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Autumn Budget 2021

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Contents

1. Introduction

The Chancellor of the Exchequer, Rishi Sunak, today delivered his third Budget, amid a challenging economic landscape, albeit one that had not been hit as hard by the COVID-19 pandemic as had previously been forecast.

The Budget was focused on the post-COVID era with numerous changes announced including in relation to the UK corporate tax regime.

The Finance Bill is expected to be published on November 4, 2021. For the avoidance of doubt, none of the new measures outlined below have yet been enacted unless otherwise stated and based on previous Budgets we would expect enactment to occur no earlier than Spring 2022.

This bulletin sets out the key tax measures for non-UK owned groups. For detailed coverage and comment on the UK Autumn Budget 2021, visit Deloitte's dedicated website at www.ukbudget.com

2. Business tax

2.1 Corporation tax rates

The UK corporation tax rate will increase to 25% for companies with profits over £250k from April 1, 2023, as was announced in the Spring Budget 2021 and which was enacted in June 2021.

Given this rise there was a concern that the surcharge on banking companies, under which their profits are subject to an additional 8% tax, would make the UK's regime uncompetitive. As a result, the surcharge is set to decrease to 3% from April 1, 2023. This rate, combined with the headline rate of corporation tax, means that banks will be taxed at a combined rate of 28% on their profits from April 2023. This is accompanied by an increase in the surcharge allowance available for banking groups from £25m to £100m, below which the surcharge is not payable.

In addition, the government has introduced a new 4% levy on the profits of the largest residential property developers, refer to section 3.1 for further detail.

2.2 Capital allowances regime

The government has announced an extension to the temporary Annual Investment Allowance (AIA) limit of £1m, for expenditure incurred on the provision of qualifying plant and machinery. This allowance was expected to reduce on December 31, 2021, but will now be extended to March 31, 2023. The AIA enables companies to take an immediate 100% writing down allowance for qualifying capital spend, up to the AIA limit.

The Chancellor emphasised the government's continuing support for investment in capital, and reconfirmed the announcements made in the Spring budget (which were enacted in June 2021), including the 130% super-deduction, and enhanced special rate allowance. No amendments to these announcements have been made.

2.3 R&D tax credits

The government recently concluded a consultation into the UK R&D tax regime with the objective of ensuring that the UK remains an internationally competitive location for R&D activities, that R&D reliefs continue to be fit for purpose and that taxpayer money is effectively targeted.

- Following this consultation, the government has now announced its intention to reform the UK R&D tax regime in the following areas:
- By expanding the definition of qualifying expenditure to include data and cloud computing costs;
- To refocus support towards R&D activities taking place in the UK (moving away from the provisions in the current regime which allow companies to claim relief for activity taking place overseas); and
- To improve compliance and reduce abuse.

Legislation has not yet been released and further detail on these changes will be published later in the Autumn as part of the government's further tax administration and maintenance announcements. The changes are expected to come into effect from April 2023.

2.4 Diverted profits tax

Diverted Profits Tax (DPT) was introduced in 2015 to counteract certain contrived arrangements entered into by large companies with activities in the UK, which are adjudged to have diverted profits from the charge to UK tax. The Chancellor has announced a technical change to ensure that DPT functions in the way it was intended, by ensuring that companies are able to amend their tax returns during the DPT review period to enable profits to be brought within the charge to corporation tax. The measure should also ensure that the conclusion of a DPT review period and the closure of a corporate tax enquiry interact as was intended. These measures will apply to any DPT review periods that are open today and any that are opened thereafter.

In addition, changes have been introduced for companies that have suffered DPT where the taxpayer has sought relief under the Mutual Agreement Procedures (MAP) of the relevant double tax treaty. This change will enable relief under MAP to be reflected in the UK so that the UK meets its obligations under the relevant treaties and will apply for any MAP decisions involving DPT that are reached from October 27, 2021.

