The Construction Industry
Joint Taxation Committee

JTC

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What are the new capital allowances described as the super allowances?

On 3 March 2021, to help with the economic recovery from COVID19 pandemic, the Chancellor announced two new temporary first year allowances, the 'super deduction' and the 'SR allowance'. Over many years, the government has used different types of capital allowance to boost business investment and businesses should look to make the most of these incentives.

Both the super deduction and SR allowance give businesses investing in qualifying equipment a much higher tax deduction in the tax year of purchase than would otherwise normally occur – a 'first year allowance' (FYA). The allowances apply for capital investments made between 1 April 2021 and 31 March 2023.

These allowances will be available alongside the ongoing Annual Investment Allowance (AIA) which already gives 100% relief for costs of qualifying plant and machinery in the tax year of purchase. The AIA has been set at £1m per business again for the year to 31 December 2021.

The super deduction and SR allowance are only available to companies subject to corporation tax, not individuals, partnerships or LLPs, and only where the contract for the plant and machinery (including fixtures installed under a construction contract) was entered into after 3 March 2021 and expenditure is incurred after 1 April 2021.

What investments qualify for the super deduction and SR allowance?
Although not all business investments will qualify for the new allowances, the qualifying groups are quite wide:

- 'Super deduction' includes all new plant and machinery that ordinarily qualifies for the 18% main pool rate of writing down allowances.
- 'SR allowance' covers new plant and machinery qualifying for the 6% special rate pool, being usually integral features in a building, and long-life assets.

However, it is important to remember that certain assets do not qualify (for example, cars have their own capital allowance rates) and that second hand assets will just go into the pools as normal.

In addition, the new capital allowances do not apply to assets that fall into the relevant pools but are used for leasing. Therefore, expensive machinery acquired by hire businesses will not qualify.

The leased plant and machinery exclusion from capital allowances does not extend to the provision of services that includes the leasing of plant and machinery. Examples would include hirers of plant and machinery that supply dedicated operatives of that plant and machinery (for instance cranes and bulldozers with hired operatives). It will be important to consider the contractual arrangements entered into and whether plant and machinery is actually subject to a lease or not.

How much tax relief can we get?
The super deduction gives relief at 130% of the qualifying cost compared to the usual 18% writing down allowance for investment in main pool plant and machinery assets.

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What are the new capital allowances described as the super allowances? contd

The SR allowance gives relief at 50% of the qualifying cost in the first year with the balance going into the normal special rate pool to be written down at the usual 6% rate in future years. This allowance will normally be claimed only on assets installed into the fabric of a building.

For all companies that can claim it, the super deduction will be more beneficial than claiming the AIA for a main pool asset purchase. However, for smaller companies it may still be beneficial to claim the AIA in the first instance rather than the SR allowance on relevant assets, unless the total expenditure on special rate pool assets exceeds the AIA threshold of £1m. The table below shows the effective rates of relief for the different claims.

Unlike the AIA, there is no limit or cap on the amount of capital investment that can qualify for either the super deduction or the SR allowance.

Super deduction, SR allowance and disposals?

A key difference is that while the disposal value is arrived at in the same way as ever when the asset is sold, the amounts incurred on plant claimed as either 'super-deduction' or 'SR allowance' is automatically a balancing charge. The main and special rate pools are not adjusted for the FYA disposal values. If this disposal occurs after 1 April 2023, then the charge is subject to 25% corporation tax rate, whilst the original relief was given against the current 19% corporation tax rate.

If the disposal takes place before 1 April 2023, a special balancing charge calculation is n eeded for assets on which the super deduction was previously claimed: in simple terms, the disposal value for the year of sale is 1.3 times the sale proceeds of the asset. ■

Asset class	CA claim	Asset type	CA rate	Effective relief of cost in year 1 for company
Main plant and machinery	Super deduction	New	130%	24.7%
	AIA (max £1m)	All	100%	19%
	Main pool	Second hand	18%	3.42%
Special rate (generally long life assets or integral features	AIA (max £1m)	All	100%	19%
	SR deduction	New	50%	9.5%
	Pool	Second hand	6%	1.14%

COVID-19: Test & trace/self-isolation support payments

Grant funding is available to employed or self-employed people on low incomes who have been asked to self-isolate due to COVID-19 by the relevant authority and cannot work from home and will suffer financial consequences as a result. Individuals who qualify for assistance will receive a lump sum payment of £500 for the duration of their self-isolation.

The payments are administered across the UK as follows:

- Test and Trace Support Payment in England.
- Self-isolation Support Grant in Scotland.
- Self-isolation Support Payment in Wales.

Employee grants

- Grants paid to employees are taxable as earnings.
- In October 2020, the government introduced secondary legislation to make sure that payments under the English scheme are not subject to Class 1 (employee and employer) and Class 1A (employer) National Insurance Contributions to prevent these administrative costs arising.
- Further regulations came into force in January 2021 to exempt payments under the Scottish and Welsh schemes.

