantageous.

Example

An employee is paid a salary of £30,000 by equal monthly instalments of £2,500 on the first day of each month. The employment is terminated on the 1 March and she is entitled to 2 weeks' notice but she agrees to leave immediately in consideration of a termination payment of £10,000.

Under the normal rules, the calculation of PENP would be:

((2,500 x 14)/28) – 0 = £1,250

If she had been terminated on 1 April, the calculation would be:

((2,500 x 14)/31) – 0 = £1,129

Under the new rules, the average number of days would be used instead giving the PENP calculation as:

((2,500 x 14)/30.42) – 0 = £1,150

Example 2

Salary £6,000 per month, contract specifies 3 months' notice (but no right for the employer to pay in lieu), resigned 15/3/20, worked 5 days' notice then left.

Paid £60,000 termination payment on 25/3/20.

Under the old rules:

- BP ÷ P = £6,000 ÷ 29 days (2020 was a leap year) = £206.90 per day
- D = 86 (16 + 30 + 31 + 14 – 5)
- T = 0
- Taxable PENP = £206.90 x 86 = £17,793

What if the resignation date was 15/4/20?

- BP ÷ P = £6,000 ÷ 31 days = £193.55 per day
- D = 85 (15 + 30 + 31 + 14 – 5)
- T = 0
- Taxable PENP = £193.55 x 85 = £16,452

Under the new rules:

"P" will be taken to be 30.42 days, whichever month notice is given (this is 365 days ÷ 12 months, rounded to 2 decimals) and will remove the anomaly in the example above.

- BP ÷ P = £6,000 ÷ 30.42 days = £197.24 per day
- If the resignation date is 15 March 2020, D = 86 as above
- T = 0
- Taxable PENP = £197.24 x 86 = £16,962
- If the resignation date is 15 April 2020, taxable PENP is £197.24 x 85 = £16,765.

Zero-emission vans

The cash equivalent of the benefit of a van with no CO_2 emissions is set at nil for 2021/22 and subsequent tax years so that no employment benefit arises even where there is private use. (Clause 23).

Enterprise management incentives

An employee who is provided with share options under an Enterprise Management Incentive (EMI) scheme has to meet the working time requirement which means they must spend at least 25 hours per work or if less, 75% of their working time, committed to the employer. If they cease to meet this requirement, there would be a disqualifying event and the tax advantages of holding the option may be lost, unless the option is exercised within 90 days of the disqualifying event occurring.

Clause 24 modifies the provisions so that the employee continues to meet the time requirement for EMI even if they are not required to work for the necessary hours for reasons connected with coronavirus. This could include taking unpaid leave, being furloughed or working reduced hours. The modification will apply for a period commencing on 19 March 2020 and ending on 5 April 2022.

Cycles and cyclists' safety equipment

There is a tax exemption within s244 ITEPA 2003 which removes the benefit in kind charge where there is provision of cycles and cyclists' safety equipment by an employer which meets the conditions within that legislation. This was designed as part of the Government's green agenda.

One of the conditions is that the equipment must be used mainly for qualifying journeys, being to or from work or in the course of work. For those individuals who were participating in such schemes and have received bikes or safety equipment on or before 20 December 2020, this condition will be treated as met for the period between 16 March 2020 and 5 April 2022. (Clause 25).

This has been introduced to minimise the impact of those who are working from home and so not undertaking qualifying journeys.

Exemption for coronavirus tests

Clause 26 confirms that no income tax charge arises in relation to coronavirus antigen tests (but not antibody tests) provided to employees by their employer or where the cost is reimbursed to the employee in respect of the same. This will apply for 2020/21 and 2021/22.

Optional remuneration arrangements

The Optional Remuneration Arrangements (OpRA) legislation removed the benefits of entering into salary sacrifice arrangements. Although these took effect from 6 April 2017, there were transitional provisions relating to provision of long-term benefits such as living accommodation and school fees which continue until 6 April 2021. These provisions applied only as long as there was no variation in the employee's employment contract.

There is a list of various statutory payments which are disregarded for the purposes of determining if contractual changes have been made in relation to the employee, but this list did not include Statutory Parental Bereavement Pay (SPBP) as it did not exist at the time the legislation was enacted.

The legislation is therefore changed to include SPBP as a disregarded statutory payment.

This will apply retrospectively for 2020/21 (but not earlier as SPBP was only brought in from 6 April 2020). (Clause 27).

Pensions lifetime allowance

The pensions lifetime allowance is the maximum value of tax-relieved pension savings that an individual can build up during their lifetime. If the pension fund exceeds this amount, then there is an additional tax charge on the excess at the time the pension benefits are crystallised (which is often when the beneficiary begins to take benefits from the plan).

The standard lifetime allowance for 2021/22 is £1,073,100 and this limit will remain until 5 April 2026 with the provisions allowing for normal indexation of this amount being disapplied. (Clause 28). This does not affect anyone who has a higher lifetime allowance where an election has been made previously to protect the higher value.

Collective money purchase schemes

Legislation is to be introduced so that collective money purchase pension schemes, which will be introduced by the Pension Schemes Act 2021, can operate as registered pension schemes for tax purposes.

These new schemes can be established by a single employer (or associated employers) and are designed to be less expensive for an employer to run and fund by being less administratively burdensome with overall responsibility for the scheme being shared between the scheme and its members. The aim is to give a target benefit level on retirement by pooling of risk and avoiding the need to make financial decisions at the point of retirement; a type of defined benefit scheme without the risks to an employer of having a defined benefit scheme.

The provisions are in Clause 29 and Schedule 5. The legislation is complex because these schemes will operate in different ways to other pension schemes but there have needed to be considerably alterations to make sure they can operate without creating unintended unauthorised payments charges and also so the flexible nature is reflected in the parameters within which they can operate.

Construction industry scheme

Amendments are made to the Construction Industry Scheme provisions as follows (Clause 30 and Schedule 6). All of these have effect from 6 April 2021.

Deemed contractors

S59 FA2004 designates certain persons as being contractors within the construction industry. One way in which a business can be deemed to be a contractor is if the expenditure on construction operations exceeds a legislated limit. The current limit is that in any three-year period the person has had an average annual expenditure on construction operation of more than £1,000,000 with various exceptions. A year in this context is the 12 months to 31 March each year.

The new legislation will change the test so that a person will be a deemed contractor if their expenditure on construction operations exceeds £3,000,000 in the previous year with the test being applied at any point, rather than just at 31 March. That person can elect for the condition not to be treated as met if they are not expected to make any further expenditure on construction operations.

Equally if the condition ceases to be met at any time, the person may elect for it to be treated as continuing to be met until such time as they are not expected to make any further expenditure on construction operations. The provisions also make it clear that the condition can be met subsequently even if either of those elections have been made.

The transitional provisions are such that if a person fell to be treated as a deemed contractor under the old rules but would not under the new rules, they are treated as a deemed contractor until they are not expected to make any further expenditure on construction operations.

There is also a new grace period where a person falls to be treated as a contractor under the above provisions. An officer of HMRC may exempt the contractor from the requirement to deduct tax from payments for a period including specified payments before the date the exemption is given. The period must not exceed 90 days, although this can be extended by further notices.

This enacts a provision previously operated by HMRC which gives a grace period to persons who inadvertently breach the deemed contractor threshold and it provides those persons' time to set up the necessary processes to correctly operate CIS.

Allocation of value to materials

S61(1) FA2004 specifies that a contractor deducts tax from payments to sub-contractors (where not gross payment registered) to the extent that the payment does not represent the direct cost of materials. In its current form the legislation states 'the direct cost to any other person' but this is to be amended to 'the direct cost to the sub-contractor'.

S62 FA2004 deals with how a sub-contractor, who has had tax deducted at source on payments made, can get relief for that deduction. If the person is not a company it is treated as an income tax payment on account but if the person is a company it can be treated as a payment on account of a wider range of liabilities. New sections are inserted in s62 authorising an officer of HMRC to amend deductions claimed by either:

- Correcting an error or omission relating to a set-off claim
- Removing a set-off claim
- Prohibiting a person from making a further set-off claim for a specified period, or indefinitely.

This can be done by amending returns or amending set-off claims (for example via the EPS submissions in RTI).

Penalties

There is an extension of the scope of the penalty regime where a person supplies false information including documents when applying for gross payment status either for themselves or for another person over which they have influence or control (e.g. where an owner manager provides information pertinent to the gross payment status of their company).

The maximum penalty under this provision is £3,000. This will not apply to any statement made or document furnished before 6 April 2021.

Coronavirus support payments

Covid-19 support scheme

Clause 31 makes it clear that payments made under the Covid-19 support scheme for working households receiving tax credits are exempt from income tax. This covers the £20 per week uplift to the Working Tax Credits basic element during 2020/21 and the one-off payment of £500 to be paid to cover the period from April to September 2021 to be paid to working households receiving tax credits.

This exemption does not cover the income tax charge which arises under Schedule 16 FA 2020 where a person has claimed a payment to which they are not entitled, where an income tax charge arises to claw back the payment made.

Self-employed Income Support Scheme

The provisions within Schedule 16 FA2020 specified that all receipts under the SEISS would be taxed in the 2020/21 tax year, regardless of the basis period they fell into under general principles. As the scheme is now continuing beyond the end of that tax year, Clause 32 amends the provisions so that for payments received on or after 6 April 2021, the payment will be taxed in the tax year of receipt.

Further amendments make it clear that a person is liable to a tax charge if they cease to be entitled to the SEISS payment due to a change in circumstances with the tax charge becoming payable at the time the person ceases to be entitled to retain the payment. Again, this only applies to payments received on or after 6 April 2021.

Business rates

Clause 33 contains a provision to override Generally Accepted Accounting Principles where there is a repayment of business rate relief by a business. The legislation allows the deduction for that repayment to be made in the same period in which the original receipt was treated as income. Provisions ensure that it is not possible to take a double deduction for the amounts.

This clause has retrospective effect.

Miscellaneous income tax issues

Interest and Royalties Directive

The EU Interest and Royalties Directive imposed an EU-wide level playing field in relation to the deduction of withholding taxes from payments between connected companies within the EU (where there was at least a 25% relationship between the parties). Clause 34 repeals the provisions relating to this Directive and will apply to payments made on or after 1 June 2021.

However, if the payment is made in 'disqualifying circumstances' the provisions will be treated as repealed in relation to payments made on or after 3 March 2021.

A payment is made in disqualifying circumstances if it made under arrangements the main purpose (or one of the main purposes) was to ensure that it was made before the repeal became effective.

This means that from 1 June 2021 (or earlier if the anti-avoidance rule above operates), the provisions of domestic legislation and the appropriate double tax treaty will determine whether withholding tax applies to any relevant payments. In reality, there are many treaties where there is no obligation to deduct tax. The following table is a (brief) summary of the position for the EU member states.

Note: where the column states nil withholding, this is because the treaty states that interest or royalties arising in one state and beneficially owned by a resident of the other state, is taxed only in the other state. This is a general summary only as most of the treaties contain additional conditions which need to be considered.

