Lexis®PSL Tax

Autumn Budget 2021—views from the market

Tax analysis: Views from leading tax practitioners on the Autumn Budget 2021.

The Lexis®PSL Tax Consulting Editorial Board (CEB) and other leading tax practitioners provide us with their views on the Budget delivered by the Chancellor on 27 October 2021.

For a summary and analysis of the key business tax announcements in the Autumn Budget 2021, see: Autumn Budget 2021—Tax analysis and for key private client announcements, see: Autumn Budget 2021—Private Client analysis.

Business and enterprise

Eloise Walker, Pinsent Masons LLP and CEB member—This was supposed to be another unexciting Budget, and at first sight it did not disappoint—except for some additional coronavirus (COVID-19) inspired reliefs for the entertainment and hospitality sector, actual news for corporates appeared from the Chancellor's speech to be thin on the ground unless you were in very focused sectors like alcohol duty (to be reformed) or tonnage tax (to be simplified). However, once we got to the overview of tax legislation and rates (OOTLAR) document there was (as always) a bit more meat on the bones than was immediately evident.
In general good news, smaller corporates will have welcomed an extension of the higher annual investment allowance deadline to 2023, giving them a further 15 months to benefit. Also welcome will be the much demanded overhaul of business rates—sadly, not abolished but at least they are to be reformed.

Less widely welcome will be the promised overhaul of R&D. While cloud and other computing sub-sectors will rejoice in a called-for expansion of the regime, this good news is overwhelmed by a worrying intention on the part of the Chancellor to incentivise UK based R&D by dis-incentivising its offshore counterparts. That will be deeply worrying for a range of sectors but none more than pharmaceuticals where the reliefs are crucial to enabling UK companies to develop new therapies and attract much needed additional investment. It is to be expected that various industry bodies will be lobbying about the negative impact of trying to kill off overseas R&D and it is to be hoped that HM Treasury will listen.

Other developments were quite sector specific. Those in asset-finance will desire a good outcome from HMRC's new powers around stamp duty in securitisation arrangements. Elsewhere in the financial services sector, while banks will be gloomily resigned to see the unpopular banking surcharge continue, and increase, smaller banks will be happy to see their allowance increase to £100m to stimulate growth. Various consultations are proceeding including the VAT treatment of fund management, as are legislative proposals around the residential property developer tax and the (very popular, much lobbied against but hopefully now less burdensome) uncertain tax treatment notification requirements.

John Endacott, PKF Francis Clark LLP—There wasn't much new in Autumn Budget 2021. The Chancellor was mainly allocating the money from his piggy bank which gave his speech the feeling of a numberfest when most of us are still reeling from the hour by hour spending announcements through the media of the last few days.

It is hard to discern much sense or meaning from this staccato of numbers being thrown around. It all sounds big and generous. Is there a magic money tree after all?
When one steps back from the detail and surveys the scene, there are a few stories of note.

The first story is that the Chancellor has resisted calls to be more generous and to continue with the pandemic relief measures. So, furlough has ended, as has the Universal Credit of £20 per week, but also the VAT reduction for hospitality will end in March next year as scheduled.

These stimulus measures will cease and the pain of the extra National Insurance contributions (NICs) for employees and employers from April 2022, followed by the corporation tax increase in April 2023 and the freezing of various rates and allowances. It is not just stimulus support coming to an end, but payback time. While the Chancellor has had a reputation as a giveaway Chancellor, he probably deserves credit for sticking to his guns and may well have come under considerable pressure from his colleagues to be more generous at this time.

The second story is slightly at odds with the first in that the Chancellor has given us some extra stimulus for 2022–23, principally a business rates reduction for retail, leisure and hospitality businesses in the form of a 50% reduction in their rates bills. This together with the Universal Credit changes and the freezing of fuel duty and business rates increases, provides some tempering of the tax rise pain to come. For many businesses though, especially those in retail, hospitality and in the care sector, the increase in the living wage will put huge additional cost pressure on them.

David Milne QC, Pump Court Tax Chambers and CEB member—More of a spending rather than a taxing Budget, so not much meat. However, the Chancellor, Rishi Sunak, says that the UK is being taxed at the highest overall rate since the early 1950s, but the spread is very different indeed. Then we had a top income tax rate of 98%, and short-term capital gains (profits on assets bought and sold within a year) were taxed as income; plus we had excess profits tax to help pay down the war debt—and, later, development gains tax to tax development gains at income tax rates (substituted in 1976 by development land tax at initially 80%, later 60%).

