# Clients&FriendsMemo

## UK Autumn Budget 2021 – Key Tax Measures

**28 October 2021**

The Chancellor of the Exchequer delivered the United Kingdom ("**UK**") Autumn Budget for 2021 on 27 October 2021.

The Budget was delivered against the backdrop of the UK's ongoing recovery from the Covid-19 pandemic and the evolving relationship between the UK and the rest of the world following Brexit. As with many previous Budgets, eye-catching pieces of good news sit alongside anti-avoidance proposals which – while targeted – cast a slightly cold shadow over the more hopeful items. The same is true in the Autumn Budget 2021, where the positive and potentially game-changing introduction of the new Qualifying Asset Holding Companies regime and helpful changes to the stamp duty treatment of UK securitisation companies are lined up with further measures to be applied to the "willing associates and collaborators" of any offshore promoter of tax avoidance.

*We have selected below the items which we think are of most interest to Cadwalader's client and friends in the Autumn Budget 2021.*

### New Tax Regime for Asset Holding Companies

As part of the Government's wider review of the UK funds regime to boost the UK's competitiveness as a location for asset management, the Government will legislate to introduce a bespoke tax regime for qualifying asset holding companies ("**QAHC**"). This regime targets UK resident intermediate holding companies interposed between investors and underlying assets. The taxation in the new regime is based on existing UK tax rules, but with some targeted modifications to address specific tax barriers which are considered to have discouraged the market from establishing asset holding companies in the UK.

The Government has conducted two consultations on this regime, and published on 20 July 2021 its response to the second-stage consultation, accompanied by some of the draft legislation which will be required for the operation of the new regime. The draft legislation prescribed a robust set of eligibility criteria to limit accessing the new regime's benefits to the intended users only, requiring a QAHC to be at least 70 per cent. owned by diversely owned funds or certain institutional investors, and to carry out investment activity with no more than insubstantial ancillary trading. Also, the benefits of the proposed regime will only be applicable to the QAHC's

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investment activity in respect of certain asset classes, such as non-UK land, certain shares and loans, and any derivative contract in relation to any asset previously mentioned.

Under the draft legislation and the accompanying policy paper, these benefits will include certain modifications to the corporation tax rules (such as allowing deductions for interest payments on certain profit-participating and results-dependent loans, exempting gains on disposal of certain shares and non-UK property, and exempting profits of a QAHC's non-UK property business, where those profits are subject to tax in a non-UK jurisdiction), withholding tax rules (by exempting withholding in relation to interest in respect of securities held by investors in that QAHC) and stamp taxes rules (by exempting repurchases by a QAHC of share and loan capital which it previously issued from stamp duty and stamp duty reserve tax).

The Budget confirms that this regime is intended to be legislated in Finance Bill 2021-22, and refers to the two consultations and the draft legislation. The policy paper in the Budget sets out further benefits that a QAHC will enjoy under the regime (in addition to those mentioned in the policy paper published on 20 July 2021). These additional benefits include exempting the associated profits that arise from loan relationships and derivative contracts and allowing certain amounts paid to certain "non-domiciled" residents by a QAHC to be treated as non-UK source when such individuals claim the remittance basis for the purposes of UK income tax and capital gains tax.

The publications accompanying the Autumn Budget do not include a full suite of revised draft legislation for the QAHC regime. It therefore remains to be seen what further legislative changes will be made in respect of the points still being considered by the Government in accordance with its response to the second-stage consultation in July 2021 and the additional modifications mentioned in the Budget. In relation to the value added tax ("**VAT**") treatment of fund management fees, the Government has announced in the Autumn Budget that it will consult on options to simplify the VAT treatment of fund management fees, a critical remaining piece in the regime before a successful launch can be achieved.

**Real Estate Investment Trusts ("REIT")**

Responses to the asset holding company consultation in relation to investments in real estate led to proposals for changes to the REIT regime. With effect from 1 April 2022, the Government has announced that amendments will be made to the rules applying to REITs, including by relaxing or removing some of the conditions which determine whether a company qualifies to be a UK REIT.

Among other things, the proposed changes remove the requirement for REIT shares to be admitted to trading on a recognised stock exchange where institutional investors hold at least 70 per cent. of the ordinary share capital in the REIT, remove the "holders of excessive rights" charge where property income distributions are paid to investors entitled to gross payment, and introduce a new simplified "balance of business" test so that a REIT may not be required to prepare the additional statements required where the full test is otherwise met.

These amendments will no doubt be welcome by the real estate investment sector, and will alleviate certain constraints and administrative burdens, thus further enhancing the attractiveness of the UK REIT regime.