Country	**Interest**	**Royalties**
Austria	Nil	Nil
Belgium	10%	Nil
Bulgaria	5%	5%
Croatia	5%	5%
Cyprus	Nil	Nil
Czech Republic	Nil	10%
Denmark	Nil	Nil
Estonia	10%	5% or 10% depending on nature of IP
Finland	Nil	Nil
France	Nil	Nil
Germany	Nil	Nil

Greece	Nil if taxed in UK	Nil if taxed in UK
Hungary	Nil	Nil
Ireland	Nil	Nil
Italy	10%	8%
Latvia	10%	5% or 10% depending on nature of IP
Lithuania	10%	5% or 10% depending on nature of IP
Luxembourg	Nil	5%
Malta	10%	10%
Netherlands	Nil	Nil
Poland	5%	5%
Portugal	10%	5%
Romania	10%	15%
Slovakia	Nil	10%
Slovenia	5%	5%
Spain	Nil	Nil
Sweden	Nil	Nil

Payments made to victims of modern slavery etc.

Clause 35 introduces an exemption from income tax where qualifying payments are made which are payments meeting the following conditions:

- The payment is made by or on behalf of a public authority
- The payment is made to a person where there are reasonable grounds to believe they may be a victim of slavery or human trafficking, and
- The payment is made for the purposes of providing assistance or support to such persons.

This applies to any such payments made on or after 1 April 2009.

Such payments are made under an obligation that the UK has under international conventions to assist victims of modern slavery and human trafficking.

Miscellaneous corporation tax issues

Hybrids and other mismatches (Lecture B1255 – 20.34 minutes)

Clause 36 introduces Schedule 7 which makes fifteen changes to Part 6A TIOPA 2010, ostensibly to ensure the hybrid mismatch rules operate as originally intended.

Before each amendment, the notes give the context in which they arise.

Definition of foreign tax

Taxes that can be counteracted under the rules include taxes on profits or income (excluding municipal levies and taxes imposed by provinces, states or other parts of the country), but not sales taxes or withholding taxes.

Schedule 7, Para 1 inserts para 3ZA into s259B(3) TIOPA 2010 with effect from Royal Assent.

A foreign tax is not an income tax or corporate tax on income if it is charged on income that has

1. arisen to an entity that is an opaque entity in the territory charging the tax but is not liable to tax on it; and

2. is to be brought into account for tax purposes by a different entity

Meaning of hybrid entity and investor

A hybrid entity is an entity that meets two conditions

A. It is taxed as a separate person under the laws of any territory; and

B. It is tax transparent in any other territory (i.e. in another jurisdiction its profits are taxable on another person(s) – usually its owners/investors).

The wording in A, 'any territory' is being amended to 'a relevant territory' which is then defined as

a) the territory where the entity is established; or

b) a territory where a person is resident for tax or otherwise within the charge to tax, and would be treated for tax purposes as receiving any distribution of profit made by the entity

Similarly, in B. the wording 'any territory' is replaced with 'a territory' and where it refers to 'person or persons other than' (the entity mentioned in A), this is being replaced by 'one of more persons (other than the entity mentioned in A) who are resident for tax purposes or otherwise within the charge to a tax in the territory'.

In other words, the territory cannot now be a totally unrelated territory to the structure being considered. The change applies with retrospective effect.

Situations where relevant debt relief is given

Normally, when a corporate lender writes off, impairs, or releases a debt of a connected company, the debit is disallowed under the loan relationship rules. If the borrower is in an insolvency procedure at that time, however (e.g. receivership, administration, liquidation), the loan relationship debit for the lender is allowable.

The borrower recognises a credit in its profit and loss account when it is notified that the liability is no longer payable. This credit is never taxable under the loan relationship rules.

For financial instrument hybrid mismatches (s259CB TIOPA 2010), the wording has been clarified to ensure that a mismatch cannot arise merely because the lender receives an allowable debit on the write off, impairment or release of a loan and the borrower is not taxed on it.

Old s259CB(3) said this would be the case where the 'excess' (i.e. the allowable debit not matched by a taxable credit for the borrower) arises by reason of a relevant debt relief provision. It now adds 'or in relevant debt relief circumstances' so as to put beyond doubt that the excess is never disallowed in these situations.

'Relevant debt relief circumstances' apply if any of the circumstances in new s259NEC – s259NEF TIOPA 2010.

New s259NEC: The amortised cost basis of accounting must have been used by the lender for the loan and a relevant release occurs when one of five conditions is met:

1. the release is part of a statutory insolvency arrangement (as defined in s1319 CTA 2009)
2. the release is not a release of relevant rights and is in consideration of ordinary shares (or a right to such shares)
3. the borrower meets an insolvency condition (insolvent liquidation, insolvent administration, insolvent administrative receivership, a provisional liquidator has been appointed and is not connected to the lender or corresponding procedures outside the UK)
4. the release is related to a stabilisation power under Part 1 Banking Act 2009
5. the release is not a deemed release nor a release of relevant rights and without it, it would be reasonable to assume that there would be a material risk that the borrower would be unable to pay its debts in the next 12 months

New s259NED: The amortised cost basis of accounting is used, the lender and borrower are connected companies and the release is neither a deemed release nor a release of relevant rights.

New s259NEE: amortised cost basis is used for the loan, the conditions in s357 CTA 2009 apply (which are identical to those in s259NEC condition C above) and

1. immediately before the conditions in s357 CTA 2009 were first met the parties were connected companies, and

2. immediately after that time they were not connected companies

New s259NEF – corporate rescue where a debt is released within 60 days of the payer and payee becoming connected.

The conditions are:

1. the payer's acquisition of rights under the loan relationship is an arms' length transaction, and

2. immediately before the payer became a party to the loan, it was reasonable to assume that there would be a material risk that the borrower would be unable to pay its debts as they fall due in the next 12 months, or the value of its assets would be less than its liabilities (including contingent and prospective liabilities).

This change is applied retrospectively.

Investment trusts

Under SI2009/2034, an investment trust can designate a distribution which is legally a dividend as an interest distribution but not an amount in excess of the company's qualifying interest income for the period. It is then treated as interest for all tax purposes.

New s259CB(3A) is inserted into TIOPA 2010. If an 'excess' arises in respect of an interest distribution designation, it is taken not to arise by reason of the financial instrument and there cannot therefore be a hybrid mismatch counteraction.

This change applies retrospectively.

Deemed dual inclusion income

Where there is a payment between two connected entities and one of them is a hybrid entity, this can lead to a deduction/non-inclusion (D/NI) mismatch. For example, if a US company has a UK subsidiary which the parent elects to disregard for US corporate tax purposes, the UK company is effectively treated as a branch of the US parent.

As such, its income and expenses are taxed in the US as part of the parent company. If there is (say) a loan from the parent to the UK subsidiary on which interest is payable, the UK subsidiary has interest expense which is ordinarily deductible.

But for US tax purposes, the loan is ignored as it is 'intra-entity', so the interest receivable on the loan by the US parent is not taxable in the US.

This represents a hybrid payer D/NI mismatch and the UK subsidiary currently needs to disallow the interest expense unless it has dual inclusion income arising in connection with the loan (s259EC(4)).

This limitation is removed by FB 2021 so that potentially the net income of the UK subsidiary which is chargeable to corporation tax in the UK and again in the US as part of the profit of the US parent will count as dual inclusion, so that if the UK subsidiary is profitable there will be no disallowance under the hybrid mismatch rules.

To be dual inclusion income for the US parent, the income must represent 'ordinary income' for the purpose of any tax charged under the law of the parent's jurisdiction.

New paras 6 - 10 are added to s259EC to clarify that this includes the following requirements:

a) under the law of any territory, the amount may not be deducted from the income of any person/body in calculating taxable profits for a relevant period

b) if the person or body is resident in a zero-tax territory (either the person or body is not chargeable to tax, or is chargeable at 0%), the amount could not be deducted from the income of the person/body in calculating taxable profits if the person/body were resident in the UK

c) under the law of the investor's jurisdiction, the amount could be deducted from its income in calculating its taxable profit if it was assumed that the payer would not meet the condition of being a hybrid payer in the investor's jurisdiction

The conditions are judged over a relevant taxable period for the investor. This is usually taken to be a period beginning within 12 months of the end of the payer's chargeable accounting period, but a later period can be considered if it is just and reasonable to do so.

If it is the recipient under the D/NI mismatch which is within the charge to corporation tax, the same existing restriction that dual inclusion income must arise 'in connection with the arrangement' is removed.

This change is effective for accounting periods beginning on or after Royal Assent.

D/NI mismatches related to transfers by permanent establishments (PEs)

The definition of dual inclusion income in s259FB which limits the disallowance of an excess PE deduction is amended to include reference to 'excessive PE inclusion income'.

This is then defined in new s259FC as normally just 'PE inclusion income' but where the permitted taxable period of the recipient begins more than 12 months after the end of the payer's chargeable accounting period, it is the amount of PE inclusion income that it is reasonable to suppose exceeds the aggregate effect on taxable profits.

PE inclusion income means an amount that:

a) is in respect of the transfer of money or money's worth from the company in the foreign jurisdiction to the UK company which is actually made or is treated as made for corporation tax purposes, and

b) it is reasonable to suppose that the amount will not result in a reduction in the taxable profits or an increase in a loss of the company for a relevant period

for the purpose of a tax charged under the law of the parent jurisdiction, or if there is a reduction in profits, the amount exceeds the 'aggregate effect on taxable profits' (any reductions in the taxable profits or increase in losses of the company for parent jurisdiction tax purposes).

Reductions of profits and increases of losses are ignored where the parent jurisdiction charges tax at 0%.

This change is effective for accounting periods beginning on or after Royal Assent.

Hybrid entity double deduction (DD) mismatches

Where (say) a UK branch of a foreign company incurs expenditure with a third party which is deductible for corporation tax purposes, there will be a double deduction because the foreign company will also receive deduction.

Usually this is not counteracted because the branch income will be taxed both in the UK and the foreign jurisdiction so that it represents dual inclusion income.

At present s259IC(4) states that the restricted deduction cannot be deducted from the UK branch profits 'unless it is deducted from dual inclusion income for the period or s259ID income for the period'. The reference to s259ID income is removed by FB 2021 as s259ID is deleted by the Bill.

S259ICA is inserted and deals with 'deemed dual inclusion income'. This is defined as income where:

a) under the law of any territory, the amount may not be deducted from the income of any person/body for tax purposes

b) for a person/body in a zero-tax territory, the amount could not be deducted from the income of a person/body if they were resident in the UK, and

c) in the investor jurisdiction, the amount could be deducted from its income in calculating its taxable profits if it were assumed that the payer would not meet the condition of being a hybrid payer in the investor's jurisdiction

This change is effective for accounting periods beginning on or after Royal Assent but an election can be made by 31 December 2021 to treat the change as retrospective.

Dual territory double deduction mismatches

Where a multinational company (one resident in jurisdiction A but with a PE in jurisdiction B), or a dual resident company incurs expenditure this can potentially be deducted twice, rather like hybrid entity double deduction mismatches.

In the case of multinationals, the counteraction is different depending on whether the UK is the parent jurisdiction or the PE jurisdiction.

