Quarterly Update 4: Tax 2

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Personal Income Tax

Tax rates and allowances – 2022/23

As announced in the March 2021 Budget, the income tax rates and bands and the main allowances are frozen at their 2021/22 levels until the end of 2025/26, instead of their usual inflationary increases each year. Although this means that someone with the same income will pay the same tax year on year, the effect of inflation on salaries and business profits means that this represents a significant tax increase over the period (£8 billion in extra government receipts forecast for 2025/26 compared to annual increases in bands and allowances).

As a reminder, the personal allowance is set at £12,570 and the basic rate band at £37,700 so that the income at which a person starts to pay higher rate tax is £50,270. The additional rate threshold is £150,000. The rates remain 20%, 40% and 45% respectively for the basic rate, higher rate and additional rate. Trust rates remain linked to the additional rate tax liability.

The starting rate for savings remains at £5,000 and the starting rate itself is 0%. The personal savings allowance remains unchanged.

Other personal allowances and income limits have increased in line with inflation:

Allowance	2022/23	2021/22
Blind person's allowance	£2,600	£2,520
Married couple's allowance	£9,415	£9,125
Income limit	£31,400	£30,400
Minimum married couple's allowance	£3,640	£3,530

MCA is available where one of the spouses or civil partners was born before 6 April 1935 (so will be 87 or older in the tax year 2022/23). It is a tax reducer saving tax at 10%.

Normally MCA is awarded to the husband, but where the couple married on or after 5 December 2005, it is given to the partner with the highest income (and restricted by their income where relevant).

There are no changes to the income levels at which the High Income Child Benefit Charge begins to claw back Child Benefit receipts (£50,000) and the rate of clawback (£100 for every complete 1% increase in income above £50,000, so that it is fully clawed back when income is above £60,000.

The personal allowances limit before it begins to be reduced is still £100,000. The reduction is 50% of income above this limit so it will be fully withdrawn when income is £125,140.

The Scottish Parliament sets its own tax rates and thresholds for Scottish taxpayers for non-savings, non-dividend income. It will announce its Budget for 2022/23 on 9 December.

The Welsh Government has similar powers for Welsh taxpayers but has not yet varied the main UK rates. Their Budget is on 20 December so they could still set different rates for 2022/23.

Dividend income

The tax rates on dividend income over the £2,000 dividend allowance will increase for the tax year 2022/23 by 1.25%.

Band	2022/23	2021/22
Basic rate	8.75%	7.5%
Higher rate	33.75%	32.5%
Additional rate	39.35%	38.1%
Rate for discretionary trusts	39.35%	38.1%

These rates will apply across the UK.

The addition is related to the increases in National Insurance Contributions and the introduction of the Health and Social Care Levy described further below and is intended to ensure that individuals who work through companies and take their profits as dividends rather than salary cannot avoid paying the charge.

However, it will also apply to dividends from passive investments, as well as from personal companies. They apply across the UK as a whole, as the Scottish and Welsh Governments do not have devolved responsibility for these taxes.

Profit extraction for owner-managed companies

With the increase in tax rates on dividends and changes in the limits for Class 1 NIC, a shareholder-director of an OMB should consider taking a salary of £9,880 per annum (£823 per month) if the company is entitled to the Employment Allowance of £4,000.

If the director is the only employee, then they should instead take a salary of £9,100 per annum (£758 per week).

They should then extract the minimum level of dividends from the company to fund their living costs, bearing in mind the increased rates of tax applying to these.

For a director/shareholder who takes a salary of £8,840 and the balance of £41,430 as dividends (up to the basic rate threshold) in 2021/22, the tax would be £2,677.50 with dividend tax being levied on £41,430 less £3,730 (being within the basic rate band) less £2000 x 7.5% = £2,677.50.

In 2022/23, with a salary of £9,100 and dividends of £41,170, the tax figures would be £3,123.75. This is an increase of £446.25.

Consideration should be given to the company making larger pension contributions on behalf of the director-shareholders, whilst mindful of the annual allowance and lifetime allowance limits.

If the director-shareholder wants to purchase an electric car, getting the company to purchase it would give 100% capital allowance and corporation tax relief on the running costs with a taxable benefit of only 2% of the list price until at least 2024/25 (albeit with increased Class 1A NIC on the benefit of 15.05% for 2022/23 only).

Household Support Fund Payments

Household Support Fund payments will be available to vulnerable households with essentials over the coming months, as the country continues its recovery from the COVID-19 pandemic. It is a £500m fund to be distributed by councils in England and the devolved administrations outside of England. The government will legislate in Spring 2022 by Statutory Instrument to clarify that payments made through the Fund, and through similar schemes in the devolved administrations, will be exempt from income tax. No income tax will be collected on payments made from October 2021 (which is when the scheme is introduced) to the date the legislation takes effect.

Employees

Company cars and fuel

No changes were made to the rates already announced in previous years, so cars first registered after 5 April 2020 and electric cars will see their benefit charge rise by one percentage point (subject to the maximum of 37%).

The rates for 2022/23 will be the same for cars registered before and after 5 April 2020 and will now remain fixed until the end of 2024/25.

The provision of a van available for private use gives rise to a tax charge on an income figure of £3,600 (2021/22: £3,500), plus £688 (2021/22: £669) if fuel is also provided free.

An electric van available for an employee's private use does not give rise to a tax charge.

		2022/23	2021/22 percentage for petrol cars first registered	
CO2 emissions g/km	**Electric range Miles**	**All cars %**	**Pre 06.04.2020 %**	**Post 05.04.2020 %**
0	N/A	2	1	1
1-50	>130	2	2	1
1-50	70 - 129	5	5	4
1-50	40 - 69	8	8	7
1-50	30 - 39	12	12	11
1-50	<30	14	14	13
51-54	N/A	15	15	14

Then a further 1% for each 5g/km CO2 emissions, up to a maximum of 37%.

Diesel cars that are not RDE2 standard suffer a 4% supplement on the above figures but are still capped at 37%.

Where the employer provides fuel for private motoring in an employer-owned car, the CO_2-based percentage from above table is multiplied by £25,300 for 2022/23 (2021/22: £24,600).

This fuel benefit applies unless the employee is required to, and actually does, reimburse the employer for all fuel used for private journeys by 6 July following the end of the tax year.

Unless non-business mileage (private journeys and ordinary commuting) in a company car is very high (typically at least 10,000 miles per annum), it will be cheaper for the employee to reimburse the cost of the fuel used than the tax liability they would face on the benefit.

National Living Wage (NLW) and National Minimum Wage (NMW)

National Living Wage (for those aged 23 or older) and the National Minimum Wage are increasing from 1 April 2022.

	From 1 April 2022	Up to 31 March 2022
Over 23s	£9.50	£8.91
21 – 22	£9.18	£8.36
18 – 20	£6.83	£6.56
Under 18s	£4.81	£4.62
Apprentice Rate	£4.81	£4.30

The maximum permitted daily and weekly rate of accommodation offset in relation to the NMW is also increasing to £8.70 for daily offset (from £8.36) or £60.90 for weekly offset (from £58.52).

National Insurance Contributions

The thresholds above which employer's and employee's National Insurance Contributions (NIC) become payable will increase in line with inflation in 2022/23 except than the upper limits for employee contributions which remain aligned with the point at which 40% income tax is payable and are frozen at that level until the end of 2025/26.

As announced on 7 September 2021, a new Health and Social Care Levy will be charged to raise £13 billion a year – dwarfing most of the other figures in the Budget policy decisions. This is discussed in the next secion.

From 6 April 2022, Class 1 NIC paid by employers and employees, and Class 4 NIC paid by self-employed people, will increase by 1.25%.

The thresholds are as follows:

	2022/23	2021/22
Weekly lower earnings limit	£123	£120
Weekly primary threshold	£190	£184
Weekly secondary threshold	£175	£170
Weekly upper earnings limit	£967	£967

The rates are as follows:

	2022/23	2021/22
Primary Class 1 main rate	13.25%	12%
Primary Class 1 higher rate	3.25%	2%
Secondary Class 1	13.8%	15.05%
Class 1A and Class 1B	13.8%	15.05%

For the self-employed, the lower profits limit increases to £9,880 (from £9,568 in 2021/22) but the upper profits limit remains aligned to the higher rate threshold at £50,270. The rate of Class 4 contributions will increase to 10.25% on earnings between £9,880 and £50,270 and 3.25% above that. The rates will revert back to their previous levels from 6 April 2023 when the separate levy is introduced.

The Class 2 rate, which is unaffected by the introduction of the levy, increases to £3.15 per week from £3.05 in the current tax year. The small profits threshold increases to £6,725 in 2022/23.

The voluntary Class 3 rate increases to £15.85 per week from £15.40.

Savings and Pensions

ISA limits

The investment limits for 2022/23 remain £20,000 for a standard adult ISA (within which £4,000 may be in a Lifetime ISA), and £9,000 for a Junior ISA or Child Trust Fund.

Pension contributions

The tax reliefs for pension contributions remain unchanged. As announced in the March 2021 Budget, the Lifetime Allowance, which is the maximum amount that a person can save in tax-advantaged pension schemes before extra tax charges arise on drawing benefits and at the age of 75, is frozen at its 2020/21 level of £1,073,100 until the end of 2025/26.

