Tolley®CPD

Finance Bill

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Income tax

Tax rates and allowances

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

There was no change to personal allowance as expected so it stays at £12,500.

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

Blind person's allowance is indexed to £2,500 for 2020/21 (from £2,450 in 2019/20).

The married couples' allowance (MCA) where available increases to £9,075 (from £8,915). The income limit before tapering increases to £30,200 (from £29,600) and the minimum entitlement increases to £3,510 (from £3,450).

MCA is available where one of the spouses or civil partners was born before 6 April 1935 (so will be 85 or older in the tax year 2020/21). 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).

<u>Example</u>
John was born on 14 January 1936 and has been married to Jane who was born on 10 October 1935 for over 50 years.

John has total income of £34,220 and Jane has total income of £45,832 in 2020/21.

What MCA is available and to whom?

<u>Solution</u>
As they were married before 5 December 2005, John claims the MCA and it is restricted based on his income.

In this case the MCA will be [9,075 – 50% x (34,220 – 30,200)] i.e. £7,065. This will save John tax of £706.50.

It should be remembered that this applies in England, Wales and Northern Ireland.

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 have the power to set income tax rates in Wales but have chosen not to do so for 2020/21.

Car and van benefits

Various changes are made to the legislation at s136 ITEPA 2003 which determines the appropriate percentage to be used for the purposes of computing the car benefit (Clause 7).

The main change is that for cars first registered on or after 6 April 2020, the emissions figure to be used for determining the appropriate percentage is the value obtained using the worldwide harmonised light vehicle test procedures (WLTP).

This applies for single and bi-fuel cars.

This replaces emissions testing under the New European Driving Cycle (NEDC) but NEDC emissions values will continue to apply to cars registered up to 5 April 2020.

The concept of 'electric range' will become relevant in 2020/21 for vehicles with low emissions (50 or less g/km CO_2) and again for cars first registered on or after 6 April 2020, this will be calculated using WLTP.

The CO_2 figure is rounded down to the nearest whole number (if it is not a whole number) and the electric range figure is rounded up to the nearest whole number (if it is not a whole number).

To compensate for the likely increase in car benefit due to adoption of WLTP, there is a modification to the car benefit percentages for cars registered on or after 6 April 2020.

The percentages are reduced by 2% for 2020/21 and by 1% for 2021/22 before reverting back to the specified percentage in 2022/23 (Clause 8 and 9).

The Budget suggested that rates will rise by 1 percentage point in 2021/22 and by a further 1 percentage point in 2022/23 for general car benefit and then be frozen until 2024/25. However, these provisions do not feature in the Finance Bill.

The relevant percentages for cars registered up to and after 5 April 2020 are shown below.

When submitting P11Ds for the next few years, it will be vital to check the date when the car was registered to ensure that the correct percentage is applied to the list price.

Company car tax - Cars first registered before 6 April 2020				
CO_2 emissions, g/km	Electric range (miles)	Appropriate Percentage (%)		
		2020-21	2021-22	2022-23
0	N/A	0	1	2
1-50	>130	2	2	2
1-50	70-129	5	5	5
1-50	40-69	8	8	8
1-50	30-39	12	12	12
1-50	<30	14	14	14
51-54		15	15	15
55-59		16	16	16
60-64		17	17	17
65-69		18	18	18
70-74		19	19	19
75-79		20	20	20
80-84		21	21	21
85-89		22	22	22
90-94		23	23	23
95-99		24	24	24
100-104		25	25	25
105-109		26	26	26
110-114		27	27	27
115-119		28	28	28
120-124		29	29	29
125-129		30	30	30
130-134		31	31	31
135-139		32	32	32
140-144		33	33	33
145-149		34	34	34
150-154		35	35	35
155-159		36	36	36
160 and over		37	37	37

Company car tax - Cars first registered on or after 6 April 2020				
CO_2 emissions, g/km	Electric range (miles)	Appropriate Percentage (%)		
		2020-21	2021-22	2022-23
0	N/A	0	1	2
1-50	>130	0	1	2
1-50	70-129	3	4	5
1-50	40-69	6	7	8
1-50	30-39	10	11	12
1-50	<30	12	13	14
51-54		13	14	15
55-59		14	15	16
60-64		15	16	17
65-69		16	17	18
70-74		17	18	19
75-79		18	19	20
80-84		19	20	21
85-89		20	21	22
90-94		21	22	23
95-99		22	23	24
100-104		23	24	25
105-109		24	25	26
110-114		25	26	27
115-119		26	27	28
120-124		27	28	29
125-129		28	29	30
130-134		29	30	31
135-139		30	31	32
140-144		31	32	33
145-149		32	33	34
150-154		33	34	35
155-159		34	35	36
160 -164		35	36	37
165-169		36	37	37
170 and over		37	37	37

For all cars, drivers must add 4% to their appropriate percentage if the car is propelled solely by diesel (up to a maximum of 37%). Cars that meet the Real Driving Emissions Step 2 (RDE2) standard are exempt from the diesel supplement.

Although not specifically outlined in the Finance Bill, the fuel benefit multiplier and van benefit increase by CPI of 1.7%

- The fuel multiplier £24,500 (2019/20: £24,100)
- Van benefit is £3,490 (2019/20: £3,430)
- Van fuel benefit £666 (2019/20: £655)

Zero-emission vans will have a benefit of £2,792 in 2020/21 (2019/20: £2,058). It was mentioned in the Budget documents that this benefit will be zero in 2021/22 but this is not included in the Finance Bill.

Are employer-provided cars an efficient benefit?

If an owner-manager of their company wants to buy an electric car, then clearly it would be beneficial for the company to buy or lease it for them, for example a Tesla with a list price of £80,000 including VAT.

The company would get 100% FYA if it purchased the car (or acquired it on hire-purchase), saving 19% corporation tax (£15,200) or would get relief for the annual expense in the profit and loss account if it leased the car.

The running costs would be a company expense (repairs, servicing and insurance principally) and tax-deductible.

There would no taxable benefit for the owner-manager in 2020/21 (and therefore no Class 1A national insurance liability for the company).

In 2021/22 the benefit would be 1% x £80,000 i.e. £800. This would give a maximum tax cost to the owner-manager of £360 (45% x £800) and a Class 1A national insurance cost for the company of (13.8% x £800) £110.40.

In the 2022/23 the benefit would be £1,600 with a maximum tax cost of £720 and Class A national insurance cost of the company of £220.80.

If the car is not a zero-emission vehicle, a cost-benefit analysis is needed to establish if it would be cheaper for an owner-manager to buy the car themselves and charge the company 45p/25p per mile for business journeys, or for the company to buy the car, taking account of tax relief on the cost and running expenses and the tax and national insurance cost of the benefit.

Is fuel benefit worthwhile?

If an employer-provided car is a worthwhile benefit, the next step is to establish if the company should provide all the fuel for the car, including for private journeys.

A cost-benefit analysis would compare the cost of the employee/director buying the fuel for their private journeys (which is a function of the cost of the fuel and the fuel efficiency of the car) and the tax they would pay on the benefit if the employer paid for all the fuel.

If it is an OMB company, other factors would include the Class 1A national insurance cost of the benefit and the tax saving the company benefits from on the fuel cost if it pays for it.

In very simple terms, unless private mileage is very high (certainly above 10,000 and in many cases much higher than this) it is cheaper for the employee/director to pay for their private fuel.

If they have a service contract, it needs to be amended to require them to reimburse the company for fuel used for private journeys by 5 July after the end of the relevant tax year.

If they are a director of an OMB company with no service contract, they need to pay for all the fuel used themselves personally, then recharge their company for the cost of fuel used for business journeys.

Apprenticeship bursaries paid to persons leaving care

It was announced at the time of the Budget that there would be a one-off bursary (known as the care leaver's apprenticeship bursary payment) for individuals who leave local authority care to join an apprenticeship scheme. Such payments have been made since August 2018 but have, until now, been taxable as employment income. Legislation is introduced so that such a bursary will not be liable to income tax and National Insurance Contributions (Clause 10).

To qualify the payment must be:

- Payable out of public revenue
- To a care leaver
- Made in connection with the person's employment as an apprentice and
- In respect of which any conditions specified in regulations made by the Treasury are met.

A care leaver is a person who is 'looked after' within the relevant authorities in England, Wales, Scotland or Northern Ireland.

The legislation says no more than this because regulations will be published in due course which will specify exactly how this exemption will apply. These regulations will also specify the date from which these provisions will be operative. For payments that have already been made, it is stated in the Explanatory Notes to the Finance Bill that HMRC will use its collection and management discretion and not seek to collect tax and NICs due on such the payments.

Tax treatment of certain Scottish social security benefits

Clause 11 confirms that three new social security benefits paid by the Scottish Government are exempt from income tax: Disability Assistance for Children and Young People; Job Start and the Scottish Child Payment.

Social security benefits: exemption from tax

New legislation is introduced (Clause 12) which allows the Treasury to exempt social security benefits from income tax by use of the statutory instrument regime, rather than having to bring forward primary legislation.

Voluntary office-holders

Where an individual is a voluntary office-holder then they are treated as if they are an employee which means that any business expenses which are paid or reimbursed are exempt from tax as they fall within s289A ITEPA 2003 as being qualifying business expenses. However, this only applies to business expenses.

Reimbursement of, say, the cost of travel from home to the place where the role is undertaken, which is treated as private travel, would theoretically be taxable. HMRC do not seek to tax amounts where the voluntary worker is otherwise untaxed but this is by concession.

Clause 13 introduces legislation which will exempt reasonable expenses incurred in carrying out the duties of the office from income tax. The payment can be an advance payment or reimbursement and would also apply where someone else makes the payment.

Disguised remuneration loan charge **(Lecture P1198 – 10.02 minutes)**

'Disguised remuneration schemes' is the generic term used by HMRC to describe schemes which sought to avoid Income Tax and National Insurance contributions (NICs) by paying scheme users their income in the form of loans. In most cases, the loans were never intended to be repaid and so HMRC's view has always been that these are, in reality, normal employment income and therefore taxable as such.

Legislation was introduced in FA2011 to stop further loans being made (although not necessarily very successfully) and HMRC continued to try to collect tax on pre-existing loans. They also pursued some cases to litigation.

However, they got frustrated at the resistance to people settling cases and so introduced legislation to tax outstanding disguised remuneration loans. Any loan made since 6 April 1999 that was still outstanding on 5 April 2019 where the recipient had not settled the tax due was to be subject to tax at that date. This was announced at the time of the Budget 2016.

As the 5 April 2019 date approached, the disquiet about the charge became more vocal and HMRC asked Sir Amyas Morse to lead an independent review of the policy. He made a number of recommendations which are now included in FB2020.

