

Freeports (Lecture P1254 – 11.30 minutes)

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

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

Capital allowances

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

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

The conditions are in new s45O CAA 2001:

- The P&M is for use primarily in an area which, at the time the expenditure is incurred is a Freeport tax site
- The P&M is unused and is not second-hand
- The expenditure is incurred for the purposes of a qualifying activity as defined within s15(1)(a) or (f) CAA 2001. This means a trade or a one of a specific list of undertakings (such as mining, transportation etc) but not property businesses.
- The expenditure is incurred on or before 30 September 2026
- The company is within charge to corporation tax.

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

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

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

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

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

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

- The construction of the building or structure begins at a time when the area in which it is situated is a freeport tax site. Construction is treated as beginning when the first contract for works to be carried out in the course of construction of that particular building or structure is entered into.
- The building or structure is first brought into qualifying use by the person entitled to the allowance at a time when the area in which it is situated is a freeport tax site and on or before 30 September 2026
- The qualifying expenditure is incurred at a time when the area in which the building or structure is situated is a freeport tax site and on or before 30 September 2026
- The person who incurs the qualifying expenditure is within the charge to income tax or corporation tax when it is incurred
- An allowance statement is made for the purposes of s279IA CAA 2001 and states that the person wants the expenditure to be Freeport qualifying expenditure. An allowance statement has to be made in all cases relating to SBAs stating the building or structure to which any claim relates, the date of the earliest contract for the construction, the amount of the qualifying expenditure and the date at which it was first brought into non-residential use.

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

Stamp Duty Land Tax

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

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

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

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

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

Transaction land is used in a qualifying manner if:

- It is used by the purchaser or a connected person in the course of a commercial trade or profession (including for purposes ancillary to the use of other land in a Freeport tax site being used in the course of a commercial trade or profession). This specifically includes property rental businesses.
- It is developed or redeveloped by the purchaser or a connected person for used by any person in the course of a commercial trade or profession.
- It is exploited by the purchaser or connected person (in the course of a commercial trade or profession) as a source of rents or other receipts other than excluded rents, or
- It is used in any combination of the above.

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

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

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

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