Preparing for a new economy

Highlights from the UK Autumn Budget announcements and documents released on 27 October

October 2021

Building a better working world

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Executive summary

In delivering the second Budget of this year, the Chancellor's tax announcements on 27 October 2021 had a distinctly low-key feel, at least from a tax policy perspective. The biggest tax change in the Budget scorecard was the Health and Social Care Levy, something already enacted, and it is the changes announced in the Spring Budget (particularly the six percentage point rise in corporation tax and the freezing of income tax thresholds) that will have the biggest tax impacts going forward.

The Chancellor did continue progress on the building blocks of recovery from the pandemic with measures such as the further temporary extension to the Annual investment Allowance, additional reliefs from Business Rates (some of which are time-limited), a consultation on the re-domiciliation of business to the UK and an extension of R&D tax relief to cover cloud computing and data costs. At the same time, he took a number of opportunities to showcase how the Brexit freedoms allow the UK to focus its tax incentives on operations in the UK (with an immediate change to the rules on cross-border group relief, the modernisation of the UK tonnage tax regime and promised measures to narrow the territorial scope of R&D tax relief to apply it more to UK spending).

There were, however, a number of potential developments that were not taken forward (at least as yet). The concept of an online sales tax (possibly in conjunction with further business rates reform) is to be consulted on later this year, but there was no announcement on changes to capital gains tax rates or to the scope of inheritance tax, and responses to the Office of Tax Simplification reports in these areas remain outstanding. Changes to pension tax relief are always a topic of discussion before a Budget, but the only changes were to raise the normal minimum pension age to 57 from April 2028 and to promise a mechanism in 2025 to address the issue of low-earning individuals saving in a pension scheme using a Net Pay Arrangement.

What the accompanying documents did contain was the promise of a number of technical changes, some of the detail for which will be forthcoming either with the Finance Bill on 4 November (Finance Bill 2021-22) or at a 'Tax Administration and Maintenance Day' sometime later this year. Included in those technical changes are revisions to the proposals for large businesses to notify uncertain tax treatments to HMRC (in particular the apparent removal of the third trigger – which would have applied where there was a substantial possibility that "a tribunal or court would find the taxpayer's position to be incorrect". More detail can be found in the Tax Management and Administration section below.

Business taxes

Research and development tax reliefs

The Government previously consulted on the scope of qualifying expenditures which companies can include in R&D tax credit claims to ensure the credits remain well targeted and reflect modern R&D processes.

The Government has confirmed in the Autumn Budget that the qualifying expenditure categories will be expanded to include data and cloud computing costs.

However, it was further announced that the Government intends to refocus relief for R&D carried out overseas but funded by the UK. There is no detail as to what this will mean in practice.

Both the expansion of the expenditure categories and the apparent narrowing of the territorial scope of R&D tax relief will be legislated for in Finance Bill 2022-23 and take effect from April 2023. There is no real detail as to how changes will be made nor what steps might be taken to "target abuse and improve compliance", though more detail is promised later this year.

Comment: This modernisation of the R&D expenditure categories to include cloud computing and data is long overdue and will be welcomed by many companies. Keeping the rules of the R&D regime current to reflect how businesses operate is vital to the continued success of the credit.

However, this announcement is overshadowed by the proposed restriction on relief for the cost of R&D carried out outside the UK. The inclusion of overseas R&D has been a long established feature of the UK regimes which is attractive to multinationals setting up R&D centres within the UK. Further details will be released in late Autumn so companies will have to wait to see what impact this will have. It will be interesting to see how overseas activities will be defined, as a wide definition could have a serious impact on key UK industries developing global centres of excellence and expertise within the UK.

Capital allowances: Annual investment allowance

The Annual Investment Allowance of £1m, which has been in place since January 2019, has been extended for a further 15 months to 31 March 2023. The AIA was due to revert to £200k on 1 January 2022, but has now been extended to align it with the super-deduction regime which was introduced in the March Budget.

Capital allowances: Other measures

Amendments will be made to the structures and building allowances legislation to bring it in line with changes to the SBA statement requirements which were announced earlier in 2021. Technical changes will also be made to capital allowances, as well as company car tax and vehicle excise duty, in relation to vehicle emissions (see indirect tax section below)

Corporate domicile

The Government announced at Autumn Budget that it intends to enable the re-domiciliation of companies to make it possible for companies to move their domicile to and relocate to the UK. It has launched a consultation setting out its proposals and asking for views on a number of questions, including the benefits of enabling companies to re-domicile and the tax implications that need to be considered.

Comment: We welcome the announcement that the Government will consult on facilitating a corporate law re-domiciliation regime, thereby bringing the UK into line with most European and global counterparts. Such a regime should allow taxpayers, including those who may wish to access the UK asset holding company regime, to migrate both their tax and corporate law residency to the UK in a more straightforward and comprehensive manner.