1. The date from which disguised remuneration loans will be taxed under these provisions is moved from 6 April 1999 to 9 December 2010. Any loan made before 9 December 2010 will not be subject to the Loan Charge. (Clause 14 and Sch.14 Pt 1)
2. Taxpayers subject to the Loan Charge can elect to spread the loan balance over three tax years so that the tax charge also arises over those three years. The years will be 2018/19, 2019/20 and 2020/21. The election is made via an online form and cannot be withdrawn. In order to be eligible to make the election, a person must submit information in an online form reporting all disguised remuneration loans received in the relevant period. (Clause 15 and Sch.14 Pt 2)

3. The charge arising for years 2015/16 and earlier will not be levied if there was a reasonable disclosure of the loan and HMRC had not taken steps prior to 6 April 2019 to recover the tax. A reasonable disclosure is defined by the legislation which provides that the person's tax return (or two or more tax returns) must have identified the loan, the person to whom it was made, the arrangements under which the loan was made and other information which would have made it apparent that it might be chargeable to income tax. It is suggested that this might be a difficult test to pass. Chargeable to tax in this context does not include being subject to the beneficial loan charge for cheap loans. (Clause 16)
4. The due date for payment of any tax liabilities for 2018/19 for a person subject to the Loan Charge is effectively moved to 30 September 2020 as no interest will be charged on tax due between 1 February 2020 and 30 September 2020. This covers all tax liabilities for that person. No interest will be charged on any payments on account for 2019/20 so that the tax for this year effectively does not have to be paid until 31 January 2021. (Clause 17)
5. The date by which the taxpayer must provide information on their loans is moved to 1 October 2020. (Clause 18)
6. Where tax has been paid under a settlement between HMRC and the taxpayer but that tax would not have been payable after the amendments made now, the tax can be repaid (or waived if not yet actually paid) if the taxpayer makes an application before 1 October 2021. (Clause 19)
7. Legislation is introduced which will allow HMRC to make further provisions by secondary legislation for implementation of the rules (for example the format of elections/applications). (Clause 20).

Pension annual allowance (Lecture P1197 – 13.52 minutes)

The pension tax rules include a maximum annual contribution (called the annual allowance) and where payments are made above that maximum, an annual allowance charge arises. There is some limited ability to carry forward unused allowances. The annual allowance is currently £40,000. However, since 2016, the annual allowance has been tapered for those who have higher incomes.

The tapering applies to those who have threshold income above one figure and adjusted income above a second figure:

- The threshold income is broadly gross income less any pension contributions paid by the individual; employer pension inputs are ignored for this purpose.

- The adjusted income is broadly the gross income plus employer pension inputs.

The current threshold income limit is £110,000 but will increase to £200,000 from 6 April 2020. The adjusted income limit is currently £150,000 but will increase to £240,000 at the same time.

The annual allowance reduces by £1 for every £2 that the adjusted income exceeds the limit.

Tapering does not currently reduce the annual allowance below £10,000 but this is also changing so that the minimum will be £4,000, again to apply from 6 April 2020. (Clause 21).

Mathematically, this reduction in the minimum annual allowance will only affect taxpayers with threshold income above £200,000 and adjusted income above £300,000.

Example

Nikki has threshold income of £230,000 for 2020/21. That is gross pay of £236,000 less her pension contribution of £6,000 (gross).

Her employer operates a defined benefit pension scheme and the calculated employer input for 2020/21 is £39,000.

Nikki's adjusted income is therefore £275,000 (236,000 + 39,000).

She has no unused annual allowance brought forward and her marginal tax rate is 45%.

As she is a high-income individual, the annual allowance of £40,000 is reduced by the following amount:

(£275,000 - £240,000) = £35,000/2 = £17,500

The annual allowance will therefore be £40,000 less £17,500 = £22,500.

Nikki's total pension inputs are £45,000 (6,000 + 39,000). She will therefore suffer a special annual allowance charge of 45% x (45,000 – 22,500), i.e. £10,125. She can elect for this to be paid out of her pension scheme, but this will reduce the benefits she is able to take from it.

Taxpayers need to be mindful of the impact a small amount of extra income can have on their tax position (as highlighted by the recent decision of NHS consultants not to take on more work which led to the increases in the income limits above).

Example

Paul has gross income £205,000. He contributed £5,000 (gross) of his income to his pension, making his threshold income £200,000.

In addition, his company makes pension contributions into the scheme on his behalf of £40,000.

At this stage, as Paul's threshold income is at the threshold limit of £200,000 (205,000 - 5,000), his annual allowance is not tapered.

Paul has always used his annual pension allowance. In the current year Paul has total pension inputs of £45,000 so is already facing an annual allowance charge of £2,250 on the £5,000 excess.

If Paul generates additional income of £1,000, his threshold income £201,000 (205,000 + 1,000 – 5,000) now exceeds the threshold level of £200,000 and his adjusted income becomes £246,000 (205,000 + 1,000 + 40,000). As a result, his annual allowance is tapered to (40,000 – 50% x [246,000 – 240,000]), i.e. £37,000

He is charged marginal tax on his extra income of £1,000 at 45%, i.e. £450, and there is a special annual allowance charge of 45% x (40,000 + 5,000 – 37,000), i.e. £3,600. His annual allowance charge has increased by £1,350 (£3,600 - £2,250),

As a result of earning extra income of £1,000, he has an extra liability of £1,800 (450 + £1,350).

Pensions lifetime allowance limit (Lecture P1197 – 13.52 minutes)

The pension lifetime allowance is not specifically mentioned in the Bill so will be increased by CPI from 6 April 2020 from £1,055,000 million to £1,073,100.

Enterprise Investment Scheme

EIS aims to encourage investors into small companies by giving a 30% tax relief on any qualifying investments. It has been amended in recent years to refocus the relief on those companies which HMRC believes it should be targeted at.

These changes include more generous rules for investments into 'knowledge intensive companies'. Approved investment funds can act as nominees for investing in shares on behalf of investors.

Clause 35 of the Finance Bill changes the legislation so that rather than investments being made via an 'approved fund' they must be made via an 'approved knowledge-intensive fund' being that:

- The amounts which the managers have subscribed for shares on behalf of the investor within 12 months after the closing of the fund represent at least 50% of the individual's investment in the fund
- The amounts which the managers have subscribed for shares on behalf of the investor within 24 months after the closing of the fund represent at least 90% of the individual's investment in the fund,
- Within that 24-month period at least 80% of an individual's investment in the fund is represented by shares in companies which are knowledge-intensive companies at the time the shares are issued
- The managers of the fund have met the appropriate reporting conditions required by HMRC.

Top-slicing relief

HMRC lost a case (Marina Silver v HMRC) about the interaction of personal allowances and income (life-insurance policy gains) eligible for top slicing relief, having claimed that the entire gain was added to income in the year the policy was encashed in determining if the personal allowance is abated.

Clause 36 of the Finance Bill introduces legislation as to how allowances and reliefs get set against such gains and states that these rules will apply to life insurance policy gains from 11 March 2020.

The specific changes are:

- The rules for reliefs and allowances in s25(2) ITA2007 that require that they are set off in a way that results in the greatest reduction in an individual's income tax liability, do not apply
- An individual's reliefs and allowances must be deducted from other income before being deducted from the gain
- When calculating the income tax liability when top slicing relief is claimed, the personal allowance (but not any other relief or allowance) is calculated as if the chargeable event gains are equal to the annual equivalent amount.

These changes apply for 2019/20 and subsequent years. However, the Bill states that they do not have effect in 2019/20 or 2020/21 for a taxpayer who is only liable for tax under the chargeable event gain provisions for the year in question on a gain from one chargeable event that occurs before 11 March 2020 or on gains from multiple chargeable events all of which occurs before that day.

This seems strange and could be subject to challenge, given that the Court ruled that HMRC's method has been wrong historically.

Example

It is the use of the personal allowance which was considered in the case of Marina Silver v HMRC, as noted above.

An individual with a gain of £110,000 made over 21 years has other income of £35,000. PA is £12,500 and basic rate band is £37,500.

The gain is taxed as follows:

	Income within band (£)	Tax (£)
Personal savings allowance	500	Nil
Basic rate	2,000	400
Higher rate	107,500	43,000
TOTAL	110,000	43,400
Tax credit (20% x 110,000)		(22,000)
Total liability		21,400

If the gain is top sliced, only £110,000/21 is brought into account = £5,238.

If the personal allowance is still not given the calculation (HMRC's old position) becomes:

	Income within band (£)	Tax (£)
Personal savings allowance	500	Nil
Basic rate	2,000	400
Higher rate	2,738	1,095

TOTAL	5,238	1,495
Tax credit (20% x 5,238)		(1,048)
Liability on 'slice'		448
Total revised liability	448 x 21	**9,400**

The top slicing relief would be £21,400 less £9,400 = £12,000.

If the personal allowance is given the calculation (the new rules) becomes:

	Income within band (£)	Tax (£)
Personal savings allowance	500	Nil
Basic rate	4,738	947
Higher rate	Nil	Nil
TOTAL	5,238	947
Tax credit		(1,048)
Liability on 'slice'		Nil
Total revised liability	Nil x 21	**Nil**

The top slicing relief would be £21,400 less nil = £21,400

Capital taxes

Rates and allowances

Although not mentioned in the Finance Bill, it was announced at the time of the Budget that the annual exemption will be £12,300 for 2020/21 (2019/20: £12,000).

The rates of CGT are unchanged, remaining at

- 10%/20% on most assets (basic rate/higher rate)
- 18%/28% on residential property gains

Entrepreneurs' Relief (Lecture P1199 – 18.39 minutes)

Entrepreneurs' Relief reduces the rate of CGT to 10% for qualifying disposals. There has always been a maximum lifetime limit of gains eligible for the relief and this is reduced from £10 million to £1 million for disposals on or after 11 March 2020. (Clause 2, introducing Sch. 22)

The relief has been renamed as 'business asset disposal relief'.

Rules will also be introduced that apply to forestalling arrangements entered into before Budget day. Disposals which fall foul of these rules will be subject to the £1m cap.

The first rules apply where transactions have been undertaken to exploit the fact that it is exchange of contracts which triggers a disposal for CGT purposes. This legislation is found at s28(1) TCGA 1992. HMRC believe that, due to extensive discussion about the likelihood of ER being removed, that some taxpayers have put in place contracts which aim to 'lock-in' the ER available before Budget day. In the past, this has been achieved by using rescindable contracts but there are other mechanisms which can be used.

If the anti-forestalling rules apply, it will be completion that will be treated as the date of disposal rather than when the contract was made. This will therefore not impact transactions which have been completely finalised before the Budget.

There are two sets of conditions.

1. If the contract is not between connected persons, the provisions will not apply if it can be shown that the contract was not entered into with a purpose of obtaining an advantage by the fact that exchange is the trigger for the CGT charge. A claim to ER on any disposal which might fall within these provisions must include a statement confirming that point.

2. If the contract is between connected persons, the parties must demonstrate not only that the contract was not entered into with a purpose of obtaining an advantage by the fact that exchange is the trigger for the CGT charge but also that the contract was entered into wholly for commercial reasons. Again, any claim to ER to which this might apply must include a statement confirming this point.

It is unclear at this stage what kind of factors that HMRC will take into account when determining whether these provisions apply but they will clearly be scrutinising any transactions which straddle the Budget date.

Clients would be well advised to consider how they would respond if any enquiries are raised by HMRC.

