

## FB 2021-22 – Miscellaneous provisions

Lecture P1291 – 10.91 minutes

### Rates and allowances – 2022/23

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

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

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

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

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

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

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

#### *Profit extraction for owner-managed companies*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Corporation tax*

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

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

### *Capital gains tax*

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

### *Inheritance tax*

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

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

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

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

## **Capital gains tax: disposals of UK land**

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

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

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

## **Discovery assessments**

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

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

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

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

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

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

## **Power to vary taxable benefits and expenses**

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

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

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

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