Cross-border group relief

The Government has announced that it will legislate in Finance Bill 2021-22 to abolish cross-border group relief (CBGR) and amend the rules on loss surrender for UK permanent establishments of companies in the European Economic Area (EEA).

The measure repeals the legislation that permits UK companies in certain circumstances to claim group relief for losses incurred in the

EEA, which was required under EU law and which the UK no longer needs to abide by.

The legislation will also limit the amount of losses that an EEA resident company trading in the UK through a UK permanent establishment can surrender as group relief, to align the treatment of EEA companies with countries elsewhere in the world. As a result of the change, all non-UK resident companies will only be able to surrender relief losses of a UK PE if it is not possible for the loss to be deducted from non-UK profits of any person for any period.

This measure will have effect for company accounting periods ending on or after 27 October 2021, and where an accounting period straddles this date, there are deemed to be two separate accounting periods for these purposes.

Corporate loss restriction rules

The Government has concluded that changes to the way leases are accounted for under IFRS 16 mean that companies in financial distress are denied the exemption from the corporate loss restriction for carried-forward losses that are set against profits arising from lease renegotiations. Legislation will be included in Finance Bill 2021-22 to amend the loss restriction legislation, which was originally introduced in F(No 2)A 2017, to ensure that the legislation continues to work as intended for companies in these circumstances. The changes will have retrospective effect from 1 January 2019.

Hybrid and other mismatches

Following public consultation, a number of changes were introduced to the legislation for hybrid and other mismatches in the Finance Act 2021. Subsequently, the Government decided that further engagement was required in respect of one specific change (relating to transparent entities) in order to ensure that it operated as intended, and withdrew that change. The Government has confirmed that legislation will now be introduced in Finance Bill 2021-22 to implement that specific change.

Online sales tax

As widely speculated in the run up to the Budget, the Government is continuing to explore a UK-wide online sales tax, the revenue from which would be used to reduce business rates for retailers.

A consultation will be published shortly in order for the Government to understand more fully the impact on businesses, consumers and retailers and to determine whether an online sales tax should be introduced.

Bank surcharge rates

The Chancellor has confirmed a decrease in the bank surcharge from the current 8% to 3% from April 2023. Taking account of the 25% corporation tax rate from April 2023, the total rate of tax payable by banks on their profits will increase to 28% - a 1% increase compared to the current 19% corporation tax and 8% bank surcharge.

The Government will also increase the surcharge allowance from £25m to £100 million. This measure will have effect from 1 April 2023.

Comment: In his Budget speech, the Chancellor referred to the allowance increase as a measure to help challenger banks. However, it is notable that the increase from £25m to £100m may take many banks (including non-UK banks) out of the scope of bank surcharge, not just those which are thought of as 'challengers'.

Insurance companies

The Government has announced that legislation will be introduced in Finance Bill 2021-22 to give it the power to make regulations in response to the new International Financial Reporting Standard for insurance contracts (IFRS 17), so that the impact on insurance companies of transition to the new standard can be spread for tax purposes. The regulations will also give the Government the power to revoke the requirement for life insurance companies to spread acquisition expenses over seven years for tax purposes. A consultation to inform the changes will be published later this year.

Asset management

It was announced in December 2020 that the Government intends to introduce a regime for the taxation of qualifying asset holding companies (QAHCs).

There were no specific announcements at the Autumn Budget on this proposed regime, other than to confirm that the measure will form part of Finance Bill 2021-22 and will be effective from 1 April 2022. Updated draft legislation is continuing to be discussed with stakeholders with a view to being released shortly and forming part of the upcoming Finance Bill.

An updated Tax Information and Impact Note provides indications of revisions to the previously issued draft legislation, but we will comment further once the amended legislation is available.

Comment: The new regime has developed positively and looks set to make the UK a materially more commonly-used holding company location for asset managers.

Stamp duty and stamp duty reserve tax

Legislation will be introduced to enable the Government to make changes in secondary legislation on stamp duty and stamp duty reserve tax (SDRT) in relation to securitisation and insurance-linked securities. The measure will take effect from Royal Assent to Finance Bill 2021-22.

Comment: Given the technical nature of the changes being considered, the Government believes it is more appropriate to make the changes by secondary legislation and is therefore taking the power now to make changes in the future. This move is prompted by the consultation on the reform of the taxation of securitisation companies.

In addition, in the context of the introduction of the new asset holding company regime (see above), measures will be included in Finance Bill 2021-22 exempting repurchases by a qualifying asset holding company of share and loan capital which it previously issued from stamp duty and SDRT.

Freeports

At Budget in March 2021, the Chancellor announced the locations of eight chosen freeports - special economic zones with tax incentives to help stimulate regional growth – in England.

On 29 October, the Government will lay secondary legislation to designate freeport tax sites. The first tax sites will be in Humber, Teesside and Thames, and those freeports will be able to begin initial operations from November.

After designation, businesses in these freeport tax sites will be able to benefit from a number of tax reliefs, including enhanced capital allowances, an enhanced rate of structures and buildings allowance, business rates relief, National Insurance contributions (NIC) relief and stamp duty relief.