But there was no word from the Chancellor on changing the beneficial rates on carried interest, dividends and capital gains on the sale of shares and land. And no mention of an excess profits tax on those who took millions out of what the Commons Public Accounts Committee have just called the 'Test and Trace ATM machine' or on those who were handed eye-watering sums under PPE contracts awarded by useful contacts.

Mark Sheiham, Simmons & Simmons LLP—The change to the bank surcharge looks like a carefully calibrated decision founded as much in politics as economics. The Chancellor can still tell the electorate that the tax rate on banks is going up not down in April 2023, but the modest scale of the increase is likely to stifle the bulk of the objections from the banking sector and bring relief to those who feared a worse increase. Additionally, the increase in threshold means the measure amounts to a tax cut for banks with profits in the £25m to £100m range, which is being spun as a measure supporting growth for small and medium-sized 'challenger' banks and promoting competition in the banking sector. It also perhaps reflects the receding political justification for additional bank taxes in recognition of government support for the sector during the financial crisis—which grows progressively more distant and has already become only 'the last but one' crisis of public finances.

Gerald Montagu, Gide Loyrett Nouel LLP and CEB member—The introduction of a power to allow relief from stamp duty and stamp duty reserve tax when loan assets are transferred to a securitisation vehicle is welcome—if that power is used. What is curious about the measure is that reference is made to the government's desire to 'increase the flexibility of the government in responding to the changing nature of the securitisation and [insurance linked securities] markets'. However, no commitment is made to actually introduce the relief. Indeed, the policy paper states that taking this power 'does not represent an intention to make any particular changes in relation to the March 2021, or any future, consultation'. A summary of responses to the March 2021 consultation will be published, we are assured, in 'due course'.

Sarah Squires, Old Square Tax Chambers—Earlier this year the government consulted on the stamp duty treatment of securities issued by securitisation companies. Now, without giving anything away as to policy intent, the detailed Budget policy documents show the Treasury is to be given the power to make changes to stamp duty as it applies to securitisation vehicles—making it easier to make changes (if it decides they are needed). With the consultation response promised 'in due course', perhaps watch this space.

Emma Game, Slaughter and May—Given current global supply chain issues, it will come as no surprise to anyone that if you want something new (a car, computer screen, concrete details of previously unannounced tax measures…), you're likely going to have to wait.
The Autumn Budget 2021 included plenty of measures that had previously been announced. Details of some of the new measures with the potential to have the widest impact were, however, harder to come by. We're told that an online sales tax is going to be consulted on. Presumably its introduction is not a foregone conclusion given the consultation is intended to explore the arguments for and against the introduction of such a tax. Similarly, we're told that R&D tax reliefs will be reformed to focus support towards innovation in the UK—and further details will be set out 'in due course'.

While the proposed abolition of the special rate of duty for sparkling wine is to be welcomed (not least from a personal perspective), it is a shame that (much like the new tumble drier I had hoped to buy), it won't be here in time for Christmas.

For other new measures where we do have some more of the detail, unsurprisingly, one of the government's main themes of the Spring Budget 2021 (to 'position the UK to make the most of global opportunities after EU exit') continues to dominate. For instance, the rate of the banking surcharge (currently 8%) will be reduced to 3% from 1 April 2023 (when the main rate of corporation tax increases to 25%) and the surcharge allowance will increase to £100m (to help ensure the UK banking sector 'remains internationally competitive, while also promoting growth within the sector').

Andrew Loan, Fieldfisher LLP—With many tax raising measures (such as increased NICs and corporation tax) and spending cuts (including the ending of coronavirus support measures, and the temporary unlocking of the pensions triple lock) already announced, the Chancellor could be more generous in his second Budget of 2021. Temporary cuts to business rates will make a difference to many businesses on the high street, but the system of local taxation needs wider and more radical reform, whether or not the current OECD proposals reduce the advantaged position of online retailers.

Jonathan Cooklin, Davis Polk & Wardwell LLP—No turning back from the slew of tax rises previously announced relating to corporation tax, dividend taxation and NICs notwithstanding a windfall from higher than anticipated growth. Given the government has decided as a policy matter to tax and spend, significantly greater thought needs to be given as to how to improve growth and productivity. The asset holding companies regime could in principle attract fund and institutional investment into the UK, if applied with pragmatism. The consultation on a proposed UK redomiciliation regime is also potentially interesting. Although not principally a tax measure, UK company law is looking inflexible and somewhat out of date compared to that in the US, some Commonwealth countries and offshore jurisdictions. This is a point that routinely (and often materially) counts against the UK as a holding company jurisdiction in many walks of corporate life. This could be a small but important step in the right direction.

