

Business Taxation (Lecture B1281 – 16.17 minutes)

Residential Property Developer Tax

The government had previously announced a new residential property developer tax as part of its measures to address unsafe cladding on high-rise buildings. It will apply with effect from 1 April 2022 to the relevant profits arising on or after this date of companies undertaking residential property development activities. It was confirmed in the Budget that the tax will be charged at 4% on profits exceeding an annual allowance of £25 million.

Basis period reform

As announced in the summer, the Government is to legislate in Finance Bill 2022 to reform the basis period rules for self-employed individuals and partners. A business's profit or loss for a tax year will be the profit or loss arising in the tax year itself, regardless of the accounting date of the business. On transition, all basis periods will be aligned to the tax year and all outstanding overlap relief given. The draft legislation published on 20 July 2021 will be revised to incorporate suggestions following consultation, including more flexible use of overlap relief in the transitional year and provisions to reduce the impact of transition profits on allowances and benefits. The principal change from the summer announcement though is that the reform will take place one year later than originally planned. The new rules will now come fully into force on 6 April 2024, with 2023/24 being the transitional year.

Capital allowances

The annual investment allowance (AIA) had previously been increased temporarily from £200,000 to £1 million, but this was due to end on 31 December 2021. The increase will now extend for a further 15 months until 31 March 2023 for both income tax and corporation tax. As always when the AIA changes, there will be transitional rules to determine the AIA available for accounting periods spanning the date of change, now 1 April 2023.

Legislation will be included in Finance Bill 2022 to amend the capital allowances legislation to allow for vehicles certified through a new comprehensive vehicle type approval scheme (due to be introduced in 2022) when determining the level of a vehicle's CO₂ emissions. Similar amendments will be made to company car tax and Vehicle Excise Duty (VED). For capital allowances, the legislation will also confirm the applicable CO₂ emissions figure to be used as that arising from the Worldwide Harmonised Light Vehicle Test Procedure. For capital allowances and company car tax, the legislation will take effect following Royal Assent. For VED, it will have effect for licences taken out on or after 3 November 2021.

Research & Development

From April 2023, R&D tax reliefs will be reformed to support modern research methods by expanding qualifying expenditure to include data and cloud costs. These changes will be legislated for in Finance Bill 2023 and take effect from April 2023.

Further details of these changes and next steps for the review will be set out in due course.

Corporate loss relief

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

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

Cross-border group relief

For accounting periods ending on or after 27 October 2021 the existing beneficial cross border group relief rules relating to EEA-resident companies are repealed. This is as a result of the UK's exit from the European Union. Group relief rules relating to EEA-resident companies are to be brought into line with those for non-UK companies resident elsewhere in the world so that all non-UK resident companies can only surrender as group relief losses of a UK permanent establishment if it is not possible for the loss to be deducted from non-UK profits of any person for any period.

Transitional arrangements will apply for accounting periods which straddle this date

Diverted profits tax

Two changes relating to the administrative aspects of the diverted profits tax were announced, both of which will have effect from 27 October 2021. First, DPT will now be included as a tax covered by the UK's double taxation treaties and so mutual agreement procedure (MAP) outcomes will be able to be implemented for companies who have sought relief from DPT under this procedure. The interaction between the DPT review period and company tax return enquiries will also be rationalised. This will be achieved by extending the time period in which a company tax return can be amended where there is a DPT review from the first 12 months of the DPT review period to the whole of the review period, other than the final 30 days. It will also not be possible for a closure notice for an enquiry into a company tax return to be given until the end of the DPT review period.

Real Estate Investment Trusts (REITs)

From 1 April 2022, changes will be introduced in relation to the tax rules applying to REITs including some of the conditions that determine whether a company qualifies to be a UK REIT. The underlying objective of this measure is to alleviate certain constraints and administrative burdens to enhance the attractiveness of the UK REIT regime for real estate investment.