The Government will also legislate in Finance Bill 2021-22 to introduce additional elements to the VAT free zone model for freeports as well as excise penalties. The legislation will take effect from 3 November 2021 and will:

- Implement a free zone exit charge to ensure businesses do not gain an unintended tax advantage from the zero-rate in the free zone model.
- Make amendments to existing VAT law to ensure free zone rules and warehousing rules are mutually exclusive.
- Amend some parts of historic free zone legislation which are incompatible with the new free zone VAT rules.
- Amend the excise wrongdoing penalty regime to apply where breaches relating to excise goods occur in the free zone procedure or the authorised use procedure for registered consignors.

Economic crime levy

The Budget confirms that following consultation last year and the publication of draft clauses in September, legislation will be included in Finance Bill 2021-22 to establish an Economic Crime (Anti-Money Laundering) Levy to fund anti-money laundering and economic crime reforms. Entities subject to the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 will pay the levy as a fixed fee based on the size band they belong to, as determined by their UK revenue for the relevant accounting period. Small entities (with UK revenue less than £10.2 million) are exempt.

The fixed fees will be confirmed in the Finance Bill on 4 November, but will range from £5,000 to up to £250,000 for very large entities.

The levy will first be charged during financial year 2022-23 and amounts will be payable following the end of each financial year.

Tonnage tax reform

The tonnage tax regime will be amended to reward companies flying the Red Ensign (the UK's merchant shipping flag). The lock-in period will be reduced from 10 years to 8 years and HMRC will have more discretion to admit companies into the regime outside the normal period allowed for election where there appears to be a good reason to do so. This will not affect the existing power of HM Treasury to provide (by order) for further periods during which Tonnage Tax elections may be made.

The proposed legislation will remove the flagging rules introduced in 2005 and simplify the rule which, subject to conditions, includes dividends or other distributions of overseas shipping companies in relevant shipping profits.

HMRC will review its guidance to reflect the significance of flagging vessels in the UK and UK investment in decarbonisation and pollution control when they assess which companies can participate in the regime. HMRC will also review its guidance on what vessels and operations qualify for the regime to take account of developments in technology and the shipping market since the tax was introduced. Finally, following a review aimed at smoothing administration, HMRC practice guidance will raise from 10% to 15% the permitted limit for qualifying secondary (ancillary, passenger-related) income. These tax changes will take effect in April 2022.

As well as reviewing the powers covering the training commitment in the regime, the Government will also review whether to include ship management within scope of tonnage tax, and whether the existing limit that can be claimed in capital allowances by organisations leasing ships to tonnage tax participants remains appropriate.

Creative and cultural tax reliefs

In order to support certain sectors that have been significantly impacted by the restrictions brought in as a result of COVID, the Chancellor announced several changes to some of the UK's creative and cultural tax reliefs.

- The amount of tax relief available under theatre tax relief, orchestra tax relief and museums and galleries exhibition tax relief will increase from 27 October 2021 until 31 March 2024. The relief will initially double, but then taper back to normal levels from 1 April 2024.

- Museums and galleries exhibition tax relief had been due to expire in March 2022, but this has been extended to 31 March 2024. The Government says the relief will continue to be monitored through this period, with a view to making a long-term decision regarding its future.

- The Government will legislate in Finance Bill 2021-22 to introduce changes to better target the cultural reliefs and ensure that they continue to be safeguarded from abuse.

- To reflect the changing nature of film distribution, film productions qualifying for film tax relief that change during production to instead meet the criteria for high-end television tax relief (ie where the intention for theatrical release changes to an intention to broadcast), will be able to continue claiming film tax relief. This measure will have effect from 1 April 2022.

Personal taxes

Rates and allowances

As it was announced in the previous Budget that most of the income tax, capital gains tax and inheritance tax rates are to be frozen until 2026, there have been very few changes made to the personal tax rates and allowances in this Autumn Budget. However, as part of the recent announcements introducing the Health and Social Care Levy announcement, the rates of tax on dividend income will increase by 1.25% from April 2022.

The ordinary dividend rate therefore increases from 7.5% to 8.75%, the upper rate increases from 32.5% to 33.75% and the additional rate increases from 38.1% to 39.35%. The dividend rate applicable to trusts also increases to 39.35%.

There are small increases to the married couple's allowance for individuals born before 6 April 1935 – from April 2022, the minimum and maximum amounts of relief increase to £3,640 and £9,415 respectively and the income limit is being increased by £1,000 to £31,400.

The blind person's allowance is increasing to £2,600 from April 2022.

Basis period reform

Following a consultation earlier in the year, the Government has confirmed that the proposed basis period reform will proceed, although as announced last month, it will be delayed by one year and will apply from 6 April 2024.