Robert O'Hare, Squire Patton Boggs (UK) LLP—A very low key, cautious, and slightly disappointing, Budget. The improved economic outlook (higher growth, higher tax receipts, lower borrowing, lower coronavirus scarring) allowed the Chancellor to further increase the size of the State but one has the sense, when it came to tax, he was keeping his powder dry; perhaps in the hope of being able to build-up a pre-election 'war chest' to fund future tax cuts. Indeed, the most striking moment of his speech was his impassioned, personal, defence of fiscal conservativism. Nonetheless, despite being his third, this was his first genuinely forward-looking Budget that starts to map the direction in which the Chancellor hopes to steer the UK's post-coronavirus, and post-Brexit, economy.
As expected, with the tax burden running at its highest level since the 1950s, there were no new significant revenue-raising announcements. The substantial corporate tax rate rise (to 25% in 2023), the health and social care levy (and associated rises to NICs and dividend tax), the residential property developer tax, and the economic crime (anti-money laundering) levy were, alongside the freezing of thresholds, all pre-announced. The one possible exception was the government's announcement that it will consult on the possible future introduction of an online sales tax. The interaction between that and the implementation of the G20/OECD inclusive framework's statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy will be worth tracking.

There were only moderate tax-relieving measures, the most significant of which was probably the further extension of the temporary £1m annual investment allowance to March 2023 and the (widely pre-trailed) reduction in the surcharge on banking companies. The reforms to business rates were underwhelming. The expansion of R&D to cloud computing and data costs will be welcomed but is less ambitious than many might have hoped given the Chancellor's hopes to re-make the UK's economic model on innovation and the challenges of climate change. The reforms will also limit relief to UK-based activities only. The repeal of the cross-border group relief rules was also widely expected post-Brexit but is a measure that further restricts the availability of loss-relief for certain companies.

Alex Barnes, BDB Pitmans LLP—So far as business is concerned, I anticipate that many will be relieved following the Budget. The Chancellor appears to be backing economic growth to help repair the damage coronavirus has done to the economy. This is a refreshing change from simply increasing taxes which although headline-grabbing, is typically counter-productive when it comes to raising revenue. As ever, the Budget measures won't satisfy everyone but, at this time, given the parlous state of the economy and world affairs in general, I think that overall, it was better than many had expected.

Real estate taxes

Elizabeth Bradley and Anne Powell, Bryan Cave Leighton Paisner LLP—It was a relatively quiet Budget even for the real estate sector, which has seen considerable changes in recent years. Notable in its absence was any announcement on stamp duty land tax. There were no holidays, new rates or new charges targeting a particular type of home buyer.
Turning to new announcements, we finally learnt the rate of the new residential property developer tax. At 4%, it is as expected, as is the confirmed annual allowance of £25m. As trailed previously, build-to-rent will not be within scope, although the government says that it will keep this decision under review.

The government reconfirmed the launch of the qualifying asset holding company (QAHC) in April 2022. The QAHC represents part of an initiative to improve the UK's competitiveness. It was therefore interesting to see the government continue to welcome business to the UK with a new consultation on allowing non-UK incorporated companies to redomicile to the UK. Businesses will be interested that the government is thinking about allowing those companies to bring their assets into the UK tax net at their market value at the time of the redomiciliation.

Finally, although the government has concluded the business rates review, retailers will be interested that no final decisions have been made on an online sales tax. The government will consult on it shortly. Retailers will be hopeful that this idea is implemented as the government says the tax (if introduced) would fund a reduction in business rates for them.

Sarah Squires, Old Square Tax Chambers—The Budget confirmed the introduction of the new residential property development tax from April next year, as well as its rate (4%) and the threshold. Since it's a tax designed to raise a specific amount of revenue (to fund building remediation works) over a particular period, it's concerning that the government is not willing to reflect that by including a sunset clause within the regime.

Elizabeth Bradley and Anne Powell, Bryan Cave Leighton Paisner LLP—In the real estate funds space, the REIT changes planned for April 2022 were reconfirmed although the exclusion from the requirement for REIT shares to be admitted to trading may apply where institutional investors hold at least 70% (not 99% as originally envisaged) of the ordinary share capital. More detail is expected on this once the Finance Bill is published on 4 November. Further REIT changes are expected to be announced when the government responds on the wider funds review in the coming months. It was good to see that as part of this response the government will consult on the VAT treatment of fund managers' fees.