Scheme pay

Contributions to a registered pension scheme by individuals and their employers are restricted by the Annual Allowance (AA). Where this is exceeded, an AA charge arises. The taxpayer can choose to ask the pension scheme to pay an AA charge if it exceeds £2,000, reducing the future pension benefits instead of having to meet the liability personally. The individual should tell the scheme by the 31 July in the year following the end of the tax year in which the liability arises. The scheme administrator must then report that the HMRC in the Accounting for Tax (AFT) return for the quarter ended 31 December in the same year, which has to be delivered by 14 February in the following year (ie within 45 days).

The deadlines for 'Scheme Pays' reporting and payment will be extended in circumstances where there is a delay in the individual receiving the information that shows they are liable to the charge. The new rule takes effect from 6 April 2022, but it also has retrospective effect to 6 April 2016. It links the deadline for paying the charge to the date at which the administrator is notified of the charge rather than being a fixed period from the end of the tax year.

Net Pay Arrangements and the lower paid

There is also an important change to lower earners who are making pension contributions under Net Pay Arrangements (NPA). The government will introduce a system to make top-up payments directly to lower earners (those with taxable incomes below the personal allowance) who are saving in pension schemes using an NPA from 2024/25 onwards. These top-ups will be paid after the end of the relevant tax year, with the first payments being made in 2025/26 and continuing thereafter. This corrects an anomaly whereby employees contributing to Relief at Source schemes receive a top-up at 20% on their pension contributions, even if they pay no, or a lower rate of, income tax. In contrast, employees contributing to an NPA scheme receive tax relief at their marginal rate, which for low earners is 0%.

As this is coming in for subsequent years, it will not be introduced in FB2022 and so no further details are available.

Taking pension benefits

The minimum age at which most people can first access their tax-advantaged pension scheme benefits is 55. This will be increased to 57 with effect from 6 April 2028 and will therefore affect those who are born on or after 6 April 1973. This is the date at which the state pension age for all will be 67 so this is 10 years before the state pension age.

Capital Gains Tax

Rates and annual exempt amount

As announced in the March 2021 Budget, the annual exempt amount will be fixed at its 2020/21 level of £12,300 until the end of 2025/26. No changes have been announced to the rates at which gains are taxed.

Sales of UK property

Since 2015, non-UK residents have been required to report the sale of UK residential property, and pay any CGT due, within 30 days of completion of the transaction.

This was extended to non-residential UK property in 2019 and, from April 2020, to UK residents selling residential property on which CGT is payable.

The deadline is extended to 60 days for reporting and payment, for both UK and non-UK residents, where a transaction is completed on or after 27 October 2021.

Amendments will also be made to make it clear that where the disposal relates to mixed use property, that the requirement to return and pay only applies to the residential portion. This has always been the understanding of how the regime works but the legislation was not entirely clear.

Inheritance Tax

Rates

The March 2021 Budget fixed the IHT nil rate band at £325,000 until the end of 2025/26.

Holding the threshold at the same amount for 17 years (from 6 April 2009) will bring far more people into the scope of the tax. However, the introduction of the ‘residential nil rate band enhancement’ on death transfers can reduce the impact where it applies.

A married couple are now potentially able to leave up to £1 million free of IHT to their direct descendants (£325,000 plus £175,000 from each parent), but the rules are complicated, and the prospect of the nil rate band being fixed for the next 4 years increases the importance of proper IHT planning.

Business Tax

Reform of basis periods

From 2024/25 (a year later than previously announced), a different basis of assessing profits is being introduced. This is discussed in more detail in section 3 of these notes.

Capital allowances

Annual investment allowance

The 100% Annual Investment Allowance (AIA) will be available for qualifying expenditure on P&M up to £1 million until 31 March 2023, rather than being reduced to its former level of £200,000 after 31 December 2021 as previously announced.

The limit will be subject to transitional rules where accounting periods straddle 31 March 2023.

The AIA may produce more tax relief for companies than the 50% FYA available for special rate expenditure introduced as part of the Spring 2021 Budget.

As the main corporation tax rate will increase from 19% to 25% on 1 April 2023, advancing expenditure to enjoy the 100% deduction will also reduce the benefit of the tax relief available.

Corporation Tax

Rates

No changes are made to the proposals enacted in FA2021 in relation to corporation tax so that the increase from 1 April 2023 is still going ahead at this stage.

Loans to participators in close companies

Following the increase in the higher rate of tax applicable to dividends, a rate of 33.75% rate will also apply to tax payable by close companies on loans to participators that are not repaid to the company within 9 months of the end of the accounting period (s455 CTA 2010).

Research & Development (R&D)

The Small and Medium-sized Enterprise (SME) R&D relief (a 130% enhancement of the expenditure) and the R&D expenditure credit (currently 13%) apply to ‘qualifying expenditure’ as defined in the legislation. At present, this comprises:

- Staff costs
- Software used directly for the R&D
- Relevant payments to the subjects of clinical trials
- Consumable or transformable materials

- Subcontracted R&D costs
- Externally provided workers

Following a consultation launched in March 2021, R&D tax reliefs will be reformed to support modern research methods by expanding qualifying expenditure to include data and cloud costs.

At present there is no limitation on incurring the expenditure outside the UK, for example by subcontracting work to suppliers in other countries. The legislation will be amended to focus support towards innovation in the UK, which is likely to require qualifying expenditure, or at least a large percentage of it, to be incurred within the UK.

Other changes will be made to target abuse and improve compliance. The changes to the law are intended to take effect for expenditure incurred from 1 April 2023.

<u>Uncertain tax treatments</u>

The law will be changed to require very large companies and partnerships to notify HMRC where they take a tax position in their returns for VAT, corporation tax or income tax (including PAYE) that is 'uncertain' but only where the position saves them £5 million or more compared to HMRC's known position in a 12-month period.

Companies and partnerships affected are those with either turnover in excess of £200 million of gross assets in excess of £2 billion.

An 'uncertain treatment' is defined as arising either where a provision has been made in the accounts for the uncertainty, or the position taken in the accounts is contrary to HMRC's known position (as stated in the public domain or in dealings with HMRC).

A third trigger, that was proposed in revised draft legislation published in July 2021, which would be where there is a substantial possibility that a tribunal or court would find the taxpayer's position to be incorrect in material respects is not being included at this time. However, it is stated that the government remains committed to further consideration of its inclusion at a later date.

The new rule will apply for returns filed with effect from 1 April 2022.

To put this measure in context, the objective is to reduce the 'legal interpretation' portion of the tax gap which is estimated at £5.8bn with £3.2bn of this felt to be attributable to large businesses. It is intended to enable early identification of high risk disputes and encourage early interaction between large business and HMRC.

<u>Cultural tax reliefs</u>

The government is extending the support it gives to the arts sector through Museums and Galleries Exhibition Tax Relief (MGETR) for two years until 31 March 2024, and increasing the headline rates of MGETR, Theatre Tax Relief, and Orchestra Tax Relief. This recognises the support needed to this sector in the post-pandemic period. Changes will also be made to better target the reliefs and safeguard them from abuse.

From 27 October 2021 there is a temporary increase in the rate of the three cultural tax reliefs, as follows:

- TTR and MGETR - rates will increase to 45% (for non-touring productions) and 50% (for touring productions) respectively. From 1 April 2023, the rates will be 30% and 35%, and rates will return to 20% and 25% on 1 April 2024
- OTR - rates will increase to 50% for expenditure taking place from 27 October 2021, reducing to 35% from 1 April 2023, and returning to 25% from 1 April 2024

As noted above, in addition, the MGETR relief will be available until 31 March 2024 - this relief was due to expire in March 2022.

From 1 April 2022, film productions qualifying for Film Tax Relief (FTR) that change during production to instead meet the criteria for High-End Television Tax Relief (HETV) will be able to continue claiming FTR. This reflects the fact that some films are initially intended for cinema release but are then instead put on streaming services but this ensures that they will not lose relief just because there is decision to change the distribution method during production.

Normally FTC is only available where the film is intended for theatrical release to the paying public at a commercial cinema, a measure introduced to clamp down on avoidance of tax by previous film tax credit regimes. If the intention changes, HETV would not be available either as again it is the broadcast intention at the onset of production which is relevant in determining eligibility to this relief. This measure bridges the gap between the two.

Specifically, this relates to any new film commencing production on or after 1 April 2022 and to ongoing productions that have not completed principal photography by that date.

Finally, there will be amendments in FB2021-22 to the legislation relating to these cultural reliefs to better target the relief and ensure that they are not capable of being abused. No further details are included within Budget documents but these measures will become clearer when the draft FB is published.

Online sales tax

It has been announced that the government will consult shortly on an Online Sales Tax. Although the announcement states that they will explore the arguments for and against the introduction of this, it is referred to in the Business Rates Review as being a possible partial replacement for Business Rates so it is clearly something that is being seriously considered.

Administration

Discovery assessments

The Upper Tribunal case of HMRC v Wilkes ([2021] UKUT 150 (TCC)) reported on 30 June 2021 established that HMRC cannot raise a discovery assessment to collect tax due as a result of the High Income Child Benefit Charge (HICBC). This is because the HICBC amount is an amount chargeable to income tax and not, as currently required by the discovery legislation, an amount of income which ought to be assessed to income tax. Whilst it is known that HMRC are appealing the decision in Wilkes, legislation will be included in Finance Bill 2022 to put beyond doubt that HMRC can raise valid discovery assessments in these circumstances. This will have immediate and retrospective effect except that it will not apply retrospectively to individuals who submitted an appeal to HMRC on or before 30 June 2021 on the basis of the arguments considered by the Upper Tribunal (including those whose appeal was stood over by the Tribunal pending the final outcome of the litigation).