The second set of rules consider share exchanges. Where there is a share reorganisation which falls within s127 TCGA 1992, the legislation states that the reorganisation is to be treated as if there is no disposal of the original shares. There is an extension to this within s135 TCGA 1992 where there are share for share exchanges (often but not always when a company is sold in exchange for shares or securities in the purchaser company). There is a provision at s169Q TCGA 1992 which allows a person to disapply the 'no disposal' rule in s127 and this is often used in order to crystallise entitlement to ER.

HMRC have seen cases where they believe that share for share exchanges have been undertaken prior to the Budget with the intention that, should changes be made to ER, that the relief can be crystallised by submitting claims within s169Q TCGA 1992.

There are two anti-forestalling rules which fall within the general umbrella of share reorganisations.

1. Where on or after 6 April 2019 (but before 11 March 2020), there has been a share reorganisation within s127 TCGA 1992. If, following the reorganisation, the relevant individual still meets the conditions for ER to apply (because the company is their personal company, it is a trading company or holding company of a trading group and they are an officer or employee), then any election under s169Q will treat the disposal as made at the time of the election and not at the time of the reorganisation.

2. Where on or after 6 April 2019 (but before 11 March 2020), there has been a share reorganisation within s135 TCGA 1992. If either of the following two conditions are met, any election under a169Q will also treat the disposal as made at the time of the election and not at the time of the exchange.

   The conditions are:
   (a) The persons who hold the shares or securities in the new company immediately after the exchange are substantially the same as those who held the shares or securities in the old company immediately before the exchange or the persons who control the new company after the exchange are substantially the same as those who controlled the old company immediately before the exchange, or
   (b) The relevant shareholders, taken together, hold a greater percentage of the ordinary share capital in the new company immediately after the exchange than they held in the old company immediately before the exchange and they continue to meet the conditions for ER to apply. Relevant shareholders in this context means persons who hold shares in both the old and the new company.

Connected persons are to be treated as the same person. There is no definition of 'substantially the same' which means, presumably, it will take its ordinary meaning (and likely be the subject of course cases in future).

Since elections for 2019/20 could not be made until after 5 April 2020, this will inevitably bring the disposal within the new regime such that the £1m lifetime limit applies.

Example

A husband and wife held 80% of the shares in a company in which they were the directors, with an employee holding 20% of the shares. They undertook a share for share exchange on 5 March 2020, inserting HoldCo above the existing trading company.

The couple hold 100% of the shares after the transaction as they bought out the employee in cash as part of the transaction. There is a commercial reason for undertaking the transaction so they obtained clearance for this to be treated as falling within s135.

If they decide to make an election under s169Q to treat the reorganisation as a disposal, they would only be able to crystallise entitlement to a 10% rate of CGT on £1 million each of the gains arising.

Private residence relief (Lecture P1200 – 13.58 minutes)

Various amendments are made to the private residence relief rules by Clause 23. All of these have been consulted on and will apply for disposals on or after 6 April 2020.

PPR nominations – homes of negligible value

The first amendment is legislating of ESC D21. Where an individual has more than one residence, they can nominate which should be treated as their main residence and have a time limit of two years to make such an election.

ESC D21 has allowed an extension to the statutory time limit where an individual has had more than one residence but all but one of them has been of negligible capital value.

For example, someone has a shorthold tenancy on a flat as well as a freehold and has not appreciated that the tenancy is sufficient to mean that an election should have been made.

The new legislation (which will be at s222(5A) TCGA 1992) just states that the election 'may be given more than 2 years from the beginning of the period' if the conditions are met. So there is no time limit in these types of cases.

Transfers between spouses

All transfers between spouses are made on a no gain/no loss basis. Currently the question as to when the date of ownership begins for private residence purposes, and whether the transferee spouse inherits the transferor spouse's private residence history depends on whether the property is the only or main residence at the time of the transfer.

The legislation at s222(7) TCGA 1992 is changed so that the ownership history and previous use of property will always be transferred to the spouse regardless of the current status of the property.

Example

A married couple live in a large house in Oxford which has been their main residence since they married.

The husband also owns a property in London in which he lived before he married but which has been rented out for the last 20 years. Out of a total of 25 years' ownership, he has 3 years' occupation. The property is standing at a gain of £2m.

If he sold the property now, the chargeable gain would be £1,600,000 assuming a final period exemption of 18 months and lettings relief of £40,000. This will increase after 5 April 2020 when the final period exemption reduces to 9 months and lettings relief changes mean that he will not be able to claim any relief (see below).

If he transferred the property to his wife on 1 April 2020, her period of ownership would not commence until that date as the property is not their main residence when it is transferred.

If they were to sell their Oxford house in June 2020 and go and live in the London property for three years (long enough that HMRC cannot argue it is not their residence), the whole of the gain would be covered by private residence relief.

If the transfer took place on 6 April 2020 (or later), the wife would be treated as owning the property for the entire period that the husband has owned it and the planning no longer works.

Job-related accommodation

Someone who is in job-related accommodation can have a property treated as their main residence even if they are not living there, as long as there is an intention for them to live in the property once they no longer occupy the job-related accommodation.

An amendment is made to s222(8A) TCGA 1992 so that members of the armed forces who are required to work away from home and receive an armed forces accommodation allowance instead of being required to live in forces accommodation are still treated as being in job-related accommodation. Armed forces accommodation allowance is an allowance which is exempt from income tax under s297D ITEPA 2003.

Final exemption period

An individual who has a property which has been their only or main residence at some point during the period of occupation is treated as occupying the property for a final period before sale. This is reduced from 18 months to 9 months. No change is made to the provisions in s225E which allow the final period to be 36 months where an individual disposes of a previous residence and either they or their spouse is disabled, or is a long-term resident in a care home. The impact on the provision will depend on how long the property has been owned and how long it has been lived in as the main residence.

Lettings relief

S.223(4) TCGA 1992is removed and therefore abolished lettings relief in its current form.

A new s223B is introduced which allows lettings relief to be given where the owner of the property shares occupancy with a tenant. This would be where they are letting out part of their main residence to another individual who has no interest in the residence and where this would result in a gain becoming subject to CGT. Relief is the smaller of the gain remaining after PPR relief and £40,000. Such relief would also be transferred to a spouse if the house was transferred in accordance with the change to inter-spouse transfers covered above.

This new relief is only going to apply in very limited circumstances. For example, where rent-a-room relief is due on co-occupation as a lodger, it is commonly assumed that this would not prejudice the private residence relief. There is no indication that HMRC have changed their view on that point.

Residency delayed by certain events

ESC D49 will be enacted. This applies where an individual acquires land on which they build a dwelling which they intend to occupy as their main residence or purchase an existing dwelling where occupation is delayed due to work being done on the property (or until they complete the disposal of their previous residence).

As long as the property is occupied within two years of the ownership beginning, then the property will be treated as their main residence for private residence relief purposes throughout the period when they are not actually living there. It can only apply if no other person has used it as their residence during that time.

It is important to note that this only applies where there is a delay in moving in due to works being done or a delay in the disposal of the previous property. A general delay in moving in for any other reason would not be sufficient.

Loans to traders (Lecture P1200 – 13.58 minutes)

When an individual makes a loan to a trader (who uses it for the purposes of that trade) and the loan become irrecoverable, a capital loss can be claimed under s253 TCGA 1992.

The legislation previously applied only where the borrower was resident in the UK but this did not comply with the EU Treaty and so the legislation is amended (Clause 26) so that it applies to loans where the borrower is not resident in the UK. This change is backdated for loans made on or after 24 January 2019.

Of course, it may still be problematic as the lender has to show that the money was used wholly for the purposes of the trade, profession or vocation of the borrower and that the loan is genuinely irrecoverable which may be harder if the borrower is not in the UK.

Share loss relief (Lecture P1200 – 13.58 minutes)

Along similar lines to the above change, the share loss relief provisions (s131 ITA 2007) which allows an allowable loss for capital gains purposes to be offset against income where the loss arises on a disposal of shares in a qualifying trading company (broadly where the shares are unquoted and the taxpayer acquired them from the company), are also amended (Clause 37).

Previously the company had to have conducted their business wholly or mainly within the UK to qualify for this relief. For disposals on or after 24 January 2019, this requirement is removed.

Business Tax

Rate of corporation tax (Lecture B1199 – 21.08 minutes)

As expected, corporation tax will remain at 19% from April 2020 and this rate will apply for FY2020 and FY2021 (Clause 5 and 6).

The current legislated rate is 17% (from s.46 Finance Act 2016). When preparing financial statements under FRS 102 or IFRS, deferred tax on timing differences reversing in accounting periods straddling 1 April 2020, or starting from that date, should be calculated at 17%.

This is because both FRS 102 and IFRS require that tax is calculated at rates enacted, or substantively enacted, by the balance sheet date. Finance Bill 2020 is unlikely to be substantively enacted before the end of March (or even April).

<u>Example</u>

A company has a year ended 31 December 2019. It has taxable timing differences of £120,000 of which £40,000 are expected to reverse in the year ended 31 December 2020 and the remainder after this.

It deferred tax liability at 31 December 2019 should be calculated as:

	£
Reversing in 2020: (19% x 91/366 + 17% x 275/366) 17.497% x £40,000	6,999
Reversing after 2020: 17% x £80,000	13,600
	20,500

The fact that the rate is set to remain at 19% should be disclosed in the notes to the financial statements if it would materially change the deferred tax balance or the tax expense in the profit and loss account.

Corporate capital losses (Lecture B1198 – 28.06 minutes)

From 1 April 2020, there is a potential restriction on the proportion of annual chargeable gains that can be relieved by brought-forward capital losses. This is an extension of the 2017 provisions relating to other corporate losses. The legislation is at Clause 24, introducing Sch.3 of the Finance Bill.

The £5 million deductions allowance (group-wide) which has been claimable since 2017 in relation to other deficits can be used by capital or income losses each year at company's behest.

The company/group needs to specify how much deductions allowance it wants to allocate to trading profits (the "trading profits deduction allowance"), how much it wants to allocate to non-trading income profits ("the non-trading income profits deduction allowance") and how much it wants to allocate to capital gains ("the chargeable gains deduction allowance").

Example

A company has brought forward corporate capital losses of £2.4 million and trading losses of £3.1 million from its accounting period ending 31 March 2020.

In the year ended 31 March 2021 it makes a taxable trading profit of £3.2 million and has a chargeable gain of £2.3 million.

Explain how it can utilise its available losses.

Solution

The company should claim the full £5m deductions allowance.

As capital losses can only be relieved against chargeable gains, it should first allocate £2.3m of the allowance to its gain for 2021 of £2.4m. This allows the maximum use of its brought forward capital loss of £2.4m.

It will offset £2.3m of this loss against the gain, leaving a capital loss to carry forward against future chargeable gains of £100,000.

The other £2.7m of the deductions allowance should be allocated to trading profits.

The trading losses brought forward of £3.1 million will be offset as follows:

- £2.7m @ 100% plus
- (£3.2m – £2.7m) @ 50%
- i.e. £2.95 million

This leaves £150,000 of trading losses to carry forward which can be offset against all future profits including chargeable gains (subject to the cap).

