

## **FB2025 - Business tax measures (Lecture B1472 – 23.45 minutes)**

### **Business reliefs**

#### *Capital allowances*

Clause 23 extends the period for which 100% first year allowances are available on the purchase of zero emission (electric) cars which are new and unused, to 31 March 2026 (for corporation tax purposes) and 5 April 2026 (for income tax purposes).

Clause 24 also extends the date for 100% first year allowances on electric vehicle charging points to the same date.

These allowances have been in place since 2009.

#### *Furnished holiday lettings*

Clause 25 introduces Schedule 5 which contains the provisions relating to the abolition of the furnished holiday letting regime.

These changes will have effect from 6 April 2025 for income tax and capital gains tax purposes and from 1 April 2025 for corporation tax and corporation tax on chargeable gains.

The basic change is that there will no longer be a separate category of properties with special treatment and those furnished holiday lets will be absorbed into (or become if no other property is rented out) the 'ordinary' property business.

Since property within the EEA can qualify as furnished holiday lets, the property could become part of an overseas property business if they are not situated within the UK.

UK and overseas property businesses are treated separately.

Going forward, this means that these properties will be subject to the same rules as apply for ordinary property businesses.

The legislation is largely concerned with repealing existing legislation to remove the provisions which gave the beneficial tax treatment for FHL property plus inclusion of various transitional provisions.

The amendments can be summarised as below:

- The finance cost restriction rules will apply so that relief for interest to acquire properties will be restricted as a tax reducer to the basic rate of income tax. This is going to have the same impact as when this measure was introduced for long-term

residential letting. It may increase the rate of tax paid unless all income falls within, and remains within, the basic rate band.

- Capital allowances will not be available for qualifying plant and machinery and instead, relief will be available only under the replacement of domestic items relief rules. Those latter rules are less generous as they only allow a replaced item to be claimed and only to the extent that there is no improvement element. There are also restrictions on assets which can be covered by the replacement allowance.
- The income will no longer be treated as relevant UK earnings for the purposes of making pension contributions. This is likely to have less impact than the other changes as it is not something that is commonly seen.
- There may be a change in treatment for husband and wife property owners. Previously, furnished holiday letting businesses did not fall within the normal provisions which allow the 50:50 split of income to be avoided – so profits could be split as appropriate. From next April, jointly owned property profits will be split 50:50 unless the beneficial ownership is different and the Form 17 is submitted to HMRC. Action may need to be taken in cases where income is split other than 50:50 due to the fact that a Form 17 cannot be backdated.
- The definition of a trade for capital gains purposes is amended to remove furnished holiday lettings or EEA furnished holiday letting activities such that business asset disposal relief, substantial shareholdings exemption, relief for loans to traders, rollover relief and holdover relief will no longer be available.

There are some transitional rules which need to be considered.

There is an anti-forestalling rule for all CGT purposes meaning that you cannot use an unconditional contract to obtain any of the CGT reliefs available under current furnished holiday letting rules – this has applied since 6 March 2024. This legislation is very straightforward in that it applies where:

- an asset is disposed of under an unconditional contract during the pre-commencement period (the period beginning with 6 March 2024 and ending with commencement)
- but not conveyed until on or after the commencement date and
- subject to a relevant claim (being rollover relief, gift relief or business asset disposal relief).

However, this will not apply if:

- no purpose of entering into the contract was to avoid the impact of the abolition of the furnished holiday letting rules and
- either the contract was entered into wholly for commercial reasons or the parties to the contract are not connected persons and
- the claim includes a statement that the conditions are met.

This means that sales of property which are undertaken before the date of the change but genuinely do not complete in time will be able to benefit from the relevant reliefs but it will be up to the taxpayer to be happy that there is no argument that could be made by HMRC that the transaction is tax motivated. Someone selling because they want to get business asset disposal relief before the change but simply doesn't get the transaction through in time might be in a difficult position. These measures are designed to attack transactions with connected parties where they are no third-party seller identified at the time of the sale but it is a grey area.

Where, for corporation tax purposes, a company has an accounting period commencing before, and ending on or after 1 April 2025, the period before and after that date will be treated as separate accounting period. Where it is necessary to apportion between those two periods, it will be done on a just and reasonable basis.