The legislation will apply equally to tax chargeable where there is insufficient income to cover Gift Aid relief and to certain pensions tax charges, to ensure that HMRC can recover all of these charges via discovery assessments.

The legislation will also make some minor technical changes, but without retrospective effect, to ensure that the requirement for an individual to notify chargeability to income tax in these circumstances operates as intended.

Economic Crime (Anti-Money Laundering) Levy

Legislation is to be introduced to bring in an Economic Crime (Anti-Money Laundering) Levy to raise around £100m per annum to help fund anti-money laundering and economic crime reforms. Any entity which is subject to Money Laundering regulations (such as credit institutions, financial institutions, auditors, insolvency practitioners, accountants, tax advisers, legal professionals, estate agents, trust or company service providers, high value dealers, casinos) will be impacted but it will not apply to small entities (being those with under £10.2m of UK revenue).

There will be three charging bands: medium (£10.2m - £36m), large (£36m - £1bn) and very large (over £1bn). A flat rate charge will apply in each band. The final fixed fees will be set out when the legislation is published but are expected to be between £5,000 and £250,000.

It will be first charged for the year from 1 April 2022 to 31 March 2023, but not collected until after the year end.

Clamping down on promoters of tax avoidance

There is to be further strengthening of existing anti-avoidance provisions to tackle promoters of tax avoidance schemes. From Royal Assent of the Finance Bill, HMRC will be able to:

- Seek freezing orders to prevent promoters from hiding assets before paying any penalties charged as a result of breaching obligations under other legislation
- Charge significant additional penalties to a UK entity who facilitates the promotion of tax avoidance by offshore promoters
- Present winding-up petitions to the court for companies operating against the public interest
- Name promoters and the details of the schemes they promote as soon as possible to warn taxpayers of the risks involved.

Powers to tackle electronic sales suppression

New legislation is to be introduced to help tackle tax evasion by use of electronic sales suppression (ESS) software by making it an offence to possess, make, supply and promote ESS software and hardware. ESS software deliberately manipulates or hides individual transactions in EPOS systems.

Draft legislation was published in the summer and has not been amended.

Penalties for late submission and late payment of tax

It is confirmed that the new penalty regime for late submission and late payment of tax will come into effect on 6 April 2024 for taxpayers in ITSA who are required to submit digital quarterly updates through MTD and 6 April 2025 for all other ITSA taxpayers.

Value Added Tax

Registration threshold

The VAT registration and deregistration thresholds will remain frozen at their present levels of £85,000 and £83,000 until 31 March 2024. This will tend to require more businesses to register for the tax as they grow, and therefore represents a small tax-raising measure.

Reduced rate

No further changes have been announced relating to the reduced rate of VAT that has applied to qualifying supplies by hospitality, leisure and entertainment businesses to help offset the impact of the pandemic. The rate reduced from 20% to 5% in July 2020, and increased to 12.5% with effect from 1 October 2021. It will revert back to the standard 20% rate on 1 April 2022.

HMRC says that there are no plans to introduce ‘anti-forestalling rules’ to counter the VAT saving enjoyed by someone who pays a deposit before the rate goes back up – on present plans, that will lock in the 12.5% rate of VAT to the extent that the supply is paid for before 1 April 2022, even if the actual supply takes place later.

Default surcharge

As announced in March 2021, the rules for late payment of VAT will be reformed for return periods beginning on or after 1 April 2022. Default surcharge will be replaced by interest on late payment and separate penalties for late filing of returns.

Implementation of VAT rules in free zones

This measure, which is to take effect from 3 November 2021, will affect VAT registered businesses authorised to operate in the customs site (free zone) of a Freeport. The main VAT benefit of operating in a free zone is that businesses selling goods within free zones can zero-rate their supplies, and services carried out on goods in those zones may also be zero-rated subject to conditions, which provides a cash flow advantage. This measure will ensure that where goods leave a free zone and there is no qualifying onward supply of the goods, or where there is a breach of the rules of the free zone customs procedure, VAT will be due.

The scope of the excise wrongdoing penalty regime is to be extended so it will cover breaches relating to excise goods in the free zone customs special procedure and the authorised use procedure.

VAT exemption for dental prostheses imports

This measure, which is to apply retrospectively from 1 January 2021, will affect registered dentists and other dental care professionals:

- importing dental prostheses into the United Kingdom
- moving or supplying dental prostheses between Great Britain and Northern Ireland

The measure is intended to remedy an unintended consequence of the Northern Ireland Protocol and is being retrospectively applied to ensure there is no gap in the fiscal position that existed prior to the end of the transition period. It introduces a VAT exemption for the importation into the United Kingdom of dental prostheses and ensures that supplies of dental prostheses by registered dentists and other dental care professionals continue to be exempt between Great Britain and Northern Ireland.

<u>Businesses trading in second-hand motor vehicles in Northern Ireland</u>

Under the Northern Ireland Protocol, motor vehicle dealers in Northern Ireland may not use the VAT margin scheme for second-hand vehicles when vehicles are purchased in Great Britain and must therefore account for VAT on the full selling price. Two measures have been announced with the intention of remedying changes to the VAT treatment of Northern Ireland businesses that deal in second-hand vehicles sourced in Great Britain.

One of the measures is described as an interim arrangement and is intended to provide for the use of the VAT margin scheme for sales in Northern Ireland of motor vehicles sourced in Great Britain provided they were first registered prior to the end of the transition period.

The other measure is intended to enable the introduction of a second-hand motor vehicle export refund scheme to allow businesses that buy used motor vehicles in Great Britain that are moved for resale in Northern Ireland or the European Union to claim a refund equivalent to the VAT on the price paid. This should put businesses in a similar financial position to having access to the VAT margin scheme for these second-hand vehicles.

<u>VAT treatment of fund management fees</u>

The Autumn Budget and Spending Review 2021 included an announcement that there will be a consultation on options to simplify the VAT treatment of fund management fees in the coming months.

Indirect taxes

<u>Air passenger duty</u>

The following changes to air passenger duty are to take effect from 1 April 2023:

- a new domestic band for air passenger duty covering flights within the UK
- a new ultra long-haul band, covering destinations with capitals located more than 5,500 miles from London

The rates the for the new domestic band will be £6.50 for those travelling in economy class, £13 for those travelling in all other classes, and £78 for those travelling on aircraft with an authorised take-off weight of 20 tonnes or more with fewer than 19 seats.

The rates for the new ultra long-haul band will be £91 for those travelling in economy class, £200 for those travelling in all other classes, and £601 for those travelling on aircraft with an authorised take-off weight of 20 tonnes or more with fewer than 19 seats.

Landfill tax

The standard and lower rates of Landfill Tax are to be increased in accordance with the retail price index with effect from 1 April 2022. This means the standard rate increases to £98.60 (from £96.70) and the lower rate increases to £3.15 (from £3.10) in both cases per tonne. The lower rate relates to less polluting qualifying material as designated by HM Treasury Order.

Landfill tax only applies in England and Northern Ireland as it is devolved to Scotland and Wales.

Gaming duty

The gross gaming yield bandings for calculating gaming duty are to be increased in accordance with the retail price index for accounting periods beginning after 31 March 2022.

Rebated diesel and biofuels

Amendments are to be made to the legislation that restricts the use of rebated red diesel and rebated biofuels from 1 April 2022. This is the end point of a process which started in 2020 when it was announced that the government were going to remove the entitlement to use rebated diesel and biofuel from most sectors as part of climate change measures (as these have harmful emissions profiles).

Whilst the legislation was included in FA2021, there are a number of technical amendments made to ensure the policy is implemented as intended.

Vehicle excise duty rates for cars, vans, motorcycles

Vehicle excise duty rates for cars, vans, motorcycles, and motorcycle trade licences are to be increased in accordance with the retail price index with effect from 1 April 2022.

Vehicle excise duty and levy rates for heavy goods vehicles

The government will continue to freeze vehicle excise duty for heavy goods vehicles for 2022/23 and will continue to suspend the levy for heavy goods vehicles for another twelve months from 1 August 2022.

Temporary extension to road haulage cabotage

Cabotage is the transport of goods between two places in the same country by a transport operator from another country (for the purposes of hire and reward). It is restricted both in the UK and abroad and the rules applicable to EU operators only currently allow two cabotage journeys within 7 days of entry into the UK.

A legislative change is to take affect from 28 October 2021 to allow, until 30 April 2022, unlimited cabotage movements of heavy goods vehicles within Great Britain for up to fourteen days after arriving in the United Kingdom on a laden international journey, without these operators needing to pay vehicle excise duty.

Tobacco duty

Increases in tobacco duty rates are to take effect from 6pm on 27 October 2021.