FB2021 amends the definition of dual inclusion income where the UK is the PE's jurisdiction and the double deduction is not counteracted in the parent's jurisdiction to include the concept of 'excessive PE inclusion income' discussed above for 'D/NI mismatches related to transfers by permanent establishments'.

Deemed dual inclusion income – anti-avoidance

S259M sets out the conditions under which avoidance arrangements can be counteracted.

S259M(4) defined when a person obtains a 'relevant tax advantage'. S259M(4)(c) is added where the person does anything which, to any extent, results in an amount being treated as dual inclusion income of that person.

Allocation of dual inclusion within a group

New Chapter 12A is added to Part 6A TIOPA 2010, having effect for accounting periods beginning on or after 1 January 2021.

A dual inclusion income surplus ('a DII surplus') can be used by other group companies where five conditions are met:

A. The dual inclusion income of a company (Company A) exceeds its counteraction amount, i.e. it has a 'DII surplus'

B. Another company (Company B) has a counteraction amount exceeding its dual inclusion income (a 'DII shortfall')

C. The periods of the DII surplus of Company A and DII shortfall of Company B overlap

D. Both Company A and Company B are within the charge to corporation tax for the overlapping period

E. There is a time during the overlapping period where Company A and Company B are part of the same group (as defined for group relief purposes).

If there is any part of the overlapping period where either of the companies is not within the charge to corporation tax or they are not members of the same group, this part is treated as not forming part of the overlapping period for either a surplus or a shortfall.

Company B must make an 'allocation claim' in its tax return for part or all of Company A's DII surplus, identifying the DII surplus to which it relates.

Company A must consent to the claim in writing to HMRC at or before the time the allocation claim is made and Company B must send a copy of the consent notice with its claim.

Company B must have matchable income (i.e. ordinary income that is not dual inclusion income) that is at least equal to the DII surplus to which the claim relates and this must be identified in the claim.

The amount of Company B's matchable income in the claim must equal the DII surplus claimed from Company A and must not exceed the unused DII shortfall of Company B for the shortfall period.

If the DII surplus of Company A arises in a period which only partly overlaps with the DII shortfall of company B, the DII surplus available to Company B must be apportioned.

The law ensures that DII can only be included once, so prior allocations of it to reduce counteractions must be deducted. There are similar provisions to ensure that DII shortfalls are only matched up to their total amount with DII allocations.

Allocation claims can be made within two years after the end of the accounting period of the claimant to which it relates. This is extended to 30 days after any enquiry into the return is completed, or 30 days after any assessment is issued as a result of the notice, or 30 days after any appeal against assessment has been finally determined, where relevant.

HMRC is permitted to accept late claims and later withdrawals of a claim.

There are further provisions relating to what happens if the unused part of Company A's DII surplus is reduced to less than the amount stated in its notice of consent, assessments on other companies where consent was withdrawn or a new consent given (such that HMRC can pursue any company that benefited from A's consent for tax owed by Company B as a result of the consent being withdrawn/replaced/amended).

Financing cost of loan capital

FB 2021 amends s259FA(4) TIOPA 2010 to put beyond doubt that notional finance costs of a UK permanent establishment under the 'separate enterprise principle' of establishing the profits that are liable to corporation tax are not subject to counteraction under the hybrid mismatch rules.

This change applies retrospectively.

Carry forward of illegitimate overseas deductions

If the UK is the PE jurisdiction and there is no counteraction in the parent jurisdiction, a double deduction (DD) mismatch is only deductible to the extent it is <u>not</u> (in substance) deductible in a foreign jurisdiction against the non-dual inclusion income of any person ('illegitimate overseas deduction').

At present, to the extent a DD is an illegitimate overseas deduction, it cannot be carried forward for relief against future relevant income.

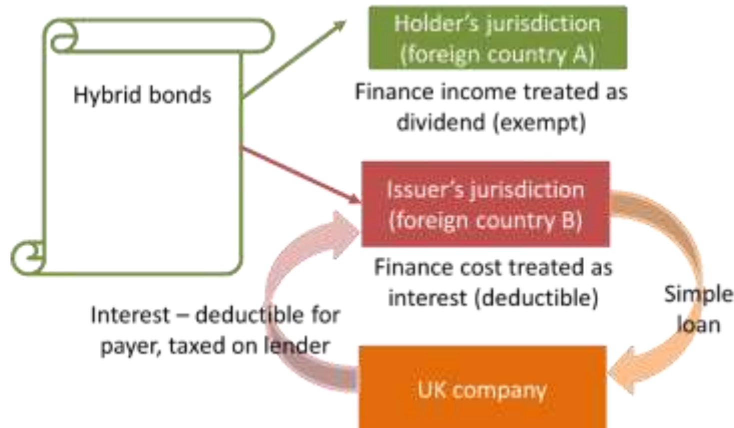
FB 2021 amends ss259IC, s259JB and s259JD to allow the carry forward of the illegitimate overseas deduction when the double deduction amount is deducted from the non-dual inclusion income of the investor in the hybrid entity (or the company in the case of a dual resident company).

This change is effective for accounting periods beginning on or after Royal Assent.

Imported mismatches

Where there is a hybrid mismatch outside the UK which is not counteracted by the jurisdictions concerned, and the transactions are part of an overarching arrangement involving a UK company, the mismatch can be counteracted in the UK company.

Example



There is no hybrid mismatch for the UK company's interest payable to the lender as it is a simple loan. The lender is taxable on the interest income and the UK company ordinarily gets a deduction for the interest payable.

However, the lender can offset its interest income from the UK company against the interest expense on the hybrid instrument finance costs payable to the holder.

If this is part of an overarching arrangement (which it is here as the finance is provided ultimately by the holding company for the benefit of the UK company), the imported mismatch rules may lead to disallowance of the UK company's interest expense if the conditions in s259KA are met.

S259KA currently sets out seven conditions (A – G) all of which must be met for counteraction to be considered.

FB 2021 has made several amendments to the imported mismatch rules.

1. Counteractions in relation to imported mismatch payments will be reduced proportionately to take account of any Part 4 TIOPA 2010 transfer pricing adjustments to the payment.

2. Condition E in s259KA(7) is amended to focus on situations where there is a territory outside the UK (other than one whose mismatch laws are equivalent to Part 6A TIOPA 2010) where a deduction in respect of the mismatch payment can be made for tax purposes.

3. Condition F is deleted.

4. Condition G is amended to remove reference to 'P' (the payer) being in the same control group as the payer as this makes no sense.

5. S259KE is introduced to put beyond doubt that the disallowance in the UK entity cannot exceed the amount of the mismatch outside the UK that was imported. Taking the example above, if the UK company had interest expense of £110 million and the deductible finance cost for entity in Country B was £101 million, the UK company's counteraction cannot exceed £101 million.

This change is effective for accounting periods beginning on or after Royal Assent.

Meaning of ‘act together’

One of the conditions in each relevant Chapter of Part 6A TIOPA 2010 usually involves whether the parties are in the same control group or are ‘related’. Control groups usually require at least 50% investment of one in the other or by a common owner and related persons require at least a 25% investment.

Where two parties (‘P’ and ‘T’) act together in relation to a person (‘U’), their interests are aggregated.

The definition of acting together in s259ND TIOPA 2010 is amended by FB 2021.

Paras 7A and 7B replace the detail that was in old para 7.

P and T act together if:

1. They have a partnership agreement that it is reasonable to suppose is designed to affect the value of T’s rights or interests in U, or relates to the exercise of any of T’s rights in U, or

2. The same person manages all or some of P’s rights in U and T’s rights in U, or

If P has a relevant investment in U:

3. P and T are connected (s163 TIOPA 2010 – spouses, relatives, spouse’s relatives, relatives’ spouses, trustees and settlors and connected persons), or

4. P can secure that T acts in accordance with P’s wishes, or T can reasonably be expected to act in accordance with P’s wishes (and vice-versa), or

5. P and T have an arrangement where it is reasonable to suppose that it is designed to affect the value of any of T’s rights or interests in U or relates to the exercise of any of T’s rights in U

Interests of less than 5% are now ignored and do not need to be aggregated even if two parties act together but still needed to be aggregated with connected persons.

This change has effect retrospectively.

Qualifying institutional investors in hybrid entities

Several amendments have been made to the mismatch rules for hybrid entity D/NI mismatches where the investor is a qualifying institutional investor.

New s259NDA defines a qualifying institutional investor as having the same meaning as para 30A, Schedule 7AC TCGA 1992 (substantial shareholding exemption).

They are

A. Pension schemes

B. Life assurance businesses

C. Sovereign wealth funds etc.

D. Charities

E. Investment trusts

F. Authorised investment funds with genuine diversity of ownership, and

G. Exempt authorised unit trusts

Para 8A is inserted in s259BC to treat income as ordinary income if it would normally be included in the taxable profits of a person but for the fact that the person is a qualifying institutional investor.

S259EB (hybrid payer D/NI mismatches) and s259GB (hybrid payee D/NI mismatches) are amended to exempt counteraction where it is attributable to a qualifying institutional investor based in a territory (i.e. tax resident there, or if not resident in any country, where it is established) where the hybrid entity is transparent for tax purposes.

This change has effect for accounting periods beginning on or after Royal Assent.

Securitisation companies

New s259NEZA excludes securitisation companies from hybrid mismatch adjustments, retrospectively.

A securitisation company is defined by SI 2006/3296 as company that has a retained profit and is

a) a note-issuing company

b) an asset-holding company

c) an intermediate borrowing company

d) a warehouse company, or

e) a commercial paper funded company

Each has its own conditions to meet the definition.

Transparent funds

New Chapter 13A is inserted into Part 6A TIOPA 2010.

New s259MA defines a transparent fund as a collective investment scheme or alternative investment fund where, if all the profits or income arise from UK sources and its participants were within the scope of income tax, its profits would be taxed on the participants.

Deduction/Non-inclusion mismatches

Where the mismatch is a D/NI mismatch involving a financial instrument, hybrid transfer (e.g. a repo), hybrid payer or hybrid payee, is not a structured arrangement and it is reasonable to suppose that a proportion of the payment or quasi-payment is attributable to a person because of an interest in a transparent fund, new s259MB applies.

If it is reasonable to suppose that the proportion attributable is less than 10% of the 'relevant amount', it is ignored in determining the extent of the mismatch. However, the interests of connected persons are aggregated in determining the proportion attributable.

The 'relevant amount' is the amount of ordinary income reasonably expected to arise to the primary fund as a result of the payment if the primary fund was a person to whom ordinary income would arise as a result of the payment (or circumstances, if it is a quasi-payment).

Double deduction mismatches

Where a hybrid entity double deduction mismatch arises and the investor and the hybrid entity are not related, s250MC exempts counteraction where it is reasonable to suppose that the proportion attributable is less than 10% of the double deduction amount subject to the same conditions as above.

Imported mismatches

A similar exemption applies to imported mismatches (new s259MD).

This change has effect for accounting periods beginning on or after Royal Assent.

Relief for losses etc.

Clause 37 introduces Schedule 8.

Group allowance nominations

New s269SZA CTA 2010 permits groups to nominate a company if they had not done so when a group ceased to exist.