Martin Shah, Simmons & Simmons LLP—Since the introduction of the original REIT regime from 1 January 2007, there have been several previous rounds of reforms that have resulted in almost 100 REITs now benefitting from the regime. We expect that the targeted reforms confirmed in Autumn Budget 2021 will result in a number of additional REITs being established, as well as enabling the holding structures adopted for some existing REITs to be rationalised, both of which will underline the continued attractiveness of the REIT regime as a vehicle for holding UK investment property.

Sarah Squires, Old Square Tax Chambers—A number of helpful changes to the REIT rules, trailed in July, have been confirmed. Chief among these is the relaxation of the listing condition for certain institutionally owned REITs—with consultation appearing to have reduced the minimum institutionally-owned threshold from an original 99% to 70%. This will be very welcome to a range of REIT investors.

International

Natasha Kaye, Cooley (UK) LLP and CEB member—The government's proposals on corporate redomiciliation were one of the more interesting reads of the Autumn Budget 2021 publications. Together with the new regime for asset holding companies, this demonstrates the government's intent in making the UK an attractive and flexible jurisdiction to locate companies.
A key question raised by the proposal is what position will be taken in relation to stamp taxes. Currently, a non-UK company can become resident in the UK for tax purposes (by virtue of being 'managed and controlled' in the UK) but still keep its shares outside the UK stamp taxes regime. The potential applicability of UK stamp taxes on inward redomiciliation could be an impediment in some cases, as businesses may instead choose to redomicile to another jurisdiction (including one that has more flexible corporate laws in respect of distributions and share buy-backs) and simply become tax resident (rather than domiciled) in the UK.

What is clear is that the government has on its radar the potential for outward redomiciliation being used in order to move outside of the UK stamp taxes regime, as it notes it is considering whether any stamp taxes anti-avoidance measures could be needed in such cases. It remains to be seen whether specific legislation will be introduced addressing the personal taxation position for owners of companies. It is not unusual to have to grapple with the tax implications for UK tax resident shareholders of non-UK companies that redomicile, working from general principals and applying them to the legal process that is being undertaken. Hopefully, any new proposals will provide more certainty as to the tax treatment in similar scenarios.

Eloise Walker, Pinsent Masons LLP and CEB member—In other developments of an international flavour, now we have left the EU we can see HMRC starting to flex its muscles. The abolition of cross-border group relief was a given. More unexpected was the slightly underhanded neutralisation of *Vitol Aviation* on the interaction of diverted profits tax (DPT) with closure notices which just oh-so-happens to apply to any application for a corporation tax closure notice made on or after 27 September 2021 (the date of the *Vitol Aviation* decision) and means in practice that once a DPT review is underway the taxpayer is under a stronger incentive to kowtow to HMRC, adjust their pricing and settle their dispute, rather than fight on.
Note as well the online sales tax consultation. We might have expected this to have formulated proposals by now, given consultation with certain industry bodies behind the scenes for a while now. Hopefully (but don't hold your breath), the upcoming consultation on this will be a proper public consultation that takes on board comments from the wider community. Let us not fear that, as seen elsewhere recently in tax developments, it is a token event that results in fully formulated proposals appearing just after the 'public consultation' closes.

Gerald Montagu, Gide Loyrett Nouel LLP and CEB member—Redomiciling in 'Singapore on the Thames'? It is only a subjective impression, but in all the pre-Budget chatter, references to the UK becoming a 'Singapore on the Thames' seemed rather more muted than they were in March 2021. However, a consultation on introducing the ability for a company to redomicile in the UK indicates, that in one respect at least, the project still has momentum.
Indeed, Singapore, seems very much the model being followed because, although the consultation document contains a paean to England's 'green and pleasant land' (or, more precisely, the UK being a 'leading destination for investment…with world-class regulatory and legal system…transparent and robust corporate law and governance…a competitive tax system') it also shows rather more enthusiasm for permitting 'inward' redomiciliation. The paper notes that when Singapore introduced a redomiciliation regime in 2017 it did not permit 'outward' redomiciliation. Bearing in mind, for example, the whittling away in recent years of the advantages of holding UK property in offshore companies, and the commercial and practical advantages that can arise from UK property being held onshore, it will be interesting to see if there is an appetite for redomiciling property groups.

More generally, permitting redomiciliation would represent something of a mini-revolution in company law terms. It will be fascinating to see quite how committed and courageous the government turns out to be to 'strengthening the UK's position as…an open, competitive, free market economy'.

