Recent Developments in International Taxation

United Kingdom

Laura Jackson
Travers Smith, London
laura.jackson@traverssmith.com
Corporation tax

Rate

The United Kingdom's main rate of corporation tax remains at 19 per cent for the tax year commencing 1 April 2022. It was announced in the 2021 Spring Budget that the rate will increase to 25 per cent for companies with profits over £250,000 from 1 April 2023. A small profits rate of 19 per cent will be introduced for companies with profits of not more than £50,000, with marginal relief available for profits up to £250,000. Corresponding changes will apply to the bank levy (to reduce the rate to maintain broadly the same level of charge as in the current period) and to the diverted profits tax (DPT) rate (to maintain the differential between the DPT and the main corporation tax rate).

This shift in approach, away from continuing to decrease already historically low corporation tax rates, may suggest a change of focus by the government towards holding corporation tax rates at more 'middle of the road' levels internationally (although still at the lowest rate within the Group of Seven (G7)), but combining this with a significant number of tax incentives to motivate behaviours that the government considers to be positive for the UK as a whole. This includes:

- tax credits aimed at driving additional research and investment, such as refocused and enhanced research and development (R&D) credits; and
- a new qualifying asset holding company regime, which aims to encourage asset management holding structures to locate themselves in the UK.

However, the future approach remains uncertain at the time of drafting given the political situation in the UK, with some candidates for the office of prime minister promising to reverse these changes and even make further cuts to corporation tax rates.

Capital losses

The trading loss carry-back rules (which allow a company or unincorporated business to make a claim for unused trading losses to be set off against its profits for the preceding 12-month period) have been extended from one year to three years for accounting periods ending between 1 April 2020 and 31 March 2022.

Relief is not subject to additional restrictions for losses to be carried back for one year, but a cap of £2m of losses for each of the financial years 2020–21 and 2021–22 applies to losses carried back to the extended period (beyond that usual one year). Where companies form part of a group, the cap applies across the group as a whole for each relevant year.

Cross-border group relief

Following the UK's departure from the European Union, the rules permitting a UK group to claim group relief from its EU group companies have been abolished with effect for company accounting periods ending on or after 27 October 2021.
Qualifying asset holding company regime

From April 2022, the UK has introduced a new qualifying asset holding company (QAHC) regime, which offers a new tax-efficient holding vehicle and aims to provide an alternative to Luxembourg or Irish holding company structures. This may be particularly welcome for managers concerned about the requirements of the third Anti-Tax Avoidance Directive (ATAD III).

The key benefits of the QAHC regime include:

- a complete exemption for gains on shares and overseas land, and for overseas property business income;
- an exemption from withholding tax on interest;
- a greater ability to make capital returns to investors; and
- the ability to use tax deductible profit participating loans to reduce taxable income such that the QAHC should only be taxed on a small transfer-priced margin.

There are seven eligibility requirements to qualify as a QAHC. Most of these are straightforward. The key requirements are:

- the main activity of the company must be the carrying on of an investment business, and any other activities must be ancillary;
- the company’s investment strategy must not involve the acquisition of equity securities listed or traded on any public market or exchange (save for ‘take private’ transactions); and
- the ownership condition must be satisfied.

The ownership condition effectively requires that ‘non-Category A investors’ cannot hold more than 30 per cent of the relevant interests in the QAHC. Category A investors include a range of institutional investors, such as most pension funds, charities and authorised long-term insurance businesses, as well as:

- collective investment schemes or alternative investments funds that are either not close (broadly controlled by five or fewer persons) or are close only because of the presence of a Category A investor; and
- collective investment schemes that meet certain requirements as to diverse ownership.

This final condition does require some fairly detailed analysis, but in practice is likely to be satisfied by many widely held investment funds.

Diverted profits tax

The diverted profits tax (DPT) was introduced to deter and counteract artificial arrangements that divert profits overseas in order to avoid UK tax. The primary aim of the tax is to ensure that profits taxed in the UK fully reflect the economic activity here. DPT is set at a higher rate than corporation tax to encourage those businesses with arrangements within the scope of DPT to change those arrangements and pay UK corporation tax on their profits. Previously, Her Majesty’s Revenue & Customs (HMRC) maintained that the DPT sat outside of the scope of double taxation treaties; however, amendments introduced in Finance Act 2022 provide that
the DPT can be subject to the mutual agreement procedure under applicable double tax treaties. This is a significant change to HMRC’s previous stated position.

**Real estate**

*Capital allowances*

From 1 April 2021 until 31 March 2023, companies investing in new qualifying plant and machinery assets qualifying for main rate (18 per cent) writing down allowances (generally not available for expenditure on dwellings) benefit from a new first-year 130 per cent capital allowance. There is also a 50 per cent first-year allowance available for qualifying special rate (including long life) assets. The enhanced relief is only available in relation to contracts entered into after 3 March 2021.