The nominated company can submit a group allowance allocation statement for periods up to the date the group ceased to exist and claim a deductions allowance. This can be done retrospectively, even if out of time and even if the companies are no longer within the charge to corporation tax.

This change has effect for accounting periods beginning on or after 1 April 2017. If an accounting period straddles 1 April 2017, there is a deemed period beginning on that date.

Deductions from total profits for group relief

S137 CTA 2010 deals with deductions from total profits for claims of group relief.

Para 4 states that the deduction is made before certain deductions listed in Para 5 (such as losses carried back from a later year). S137(5)(d) was the giving of group relief for carried-forward losses.

Trade losses incurred since 1 April 2017 can be carried forward against total profits and gains. Where the company that incurred the losses has fully relieved them against its total profits of a later year, the excess is available for group relief, but only up to the amount the claimant company can use.

S137(5)(d) has been deleted and replaced with a new Para 5(e) which deals with the maximum amount of losses brought forward that can be offset against current year profits to reflect the new carry forward rules.

Surrender of group losses where the surrendering company could use them itself

S188BE CTA 2010 restricts the surrendering of losses etc where the surrendering company could use them itself. The wording is changed to make it clearer. It now says:

> "The surrendering company may not surrender under this Chapter any loss or other amount carried forward to the surrender period to the extent that the loss or other amount could be deducted from the total profits of the company for the period at Step 2 of section 4(2)."

This wording applies for accounting periods beginning on or after 1 April 2021.

Claimant's relevant maximum

S188DD (claimant company's relevant maximum) is amended. Para 3 referred to s269ZD(6) which was repealed by FA 2020 so it now refers correctly to s269ZDA (deductions allowances where a company is part of a group).

Similarly, in para 3A(a) the company's qualifying trading and non-trading profits are now called its 'modified total profits' and the reference in 3A(b) to 'in determining' (those profits) has been changed to align with the wording in s269ZF(3) Step 2 (1) 'which could be relieved against'.

These changes are treated as being contained within FA 2020.

Step 2(2) is also amended retrospectively so that amounts that could be relieved against the claimant's total profits, but are not, are ignored.

S269ZFA sets out the company's relevant profits for an accounting period as its qualifying profits minus the company's deduction allowance for the period, but it does not cap this at nil as it does in s269ZF (relevant trading profits, total relevant non-trading profits etc). FB 2021 inserts the same text at the end of s269ZF to s269ZFA to ensure it is capped at nil and it is treated as always having said this.

Exception to submitting a group allowance statement

Para 3A is inserted in s269ZT to clarify that a company need not submit a group allowance allocation statement to HMRC for an accounting period if the statement would, if submitted, allocate no amount of group deductions allowance.

This change applies to accounting periods beginning on or after 1 April 2021.

Filing date for group allocation statement

Para 4 is amended to ensure that the time limits to submit an original group allowance statement are extended to cover situations where there are enquiries into a group company's tax return, so that it now reads as the latest of

a) the first anniversary of the filing date (i.e. two years after the end of the accounting period)

b) 30 days after any enquiry into a company tax return for a period covered by the allocation statement has been completed)

c) 30 days after an amendment has been issued following an enquiry, and

d) 30 days after any appeal against the amendment has been finally determined

This applies to accounting periods beginning on or after 1 April 2021.

Maximum deductions allowance allocated to a listed company

S269ZV(5)(a) is amended to make it clear that in the formula for how much group deductions allowance can be allocated to a listed company, DAP is the number of days in the accounting period of the listed company that are days in the nominee's accounting period on which it was the nominated company for the group.

An identical extension is applied for the formula DNAP in para (b).

This applies to accounting periods beginning on or after 1 April 2021.

Meaning of a change in ownership

In Chapter 7, Part 14 CTA 2010 (meaning of change of ownership of a company), s719(4A) is amended to refer to Chapters 2A to 2E (it currently refers to 2D). This extends the definition in s719(4A) to the Chapter restricting relief of trading losses in certain cases involving the transfer of a trade.

S721(4) is similarly amended to refer to Chapter 2E as well as 2A to 2D. This section deals with when things other than ordinary share capital may be taken into account in deciding whether there has been a change in ownership of a company.

It applies where persons (corporate or individuals) possess extraordinary rights or powers under any document regulating the company and therefore ordinary share capital ownership may not be an appropriate test of whether there has been a major change in the persons for whose benefit the relief may available to.

In this case any of the following can be taken into account

a) holdings of all kinds of share capital,

b) holdings of any particular kind of share capital,

c) voting power, and

d) any other kind of special power.

The changes apply to acquisitions occurring from 1 April 2021.

Corporate interest restriction

Clause 38 makes minor amendments to Part 10 TIOPA 2010.

Real Estate Investment Trusts

S452(2) defines "the residual business company" to mean the company which

a) so far as it carries on residual business, is treated, as a result of section 541 of CTA 2010, as a separate company distinct from the property rental business company, but

b) ignoring that section, is in fact the same company as the property rental business company.

S452(2A) is added to clarify the definition

In applying subsection (2) and giving effect to the remainder of this section, the company is treated, at all times in the accounting period, as carrying on a residual business within the charge to corporation tax (and, accordingly, amounts falling to be brought into account in the

accounting period as a result of this section are within the charge to corporation tax).

This has been added to cover non-resident companies whose UK property rental businesses are within the scope of corporation tax (since 6 April 2020) but whose residual business may well be offshore. Para 2A ensures that the residual business is treated for CIR purposes as being in the UK so that any adjustments to allowable interest expense will have a UK corporation tax effect.

Reasonable excuse

New para. 29A is inserted in Schedule 7A, Part 10 to retrospectively provide that a reasonable excuse for the late filing of a CIR return means that penalties will not arise.

Northern Ireland Housing Executive

Clause 39 adds s987C to CTA 2010 to confirm that the Northern Ireland Housing Executive is not liable to corporation tax.

This applies retrospectively to accounting periods beginning on or after 1 April 2020.

Capital gains tax

Annual exempt amount

The annual exempt amount for capital gains tax purposes will remain at its current level of £12,300 until 5 April 2026 by removal of the increase in this amount to reflect increases in CPI (Clause 40).

Hold-over relief

S165 TCGA 1992 allows for hold-over of the capital gain arising on the gift (or transfer) of a business asset to be held-over on making of a joint claim by the transferor and transferee.

S167 TCGA 1992 precludes a holdover relief claim being made if the transferee is a company which is controlled by a person or persons who is not resident in the UK and is connected with the person making the disposal.

Clause 41 makes a minor amendment to this provision by making it clear that this can also apply if the person controlling the non-resident company is the transferor. It has always been HMRC's view that the legislation should apply in this way but there has been some dispute as to whether this was the correct analysis, notably in *Reeves v HMRC [2018] UKUK 293,* which is why this amendment is being made.

Plastic Packaging Tax

A significant tranche of the FB is concerned with the introduction of the new plastic packaging tax, covering Clauses 42 – 85 and Schedules 9 – 15. This is covered very briefly below.

The tax will arise when a 'chargeable plastic packaging component' is either produced in the UK by a person acting in the course of a business or imported into the UK on behalf of such a person. The charge arises on the person who produces the component (in the first case) or the person on whose behalf it is imported (in the second case). Importation is treated as taking place when it is treated as imported for Customs and Excise purposes.

The rate is £200 per metric tonne of chargeable plastic packaging components of a single specification with the amount proportionately reduced for part tonnes. It is paid by reference to accounting periods.

A plastic packaging component is chargeable if:

(a) The proportion of recycled plastic measured by weight is less than 30% of the total amount of plastic and

(b) It is finished (meaning it has undergone its last substantial modification or in the case of a component which undergoes a substantial modification when packed or filled, the last substantial modification before it is packed or filled).

This applies even if waste or surplus material remains attached to it although that waste or surplus material is not treated as part of the component.

A plastic packaging component is a product used in 'the containment, protection, handing, delivery or presentation of goods at any stage in the supply chain of the goods' from the producer to the consumer whether alone or in combination with other items. It must contain more plastic by weight than any other single component.

Plastic means a material consisting of a polymer, other than a cellulose-based polymer that has not been chemically modified, to which additives or other substances may have been added. Recycled plastic is plastic that has been reprocessed from recovered material by means of a chemical or manufacturing process other than organic recycling (meaning aerobic or anaerobic treatment using micro-organisms, of bio-degradable matter). Recovered material is pre-consumer or post-consumer plastic that has been collected for recycling and would otherwise be disposed of as waste. Pre-consumer plastic is recovered from waste generated in a manufacturing process and processed by a reprocessing facility. Post-consumer plastic is plastic generated by households or commercial facilities in their role as end-users and that can no longer be used for its intended purpose.

The charge is deferred if it is intended that the component will be exported and then waived once exportation has taken place. The export must take place within 12 months of production or importation. This does not apply if the components are used in the removal of goods from the UK as packaging.

No charge arises in relation to packaging components which are packaging relating to items being delivered into the UK. There is also no charge for production or importation of plastics for use in the immediate packaging of a medicinal product or if the item is set aside for use other than in the containment, protection, handing, delivery or presentation of goods as long as record is kept of this action.

Regulations may be introduced to give a tax credit where the tax has been paid but the component is then exported from the UK and converted into a different packaging component.

A register must be established and maintained for the purposes of collecting and managing this tax.

Anyone who becomes liable to pay the tax becomes liable to register on any day when they believe that they will have produced or imported an amount equal to or exceeding 10 metric tonnes of finished plastic packaging

1. within the period of 30 days beginning with that day or

2. Over the 12 months ending with the day before that day (being the first day of any calendar month).

Anyone who falls within this must notify HMRC within 30 days starting from the first day on which the liability arises. HMRC can register someone who they are satisfied should be registered. There are provisions for the registration to be cancelled if the person is no longer liable for the tax and for corrections of the register.

Provisions apply for HMRC to issue notices imposing either secondary or joint and several liability on other persons where the tax remains unpaid. These notices can be issued to related businesses where those involved in that business have been involved in the failure to pay the tax or been involved in dealing with a chargeable plastic packaging component knowing that there is no intention to pay the tax on it.

Many issues are yet to be resolved and so the legislation allows for regulations to be issued to cover:

- provisions relating to the measurement of weight of product for the purposes of the tax;
- how the tax is to be reported and collected;
- records which need to be kept;
- provision of security for tax which may become due;
- how these provisions will apply to partnerships and other unincorporated bodies from the perspective of specifying who has to do what and when; and
- how these provisions may apply to non-resident taxpayers who may have to appoint a UK representative to deal with the tax.

There is legislation relating to the assessment process, the appeals processes and the collection and sharing of information in relation to the tax.

A person who supplies a plastic packaging component to a business customer on which a tax charge which they are liable to pay arises must provide a statement (called a PPT statement) when invoicing the customer showing the amount of tax which has arisen.

There are special rules relating to groups of companies; provisions preventing artificial fragmentation to avoid the charge arising; rules relating to the transfer of businesses as a going concern and particular rules applying to the import and export of components from and to the Isle of Man.

There are strict penalties (including custodial sentences) for fraudulent evasion of the tax, misstatements leading to underpayment of tax or conduct involving evasions or misstatements.