2.5 Notification of uncertain tax positions

At Budget 2020 the Chancellor announced that new rules would be introduced requiring large companies to notify HMRC of uncertain tax positions, where the amount of tax at stake is at least £5m and the tax treatment meets one of three criteria. These triggers have been reduced today to meeting one of two criteria, which are as follows:

1. That a provision has been made in the accounts for the uncertainty; or
2. That the tax treatment applied is not in accordance with HMRC's known interpretation.

Draft legislation was subsequently published in July 2021, which was subject to a period of consultation. As a result of this consultation certain changes have been announced to revise the proposed rules.

The government has confirmed that a large company for these purposes will be defined as one with turnover of at least £200m per annum or a balance sheet total of at least £2bn, and criteria will be introduced to enable companies to determine whether a tax treatment is uncertain.

The government has also confirmed their continued intention to consider a third trigger (where there is a substantial possibility that a tribunal or court would disagree with the taxpayer's position) for possible inclusion in the rules at a later date.

The rules apply to returns due to be filed on or after April 1, 2022.

2.6 Abolition of cross-border group relief

The UK left the European Union (EU) on January 31, 2020, with the transition period coming to an end on December 31, 2020. In the past it was possible in certain circumstances for UK companies with operations in the European Economic Area (EEA) to claim group relief to offset non-UK losses against UK profits or for companies resident in the EEA with UK Permanent Establishments (PEs) to offset the losses of that UK PE against UK profits with fewer restrictions than those faced by UK PEs of companies based outside the EEA.

The Chancellor announced changes to repeal the current legislation which enables UK companies to claim group relief from EEA companies, reflecting the UK's status outside of the EU. Changes were also announced to limit the amount of group relief that can be surrendered by an EEA company trading through a UK PE, in order to align the rules with those for other foreign companies based outside the EEA. These changes will impact accounting periods ending on or after October 27, 2021, with transitional arrangements applying for periods straddling this date.

2.7 Changes to corporation tax loss relief rules

The UK introduced major changes to the loss relief rules in 2017 to increase their flexibility. However, some companies in financial distress have been disadvantaged, since the way in which leases are accounted for under IFRS16 means that brought forward losses relieve only 50% of the profits that arise from the release of an onerous lease provision. This rule has now been broadened to bring it into line with the situation in which a corporate rescue takes place, such that it is now possible to relieve 100% of these profits. This change will apply retrospectively to accounting periods starting on or after January 1, 2019.

2.8 Business rates

The conclusion of the government's review of business rates has been published. Various changes are being introduced to reduce the burden of business rates including:

- The introduction of a new temporary 50% relief for eligible retail, hospitality and leisure properties for 2022-23 up to a maximum of £110,000 per business;
- A one year 100% improvement relief for business rates where an occupier makes eligible improvements to a property; and
- Freezing the business rates multiplier that had previously been scheduled to increase.

In addition, the government will consult on more frequent business rates revaluations, accelerating the revaluation period from every five years to every three.

2.9 Corporate re-domiciliation – announcement of consultation

As part of its ambition to strengthen the UK's position as a global business hub, the government has announced a consultation to seek views on the introduction of a UK re-domiciliation regime which would make it possible for companies to re-domicile to the UK. Such a re-domiciliation would enable a company to move its place of incorporation to the UK whilst maintaining its legal identity as a corporate body.

The government is also considering introducing a similar regime for outward re-domiciliation, for UK companies looking to move their place of incorporation to another country.

The consultation includes consideration of various tax impacts, including whether tax residence would move to (or from) the UK, steps that would be required to prevent the importation of foreign losses to shelter UK profits, whether market value basis should apply to assets brought into the UK and a number of other points.

The government is consulting on these proposed changes and comments are invited by any interested party, with responses due by January 7, 2022.