Companies in insolvent liquidation

If a company has gone into an insolvent liquidation or a corresponding situation outside the UK, its deductions allowance for a winding-up accounting period is increased by the smaller of its net gains for the period, or its allowable losses brought forward.

Gains on assets disposed of that were received from non-insolvent 75% group companies at no gain/no loss (or where a s171A TCGA election has been made to deem the asset to have been transferred to the insolvent company prior to disposal) are not included in determining the insolvent company's net chargeable gains in a winding up period.

This is to prevent groups gaining a tax advantage by routing all disposals through an insolvent member of the group to avoid the restriction on the set-off of losses brought forward.

This effectively means that the insolvent company can use all of its capital losses brought forward to relieve current year net gains.

In its CT600, the company would need to specify what deductions allowance would have applied if it was not in insolvent liquidation.

Companies with no source of chargeable income

If a company is only chargeable to corporation tax on a chargeable gain from the disposal of an asset (e.g. a non-resident company disposing of a UK property), it may only have a one-day chargeable accounting period.

This would ordinarily mean that its deductions allowance would be restricted to (1/365ths of £5 million) £13,699.

The company can, however, make a claim in this case to take advantage of the full £5 million allowance (or any part of it, as necessary) but if it is a member of a 75% group, then no company in the group must have any income chargeable to corporation tax in the financial year (but they can have gains chargeable on disposal of assets).

The claim must be made within two years of the end of the accounting period but cannot be made before the end of the financial year (i.e. 31 March following the date of disposal).

If a company delivers its CT600 to declare a chargeable gain before the end of the financial year, it can make a declaration in the return that at all times earlier in the same financial year that neither it, nor any group company, had no sources of chargeable income and that intends to make a claim for the full deductions allowance after the end of the financial year.

The declaration is treated as if it had made the claim and it can use the £5 million deduction allowance in the tax calculation.

The declaration ceases to have effect if it is withdrawn, is superseded by an actual claim, or another group company acquires a source of chargeable income before the end of the financial year. If none of these happen within two years of the end of the chargeable accounting period, the declaration ceases to have effect and the tax must be recalculated.

The normal rules on allocating a deductions allowance around the group do not apply in these circumstances.

This would seem to indicate that if (say) two companies in the same group had chargeable gains, where no member of the group had a source chargeable to income tax (i.e. they both had one-day chargeable accounting periods), both would be entitled to claim a deductions allowance of £5 million.

Companies with no source of chargeable income – carry back of losses

A company that has no source of income chargeable to UK corporation tax but realises chargeable gains or allowable losses on asset disposals could have more than one separate (one-day) chargeable accounting period in a financial year.

Finance Bill 2020 amends s2A TCGA 1992 to allow a capital loss in a later accounting period to be set off against a chargeable gain in an earlier accounting period falling in the same financial year.

<u>Example</u>
A Jersey resident company has no permanent establishment in the UK, no UK property business and no trade of dealing in UK land.

It has held two pieces of land in the UK for many years. Both are currently active general aviation airfields.

Airfield 1 has planning permission to develop housing, but Airfield 2 has just been refused planning permission at an appeal hearing.

The company has decided to sell both pieces of land.

On 27 September 2020 it exchanges contracts on Airfield 1, realising a chargeable gain of £5,754,205.

It is in negotiations to sell Airfield 2 and hopes to exchange contracts in late March 2021 or early April 2021. Based on the prices being offered, the company expects to realise a capital loss of £2,450,000.

What are the tax implications of the timing of the disposal of Airfield 2?

Analysis

If Airfield 2 is sold before 1 April 2021, the loss can be offset against the gain arising on 27 September 2020. There would be two separate one-day accounting periods and both would fall in the same financial year.

If Airfield 2 is sold on or after 1 April 2021, the loss would have to be carried forward for relief against any future chargeable gains as it would fall outside the financial year when the gain on Airfield 1 was realised.

If the company has no other UK assets that could give rise to a chargeable gain, it might be preferable to discount the selling price of Airfield 2 to expedite a disposal before 1 April 2021 and ensure that the loss saves corporation tax at 19% against the gain on Airfield 1.

Clogged losses

Allowable losses a company incurs on disposals to a connected person can only be relieved against disposals to the same person in the same or a future accounting period (s18 TCGA 1992).

Finance Bill 2020 allows a company to claim in its CT600 to deduct brought-forward clogged losses in preference to losses that arise in the period, but only where the carried forward clogged losses could have been offset if the capital loss restriction did not apply.

The amount of clogged losses used must not exceed the amount of allowable losses arising in the period for which the claim is made. Effectively, the two losses swap over with each other and there is nothing in FB2020 to then stop the use of brought forward losses in the normal way.

Example
A company has a current year related party gain of £20 million, a current year loss (3rd party) of £6 million, and a brought forward clogged loss from a transaction with the same related party of £10m.

Analysis
The current year net gain position becomes:

Connected party gain	£20m
Clogged loss b/fwd treated as current year loss	(£6m)
	£14m

Brought forward losses are (the 3rd party loss switched) of £6m plus remaining clogged losses of £4m (10m – 6m used above) = £10m

Set off of b/fwd capital losses is restricted to £5m (if claiming deductions allowance against gains) + 50% x (14m – 5m) i.e. £9.5m.

So, the net gain of £14m after current year loss relief can be reduced by £9.5m for brought forward capital losses.

No order of set offset seems to be specified so it seems that the company can nominate that the £0.5m of as yet unrelieved capital loss to carry forward is an unclogged loss.

Pre-entry losses

Finance Bill 2020 amends the rules on the use of pre-entry losses to bring them within the capping regime.

Realised capital losses of a company from before it joins a group cannot be used to shelter the gains of assets owned by the pre-existing members of the group. They can only be used to reduce gains on disposals by the company joining the group on assets it purchased or later purchases from third parties.

The amendment ensures that the maximum set off of capital losses brought forward is still limited to the capital gains deduction allowance plus 50% of any remaining gains, even where pre-entry losses are being brought forward.

Commencement rules

Accounting periods that straddle 1 April 2020 must be broken down into two separate periods for the purpose of determining the amount of capital losses brought forward that can be offset.

Capital losses in either part of the two periods can be offset against chargeable gains in either part of the two periods without restriction.

No restriction will apply to a non-resident company with a UK property business that realises an allowable loss between 1 and 5 April 2020 falling under corporation tax rules (but is within the charge to income tax on its property income for that period).

Where the company becomes chargeable to corporation tax for the period commencing 6 April 2020, and realises a gain in this period, the losses from disposals between 1 and 5 April 2020 can be fully offset against chargeable gains in the period commencing 6 April 2020.

It is also clarified that the non-resident company has a deductions allowance for its chargeable accounting period commencing 6 April 2020 but that this must be reduced for any deductions allowance claimed in any accounting period occurring between 1 and 5 April 2020.

Anti-forestalling rule

Where a company enters into arrangements

1. either between 29 October 2018 and 1 April 2020, or
2. in the pre-1 April 2020 part of an accounting period straddling that date

with a main purpose of securing a tax advantage under the corporate capital loss restriction rules before it comes into force, the carried-forward allowable losses are restricted to a maximum of 50% of the qualifying chargeable gains. No deductions allowance is available where this applies.

Quarterly instalment payments **(Lecture B1199 – 21.08 minutes)**

Normal corporation tax is due 9 months and one day after the end of the accounting period but there is an accelerated quarterly instalment payment regime for large companies and now very large companies.

A large company is one with taxable profits over £1.5m and liability of more than £10,000 with thresholds proportionately reduced if there are related 51% group companies and if the accounting period is less than 12 months.

A very large company is one whose profits exceed £20m per year, again as long as the tax liability is more than £10,000 and with the limits also reduced as above.

HMRC have identified that there are companies not normally chargeable to tax but become so because they have chargeable gains accruing. Often, they will become chargeable to corporation tax on the day of the gain and then immediately cease to be within charge, so having a one-day accounting period. These companies would fall within the very large company regime if their profit exceeds £54,795 and have a corporation tax liability of more than £27.40.

Falling within the very large company regime would mean that they would have to pay all their liability on the day of the disposal.

Clause 25 of the Finance Bill amends the relevant regulations so that these companies will be treated as large companies and so the corporation tax will be due 3 months and 14 days after the end of the accounting period. The legislation has effect for accounting periods beginning on or after 11 March 2020.

R&D expenditure credit (Lecture B1199 – 21.08 minutes)

This relief mainly impacts on large companies but can also apply to certain costs incurred by small companies that are not eligible for SME enhancement. The RDEC is, as the name suggests, a credit which arises to eligible companies who are undertaking a qualifying activity.

Companies with no corporation tax liability may be able to reclaim the credit as a cash payment or use it to reduce other liabilities.

The tax credit is increased from 12% to 13% for expenditure incurred from 1 April 2020 (Clause 27).

Also announced at the Budget in relation to R&D costs were:

- there will be a consultation on widening the scope of the RDEC to include data and cloud computing costs as qualifying R&D expenditure
- the planned introduction of the cap on the payable tax credit in the SME R&D schemes will be delayed until 1 April 2021. This would see repayable tax credits capped at 3 x the PAYE liability for the accounting period. The Government wants more time to think about circumstances where the cap would not apply.

Structures and Building Allowance (Lecture B1197 – 10.30 minutes)

Structures and Buildings Allowance was introduced in the 2018 Budget and allows businesses to claim a flat rate allowance for the costs of construction of qualifying buildings and structures.

Clause 28 increases the rate of Structures and Buildings Allowance to 3% p.a. from 1 April 2020 for companies and 6 April 2020 for unincorporated businesses. This reduces the period over which relief will be given to 33 1/3 years rather than 50 years. This means that there will be a 'catch-up' for some businesses which have been claiming the 2% amount already.

Businesses with accounting periods straddling these dates will need to time apportion the allowance accordingly.

<u>Example</u>

A company has a year end of 31 December. The rate of SBA for the year ended 31 December 2020 would be 2.75(1)% (being 91/366 x 2% plus 271/366 x 3%).

If a person is entitled to an allowance at the relevant date (31 March 2020 for corporates or 5 April 2020 for unincorporated businesses) any shortfall in allowance by virtue of the reduction in the qualifying period is available to them in the final period when they are claiming the relief assuming that they have not disposed of their relevant interest in the property.

Example

A company with a 31 March year-end incurs £1m of expenditure eligible for SBA on 1 April 2019.

The company can claim £20,000 (2% x £1 million) of SBA in the period ended 31 March 2020.

Each year after that they would be able to claim £30,000.

The final year in which they could claim the SBA would be the year ended 31 March 2053 (33.33 years after they started claiming).

They would have claimed £980,000 at this stage (32 years x £30,000 + 1 year x £20,000). The final year claim would be the balance of expenditure not yet relieved. i.e. £20,000.

Clause 29 introduces Sch.4 which also make some miscellaneous amendments to the SBA rules.

Where there is a sale of a property on which SBA has been claimed, there is a restriction on the amount of SBA available to the purchaser where Research and Development Allowances can be claimed on the same building.

There is also a restriction on the SBA where there is a sale of building on which RDA has been claimed when the purchaser pays less than the total remaining SBA available at the time of sale. This is to stop both allowances being available on the same building which was possible under the previous wording.

