SR Lynn & Co

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Contents

The Chancellor's May economy statement: all about energy 2
HMRC withdraws P11D PDF alternative 4
Company insolvencies on an upward trend 5
Off-payroll mistakes now penalised 6
Charitable giving pitfalls 7

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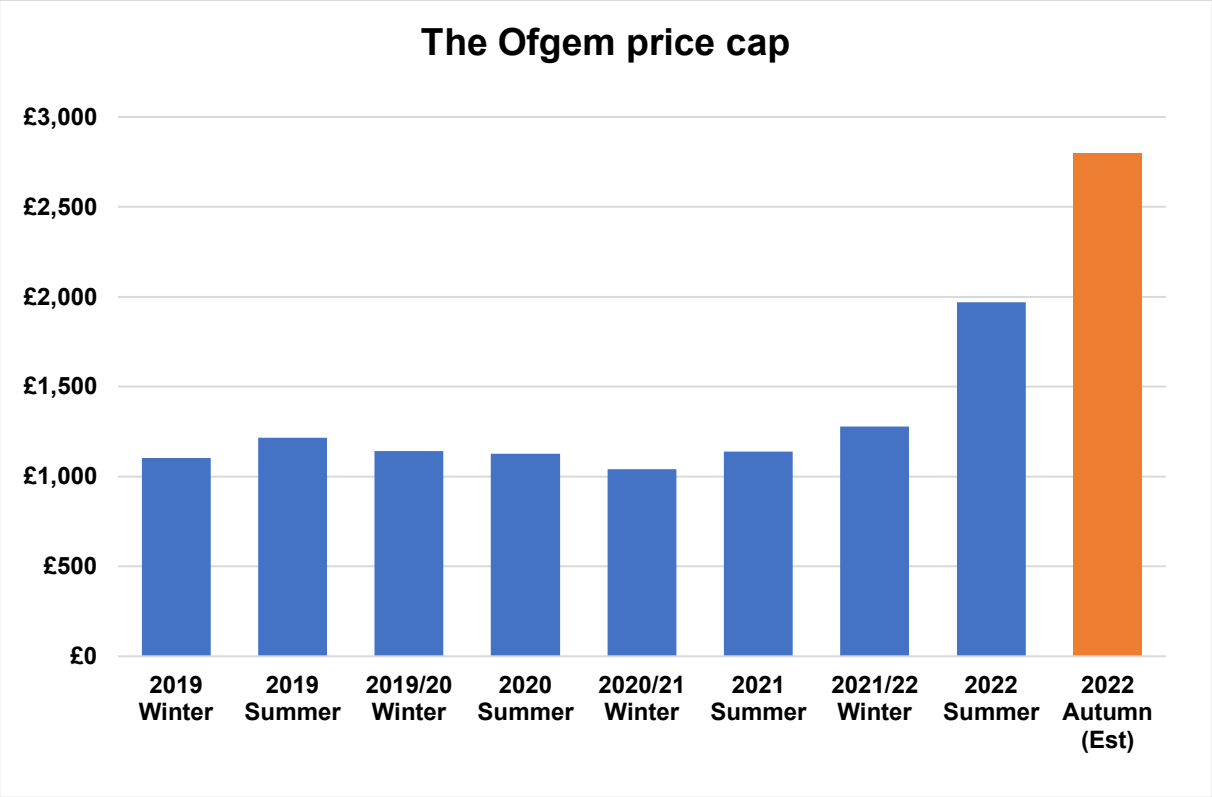
The Chancellor's May economy statement: all about energy

In late May, the Chancellor announced new measures to counter the rising cost of living, in particular energy prices.



Source: Ofgem.

Initial measures for 2022

In early February 2022, the Chancellor announced a package of measures to reduce the impact of the £693 April 2022 increase in Ofgem's energy price cap. These were primarily:

- A £150 council tax rebate for those with properties in bands A–D in England, with corresponding funding for Scotland, Wales and Northern Ireland under the Barnett formula;
- An Energy Bills Support Scheme to provide a £200 reduction in utility bills for the year starting in October 2022. This was effectively a loan, to be repaid by £40 a year added to bills from April 2023. The scheme applied throughout the UK apart from Northern Ireland, which again received Barnett formula cash; and
- Extra discretionary funding of £500 million under the Household Support Fund for English councils to allow them to provide support for vulnerable people and individuals on low incomes, again with Barnett money for the UK's other constituents.

The package, which has had problems with the distribution of the council tax rebates, had a value of about £9 billion. However, with the suggestion from Ofgem that the October price cap will be around £2,800 and inflation already running at 9%, February's measures looked increasingly inadequate under widespread criticism.