Key changes include:

- removal of the requirement for REIT shares to be admitted to trading on a recognised stock exchange in cases where institutional investors hold at least 70% of the ordinary share capital in the REIT;

- amending the rules requiring that at least 75% of a REIT's profits and assets relate to property rental business (the 'balance of business test') to disregard non-rental profits arising because a REIT has to comply with certain planning obligations, and to ensure the items currently specified as excluded from the profits part of the test are disregarded in all parts of the test;
- introduction of a new simplified balance of business test so that, if group accounts for a period show that property rental business profits and assets comprise at least 80% of group totals, a REIT will not have to prepare the additional statements which would be required to meet the full test.

Creative Industries

A range of measures were announced in relation to the three "cultural" tax reliefs (Theatre Tax Relief (TTR), Orchestra Tax Relief (OTR), and Museums and Galleries Exhibition Tax Relief (MGETR)).

From 27 October 2021 there is a temporary increase in the rate of the three cultural tax reliefs, as follows:

- TTR and MGETR - rates will increase to 45% (for non-touring productions) and 50% (for touring productions) respectively. From 1 April 2023, the rates will be 30% and 35%, and rates will return to 20% and 25% on 1 April 2024;
- OTR - rates will increase to 50% for expenditure taking place from 27 October 2021, reducing to 35% from 1 April 2023, and returning to 25% from 1 April 2024.

In addition, other provisions confirm that legislation will be introduced such that:

- From the date of Royal Assent to the Finance Bill 2022, the MGETR relief will be available until 31 March 2024 - this relief was due to expire in March 2022;
- From 1 April 2022, film productions qualifying for Film Tax Relief (FTR) that change during production to instead meet the criteria for High-End Television Tax Relief (HETV) will be able to continue claiming FTR without losing their right to access tax relief, which will benefit film productions in the longer term.

Bank surcharge

For accounting periods beginning on or after 1 April 2023, the bank surcharge rate will be reduced to 3% (from 8%) and the surcharge allowance will be increased to £100 million (from £25 million). Where a company's accounting period straddles 1 April 2023 the period will be split on a time apportionment basis for the purposes of the allowance and the reduced rate.

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

Asset Holding Companies (AHCs)

From 1 April 2022 a new tax regime for qualifying AHCs and some of the payments they make will be introduced. The regime will apply to certain AHCs that are used in a range of collective and institutional investment structures to hold investment assets. It will also apply to investment funds, institutions and individuals that invest in these structures.

The broad intention behind this regime is to ensure UK competitiveness as a location for asset management and investment funds. It operates so that investors are taxed broadly as if they had invested in the underlying assets and the intermediate holding companies pay no more tax than is proportionate to the activities they perform.

The regime will exempt from tax:

- gains on share disposals & overseas, property disposals;
- profits of an overseas property business of a qualifying AHC, where those profits are subject to tax in an overseas jurisdiction.

In addition the following provisions will be modified:

- the late paid interest rules so that, in certain situations, interest payments are relieved in the qualifying AHC on the accruals basis rather than the paid basis;
- the deeply discounted securities rules for corporates so that, in certain situations, the discount arising on any such security issued by the qualifying AHC is relieved on the accruals basis rather than the paid basis;
- the transfer pricing exemption for small and medium-sized enterprises and adjustment of the participation condition to ensure the transfer pricing rules apply appropriately in relation to a qualifying AHC;
- the deduction regime for interest payments so that deductions for certain interest payments that would usually be disallowed as distributions (along with necessary consequential changes to the hybrids rules) are allowed and in certain circumstances the obligation to deduct a sum representing Income Tax at the basic rate on payments of interest is disapplied;
- the buy back of share capital rules so that when a qualifying AHC repurchases its share capital from an individual, premiums paid will be allowed to be treated as capital rather than income distributions. In addition repurchases by a qualifying AHC of share and loan capital which it previously issued will be exempt from Stamp Duty and Stamp Duty Reserve Tax (SDRT);
- the remittance regime so that certain amounts paid to qualifying remittance basis users by a qualifying AHC are able to be treated as non-UK source, reflecting the underlying mix of UK and overseas income and gains;
- CGT and accounting provisions in relation to entry and exit from the regime, including the rebasing of certain assets and the creation of a new accounting period.