Tougher sanctions are to be introduced to tackle tobacco duty evasion with enforcement by HMRC and Trading Standards. The sanctions are linked to the Tobacco Track and Trace System (TTS) and the proposals include:

- power to issue financial penalties up to £10,000 for holding or possessing products that do not comply with TTS requirements
- making liable to forfeiture any TTS compliant tobacco products here they are found alongside non-compliant products
- withdrawal of a retailers TTS ID where they persistently contravene rules
- the power to make future regulations to ensure the system works properly.

Alcohol duty

Alcohol duty rates will be frozen and it is intended that alcohol duty will be reformed. A consultation has been launched which will close on 30 January 2022.

The Chancellor devoted space in his speech to set out a number of measures that he intends to take to make the taxation of alcoholic drinks simpler and more rational. This will include a 5% cut on duty for various drinks sold in pubs, and a relief for small producers of drinks below 8.5% ABV. This is still subject to the consultation mentioned in the previous paragraph.

Plastic packaging tax

Amendments are to be made to the plastic packaging tax legislation to ensure that the tax operates as intended, that the UK complies with international agreements, and that HMRC has the appropriate framework to administer the tax.

Insurance premium tax

Legislation is to be introduced setting out the criteria for determining the location of risk for insurance premium tax to provide clarity and ensure that risks located outside the UK remain exempt from insurance premium tax in the UK. This is not new legislation it is just being moved into FA1994 from the Financial Services and Markets Act 2000.

Carbon Price Support rate and Climate Change Levy

The Carbon Price Support rate per tonne of carbon dioxide emitted will be £18 for 2023/2024, further extending the rate freeze introduced from 1 April 2016. There is an increase in the main rate of climate change levy.

Aggregates levy rate

The aggregates levy rate is to be frozen in 2022/2023 at a rate of £2 per tonne.

Fuel duty rates

Fuel duty rates will remain frozen for 2022/2023.

Soft drinks industry levy

The levy is unchanged with the standard rate remaining at 18p per litre and the higher rate at 24p per litre.

Introduction of public notice powers for non-duty tariff changes

The government will legislate to amend the relevant legislation 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. This measure will ensure routine technical changes to the UK's tariff schedule will be implemented more quickly. The measure will have effect from the date of Royal Assent to Finance Bill 2022.

Trade Remedies Authority (TRA)

The TRA is responsible for reviewing trade remedies. These allow for additional tariffs or quotas to be imposes on imported goods to protect domestic industries. The 43 trade defence measures in operation from when the UK was in the EU customs union remain in place. There is to be greater ministerial involvement in the TRA's review of existing and proposed trade remedies.

Property

Residential Property Developer Tax

As announced in February 2021, the government will introduce a new tax from April 2022 on the profits that companies and corporate groups derive from UK residential property development activities. It will only be applicable to the profits which relate to profits that arise from residential property development activity rather than the whole profits of the business. It is likely that development will be widely defined.

This is intended to ensure that the largest developers make a fair contribution to help pay for building safety remediation and is one of a package of measures specifically designed to enable the Government to raise funds to deal with unsafe cladding in high-rise buildings.

The tax will be charged at 4% on profits exceeding an annual allowance of £25 million.

Apart from being told there will be a restriction in respect of finance costs, no further details will be available until the Finance Bill is published, although draft legislation was published earlier in the year.

Annual Tax on Enveloped Dwellings (ATED)

ATED applies to residential property worth above £500,000 which is owned through companies and other corporate structures, unless the situation qualifies for a relief. The rates increase automatically each year in line with inflation: they will rise by 3.1% from 1 April 2022 in line with the September 2021 Consumer Price Index.

The next 5-yearly revaluation of relevant properties is due on 1 April 2022, which may affect the ATED payable from 1 April 2023, if a property moves into a different valuation band as a result.

Taxable value	2022/23	2021/22
£500,001 to £1,000,000	£3,800	£3,700
£1,000,001 to £2,000,000	£7,700	£7,500

£2,000,001 to £5,000,000	£26,050	£25,300
£5,000,001 to £10,000,000	£60,900	£59,100
£10,000,001 to £20,000,000	£122,250	£118,600
£20,000,001 and over	£244,750	£237,400

Section 2: Health and Social Care Levy (slides 16– 30)

We have been waiting a long time for a plan from the Government to deal with the crisis in the health service and social care. We now have (some) detail and it is complicated!

The basic message is that they are going to raise £12bn per year by increasing national insurance contributions and dividends from 6 April 2022. The increase will be rebranded the ‘health and social care levy’ from 6 April 2023 and no longer linked to national insurance, to enable it to be levied on working taxpayers over state pension age.

Employees

The main rate of Class 1 primary NICs will increase to 13.25% from 6 April 2022 and the additional rate increases to 3.25%. The additional rate is payable above the upper earnings limit.

From 6 April 2023, employees over state pension age, who currently pay no national insurance contributions, will pay 1.25% on all earnings above the primary threshold.

Secondary NICs will increase to 15.05% for all earnings above £9,100. These are already paid for all employees, even if they are over the state pension age and there is no earnings cap either. Class 1A and Class 1B rates will also increase to 15.05%.

For an individual who is earning £50,000 per year, and taking account of the increased thresholds as announced in the Budget, the liability increases as follows:

2021/22: Class 1 NICs due are (50,000 – 9,568) x 12% = £4,851.84

2022/23: Class 1 NICs due are (50,000 – 9,880) x 13.25% = £5,315.90

This is an increase of £464.06 or £38.67 per month.

For the employer the increase is calculated as follows:

2021/22: Class 1 NICs due are (50,000 – 8,840) x 13.8% = £5,680.08

2022/23: Class 1 NICs due are (50,000 – 9,100) x 15.05% = £6,155.45

This is an increase of £475.37 or £39.61 per month.

Self employed

The rate of Class 4 NICs will increase to 10.25% for profits between £9,880 and £50,270 and 3.25% above that. As for employees, the self-employed over state pension age will pay 1.25% NICs on all profit over the lower profit level from 6 April 2023.

For someone earning £150,000 per year the Class 4 liabilities will be:

2021/22: (50,270 – 9,568) x 9% plus (150,000 – 50,270) x 2% = £5,657.78

2022/23: (50,270 – 9,880) x 10.25% plus (150,000 – 50,270) x 3.25% = £7,381.20

This is an increase of £1,723.42.

Class 2 and Class 3

These classes are paid at a flat rate per week and the increases will not be applied to these.

Dividend tax

The rates of income tax on dividends received will increase as follows:

Basic rate: increase from 7.5% to 8.75%

Higher rate: increase from 32.5% to 33.75%

Additional rate: increase from 38.1% to 39.35%

Dividends received on investments held within ISAs are not subject to the dividend tax. We do not yet know whether the dividend allowance of £2,000 will be retained going forward.

For a director/shareholder who takes a salary at the level of the secondary threshold and the balance up to the basic rate threshold as dividends, the tax would increase as follows:

For 2021/22, dividends would be £41,430 (being £50,270 less £8,840) and tax would be levied on 41,430 less 3,730 (being within the personal allowance) less 2000 x 7.5% = £2,677.50. In 2022/23, the equivalent calculation would give tax of £3,123.75. This is an increase of £446.25.

Loans to participators

Where a director/participator in a close company borrows from that company (eg overdrawn director's account) and doesn't repay the loan by the due date of the corporation tax, a section 455 charge is levied at 32.5% of the outstanding loan.

That section 455 charge is to be increased to 33.75% in line with the higher rate of dividend tax from 6 April 2022.

Employer reliefs

There are three categories of employee where the employer can currently pay a zero rate of secondary class 1 NIC on the employee's pay up to the secondary threshold. Those categories are:

- Anyone aged under 21
- Apprentices aged under 25
- Ex-forces personnel in their first civilian role for up to 12 months

In addition, from 6 April 2022 a zero rate of secondary class 1 NIC will be available on employees' wages who work for least 60% of their time at Freeport tax site. This zero-rate will apply up to a new secondary threshold which is expected to be set at £25,000 per year.

The HSC levy won't be payable by the employer on employees' wages where the zero rate of secondary class 1 NIC applies.

Employment allowance

HMRC has stated that the employment allowance can be set against the increased secondary class 1 NIC for 2022/23, but what is not clear is whether the employment allowance will be available to set against the HSC levy from April 2023.

Scottish rates

The Scottish Parliament has the power to set its own rates and thresholds for income tax, so since 2017 the Scottish tax bands do not tie up with the thresholds for NIC in the rest of the UK. This is because powers to set the NIC thresholds have not been devolved to the Scottish Parliament.

The result for 2022/23 will be some very high marginal tax rates (see table) for Scottish taxpayers on earnings and profits. The Scottish income tax rates do not apply to income from savings, dividends, or to set the level of capital gains tax payable.

If it assumed that Scottish income tax rates and thresholds remain at their present level for 2022/23, there will be a 54.25% marginal rate between £43,663 and £50,270, due to the Scottish higher tax rate of 41% starting at a lower level than the reduced NIC rate, which is aligned with the 40% band in the rest of the UK. Taxpayers in England, Wales and Northern Ireland will pay a marginal tax rate of 33.25% on earned income in this band.

There will also be a 64.75% marginal rate between £100,001 and £125,140 arises because the personal allowance is withdrawn by £1 for every £2 of additional income in that band.

Universal credit

In 2022/23 Universal Credit claimants should have their benefit topped up to compensate for some of the loss of income resulting from the NIC increase in 2022/23. This is because entitlement to Universal Credit is worked out after income tax and NIC deductions are taken into account.