Darren Oswick, Simmons & Simmons LLP—A key feature of the Chancellor's Budget was attracting more overseas investment; part of that plan includes making it easier for companies to move to the UK through a new redomiciliation regime. It is not currently possible for a company to transfer incorporation to the UK and retain the same legal identity and the consultation launched as part of the Budget seeks to redress this situation by enabling continuity of operations through a shift in a company's place of incorporation while maintaining its corporate history, management structure, assets, IP and property rights, contracts, and regulatory approvals. It is not altogether clear how much demand there currently is for redomiciliation but measures to enable the process in principle are clearly welcome—though the irony of waiting until the UK has exited the EU before seeking to introduce rules which were substantially already available through the mergers process in much of the EU will not be missed.

Emma Game, Slaughter and May—A welcome development is the announcement that, to 'strengthen the UK's position as a global business hub', the government wants to make it possible for non-UK companies to move their domicile to the UK by enabling the redomiciliation of companies. A consultation seeking views on a wide range of questions (44 to be precise) in connection with this proposal has been published. This closes on 7 January 2022.

Andrew Loan, Fieldfisher LLP—Perhaps most eye-catching are changes to reintroduce more explicitly territorial elements of the UK tax system after Brexit—ending cross-border loss relief, reduced air passenger duty for domestic aviation, reforms to tonnage tax to encourage UK registrations, and potentially very significant changes to limit R&D tax credits to work actually done in the UK.

David Klass, Hunton Andrews Kurth LLP—The following things caught my attention, each of which is fascinating, in its own way, from a policy-making perspective. The consultation on corporate redomiciliation is an eye-opener as it seeks to align the UK with some of the more traditionally 'competitive' and outward-facing jurisdictions where such transactions are already possible. Subject to final design of the regime it will represent a significant modernisation of UK corporate law and throws up a number of interesting tax aspects, including the question (asked in the consultation) about what impact such redomiciliation ought to have on the redomiciling company's tax residence position. Definitely a 'watch this space' item.
Equally noteworthy policy-wise is the proposed abolition of cross-border group relief. This is accompanied by some interesting explanatory commentary from the government, leaving the reasoning for the proposal in no doubt (as if there might have been any): 'Now that the UK has left the EU, it is no longer bound by EU law and can depart from this historic position, which conflicts with UK policy interests'; and we are informed that this is a decision which 'protects the UK Exchequer against unfair outcomes'. This represents a lowering of the curtain on the multi-act, Marks and Spencer-inspired EU group relief saga; and serves as a stark example of the freedom now available to the UK government to remove aspects of the UK tax code inserted under duress. If we were in any doubt as to the attitude the government would take to features of the tax code such as this, this is a clear indication of the direction of travel: repeal where possible.

Tomoko Ikawa, Simmons & Simmons LLP—There was good news and bad news on DPT. The extension to the period in which taxpayers can amend their corporation tax return to make transfer pricing adjustments (and avoid a DPT charge) and bringing DPT within the mutual agreement procedure framework are very welcome. But the decision to counteract the impact of the recent *Vitol* case on corporation tax closure notices will be controversial. This change to the legislation only seeks to highlight that the interaction between DPT review periods and open corporation tax enquiries will continue to be a complex area. Taxpayers will need to assess the status of their specific enquiries and carefully navigate the legislation, HMRC guidance and case law to consider their tax management strategy in these situations.

Simon Letherman, Shearman & Sterling LLP—After the relative excitement of another out-of-sequence Budget in March 2021 to address the impact of the pandemic, the Autumn Budget and Spending Review was a more sedate affair. The government used the Budget as an opportunity to move away from positions mandated under EU law, in particular taking steps to abolish the cross-border group relief that had been brought in to address the European Court of Justice's decision in the *Marks and Spencer* case, and making amendments to the tonnage tax regime to encourage more ships to adopt the red ensign.

The announcement of a consultation on making legislative changes to permit non-UK companies to redomicile to the UK was also presumably a response triggered by the European Mergers Directive and the

Societas Europaea regime no longer applying post-Brexit. Perhaps more notable was the absence of measures to encourage the growth of the green economy, particularly with COP26 around the corner. Against this background, the decision to reduce air passenger duty on domestic flights and introduce a levy on only the longest of long-haul flights appeared perplexing and a missed opportunity, unless these green-oriented provisions are being saved until the final Budget before the next election to win favour among would-be voters.

Funds

Gerald Montagu, Gide Loyrett Nouel LLP and CEB member—As expected, the government is moving forward with the welcome introduction of an asset holding company regime. We shall have to await publication of the Finance Bill to see to what extent changes have been made since draft legislation was published over the summer. Regrettably, no further concrete information was provided as to how the government intends to take forward its wider-ranging review of the funds regime, except for the reassurance the government 'remains' committed to the exercise. However, we were told that the government will also publish its response to the call for input on the broader elements of the UK funds regime review, as well as a consultation on options to simplify the VAT treatment of fund management fees 'in the coming months'.