The regime will also include administrative provisions and provisions to guard against potential for abuse or avoidance.

Implementation of VAT rules in free zones

This measure, which is to take effect from 3 November 2021, will affect VAT registered businesses authorised to operate in the customs site (free zone) of a Freeport. The main VAT benefit of operating in a free zone is that businesses selling goods within free zones can zero-rate their supplies, and services carried out on goods in those zones may also be zero-rated subject to conditions, which provides a cash flow advantage. This measure will ensure that where goods leave a free zone and there is no qualifying onward supply of the goods, or where there is a breach of the rules of the free zone customs procedure, VAT will be due.

VAT exemption for dental prostheses imports

This measure, which is to apply retrospectively from 1 January 2021, will affect registered dentists and other dental care professionals:

- importing dental prostheses into the United Kingdom;
- moving or supplying dental prostheses between Great Britain and Northern Ireland.

The measure is intended to remedy an unintended consequence of the Northern Ireland Protocol and is being retrospectively applied to ensure there is no gap in the fiscal position that existed prior to the end of the transition period. It introduces a VAT exemption for the importation into the United Kingdom of dental prostheses and ensures that supplies of dental prostheses by registered dentists and other dental care professionals continue to be exempt between Great Britain and Northern Ireland.

Other indirect taxes

Landfill tax

The standard and lower rates of Landfill Tax are to be increased in accordance with the retail price index with effect from 1 April 2022. The value of the Landfill Communities Fund for 2022 to 2023 will be set at £30.8 million, with the cap on contributions by landfill operators remaining at 5.3% of their landfill tax liability.

Gaming duty

The gross gaming yield bandings for calculating gaming duty are to be increased in accordance with the retail price index for accounting periods beginning after 31 March 2022.

Rebated diesel and biofuels

Amendments are to be made to the legislation that restricts the use of rebated red diesel and rebated biofuels from 1 April 2022. The changes will affect the provisions relating to certain vehicles, machines and appliances, restrictions on the use of red diesel and rebated biofuels, and travelling fairs and circuses. There are also to be changes to the circumstances in which the use of red diesel and rebated biofuels will be permitted, including provisions aimed at the transition to the new rules.

Vehicle excise duty rates for cars, vans, motorcycles

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

Vehicle excise duty and levy rates for heavy goods vehicles

The government will continue to freeze vehicle excise duty for heavy goods vehicles for 2022 to 2023 and will continue to suspend the levy for heavy goods vehicles for another twelve months from 1 August 2022.

Temporary extension to road haulage cabotage

A legislative change is to take effect from 28 October 2021 to allow, until 30 April 2022, unlimited cabotage movements of heavy goods vehicles within Great Britain for up to fourteen days after arriving in the United Kingdom on a laden international journey, without these operators needing to pay vehicle excise duty.

Tobacco duty

Increases in tobacco duty rates are to take effect from 6pm on 27 October 2021. Tougher sanctions are to be introduced to tackle tobacco duty evasion with enforcement by HMRC and Trading Standards.

Alcohol duty

Alcohol duty rates will be frozen and it is intended that alcohol duty will be reformed.

The excise wrongdoing penalty regime

The scope of the excise wrongdoing penalty regime is to be extended so it will cover breaches relating to excise goods in the free zone customs special procedure and the authorised use procedure.

Plastic packaging tax

Amendments are to be made to the plastic packaging tax legislation to ensure that the tax operates as intended, that the UK complies with international agreements, and that HMRC has the appropriate framework to administer the tax.

Insurance premium tax

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

Carbon Price Support rate

The Carbon Price Support rate per tonne of carbon dioxide emitted will be £18 for 2023 to 2024, further extending the rate freeze introduced from 1 April 2016.

Aggregates levy rate

The aggregates levy rate is to be frozen in 2022 to 2023.

Fuel duty rates

Fuel duty rates will remain frozen for 2022 to 2023.