A new helping hand

After many rumours about windfall taxes and whether/where they would be levied, on 26 May Rishi Sunak revealed a new round of cost of living measures, greater in scope than many had expected:

- The reduction provided under the Energy Bills Support Scheme will increase by £200 to £400 and turn into a grant, not a loan, i.e. there will be no clawback from future bills.
- Eight million households throughout the UK on means-tested benefits (e.g. Universal Credit. Working Tax Credit and Pension Credit) will receive a Cost of Living Payment of £650. This will be made in two directly paid instalments, one in July and the second in the autumn. Payments from HMRC for those on tax credits only will follow shortly after each to avoid duplicate payments.
- Another eight million pensioner households eligible for the Winter Fuel Payment (WFP) will be paid a top-up £300 Pension Cost of Living Payment over November and December. Eligibility will be based on being over State Pension age (aged 66 or above) between 19–25 September 2022 and entitled to the WFP
- Six million people in the UK who receive disability benefits (e.g. Disability Living Allowance) will receive a one-off payment of £150 in September.
- The Household Support Fund will receive an additional £500 million for distribution by English councils, with corresponding funding for Scotland, Wales and Northern Ireland under the Barnett formula.
- These payments are not mutually exclusive so, for example, a low-income pensioner could receive a total of £1,150 support (£200 + £650 + £300) in addition to the £350 (£150 + £200) from February's measures.

Paying the bill

The total cost of the package is put at £15.3 billion. To help finance this there will be a new temporary Energy Profits Levy on oil and gas company profits of 25%, bringing the total tax rate payable by these companies to 65% and raising £5 billion in its first year.

The levy will be phased out if oil and gas prices return to "historically more normal levels" and in any case will end by the start of 2026. To encourage oil and gas companies to invest, the Chancellor will introduce a new Investment Allowance that will mean total tax relief equivalent to 91.25% of new investment.

The levy will not apply to electricity generators, but the Treasury will now urgently evaluate the scale of the extraordinary profits being made by generating companies and consider "the appropriate steps to take".

One interesting non-energy nugget that emerged in the Chancellor's speech was that "…subject to the Secretary of State's review, benefits will be uprated by this September's CPI" and "Similarly, the Triple Lock will apply for the state pension." That could mean rises of around 10% coming in from April 2023.

HMRC withdraws P11D PDF alternative

HMRC has decommissioned its interactive PDF that businesses have been using to submit up to 150 P11Ds. For 2021/22, former users will instead have to turn to HMRC's PAYE online service or use commercial payroll software.

The deadline for filing P11Ds to report taxable benefits and expenses for 2021/22 is not due until 6 July, so there is still time to go with one of the alternatives.

P11Ds are not required if all taxable benefits have been payrolled, although it is still necessary to submit the employer declaration (form P11D(b)) to confirm that all the required P11Ds have been filed.

- **Paper returns** Although there is no requirement to file P11Ds online, paper returns will only be an option for those employers with just a few returns to file.
- **PAYE online** HMRC's PAYE online service may be the natural choice for businesses that can no longer use the interactive PDF – it can be used for submissions for up to 500 employees. The online service provides more functionality than the decommissioned PDF, such as the ability for an employer to check what is owed, pay bills, see payment history and provide company car details.

The same Government Gateway details can be used as for the interactive PDF service.

Payroll software

Since software must be used for payroll purposes, it makes sense to also use the same software to file P11Ds. However, not all payroll software has this feature. If you are moving from using the interactive PDF it might be a good time to look at changing providers but keep an eye out for what improved software will cost.

Those employers that need to make more than 500 submissions have no choice but to do so using payroll software.

Payrolling

Although not an option for 2021/22 or 2022/23, looking further ahead, the P11D obligation can be avoided by payrolling taxable benefits. However, payrolling might not be as simple as it appears:

- Registration is required before the start of the tax year;
- The payroll software used must be able to deal with the payrolling of benefits; and
- Benefit information has to be available for each pay period.

The starting point for using HMRC's PAYE online service can be found here.

Company insolvencies on an upward trend

Although showing a slight improvement from March, the number of company insolvencies in April of this year was more than double the number from April 2021. This shows just how important it is to get advice sooner rather than later if your company is experiencing problems.

The majority of insolvencies were creditors' voluntary liquidations (CVLs):

	Total insolvencies	CVLs
April 2019	1,429	1,024
April 2020	1,199	933
April 2021	925	815
April 2022	1,991	1,777

Figures already available for May show no improvement. The government's support measures kept insolvencies at bay during the Covid-19 pandemic, but the expected post-pandemic boom has not materialised for many businesses, followed instead by other damaging economic factors such as high inflation, the Ukraine war and supply chain challenges due to continuing Chinese lockdowns.