Changes are made to enable contributions allowance to be claimed for a contribution to expenditure incurred by a public body with the allowance being due when the public body brings the asset into qualifying use or non-residential use if earlier (as long as the use is not insignificant) and provided that the person making the contribution has no relevant interest.

If the public body later sells its relevant interest, the contributor is not treated as selling its interest and can continue to claim SBA.

Corporate Intangible Fixed Assets (Lecture B1199 – 21.08 minutes)

Intangible fixed assets created before 1 April 2002 have traditionally been treated as capital assets for corporation tax purposes unless purchased from an unrelated party after that date.

For assets falling within the intangible fixed assets (IFA) regime, the tax treatment more closely follows the accounting treatment so that there are more opportunities to get tax relief on the costs associated with such assets. In particular there is the chance to get tax relief for the ongoing amortisation or impairment of such assets.

Clause 30 introduces legislation to include relief for pre-1 April 2002 intangibles and to change the provisions for fungible assets.

Pre-FA 2002 intangibles

The current s882 CTA 2009 applies the IFA rules to assets falling within one of the following three categories:

1. Created by the company on or after 1 April 2002
2. Acquired by the company on or after that date from an unrelated party
3. Acquired by the company on or after that date from a related party but only where condition A, B or C is met
   - A is that where the vendor is a company, the asset was within the IFA regime before acquisition
   - B is that related party had acquired it after 1 April 2002 from an unrelated party
   - C is that it was created by the related party on or after 1 April 2002

The new legislation will state that assets will fall within the IFA rules if one or more of the following conditions is met:

1. The asset is created by the company on or after 1 April 2002
2. The asset is acquired by the company between 1 April 2002 and 30 June 2020 and either it is acquired from an unrelated party or a related party fulfilling one of conditions A – C as outlined above
3. The asset is acquired by the company on or after 1 July 2020
4. The asset is held by the company immediately before 1 July 2020 and at that time the company is not within the charge to corporation tax in respect of the asset. However, there is anti-avoidance provision whereby this does not apply if the asset is held by any company at any time between 19 March 2020 and 30 June 2020 where that company is within charge to corporation tax

However, it is important to note that the no gain/no loss rules for capital gains within groups of companies is preserved. This means that pre-FA 2002 assets will not come within the IFA regime when they have been transferred intra-group even if that transfer takes place on or after 1 July 2020. Such assets will remain as capital assets.

Further anti-avoidance provisions are introduced which may affect the debits which can be brought into account for tax purposes where the intangible fixed asset is a 'restricted asset'.

A restricted asset is one acquired by the company on or after 1 July 2020 from a related party which falls within one of these categories:

1. The asset was a pre-FA 2002 asset in the hands of any company on 1 July 2020 and at no time on or after 1 July 2020 has the asset been the subject of a 'relieving acquisition' (i.e. an acquisition by a company from a person who is not a related party in relation to the company)
2. The asset was created before 1 April 2002, immediately before 1 July 2020 the asset was held by a person other than a company and at no time on or after 1 July 2020 has the asset been the subject of a relieving acquisition. The asset is not within this section if the vendor (the 'intermediary') acquired the asset on or after 1 April 2002 from a third party who is:
   a. Not a company or is a company which is not a related party of the intermediary's at the time of the intermediary's acquisition
   b. The third party is not a related party of a company which is also related to the intermediary
   c. The third party is not a related party to the company now acquiring the asset

3. The asset is acquired on or after 1 July 2020 and was created after that same date, has not been subject to a relieving acquisition and derives its value from another asset which is a pre-FA2002 asset or a restricted asset in the hand of any company on the date it was created
4. The asset is acquired on or after 1 July 2020 and is acquired directly or indirectly as a consequence of the realisation by another person of another asset where the company and the other person are related parties and the other asset was a pre-FA2002 or restricted asset in the hands of any company between 1 July 2020 and the date of realisation. This only applies if the other asset was not the subject of a relieving acquisition in the same period or after acquisition.

In the first two cases (1. and 2. above), if the company is the first company to acquire the asset on or after 1 July 2020 it is treated as having acquired the asset at no cost for the purposes of the IFA legislation.

If it is not the first company to acquire the asset after that date, the asset is treated as acquired for the 'adjusted amount' which is A – B.

- 'A' is the consideration either actually paid or deemed to have been paid
- 'B' is the market value of the asset on the date it was acquired on or after 1 July 2020

If B is greater than A, the adjusted amount is nil.

Where the second two cases apply (3. and 4. above), the asset is also treated as acquired for the 'adjusted amount' but it is a different calculation. This is the consideration either actually paid or deemed to be paid less a just and reasonable apportionment of the 'notional deduction amount' for the other asset. This cannot be a negative number. The legislation which specifies how the notional deduction amount is calculated is complicated but is linked to the market value of the other asset.

There are also extensions to the definition of 'related party' to include circumstances where the participation condition in TIOPA 2010 would be met (i.e. participation in the management, control or capital of another party).

Finally, a company acquiring an asset under an unconditional contract is treated as making the acquisition when the contract is made (or, if later, when it becomes unconditional).

Example

A business, which commenced trading on 1 January 2000 and purchased an intangible fixed asset on 15 January 2001. The business was transferred to a limited company (OldCo) under the same ownership on 1 January 2010.

Even after the FB2020 changes the intangible assets is not going fall within the IFA regime.

The business and assets are sold to a company (NewCo) owned by the same person on 1 April 2021.

Technically the intangible fixed asset comes within the IFA rules as it was purchased by NewCo after 1 July 2020.

However, the asset is a pre-FA 2002 asset in the hands of OldCo on 1 July 2020 and at no time on or after 1 July 2020 has the asset been the subject of a relieving acquisition (i.e. by an unrelated party).

It is therefore a restricted asset which means the acquisition cost for the purposes of the IFA provisions is nil.

The business is then sold to another company owned by the same person on 1 December 2022. The price paid is £1 million and the market value of the asset on 1 April 2021 (when NewCo bought it) was £750,000.

It is still a restricted asset for the same reason as explained in the previous paragraph.

The acquisition price for the purposes of the IFA provisions is (£1m – £750,000) £250,000.

Fungible assets

There is a redefining of the term 'fungible asset'. New s900J explains that fungible assets of the same kind that are held by the same person in the same capacity are treated as indistinguishable parts of a single asset which grows as additional assets are added and diminishes as assets are realised.

In the context of intangible assets, there may be licences that can be bought and sold on a market which have identical characteristics, for example the right to produce or sell a fixed number of units of a product where holding one licences entitles the holder to produce 1 unit, holding two licences entitles the holder to produce 2 units.

In a real life context, when an energy generator produces units of renewable energy they are issued with renewables obligation certificates (ROCs). These can be traded with other parties and are commonly accounted for as intangible assets when purchased.

There are three types of fungible assets:

1. Pre-FA2002 assets
2. Restricted assets
3. Standard intangible fixed assets

These are all to be regarded as assets of different kinds.

This mirrors the legislation as it applied before except that there were only two types of fungible assets before: pre-FA2002 assets and standard intangible fixed assets.

When looking at realisation of fungible assets, there were specific rules which determined which assets were treated as sold where more than one category existed. The basic premise of those rules is retained with the new legislation.

S900L applies where a company realises a fungible asset which would be treated as a single asset but where the legislation treats it as a group of separate assets. The realisation is treated:

1. As diminishing the pre-FA2002 assets first, then
2. Diminishing the restricted assets, then
3. Diminishing the standard IFA

There are also anti-avoidance rules relating to identification of assets. These are similar to the bed and breakfasting rules for shares.

Fungible assets acquired by a company are matched with pre-FA2002 assets or restricted assets realised by the company in the 30-day period either side of the acquisition.

Assets realised earlier are identified before assets realised later. Assets acquired earlier are identified before assets acquired later.

The amendments will apply for accounting periods beginning on or after 1 July 2020, but straddling periods will be treated as split at that date.

Example

A company holds 100,000 units of a fungible asset on 1 April 2002 and buys another 20,000 units on 15 April 2020.

It sells 40,000 units on 1 June 2021 and buys 50,000 units on 15 June 2021. The purchases are from unrelated parties.

It sells 30,000 units on 30 June 2021.

Treatment

Following the 15 April 2020 acquisition, the company is regarded as holding two assets:

1. 100,000 units of pre-FA2002 asset and
2. 20,000 units of standard IFA.

The 40,000 units sold on 1 June 2021 are regarded as diminishing the pre-FA2002 asset in priority so that immediately afterwards the company has 60,000 units of pre-FA2002 asset of and 20,000 of standard IFA.

The 50,000 units acquired on 15 June are regarded as swelling the pre-IFA asset to the extent of 40,000 units under the 30-day 'bed and breakfasting' rule.

As a result, immediately afterwards the company holds 100,000 units of pre-FA2002 asset and 30,000 of standard IFA.

The sale of 30,000 units on June 30 diminishes the pre-FA2002 asset down to 70,000 units.

NR companies with UK property businesses (Lecture B1199 – 21.08 minutes)

Finance Act 2019 brings non-resident companies within scope of UK corporation tax from 6 April 2020 if they derive income from UK property.

Clause 31 and Sch.5 of this Finance Bill makes some amendments to those provisions:

The wording of s301(1A) CTA2009 is replaced as it was felt that the previous wording might have limited the taxation of income derived from non-trading loan relationships held in respect of

UK permanent establishments of non-UK resident companies. Similar amendments are made to s574(2A) CTA2009 as far as they apply to non-trading derivative contracts.

Pre-6 April 2020 finance costs

A new provision is introduced to make sure that a non-resident company that starts to carry on a UK property business on or after 6 April 2020 can deduct the net amount of financing costs incurred prior to the commencement of the business even if those costs relate to a period before the new regime commenced.

For example, borrowing costs incurred during the construction of buildings in the UK before 6 April 2020, where the company starts to rent the buildings out after this date.

The maximum period over which costs can be deducted is 7 years before the date on which the UK property business commenced. This is in line with other pre-business expenditure provisions.

Similar provisions are introduced in respect of net debits on derivative contracts relevant to the UK property business.

Exception from notifying chargeability to corporation tax

Schedule 5 Finance Act 2019 created an exception from notifying chargeability to corporation tax for non-UK resident companies coming into charge to corporation tax where it was reasonably expected that all its income would suffer income tax deduction at source and it would not have any chargeable gains.

This exception has now been refined so that it becomes conditional on the company having a reasonable expectation that the tax deducted will cover the company's expected corporation tax liability.

Disregard regulations

The Disregard Regulations are amended to provide that the time limits for electing into the Disregard Regs are not accelerated only as a result of a non-UK resident disposing of an asset where the gain is subject to corporation tax.

This will be particularly relevant where the disposal occurs prior to 6 April 2020

Surcharge on banking companies

Clause 32 amends the surcharge on banking companies' legislation to introduce a new adjustment to surcharge profits. The surcharge applies to banking companies, including building societies, within the charge to UK Corporation Tax.

The adjustment denies relief against the surcharge for allowable losses transferred to a banking company from a non-banking company in the same group. The amendment has effect for allowable losses deducted from chargeable gains accruing on or after 11 March 2020.