3. Industry specific measures

3.1 Residential property developer tax

A new tax will be introduced from April 1, 2022 at a rate of 4% on trading profits derived from residential property development activity (RPD activities). The charge will apply on profits attributable to RPD activities above a group annual allowance of £25m. The charge is being introduced to ensure that large developers make a contribution to help fund the government's costs of cladding and building safety remediation.

The tax will apply to developers carrying on RPD activities where they have an interest in the land that forms part of their trading stock and have generated corporation tax profits related to those activities.

Taxpayers will be required to identify their RPD activities and calculate the amount of profits relating to that activity. Profits will be calculated in accordance with existing corporation tax principles, subject to certain specific adjustments including a restriction to limit the deductibility of finance costs.

As a result, we expect affected companies to be taxed at a rate of 23% from April 2022, increasing to 29% from April 2023.

3.2 UK tonnage tax reform

The government has announced substantive reforms of the UK tonnage tax regime. The measures are designed to make it easier for shipping companies to move to the UK, ensure they are not disadvantaged compared to competitors taxed under other countries' regimes and to reduce unnecessary administrative burdens. The measures include:

- Reducing the period for which a Tonnage Tax election remains in force from 10 years to eight;
- Giving HMRC the power to allow elections to be made outside the normal period where there appears to be a good reason to do so; and
- Removing the flagging rules so that the regime applies to vessels flying the UK merchant shipping flag.

The reforms are set to apply from April 2022.

3.3 Reform of the taxation of the aviation industry

The government has recently concluded a consultation on Air Passenger Duty (APD) to determine whether APD supports the political structure of the UK and whether it meets the aim of reaching net zero emissions by 2050.

The government has now announced certain changes to APD from April 2023, in particular:

- The introduction of a new reduced band of APD for domestic flights to support internal travel; and
- The introduction of a new ultra-long haul band of APD to levy a higher amount of APD on the longest flights.

3.4 Asset holding companies and REITs

Legislation will be introduced to establish a new regime from April 1, 2022 for the taxation of qualifying asset holding companies (QAHCs). For these purposes, a QAHC must be at least 70% owned by diversely-owned funds or certain institutional investors and must mainly carry out investment activity.

The aim of the regime is to recognise circumstances where intermediate holding companies are used to facilitate the flow of capital between investors and underlying assets. It is intended to ensure that ultimate investors are taxed broadly as if they had invested directly in the underlying assets and intermediate holding companies do not pay more tax than is proportionate to the activities they perform.

Targeted changes have also been introduced to the existing REIT regime.

These changes form part of a wider review of the UK funds regime to increase the competitiveness of the UK as a location for investment funds and asset management. The government has also announced its intention to publish its response to the call for input on broader elements of the UK funds regime, as well as a consultation on options to simplify the VAT treatment of fund management fees.

4. Indirect tax

4.1 Online sales tax (OST) consultation

The government will explore the arguments for and against a UK-wide OST and will publish a consultation shortly. If introduced, it is stated that the revenue from an OST would be used to reduce business rates for retailers.

4.2 Plastic packaging tax (PPT)

Legislation was enacted in June 2021 to tax the production and importation of plastic packaging and this applies from April 1, 2022. PPT will apply to UK manufacturers of plastic packaging and businesses that import plastic packaging into the UK.

The government has now published a policy paper setting out some minor technical amendments to the legislation. These changes are designed to ensure that the PPT legislation reflects the policy intent and will be effective from April 1, 2022.

5. Employment tax

5.1 Health and social care levy

A number of tax-raising measures were previously announced on September 7, 2021 which will take effect from April 2022 as part of the government's plan to pay for health and social care.

From April 2022 there will be a 1.25% increase in the rates of Class 1 National Insurance Contributions (NIC) for employees and employers, and Class 4 NIC for the self-employed. These rules were enacted earlier this month. From April 2023 the rates will return to their current levels but there will be a new standalone 1.25% Health and Social Care Levy on the earnings and/or profits that are subject to NIC.

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