The insolvency figures suggest many directors lack confidence in their company's ability to continue trading in the current climate possibly pre-empting later forced closure by bringing forward a difficult decision. Directors who have any doubts about their business are advised to seek advice as soon as possible. There are two tests which can act as a warning sign of insolvency:

- **Cash flow test:** Signs that a company is failing this test include late payment of suppliers and falling behind with payments to HMRC.
- **Balance sheet test:** Where a company's liabilities exceed the value of its assets.

For small businesses and the self-employed, free advice can be obtained from the Business Debtline charity.

Avoiding insolvency

Two recently introduced measures might help a company avoid formal insolvency procedures.

- A moratorium period gives a struggling business a formal breathing space from creditors to explore rescue and restructuring options.
- A new type of restructuring plan can be implemented even if certain classes of creditors vote against it.

Guidance on tell-tale signs of potential insolvency, and how managing an insolvent company incorrectly can lead to personal liability and/or being disqualified as a director, can be found here.

Please get in touch with us sooner rather than later if you believe you may need help.

Off-payroll mistakes now penalised

The private sector off-payroll working rules have been in place since April 2021, but for the first 12 months businesses have benefitted from HMRC's relaxed stance on penalties. HMRC will now, however, penalise mistakes made in applying the rules.

HMRC will charge penalties for any inaccuracies relating to the operation of the off-payroll working rules that occur from 6 April 2022 onwards.

Medium and large-sized private sector contracting companies are responsible for determining the employment status for any contractors they use.

Size check

Small private sector contractor companies are not subject to the new off-payroll working rules. Size classification is based on the Companies Act definition and should be checked each year.

- This is particularly the case if a business has grown in size or been bought by another organisation.
- It is good idea to confirm small company status with contractors as they will be responsible for determining their employment status.

Compliance

There would be no problem complying with the rules if there was a clear definition of employment as opposed to self-employment. Unfortunately, HMRC's Check Employment Status for Tax (CEST) tool falls well short of what is required, and even government departments have found themselves liable for millions in additional tax after erroneously relying on the CEST tool.

Two recent Court of Appeal cases (both pre-dating the change in rules) show how difficult determining employment status can be:

- Paul Hawksbee, a regular presenter for TalkSport Radio, prevailed at the First-Tier Tribunal, but HMRC was successful at the Upper Tribunal. This has been confirmed by the Court of Appeal, resulting in a tax cost of over £140,000.
- Kaye Adams, a presenter for BBC Radio Scotland, was successful at both the First-Tier Tribunal and Upper Tribunal, but the Court of Appeal felt the Upper Tribunal had erred in making its decision. The case has therefore been sent back to the Upper Tribunal to be reheard. Tax of over £124,000 is at stake, with Adams's legal costs outweighing this amount.

Guidance on the off-payroll working rules for contractor companies, along with some useful links, can be found here.

Charitable giving pitfalls

Many individuals donate to charity simply for altruistic reasons, but this doesn't mean the tax benefit should be ignored. With Gift Aid donations saving tax at an individual's marginal rate, donors need to watch out for any pitfalls that might preclude relief.

If a Gift Aid donation helps to preserve a person's entitlement to the personal allowance, the tax saving is 60%. For example, a gross donation of £1,000 costs just £400.

Benefit received

Any benefit received in return for making a donation must be minor. An acknowledgement of the donor's generosity – such as a plaque – is permitted but should not take the form of business advertisement or sponsorship.

When it comes to right of admission, such as a National Trust membership fee, the donation must be at least 10% more than the normal admission cost. For example, £11 would need to be paid for entrance that would otherwise cost £10. Alternatively, admission rights can be for at least 12 months during public opening hours.

Other pitfalls to be aware of include:

- **Gifts:** Tax relief is not available for an individual membership or subscription gifted to someone else, such as a spouse or parent. However, this restriction doesn't apply where a donor's minor child is the recipient.
- **Double counting:** Where charitable giving is via a Charities Aid Foundation account, tax relief is given on donations to the account – not when donations are made from the account to charities. Therefore, be careful not to double count when claiming relief. The advantage of using a centralised charity account like this is that only one Gift Aid declaration need be completed.

Tax planning

If a donor's income varies from year to year, donations can be made in the tax years when the tax saving is greatest.

- The ability to treat donations as being made in the previous tax year is a great help here because – unlike pensions – tax planning can be done retrospectively once the donor's tax position is established.
- The same approach should be followed for spouses or partners. If a donation comes from a joint bank account, the donor who will benefit the most should make the Gift Aid declaration.

Detailed guidance from HMRC on Gift Aid for individuals and companies can be found here.