Zoe Arnautov, Simmons & Simmons LLP—The government has announced that it remains committed to its ongoing review of the UK's funds regime and, in addition to its announcements in respect of asset holding companies and REIT reforms, it will publish its response to the call for input on the broader elements of the UK funds regime review, as well as a consultation on options to simplify the VAT treatment of fund management fees, in the coming months. Given the continued focus on UK competitiveness and facilitating the growth of the UK as a fund domicile, we hope that there will be positive developments to come in relation to the wider fund landscape, particularly to remove the VAT disadvantage that exists currently for UK managers that manage relevant UK funds.

Stephen Pevsner, Proskauer Rose LLP—While of great interest to the general economy, there was not much in the Autumn Budget 2021 to get the funds industry excited. In particular, there was no mention of changes to the CGT rules or rates that people have been concerned about, so that point will probably now just resurrect itself at the next Budget unless clear statements that there will be no change are provided.

The main area of new law that is of interest to the funds industry will be the publication of the draft Finance Bill rules on the new UK asset holding company regime, which is expected on 4 November. Alongside the wider UK fund regime review and the review of changes to VAT on fund management fees, the terms of the new asset holding company, their simplicity and the certainty that they will provide will go a long way to determining whether or not the UK becomes a more attractive jurisdiction for holding companies. We can only hope that HMRC has listened carefully to all of the representations that have been made recently.

Ceinwen Rees, Macfarlanes LLP—Although not the most dramatic of budgets (which given the drama of the past couple of years, is probably no bad thing), there were a couple of noteworthy announcements in the Budget that impact the investment management industry.
The government confirmed it is moving ahead with its reform of the income tax basis period system for unincorporated businesses, although as anticipated the changes will not be introduced until 2024–25, with 2023–24 being a transitional year. This will shift the basis of assessment from the existing current year to a tax year basis. There are a couple of attractions with this policy. Firstly it offers simplification. And secondly, the government's cash flow is significantly improved. The impact will be felt most by firms with a 30th April year end (ie many professional services partnerships), but there will also be an impact for investment

management LLPs, which generally have a 31 December year end both in terms of acceleration of three months of tax and the ongoing need to apportion profits of two accounting periods to a year going forward.

Positioning the UK as a global business hub, the government has published a consultation to make it possible for companies to redomicile a non-UK company in the UK while retaining its same legal identity. The proposals are welcome, and should mitigate against the complexity and frustrations that arise under the current rules. The current work-around normally requires the non-UK company to either become UK tax resident (by exercising central management and control here) or by undertaking restructuring by setting up a new UK company and either transferring assets or acquiring shares in the foreign entity. These developments will also prove helpful with the introduction of the asset holding company regime that may tempt investment managers to relocate holding companies to the UK.

Investment managers remain in limbo on the anticipated reforms to the UK funds regime. Despite progress on the asset holding company regime and the long-term asset fund, the government still needs to formally respond to its review of the UK's fund regime. The government also re-announced that it will consult on the simplification of VAT treatment of fund management fees but similarly, it will be necessary to wait for more details in the 'coming months'.

Tax administration and avoidance

Emma Game, Slaughter and May—Businesses and tax advisers alike will welcome the fact that the third trigger included in the draft legislation has been removed from the notification of uncertain tax treatment provisions to be included in Finance Bill 2021-22. This means that (for now) it should not be necessary to consider, in applying those rules, whether there is a substantial possibility that the adopted tax treatment would be found by a court or tribunal to be incorrect. Much of the uncertainty in these rules resulted from the need to apply that trigger. Given the comment that the government remains committed to further consideration of this trigger, we will, however, need to wait to see if (and how) it is implemented in the future.

Robert O'Hare, Squire Patton Boggs (UK) LLP—The emphasis on transparency in tax matters has been reinforced by the government confirmation that it will include the rules requiring large businesses to notify HMRC of uncertain tax treatment which will result in a tax advantage of more than £5m in a 12-month period. However, in a notable and very welcome relaxation, the rules will define uncertain amounts by reference to two criteria: (a) that a provision has been made in the accounts for the uncertainty, or (b) the position taken by the business is contrary to HMRC's known interpretation. A third criteria, where there is a substantial possibility that a tribunal or court would find the taxpayer's position to be incorrect, has been dropped pending further consideration.