Self-employed grants

- Grants paid under the schemes are also classed as trading income in respect of the self-employed and liable to Class 4 and 2 National Insurance Contributions.
- The measure is formally retrospective for the tax year 2020 to 2021. This is when the English, Welsh and Scottish schemes were implemented.

Overview

The payment scheme opened on 1 September 2020 in England and initially only applied in specific areas subject to local lockdown starting, on a trial basis, with Blackburn with Darwen, Pendle and Oldham. From 28 September 2020, a test and trace support payment was extended to all regions in England with payments of £500 being available to those who qualified.

- A payment of £500 is available if either:

o You have been told to self-isolate because of Coronavirus (COVID-19) and you cannot work from home.

o You're the parent or guardian of a child who has been told to self-isolate and you need to take time off to look after them.

- You must be employed or self-employed to get the payment.
- You need to claim within 42 days of you or your child's first day of self-isolation.

You or the partner you live with must get one of the following benefits:

- Universal Credit or Working Tax Credit.
- Income-based Employment and Support Allowance.
- Income-based Jobseeker's Allowance.
- Income Support.
- Housing Benefit.
- Pension Credit.

You must have given NHS Test and Trace the information they have asked for and have a Test and Trace account ID. ■

How to complete your tax return?

The Supreme Court published its decision in the Tooth discovery case. The key issue in the case was whether the act of putting the right figures in the wrong place of a tax return could be regarded as making a deliberate error. Making a deliberate error potentially allows HMRC to assess tax for 20 following years.

The court found that the explanation that entries were included in the 'white space' of the return because there was nowhere else to put them had adequately explained the rogue entries. HMRC had instantly understood the information on the return, therefore, there was no error in terms of the entries if the return was considered as a whole. The problematic tax return was submitted in 2009. With hindsight, it seems extraordinary that it had to take the highest court in the land to decide such a basic problem. It goes to show that you should use the white space of the return when you need to explain an entry in order to protect yourself from investigation or worse still, discovery assessments. ■

Spotlight 45: Umbrella companies

HMRC have published a new tax Spotlight: *'Umbrella companies offering to increase your take-home pay'*. It highlights the fact that many employees and self-employed contractors are failing to realise that some staff agencies and umbrella companies are flouting tax anti-abuse rules.

- Umbrella schemes work in similar ways, the agency takes the employees pay and somehow manages to pay them more than they would receive as a normal employee.
- It may be that some of the cash is received as a loan instead of pay, or it may be that the agency is claiming some kind of deduction on their behalf.
- The problem is that the loan-pay schemes don't work since the introduction of the Disguised Remuneration rules, the Contractor Loan scheme. There are tight rules on deductions, including special rules for travel expenses.

HMRC say companies are promising that employees can keep 80, 90 or 95% of your wages and be tax compliant. This is unlikely to be true as, in most cases, the basic rate of Income Tax is 20% and National Insurance Contributions (NICs) are also due on earnings.

Key features are that:

- Only a fraction of the salary is paid through payroll and subject to PAYE (indicating that the person is only paying tax on some of their income).
- They are paid using a loan, credit or investment payment and the company claims this is not subject to Income Tax or National Insurance contributions (this is tax avoidance).
- The payment from the employee's umbrella company is routed through various companies before it comes to them. These companies may say that they are compliant with tax rules, but you should not rely on this.

If you want to speak to someone about getting out of avoidance you should email: **exitsteam.counteravoidance@hmrc.gsi.gov.uk.** If you are aware of arrangements of this type operating you can report it to HMRC. ■

New powers to investigate directors of dissolved companies

The 'Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill' will give the Insolvency Service new powers to investigate directors of companies that have been dissolved. The aim will be to prevent directors from dissolving their companies to avoid creditors.

The Bill is the result of government concerns that this has been a method of fraudulently avoiding the repayment of Government-backed loans given to businesses to support them during the Coronavirus pandemic.

- The new rules aim to prevent directors of dissolved companies from 'phoenixing', as in setting up a near-identical business after the Dissolution of their existing company. This often leaves customers and other creditors, such as suppliers or HMRC, unpaid.
- The bill also includes the relevant sanctions such as disqualification from acting as a company director for up to 15 years. These powers will be exercised by the Insolvency Service on behalf of the Business Secretary.
- Under current rules, the Insolvency Service has powers to investigate directors of live companies or those entering a form of insolvency. If wrongdoing or malpractice is found, directors can face sanctions including a ban of up to 15 years.
- The measures included in the Bill are retrospective to enable the Insolvency Service to also tackle Directors who have inappropriately wound-up companies that have benefited from Bounce Back Loans.

This Bill also delivers on the commitment to rule out COVID-19 related business rate appeals. This is because market-wide economic changes to property values, such as from COVID-19, can only be properly considered at general rates revaluations. ■

Revenue & Customs Brief 5 (2021): VAT liability of installation of blinds

R & C Brief 5 (2021): 'VAT liability of installation of blinds – First Tier Tribunal decision' explains HMRC's revised policy on the VAT treatment of installation of blinds.