This will impact sole traders and partners of businesses that do not have an accounting year ending on 31 March or 5 April. From the 2024/25 tax year, all businesses will be assessed on the profits of the tax year rather than the accounting period ending in the tax year. The 2023/24 tax year will be a transitional year with provisions included to spread out any resulting excess profits over a 5 year period.

The Government has confirmed a full response to the consultation is to be released on 4 November 2021 and legislation will be included in Finance Bill 2021-22.

Dormant assets scheme

As was announced following the Budget in March 2021, the Government intends to amend tax legislation to assist with the expansion of the dormant assets scheme (DAS). The expanded DAS will allow dormant financial accounts and certain dormant assets from the pensions, insurance, investment and wealth management and securities sectors to be monetised (if applicable) and used for good causes.

Under the expanded scheme, certain assets must be monetised before transfer into the scheme and, without this measure, this transfer would be classed in certain cases as a disposal for capital gains tax (CGT) purposes, resulting in either a gain or a loss. This new measure ensures that a CGT charge does not immediately arise when identified dormant assets are liquidated and their monetary value transferred into the expanded DAS. Instead, a CGT charge will only arise when an individual identifies that their assets have been transferred into the scheme and they receive a payment. This measure will take effect once the Dormant Assets Bill becomes law.

Income tax exemption for Household Support Fund payments

The Government will legislate in Spring 2022 to clarify that payments made through the Household Support Fund, and through similar schemes in the devolved administrations, will be exempt from income tax.

Employment taxes

National Insurance contributions (NICs) and the Health and Social Care Levy

As previously announced by the Prime Minister in September 2021, the Government has legislated for a new 1.25% Health and Social Care Levy, to support the National Health Service and equivalent bodies in social care across the UK. The new levy will be subject to the same reliefs, thresholds and requirements of the qualifying NICs (Class 1, Class 1A, Class 1B or Class 4) in respect of which the levy is payable. The levy will not apply to Class 2 NICs or Class 3 NICs.

The levy will be effectively introduced from April 2022, when NICs for working age employees, self-employed individuals and employers will increase by 1.25% and be added to the existing NHS allocation. Individuals above State Pension age will not be affected by the temporary increase to National Insurance contributions for the 2022-23 tax year only.

From April 2023 onwards, the NICs rates will decrease back to 2021-22 tax year levels and will be replaced by the new 1.25% Health and Social Care Levy. Individuals working above State Pension age will be liable to pay the levy from April 2023.

Rates

National Insurance thresholds for 2022-23 will rise in line with the Consumer Prices Index (CPI) figure of 3.1% (including the rates of Class 2 and Class 3 NICs). This excludes the Upper Earning Limit and Upper Profit Limit as these will remain aligned to the higher rate income tax threshold in 2021-22, and the two will remain in alignment until April 2026. The Government will legislate for any changes via a Statutory Instrument ahead of the start of the tax year.

National Minimum and National Living Wage

With a view to supporting the living standards of low paid workers, the Government reaffirmed the previously announced increases to the National Living Wage (NLW) and National Minimum Wage (NMW) rates.

In line with the recommendations made by the Low Pay Commission, with effect from 1 April 2022 the hourly NLW/NMW rates will be:

- 23 and over – £9.50 an hour (an increase of 6.6%)
- 21 to 22 – £ 9.18 an hour (an increase of 9.8%)
- 18 to 20 – £ 6.83 an hour (an increase of 4.1%)
- 16 to 17 – £4.81 an hour (an increase of 4.1%)
- Apprentices – £4.81 an hour (an increase of 11.9%)

Changes in the Universal Credit taper rate

The Budget includes further changes to Universal Credit designed to maximise the incentive to work. The taper rate is to be reduced from 63% to 55%, meaning claimants will keep an additional 8p for every £1 of net income earned.

Power to make temporary modifications of taxation of employment income

The Government confirmed measures will be included in Finance Bill 2021-22 to grant HM Treasury the power to make regulations, under ministerial direction, to provide income tax and National Insurance relief on specific employee expenses or benefits-in-kind in the event of a disaster or emergency of national significance.

Comment: Whilst the added flexibility this power will afford is to be welcomed, it is hoped that the Government will recognise the need to review the current expenses and benefits system to ensure that this is better aligned to modern working practices.

Apprenticeships / Apprenticeship Levy

The Government confirmed that it is increasing apprenticeships funding to £2.7bn by 2024-25, the first increase since 2019-20. This includes the Government continuing to meet 95% of the apprenticeship training cost for employers who do not pay the Apprenticeship Levy and delivering apprenticeship system improvements for all employers by supporting flexible apprenticeship training models.

By April 2022, the Government will consider changes to the provider payment profiles, aimed at giving employers more choice over how the apprenticeship training is delivered.

Global Talent Network

As part of the Government's implementation of changes to the UK's immigration system to bring highly skilled people to the UK, it will launch a Global Talent Network to attract talented individuals working in key science and technology sectors. This network will work with business and research institutions to identify UK skills needs and source talent in overseas campuses, innovation hubs and research institutions to bring to the UK.