Ceinwen Rees, Macfarlanes LLP—Large businesses are expected to notify HMRC when they have adopted an uncertain tax treatment for tax returns (corporation tax, VAT or income tax) filed on or after 1 April 2022. Although draft legislation had already been published on this measure, the interesting development is that the government has dropped (for now) the most contentious trigger that required notification where there was a substantial possibility that a tribunal or court would find the taxpayer's position to be incorrect in material respects. This remains under consideration so may be introduced at a later date. For now, large businesses will need to notify in just two instances: (i) where a provision has been made in the accounts for the uncertainty and (ii) where the tax treatment applied is not in accordance with HMRC's known position. Given these are more objective tests, businesses will welcome the greater certainty this change brings.

Stephen Pevsner, Proskauer Rose LLP—A welcome change to previously published draft law that was announced at Autumn Budget 2021 was the removal of the 'substantial possibility that a court or tribunal' would disagree with the taxpayer's tax treatment trigger from the reporting of uncertain tax treatment rules that will be introduced from next April. This trigger would have introduced a completely new standard of (un)certainty that the taxpayer would have had to assess with no legislative basis, and, hopefully, its removal is a sign that the government realises that it needs to produce clearer and more definitive law in these increasing areas requiring taxpayers to self-police their tax affairs.

Gideon Sanitt, Jackelyn West and Sophie Rhind, Macfarlanes LLP—As was to be expected, the Autumn Budget has not revealed any game-changers in the area of tax administration and avoidance. However, as predicted, we continue to see steady investment in this area. In particular, an additional £292m across three years has been allocated for more resources to 'tackle the tax gap and ensure that those who should pay, do'.

A decent chunk of this funding could go towards administration of the new notification of uncertain tax treatment rules, which will come into force from 6 April 2022. This has been on the table for a while and was one of the most talked about measures that HMRC had proposed to reduce what they refer to as the 'legal interpretation' tax gap. Consultations since it was first suggested have limited the scope of this initially very broad measure, and a policy paper published alongside the Budget indicates that there will be a further amendment to the definition of 'uncertain tax treatment' (removing one of the three 'triggers' for notification). The removal of such a subjective trigger is a welcome change, however, how the rules will apply in practice remains unclear. It is also curious that the Budget reveals that changes to the scope of the rules following the consultations are estimated to materially reduce the Exchequer impact, with the peak impact in 2023-24 now worth only £35m. Given that the estimated portion of the 'legal interpretation' tax gap attributable to large businesses is estimated by HMRC to be £3.2bn, and these rules will lead to administrative burden and uncertainty in their application for large businesses, there are serious questions as to whether the new measure is worth the effort or will really be so limited in its scope.

Emma Game, Slaughter and May—Although a narrowly targeted measure, we will need to wait until we have sight of the Finance Bill 2021-22 to understand exactly what changes are going to be made to HMRC's discovery assessment powers in TMA 1970, s 29(1)(a) in relation to (among other things) unpaid unauthorised payments, lifetime allowance and annual allowance charges in the pensions tax context. One of the proposed changes, to allow HMRC to issue discovery assessments in relation to such charges, which is described as making 'a technical clarification to clarify the law to provide legal certainty and maintain the status quo', will apply retrospectively. In due course, these changes should be carefully scrutinised given this retrospective element (in particular, where they are at odds with how the relevant provisions have recently been interpreted in the tribunal in various cases including *Wilkes* [2021] UKUT 150 (TCC) and *Monaghan* [2018] UKFTT 156 (TC)) and to confirm those who have appealed against previously issued discovery assessments are protected by the promised safeguards.

Gideon Sanitt, Jackelyn West and Sophie Rhind, Macfarlanes LLP—It comes as no surprise that the Budget reinforces the message that HMRC will be focussed on combatting avoidance and evasion, with particular reference to the latter and the abuse of coronavirus support schemes especially. A further £55m is to be provided next year to the Taxpayer Protection Taskforce, which has been established for the purpose of tackling fraud related to the government's coronavirus support schemes. It is likely, however, that HMRC's increasing focus on combatting fraud will not be limited only to these schemes. The Budget also addresses the previously announced measures for clamping down on promoters of tax avoidance, such as penalising UK associates of offshore promoters, and sharing information on promoters and schemes in order to stop taxpayers entering these schemes in the first place. A further area of focus is the abuse of R&D tax reliefs, which the government is to set out plans for later in the autumn. It is clear that taxpayers can expect substantial engagement from HMRC on these points.

In light of this sustained focus on 'tackling the tax gap', and with leaks like the Pandora Papers earlier this month continuing to make the press, it seems inevitable that we will see HMRC flexing their muscles in the areas of avoidance and fraud, with additional measures to come. We expect to see more on this in the further set of tax administration and maintenance announcements that are to be made later in the autumn.