Background

- The construction of a dwelling is zero-rated for VAT purposes. This applies to construction services and building materials provided by the persons supplying the construction services.
- Building materials are defined as: 'goods of a description ordinarily incorporated by builders in a building of that description (or its site)'.
  - o This includes bricks, timber, kitchen units, sinks, washbasins, baths and toilets.
  - o The definition of building materials is also significant for DIY housebuilders, who are able to reclaim VAT charged on building materials (typically charged because there is no associated qualifying service).
- HMRC's stated policy was that roller blinds and other 'window furniture' were not building materials.
  - o Roller blinds could not be zero-rated nor could VAT be recovered under the DIY housebuilders' scheme.

Revised policy

- HMRC's position was challenged in Wickford Development Co Ltd (Wickford) v HMRC [2020] TC07864, where the First Tier Tribunal (FTT) found that manual window blinds are building materials that did not fall into any of the exceptions. As such, they could qualify for zero-rating.
- From 5 October 2020, HMRC have accepted the FTT decision that manual window blinds and shutters are building materials for VAT purposes.
  - o This does not extend to motorised blinds, which are included in the exceptions of the blocking order as electrical appliances.
- Where VAT has previously been disallowed based on HMRC's former policy, a Correction can be made on the VAT return, subject to the four-year cap and Unjust enrichment rules. ■

Get your business ready for the Plastic Packaging Tax - Do you manufacture building materials, or buy in and sell on?

HMRC have issued a new policy paper 'Get your business ready for the Plastic Packaging Tax' advising businesses who will be affected by the new tax how to prepare for it.

The Plastic Packaging Tax is due to take effect from April 2022. Its aim is to encourage the use of recycled rather than new plastic within plastic packaging and to promote increased recycling and collection of plastic waste, reducing the need for landfill and incineration.

- The tax will apply to plastic packaging manufactured in or imported into the UK, where the plastic used within its manufacture is less than 30% recycled.
- The rate of tax is to be £200 per metric tonne of plastic packaging.
- Business customers can be jointly and severally liable if the supplier fails to account for and pay the tax. This includes non-resident suppliers.

The policy paper advises businesses to check now:

- Whether they will need to register and pay the tax.
  - o Businesses manufacturing or importing 10 or more tonnes of plastic packaging over a 12-month period will need to register even if no tax will be due and/or the plastic used is more than 30% recycled.
- If you use materials that are heavily packaged in plastic, check that the suppliers are aware and acting to reduce the packaging and the proportion of new plastic used.

HMRC have promised more detailed guidance during 2021 ahead of the introduction of the tax in 2022. ■

Consultation on Residential Property Developer Tax

HM Treasury has published 'Residential Property Developer Tax (RPDT): Consultation on policy design', a new tax that forms part of its Building Safety Package ahead of its inclusion in the 2021-22 Finance Bill. This measure targets only the largest developers. The government is introducing two revenue raising measures as part of a five-point plan to bring an end to unsafe cladding.

- A new Gateway 2 levy, which will be applied when developers seek permission to develop certain high-rise buildings in England.
- A new tax on the residential property development sector.

This consultation is focused on the new tax, RPDT.

- RPDT will only apply to profits of a company or group that:
  - o Undertake UK residential property development activities.
  - o Generate profits that exceed the annual allowance available to them in that accounting period.
- The rate of the tax is yet to be announced, it will only apply to profits of a company or group that exceed an annual allowance of £25 million.
- This tax will be time-limited and introduced in 2022 and seek to raise at least £2 billion over a decade.
- Tax will be paid through the normal corporation tax payment instalment schedule.

The consultation considers relevant definitions and models to tax profits.

- Residential property is defined broadly as for Stamp Duty Land tax with some modifications for undeveloped land.
- The consultation considers that RPDT may also apply to the profits on development of:
  - o Affordable Housing.
  - o Communal dwellings.
  - o Student housing.
  - o Retirement house.
- The RPDT will be applied to the profits of companies and corporate groups that undertake residential property development on their own behalf or who use Build-to-rent models.
- There will be some interaction with Gateway 2 levy.
- There are proposals for reporting, payment and compliance.

The consultation runs until 22 July 2021 and responses should be sent to **rpdtconsultation@hmtreasury.gov.uk** ■

Watch OUT

Another area of tax that needs reform, but which unfortunately is not yet on the government's published to-do-list, is employment supply chain taxation. A BBC Radio 4's 'File on 4' program highlighted the case of more than 40,000 'ghost companies' formed in the UK and run by nominees in the Philippines who are defrauding HMRC on 'an industrial scale' via the use of mini-umbrella companies.

The umbrellas operate in labour supply chains to secure the employers' NICs allowances, maximise employee expense claims and save VAT. Ghost umbrella companies are set up by UK directors and then replaced by Filipino directors, all who are recruited via Facebook and network marketing sites. Clearly HMRC is struggling to cope with fraud on this scale, and while the temps and other agency workers at the end of this fraud chain will not necessarily realise that there is any issue, some employers are turning a blind eye when selecting their outsourcing partners.
Do not allow yourself to get in this position. If someone offers you cheap labour, ask yourself how they can recruit and reward at those prices. ■