Corporation tax payment plans (Lecture B1199 – 21.08 minutes)

Transactions between 75% UK group companies (or between two companies both within the charge to corporation tax) are tax neutral as far as they relate to chargeable assets, loan relationships or derivative contracts.

Clause 33 and Sch.6 of the Finance Bill introduce provisions which defer the payment of tax under a corporation tax payment plan for these transactions where the transferor is a UK company and the transferee is a resident outside the UK in an EEA state and outside the charge to UK corporation tax in respect of the transferred item after the transaction.

The transfers to which this applies are:

- Those within s171 or s139 TCGA 1992 (intra-group transfers of chargeable assets or qualifying reconstructions);
- Those within s340(3) CTA2009 (replacement of one group company by another as a party to a loan relationship) or s625(3) CTA2009 (the same but in relation to derivative contracts)
- Those within s775 CTA2009 (intra-group transfers of intangible fixed assets).

The tax which qualifies to be part of a corporation tax payment plan is the difference between the amount due and the amount which would have been due if one of those provisions had applied.

A single payment plan applies for an accounting period regardless of the number of transactions involved and the company must apply within nine months of the end of the accounting period. The company is undertaking to pay the tax deferred plus any interest. Acceptance of this by HMRC may involve requesting of security by HMRC if they feel there is a serious risk to the collection of the tax.

The payment plan involve the tax that has been deferred being paid in six annual instalments, commencing nine months after the accounting period in which the disposal occurred. The whole of the balance of the deferred tax become payable on the occurrence of a qualifying event.

These include the company that entered into the plan:

- Becoming insolvent
- Appointing a liquidator or administrator
- Failing to make payments due for a period of twelve months after they become due
- Ceasing to be within charge to UK corporation tax

Or the transferee company:

- Ceasing to be resident in an EEA state
- Ceasing to be a member of the same group as the transferor company
- Selling or otherwise disposing of the item subject to the transaction.

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

The provisions come into force on 11 July 2019 and can apply for a qualifying transaction in any period ended on or after 10 October 2018.

Accounting standards affecting leases (Lecture B1199 – 21.08 minutes)

There were significant provisions in FA2019 relating to the introduction of IFRS16 which is an accounting standard relating to leases.

Clause 34 amends Sch.14 FA2019 to clarify that the spreading rules in Sch.14 apply to all lessees adopting International Financial Reporting Standard 16 (IFRS 16) for any period of account, including periods commencing before 1 January 2019. The amendment is treated as always having had effect.

Where a lessee has adopted IFRS 16 for a period of account beginning before 1 January 2019, the transitional provisions in paragraph 13, Sch. 14 FA2019 have effect as if IFRS 16 were adopted in the first period of account beginning on or after 1 January 2019. This makes the calculation of the transitional deduction or taxable amount more difficult to calculate.

Digital services tax

The introduction of this has been well signposted and the actual legislation will be contained within the Finance Act 2020. It is currently in Clauses 38 – 71 of and Schedule 7 FB2020.

The tax It will apply from 1 April 2020.

The Government will impose a 2% tax on the group revenues of derived from UK users of digital services activity.

This will apply if the business has global revenue exceeding £500 million and UK revenue exceeding £25 million (both must apply) and will not be payable on the first £25 million of UK revenue.

Businesses will pay the DST on an annual basis, on the day following the end of 9 months from the end of the accounting period.

The Government will repeal DST once an appropriate global solution is in place for taxing digital services in the country of consumption not supply.

These notes are not going to cover these provisions in detail but just to make some comments:

- 'Digital services revenues' are those which derive from social media platforms, internet search engines and online marketplaces including online advertising (where viewed or consumed by UK users) and any other revenues that arise in connection with UK users.
- A user does not include employees or persons who are members of the same group as the provider and a UK user is someone who it is reasonable to assume is normally in the UK or is established in the UK.
- An online marketplace does not include online marketplaces where more than half of the relevant revenues arise in connection with the facilitation of the trading of financial instruments, commodities or foreign exchange.
- The limits above are apportioned for periods of less than one year.
- The charge is calculated on a group-wide basis and there are provisions as to how it is allocated to individual entities within the group.
- There is an alternative basis of charge where a relevant activity has a very low or negative UK operating margin.
- Each group will appoint a 'responsible member' who will become the group contact for DST including having obligation to submit returns.
- There are significant obligations on the responsible member which are outlined in the legislation such as obligation to notify when thresholds are met, duty to notify HMRC of change of relevant information and duty to file returns.

Other taxes

Excluded property

Clause 72 introduces legislation following a loss by HMRC in the Court of Appeal in the case of Barclays Wealth Trustees (Jersey) Ltd v HMRC.

S48(3) IHTA 1984 provides that, where settled property is situated outside the UK, it represents excluded property for IHT purposes unless the settlor was domiciled in the UK at the time when the settlement was made.

Where a foreign-domiciled settlor establishes an excluded property settlement but subsequently becomes UK-domiciled (or deemed to be domiciled in the UK by virtue of S267 IHTA 1984) and then adds overseas assets to that settlement, the Court decided that those added funds were also excluded property.

The new legislation makes it clear that when property is added to a settlement, the domicile of the settlor will be considered at the time of the addition rather than at the time when the settlement was first created. This will apply for any chargeable events taking place on or after the date of Royal Assent.

For example, in S48(3) IHTA 1984, instead of ‘at the time the settlement was made’ one will now read ‘at the time the property became comprised in the settlement’. This avoids the previous semantic uncertainties.

There is to be a similar rule for property moving between settlements which is introduced by Clause 73 on the same principle so that it is the domicile of the settlor (or other person) that has caused the property to move to the other trust.

Relief for payments to victims of persecution

Clause 74 provides that the one-off compensation payments of €2,500 made to eligible survivors under the Kindertransport Fund will not be subject to Inheritance Tax.

The Clause will include the Kindertransport Fund payments in the list of qualifying compensations payments for World War II era claims. This will have effect in relation to deaths occurring on or after 1 January 2019.

Stamp duty

FA2019 introduced a Stamp Duty market value rule where listed securities were transferred to connected companies.

Clause 75 extends this premise to the transfer of unlisted securities to connected companies but only where some or all of the consideration consists of the issue of shares.

Unlisted securities are defined as stock or marketable securities which are not listed securities and determines that the value for stamp duty purposes will be the market value if it exceeds the value of the consideration paid.

Clause 76 extends these provisions to the Stamp Duty Reserve Tax provisions.

Clause 77 introduces an amendment to the relief within s77 FA1986. This exempts instruments from stamp duty where there is a transfer of shares in one company (the target company) to another company (the acquiring company) where the consideration is an issue of shares in the acquiring company to all the shareholders of the target company.

The conditions for this relief are quite stringent and s77A FA1986 includes a provision that no relief is available if there are arrangements in place for a change in control of the acquiring company.

However, partition demergers will often involve such a change in control. The legislation is therefore changed to allow the relief where the person obtaining control of the acquiring company has held at least 25% of the issued share capital of the target company at all times during the relevant period (being the period of 3 years ending immediately before the acquiring company is issuing shares as consideration).

All of the above changes apply from Royal Assent.

Administration

HMRC debts in an insolvency (Lecture B1200 – 12.53 minutes)

Clause 95 introduces provisions such that VAT and 'relevant deductions' will be preferential debts for HMRC to recover from 1 December 2020. This is a change from the announced date of 6 April 2020.

A deduction is 'relevant' if the debtor is required to deduct from a payment to another person and that payment is credited against the liability of the other person. This covers PAYE, student loan repayments, Employees NICs and CIS deductions.

Other tax liabilities will remain unsecured and rank with other unsecured creditors equally.

There are consequential amendments to other legislation to ensure that this applies across the UK and Clause 96 makes amendments to various pieces of secondary legislation.

Joint and several liability (Lecture B1200 – 12.53 minutes)

Clause 97 and Sch.12 introduce a new regime to give HMRC the power to make directors (including shadow directors) and other persons connected with a company joint and severally liable for the company's tax liabilities, as well as to members of limited liability partnerships.

It will not apply to tax liabilities that relate to a period ending before the day on which Royal Assent is achieved or arising from an event or default occurring before that day or penalty determination issued before that day.

It will only apply where a notice is given under one of the following provisions:

a) Tax avoidance and tax evasion cases
b) Repeated insolvency and non-payment cases
c) Cases involving penalty for facilitating avoidance or evasion

There are various requirements as to what information has to be provided in the notice. There is a right of review and right of appeal against tax liability.

Tax avoidance and tax evasion

The following conditions have to be met:

1. The company has entered into tax avoidance arrangements or tax-evasive conduct
2. The company is subject of insolvency procedures or there is a serious possibility this will happen
3. The individual was responsible for entering into the tax avoidance arrangements or engaging in the tax-evasive conduct or received a benefit from such (which they knew about) or took part in, assisted with or facilitated these as a director or shadow director or when taking part in the management of the company
4. There is likely to be a tax liability relating to the arrangements or conduct
5. There is a serious possibility that some or all of the relevant tax liability will not be paid.

Tax avoidance arrangements mean cases where GAAR notice has been given, where follower notices have been issued or where APN could be issued, DOTAS arrangements, arrangements where relevant tribunal order has been made (being order to disclose) or arrangements substantially similar to any of the above.

Tax evasive conduct means giving to HMRC any deliberately inaccurate return, claim, document or information.

Repeated insolvency and non-payment cases

The following conditions have to be met:

A. There are at least two companies (the old companies) where, in relation to each,
   - The individual had a relevant connection in the 5 years up to the date of the issue of the notice
   - The company became subject to an insolvency procedure during the five-year period
   - At the point of insolvency there was unpaid tax or failures relating to submission of returns
B. Another company (the new company) is or has been carrying on the same trade as activities carried on by the old company
C. Individual had a relevant connection with the new company during the five-year period
D. At least one of the old companies has a tax liability and the total amount of all outstanding liabilities is
   - More than £10,000, and
   - More than 50% of the companies' liabilities to unsecured debtors

Relevant connection here means director, shadow director or participator or (in relation to the new company only) concerned with the management of the company.

A notice may not be issued after the end of two years from when HMRC first became aware that the conditions were met.

Penalty for facilitating avoidance or evasion

The following conditions have to be met:

A. A penalty has been issued under specified provisions
   - Penalties for DOTAS breaches
   - Penalties for promoters of tax avoidance schemes
   - Penalties for enablers of offshore tax evasion
   - Penalties for enablers of defeated tax avoidance
B. The company is subject of insolvency procedures or there is a serious possibility this will happen
C. The individual was a director or shadow director or participator at the time of the act or omission to which the penalty relates
D. There is a serious possibility that some or all of the penalty will not be paid.

General Anti-Abuse Rules (Lecture B1200 – 12.53 minutes)

Some minor changes are made to the operation of the GAAR by Clause 98 and Sch.13, mainly to simplify the procedures and remove ambiguity from the legislation.

It also ensures that where HMRC decides not to pursue a taxpayer using the GAAR, that enquiries can still be pursued using technical non-GAAR arguments.