However, it is not clear whether the new HSC Levy will be treated in the same way as NIC for Universal Credit purposes.

Profit extraction by limited company director/shareholders

Many directors of companies will be shareholders as well when we are looking at the OMB population. The main issue beyond normal consideration of tax efficient remuneration in general terms is whether to use salary (or bonuses) or dividends. There is a subsidiary issue involving loan interest (where money has been lent to the company by the individual) and rental income (where it is possible to purchase business premises outside the main company) but these are not really going to generate the main income for a household other than in a few cases.

Looking at the two options is superficially straightforward. Salary payments will be tax deductible in the company, but attract tax and National Insurance for both the payer and the payee. Dividend payments are not tax deductible for the company but will only attract tax and not NICs.

Calculations

a) Bonus

Gross	100.00
Secondary class 1 NIC $\left[\frac{13.8}{113.8}\right]$	(12.12)
Gross salary	87.88
Income tax and NIC at 32%	(28.12)
Retained	59.76
Total tax and NI cost	40.24%

b) Dividends

For dividends, it is assumed that the dividend tax allowance has already been utilised.

Gross	100.00
Less corporation tax (20%)	(19.00)
Gross dividend	81.00
Income tax 7.5%	(6.08)
Retained	74.92
Total tax and NI cost	25.08%

The following table compares the different tax burdens:

	Basic rate taxpayer	Higher rate taxpayer	Additional rate taxpayer
Salary	40.24%	48.15%	52.54%
Dividends	25.08%	45.33%	49.86%

These figures will go up next year with the new Health and Social Care Levy.

	Basic rate taxpayer	Higher rate taxpayer	Additional rate taxpayer
Salary	41.98%	50.67%	55.02%
Dividends	26.09%	46.34%	50.87%

They then change again when the rate of corporation tax goes up in 2023 since the tax rate for dividends depends on the marginal rate of tax of the company.

	Basic rate taxpayer	Higher rate taxpayer	Additional rate taxpayer
Salary	41.98%	50.67%	55.02%
Dividends			
19% CT	26.09%	46.34%	50.87%
26.5% CT	32.93%	51.31%	55.42%
25% CT	31.56%	50.31%	54.5%

Interesting, if no money was extracted on an annual basis but the funds were retained in the company and then extracted subsequently as a capital distribution, the following marginal rates of tax would apply:

	BADR	No BADR basic rate	No BADR higher rate
19% CT	27.1%	27.1%	35.2%
26.5% CT	33.85%	33.85%	41.2%
25% CT	32.5%	32.5%	40%

Section 3: Making Tax Digital and reform to basis periods (slides 31 - 41)

The initial proposal regarding Making Tax Digital (MTD) announced in 2015 was not greeted with any great enthusiasm by the tax profession and there was some hope that the limited use of this for VAT would continue rather than any expansion of the scheme. This hope was quashed last year.

MTD currently applies for all VAT registered businesses with turnover in excess of the VAT threshold. The 'soft landing' expired in April 2021 and MTD for VAT will be rolled out to all VAT registered businesses from April 2022.

MTD for income will be mandated from April 2024 for all unincorporated business and landlords with turnover in excess of £10,000 except for partnerships which will come into the regime a year later. Note this has been delayed by a year since the initial announcement in the summer. MTD for companies is being proposed from April 2026 although there are genuine doubts as to whether this will ever happen due to the low level of gains for the Exchequer from doing this.

MTD for income tax

As noted above, this will apply for the first accounting period beginning after 5 April 2024. W The main driver behind MTD has always been to force businesses to keep digital records as those in Government are convinced that the reason for a significant part of the tax gap is the errors in records kept by very small businesses. It is true to say that many are sceptical that this is the case but HMRC are moving forward with MTD based on that assumption.

In order to force the use of digital records, taxpayers will have to submit a quarterly update which will need to be directly from digital records (as people will be familiar with for VAT). It can be a three-line summary of just income, expenses and profit without any accounting or tax adjustments. There is huge concern about what HMRC will do with the data. In reality, no-one believes that the answer to that question is 'nothing' which is what HMRC say.

There will then need to be an end of period statement which is the actual taxable profit figure derived from those digital records, with the necessary adjustments made. This is not the self-assessment return which will also have to be filed if there is any non-MTD income. If the only reason someone is in self-assessment is because of trading or property, then they may eventually fall out of that system, although there is no clear roadmap to achieve that.

It is really important to just reiterate that all of this has to be done automatically from the digital records without any manual intervention although how the accounting and tax adjustments will be made will depend on the software.

Which brings us to an interesting point. This all relies on software being developed to meet the needs of the system. At the moment there are very few software providers which claim to be prepared for this next stage in MTD although given the options for MTD for VAT it can probably be assumed that the software houses are currently frantically preparing these packages. However, there are going to be types of businesses where no software solution will exist due to the uniqueness of the business. The same is true for VAT – so for example there is nothing in the affordable market which deals with the second hand VAT schemes. But most businesses will use Excel spreadsheets and bridging software. The narrative at the moment is that Excel spreadsheets are still digital records and that they can be used but it is harder to see how bridging software might work for more complex information. There will be no copy and pasting of information, as applies now for VAT MTD. It is all about digital links!

Going back to the mechanics of the situation, a quarterly return and end of period statement will have to be done for every business which is affected. The £10,000 threshold is a joint one for all trade/property businesses but then the returns are done for each business.

The quarterly update will be for the same standard quarters for all businesses being 5 July, 5 October, 5 January and 5 April although a business can elect to use calendar quarters to 30 June, 30 September, 31 December and 31 March. The deadline for the quarterly returns is 1 month from the end of the 'normal' quarter date. The end of period statement has to be done by the current self-assessment deadline for the relevant tax year.

So for the year ended 31 March 2025, on the assumption the election is made:
Q1: April to June 2024 – deadline for submission of quarterly return is 5 August 2024
Q2: July to September 2024 – deadline for submission of quarterly return is 5 November 2024
Q3: October to December 2024 – deadline for submission of quarterly return is 5 February 2025
Q4: January to March 2025 – deadline for submission of quarterly return is 5 May 2025
The end of period statement has to be done by 31 January 2026.
For new trades, there will be a period of time before quarterly returns etc have to be submitted but there will be a requirement to keep digital records from day 1.

The end of period statement has to be made for the first accounting period that starts after the digital start date. So for someone with a 31 March year end, the first period to begin after the digital start date will be year ended 31 March <u>2026</u>, so that even though will have been making quarterly returns from June 2024 onwards, they will not have to make an EOP statement until 31 January 2027.

This all sounds very complicated and the potential for mistakes to be made seems high. But the regulations are brief, and no guidance has yet to be issued so there may be changes.

Exemptions
The main exemption is for those whose joint turnover from all trade and property businesses does not exceed £10,000 per annum. This is, of course, below the current personal allowance. This leads to the possibility that someone with no taxable income having to comply with MTD. This has been repeatedly pointed out to HMRC by those involved in the consultation process but this has not been acknowledged so is felt to be unlikely to change.

There is an exemption for those who are digitally excluded. Those are going to be those who are such for religious reasons or where it is not practical (by virtue of age, disability or internet accessibility). The digital excluded who are already registered as such for VAT purposes will continue to be treated as such. Others will have to apply.

It is also felt likely that trustees, executors and complex partnerships (such as LLPs, limited partnerships or corporate partnerships) will not have to initially comply with MTD. However, this has yet to be confirmed.

For MTD for companies, if it is ever introduced, it is likely that there will be no income threshold and it will not apply to insolvent companies. It is likely that no quarterly updates will be needed for companies within the very large quarterly instalment regime or subject to Country by Country reporting. However, this is such a long way off really that who knows what the company regime may look like.

Penalty regime
There is also a new penalty regime being introduced as part of the move towards MTD. This will come in for VAT for returns on or after 1 April 2022, for ITSA MTD from April 2024 and for non-MTD from April 2025.

The idea is that a late return will not give an automatic late filing penalty but points will be awarded when the return is filed late. Once you reach the penalty threshold, then a penalty of £200 will be levied. The threshold depends on the frequency of the returns and each set of returns has its own threshold.

For annual returns, the threshold is 2. For quarterly returns, the threshold is 4. For monthly returns, the threshold is 6.

There will be a reasonable excuse opt-out but there is going to be no soft landing for the introduction of these penalties.

For late payment, the penalties are also altering. There will be no late payment penalty until the payment is more than 15 days late but it then increases from there. Once we get past 30 days, then there is effectively a ‘penalty’ interest charge of 4% pa. There will be soft landing on this for one year.

What do we need to be doing?
You need to be reviewing clients:

1. Determining if and when the client will be mandated
2. Make an assessment as to how much help each client will need.
    a. Do they already have digital records?
    b. Do they have the necessary skills to adapt to use of digital records?
3. Explore software options if not already dealing with particular software provider
4. Consider joining pilot (although the criteria are currently very limited although it is likely to be widened from April 2022)

Basis period reform

The proposal is that for trading businesses, the taxable profits or allowable losses for a tax year would be those arising in the tax year itself. We would therefore have a new ‘tax year basis’ rather than a current year basis as applies now (where the profits arising in the accounting period ending in the tax year form the basis of the taxable profits with special rules for opening and closing years and changes of accounting date).