Other taxes

Inheritance tax

The nil rate band for inheritance tax purposes remains at £325,000 until 5 April 2026 with the indexation of this being specifically disapplied (Clause 86). Similarly, the residential enhancement to the nil rate band and the taper threshold remain unchanged (£175,000 and £2,0000,000 respectively) until the same date.

Stamp Duty Land Tax: nil rate band

Clause 87 retains the enhanced nil rate band of £500,000 for Stamp Duty Land Tax purposes until 30 June 2021 rather than reverting back to its normal level for transactions with an effective date on or after 1 April 2021.

In order to mitigate the effects of the sudden reduction in the nil rate band, there will be a nil rate band of £250,000 applying up until 30 September 2021. The normal nil rate band of £125,000 will apply for transactions with an effective date on or after 1 October 2021.

The 3% supplement for higher rate transactions is unaffected by this and will continue to apply where relevant.

Note that SDLT is only payable in England and Northern Ireland. The devolved administrations in Wales and Scotland have also announced changes to their equivalent residential property taxes, as follows:

Wales (Land Transaction Tax)

- The £250,000 NRB is extended to transactions up to 30 June 2021; then it reverts to £180,000.

Scotland (Land and Buildings Transaction Tax)

- The enhanced NRB of £250,00 applies for transactions up to 31 March 2021; then, it returns to £145,000.

Increased rate of SDLT for non-resident transactions **(Lecture P1253 – 16.30 minutes)**

Clause 88 and Schedule 16 inserts Schedule 9A into FA2003, which will add a 2% SDLT surcharge to purchases of dwellings where the transaction is a ‘non-resident transaction’. It is important to note that it adds 2% to all the rate bands applicable to the following:

- Purchase of residential property
- Higher rate transaction where the 3% supplement applies
- the 15% ATED-linked charge
- the tax chargeable in relation to rent on residential property
- Acquisitions by first-time buyers

- The rate payable on exercise of collective rights by tenants of flats

The impact of the legislation will be an increased cost of £2,000 in SDLT for every £100,000 of consideration for the transaction.

A 'non-resident transaction'

A transaction is a non-resident transaction if it meets all of the following conditions:

1. The purchaser is, or includes, a person who is non-resident (note, as with the current 3% supplement that this is an 'all-or-nothing' charge – if one party to the transaction is caught then the whole transaction is caught);

2. The purchase consists of a major interest in a dwelling or dwellings, including an undivided share in a major interest;

3. The interest is not a leasehold interest with 7 years or less to run and is not subject to a relevant inferior interest; and

4. The chargeable consideration is £40,000 or more or where the chargeable consideration consists of or includes rent, the chargeable consideration other than rent is £40,000 or more or the annual rent is £1,000 or more.

What do we mean by non-resident?

Individuals

The basic rule is that if an individual is present in the UK on at least 183 days during any continuous period of 365 days falling within the relevant period, then they are treated as UK resident. The relevant period starts 364 days before the effective date of the transaction and ends 365 days after the effective date of the transaction. In effect, there is a two-year period with the effective date in the middle and you have to be in the UK for 183 days in any continuous 365-day period within that two years.

<u>Example</u>

Nigella is not tax resident in the UK when buying a house in London on 1 September 2022. However, since 2 September 2021, she has spent 200 days in the UK and is therefore treated as UK resident for SDLT purposes.

If the individual is married or in a civil partnership, then as long as neither is acting as a trustee of a settlement, then if one party is treated as UK resident then both of them are.

<u>Example</u>

Continuing the above example, Nigella is buying the property with her wife, Amber. Amber has spent no time in the UK during the 12 months up to the date of the purchase, but the transaction is not liable to the 2% supplement as the UK-resident condition is met by Nigella.

It is clear from the above rules that it is possible to meet the conditions after the purchase but even if it can be assumed that is going to happen, Individuals have to pay the surcharge upfront and then are able to claim a refund of the 2% surcharge once they can show that the residency condition is met.

Being present in the UK means the same as it does for the statutory residency test, i.e. being in the UK at midnight at the end of the day. Although Stamp Duty Land Tax applies only in England and Northern Ireland, it is the whole of the UK which is considered when judging whether someone is resident.

Anyone in Crown employment is treated as present in the UK at the end of a day where they are present in a country outside the UK for the purpose of performing activities in the course of their Crown employment or they are the spouse or civil partner of such a person (as long as they are living with that person). This effectively exempts them from the 2% surcharge if they purchase a UK residential property while abroad on Crown duties for long periods of time.

Example (taken from the HMRC manuals)

Marcel is a member of the British Army. Between 1 January 2025 and 1 January 2028, Marcel is deployed in Cyprus. Marcel is accompanied by his wife, Rebekah. During this period, neither of them spend any time in the UK.

On 31 August 2026, Rebekah purchases a freehold residential property in England for £900,000. The residence test set out in para. 4 of Schedule 16 applies to determine whether Rebekah is treated as UK resident. Although Rebekah has not spent any time in the UK during the relevant time period, throughout that period she was living with Marcel who was in Crown employment and in Cyprus for the purposes of performing activities in the course of his employment for the British Army.

Rebekah is treated as UK resident in relation to the transaction.

There is an alternative mechanism for determining residence for the purposes of these provisions. If you are in the UK on at least 183 days during the period that begins with the day that is 364 days before the effective date of the transaction and ends with the effective date, then you are UK resident if you meet any of the following conditions:

A. The purchaser is, or includes, a company or a person acting as a trustee of a unit trust scheme

B. The purchaser is, or includes, an individual who is entering into the transaction as a partner in a partnership

C. The purchaser is, or includes, an individual who is acting as a trustee of a settlement as long as no individual is entitled to occupy the property or the income from the property automatically (i.e. it is not an interest in possession settlement).

This test is only looking at the period before the date and so it follows that if you fall within one of these scenarios but do not meet the UK residency test so you are treated as non-resident for these purposes, it is not possible to claim a refund of the surcharge if you meet the residency condition after the event.

Example (from HMRC manuals)

Camille and Joshua are the partners at Rousseau's LLP. They are neither married nor civil partners to each other. Rousseau's purchases a freehold residential property in England on 1 June 2025 for £600,000. Condition B of the above condition applies.

Between 2 June 2024 and 1 June 2025, Camille spent 200 days in the UK. She is therefore UK resident in relation to the transaction.

Between 2 June 2024 and 1 June 2025, Joshua spent 150 days in the UK. Between 2 June 2025 and 1 June 2026, Joshua spent 200 days in the UK. Under the basic rule, Joshua would be UK resident in relation to the transaction. However, as one of the above conditions apply, the alternative definition must be used.

As Joshua is non-UK resident in relation to the transaction, and the purchase is a "non-resident transaction" as all of the remaining conditions are also met.

Partnerships

Partners in a business partnership buying a residential property together are treated as joint buyers so the residency of each partner needs to be considered.

Companies

A company will be not resident for these purposes if they are not UK resident for the purposes of the Corporation Taxes Acts or if it is a close company (whether or not it is UK resident) which is controlled outside the UK and is not an excluded company.

Clearly, a company which is incorporated in the UK or which has central control and management in the UK will automatically be treated as UK resident and avoid the 2% surcharge. Where a company is dual resident, and there is a tie-breaker clause in the relevant double tax treaty such that the company is 'treaty non-resident' in the UK, then it is treated as not resident for the purposes of these provisions.

A company meets the non-UK control test if it is a close company which is under the control of any number of participators who are non-resident (using the definition given in this legislation, not the statutory residency test). Various other statutory provisions are ignored:

- S444 CTA 2010 condition A is treated as omitted, so a close company controlled by another company which is not a close company can be caught by these provisions
- S446 CTA 2010 is omitted so that a close company can include quoted companies in which the public owns 35% or more of the voting power.
- A participator who is a general partner in a limited partnership is not included as a relevant participator for this test as long as they have entitlement to more than 1% of the assets of the company.

Additionally, in dealing with this test, there are various amendments to the situations where rights of associates are normally attributed. For this purpose, we do not attribute the rights of:

- Partners

- Spouses and civil partners living together where one is UK resident
- Rights of a company where an individual’s interest is less than 5% (of the share capital, voting rights, income from a distribution, and assets in a winding up)
- Loan creditors.

A company is an excluded company if it is a property authorised investment fund (PAIF), a body corporate that is a 51% subsidiary of a PAIF, a UK REIT or a member of a group UK REIT.

Example 1

Francine and Justine each own 50% of the share capital in West Workshops Ltd (WWL), a UK resident company for the purposes of Corporation Tax. It is not an excluded company.

WWL purchases a freehold residential property and it is necessary to determine if the company is not resident for SDLT purposes. It is UK resident for tax purposes but we need to consider the close company provisions.

WWL is a close company as it is under the control of two participators. Are Francine and Justine relevant participators?

At the point of purchase, Francine has spent 200 days in the UK in the previous 364 days but Justine has spent just 15 days in the UK in the same period. Justine is a relevant participator as she is not resident under the particular provisions.

As Justine owns only 50% of the share capital, she does not control WWL. The company is therefore not under the control of relevant participators in relation to the transaction, and the non-UK control test is not met. Hence, the purchase is not liable to the surcharge.

Example 2

West Workshops Cheltenham Ltd (WWCL) is a UK resident company for the purposes of Corporation Tax and it is not an excluded company.

The company purchases a residential property in England.

The share capital of WWCL Ltd is held as follows:

- 40% – WWL;
- 40% – West Workshops Hong Kong Ltd (WWHKL); and
- 20% – West Workshops Sweden Ltd (WWSL).

WWCL is a close company as it is under the control of any two or more of its participators.

We know from the above example that WWL does not meet the non-UK control test so is not a relevant participator in WWCL. We need to look at WWHKL and WWSL.

WWHKL is a UK resident company and not excluded. Its share capital is held equally by three brothers, only one of which meets the conditions to be UK resident in the 364-day period up to the date of the transaction. The company is therefore under the control of non-resident participators and meets the non-UK control test. WWHKL is therefore a relevant participator of WWCL in relation to the transaction.

WWSL is under the control of two sisters each of whom own 50% of the shares. It is a close company. It is not an excluded company. One sister is UK resident and one sister is not UK resident. As they are associates, we can attribute the rights of one to another which means that the company can be controlled by a non-resident participator and meets the non-UK control test.

Together, WWHKL and WWSL control WWCL and so WWCL is under the control of relevant participators in relation to the transaction. WWCL meets the non-UK control test and will be non-resident for the purposes of the transaction.

Particular situations

Bare trusts

Normally bare trust arrangements are ignored for SDLT purposes so that the bare trustee is ignored and any transaction is treated as being undertaken by the beneficiaries. The exception is where a lease is granted to a bare trustee.

Where this happens, the question of whether the purchaser is non-resident must consider if the beneficiaries of the bare trust are non-resident and the situation of the bare trustee is ignored.

Settlements

Subject to the provisions outlined above regarding bare trusts, trusts are treated as non-UK resident if any trustee is a non-UK resident under the SDLT residence rules.

However, if there is a settlement where the beneficiary is entitled to occupy the dwelling for life or have any income earned in respect of the dwelling (so basically an interest in possession trust), any question as to whether this is a non-resident transaction must take account of the residence of the beneficiary.