Once the furnished holiday letting property has been merged into the ordinary property business, then the profits and losses from all profits will be reported as a single figure. UK and overseas property business will still be treated as separate businesses.

Any losses which have arisen in the furnished holiday letting business before the repeal, those losses will be carried forward and be available to offset against total profits arising after the change. There is no ring-fencing of losses against the furnished holiday letting property income.

There will be no claw-back of capital allowances which have been claimed previously and if there is a pool of unrelieved expenditure at the implementation date, the business will be able to continue claiming writing down allowance until the expenditure has all been relieved, against the wider property business. Given that annual investment allowance is typically available, there may not be many businesses to which this applies.

Specifically in relation to business asset disposal relief, there is a general ability to claim the relief up to 3 years after cessation of the business. Where the furnished holiday letting conditions are satisfied for the qualifying period in relation to a furnished holiday letting business which ceased before commencement of the new rules, the relief will be available for a disposal within the normal 3-year post-cessation period. This will also apply for disposals of shares following cessation of a trading activity where the cessation was before commencement of these new rules and associated disposals where the date of the material disposal with which the disposal is associated is before 6 April 2025. The lapsing of the furnished holiday letting special rules will not be a cessation for these purposes.

For substantial shareholdings exemption, there is a provision which allows the relief to be claimed if the conditions were met in the previous two years (even if it is not met at the time of the disposal) and this will continue to apply for disposals made on or after 1 April 2025. However, in determining whether the conditions were met at that earlier date, the furnished holiday letting business is disregarded.

#### *Audio Visual Expenditure Credit and Video Games Expenditure Credit*

Audio Visual Expenditure Credit (AVEC) and Video Games Expenditure Credit (VGEC) give additional relief for the qualifying costs of production for film, high-end TV and video games. The regime which gives enhanced deductions for qualifying costs will end as at 31 March 2027 when the new regime will be the only option to gain any additional tax benefits on qualifying costs.

Clause 26 extends the relief available for visual effects expenditure by increasing the tax credit from the standard rate of 34% to the higher rate of 39% and removing the 80% cap on relevant expenditure so that the credit can apply to the full amount of expenditure.

It cannot be claimed where the production is claiming the higher credit rate of 39% already (being films that are animations or low-budget films or television programmes that are animations or children's programmes). It may be that some productions will be better to claim the lower rate for mainstream costs and then the higher rate for visual effects rate due to the fact that the higher rate is not subject to 80% capping (which would apply if the 39% rate is claimed on all expenditure). But each will have to consider the figures on a case-by-case basis.

The expenditure must be incurred on relevant visual effects work carried out in the UK which counts as relevant production expenditure within the general provisions. Relevant visual effects work means 'work consisting of the use of computer technology to create or alter images for inclusion in the film or programme'.

This has effect for expenditure incurred on or after 1 January 2025 for claims made on or after 1 April 2025.

Clause 27 relates to the certification of films, television programmes or video games by the BFI. They are responsible for determining if productions can be certified as British. The clause outlines revised administrative procedures for obtaining of such certificates.

Clause 28 makes amendments to legislation so that expenditure on film and TV programmes will not be eligible for the relevant credit if it is not paid within four months of the end of the accounting period to which it relates. Relief is available when subsequently paid. This applies from Royal Assent.

### *Research and Development tax reliefs*

Clause 29 changes the legislation relating to research and development tax reliefs for companies in Northern Ireland.

R&D intensive companies can claim enhanced relief but companies in Northern Ireland are covered by the Windsor Framework and so are subject to different rules. This means that a Northern Irish company is only entitled to the enhanced relief if the excess amount (i.e. the amount over the equivalent RDEC relief available) does not have to be notified as it falls to be classified as de minimis state aid (taking account of other support received in a rolling three-year period).

It would not apply where the company has no trade in goods or electricity.

The changes also exempt companies within Northern Ireland from the restrictions on overseas expenditure on contractor payments and payments for externally provided workers which apply to companies within the rest of the UK.

This applies for claims made on or after 30 October 2024.

Clause 30 amends an error in the legislation relating to the definition of an 'R&D intensive company'. This is one whose relevant R&D expenditure is at least 40% of their total relevant expenditure. In defining 'relevant R&D expenditure', the legislation did not include expenditure qualifying for RDEC as well as expenditure qualifying under the SME scheme. This is now amended and is treated as having retrospective effect.