This is not the same as mandating the accounting date for a business as they can still choose the most appropriate date from a commercial perspective but if they do not have an accounting period that mirrors the tax year, then you would need to apportion the profits into the relevant tax year. Apportionment would be on a just and reasonable basis.

It is suggested this will come in from 2024/25 tax year.

As an example, a business with a year ending 31 December, who prepared accounts to 31 December 2024 would find 9 months of that period would be assessed in 2024/25 with the balance being made up of 3 months from the year to 31 December 2025.

There are some significant impacts of this and some of the main ones are highlighted below:

- If the second set of accounts (as in the above example) have not be prepared by the filing deadline for the tax year, businesses would be expected to use provisional figures to prepare their tax returns, estimating the amount of profits arising in the final months of the tax year. This is clearly going to increase the amount of work that both taxpayers and their advisors are going to have to do. This is acknowledged in the consultation and HMRC make suggestions as to alternative ways in which this could be managed.
- For the purposes of these rules, accounts made up to 31 March will be treated as made up to 5 April.
- Partnerships will be included within these provisions.
- The 2023/24 tax year will be the transition year with businesses that do not have a basis period aligned with the tax year being taxed on the current year basis period plus profits from the end of that basis period up to the end of the tax year. Any excess profits arising by doing this can be spread over 5 years. All existing overlap relief would have to be claimed in that transitional year. HMRC have indicated a flexible approach to time to pay for anybody suffering hardship due to these changes.

The only issue to consider is whether or not it is worth accelerating the date at which the change takes place? This might be worth thinking about if you have businesses which have made losses during the pandemic. But it is not always going to be straightforward.

Let’s look at an example.

Nick commenced trading on 1 May 2000 and prepared accounts to 30 April 2001 thereafter retaining this accounting date. His first year’s profits were £20,0000 so he had overlap profit arising on commencement of £18,333 (being 11/12th of that first year’s profits).

His profits for the accounting periods running up to the commencement of the new rules are as follows. This assumes he changes his accounting date to 31 March 2024 in the final period:

30 April 2020	£50,000
30 April 2021	(£30,000)
30 April 2022	£10,000
30 April 2023	£50,000
31 March 2024	£50,000

The profits that would be taxable up to the date of the change would be as follows:

2020/21	£50,000
2021/22	Loss of £30,000 which we assume is carried back to the PY
2022/23	£10,000
2023/24	£100,000 less overlap of £18,333 so £81,667

The excess profit in 2023/24 could be spread forward over up to 5 years but there is no indication yet of what the comparison will be in calculating the excess profit and what the tax rate will be.

If the accounting date was instead changed to 31 March 2021, the calculations would be (assuming we have a one-month shift in profits in the later years):

2020/21	£50,000 less 11/12th of loss being £27,500 less overlap £18,333 = £4,167
2021/22	£11,666
2022/23	£50,000
2023/24	£50,000

Whether this is worth looking at will depend on the figures for each individual client and what the current accounting date is. It is not possible to give generic advice on this point.

Section 4: Tax case update (slides 42 - 49)

Termination payment and Real Time Information

Alan Loughrey had always paid income tax under PAYE and had never been required by HMRC to file a tax return.

In 2013 he was made redundant and, believing that too much tax had been deducted from his pay in 2013/14, he filed a tax return for that year using figures from his P45. No longer able to access his electronic payslips, he included a £30,000 deduction against his termination payment that he was entitled to. Based on this return, HMRC processed a £14,000 tax refund. However, unknown to him, Alan Loughrey's employer had already deducted the £30,000 from the P45 taxable pay figure, meaning the exemption had been claimed twice.

On reviewing the return using the real time information (RTI) held on HMRC's computer systems, HMRC identified this discrepancy and HMRC raised a discovery assessment in April 2018 to correct the matter. HMRC argued that the hypothetical officer would not have been aware of the insufficiency of tax from a review of the information on the tax return

Alan Loughrey appealed. He did not dispute HMRC's calculation, but rather he challenged whether HMRC had satisfied the requirements to be able to make a valid discovery.

The First Tier Tribunal found that when submitting his online tax return, Alan Loughrey had followed HMRC's instructions and deducted £30,000 from the P45 figure for the tax-free redundancy payment. He had not acted carelessly as the online guidance did not indicate that amounts for which the £30,000 exemption had already been given should be treated any differently. There was no suggestion in that guidance that he should seek further advice from either HMRC or a qualified professional.

HMRC should have been aware of the discrepancy, as it was aware of the existence of the real time information on his pay figure from his employer. This information would make it obvious to a hypothetical officer that there was an insufficiency of tax in respect of employment income. After all, it was HMRC's computer systems that initially flagged the discrepancy on the tax return using the RTI data to begin with and further, HMRC had used the RTI information when reviewing the correctness of the tax return.

The appeal was allowed.

Alan Loughrey v HMRC (TC08198)

Redundancy related inaccuracies

Angel Rodriguez-Issa was made redundant by Morgan Stanley in July 2016 and subsequently commenced employment with BNP Paribas.

He entered into a Settlement Agreement dated 12 September 2016 under which, Morgan Stanley would pay all outstanding salary, a payment equivalent to three months of salary in lieu of notice and a severance payment. Further, Morgan Stanley would waive its right to repayment of an outstanding loan.

He filed his 2016/17 tax return in December 2017 but omitted just over £176,700 of income received from Morgan Stanley after he had left employment with the firm as well as any reference to his employer having written off the loan.

In October 2018, HMRC opened an enquiry into his 2016/17 tax return and later, both parties agreed that there were inaccuracies in that return such that his tax liability had been understated by £68,000.

HMRC argued that the omissions were deliberate. The sums were large and the settlement agreement specifically stated that he was to be liable for the income tax payable on the settlement sums paid. HMRC contended that Angel Rodriguez-Issa must have been aware that the substantial sum was missing from his return.

Angel Rodriguez-Issa argued that Morgan Stanley had not given him paperwork for these additional amounts, so at the worst his behaviour was careless. He argued that, as in previous years, he had reported income based on returns provided by his employers. He had completed his return using the P45 received from Morgan Stanley and the P60 provided by his new employer, BNP Paribas. He did not appreciate that Morgan Stanley had made further payments that were not included on these documents. He claimed that he was not aware the loan write off would trigger a lump-sum tax liability.

The First Tier Tribunal were not satisfied that HMRC had discharged the burden of proving that the inaccuracies were the result of deliberate behaviour on the part of the taxpayer.

The First Tier Tribunal accepted that Angel Rodriguez-Issa believed that he had completed his tax return correctly using figures from his P60 and P45 and that he did not understand the tax treatment of the loan waiver. Completing his return without professional advice meant that errors had arisen but these errors were not deliberate.

Surprisingly, HMRC advanced their case on an “all or nothing” basis so that when the Tribunal found that Angel Rodriguez-Issa’s actions were not deliberate, no penalties could be charged on the basis of carelessness. The appeal was allowed and the £24,000 penalty was cancelled.

Angel Rodriguez-Issa v HMRC (TC08123)

No PPR available

Heather Whyte bought the Bunny Hall Estate in 2001 which included Bunny Hall, a Grade I listed mansion house that was unoccupied and extremely dilapidated. The purchase was partially funded by her husband who was a property developer. Heather Whyte’s family moved into a renovated flat within Bunny Hall.

The Bunny Hall Estate included 17 acres of grounds that were completely overgrown and had not been touched for decades. They included walled and terraced areas of formal gardens, informal grassed and wooded areas, lawns, and fenced grass paddocks.

The couple knew that to be able to renovate the Hall, significant funds would be needed. Before buying the Estate, plans were already in place to sell off part of the land for housing. English Heritage approved the sale of a number of plots and between 2003 and 2006, Heather Whyte sold five plots to her husband and a sixth to a ‘known’ third party. At the time of sale, all of the plots had utilities in place and groundwork for the properties to be built had already commenced.

Heather Whyte reported gains on her tax returns in the relevant years and claimed Principal Private Residence relief (PPR) against these gains, claiming that the plots of land were part of her garden or grounds.

HMRC rejected the PPR claims arguing that the plot sales were either:

- trading transactions liable to income tax; or
- capital transactions liable to CGT but without PPR.

She argued that this was not a trade, as it was a one-off transaction and the plots of land had been in her sole name prior to sale for over two years.

The First Tier Tribunal found that Bunny Hall was originally acquired by Heather Whyte as a capital asset.

Having considered the Badges of Trade, the Tribunal concluded that Heather Whyte had been trading. She had worked with her husband developing properties and had bought this property with the intention of selling development plots on at a profit. The land had been divided into six plots for sale which had been cleared, utilities had been installed and an access road constructed. All of these actions made the plots easier to sell.

The Tribunal concluded that in 2003, when plans for the six plots were submitted to the Council, they were appropriated to trading stock. Gains liable to CGT arose on the plots at this time but PPR relief was denied as the partially developed land was not part of the garden or grounds of Bunny Hall.

The profit generated after this time was liable to income tax.

Heather Whyte v HMRC (TC08215)

Interpreting a will

Audrey Arkell died on 17 August 2017 leaving an estate valued for probate at £3,127,174.