Example

Daria is a trustee of the Larsson family trust. One of her children is a beneficiary of the trust and is to attend university in London. Daria uses funds from the trust to purchase a property in the capital for her son to live in whilst he is studying. He has no right to occupy the property under the terms of the trust or to any income derived from the property. It is the residency status of Daria which will be relevant in determining if this is a non-resident transaction.

Alternative property finance

If there is an alternative property finance transaction (such as a transaction involving Islamic financing), the question of whether this is a non-resident transaction must also consider if the person who is the ultimate beneficiary of the arrangement is non-resident.

Substantial performance and then completion

Although SDLT liability can crystallise on substantial performance rather than on completion, where that happens there is actually another potential charge on completion. Normally there is no additional SDLT to pay. If this happens, the completion will only be a non-resident transaction if the earlier notifiable transaction (i.e. the substantial performance) was also a non-resident transaction.

Land transaction returns

If it is necessary to determine if someone is not resident but they have not met the conditions at the filing date to be treated as resident, the return must be completed on the assumption that they will not meet the conditions. The return can be amended if they do subsequently meet the conditions. The time limit for the amendment is two years beginning with the day after the effective date of the transaction.

What is a dwelling?

A building or part of a building is a dwelling if it is used or suitable for use as a single dwelling or in the process of being constructed or adapted as such. Land that is occupied or enjoyed with a dwelling is taken to be part of that dwelling but would not be a dwelling if sold separately. This is the same definition as we are familiar with for other SDLT purposes.

Commencement provisions

The provisions apply to any transaction where the effective date is on or after 1 April 2021. This means that contracts being entered into in March 2021 could be potentially caught by this.

However, if the contract was entered into before 11 March 2020 it will not be caught unless

- there is a variation of that contract, or
- it is assigned on or after 11 March 2020, or
- it is the exercise of an option or similar pre-emption right on or after 11 March 2020.

Higher rate charge to SDLT

A higher rate of SDLT of 15% applies to certain transactions where a company (or corporate partnership or collective investment scheme) buys a property worth more than £500,000 unless one of a number of reliefs applies.

One of the situations where a relief has applied is where the property was purchased by a provider of social housing including registered social landlords. This relief has now been extended by Schedule 17 so that it now covers ‘qualifying housing bodies’ which are defined as:

- A qualifying housing co-operative as defined by s150(3A) FA2013 (see below)
- A registered provider of social housing
- A registered social landlord.

This relief is withdrawn if within three years of the effective date of the charitable transaction the purchaser ceases to be a qualifying housing body whilst they still hold the property. This claw-back will not happen if the purchaser transfers their business to a successor body which is itself a qualifying housing body.

This comes into effect for purchases on or after 3 March 2021. (Clause 89).

Annual Tax on Enveloped Dwellings

The Annual Tax on Enveloped Dwellings charge applies in cases where the SDLT higher rate charge would apply although it is judged on a year-by-year basis as to whether the conditions are met.

A relief equivalent to the one discussed above in relation to SDLT is also introduced for ATED purposes too.

It is in this part of the legislation where the actual definition of a qualifying housing co-operative is found. S150A(1) provides that a 'qualifying housing co-operative' is one which falls within the Housing Association Act 1985 and is a registered society within the meaning of the Co-operative and Community Benefits Societies Act 2014 (or equivalent legislation in Northern Ireland).

The rules of the association:

- Must restrict membership to persons who are tenants or prospective tenants of the association,
- Must preclude the granting or assignment of tenancies to persons other than members,
- Must prevent members from transferring any of their shares;
- Must prevent members from receiving any more than the nominal value of their shares on a return of share capital, and
- Must confer on members equal voting rights.

This applies for the chargeable period beginning with 1 April 2021 and any subsequent periods although there are some circumstances where it can apply from 3 March 2021 but only if:

- The first day in the chargeable period in which the person is within charge in relation to the interest in the dwellings is on or after 3 March 2021 or
- The person is within the charge in relation to the interest in the dwelling before 3 March 2021 but has not delivered an ATED return by 3 March 2021.

(Clause 90)

However, a person who would have qualified for the relief during the period beginning 1 April 2020 and has already submitted their ATED return (and paid the tax) can claim repayment of the ATED for that year.

(Clause 91).

Value Added Tax

VAT for hospitality businesses

Clause 92 confirms that the reduced rate of VAT of 5% for hospitality businesses will be extended until 30 September 2021. The temporary changes to the flat rate percentages for the same businesses will also continue.

Clause 93 then confirms that there will be a VAT rate of 12.5% for the same businesses from 1 October 2021 to 31 March 2022. Again, there will be adjustments to the relevant flat rate percentages as well.

Making Tax Digital

Clause 94 changes the conditions for Making Tax Digital for VAT so that from 1 April 2022 it will apply for all VAT registered businesses rather than just those businesses which are registered for VAT and have turnover above the VAT registration threshold.

Deferred VAT

Clause 95 and Schedule 18 make provisions relating to the payment of VAT that was deferred as a result of coronavirus. Businesses were allowed to defer VAT liabilities falling due between 20 March 2020 and 30 June 2020 until 31 March 2021.

It was subsequently announced (on 24 September 2020) that businesses would be able to pay that deferred VAT in up to 11 monthly interest-free instalments as long as the business signs up for the instalment option by 21 June 2021.

The legislation will also provide for a penalty of 5% of the outstanding VAT if a business has not, by 30 June 2021:

1. paid its liability under the deferral scheme in full;
2. opted in to the in new payment scheme; or
3. made alternative arrangements to pay.

The application of the penalty will be at the discretion of HMRC as the legislation contains a power to repeal the penalty which would be exercised if further coronavirus problems arise. It will apply instead of the normal default surcharge regime.

The opt-in is via an online portal which is already available to businesses.

The number of instalments will depend on the date at which the scheme is joined with 11 instalments being available to those signed up before 19 March 2021, 10 for those signing up before 21 April 2021, 9 if before 19 May 2021 and 8 if before 21 June 2021.

In essence, a business can choose between paying smaller instalments over a longer period of time starting earlier, or larger instalments over a shorter period of time starting later.

Refunds to S4C

Clause 96 extends the bodes that can claim refunds of VAT on purchases etc made to support their non-business activities to include S4C.

Duties and other matters

Customs duty: steel removed to Northern Ireland

The rules introduced as part of the Trade and Co-operation Agreement which saw the UK leave the EU are complete and there are different provisions relating to Northern Ireland in some circumstances.

Although the principle of trade between the EU and UK is that it should be tariff-free, there are various complexities associated with applying this.

Clause 97 introduces provisions which will allow Northern Ireland importers of steel from the Rest of the World to be able to take advantage of EU quotas if there is availability within them rather than having to pay an import tariff of 25%.

Fuel duties: red diesel and biofuels

Clause 98 introduces changes to the use of red diesel and rebated biodiesel to take effect from April 2022. The provisions reduce the circumstances where this type of fuel – which has a significantly lower duty attached – can be used. The legislation is restated so that you will not be able to use the fuel unless you have a qualifying use.

These qualifying uses are:

- for vehicles and machinery used in agriculture;
- as fuel to propel vehicles designed to run on rail tracks;
- for non-commercial heating and generating power in non-commercial premises;
- fuel for marine craft;
- non-propulsion uses in permanently moored houseboats;
- for maintaining community amateur sports clubs and all golf courses; and
- for powering machinery in travelling fairs and circuses.

Tobacco products duty

Clause 99 consolidates the increases in tobacco duty which came in via secondary legislation on 16 November 2020. Duty on tobacco is changed from 6pm on 11 March 2020 as follows:

- specific duty element on cigarettes goes up to £244.78 per thousand (from £237.34) and the percentage of the retail price remains unchanged at 16.5%. The minimum excise tax (MET) is £320.90 per 1000 cigarettes (from £305.23).
- the duty rate on cigars increases to £305.32 per kilogram (from £296.04).
- The duty rate on hand-rolling tobacco increases to £271.40 per kilogram (from £253.33).
- The duty rate on other smoking tobacco and chewing tobacco is increased to £134.24 per kg).
- The duty rate on tobacco for heating is increased to £251.60 per kilogram (from £243.95).

Vehicle excise duty

Various changes are made to VED:

- Clause 100 changes the rates of VED for light passenger vehicles and motorcycles

- Clause 101 amends the provisions relating to rebates of VED when vehicles are sold or make a SORN so that the correct rebate is issued

- Clause 102 suspends the HGV Road User Levy (which is an annual charge for UK hauliers paid alongside VED and for non-UK based hauliers as a daily, weekly or monthly charge) for a further 12 months from 1 August 2021 to 31 July 2022. This levy was initially suspended as part of measures to support the haulage industry in the wake of the pandemic and the continued suspension is similarly motivated.

Air passenger duty

Air passenger duty rates from 1 April 2022 are as follows (Clause 103):

- The rates of APD for flights to Band A destinations (where the capital city of the destination is no more than 2,000 miles from London) are unchanged.

- Rate changes to Band B destinations (more than 2,000 miles from London) will be as follows:

    - Reduced rates will rise from £82 to £84 (lowest class available and seat pitch less than 40 inches)

    - Standard rates will rise from £180 to £185 (any other class, or where seat pitch exceeds 40 inches)

    - Higher rates will rise from £541 to £544 (planes of at least 20 tonnes carrying fewer than 19 passengers)

Gaming duty

The gross gaming yield bands for gaming duty increase in line with inflation for accounting periods starting on or after 1 April 2021 (Clause 104).

Environmental taxes

New rates of climate change levy are announced from 1 April 2022 (Clause 105) and from 1 April 2023 (Clause 106).

Landfill tax increases in line with inflation applying to any disposal of relevant materials made on or after 1 April 2021 (Clause 107).

Clause 108 repeals primary legislation relating to the proposed Carbon Emissions Tax which was legislation that was put in place in preparation for the UK's withdrawal from the EU so that the UK could leave the EU Emissions Trading Scheme. No commencement date had been announced.

The Government decided to utilise the UK Emissions Trading System rather than the Carbon Emissions Tax so the legislation is repealed.

Miscellaneous

Freeports (Lecture P1254 – 11.30 minutes)

It was announced at the time of the Budget that there would be designation of various areas as Freeports. There were eight announced in England (East Midlands Airport, Felixstowe & Harwich, Humber, Liverpool City Region, Plymouth and South Devon, Solent, Teesside and Thames) with consultations to take place on expanding this to other part of the UK. There are various advantages of having a business sited within a designated Freeport and the Finance Bill contains the parts of the policy which have a tax impact.

Clause 109 gives a power to designate areas to be a 'freeport tax site' which means that they will benefit from the tax advantages outlined.

Capital allowances

Clause 110 and Schedule 21 outline the capital allowances position for Freeport tax sites.

The first part of the legislation provides for first-year allowances to apply to expenditure on plant and machinery (P&M) for use in Freeport tax sites incurred by companies. This means that 100% allowances will be available in the year that the expenditure is incurred.