Pensions: Top-up for low earners in net pay arrangements

Following the response to a call for evidence on pensions tax relief administration, the Government has announced that it will introduce legislation in a future Finance Bill to make top-up payments directly to low-earning individuals saving in a pension scheme using a net pay arrangement.

These top-ups will start to be paid from 2025-26 in respect of contributions made in 2024-25 onwards and will help to better align outcomes with equivalent individuals saving into pension schemes using relief at source.

Pensions: Scheme Pays Reporting

As announced in the Government's Tax Policies and Consultations Command Paper published on 23 March 2021, the Government will introduce legislation to extend the Scheme Pays reporting and payment deadlines. This will allow an individual to ask their pension scheme to settle their annual allowance charge of £2,000 or more from a previous tax year by reducing their future pension benefits. This measure will apply to all individuals within scope of a retrospective annual allowance tax charge of £2,000 or more, who meet the conditions to qualify to use Scheme Pays, and not just those individuals affected by the age discrimination found in the 2015 public service pension reforms. The changes will have effect from 6 April 2022, but in effect will be retrospective from 6 April 2016.

Pensions: Taxation of public service pension reform remedy

Also as announced in the Command Paper published on 23 March 2021, the Government will introduce legislation in Finance Bill 2021-22 with supporting regulations to ensure the pensions tax framework applies as intended to the public service pension reforms and addresses the discrimination of affected public servants. The changes will have retrospective effect from 1 April 2015 and this measure will take effect from 6 April 2022.

Pensions: State Pension

Given that earnings data has been distorted by the pandemic, the Government is legislating to temporarily suspend the earnings element of the 'Triple Lock' used to uprate the State Pension and Pension Credit. For 2022-23 the new and basic State Pension, Pension Credit and survivors' benefits in industrial death benefit will increase by the higher of CPI or 2.5%.

Van and fuel benefit charge increases

- The van benefit and company car and van fuel benefit charges will increase in line with inflation from 6 April 2022. The van benefit charge will increase to £3,600, the van fuel benefit will increase to £688 and the company car fuel benefit will increase to £25,300.

- The Government will legislate in Finance Bill 2021-22 to amend the company car tax legislation so that the tax system continues to function as intended where vehicles have been certified through the new comprehensive vehicle type approval scheme due to be introduced in 2022.

Indirect taxes

VAT: threshold and rates

Unsurprisingly, the VAT registration (£85,000) and deregistration (£83,000) thresholds remain unchanged, having previously been announced as frozen for a period of two years from 1 April 2022. VAT rates also remained unchanged.

Plastic packaging tax

The UK's plastic packaging tax (PPT) will be introduced from 1 April 2022. The tax will be levied at £200 per tonne of plastic packaging that contains less than 30% recycled plastic, with a minimum threshold of 10 tonnes. The tax applies to both manufacturers and importers of plastic packaging.

The Government will legislate in Finance Bill 2021-22 to make amendments to the PPT legislation to allow the tax to operate as the Government intended, ensure that the UK complies with international agreements, and make sure that HMRC has the appropriate framework to administer the tax.

Many businesses within the PPT regime are currently reviewing supply chains to ensure readiness from 1 April. The latest updates are largely administrative in nature. Businesses will no doubt welcome further technical details as the implementation date approaches.

Fund management fees

As widely anticipated, the Government has announced that it will consult on options to simplify the VAT treatment of fund management fees in the coming months.

Electronic sales suppression

Electronic sales suppression (ESS) occurs where a business deliberately manipulates its electronic sales records in order to hide or reduce the value of individual transactions.

As expected, Finance Bill 2021-22 will introduce penalties and information gathering powers in relation to ESS, to strengthen the Government's approach to tackling the possession, making, supplying and promotion of ESS software and hardware.

VAT: exemption for dental prostheses imports

The Government will legislate in Finance Bill 2021-22 to extend the current VAT exemption for dental prostheses supplied by registered dentists and other dental care professionals or dental technicians to imports of dental prostheses by these persons.

This will ensure the VAT treatment for such prostheses supplied into and within the United Kingdom, including between Great Britain and Northern Ireland, is consistent. This measure will take effect on or after the date of Royal Assent of Finance Bill 2021-22 and will apply retrospectively from 1 January 2021.

Northern Ireland second-hand margin scheme - interim arrangement

The Government will legislate in Finance Bill 2021-22 to extend the second-hand margin scheme for motor vehicles to apply in Northern Ireland on a limited basis in respect of motor vehicles sourced from Great Britain for the period until the Second-hand Motor Vehicle Export Refund Scheme is implemented (see below). As a result, motor vehicles first registered in the United Kingdom prior to 1 January 2021 will be available to sell under the VAT margin scheme in Northern Ireland during that time.

This measure will take effect should a relevant agreement be reached with the EU and will apply retrospectively from 1 January 2021.