Compensation schemes

Clause 99 and Sch.14 introduce an exemption for income tax and capital gains tax and a relief from inheritance tax for payments made under or in connection to the Windrush Compensation Scheme and payments made under the Troubles Permanent Disablement Payment Scheme.

The Schedule also introduces a power, having retrospective effect, for the Treasury to provide similar exemptions and reliefs for payments made under other compensation schemes and qualifying scheme payments, administered by or on behalf of the Government or other foreign governments, by statutory instrument.

Automated notices and penalties (Lecture B1200 – 12.53 minutes)

Clause 100 introduces legislation to confirm that HMRC may use automated processes to issue taxpayers with notices to file tax returns and to issue penalty notices.

This will apply prospectively and retrospectively and is in response to cases that HMRC has lost at Tax Tribunals where judges have held that the requirement that a notice or penalty be determined by an Officer of the Board of HMRC meant that automatic notices and penalties were not valid.

LLP returns (Lecture B1200 – 12.53 minutes)

LLPs are used by many businesses as a legitimate vehicle. Where an LLP is not operating with a view to profit, it is not treated as tax transparent and becomes liable to corporation tax.

Clause 101 makes an amendment such that if a return is made on the basis that an LLP is operating with a view to profit and the income is taxed on the members that it will be treated as a legitimate partnership return.

This is because HMRC have had cases where losses have been allocated to partners under such LLP returns but avoidance promoters have then sought to argue that the partnership return cannot be amended because the LLP is not operating with a view to profit so it is not a legitimate return.

Plastic packaging tax

Clause 102 introduces legislation which will enable HMRC to prepare for the introduction of a new tax on plastic packaging where it has less than 30% recycled plastic.

VAT

Registration/de-registration limits

Whilst not specifically referred to in the Finance Bill, there are no changes to the VAT registration and de-registration limits, which remain at £85,000 and £83,000 respectively.

There is no likelihood they will increase in the foreseeable future and they could even be reduced.

New rules on 'call off' stock

New Schedule 4B is inserted into the VAT Act 1994, but having effect from 1 January 2020.

Call off stock is stock held in another EU country for a single customer (or transferred from an EU country to the UK by a foreign supplier for a single UK customer).

Previously, the default rule was that the company would have to have registered in the customer's country and charge local VAT to the customer when the stock was called-off.

The only exception to this was where the customer agreed to treat the movement of stock into their country as an acquisition by them, whereby they accounted for the VAT to their local tax authority. In this case, the UK supplier could use the foreign customer's VAT number to zero-rate the movement of goods even before the customer purchased them.

For movements of goods from 1 January 2020, the removal of goods from the origin state is not treated as a supply where

1. Goods are removed from the UK to be taken to another EU member state or vice-versa by the supplier in the course of its business
2. With a view to them being supplied to the customer later in that destination country
3. At the date of removal, the customer is entitled to take ownership of the goods in accordance with an agreement with the supplier
4. The supplier does not have a business establishment or other fixed establishment in the destination State
5. The customer is VAT registered in the destination state and the supplier has the customer's VAT identification number
6. The supplier has recorded the removal of the goods in a 'call-off' stock register (as required by Article 243(3) Council Directive 2006/112/EC, implementing the new rules), and
7. The supplier records the sale to the supplier in an EC Sales List,

If the goods are transferred to the customer within 12 months of arrival, and a 'relevant event' had not occurred before this, an intra-community supply takes place at this time. This will be a zero-rated supply, assuming that the supplier quotes the customer's VAT identification number on the sales invoice.

The customer accounts for an acquisition of the goods at the same time (charging itself output VAT at its local rate, then seeking to recover this as input VAT on the same VAT return).

If a 'relevant event' occurs within 12 months of the arrival of the goods (and they have not by this time been sold to the customer), a supply is deemed to take place of a removal from the country of origin to the destinations state at the date of the relevant event.

A relevant event is:

a) the supplier forms an intention not to supply the goods to the customer (unless at the time that the event occurs the supplier forms an intention to supply the goods to another person which is identified for the purposes of VAT in the destination State, the supplier uses the new customer's VAT number in its EC sales list, amends its entry in the 'call-off' stock register and informs HMRC of the change of customer)
b) the supplier forms an intention to supply the goods to the customer otherwise than in the destination State
c) the supplier establishes a business establishment or other fixed establishment in the destination State
d) the customer ceases to be identified for the purposes of VAT in accordance with the law of the destination State
e) the goods are removed from the destination State by or under the directions of the supplier otherwise than for the purpose of being returned to the origin State, or
f) the goods are destroyed, lost or stolen

If stock is not called off within 12 months of arrival, then unless the goods have been returned to their country of origin, the supplier must register in the customer's country and there is a supply on the day after the 12-month anniversary (effectively a self-supply by the supplier to itself in the destination country).

The supplier must register in the customer's country (and can then treat the self-supply as zero-rated).

The subsequent supply to the customer is treated as a domestic supply in that country and the supplier will need to account for the VAT to the destination country's tax authorities and issue a tax invoice to the customer.

Effect when the UK leaves the EU after the transition period

After the transition period has ended, the above arrangements will cease to apply as the UK will become a non-EU country.

At this point, the supplier will need to be VAT registered in the destination country (and may have to appoint a fiscal representative to look after its VAT affairs). When it sells its stock, it will need to account for VAT in the country where the stock is located.

<u>Example</u>

ABC Limited is a UK, VAT registered supplier of parts for the construction industry. It has a customer in Spain, Ibericonstruct, SA., for whom it sends goods from the UK to a warehouse on the outskirts of Madrid.

ABC Limited retains ownership of the goods until Ibericontruct asks them to be delivered to a project it is working on.

ABC Limited has the VAT identification number of Ibericonstruct, but the customer does not account for the movement of the goods from the UK to Spain as an acquisition.

ABC Limited sent goods to the warehouse on 14 November 2019 with a cost of £180,000 and a sales value of £240,000 and again on 7 January 2020 with a cost of £260,000 and a sales value of £315,000.

Iberoconstruct took ownership of the first stock on 17 March 2020 when the exchange rate was €1.15 to £1. It has not yet taken ownership of the goods sent on 7 January 2020

The rate of VAT in Spain is 21%

Movements of goods prior to 1 January 2020

ABC Limited should have been registered in Spain. The movement of stock on 14 November 2019 to the Spanish warehouse would have been zero-rated on the basis of its registration in Spain.

When it sold this stock to Ibericonstruct, it should have been charging 21% VAT, issuing a Spanish VAT invoice (showing VAT of 21% x £240,000 x €1.15 = €57,960), filing Spanish VAT returns and paying over the VAT to the Spanish tax authorities.

Movement of goods from 1 January 2020 until end of transition period

If ABC Limited does not have a business or fixed establishment in Spain (a warehouse does not count as one), there will be no VAT implications of moving the goods from the UK to Spain. It will need to enter the movement of the goods on 7 January 2020 into a 'call-off register' it must maintain.

When Ibericonstruct takes ownership of the goods, ABC Limited will issue a zero-rated VAT invoice for the selling price of £315,000, quoting Ibericonstruct's VAT number on the invoice.

ABC Limited will also need to record the sale on an EU Sales List (a failure to do so could mean that Ibericonstruct will not be able to recover the VAT it will charge itself on this acquisition it has now made).

If the goods are returned to the UK before being acquired by Ibericonstruct, ABC Limited needs to record this in its 'call-off stock register' but there are no VAT implications.

If the goods are not transferred to Iberoconstruct by 6 January 2020 and the UK is still in its transition period with the EU, then ABC Limited will need to ensure it is registered in Spain on this date (it may have de-registered from 1 January 2020 based on the new rules on call-off stock which mean it was not intending to make any further supplies that would be subject to Spanish VAT).

It would then charge Spanish VAT when Ibericonstruct takes ownership of the goods, in the same way it would have done for stock movements prior to 1 January 2020.

If the goods are still in Spain at the end of the transition period

If ABC Limited still holds the goods as its stock when the transition period finishes, it will need to register in Spain (if it de-registered previously) and appoint a fiscal representative in Spain if it does not have any other companies which are EU resident.

It will then charge 21% VAT on selling the stock to Iberoconstruct as set out in the section immediately above.

Proposed changes to VAT not included in Finance Bill 2020

The following changes were announced at the time of the Budget but do not form part of the VAT Act 2020. They will presumably become law using Statutory Instruments or other legislation later in the year.

Zero-rating of digital newspapers

Digital publications will be zero-rated from 1 December 2020. This will cover e-books, e-newspapers, e-magazines and academic e-journals.

This follows the News Corp UK & Ireland Limited case that the taxpayer recently won at Upper Tribunal *([2019] UKUT 0404 (TCC))*.

Zero-rating of women's sanitary products

Women's sanitary products will also be zero-rated, this time from 1 January 2021. They are currently 5% rated, being the smallest rate permitted under EU law.

VAT on imports

Postponed VAT accounting will apply on all imports of goods after Brexit, both from EU member states and countries outside the EU.

Import VAT will be accounted for on the VAT return for period in which date of importation occurs, showing output VAT owed to HMRC and the potential recovery of this VAT as input VAT in Box 4.

At present, VAT on imports must be paid over to HMRC first, then recovered later so this will represent a cash flow saving for importers.

Agricultural flat rate scheme

There are new conditions for entry and exit into the AFRS from 1 January 2021 (aligning the criteria with the VAT Flat Rate Scheme).

A business can join the AFRS when their annual turnover for farming related activities is below £150,000.

They must notify HMRC once annual turnover for farming related activities exceeds £230,000, to be deregistered from the scheme and register for full VAT instead.

If turnover exceeds £85,000 for non-farming related activities, the business will still be required to register for VAT and will be ineligible for the AFRS and it also will not be able to register if it would be £3,000 better off or more by using the scheme in the first year than being fully VAT registered.

Non-farming services include renting out holiday cottages, charging people to enter the farm (with petting areas or other entertainment), buying and selling animals, raising animals for pets, riding lessons.

As more farming businesses might now be eligible to use the scheme, it is worth revisiting the main provisions.

The flat rate scheme is an alternative to VAT registration for farming businesses.

If a farming business registers under the scheme, it does account for VAT or submit returns and so cannot reclaim input tax.

The farming business charges a 4% 'flat rate addition' on farming services to VAT registered customers. Whilst this 4% addition is not VAT and can be retained by the farmer, but it can be reclaimed VAT registered customers as if it was input VAT.

In effect it is a government funded supplement that is intended to compensate farmers for the loss of an ability to reclaim VAT on expenditure by not being VAT registered.

Domestic reverse charge – construction services

The Budget confirmed that the rules postponed from 1 October 2019 will go ahead from 1 October 2020. This may need to be revisited in the light of the effect on the construction industry to the Covid-19 virus.

It will apply to CIS-type construction services from a VAT registered supplier (sub-contractor) to a VAT registered customer (contractor), where the customer will recharge the service to an end user.

Where reverse charging applies, the supplier does not charge VAT. Instead, the customer charges itself VAT at the appropriate rate (5% or 20%). It declares output VAT in Box 1 of return and recovers it as appropriate as input VAT in Box 4.