Clause 4 of her will stated "I leave the Nil Rate Sum to my Trustees on trust for my said friend John Wayland Beasant", with other clauses leaving specific items 'free of inheritance tax' as follows:

- To John Beasant, her main residence and shares worth nearly £460,000;
- To six other individuals, cash gifts totalling £45,000.

The remainder of her estate, after costs and tax, was to be split between 21 charities.

The claimant in this case was one of the 21 charities, acting on behalf of all of the legatee charities.

The issue to be decided was the interpretation of Clause 4, the gift to John Beasant:

- The Royal Commonwealth Society for the Blind claimed that no sum was due to John Beasant, as the total value of the specific gifts exceeded the nil rate band of £325,000.
- John Beasant claimed that the other legacies did not have to be taken into account in interpreting Clause 4, meaning that in addition to the house and shares, he was also entitled to a tax-free amount of £325,000.

In reaching their decision, the Hight Court needed to consider the relevance, if any, of Clause 4.1. It read:

“In this clause 'the Nil-Rate Sum' means the largest sum of cash which could be given on the trusts of this clause without any inheritance tax becoming due in respect of the transfer of the value of my estate which I am deemed to make immediately before my death."

The High Court referred back to the language of the will and stated that, if the deceased had intended to gift the nil rate band to John Beasant, the will could simply have stated that there should be a gift equal to the nil rate band and expressed that to be free of IHT, as was the case with the other gifts contained within the will. The definition in Clause 4.1 would not have been necessary.
However, the Court stated that Clause 4.1showed a clear understanding of how IHT worked, referring to "without any inheritance tax becoming due" and "in respect of the transfer of the value of my estate which I am deemed to make immediately before my death". The Court found that Clause 4 clearly contemplated that the 'Nil-Rate Sum' should be calculated by reference to the operation of IHT across the whole of the deceased's estate and the order of the gifts in the will does not matter. The sum is limited to the amount left of the nil rate band, if any, before tax would become payable.

The High Court agreed with the charities that John Beasant was entitled to nothing under Clause 4 and so the residue left to the charities was not reduced by a gift of £325,000 to John Beasant.

Royal Commonwealth Society for the Blind v John Wayland Beasant and Benjamin How Davies (as PR of the Estate of Audrey Arkell deceased) [2021] EWHC 2315

Employee or self-employed?

C&G is a broker providing niche bespoke insurance products. Having worked at developing a medical malpractice product with an unrelated company, in May 2010 C&G decided to develop the product itself. This involved identifying an insurer who was prepared to underwrite the scheme and reach a binding authority agreement (a “binder”) with that insurer as to the relevant terms. When a surgeon purchased a policy, C&G would receive a commission on that policy.

C&G did not have the contacts or experience themselves to identify potential insurers or negotiate the terms of a binder and so the company engaged with Gareth Phillips, who had both the experience and contacts required and had been involved with the project from the start.

Gareth Phillips had identified Newline as an insurer interested in underwriting the scheme. He negotiated the terms of a binder with them months and notified C&G that he had secured an agreement with Newline, which C&G signed off on. C&G only became involved once the terms were largely agreed. The terms included a key man clause, which provided that Newline had the right to terminate the contract if Gareth Phillips ceased to be an employee or director of C&G.

No business was written under this binder with Newline and in March 2011 Newline terminated the agreement. Gareth Phillips negotiated a binder with another insurer, AmTrust. Some business was written under that scheme, that generated commissions for C&G in early 2012. However, around May 2013 AmTrust terminated the agreement and C&G and Gareth Phillips parted company.

Although there was a draft Contract for Services and an Employment Contract, there was no signed written contract between Gareth Phillips and C&G. A number of possible relationships between the two parties were considered at various times.

This case relates to the period from 28 May 2010 to May 2013. On 10 October 2011, Gareth Phillips wrote to HMRC stating that he had experienced difficulty in obtaining his P60 from his previous employer, C&G, which he needed to complete his self-assessment return.

HMRC wrote to C&G who responded by stating that Gareth Phillips had never been employed by them. On 9 December 2011 HMRC notified Gareth Phillips that the matter had been passed to a "Status Inspector" to consider his employment status. Later, C&G confirmed that Gareth Phillips had been self-employed, paid on a tiered commission basis with no salary entitlement.

Gareth Phillips made a claim for unfair dismissal, breach of contract, holiday pay and unlawful deductions. That appeal was heard by the Employment Tribunal and was struck out. He was found to be neither an employee nor a worker of C&G.
HMRC subsequently assessed him as self-employed.

Gareth Phillips appealed to the First Tier Tribunal.

The First Tier Tribunal acknowledged that Gareth Phillips had expertise and experience in the insurance industry, and in developing medical malpractice insurance products.
The Tribunal found that although C&G were prepared to offer an employment contract to Gareth Phillips, he did not accept the contract. In fact, he was reluctant to commit to any option. An email exchange in December 2010 contained the terms which were agreed between the parties and those terms (commissions, bearing a share of operating costs, recovery of amounts already paid, retention of IP rights) were consistent with self-employment. The agreement did not include a separate or additional right to salary on top of the commission arrangements. He did not receive regular wages, but rather irregular payments without payslips.

Gareth Phillips had argued that FSA rules required that he could only operate in this field under the umbrella of C&G's authorisation as an employee of C&G. However, with no sight of these FSA rules, the Tribunal rejected this argument.

The Tribunal considered the key man clause requiring that Gareth Phillips be an employee or director of C&G but rejected its relevance. There was no evidence provided that the binder with Newline was signed and further, no business was ever entered in to under that binder.

Although Gareth Phillips did not have PII in his own right and appeared to be within the scope of that of C&G, again no evidence as to the terms of C&G's coverage was provided. The Tribunal placed little weight on this factor.

The Tribunal found that Gareth Phillips was self-employed:

- He set his own working hours, arranged appointments with insurers and potential clients. There was little reporting back to C&G and what was reported was on an irregular basis;

- He negotiated the terms of the binders with insurers;

- He was remunerated on a commission basis and had received advance payments on account of future expected commissions. He did not receive regular payments by way of salary, or any payslips;

- He retained the IP rights in the insurance product.

Gareth Phillips was performing his activities as a person in business on his own account.

Gareth Phillips v HMRC (TC08074)

Validity of enquiry notice 'estopped by convention'

Under sS.9A and 15 TMA 1970, HMRC must give notice of an enquiry into a taxpayer's tax return by sending it addressed to the taxpayer's usual or last known place of residence, or their place of business or employment.

In early 2005, HMRC received two documents showing Mr Tinkler's address as Station Road:

1. Form 64-8 on the appointment of BDO Stoy Hayward (BDO) as his agent;
2. Mr Tinkler's 2003/04 Self Assessment Tax Return.

As a result, HMRC amended the address that was held on their system to show the Station Road address rather than the address at Heybridge Lane where Mr Tinkler had previously been living in a rented house.

For reasons that were not stated, on 1 July 2005 , HMRC incorrectly changed the address back to Heybridge Lane and that same day, sent two letters:

1. A notice of enquiry into Mr Tinkler's 2003/04 Return to Heybridge Lane;
2. A letter to Mr Tinkler's accountants and tax advisers, BDO Stoy Hayward (BDO), informing them of the enquiry and raising a number of questions about his tax affairs. It included a copy of the notice that had been sent to Heybridge Lane.

BDO replied to HMRC by letter on 6 July 2005, confirming that BDO would respond to the questions raised in relation to capital gains by 22 August 2005 as requested by HMRC. BDO also referred to a "gilt strip loss" which had mistakenly not been included in the Return. If taken into account, BDO asserted that Mr Tinkler had suffered an income tax loss for 2003/04 of some £2.5m but it pointed out that it could not amend the Return "as the Return is now the subject of a section 9A TMA 1970 enquiry". A repayment of tax overpaid by Mr Tinkler was nevertheless sought which BDO stated amounted to £605,319.58 (plus £30,265.98 in overpaid surcharge). HMRC responded by letter dated 12 July 2005, noting the gilt strip loss claimed but saying that "no repayment will be made until after the enquiry has been concluded".

Correspondence continued between HMRC and BDO, during which time HMRC were informed that Mr Tinkler no longer used the Heybridge Lane address and on 1 November 2005, HMRC corrected the address recorded in their system to Station Road.

HMRC finally issued a closure notice in August 2012, denying the losses and stating that Mr Tinkler owed just over £700,000 in tax.

At this time, Mr Tinkler argued that the closure notice was invalid because the initial notice of enquiry had been sent to Heybridge Lane, which was neither his usual or last known place of residence, nor his place of business or employment.

HMRC argued that as Mr Tinkler and his agent had corresponded with HMRC on the shared assumption that the enquiry was validly opened, he was estopped from challenging that assumption.

The First Tier Tribunal and Upper Tribunal dismissed Mr Tinkler's appeal but the Court of Appeal allowed it.

HMRC appealed to the Supreme Court.

The Supreme Court considered the principles governing estoppel by convention in CRC v Benchdollar [2009] STC 2342 and concluded that by replying and engaging with HMRC's enquiry process, BDO had confirmed that they were acting on the shared assumption that the enquiry had been validly opened.

Had HMRC not relied on the common assumption, and objections to the enquiry notice were raised at the start, HMRC could have issued an alternative notice with the new address. Waiting over nine years to raise the issue was not acceptable.