Second-hand Motor Vehicle Export Refund Scheme

The Government will legislate in Finance Bill 2021-22 to be able to introduce a Second-hand Motor Vehicle Export Refund Scheme. Businesses that remove used motor vehicles from Great Britain for resale in Northern Ireland or the EU may be able to claim a refund of VAT following export.

This will ensure that Northern Ireland motor vehicle dealers will remain in a comparable position as those applying the VAT margin scheme elsewhere in the UK.

Insurance premium tax

The criteria for determining a location of risk for insurance premium tax (IPT) will be moved to primary UK legislation.

Although there is no change in the rules themselves, previously insurers relied on regulatory legislation and/or an EU directive. This measure will provide clarity, as well as ensuring that the risks located outside the UK remain exempt from UK IPT.

Introduction of public notice powers for non-duty tariff changes

The Government will legislate to amend the Taxation (Cross-border Trade) Act 2018 so that technical updates to tariff legislation, which do not alter the rate of an import duty, will be made by public notice instead of by regulations. Routine technical changes to the UK's tariff schedule will be able to be implemented more quickly, which may benefit stakeholders who refer to tariff legislation for information.

Other indirect tax updates

- Alcohol duties: Planned increases to current alcohol duties will be cancelled. From 2023, alcohol duties will be reformed to make the regime simpler - the system will only have six main bands compared to 15 currently with rates based on the alcohol strength of the drink. In addition, the special rate for sparkling wines will end; there will be a new small producers' relief for alcohol duty (based on small brewers relief, but it will also apply to cider and other lower-strength drinks); and, there will be a new draught relief for alcohol duty (which means that draught beer and cider will attract 5% less in alcohol duty). A consultation document has been published.

- Air passenger duty (APD): From April 2023, there will be a new lower rate of APD on domestic flights. There will also be a new 'ultra-long haul' rate for flights over 5,500 miles.

- Tobacco duty rates: The duty rates on tobacco products and Minimum Excise Tax increased with effect from 6pm on 27 October 2021. In addition, as announced at Budget 2020, the Government will legislate in Finance Bill 2021-22 to introduce tougher sanctions to tackle tobacco duty evasion. These sanctions will be linked to the Tobacco Track and Trace System (TTS), with enforcement by HMRC and Trading Standards.

- Fuel duty: Fuel duty has been frozen for 2022-23. Vehicle Excise Duty (VED) rates for heavy goods vehicles (HGVs) will remain frozen in 2022-23, and the HGV Levy will be suspended for another 12 months from August 2022. In addition, until 30 April 2022, unlimited cabotage movements of heavy goods vehicles (HGVs) within Great Britain will be allowed for up to 14 days after arriving in the UK on a laden international journey, without these operators needing to pay VED. The legislative change will take affect from 28 October 2021.

- Vehicle emission certification: The Government will legislate in Finance Bill 2021-22 to amend capital allowances (the applicable carbon dioxide emissions figure to be used will be identified as that arising from the Worldwide Harmonised Light Vehicle Test Procedure), Company Car Tax (CCT) and VED legislation so that the tax system continues to function as intended where vehicles have been certified through the new comprehensive vehicle type approval scheme due to be introduced in 2022.

- Rebated diesel and biofuels: The Government will legislate in Finance Bill 2021-22 to make amendments to legislation that restricts use of rebated (red) diesel and rebated biofuels from 1 April 2022.

- Gaming duty: The Government will legislate in Finance Bill 2021-22 to raise the gross gaming yield (GGY) bandings in line with RPI for accounting periods beginning on or after 1 April 2022.

- Landfill tax: The standard and lower rates of landfill tax will increase in line with the Retail Price Index (RPI), rounded to the nearest 5 pence. The changes will have effect from 1 April 2022.

- Landfill Communities Fund value: This will be set at £30.8 million for 2022-23, with the cap on contributions by landfill

operators remaining at 5.3% of their landfill tax liability.

- Carbon Price Support rates for 2023 to 2024: The Government will freeze the Carbon Price Support rate per tonne of carbon dioxide emitted at £18 for 2023 to 2024, in Great Britain.

- Aggregates levy: The Government has frozen the aggregates levy rate for 2022 to 2023.

Property taxes

Residential property developer tax

The Government has published its response to the recent consultation on the design of the new residential property developer tax (RPDT), which is to be introduced from April 2022. It has also confirmed that the tax will be charged at a rate of 4% on profits from residential property development activity, to the extent that they exceed an annual allowance of £25m. Build to Rent assets and certain communal housing – such as care homes and purpose-built student accommodation – are to be excluded from the scope of the tax.

The Government has confirmed that the administration and collection of RPDT will be aligned with that for corporation tax, with no separate registration being required. Legislation for RPDT is expected be included in Finance Bill 2021-22, with the tax applying from 1 April 2022.

Comment: The exclusion of build to rent from RPDT is welcome. The 4% rate and the confirmation of a £25m annual allowance, whilst not surprising, are also welcome, but it is to be hoped that the £25m annual allowance will be increased over time in line with inflation. However, taxpayers may be disappointed to note that the Government does not intend to allow interest and financing costs to be deductible in arriving at a company's profits subject to RPDT.