### **Loans to participators**

HMRC are concerned about the avoidance of a charge under s455 CTA 2010 (the loans to participators provisions) and have introduced a Targeted Anti-Avoidance Rule (TAAR) aimed at tackling tax avoidance in this area.

Firstly, s464B CTA 2010 is repealed. S464A CTA 2010 confers a charge where a company is party to arrangements with the purposes of avoiding the loans to participators provisions and s464B gives relief from the charge where the company receives a payment in respect of the benefit that would otherwise arise. This is repealed for payments made on or after 30 October 2024.

The 'bed-and-breakfasting' provisions at s464C and s464D CTA 2010 are relabelled and amended. The loans to participators provisions apply where a loan is made to a participator which still remains outstanding nine months after the end of the accounting period. The bed-and-breakfasting provisions limit the ability to repay the loan for a short period only so that there is no real repayment of the liability.

The new provisions, s464ZA and s464ZB CTA 2010, consider arrangements where the loan is repaid but then withdrawn again by the participator from an associate of the original company. Effectively the loan is moved around between group or associated companies to avoid a liability arising under s455 but where no genuine repayment is being made. As with the previous legislation, the anti-avoidance provision will not apply where the repayment gives rise to an income tax charge on the participator or an associate (such as payment of a dividend or salary).

This will apply from 30 October 2024.

### **Employee ownership trusts**

Clause 31 introduces Schedule 6 which makes changes to the provisions relating to Employee-ownership Trusts (EOTs).

EOTs are a specific kind of Employee Benefit Trust where a controlling interest in a trading company or the holding company of a trading group is owned by the trustees of an EOT on behalf of the employees. Where the conditions for relief are met, the EOTs regime provides valuable tax reliefs, notably no CGT on the disposal for the vendor and a provision which states that the transfer is IHT-exempt. Companies which are controlled by an EOT may pay bonuses of up to £3,600 pa free of income tax (although NIC applies as normal).

Various conditions have to be met in order for the reliefs to be available and the Finance Bill makes amendments to some of those conditions. These have effect for disposals on or after 30 October 2024 (other than the additional information requirement).

### *Residency of trustees*

S236H TCGA 1992 is amended to introduce a requirement that the trustees of an EOT must be resident in the UK at the time the shares are sold to the trust and for the remainder of the tax year to enable the initial claim to be valid.

If the trustees cease to be resident in any of the first four years following the tax year of disposal, the claim for relief from CGT on the disposal will fail and the tax will be due on the disposal. The only exception to this is where the failure occurs as a result of a death in any of the first four years following the year of disposal provided the requirements are met again within six months of death.

#### *Trust issues*

A new trustee independence requirement is introduced at the time of the disposal and for the remainder of the tax year. Half of the trusts of the EOT must be persons who are not excluded participators and that excluded participators must not control the trust.

An excluded participator (as defined by s236J TCGA 1992) includes any person who is a participator in the target company (or any group company) as well as persons connected with those participators. It also includes any company where 50% or more of the directors are themselves excluded participators.

If the trustee independence requirement is failed in any of the first four years following the tax year of disposal, the claim for relief from CGT on the disposal will fail and the tax will be due on the disposal. The only exception to this is where the failure occurs as a result of a death in any of the first four years following the year of disposal provided the requirements are met again within six months of death.

If the trustee independence requirement ceases to be met subsequently, the trustees are treated as having immediately disposed of and reacquired the shares at market value. Again, the only exception to this is where the failure occurs as a result of a death provided the requirements are met again within six months of death.

#### *Consideration paid*

A new 'consideration requirement' must be met at the time of the disposal which requires the trustees to take all reasonable steps to ensure that the consideration for the acquisition of the shares from the vendor does not exceed market value at the time of the disposal and that if any consideration is deferred, any interest paid on the deferred sums is no more than a reasonable commercial rate.

#### *Run-off period*

Amendments are made to existing conditions so that they need to be met up to the end of the fourth tax year following the year of disposal rather than just the end of the tax year following the year of disposal.