There is an (deemed) Output in Box 6 for the invoice value and a Purchase in Box 7 for the same invoice value.

Duties and other matter

Post-duty point dilution of wine or made-wine

Wine and made-wine are taxed in broad strength bands. Calculating the duty and then increasing volume and reducing strength by dilution after the duty point, means that the amount of duty payable on the undiluted wine or made-wine can be less than that which would be calculated on the larger volume of the diluted final product.

Clause 79 amends the Alcoholic Liquor Duties Act 1979 (ALDA) to introduce sanctions for post duty point dilution of wine or made-wine which, if carried out before the duty point, would have resulted in a higher amount of duty being payable with effect from 1 April 2020.

Tobacco products duty

Duty on tobacco is changed from 6pm on 11 March 2020 as follows (Clause 80):

- specific duty element on cigarettes goes up to £237.34 per thousand (from £228.29) and the percentage of the retail price remains unchanged at 16.5%. The minimum excise tax (MET) is therefore £305.23 per 1000 cigarettes (from £293.95).
- the duty rate on cigars increases to £296.04 per kilogram (from £284.76).
- The duty rate on hand-rolling tobacco increases to £253.33 per kilogram (from £234.65).
- The duty rate on other smoking tobacco and chewing tobacco is increased to £130.16 per kilogram (from £125.20).
- The duty rate on tobacco for heating is increased to £243.95 per kilogram (from £234.65).

Vehicle excise duty

Various changes are made to VED:

- Rates are announced for the various different categories of vehicle (Clause 81)
- Where the emissions data is relevant in calculating the VED, the WLTP rates will be used for cars registered on or after 6 April 2020 (Clause 82)
- All zero-emission light passenger vehicles registered from 1 April 2017 are exempt from the VED supplement for vehicles with a list price exceeding £40,000 when the licence is renewed on or after 1 April 2020 (Clause 83)
- New motor caravans which are M1SA type-approved will be taxed in the Private/Light Goods or Private HGV VED class from 12 March 2020 (Clause 84)
- An exemption will be available from VED for purpose-built vehicles used by medical courier charities (Clause 85).

Hydrocarbon oil duties

Clause 86 and Sch.10 make amendments which will disallow the use of red diesel to propel private pleasure craft by use of statutory instruments. This is introduced following an adverse judgment in the Court of Justice of the European Union.

Air passenger duty

Air passenger duty rates from 1 April 2021 are as follows (Clause 87):

- 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 £80 to £82 (lowest class available and seat pitch less than 40 inches)
    - Standard rates will rise from £176 to £180 (any other class, or where seat pitch exceeds 40 inches)
    - Higher rates will rise from £528 to £541 (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 2020 (Clause 88).

Environmental taxes

New rates of climate change levy are announced until 1 April 2021 (Clause 89) and from 1 April 2021 (Clause 90).

Landfill tax increases in line with inflation applying to any disposal of relevant materials made on or after 1 April 2020 (Clause 91).

Amendments are made to the Carbon Emissions Tax which would commence on 1 January 2021 if the Government decide to use the tax as its carbon pricing policy after the Brexit Transition Period (Clause 92 and Sch.11).

Clause 93 allows HM Treasury to make regulations which provide for allocation of emissions allowances in return for payment under any future UK Emissions Trading System.

International trade disputes

Clause 94 amends s15 of the Taxation (Cross-border Trade) Act 2018. The amendment to s15 will enable the Secretary of State to vary the rate of import duty when a dispute or other issue

has arisen between the UK Government and the government of another country after the UK Government has had regard to its international arrangements and considers it appropriate to do so.

Other Budget announcements not in Finance Bill 2020

Junior ISAs and Child Tax Funds

The investment limit for JISAs and CTFs increased from £4,368 to £9,000 for 2020/21.

Maturing CTFs (from September 2020) can be transferred to an ordinary ISA (in addition to the annual ISA limit for 2020/21, which remains at £20,000).

Employees working from home

From April 2020 the maximum flat rate income tax deduction to cover additional household expenses increases from £4 per week to £6 per week where working at home under homeworking arrangements, i.e. where the employee is required to work at home by the employer.

Larger amounts can be claimed but only if evidenced by invoices or proof of extra costs incurred.

Enterprise Management Incentive Scheme

There will be a consultation on changes to the EMI scheme, partly examining whether more companies should be able to use it.

At present, it allows eligible companies to issue up to £250,000 of share options to a key staff member, with a maximum of £3 million in unexercised options issued in total at any time.

EMI acquired shares qualify for Entrepreneurs' Relief even if the shares acquired do not give 5% ownership. The 24-month qualifying period begins when the options are granted, not when the shares are acquired.

Uncertain tax treatments

From April 2021 large businesses will be required to notify HMRC when they include a tax treatment which HMRC is likely to challenge.

An uncertain tax treatment is one where the business believes that HMRC may not agree with their interpretation of the legislation, case law, or guidance.

Large businesses (partnerships, LLPs and companies) are those with

1. Turnover exceeding £200 million, and/or
2. Balance sheet total (i.e. total assets) exceeding £2 billion

It is proposed that the measure will cover all taxes presently covered by the Senior Accounting Officer regime (corporation tax, income tax, PAYE, VAT, Duties, IPT, SDLT, SDRT, Bank Levy and PRT).

Anything disclosable under DOTAS rules will be excluded from these provisions.

It will not be necessary for businesses to disclose any uncertainty which is the subject of formal discussion with HMRC, such as in the course of an ongoing enquiry into one of the customer's tax returns, which specifically covers the tax treatment in question.

The Government is proposing an exemption from disclosure if the tax outcome would not be less than £1 million.

HMRC might issue guidance over general and specific issues that it would consider to be uncertain, such as

- Adopting a tax treatment which is under dispute in the courts
- Adopting a treatment contrary to HMRC's stated view in a VAT Brief or Statement of Practice
- Adoption of a treatment where HMRC clearance was sought but not given
- Applying a reduce VAT rate to new goods or services supplied
- Treating expenditure as revenue in nature when it could be argued it is capital

The notification is proposed to be an annual process, with no 'nil' returns, based on similar principles to the SAO regime.

Proposed penalties for non-compliance are

- £5,000 on the entity for failing to notify HMRC of the person liable to make the disclosure
- £5,000 on the person liable to notify (or the entity), where notification was required but not made

SDLT changes

There will be a 2% SDLT surcharge on non-UK residents purchasing residential property in England and Northern Ireland from 1 April 2021.

Qualifying housing co-operatives will be relieved from ATED and the 15% flat rate of SDLT on purchases of dwellings over £500,000. SDLT relief in England and Northern Ireland will take effect from 11 March 2020. UK-wide ATED relief from 1 April 2021 with a refund available for 2020/21.

ATED rates

ATED rates will be increased from April 2020 by 1.7% (CPI increase to September 2019).

Property value	Charge for tax year 2019-20	Charge for tax year 2020-21
More than £500,000 but not more than £1m	£3,650	£3,700
More than £1m but not more than £2m	£7,400	£7,500
More than £2m but not more than £5m	£24,800	£25,200
More than £5m but not more than £10m	£57,900	£58,850
More than £10m but not more than £20m	£116,100	£118,050
More than £20m +	£232,350	£236,250

Changes to allowances for cars from April 2021

A 100% FYA will only apply to the purchase of a new zero-emission car from April 2021.

A car with emissions of up between 1 and 50g/km will qualify for 18% general pool writing down allowances and all other cars will only qualify for the 6% special-rate pool writing down allowances.

Other capital allowance changes

The 100% FYA for zero-emission goods vehicles and natural gas and hydrogen refuelling equipment is extended until April 2025.

The 100% FYA on plant and machinery expenditure in Enterprise Zones is extended to 31 March 2021 (it was due to expire on 31 March 2020).

Car leases

There is a 15% disallowance of certain car lease expenses in the profit and loss account.

This will apply to cars with CO_2 emissions of more than 50g/km for leases entered into from 1 April 2021. The disallowance currently applies to cars with emissions of more than 110g/km.

Annual investment allowance

The Budget press releases confirm that the AIA will fall back from £1 million to £200,000 for expenditure incurred from 1 January 2021.

There are transitional rules which are particularly harsh when the AIA limit decreases.

Businesses therefore need to plan their capital expenditure carefully around end of the calendar year, or they could delay the availability of allowances significantly.

Example
A company has a year end 31 March 2021.

The total maximum AIA for the period will be (£1,000,000 x 275/365) + (£200,000 x 90/365), i.e. £802,739.

For expenditure between 1 April 2020 and 31 December 2020, the actual maximum expenditure that can qualify for AIA is the £802,739.

But the maximum expenditure that can qualify between 1 January and 31 March 2021 is only (£200,000 x 90/365) £49,315.

If the incurred expenditure on plant and equipment for £750,000 on 31 December 2020 it would qualify for 100% AIA, saving £142,500 in corporation tax for the period.

If the expenditure was incurred on 2 January 2021, the business would only get allowances of £49,315 AIA plus 18% x (£750,000 - £49,315) in writing down allowances, i.e. £175,438, which would only save £33,333 in corporation tax.

Getting the timing wrong would cost the company extra tax for its year ended 31 March 2021 of (142,500 – 33,333) £109,167.

It would then receive 18% on the reduced balance the following years.

Off-payroll working in private sector

It was announced that the new rules for non-small customers utilising the personal services of workers operating through personal service companies will commence on 6 April 2020 as planned at the time of the Budget but this has since been delayed to 6 April 2021, in light of the problems caused to businesses by the Covid-19 virus.

National living wage

The Government aims to make the national living wage at least 2/3rds of median earnings by 2024 if economic conditions allow, and to apply it to those 21 or older. It is expected to be more than £10.50 per hour by then.

The NLW / NMW from 1 April 2020 were previously published
- £8.72/hour if 25+
- £8.20/hour if 21 – 24
- £6.45/hour if 18 – 20
- £4.55/hour if 16 – 17
- £4.15 for apprentices

NIC bands 2020/21

Employment allowance

This is now only available if secondary class 1 contributions in the previous year were less than £100,000.

As described above it is not given where there is only a sole director on the payroll with no employees.

The allowance will increase to £4,000 p.a. from April 2020 and will now have to be claimed each year.

Class 1
The primary threshold is £9,500 (2019/20: £8,632).

The secondary threshold is £8,788 (2019/20: £8,632).

A salary of £9,500 will avoid employers' NIC if the employment allowance is available (i.e. if more than just a sole director on the payroll and the total employers' NIC is less than £4,000).

Class 2

Contributions will be £3.05 per week.

There is an exemption if profit for the tax year is below the threshold of £6,475 but the self-employed should continue to pay Class 2 NIC even if they can claim exemption to maintain their contribution record.

This is significantly cheaper than paying voluntary *Class 3* contributions which are £15.30 per week in 2020/21 (2019/20: £15.00)

Class 4

The profit limits are £9,500 and £50,000, so 9% is payable on profits between the limits and 2% on profits above £50,000.

Employing armed forces veterans

From April 2021, no employers' national insurance will be charged on earnings up to the upper earnings limit (currently £50,000) for employers of armed services veterans in first year of civilian employment.