Business rates

The Government has published its long-awaited final report on its review of business rates. The report sets out that business rates will be retained, subject to a number of changes. These are:

- More frequent revaluations (every three years) starting in 2023

- A new investment relief for businesses investing in green technology

- A new 100% business improvement relief, under which if a business makes improvements to its premises, there will be no additional business rates to pay for 12 months

- A temporary 50% relief (subject to a cash cap of £110,00) for businesses in the retail, leisure and hospitality sectors for 2022- 2023

- Freezing of the multiplier for 2022-23

Real Estate Investment Trusts

Following on from the consultation on Asset Holding Companies (see above), the Government has published draft legislation making changes to the real estate investment trust (REIT) regime. The draft clauses make a number of changes to the conditions which must be met in order for a company or group to qualify as a UK REIT.

The requirement for the REIT company / group principal to be listed has been removed where the REIT is effectively wholly owned by institutional investors.

Comment: Where relevant, this could reduce the running costs of REIT structures. We note that draft legislation refers to a 99% holding requirement, although the Policy Paper comments refer to a 70% threshold – confirmation will be sought from HMRC on this point.

In addition, the relaxation of 'Holder of Excessive Rights' rules for certain investors in REITs can allow for simplified holding structures for captive / 'private' REITs.

There have also been simplifications for ongoing reporting requirements – the Balance of Business tests will be simplified where a REIT's property business activities represent at least 80% of its profits and assets.

Capital gains tax reporting of property disposals

The time limit for submitting capital gains tax (CGT) returns and making the associated payments of tax on property disposals has been extended from 30 days to 60 days after the date of completion. This follows a recommendation from the Office of Tax Simplification.

For disposals completing on or after 27 October 2021, if a UK resident disposes of a UK residential property resulting in a CGT liability being due, or a non-UK resident makes any disposal of UK land or property, there is a requirement to submit a CGT return and pay any resulting tax within 60 days after the date of completion.

The legislation is also being amended to clarify that if a UK resident disposes of a mixed-use property, it is only the element relating to residential property that is reportable within the 60 day window.

Other property tax changes

The annual tax on enveloped dwellings (ATED) charges will rise by 3.1% from 1 April 2022 in line with the September 2021 Consumer Price Index.

Green measures

With COP26 being hosted by the UK shortly after the Autumn Budget, all eyes were on how the Chancellor would support the future greening of the economy. As the Treasury only released its Net Zero final report in the days before the Budget, it is perhaps not surprising that there are limited green tax measures in this Budget, as work is still ongoing in that policy area.

The Budget speech itself was surprisingly light on green measures, although some spending announcements had been trailed in advance of the Budget and more were described in the detail.

Given the interest in this area, we have highlighted some of these below.

Carbon capture and storage

The HyNet and East Coast Cluster projects were announced as 'track 1' clusters, with the Acorn project named a 'reserve' cluster. The track 1 clusters will be advanced with a view to becoming operational in the mid-2020s. The Budget reaffirmed investment of £1bn in the Carbon Capture Usage & Storage Infrastructure Fund, although this is now spread over a longer time.

Hydrogen economy

An investment of £140m will be made to establish the Industrial Decarbonisation and Hydrogen Revenue Support scheme and the investment of £240m in the Net Zero Hydrogen Fund was confirmed.

Low carbon electricity

The Budget confirms investment of £380m in the UK's offshore wind sector, up to £1.7bn in a large-scale nuclear project, and £120m for a Future Nuclear Enabling Fund.

Greener transport

A total of £6.1bn is set aside to support the policies and strategy set out in the Transport Decarbonisation Plan, including an additional £620m for public electric vehicle charging points in residential areas and targeted plug-in vehicle grants, £710m of new funding for 'active travel' and a new dedicated £1.2bn commitment for bus transformation deals.

Greener buildings

A commitment of £3.9bn was announced to ensure buildings in England and Wales are warmer and cheaper to heat. The Government will invest £450m to grow the heat pump market in England and Wales, £1.4bn to decarbonise the public sector estate in England, and £1.75bn across the Home Upgrade Grant and Social Housing Decarbonisation Fund to support low-income households in England to make their homes more energy efficient.

Tax management and administration

Notification of uncertain tax treatments (UTT) by large businesses

The Government has confirmed that, as had previously been announced, it will legislate in Finance Bill 2021-22 to introduce a new requirement for large businesses to notify HMRC when they take a tax position in their returns for VAT, corporation tax, or income tax (including PAYE) that is uncertain.

Businesses will need to notify HMRC where the tax advantage is expected to be over £5m for a 12-month period and one of the triggers applies (subject to certain exemptions).

The latest announcement confirms that only two triggers will apply when the UTT regime comes into force from 1 April 2022: that a provision has been made in the accounts for the uncertainty, or that the position taken by the business is contrary to HMRC's known interpretation (as stated in the public domain or in dealings with HMRC).

