10 March 2021

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1. General

1.1 Budget 2021: More anti-avoidance measures

The Budget continues the Government’s focus on tackling tax avoidance, with changes designed to clamp down on promoters of tax avoidance schemes, a change to penalties to encourage taxpayers not to challenge HMRC decisions, and a new power for HMRC to obtain information from financial institutions.

A range of measures to clamp down on those promoting tax avoidance schemes are to be introduced. HMRC will receive increased powers to obtain information, and amendments will be made to the Disclosure of Tax Avoidance Schemes and the Promoters of Tax Avoidance Schemes regimes. How the General Anti-abuse Rule applies to partnerships will also be clarified.

Non-compliance penalties on follower notices will be changed to incentivise taxpayers to accept HMRC’s decision at an earlier stage. The maximum penalties for non-compliance attached to follower notices will be reduced from 50% to 30%. A further penalty of 20% will, however, be charged on those taxpayers who are found to have acted ‘unreasonably’ in continuing to litigate against HMRC’s decision.

HMRC will have a new civil information power to obtain information about taxpayers from financial institutions. Currently, HMRC must obtain permission from the tribunal before getting this information directly, so although it will save HMRC time and effort, the loss of independent oversight is a significant shift. It will be balanced by a number of taxpayer safeguards.

These measures were all announced as plans previously. Their inclusion in the Budget just confirms that they will be going ahead now that the consultations have been completed. They will be effective from the date of Royal Assent to Finance Bill 2021.

In addition, a new reporting requirement will be introduced requiring digital sales platforms to share information with HMRC on sellers using the platform.

www.gov.uk/government/publications/amending-hmrcs-civil-information-powers

2. Private client

2.1 HMRC contacting former traders who claimed COVID-19 support

HMRC has begun to contact those that it believes may have claimed support under the self-employment income support scheme (SEISS) to which they were not entitled. In the Budget, funds were set aside to assist HMRC in tackling COVID-19 support related fraud.

The CIOT reports that HMRC has sent emails to SEISS grant recipients who informed HMRC on their 2018/19 or 2019/20 returns that they had ceased to trade. As a requirement of claiming the grants was that trade was expected to continue, this means that they were potentially ineligible for the grants. Recipients are required to respond by 22 March or will be prevented from making claims for the newly announced fourth and fifth grants. They are required either to provide evidence of the continued trade or repay the grant.

Agents have not been copied into the emails, which may delay resolution. Those contacted have not necessarily made incorrect claims, as for example the cessation of trade could have been unexpected. At Budget, additional funding was announced for HMRC to deploy more staff on work to tackle incorrect COVID-19 support claims.

2.2 Budget 2021: Sweeping changes to self-assessment penalties from 2023

The current penalty regime will change to a points-based system for late submission, and a percentage-based penalty for late payment. This is effective from 6 April 2023 for some taxpayers, and will be universal the year after.

Late submission penalties will be points-based. Individuals will incur a point for each failure to meet a submission deadline and, once the points threshold is reached, a fixed £200 penalty applies for each failure.

The threshold will be 2 points for taxpayers who file their tax return annually, but a higher threshold can apply where submissions are due more frequently than annually. Penalty points will also expire after 24 months of continued compliance with filing deadlines.

The new late payment penalty regime will apply penalties calculated as a percentage of underpaid tax at set trigger points. The first penalty will be charged after 15 days at 2%, or will be charged at 4% if between 16 and 30 days late. A second penalty will be charged at an annualised rate of 4% from day 31, calculated on a daily basis.

Time to Pay arrangements and reasonable excuse provisions will still apply to help those who have difficulty meeting their payment obligations. Taxpayers will retain the right to appeal penalties.


2.3 Budget 2021: Further COVID-19 support for the self-employed

As well as releasing details of the expected fourth grant under the self-employment income support scheme (SEISS), the Chancellor has confirmed that a fifth grant will be available, extending support to the end of September. Eligibility for these grants will be based on data from 2019/20 tax returns, so they will be available to around 600,000 of the newly self-employed who were excluded from the previous support.

The fourth grant has been set as 80% of three months' worth of average trading profits, designed to provide support for February to April 2021. To be eligible, traders must have filed a self-assessment return for 2019/20 by 2 March. Applications will open later in April.

