Representation from the Chartered Institute of Taxation for Finance Bill 2021 Committee Stage

Freeports
Clauses 109-111 and Schedules 21-22

Chartered Institute of Taxation
Excellence in Taxation

Executive Summary

- **The Finance Bill legislates for some of the tax incentives and reliefs for businesses in freeports.**
- **There are important questions for government to answer in relation to freeports, including how the area of freeports will be designated, the treatment of joint ventures and the circumstances in which reliefs will be withdrawn for subsequent non-qualifying activity. We are concerned that some of these uncertainties might hinder investment; clarification needs to be provided.**
- **Additionally there is the broader question of whether freeports will generate additional economic activity or only displace activity from other, fully taxed areas.**

1 Overview

1.1 In the March 2021 Budget the Chancellor announced that eight freeports will be created in England: East Midlands Airport, Felixstowe and Harwich, Humber, Liverpool City Region, Plymouth and South Devon, Solent, Thames and Teesside. Discussions continue around further freeports in Scotland, Wales and Northern Ireland.

1.2 This Finance Bill legislates for some of the tax incentives and reliefs for businesses in freeports.

1.3 Clause 109 introduces a new power to designate freeport tax sites in Great Britain. Tax reliefs are part of the wider freeports policy. The reliefs will be available in areas in Great Britain which have been designated as freeport tax sites by regulations made under this clause.

1.4 Clause 110 and Schedule 21 provide for enhanced rates of capital allowances on qualifying expenditure incurred in freeport tax sites. Part 1 of the schedule provides for 100% first-year allowances (standard rates are 18% or 6% depending on the asset) for companies investing in plant or machinery for use primarily in freeport tax sites. Part 2 provides for an enhanced annual rate of structures and buildings allowances of 10% (standard rate is 3%) for qualifying expenditure incurred on non-residential structures and buildings situated in freeport tax sites.

1.5 Clause 111 and Schedule 22 provide for a new relief from SDLT for certain acquisitions of land situated in freeport tax sites. The relief will be subject to a 'control period' of up to 3 years and the land being acquired and used in a 'qualifying manner'.

ARTILLERY HOUSE
11-19 ARTILLERY ROW
LONDON SW1P 1RT

REGISTERED AS A CHARITY NO 1037771

Tel: +44 (0)844 251 0830
Fax: +44 (0)844 579 6701
E-mail: technical@tax.org.uk
Web: www.tax.org.uk

UK REPRESENTATIVE BODY ON THE CONFEDERATION FISCALE EUROPEENNE

1.6 Additionally the government intends to enable employers operating in a freeport tax site to pay 0% employer NICs on the salaries of any new employee working in the freeport tax site. This will be legislated for separately but is included in this briefing as relevant to the debate.

2 Issues and questions - general

2.1 As a general point we are interested in the government's evidence:
- for why it believed these proposals will achieve their intended benefits,
- on the risk that economic activity will be diverted from other, fully taxed areas, rather than increased overall, and
- on the risk that impact will be felt through a rise in commercial property prices in the areas concerned rather than fully in increased activity.

2.2 In this briefing we mostly limit our comments to practicalities of the tax incentives to be offered within the allocated freeports.

3 Issues and questions – capital allowances

3.1 The enhanced capital allowance for plant and machinery expenditure is a 100% allowance – less generous than the 130% super-deduction. So for the period that they overlap corporate taxpayers in freeports will presumably have to consider whether they are eligible to claim the super-deduction rather than the enhanced capital allowance.

3.2 The importance of identifying the designated area (the freeport tax site) will apply to the enhanced plant and machinery capital allowances and structure and buildings allowances as well as to the SDLT reliefs (see below).

4 Issues and questions - SDLT

4.1 Clause 111 provides for a new relief from SDLT for acquisitions of land and buildings in freeport tax sites. We have concerns that the drafting may not reflect the policy intent in some areas. It would be helpful if the minister could be pressed on the following issues, which have been raised by practitioners on CIOT's Property Taxes Committee:

- How will the area of freeports be designated? It will be necessary to ensure that particular buildings or plots can be identified as either in or out of the boundary of the tax site. Will mapping be available at that scale?

- The treatment of joint ventures which might typically involve one partner developing commercial areas (qualifying) and one developing residential areas (non-qualifying). Does the requirement that the purchaser must intend to use the site for exclusively qualifying purposes disqualify the joint venture acquisition from SDLT relief? If so this will exclude a common commercial arrangement from relief - is that the intention?

- Withdrawal of relief for subsequent non-qualifying activity. The SDLT relief is withdrawn if the land and buildings are not used exclusively for qualifying commercial purposes at any time in a 3-year period following acquisition. A small amount of non-qualifying use can potentially lead to withdrawal of all the relief. For example, if following construction, a small residential unit for overnight security staff is added to an otherwise qualifying commercial building all the relief is withdrawn in full not just a small proportion relating to the non-qualifying use. Is the minister concerned that the risk of loss of full relief in such circumstances could be a bear trap and potentially discourage investment?

- Whether relief is available where the land and buildings are acquired using Shari'a-compliant financing arrangements.

4.2 We are concerned that some of these uncertainties might hinder investment in these areas, and clarification needs to be provided in the near future.

5 Issues and questions - Employer NICs

5.1 The temporary employer NICs relief for eligible employees employed at freeport sites from April 2022 will be legislated via a NICs Bill. This said, this debate is an early opportunity to highlight some of the issues that will need to be addressed.

5.2 These include:

- whether ‘deemed employments’ under the Off-Payroll Working (OPW) rules, or under the 1978 NIC Categorisation of Earners Regulations, are included within the scope of the relief,

- whether restricting the relief to new employees engaged from April 2022 will hamper a business that wants to prepare for activities at a freeport site prior to next April, and

- who qualifies as a new employee, in relation to, for example, agency workers subsequently engaged under an employment contract with a freeport business.

6 The Chartered Institute of Taxation

6.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

For further information, please contact:
George Crozier, CIOT Head of External Relations
gcrozier@tax.org.uk 020 7340 0569

The Chartered Institute of Taxation
13 April 2021