A third trigger – which would have applied where there was a substantial possibility that "a tribunal or court would find the taxpayer's position to be incorrect" – appears to have been removed. However, the announcement states that the Government will continue to consider this third trigger for potential inclusion in the rules at a later stage.

Comment: During the recent consultation, many stakeholders were concerned about the subjective nature of the third trigger and will welcome the news that, for the time being at least, this trigger will not form part of the regime. However, it remains to be seen whether the Government will re-introduce it.

Making Tax Digital for Income Tax Self-Assessment (MTD for ITSA)

As announced in September 2021, the planned start date for MTD for ITSA has been delayed by one year and will now commence on 6 April 2024 for individuals and on 6 April 2025 for general partnerships. Limited liability partnerships (LLPs) and any partnership with a corporate member will not be brought into MTD for ITSA until a later, unspecified date.

As a result of the delay to the start of MTD for ITSA, the planned reform of the penalties for late submission and late payment of tax for ITSA has also been delayed by one year. This will now come into effect on 6 April 2024 for individuals who are within the scope of MTD for ITSA and from 6 April 2025 for all other taxpayers.

Making Tax Digital for VAT: Late submission and payment penalties

Despite a delay in the implementation of MTD for ITSA (see above), the new late return submission and late payment penalties for VAT will come into effect for VAT registered businesses for accounting periods starting on or after 1 April 2022. Originally it had been intended that the ITSA and VAT penalty regimes would become effective from the same date.

Diverted profits tax: Interaction with corporation tax closure notices and amendment to relieving provisions

Draft legislation, which takes effect from 27 October 2021, has been published to extend the time period in which companies that have received a diverted profits tax (DPT) charging notice are able to amend their corporation tax returns during the DPT charging notice period. The period is extended from the first 12 months of the review period to any time up until the last 30 days of the review period.

Such amendments can be made so far as they remove taxable diverted profits and ensure that these profits are subject to corporation tax rather than DPT. In addition, the draft legislation clarifies that such amendments will take effect on the date of the amendment and not the date on which HMRC issues a corporation tax enquiry closure notice.

Additionally, HMRC will be precluded from issuing a corporation tax enquiry closure notice where a DPT charging notice review period is ongoing. This change applies from 27 October 2021 but will also impact any application to the First-tier Tribunal for a closure notice made on or after 27 September 2021, where the Tribunal issues a direction on or after 27 October 2021 which requires HMRC to issue a closure notice.

Comments: The change and clarification regarding corporation tax return amendment timing and effect and its interaction with DPT is very welcome. This rectifies and puts into legislation a matter which we have previously raised with HMRC.

The legislative change preventing the issuance of a closure notice appears to be in response to the First-tier Tribunal decision in Vitol Aviation and Ors on 27 September 2021, where HMRC was directed by the Tribunal to issue closure notices to give effect to adjustments which were the subject of DPT charging notices. It is unclear how many taxpayers would be affected by the application of this restriction to closure notice applications made on or after 27 September 2021, ie a month before the draft legislation was issued, but this appears to introduce an unwelcome element of retrospective legislation.

Mutual Agreement Procedure decisions relating to the diverted profits tax

It has been announced that legislation will be introduced to confirm that effect can be given to the outcome of an application for relief from DPT under Mutual Agreement Procedure (MAP) in accordance with a relevant Double Tax Treaty.

This legislation has not yet been published in draft form, but will be introduced in the Finance Bill 2021-22, and is expected to have effect in relation to any MAP decisions involving DPT issued after 27 October 2021.

Comment: Although the detail of the proposed legislation is yet to be seen, this change seems to confirm that DPT can be subject to a MAP process which is an important and welcome clarification for companies affected by this issue.

Promoters of tax avoidance

As announced on 23 March 2021, and following consultation, the Government has confirmed that it will legislate in Finance Bill 2021-22 for further measures targeted at promoters of tax avoidance arrangements.

Discovery assessments

There are also proposed specific changes relating to discovery assessments, which are intended to allow HMRC to recover High Income Child Benefit Charge or Gift Aid in certain circumstances.

What happens next?

On Thursday 4 November, we will see the publication of the Finance Bill 2021-2022, providing the detail on tax measures to be implemented now. If the Government follows the timetable for Autumn Budgets set out in 2017 (when there was a proposal to move to one fiscal event per year) we may see Royal Assent to the Finance Bill in the first quarter of 2022.

As a reminder, some of the draft legislation for the Finance Bill has previously been released for consultation – this includes draft clauses relating to the notification of uncertain tax treatments regime, and the new residential property developer tax.

In addition, we expect a 'Tax Administration and Maintenance Day' with further announcements before the end of the year (perhaps on similar lines to the Tax Policy and Consultations Day that followed the Spring Budget earlier this year). This could include some of the other consultations promised in the Budget, eg VAT on fund management fees and an online sales tax.

Further information

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