**Residential Property Developer Tax**

The Government consulted on the policy design of the new Residential Property Developer Tax ("**RPDT**") and conducted a technical consultation on the draft legislation during 2021. In Budget 2021, the Government confirmed the introduction of the RPDT with effect from 1 April 2022 for companies or groups of companies undertaking UK residential property development with annual profits in excess of £25 million. The Government announced in Budget 2021 that the rate of the RPDT would be 4 per cent. The £25 million allowance can be allocated by the group between its companies.

Whilst hypothecated taxes are not a common feature of the UK tax system, revenues raised from the RPDT are intended to be used to fund cladding remediation and thus, the RPDT is expected to be a time-limited tax. However, the draft legislation does not include a sunset clause, and respondents to the consultations noted that the expected revenues raised (expected to be £2 billion over a 10-year period) may be insufficient.

Non-profit housing developers and build-to-rent developers have been excluded from the scope of the RPDT.

Companies and groups engaging in residential property development will need to give careful consideration to the activities within scope and any reliefs (such as in respect of loss relief or group relief) which may be available.

**Public Consultation on Corporate Re-Domiciliation**

As part of the Autumn Budget publications, the Government has commenced a public consultation on corporate re-domiciliation into (and possibly out of) the UK. The Government wishes to seek views on, among other things, the tax consequences of a company re-domiciling into, or out of, the UK.

Re-domiciliation would enable to a company to change its place of incorporation into (and out of) the UK while maintaining its legal identity as a corporate body. The Government hopes that this will encourage foreign companies to shift their headquarters to the UK, with the re-domiciliation process giving companies maximum continuity in business operations and substantially reducing administrative complexity. A flexible domiciliation regime, when combined with the QAHC regime described above, may also create new investment possibilities for funds and other market participants.

Under the current UK regime, companies are generally treated as UK resident for corporation tax purposes if they are incorporated in the UK (subject to exceptions) or the central management and control of the company is exercised in the UK, subject to being treated as non-UK resident by virtue of the tie-breaker test in a double tax agreement. In relation to inward re-domiciliation,

the Government is considering whether, subject to any double tax agreement, the arriving company will be treated as UK resident by virtue of the re-domiciliation itself, or only be treated as UK resident if that company's central management and control is exercised in the UK.

In relation to outward re-domiciliation, the Government is considering whether the exiting company will cease to be UK resident by virtue of the re-domiciliation (assuming central management and control are exercised outside the UK) or continue to be treated as UK resident unless and until it is treated as non-UK resident by virtue of any double tax agreement.

Unsurprisingly, the Government is also concerned about the possible opportunities for tax avoidance that a re-domiciliation may bring. For example, inward re-domiciliation might create the risks of a loss-generating non-UK resident company becoming UK resident and seeking to utilise foreign losses against the UK profits of other group companies under the UK's group relief rules. The Government is clear in the Autumn Budget statement that such an obvious tax avoidance technique would not be permitted in any re-domiciliation regime.

The Government is also asking for views on the possible implications of re-domiciliation in relation to the personal taxation of the shareholders of re-domiciling companies, as well as considering the VAT treatment of re-domiciliations generally.

**Taxation of Securitisations and Insurance-Linked Securities**

A welcome announcement in the Autumn Budget is that the Government is proposing legislation in Finance Bill 2021-22 to facilitate changes to the stamp duty and stamp duty reserve tax ("**SDRT**") treatment of securitisation companies (under the UK's Taxation of Securitisation Companies Regulations) and qualifying transformer vehicles which feature in transactions involving insurance-linked securities ("**ILS**"). During the consultation on the UK tax treatment of securitisations in the spring of 2021, concerns were expressed regarding the uncertainty surrounding the application of the stamp duty loan capital exemption to securitisation companies. Those concerns centred around both: (i) securities issued and raised by securitisation companies, particularly where the returns on those securities are related to the profits of a business or carry a right to an excessive rate of return or repayment; and (ii) the stamp duty and SDRT treatment of the transfers of pools of loan assets as part of securitisation arrangements.

The Government has responded to those concerns in the Autumn Budget. Provisions in Finance Bill 2021-22 will allow the Government to make regulations to provide that stamp duty or SDRT is not chargeable on transfers of securities issued or raised by a securitisation company or a qualifying transformer vehicle. The Government has also stated its intention that those regulations will also provide that stamp duty or SDRT is not chargeable on transfers of securities to or by a securitisation company.

HMRC has, however, stopped short of confirming when the amending regulations will be made, which is likely to follow the Government's publication of its summary of responses to the Spring 2021 consultation. If those regulations are made, they should be helpful in facilitating a broad

range of term-deal securitisation arrangements, warehousing companies, and ILS-transformer vehicles which fall within the scope of the relevant UK securitisation and ILS legislation.