VAT and indirect taxes

John Fuszard, Sagars Accountants Ltd—Plenty of nothing in relation to VAT! In this Budget, the Chancellor was free from any restrictions imposed by EU Directives in relation to VAT. There was a good deal of pre-Budget lobbying from consumer groups for the replacement of the reduced rate of VAT on domestic fuel and power with a zero-rate to mitigate the effect of the recent increase in gas prices. The Chancellor made no such intervention. There were some technical amendments in relation to freeports.

Energy and environment

Robert O'Hare, Squire Patton Boggs (UK) LLP—With COP26 being hosted in the Glasgow next week, the almost total absence of any mention of the government's thinking on how (if at all) to use the tax system to combat climate change was disappointing; at best, surprising, and at worst, alarming.

David Klass, Hunton Andrews Kurth LLP—The decision to reduce aviation duty on domestic flights is great for encouraging people to travel by plane rather than jump on a train, but somewhat inconsistent with the promotion of concern for the environment in economic policy (the increase in long-haul duty presumably being an attempt to provide some sort of balance to this measure). All the more striking in view of the timing, coming as it does just days before commencement of the COP26 gathering in Glasgow. One thinks this measure would raise a few eyebrows there.

Lucy Bruce Jones, Norton Rose Fulbright—The Budget announcement was light on addressing environmental and climate change matters. As anticipated, there were some positive announcements including funding to unlock brownfield sites for housing which will assist in regenerating potentially historically contaminated areas. In addition, a sovereign green savings bond for retail investors is to be launched. Support was given towards the Net Zero Strategy including funding for the offshore wind sector, energy efficiency improvements in buildings and the transition to electric vehicles and encouragement to cycle and walk. However, the announcement yet again froze fuel duty coupled with an air passenger duty cut for domestic flights, albeit a new ultra long haul air passenger duty will be introduced. Such green taxes being cut does not convey the message many were hoping to hear regarding the UK's stance on addressing climate change especially on the eve of COP26.

Phil Greatrex, CW Energy LLP—Leaving the ring fence corporation tax and supplementary charge rates unchanged, despite the fact that oil and gas prices are at historically high levels at present, indicates that the upstream oil & gas industry's lobbying for a stable regime has been listened to, and hopefully means the Government recognises the important part that the industry can play in maintaining energy security of supply and helping the transition to a low carbon economy.

Matthew Duncan, Druces LLP—Rishi Sunak delivered a Budget this afternoon that provided clear blue water between his approach and recent previous Tory Chancellors with a giveaway Budget funded by unexpected revisions to GDP growth predictions and aided by rising inflation which has increased the amount of tax receipts for the exchequer. The Chancellor had more money to play with as a result of lower borrowing and increased employment and an economy rebounding from coronavirus restrictions far stronger than originally predicted.

The 50% reduction in business rates for the hospitality sector and the reduction in alcohol duty will clearly be welcomed by those businesses so heavily hit by the coronavirus restrictions imposed on their industry during this pandemic. Although the freeze on fuel duty and the reduction in air passenger duty for internal UK flights will be widely appreciated, it doesn't sit well with the forthcoming COP26 climate change conference in terms of delivering a green Budget. Buried in the small print, an extension to the reporting deadline from 30 to 60 days for CGT due on the sale of residential properties will be welcomed by private clients and accountants alike.

Future

John Endacott, PKF Francis Clark LLP—A concern is that we are over-leveraged as a country. In the Chancellor's view if inflation and interest rates increase, then the nation's finances could look much worse very quickly. At the same time, business and personal finances would also come under more pressure, creating a double whammy. A 1% increase on a debt burden of £2.2trn is £22bn per annum and a quarter of that debt is index-linked so a 1% increase in inflation adds maybe another £5bn.

The Chancellor said that he couldn't reform business rates more substantially as he couldn't afford to lose £25bn a year from the coffers. That is 1% on interest rates and 1% on inflation. You can see the potential problem ahead. Now the complicating factor is that the Bank of England owns 40% of our debt (so is that real debt?) but even on 60% of the debt figure the interest and inflation exposure is concerning. Hence, the Chancellor is reiterating the need for fiscal discipline. If interest rates and inflation get out of control then we're all in trouble.

That led to the Chancellor's final homily in his speech, when he said:

'Do we want to live in a country where the response to every question is: "What is the government going to do about it?"

Where every time prices rise, every time a company gets in trouble, every time some new challenge emerges, the answer is always: the taxpayer must pay?'

We may find that we are on our own a bit more in future.