The fifth grant will cover May to September, and is two-tier. For those traders whose turnover was reduced by 30% or more in the tax year ended 5 April 2021, it will be worth 80% of three months' worth of average trading profits. If the turnover reduction was under 30%, it will only be worth 30% of three months' worth of average trading profits. As the grant technically covers five months, but is calculated based on three months' worth of average trading profits, the per month levels of support are 48% and 18%.

All other eligibility criteria remain the same as for the previous grants, but based on the most recent data from 2019/20 tax returns, as they were due to be filed by 31 January 2021. This means that those self-employed who began to trade in 2019/20, or too late in 2018/19 to be eligible, may now be able to claim support.

Only those self-employed persons whose businesses have been adversely affected by the pandemic in the period in question will be eligible, provided that they are still trading or intending to resume. As with the previous grants, each grant will be paid as one lump sum with a separate application process. They will be taxable as trading income in the 2021/22 tax year.

Another Budget measure gives the Government the power to clawback the grant from a self-employed individual who was entitled to the grant at the time of claim, but whose circumstances subsequently changed such that they were not entitled. Current measures only allow clawback if the individual was not entitled to the grant at the time they claimed it. This will take the form of a 100% tax charge on the overpaid grant, and only applies to the fourth and fifth grants.

2.4 Budget 2021: Personal allowance, IT bands, and CGT allowance frozen

The personal allowance for IT, rate bands for IT, and two NIC limits, will all rise in line with inflation on 6 April 2021 and then be fixed at that level until 5 April 2026. The pension lifetime allowance (LTA) and the annual exempt amount (AEA) for CGT will be fixed at their current levels until 5 April 2026.

As previously announced, the IT personal allowance and basic rate band will increase, in line with inflation, to £12,570 and £37,700 respectively from 6 April 2021. These thresholds will be fixed at these levels for the following four tax years until April 2026.

The respective upper earnings limit and upper profits limit for Class 1 and Class 4 NICs will also increase in line with inflation and will remain aligned with the higher rate threshold of £50,270 until April 2026.

The CGT AEA for the 2020/21 tax year is £12,300 for individuals and a maximum of £6,150 for trustees. It has now been announced that it will remain at these levels up to and including the 2025/26 tax year.

The LTA is the value of a pension fund an individual is allowed to accrue before suffering additional tax charges when benefits are taken. The current LTA of £1,073,100 was due to increase with inflation on 6 April 2021. This announcement sees the inflation linking removed until at least 2026.

The Conservative manifesto committed the Government to not raising the IT and NIC rates, but freezing allowances that normally rise with inflation will increase tax revenues more gradually.

2.5 Budget 2021: Other measures affecting private clients

A number of other minor changes, and rates being fixed, were included in the Budget documents. The more important ones are listed below.

These are:

- the starting rate band for savings income will stay at its current level;
- the current ISA subscriptions limits have been fixed until April 2022;
- the anti-avoidance rule when claiming relief for gifts of business assets will be amended to make sure it operates as intended;
- the temporary tax exemption for home office expenses reimbursed by employers will be extended to 5 April 2022;
- the IT and NICs exemptions for providing or reimbursing COVID-19 antigen tests will be introduced and extended;
- collective money purchase pension schemes are to be introduced;
- technical changes have been made to the off-payroll working rules;
- technical changes have been made to the termination payment rules;
- the holdover relief rules have been clarified to confirm that gifts by non-UK resident individuals to a company are not eligible for relief; and
- an existing relaxation to the Enterprise Management Incentive or ‘EMI’ scheme qualifying conditions has been extended.


2.6 Budget 2021: 2% SDLT surcharge on non-residents confirmed

As announced in Budget 2020, a 2% surcharge above existing residential SDLT rates will be introduced for acquisitions of residential property by non-UK residents from 1 April 2021.

The Government has confirmed that a proposed 2% SDLT surcharge will apply to purchases of residential property in England and Northern Ireland by non-residents with an effective date from 1 April 2021. The surcharge will apply in addition to the existing rates, including the 3% surcharge that applies to acquisitions of second properties.

Draft legislation providing for the changes, which will apply to purchases by both individuals and ‘non-natural persons’ such as companies, trusts and partnerships, was published in 2020. The draft legislation includes details on those treated as non-UK resident for the purposes of the charge, with definitions that differ from those for the purposes of other UK taxes.