**Bank Corporation Tax Surcharge**

In a move widely seen as protecting London's position as a global financial centre post-Brexit, the Chancellor confirmed plans to reduce the tax surcharge on bank profits from 8 per cent. to 3 per cent. with effect from 1 April 2023. In addition, the surcharge allowance – being the threshold above which bank profits are liable to the surcharge – will be increased from £25 million to £100 million.

However, the reduction in the tax surcharge only partially offsets the proposed increases in the corporation tax rate from the current rate of 19 per cent. to 25 per cent. from 2023. Whilst this is a welcome move and should ensure that the UK remains competitive with other financial centres, the headline tax rates for banks will still increase from the current rate of 27 per cent. (19 per cent. corporation tax and 8 per cent. tax surcharge) to 28 per cent. (25 per cent corporation tax and 3 per cent. tax surcharge) from 1 April 2023.

**Abolition of Cross-Border Group Relief**

As the UK has left the European Union, groups with European Economic Area ("**EEA**") resident companies should not be treated more favourably than those with non-EEA resident companies. Currently, Chapter 3 of Part 5 of Corporation Tax Act 2010 provides that in specific circumstances, EEA companies can surrender losses as group relief to UK companies. This rule will be repealed from 27 October 2021.

Also, under current law, a company established outside the EEA with a UK permanent establishment ("**PE**") can only surrender the losses of its UK PE if it is not possible for those losses to be deducted from the non-UK profits of any person for any period. However, an EEA company with a UK PE can surrender losses of its UK PE if those losses have not been actually deducted from non-UK profits of any person. The Government has announced its intention in the Autumn Budget to correct this anomaly and to repeal the more favourable rules for EEA-resident companies. This change will apply for accounting periods ending 27 October 2021.

**Clamping Down on Promoters of Tax Avoidance**

Following the Government's announcement in November 2020 that it wanted to take further action against the promoters of tax avoidance arrangements, the Government consulted publicly during the summer of 2021 on a range of measures which it hoped would change the economics of promoting tax avoidance schemes. In the wake of these developments, the Autumn Budget sets out the details of new countermeasures which will be sought by the Government in Finance Bill 2021-22.

These include:

- penalties on UK entities which facilitate tax avoidance provided by offshore promoters. The Government policy paper in the Autumn Budget describes those UK entities as "willing

associates and collaborators" of the offshore promoter, and such persons would not only face existing statutory penalties but also a new additional penalty of an amount up to the total fees (or HMRC's best estimate of such fees) which are derived from the facilitation;

- winding up companies that are "operating against the public interest" in promoting tax avoidance, regardless of whether (as currently is required to be the case) a tax debt exists under the relevant insolvency legislation;
- providing HMRC with the right to seek a "freezing order" against promoters' assets when HMRC is about to initiate proceedings for a tribunal-assessed penalty under current anti-avoidance legislation. Such a freezing order would prevent any dissipation by the promoter of their assets, irrespective of whether an enforceable debt existed at the point that the freezing order is sought.

These provisions demonstrate HMRC's relentless targeting of the most persistent and determined promoters and enablers of tax avoidance, with HMRC's justification for its action being that such promoters and enablers are acting against the public interest and are causing significant damage to the UK economy. The proposals are certainly eye-catching, and it will be interesting to see whether the Government's initiative will be followed by other European tax authorities.

**Notification of Uncertain Tax Positions for Large Businesses**

HMRC has confirmed its intention to legislate in Finance Bill 2021-22 to require the notification of uncertain tax treatments by large businesses to HMRC. The forthcoming legislation will require large businesses (broadly, those with a £200 million UK turnover and £2 billion UK balance sheet) to notify HMRC where they have adopted an uncertain tax treatment, with the aim being to improve HMRC's ability to identify issues where businesses have adopted a legal interpretation or application of law which differs from HMRC's known position. The proposals are to apply to large businesses' tax returns from 1 April 2022.

**Economic Crime (Anti-Money Laundering) Levy (the "Levy")**

The new Levy is part of the Government's wider objective, outlined in the 2019 Economic Crime Plan, to develop a long-term "sustainable resourcing model" to tackle economic crime. The Levy was announced at Budget 2020, and that announcement was followed by a public policy consultation and the publication of draft legislation.

The Levy will commence in the financial year running from 1 April 2022 to 31 March 2023 on medium, large and very large entities which are regulated for anti-money laundering purposes at any point during that year. The Levy will be collected by (among others) HMRC, with unpaid levy debts and any related penalties being owed as a civil debt to the Crown. The rate of the Levy will depend on the relevant UK revenue of the relevant regulated entity, with threshold figures and Levy amounts to be finalised in Finance Bill 2021-22.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.


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