SLAUGHTER AND MAY/

CLIENT BRIEFING

OCTOBER 2021

AUTUMN 2021 HR BUDGET BRIEFING

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Welcome to our 2021 HR Budget Briefing, summarising the key implications for employees and their employers of the UK Budget announced on 27 October 2021. When compared to the spending announcements trailed earlier this week, there was relatively little new information disclosed by the Chancellor in his statement earlier today. That said, there were a number of key measures and changes which companies should be aware of when dealing with their employees.

NATIONAL LIVING WAGE AND APPRENTICESHIPS

As previously announced, the National Living Wage (NLW) and the National Minimum Wage (NMW) will be increased with effect from 1 April 2022, meaning that those businesses paying employees at the current NLW and NMW rates will see their employment costs rise from that point. The increases are summarised in the table below.

Age	Percentage increase	Rate from 1 April 2022
23 +	6.6%	£9.50
21 - 22	9.8%	£9.18
18 - 20	4.1%	£6.83
16 - 17	4.1%	£4.81

The Government has also extended its support for the National Apprenticeship Programme by extending the £3,000 apprenticeship hiring incentive for employers until 31 January 2022.

TAX RATES

In line with expectations, the rates for income tax on employment income and capital gains tax have not changed. However, the previously announced Health and Social Care Levy will be introduced with effect from April 2022. The rates for both Class 1 employee's and employer's National Insurance contributions will be increased by 1.25% (i.e. 15.05% for employers and 3.25% for higher and additional rate taxpayers). This increase is intended to be an interim measure for one year until it is replaced by a separate 1.25% Health and Social Care Levy which has been 'ring fenced' for investment in the NHS and social care. We await to see whether the ability for the new levy to be transferred to employees in respect of gains made under employee share options and awards (as is currently available for employer's National Insurance contributions) will be replicated in new legislation.

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DIVIDENDS

Whilst, as mentioned above, income tax rates for employment income were not increased, the Chancellor intends to raise the level of income tax applicable to dividends by 1.25% with effect from April 2022, so that the dividend ordinary rate will be set at 8.75%, the upper rate at 33.75% and the additional rate at 39.35%. This increased level of dividend tax will make participation in an employer's HMRC-approved Share Incentive Plan more attractive for employees who are already using their £2,000 exempt allowance from dividend income tax, as a result of the ability to reinvest the dividends paid on shares held within the SIP on a tax free basis, with the "dividend shares" acquired being free from income tax if held in the SIP for at least 3 years.

ANTI-AVOIDANCE

The Government continues its campaign against what it perceives to be tax avoidance arrangements and has proposed new legislation to be included in the Finance Bill 2021-2022 to restrict the activities of promoters of such arrangements, including the freezing of the promoter's assets.

In addition, as announced in July, new legislation will be introduced imposing an obligation on companies to notify HMRC where they consider the tax treatment of a particular action to be 'uncertain'. Given that the scope of this new regime covers companies' withholding obligations under PAYE, this measure is intended to discourage companies from implementing arrangements designed to deliver employment income in a tax-efficient structure in circumstances where, at the time of implementation, there is a reasonable chance that HMRC would seek to challenge the tax analysis.

It is worth noting that the Finance Bill is intended to include new flexibility for Government ministers to apply derogations or reliefs from income tax for certain benefits in kind. We anticipate that the Government intends to use this flexibility on an ad hoc basis to supply ongoing targeted support to employees in particular straitened circumstances, to avoid unjust outcomes, an example of which might be employees receiving benefits which are subject to tax in connection with having worked from home during the recent periods of lockdown.

PENSIONS "NET PAY" ANOMALY DEALT WITH THROUGH TOP-UP PAYMENTS

The Government has grasped the nettle of dealing with the "net pay" anomaly for pension contributions made by low earners. HMRC will make top-up payments direct to affected individuals in net pay arrangements. The system will be introduced in 2025/26, for pension contributions made from 2024/25 onwards.

Currently, low earners who receive tax relief under "net pay arrangements" (where pension contributions are taken from pay by the employer before tax is calculated) do not receive a tax relief top-up. However, where tax relief is given under "relief at source" (where pension contributions are made from take-home pay, for example where the pension contract is with an insurer), the pension is topped up by 20% by the Government even if the individual pays no or low rates of income tax. This means individuals in similar situations have different take-home pay,

The payments will be delivered through the PAYE reconciliation process, with HMRC notifying individuals of their eligibility. This will require HMRC to make significant IT systems changes. Draft legislation is expected in 2022, to be included in a subsequent Finance Bill.

FURTHER CONSULTATION ON THE DEFINED CONTRIBUTION CHARGE CAP

The Government is keen to encourage pension investment in illiquid assets and will consult on further changes to the charge cap for the default arrangements in auto-enrolment pension schemes. This consultation will specifically consider amendments to the scope of the cap to "better accommodate well-designed performance fees to ensure savers can benefit from higher return investments, while unlocking institutional investment to support some of the UK's most innovative businesses." The consultation is promised before the end of the year. The Government will also continue wider policy work to understand and remove barriers to illiquid investment by pension schemes.

STATE PENSION UPRATING

The earnings element of the "Triple Lock" will, as previously announced, be suspended in 2022/23.

LOOKING FORWARD TO THE FINANCE BILL

The drafting of the Finance Bill (scheduled to be published on 4 November 2021) will include draft legislation for the proposed 2028 change in the normal minimum pension age from 55 to 57. It will be interesting to see if changes are made to the draft published in July, which met with criticism due to the complexity of the proposed grandfathering regime. Legislation to extend the reporting and payment deadlines for “scheme pays” in relation to annual allowance charges will also be included, addressing a technical point picked up in relation to the public sector age discrimination “McCloud” remedies, but which will apply to all pension schemes.

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