These conditions are:

- the trading requirement;
- the all-employee benefit requirement;
- the controlling interest requirement;
- the participator fraction not exceeding 2/5; or
- trustees acting outside permitted purposes.

#### *Additional information*

A new information requirement is included which means that any claim for relief must be accompanied by the following details:

- the number of employees of the company at the date of disposal (unless this cannot be ascertained despite taking reasonable steps to do so); and
- the consideration for the disposal.

This has to be met for claims made on or after 6 April 2025.

#### *Qualifying bonus payments*

S312C ITEPA 2003 determines that bonus payments will only be exempt from tax as employment income if the participation requirement is met, which is that all persons in relevant employment must be eligible to participate and do so on the same terms.

New legislation is inserted so that this is not breached by excluding the directors from participating.

#### *Company contributions*

New legislation at s401ZA ITTOIA2005 allows a company to make contributions to the trustees relating to their costs of acquisition of the shares (including disposal proceeds, interest and stamp duty or SDRT liabilities) without this being chargeable to income tax as a distribution. The costs are deducted from the relevant distribution, although cannot reduce the amount below nil. This has to be claimed.

#### **Alternative financing**

Alternative financing is a generic term used to describe transactions which are compliant with Sharia law which does not allow lending of money at interest. The tax legislation is written to give equivalent tax treatment for conventional and alternative financing.



One such alternative financing arrangement is 'diminished shared ownership where a purchaser and a financial institution buying an asset jointly. The purchaser has use of the whole property and pays rent to the financier on their share of the property. Over time, the purchaser gradually buys out the financier's share of the property.

Clause 35 introduces Schedule 7 which tweaks the rules in situations where this type of arrangement is used to refinance a property. HMRC had identified that this could cause a CGT charge to arise as there might be a disposal if there is a change in ownership shares as part of the refinancing process. The legislative changes remove the possibility that a tax charge can arise, as would be the case with conventional refinancing. This applies from 30 October 2024.

### **Energy profits levy**

The Energy Profits Levy (EPL) is a temporary levy on profits arising from production of oil and gas, payable in addition to the corporation tax due on those profits (which is 30% for Ring Fenced profits with a 10% supplementary charge). It was introduced in May 2022 as a response to the high price of oil and gas due to the Ukraine war and the extraordinary profits that oil and gas companies were making as a result.

Clause 15 of draft legislation increases the energy profits levy from 35% to 38%. This applies for accounting periods beginning on or after 1 November 2024 although accounting periods straddling that date will be split at that date for these purposes. Each accounting period will be treated as a separate period for the purposes of calculating any instalments due.

This will bring the overall headline tax rate for these profits to 78%.

There have been two investment allowances which have reduced the impact of the EPL: the 29% investment allowance and the 80% decarbonisation investment allowance. Clause 16 removes the investment allowance and reduces the decarbonisation investment allowance to 66%. This applies from 1 November 2024. No changes are made to the types of expenses which will qualify for the decarbonisation investment allowance.

Clause 17 extends the date at which the EPL will expire to 31 March 2030. However, there is a mechanism for the EPL to end earlier if the oil and gas prices fall below a set threshold for a sustained period and this remains in place.

Clause 18 and Schedule 3 introduce a new provision for tax relief in relation to payments made into decommissioning funds. Companies which are established for carbon capture and storage (CCS) are involved in geological storage or transportation of carbon dioxide. Under previous legislation, oil and gas companies would not have been able to obtain relief for transferring assets to such companies as the legislation only allowed deductions for the

actual costs of decommissioning, even though such companies would have to make contributions to cover future decommissioning.

The new legislation will enable payments made into a decommissioning fund to be treated as decommissioning expenditure so that tax relief is available.

The conditions are:

- The payment is made in accordance with relevant provisions within the Energy Act 2023;
- The transferred plant and machinery must be an eligible CCS installation or an eligible carbon storage network pipeline which qualifies for change of use relief under the Energy Act 2008; and
- the payment made represents the estimated cost of decommissioning the transferred plant and machinery.

The payment can be made directly into the decommissioning fund or into the CCS company for onward payment. Various definitions are outlined in the draft legislation to underpin the new rules but these are beyond the scope of this note.

This measure will apply from Royal Assent.