2.7 Budget 2021: SDLT holiday extended

The SDLT nil rate band for residential properties will remain at £500,000 until 30 June 2021. It will then taper off, reducing to £250,000 until 30 September 2021 before returning to its previous level of £125,000 from 1 October 2021.

On 8 July 2020, the Chancellor announced that the SDLT nil rate band, being the first slice of consideration on which the SDLT rate is 0%, would increase from £125,000 to £500,000. This was a temporary measure and was planned to end on 31 March 2021.

The Government has now confirmed that the nil rate band will remain at £500,000 until 30 June 2021. It will then reduce to £250,000 from 1 July 2021 before returning to £125,000 from 1 October 2021.


3. Trusts, estates and IHT

3.1 Budget 2021: IHT nil rate band and residential nil rate band frozen

The IHT nil rate band (NRB) and the residence nil rate band (RNRD) will remain at their current level up to and including the 2025/26 tax year.

The NRB threshold, above which inheritance tax becomes payable, will remain at £325,000 until April 2026. The RNRB, which applies when taxpayers pass their main residence to their direct descendants on death, will also be kept at £175,000 for this period. The RNRB is reduced by £1 for every £2 that an estate exceeds £2m in value and this £2m threshold will also remain fixed until April 2026.

The freezing of allowances is no surprise, given that the NRB last changed in 2009. Broader changes to the inheritance tax system may still be on the cards, with further HMRC consultation documents expected on 23 March.


4. PAYE and employment

4.1 Budget 2021: Coronavirus Job Retention Scheme extension

The Coronavirus Job Retention Scheme (CJRS) is being extended until 30 September 2021. This is to protect jobs as the COVID-19 restrictions are eased gradually over a prolonged period.

During the COVID-19 pandemic, the Government has provided support to businesses and protected jobs by providing furlough grants covering a proportion of employees’ salaries.

The operation of the CJRS will not change for the months of May and June. Broadly, this means employers will receive a grant equal to 80% of furloughed employees’ remuneration for the hours they do not work. This allows employees to be furloughed flexibly, as business activity returns to normal.

The amount that can be claimed by businesses will be gradually reduced from July onwards. For the month of July, employers will only receive 70% of furloughed employees’ remuneration. For August and September, the figure will be reduced to 60%.

This reduction will be made up by increased employer contributions. For the month of July, the Government will introduce an employer contribution of 10% towards the pay for unworked hours, up to a monthly cap. For August and September this will be 20%.


5. Business tax

5.1 Budget 2021: CT rates to increase from 2023

The main rate of CT will rise to 25% from 1 April 2023, but a new small-profits rate of 19% will apply to smaller companies. The Diverted Profits Tax (DPT) rate will rise from 25% to 31%, and the Government will review the overall tax burden on banking companies.

The main CT rate for company profits over £250,000 will be 25%, with companies with profits under £50,000 continuing to be taxed at 19%. Profits in between these limits will be taxed at a tapered rate. A rise in CT rates was widely expected, though this will not come into effect until the financial year starting 1 April 2023. The DPT rate will be similarly increased by 6%, to ensure that it continues to discourage companies from diverting profits offshore. The new rates will be treated as substantively enacted on the passing of Finance Bill 2021 by the House of Commons.
HMRC is concerned that the increase CT rates will result in the UK being a less attractive market for banks, which are also subject to an 8% surcharge on banking profits. HMRC will review the overall tax burden on banks later in 2021.


5.2 Budget 2021: Carry-back loss relief extended

The CT and IT trading loss carry back rules have been temporarily relaxed. Incorporated and unincorporated businesses will be able to carry back trading losses for three years, rather than the usual one year.

This relief is being temporarily extended to support businesses affected by the pandemic. It will be available for losses incurred in the two-year period from 2020 to 2022, and is subject to a cap of £2 million for each year of loss. The cap also applies to groups of companies. Where the claim does not, and could not, exceed £200,000, the claim can be made outside of the tax return. A claim for a loss can be made once the extent of the loss has been established now, but HMRC will not give effect to the claim or make repayments until the Finance Bill receives Royal Assent.