**Freeports**

A new freeports regime was announced in the 2021 Spring Budget, which offers a range of tax incentives, including:

- an enhanced ten per cent Structures and Buildings Allowance for constructing or renovating non-residential structures and buildings within Freeport sites. To qualify, the structure or building must be brought into use on or before 30 September 2026;
- enhanced capital allowances of 100 per cent for companies investing in plant and machinery for use in Freeport sites until 30 September 2026;
- full relief from stamp duty land tax on the purchase of land or property within Freeport sites until 30 September 2026;
- full relief from business rates (a tax applied to most properties used for non-business purposes based on the rateable value of the property) for all new businesses, and certain existing businesses where they expand, in Freeport sites until 30 September 2026 (relief will apply for five years from the point at which the business first receives relief); and
- National Insurance contributions relief for employers, available for eligible employees at Freeport sites, which will be available until at least April 2026.

**Residential property developer tax**

Residential property developer tax (RPDT) is part of a package of measures to help pay for the remediation works arising from the cladding crisis following the Grenfell Tower tragedy; it aims to raise at least £2bn over a decade. The tax came into force from 1 April 2022 and applies to profits made by property developers from in-scope activity in excess of £25m per year, at a rate of four per cent.

**UK implementation of BEPS Pillar Two**

In January 2022, the UK Government launched a consultation on the UK’s implementation of the Global Anti-Base Erosion (GloBE) rules. As part of this, the government is exploring whether to introduce a domestic minimum top-up tax, which would allow the UK to impose top-up tax on low-taxed profits of a group’s entities in the UK, rather than allowing a foreign jurisdiction to do so.
The government anticipates that the parts of GloBE relating to the income inclusion rule (IIR) will be included in the Finance Bill 2022–23. It had initially intended that this would take effect from 1 April 2023 (with the undertaxed payment rule (UTPR) and any domestic minimum top-up tax being introduced from 1 April 2024). However, the government has recently announced that implementation will be delayed to 31 December 2023 and will apply to accounting periods commencing on or after that date. This will bring the UK’s implementation date in line with the expected implementation date for other countries, in particular EU Member States.

At this point, it is not clear when the UTPR and any domestic minimum top-up tax will come into force, or whether there will be a ‘straddle period’ mechanism that applies the rules with effect from 31 December 2023 to accounting periods commencing prior to that date.

Other UK tax headlines

Plastics tax

Part 2 of the Finance Act 2021 introduced a tax on the manufacture and import of significant volumes of plastic packaging that does not contain a minimum amount of recycled content, with the aim of increasing demand for recycled plastics. Organisations that have manufactured or imported ten or more tonnes of plastic packaging within the last 12 months are required to register. The tax is charged at a rate of £200 per metric tonne of plastic packaging containing less than 30 per cent recycled plastic content.

Corporate re-domiciliation proposal

This is currently only at the consultation stage, but the Autumn Statement in 2021 referenced a proposal to permit non-UK incorporate companies to re-domicile their place of incorporation to the UK – something that is not currently possible under English law.

Health and social care levy

A new health and social care levy has taken effect in the 2022–2023 tax year by way of an increase of 1.25 per cent in the rate of National Insurance contributions paid by employees, employers and self-employed persons. From April 2023, National Insurance contributions will return to 2021–22 tax year rates and the health and social care levy will become a separate levy at a rate of 1.25 per cent. This will also be paid by individuals working above the state pension age, unlike National Insurance contributions. The rates of income tax on dividend income above the £2,000 tax-free dividend allowance have also been increased by 1.25 per cent from April 2022.

Notification of uncertain tax positions

The Finance Act 2022 introduced a requirement for large businesses to notify HMRC where they take a position in their corporation tax, income tax (including PAYE) or VAT returns which is ‘uncertain’.

The measures affect large businesses with an annual turnover of more than £200 million or a balance sheet total of more than £2bn. They require businesses to notify HMRC where they have adopted an uncertain tax treatment that has not been brought to HMRC’s notice through
the business’s regular customer compliance relationship, and where the potential tax advantage associated with the uncertain treatment exceeds £5m.

The legislation contains two trigger points for notification:

- the taxpayer adopting a position that differs from HMRC’s known position; or
- where a provision has been recognised in the accounts of the taxpayer to reflect the probability that a different tax treatment will apply.

The government is understood to be continuing to consider the addition of a third trigger, which would apply where there is a substantial possibility that a tribunal or court would find the taxpayer’s position to be incorrect in material respects.