Lord Burrows concluded by saying:

"Standing back from the detail, what Mr Tinkler and his advisers have done is to take at a late stage what can fairly be described, on the facts of this case, as a technical point (that the notice of enquiry was sent to the wrong address) even though that has not caused Mr Tinkler any prejudice. It is entirely satisfactory that, by reference to estoppel by convention, the law has the means to avoid such a technical point succeeding."

HMRC's appeal was allowed.

Tinkler v HMRC [2021] UKSC 39

Black cab taxi hire and insurance

Black Cabs Services Limited leases London Hackney cabs to self-employed drivers. By leasing rather than buying black cabs, the drivers do not have the hassle of maintaining, financing and insuring the vehicle themselves.

The black cabs are insured under a "motor fleet policy" taken out by Black Cabs Services Limited and all cabs owned by the company are covered. There is usually no requirement for the details of the drivers to be sent to the insurer. Although drivers have the option of using their own insurance, his drivers have never used their own insurance policies as the company's policy was cheaper and had more benefits than an individual driver could negotiate himself.

Insurance formed a small part of the overall cost of running a vehicle (£30) with the majority of the cost comprising finance and maintenance. No invoices were issued to the drivers, just receipts with the cost of insurance set out separately.
Having originally treated the insurance element as a taxable supply, they later claimed that this was a mixed supply and that the insurance element was an exempt supply. Consequently, Black Cabs Services Limited submitted a VAT error correction claim for £43,245 for the 12/2013 - 03/2016 periods.

HMRC disagreed and determined that the company was making a single standard-rated supply of a fully insured taxi and refused the claim. It would be artificial to split the costs.

The company appealed.

The First Tier Tribunal accepted that although the economic realities of the purchase of "block policy" insurance meant that this option was cheaper and so all drivers were insured under their policy, drivers were always given the option of using their own insurance.

Drivers were aware of the added cost of insurance because not only was it set out in the agreement, but the receipt separately set out the hire amount and the insurance amount. The First Tier Tribunal concluded that the average driver was likely to conclude Black Cabs Services Limited two supplies: an exempt supply of insurance services and a standard supply of vehicle hire.

HMRC were wrong to deny the repayment claim and the appeal was allowed.

Black Cabs Services Limited v HMRC (TC08141)

Construction of new dwelling

CMJ (Aberdeen) Limited is a joinery and construction services company.

In June 2012, an initial planning application was made for the "demolition of existing dwelling and garage and reinstatement with new build dwelling and garage". To gain approval, the application was amended and referred to as 'an extension and a garage' with the newly designed house sitting within the same footprint as the existing house and retaining two of its original walls.

In February 2013, when the roof was taken off, it was discovered that the walls were not suitable to hold the weight of the proposed new extension and so they were demolished and rebuilt with modern replacements.

On 10 November 2014 the Council granted full planning permission for "Demolition of existing steading and erection of new dwelling house (retrospective) at [the property]".

In summary, this meant that when construction started, the planning permission in place did not relate to the construction of a new dwelling but rather 'alterations and extension' to the existing dwelling. However, the final result was that the company supplied construction services to build a new dwelling with retrospective planning permission granted.

For the construction services to be zero rated under Schedule 8 Group 5 VATA 1994, one of the conditions is that 'statutory planning consent' must have been granted for a new dwelling before the work starts. As this was not the case, HMRC raised an assessment, treating the supplies as standard rated.

The company appealed arguing that statutory planning consent had been obtained for the construction by dint of a combination of the planning consent and a construction building warrant which it had obtained from the relevant authority and which allowed for the construction of a new building.

HMRC's view was that a building warrant was 'not sufficient' for zero-rating purposes because it was not statutory planning consent.

The First Tier Tribunal agreed with HMRC confirming that verbal planning consent and a building warrant granted before the work started was insufficient.

On a strict interpretation of note (2), zero rating was not allowed.

The company's appeal was dismissed.

CMJ (Aberdeen) Limited (TC08140)

Car parking services or right to occupy land for car washing

RK Fuels Limited rented out the car park at its premises to a tenant who ran a car wash business, treating the income as an exempt supply of land. The company argued that it was supplying a licence to occupy the land and not a parking facility. The use to which the tenant put the land was not relevant. It was up to them how they used the land – as a car park, to run a car wash business or for some other purpose.

Following a visit, HMRC raised an assessment to collect output tax on the basis that the supply was standard rated. HMRC stated that the fact that RK Fuels Limited had permitted an alternative use of the car park to run a car wash did not cause the area to cease to be a car park, nor did it mean that it could not be used as a car park. There was a need for cars to be parked on the land whilst waiting to be washed, dried and cleaned. Without the ability to park a car on the land, the permitted use could not occur.

RK Fuels Limited appealed to the First Tier Tribunal relying on the section of the lease agreement that stated:

The car park will be used for only the following permitted use (the Permitted use): as a car wash business. Neither the car park nor any part of the premises will be used at any time during the terms of this lease by the tenant for any purpose other than the permitted use.'

The First Tier Tribunal concluded that the supply was standard rated. Having considered the lease agreement in its entirety, the Tribunal found that there was considerable force in HMRC's submission that the words "Car Park" featured frequently throughout the lease agreement. The area being leased was a car park, albeit under the terms of the lease agreement that car park enabled a car wash facility to operate.

The Tribunal was satisfied that a site for parking is any place where a car may be parked. The agreement was 'simply a means of allowing the supply; namely the right to operate a car wash'. HMRC's assessment was upheld.

RK Fuels Limited v HMRC (TC08053)

Hospital parking

Northumbria Healthcare NHS Foundation Trust provides NHS and private medical services. At some of its sites, it provides pay-and-display car parking for staff, patients and visitors. The Trust provides car parking free-of-charge to a range of hospital users, including cancer patients and those visiting patients that are in hospital for an extended period. Staff pay reduced rates for parking depending on their level.

The Trust had originally accounted for VAT at the standard rate on the fees that it charged for parking but in 2017, it submitted a claim for repayment of VAT for in VAT periods 05/13 to 03/16. The Trust argued that, as an exempt supply, the supply of parking was not an economic activity and further, the supply was closely related to hospital and medical care and so exempt as part of those activities.

Arguing that the supply of car parking was standard rated, HMRC refused to repay the £267,000 of VAT being claimed.

Northumbria Healthcare NHS Foundation Trust appealed to the First tier Tribunal.

TradThe First Tier Tribunal found that car parking charges were set so as to make a profit and support the work of the hospital, making its supply an economic activity.

The Tribunal concluded that the supply of car parking was not closely related or essential to the supply of hospital and medical care. The Tribunal stated:

For the supply to be exempt, the car parking supply needed to be "an indispensable stage in the supply of hospital and medical services for the purposes of achieving the therapeutic objectives, namely diagnosis, treatment and, in so far as possible, cure of diseases or health disorders. It is not sufficient that services improve the comfort and well-being of the patients."

The car parking was too remote from the medical treatment to qualify for the VAT exemption. The supply was standard rated and the appeal dismissed.

Northumbria Healthcare NHS Foundation Trust v HMRC (TC08056)

Don't forget to notify an option to tax

William Newman was the tenant landlord of a pub. In 2014 the freeholder offered to sell it to him. Having found a buyer, on 22 May 2014 he bought the property and sold it on.

He was invoiced £1.3m plus £234,000 VAT on his purchase and invoiced on to his buyers for £1.8m with VAT of £360,000.

HMRC argued that he did not make an effective election to opt to tax his sale. Had he done so, he would have been able to reclaim the VAT on his purchase, leaving him with a net VAT liability of £126,000. With no option to tax in place, his sale was an exempt supply and his input tax was irrecoverable. As an exempt supply, he could not properly give a VAT invoice to the buyer and the VAT shown on the invoice would be collectable from him under para 5(2) Sch. 11 VATA as a debt to the crown.
Strangely, no VAT return was made on time for the period 07/14 when he bought and sold the pub, although a later nil return was made. William Newman was not advised by his advisors to pay and did not pay HMRC the £126,000 within the prescribed time after the end of the period.

By para 20 Sch. 10 VATA, an option to tax does not have effect unless it is notified to HMRC "within the allowed time", which in non-COVID times is 30 days. William Newman did not notify HMRC by submitting form VAT 1614**A** within the 30-day period.
In October of the following year, HMRC received a form 1614H, requesting permission for a retrospective option, rather than the required form 1614A relating to the notification of an option already made.

On 11 November 2015 HMRC sent a demand under para 5(2) Sch 11 VATA for the VAT charged to his buyer and two weeks later followed up on the incorrect form that had been sent, which resulted in completed and signed form 1614A arriving on 4 December 2015.

William Newman appealed against HMRC's demand for £360,000.
The First Tier Tribunal concluded that it seemed clear that VAT accounting on both the sale and purchase had been mishandled in 2014 and early 2015 by those advising him.
The issue to decide was whether William Newman had made an effective election before 21 May 2014.

The Tribunal found that he had made an election in time as indicated by the VAT in the sale contract and other documentation. He delegated authority to his advisors to make the election on his behalf and to take such steps as were necessary to make it effective.

Having missed the 30-day notification deadline, the Tribunal concluded that the election could still be "effective" but only if HMRC allowed further time. However, it was clear that HMRC had not done so and the appeal was dismissed.

William Newman v HMRC (TC08147)