The Government is also introducing technical changes to the CT loss relief rules, to ensure they operate as intended. The changes focus on transfers of trade following a change in ownership, group loss relief, computations of loss restrictions and administrative requirements.


5.3 Budget 2021: New super-deduction and 50% first-year allowance

A 130% super-deduction for expenditure on new, qualifying plant and machinery will be introduced for two years from 1 April 2021. A first year allowance of 50% will also be available for expenditure that ordinarily qualifies for special rate relief.

The super-deduction and 50% first year allowance will only be available to companies. The 50% first year allowance will be available for expenditure on items that would usually attract the special rate of relief of 6%. Used and second-hand assets will be excluded and the general first year allowances exclusions will apply. These reliefs will not be available for expenditure in connection with contracts entered into prior to 3 March 2021.

It was also confirmed in the Budget that the temporary increase in the Annual Investment Allowance (AIA) for plant and machinery to £1m has been extended by a year. This was announced previously, and the limit will have effect from 1 January 2021 to 31 December 2021.


5.4 Budget 2021: Tax relief for Freeports

**Businesses operating in designated Freeport tax sites will benefit from enhanced capital allowances, SDLT relief, and business rates relief. The conditions to qualify for these generous reliefs are, however, quite strict.**

The Government announced eight Freeports in England in the 2021 Budget. Additional freeports are expected to be announced later this year. These sites will enjoy:

- an enhanced Structures and Buildings Allowance of 10%, compared to the 3% standard rate. This will apply to structures or buildings brought into use by 30 September 2026;
- 100% capital allowances relief on qualifying plant and machinery incurred up to and including 30 September 2026;
- full SDLT relief for qualifying land and buildings, available for purchases up to and including 30 September 2026; and
- full business rates relief for five years from the point at which each beneficiary first receives relief.

These reliefs will apply until 30 September 2026. Subject to parliamentary approval, employer’s NICs relief will also apply from April 2022 to April 2026. It may be extended to April 2031.


5.5 Budget 2021: Repeal of legislation relating to Interest and Royalties Directive

**The Government will repeal the domestic legislation that gives effect to the EU Interest and Royalties Directive in the UK. From 1 June 2021, withholding taxes may apply to payments of annual interest and royalties from one connected EU company to another.**

When it was part of the EU, the UK benefited from the EU Interest and Royalties Directive. This Directive stipulated that no withholding taxes should apply on payments of annual interest and royalties from one connected EU company to another. Following Brexit, the repeal of the domestic legislation implementing the Directive means that EU companies will cease to benefit from automatic withholding tax exemptions on payments from UK companies. Such payments must now occur on the same terms as payments to companies based elsewhere in the world, under the terms of any relevant double taxation agreement. Exemptions from withholding tax may still apply to some payments, but only if they are available under relevant double taxation agreements.


5.6 Budget 2021: Additional business tax announcements

*In addition to those included in previous articles, the Chancellor made several further business tax announcements.*

These include the following previously announced measures:

- technical changes to ensure that the hybrid mismatch rules and the Corporate Interest Restriction operate as intended;
- changes to prevent abuse of the Construction Industry Scheme;
- a cap on R&D relief for small and medium enterprises, which will take effect for accounting periods beginning on or after 1 April 2021; and
- confirmation that repayments of business rates relief are tax deductible for both IT and CT.
The Government will hold consultations on the following topics in 2021:

- a wider review of R&D incentives, including eligibility of cloud computing and data expenditure;
- the experience of large businesses with tax administration in the UK; and
- the implementation of the OECD’s model reporting rules for operators of digital platforms.

New powers will also be introduced to enable the Government to implement the OECD’s model reporting rules in the UK. These rules require operators of digital platforms to report tax information to tax authorities regarding sellers using the platform. Reporting is not expected to take effect until 2023.

The CA has agreed with the UT’s application of the consortium relief anti-avoidance provisions. A causative test should be used to determine whether or not arrangements prevent a link company from exercising control.

Enquiries had been opened into the CT returns of the taxpayers, which included investigating consortium claims. After an extended period, the taxpayers applied to the FTT to direct HMRC to close the enquiries. The issue before the FTT was whether or not anti-avoidance provisions applied to limit the available consortium relief. If so, HMRC was entitled to continue the enquiry.