The conditions are in new s45O CAA 2001:

- The P&M is for use primarily in an area which, at the time the expenditure is incurred is a Freeport tax site

- The P&M is unused and is not second-hand

- The expenditure is incurred for the purposes of a qualifying activity as defined within s15(1)(a) or (f) CAA 2001. This means a trade or a one of a specific list of undertakings (such as mining, transportation etc) but not property businesses.

- The expenditure is incurred on or before 30 September 2026

- The company is within charge to corporation tax.

The legislation also contains provision so that these conditions can be changed by secondary legislation although it will not be possible to remove the requirement that P&M be used primarily in an area which is a Freeport tax site.

There is an exclusion where a company is incurring expenditure when it intends to use the P&M partly in an area which is not a Freeport tax site where the main purpose or one of the main purposes is the obtaining of a first-year allowance (or a greater first-year allowance) in respect of the expenditure which relates to the intended use outside of the Freeport tax area. The 'non-freeport' part of the expenditure will not qualify for a first-year allowance with this proportion to be determined on a just and reasonable basis.

However, no first-year allowance will apply if the primary use to which the P&M is to be put is other than in an area which is a Freeport tax site or it is held for use otherwise than primarily in an area which is Freeport tax site. This condition is judged across the 'relevant time' which a period of 5 years beginning with the day it is bought into use in a qualifying business or if earlier the day on which it is first held for such use, assuming that the P&M continues to be owned by the company or anyone connected with the company.

Any of the assets which fall within the general exclusions for first-year allowances within s46(2) CAA2001 will also be excluded from qualifying under these provisions. This means excluding expenditure in the period of cessation, on cars, on long-life assets or on provision of plant and machinery for leasing amongst other exclusions.

The Structures and Buildings Allowance provisions are also amended to give an annual allowance of 10% so that all relief is given over 10 years instead of the normal 33 1/3 years. This enhanced relief is where there is 'freeport qualifying expenditure'.

Freeport qualifying expenditure is incurred when the following conditions are met:

- The construction of the building or structure begins at a time when the area in which it is situated is a freeport tax site. Construction is treated as beginning when the first contract for works to be carried out in the course of construction of that particular building or structure is entered into.

- The building or structure is first brought into qualifying use by the person entitled to the allowance at a time when the area in which it is situated is a freeport tax site and on or before 30 September 2026

- The qualifying expenditure is incurred at a time when the area in which the building or structure is situated is a freeport tax site and on or before 30 September 2026

- The person who incurs the qualifying expenditure is within the charge to income tax or corporation tax when it is incurred

- An allowance statement is made for the purposes of s279IA CAA 2001 and states that the person wants the expenditure to be Freeport qualifying expenditure. An allowance statement has to be made in all cases relating to SBAs stating the building or structure to which any claim relates, the date of the earliest contract for the construction, the amount of the qualifying expenditure and the date at which it was first brought into non-residential use.

If the building or structure is situated only partly in an area that is a Freeport tax site, there is just and reasonable apportionment of the qualifying expenditure. There is also just and reasonable apportionment of costs if the building is first brought into qualifying use partly on or before 30 September 2026 and partly after that date.

Stamp Duty Land Tax

Clause 111 and Schedule 22 outline the Stamp Duty Land Tax provisions for Freeport tax sites.

Relief is available from SDLT where the effective date falls on or before 30 September 2026 and any relief must be claimed on a land transaction return with the claim being made on or before 14 October 2027. The legislation is inserted as Schedule 6C FA2003.

The relief is an exemption from the charge to SDLT as long as at least 90% of the chargeable consideration is attributable to the qualifying Freeport land. If the proportion of chargeable consideration for the transaction that is attributable to the qualifying Freeport land is less than 90% but at least 10%, then the tax chargeable is reduced by the relevant proportion.

Any attribution of chargeable consideration has to be done on a just and reasonable basis.

Relief is available where the ‘transaction land’ is, on the effective date of the transaction, situated in a Freeport tax site and the purchaser intends it to be used exclusively in a qualifying manner. ‘Transaction land’ means a chargeable interest in land.

Transaction land is used in a qualifying manner if:

- It is used by the purchaser or a connected person in the course of a commercial trade or profession (including for purposes ancillary to the use of other land in a Freeport tax site being used in the course of a commercial trade or profession). This specifically includes property rental businesses.

- It is developed or redeveloped by the purchaser or a connected person for used by any person in the course of a commercial trade or profession.

- It is exploited by the purchaser or connected person (in the course of a commercial trade or profession) as a source of rents or other receipts other than excluded rents, or

- It is used in any combination of the above.

Land is not used in a qualifying manner if it is used as a dwelling or as the garden or grounds of a dwelling, is developed or redeveloped to become residential property or held for resale as stock without development or redevelopment.

Connected person for the purposes of the above legislation is defined in s1122 CTA2010.

The relief is withdrawn if at any point during the control period, the qualifying Freeport land is not used exclusively in a qualifying manner. It is not withdrawn if there is an unforeseen change in circumstances beyond the control of the purchaser. Periods where steps are being taken to use the land in a qualifying manner would not mean withdrawal of the relief.

The control period is three years from the effective date of the transaction or any shorter period up to the date at which the purchaser or anyone connected with them no longer holds an interest in the land.

Penalties (Lecture P1255 – 10.58 minutes)

Clause 112 introduces a new penalty regime which is then detailed in Schedules 23 and 24. Schedule 25 describes penalties due for late payment of tax.

Late submission penalties

The first part replaces the existing late submission penalties with a points-based system. Each return which falls within these provisions is divided into groups with different penalty points being awarded for each group of returns.

The returns are grouped into

1. 'Column A' (basically annual returns),
2. 'Column B' (quarterly returns) and
3. 'Column C' (monthly returns).

Where a business has agreed a non-standard return period that is not exactly monthly, quarterly or annual, these will be treated as the next longest accounting period. For example, a return period between 3 and 12 months would be treated as an annual return.

Within each Column there is then:

1. Group 1 – income tax returns,
2. Group 2 – trust returns
3. Group 3 – partnership returns, and
4. Group 4 – VAT returns.

The returns within Column B include the periodic returns which will become due once Making Tax Digital is live for income tax self-assessment purposes.

There are specific provisions where a taxpayer has multiple businesses where there will be separate submissions for each business (such as MTD business updates and End of Period statements). The points apply per group so that even if one or more submission is late, they will only get one point added to their points total. The exception to this is VAT where if a person makes separate return for each business, then the penalty point will accrue on each set of returns.

If you fail to make a return on or before the due date, then you become liable for one penalty point for the group of returns to which the return belongs. You only get one penalty point if there is more than one failure in the same month relating to either:

(a) An ITSA annual return, trust annual return or partnership annual return group

(b) Any VAT return due (whether annual, quarterly or monthly)

(c) Any digital reporting sub-group of returns.

A person is not liable to a penalty point for a group of returns if they have already had the maximum penalty points for that group. The maximum is:

- Column A (annual) group: 2 points
- Column B (quarterly) group: 4 points
- Column C (monthly) group: 5 points

Example

An individual who is mandated to file under MTD for both income tax and VAT fails to file quarterly returns for the period to 30 June 20xx and 30 September 20xx. The person is filing two income tax MTD returns as they have property income as well as trading income.

This individual reaches 4 points with one of the returns due in relation to 30 September and so becomes liable for a penalty at that stage.

HMRC must notify the person that they have been awarded a penalty point and there is a time limit for it to do that otherwise the penalty is not deemed to be awarded.

The individual points expire at the end of the 'relevant period' unless at that date, the person has the maximum number of penalty points for that group of returns. The relevant period is 24 months although the date from which this runs varies in different cases.

All of the points for a particular group of returns expire at the beginning of the first day on which both condition A and condition B are met.

A. The person has made each return in the group on or before its due date for the 'relevant length of time'. This is 'x' months with x being 24 months for Column A returns, 12 months for Column B returns and 6 months for Column C returns.

B. Condition B is met on any day if that person has made all the returns in the group whose due date fell in the period of 24 months ending with the previous day, whether or not those returns were made on time.

HMRC must notify the person if their penalty points have expired.

If a person moves from one group to another, so that the frequency of their submissions change, then there will need to be an adjustment to the points. If you had no points for the old submission frequency, then there will be no points for the new submission frequency. Otherwise the adjustment is:

- Annual to quarterly +2 points
- Quarterly to annual – 2 points
- Annual to monthly + 3 points
- Monthly to annual – 3 points
- Quarterly to monthly +1 point
- Monthly to quarterly – 1 point

The points cannot go lower than zero. If you are reducing the points, the oldest points are treated as expiring; if the points are increasing, the points are treated as being award in respect of the most recent failure. The provisions allowing for all points to expire are also amended in these cases so that the starting point for condition A is one month after the first submission under the new frequency.

If you fail to submit a return on time and either this means you reach the points threshold or you are already at the points threshold, there will be a £200 penalty levied.

For ITSA customers mandated to MTD who have multiple businesses, only one penalty will accrue per quarter per obligation after the penalty threshold is reached.

The points awarded are removed if HMRC issues a notice stating that a return does not need to be filed.

HMRC must notify the taxpayer that the penalty has been levied but no penalty will be due if the taxpayer has a reasonable excuse for the failure. Any appeal can cover both the financial penalty and the points which led to that penalty. The first tier tax tribunal can hear any appeal.

If a tribunal cancels a point or points, HMRC has 12 months from that decision to award points which were not previously awarded because the taxpayer was already at the maximum number of points. The guidance notes give the following example:

An MTD mandated ITSA customer who has missed all 4 quarterly return obligations has reached the penalty points threshold and accrued a £200 penalty. They have appealed the penalty and the FTT decides to cancel the point relating to the Q3 regular update, so the penalty is cancelled. However, the same customer also missed the deadline for the end of period statement. A point did not accrue because the customer was already at the penalty deadline. HMRC will have 12 months from the date of the FTT decision to levy this point and any resulting penalty.

There are amendments to the basic rules for returns to be submitted by partnerships and settlements.

Commencement

These provisions will apply for VAT for accounting periods beginning on or after 1 April 2022, for ITSA taxpayers coming within MTD from 2023 for all accounting periods beginning on or after 6 April 2023 and for all other ITSA taxpayers for accounting periods beginning on or after 6 April 2024.

Deliberate withholding of information

Schedule 24 contains provisions relating to the penalties payable when a person fails to make a return (either individual self-assessment, partnership, trust or MTD return) and then deliberately withholds information which would enable HMRC to assess their tax liability.

The penalty is the same as applies for an inaccurate return (with a de-minimis of £300 applying for all offences) so it depends on whether it is a category 1, 2 or 3 offence and whether it is careless, deliberate and not concealed or deliberate and concealed.

Penalties can be mitigated dependent on behaviour and HMRC must assess the penalty within the relevant time limits.

The implementation date is the same as the provisions within Schedule 23.

Late payment of tax

Schedule 25 makes provision for penalties for late payment of taxes as specified within the table in Paragraph 1, which covers most liabilities due from taxpayers.

No penalty is payable if the tax is paid before the end of 15 days from the due date.

A penalty of 2% of the tax due is levied for the amount unpaid at the end of the 15-day period and another 2% is due if the tax remains unpaid at the end of a 30-day period after the due date. These amounts will not become due and payable if a time to pay arrangement is in place at the penalty date although if the time to pay arrangement is not complied with, then the penalty comes back into charge.