## **Pillar two**

Clause 19 introduced Schedule 4 which contains provisions for the introduction of the Undertaxed Profits Regime.

These provisions apply alongside the Income Inclusion Rule (IIR – sometimes referred to as the Multinational Top-Up Tax) and the Qualifying Domestic Minimum Top-Up Tax (QDMTT). The aim is to achieve a minimum level of tax in each territory in which multinational enterprises operate. The current effective rate is 15%. It applies to groups which have annual revenues of €750m in at least two of the four fiscal years immediately preceding the current year.

The IIR is levied on the ‘responsible member’ which is the group holding company unless that company is in a jurisdiction which has not adopted these rules. An intermediate holding company could then be caught but only in relation to companies with which it has a direct relationship. The QDMTT applies to any UK company which has an effective rate of less than 15%.

The new Undertaxed Profits Regime will be charged where the IIR or the QDMTT does not apply. This is likely to be where there is no intermediary parent in a jurisdiction which has

implemented IIR. It will apply for accounting periods beginning on or after 31 December 2024.

The details of these provisions (which are very complex) are beyond the scope of these notes.

### **PAYE in relation to internationally mobile employees**

PAYE for employers with internationally mobile employees can be difficult due to the uncertainties around the amount of employment income which will be subject to UK tax.

It is acknowledged that where duties are performed both in the UK and overseas, some of the income may not be subject to tax and there has been a process whereby HMRC would provide a direction allowing an employer to operate PAYE on only part of the earnings. The employee would then submit a self-assessment return after the year end to determine the correct tax position. However, the employer had to wait until HMRC had issued the direction before operating PAYE on the relevant proportion of income and there were often delays.

Clause 21 amends s690 ITEPA 2003 so that, from 6 April 2025, employers will be able to apply PAYE on the proportion of earnings which they think relates to UK duties without getting prior HMRC approval, although there is still a notification process (explained below). The position will continue to be finalised after the year end by submission of the employee's self-assessment return.

It will apply where an employee is internationally mobile meaning:

- they will work, or are likely to work, both inside and outside the UK during the tax year (called 'the mobile tax year');
- they are likely to be non-UK resident for the mobile tax year or that will be a split year.

If the employer makes 'uncertain payments' which are payments where the employer is unable to ascertain the extent to which this will be subject to PAYE, then the whole amount must be subject to PAYE. It also covers payments made by persons acting on behalf of the employer or persons acting as a host employer.

Nothing within these provisions prejudices HMRC's right to make assessments or collect debts.

### *Notification process*

The employer will still have to give notice to HMRC that they are proposing to treat a proportion of the uncertain income as not being liable to PAYE and specifying the proportion.

Where the individual is a newly resident individual and is claiming relief for income under the new foreign employment income exemption, the employer will have to notify HMRC of the income which falls outside of UK PAYE (new s690D ITEPA 2003). This takes priority so that the provisions of this section will not apply to any payment being made under s690D.

The notice will not have effect if HMRC have given notice under new s690B (see below) but will otherwise have effect when acknowledged by HMRC.

It will also cease to have effect if:

- HMRC issue a direction under s690B;
- A subsequent notice is given under this legislation;
- Where a notice is given on the basis that the employee would be non-resident but a notice is then given under s690D that the individual is, in fact, a newly resident individual.

New s690B applies where a notice has been given under s690A relating to the split of income but it appears to HMRC that the proportion is incorrect. An HMRC officer can then give a direction determining the proportion that they believe is correct (or specifying that all income should be subject to PAYE). A direction under these provisions would cease to have effect if it transpires that the individual is, in fact, a newly resident individual for the tax year and a notice is given under s690D.

Where payments are made which relate to years before 2025/26 where the employee meets the requirements of s26A (overseas workday relief) and are claiming remittance basis, the employer can also estimate the amount on which PAYE should be operated.

### **Advance pricing agreements**

Businesses can apply for an advance pricing agreement where they wish to have certainty about the transfer pricing impact of their transactions.

HMRC have recently identified that there is an inability to ask for such an agreement where person fulfilled the participation condition through acting together in relation to financing agreements.

Clause 22 amends the legislation to remove this anomaly, which was never intended when the legislation was introduced. This is treated as always having effect.