A 50% restriction may apply to consortium relief where arrangements exist that enable a person to prevent the link company from controlling the claimant company, and there is a tax avoidance motive. The voting rights of the taxpayers in this case had been increased from 40% to 74.6%. The required threshold to pass shareholder resolutions was increased from 50% to 75%. These changes were made when new rules regarding consortium relief were announced, and the effect was to allow a greater claim for relief.

The UT overturned the FTT’s decision. It held that, had the voting arrangements not been in place, the link companies would have had control. The arrangements were, therefore, capable of triggering the anti-avoidance rules and the enquiry should continue. The CA agreed with this ruling. The UT was correct to apply a causative test, and correct not to speculate what would have happened if they had not been put in place.

*Eastern Power Networks plc (and others) v HMRC* 2021EWCA Civ 283

www.bailii.org/ew/cases/EWCA/Civ/2021/283.html

6.1 Budget 2021: VAT cuts for hospitality and tourism

The temporary 5% reduced rate for the tourism and hospitality sectors, which has applied since 15 July 2020, has been extended for another 6 months to 30 September 2021. This will be followed by a new interim reduced rate of 12.5% for a further 6 months to 31 March 2022, before reverting to the standard rate from 1 April 2022. These measures apply to supplies of restaurant services, hot takeaway food, holiday accommodation and admission to many attractions.


6.2 Budget 2021: Other VAT announcements

The Chancellor made several additional VAT announcements in the 2021 Budget. These include freezing the registration threshold, confirming the extension of Making Tax Digital (MTD) and amending the penalty regime.

The VAT registration threshold will remain the same at £85,000 until 31 March 2024. Similarly, the VAT deregistration threshold will remain unchanged at £83,000 until 31 March 2024. As previously announced, MTD for VAT is to be extended to all VAT registered businesses from 1 April 2022. Also previously announced, the new payment scheme for deferred VAT is now open. This scheme allows businesses to repay VAT deferred during the pandemic by instalments. A new 5% penalty was announced for deferred amounts not paid by 30 June 2021 unless the business has opted into the new payment scheme or alternative arrangements have been agreed with HMRC.

Amendments will also be made to the VAT penalty regime. A points-based system will be introduced for late submission and a percentage-based penalty will apply for late payment. These will take effect for accounting periods beginning on or after 1 April 2022.


7. Tax publications and webinars

7.1 Tax publications

The following Tax publications have been published.

- Budget 2021: Business-taxes
- Budget 2021: Payroll and employee incentives
- Budget 2021: Income tax
- Budget 2021: Capital taxes
- Budget 2021: VAT and indirect taxes
- Budget 2021: A Budget designed to support growth and investment for entrepreneurs
- Budget 2021: The calm before the storm for individuals
- Budget 2021: Real estate sector to benefit from significant reliefs to incentivise investment in infrastructure
- Budget 2021: Non-doms can rest easy for now
- Budget 2021: Financial services sector supported by new opportunities
- Budget 2021: Companies to carry the tax burden for covid-19 support to professional practices
- Budget 2021: Many changes for large and international businesses with new tax reliefs, investment incentives and an increase to the corporation tax rate
7.2 Webinars

The following client webinars are coming up over the next month.

- 10 March 2021: S&W Sessions: The Budget
- 24 March 2021: Private Client Tax Conference
- 25 March 2021: Land agent tax update webinar
- 25 March 2021: Professional Practices Spring Webinar Series

https://smithandwilliamson.com/en/events/

8. And finally

8.1 A twitch of the whiskers

Budget Day, when it came, felt somewhat like an anti-climax. This thriller had been postponed from the Autumn, and given the number of reports recommending fundamental tax reform, we sat down to listen with pens at the ready. After a series of leaks and statements, however, it seemed as though all the rabbits had hopped out of the hat early, but there were a few surprises in the small print.

One minor surprise was our concern over the Chancellor’s maths – the fifth self-employment support grant is due to cover 5 months, but is calculated as a percentage of three months’ average taxable profits. Possibly, he realised that 80% or 30% support sounded better than 48% or 18%.

In conclusion though, this is likely not the most tax-radical Budget of the Chancellor’s career. We await Tax Consultation Day on 23 March, and the next Budget, due in the Autumn, for some signs on where he may hop next.

Glossary

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