If tax is still outstanding at the end of day 30, then a penalty of 4% per annum, calculated daily will be applied until the liability is paid in full or time to pay proposals are accepted by HMRC.

These initially apply for income tax and VAT obligations only but will be extended in due course to other liabilities.

These will apply for all late VAT payments for return periods starting on or after 1 April 2022 (replacing default surcharges), for ITSA taxpayers who join MTD in 2023/24 for payments relating to that year onwards, and for all other ITSA taxpayers for payments relating to 2024/25 onwards.

Consequential amendments

Clause 114 introduces Schedule 26 which contains amendments to existing legislation which are consequential on the introduction of the new penalty regime.

Follower notices

A Follower notice may be issued to a person who has used tax arrangements in an attempt to gain a tax advantage where HMRC have successfully litigated against other similar schemes. Anyone who receives a Follower notice must either pay the tax or continue their dispute or risk a 50% penalty if they are ultimately unsuccessful.

Clause 115 and Schedule 27 reduce the initial penalty to 30% but with an additional 20% penalty to be levied if a tax tribunal finds that person has unreasonably pursued litigation in relation to the tax scheme. This will apply from the date of Royal Assent.

Interest

Clause 116 and Schedule 28 make amendments to the interest charged on late payments of VAT and the repayment interest on overpayments of VAT. The changes will come into being on a date to be announced and brings these provisions in line with the interest applicable for income tax self-assessment purposes.

Repayment interest will not, however, be paid for any period where there are VAT returns missing or where HMRC has raised reasonable enquiries in relation to the VAT position of the person concerned.

Avoidance

Various provisions are introduced with the intention of tightening up on the ability of persons to implement tax avoidance planning.

Promoters of tax avoidance schemes

Stop notices

Clause 117 and Schedule 29 introduce a power for HMRC to issue stop notices to promoters of tax avoidance schemes to stop the sale of schemes before they have been defeated.

This can be issued if an authorised officer suspects that the recipient promotes or has promoted arrangements (which must be described in the notice) which meet either:

a) conditions A and either of conditions B or C, or

b) conditions B and D.

Condition A defines categories of arrangements for which a stop notice can be issued, namely:

- Disguised remuneration schemes that would have fallen within the loan charge provisions
- Schemes similar to any that have been allocated a DOTAS number or DASVOIT number
- Schemes similar to ones in relation to which a Follower notice has been issued
- Any scheme similar to one of a description specified in regulations

Condition B is that an authorised officer consider that the relevant arrangements have been marketed to enable any person to obtain a particular tax advantage and are more likely than not to be incapable of enabling the advantage.

Condition C is that the authorised officer must consider condition A is met as a result of the allocation of a DOTAS or DASVOIT number to arrangements and a person has not complied with a request for information in relation to those arrangements.

Condition D is that the arrangements would be relevant arrangements under s234 FA 2014 (being arrangements designed to provide a tax advantage where the main purpose of entering into the arrangements is to obtain that tax advantage) and where the recipient of the notice is subject to a conduct notice or monitoring notice under the Promoters of Tax Avoidance Scheme provisions.

The stop notice means the recipient must stop promoting the indicated schemes and must provide quarterly returns to HMRC for a period of 3 years detailing all relevant clients of that person, being anyone who has been approached regarding the relevant arrangements. There are modifications of the rules for businesses which the recipient is involved with.

The person can request that the stop notice is withdrawn on the basis they do not intend to promote relevant arrangements. The person can appeal against a refusal to withdraw the notice.

HMRC can publish details of a person who is subject to a stop notice and details of the arrangements promoted by them for which the stop notice was issued.

The recipient must also give the details to all of their clients who have been provided with details of the relevant arrangements.

There are various penalties for failure to comply with these provisions.

Promotion structures

Schedule 33A is inserted into FA2014 which determines circumstances where a person is deemed to be a promoter for the purposes of the Promoters of Tax Avoidance Scheme provisions. The provisions are complex but they fall into 4 categories:

1. Multiple entity promoters
2. Acting for non-resident promoter
3. Control of another promoter
4. Transfer of promotion business

Conduct and monitoring notices

This part of Schedule 29 allows an authorised officer to issue a conduct notice and/or a monitoring notice where they become aware that a person to whom a conduct notice has been served has made a relevant transfer of their business to another person.

Further provisions allow an authorised office to determine the duration of a conduct notice which can be between 2 and 5 years depending on the number and significance of specified threshold conditions being met.

Disclosure of tax avoidance schemes

The DOTAS and DASVOIT schemes are amended by Clause 118 and Schedule 30 such that if HMRC reasonably suspects that a person has failed to disclose under the relevant regime then they can issue a notice to obtain details. If the person does not satisfy HMRC within 30 days (or a longer period as agreed by HMRC) that the arrangements are not disclosable, then HMRC may allocate a Scheme Reference Number to the arrangements. All consequences of the issue of an SRN then flow from this in the normal way. There is a right of appeal against issue of the SRN.

This will take effect from the date of Royal Assent.

Penalties for enablers of tax avoidance schemes

Clause 119 introduces provisions which will allow HMRC to use information powers to get details of a person’s potential liability for a penalty in relation to arrangements before they have been defeated by requesting information from one enabler of tax avoidance schemes about other persons who have also enabled the same arrangements.

Where there are multi-user schemes, there is a new threshold for determining when a penalty can be issued, being the meeting of one of two conditions:

1. That there has been a defeat of a related arrangement resulting from a judicial ruling

2. That there has been no judicial defeat but a threshold is breached dependent on the number of related cases and the percentage of those cases that have been defeated.

Finally, there is an amendment to the provisions relating to the publishing of details of enablers of tax avoidance schemes who have received penalties. It removes the restriction requiring HMRC to have defeated all related uses of a multi-user scheme before publishing details. HMRC can now publish information about an enable once they have received 51 penalties or penalties exceeding £25,000 over a period of 12 months.

Amendments to GAAR

Clause 120 and Schedule 31 make amendments to the provisions relating to the General Anti-Abuse Rule (GAAR) in respect of the way it works where partnerships are being investigated so that it aligns with the general enquiry regime for partnerships. This means using the representative partner to deal with all of the relevant aspects of the GAAR regime.

Conditionality

Clause 121 and Schedule 32 introduce provisions requiring licensing authorities to give or obtain tax information before issuing certain licences. This applies for applications on or after 4 April 2022.

Licenses to which this applies are:

- Taxis and private hire vehicles

- Private hire vehicle businesses

- Dealing in scrap metal

Different provisions apply to first-time applications and renewals.

A first-time application comes from an individual or company who has previously held neither kind of licence now being applied for nor a licence in the same category or where they held such a licence but it ceased a year or more before the application is made.

Where there is a first-time application, the licensing authority may not consider the application until they have:

- Drawn the applicant's attention to guidance relating to tax compliance

- Obtained confirmation that the applicant is aware of the contents

- Drawn the applicant's attention to the fact that HMRC can obtain information from them about the applicant.

For those who are not first-time applicants, the application cannot be considered unless HMRC has given confirmation that the applicant has, within the required period, completed a tax check. The required period is the period of 120 days ending with the day on which the licensing authority request the confirmation. Details are contained within the legislation of how HMRC will undertake these tax checks.

The need for a tax check can be suspended in the event of this service being unavailable.

HMRC powers

Information notices

Clause 122 introduces a new information notice to be included within Schedule 36 FA2008. This will require a financial institution to provide information reasonably required by HMRC for the purposes of checking the tax position of a named taxpayer or for the purposes of collecting tax debt from that taxpayer. It can only request information where it is not unduly onerous for the financial institution to provide the same.

This will be called a financial institution notice and can be given by an authorised officer of HMRC without recourse to the first tier tax tribunal, although an application may be made to the tribunal for its issue.

A financial institution is any person treated as a financial institution for Common Reporting Standard purposes or any person who issues credit cards with an exception for investment entities within section VIII (A)(6)(b) of the CRS.

HMRC must report each year as to how many of these notices have been issued.

Clause 123 amends the information powers in Schedule 36 FA2008 to allow taxpayer notices, third party notices and unknown identity notices to be issued for the purposes of obtaining information to enable collection of tax debt.

Clause 124 and Schedule 33 introduce various amendments to the Schedule 36 provisions. The most important of these is a new non-disclosure requirement when a person is given a third-party notice or financial institution notice where the tribunal has disapplied the requirement to give a copy of the notice to the taxpayer, applying for a period of 12 months although this can be extended.

Disclosure of information

Clause 125 introduces a power to enable secondary legislation to be put in place to require certain UK digital platforms to report information about the income of sellers of services on their platform. This is to comply with OECD Model Rules for reporting of platform operators. HMRC will consult on the draft regulations.

Unauthorised removal of seized goods

Clause 126 introduces provisions allowing for introduction of a civil penalty for the unauthorised removal of goods that have been seized in situ.

Approval to trade

Where HMRC has revoked or refused an approval to trade, a business has a right of appeal but that business may not survive the appeal process simply because they cannot trade so the appeal becomes irrelevant. Clause 127 gives HMRC a right to temporarily approve relevant businesses to enable it to preserve its right to appeal.

Banking

Replacement of LIBOR

Clause 128 substitutes the statutory references to LIBOR in the capital allowances leasing provisions with 'incremental borrowing rate' as defined by generally accepted accounting practice. This is because of changes such that there is no intention to compel banks to contribute to LIBOR after the end of 2021 so its use cannot be guaranteed beyond this date.

Clause 129 provides that the Treasury can make regulations to address any unintended taxation issues arising from the transition away from LIBOR.

Power to amend legislation relating to banks

Clause 130 introduces legislation which will enable banking tax rules to be amended including bank levy, the bank compensation restriction, the bank loss restriction and the bank CT surcharge. HMRC are intending to consult on whether any changes should be made.

Measures announced but not to be legislated in FB2021

Some of these have already been mentioned, but below are the additional points to note.

Electronic sales suppression

The Government is to introduce new powers to tackle electronic sales suppression in the next Finance Bill to attack those producing and using electronic sales suppression software and hardware.

EMI

There is a call for evidence on how to expand the current EMI scheme to offer effective support for high-growth companies seeking to recruit and retain key employees.

R&D tax reliefs

There will be a review of R&D tax reliefs to ensure that the UK remains a competitive location for research based business by ensuring the reliefs are fit for purpose and effectively targeted.

Bank surcharge

There is to be a review of the bank surcharge of 8% to ensure that the increase in CT rate, combined with the surcharge, does not make the UK an uncompetitive environment for such businesses.

Apprentice payments

Government is to extend and increase the payments made to employers in England who hire new apprentices. A new apprentice hired between 1 April 2021 and 30 September 2021 will result in a payment of £3,00 to the employer per new hire compared with £1,500 under the old scheme (or £2,000 if they were aged 24 or under).

Combatting COVID-19 fraud

The Government is to invest over £100 million in a Taxpayer Protection Workforce of 1,265 HMRC staff to combat fraud within Covid-19 support packages including the CJRS and SEISS.