

On Monday 16 November 2020, the UK government published the [Freeports Bidding Prospectus](#), formally opening the bidding process to establish what it hopes will be at least seven new Freeports across England. The devolved administrations will oversee their own bidding process for creating new Freeports in Scotland, Wales and Northern Ireland.

The Bidding Prospectus follows the [Freeports Consultation](#) conducted over the summer and the government's [Response document](#), which was published in early October. It sets out in detail a model for Freeports in the UK. The document covers several crucial topics, including, for example, setting the geographic guidelines for Freeport site design and size, as well as the rules on planning, regeneration and innovation.

While all of these considerations help define how it will operate, at its core, a Freeport is a geographically distinct area that benefits from generous customs and tax incentives designed to achieve specified governmental objectives. This note builds on our previous alert ([UK Freeports – The Tax Angle](#)) by summarising the detailed tax offering, and the conditions bidders will need to satisfy, as set out in the Bidding Prospectus.

The Core Objectives

The UK government's Freeport model aims to achieve three main objectives. Each of these closely mirrors one of the current government's core policy goals. Therefore, it is not surprising to find that Freeports are described in the Bidding Prospectus as, "a flagship government programme that will play an important part in the UK's post-COVID-19 economic recovery".

The government's main objectives are that each Freeport should:

- **Be a national hub for global trade and investment across the UK** – This objective mirrors the government's post-Transition plans for a "Global Britain" and its promotion of international free trade.
- **Promote regeneration and job creation** – This objective mirrors the government's "levelling-up" agenda.
- **Create a "hotbed" for innovation** – This objective mirrors the government's ambition to "build back better" after the pandemic by remodelling the UK economy through a green industrial revolution and a focus on a renewed industrial strategy encompassing research and development, digital and technology.

Tax policy is likely to support each of the government's core policy priorities but it assumes a central role for Freeports.

The Tax Site

Generally speaking, the outer boundary of a Freeport (which can include any type of port be it sea, air or rail) in England is limited to 45km – that is, the maximum permitted distance between any two sites within the same Freeport is 45km. The demarcation of the outer boundary will need to be justified by a clear economic rationale; simply maximising the area is not a permissible justification.

Unlike for the customs site, there is no obligation to create a tax site in the Freeport. However, for bids that do include one, the tax site (or sites) must satisfy some basic requirements concerning geographical location and economic characteristics.

The requirements for the tax site (or sites) include:

- **Location** – It must be established and clearly delineated within the Freeport's outer boundary. Although the tax site can encompass all (or any part) of the customs site, there is no requirement for it to do so and it can be entirely separate if preferred.
- **Size** – It must total no more than 600 hectares (either as a single site or up to three separate sites of no more than 200 hectares each).
- **Regeneration** – It should, either currently or over the last five years, be located in an area of both:
 - Below national average GDP per head
 - Above national average unemployment rates
- **Underdeveloped** – It should meet certain set criteria that identifies the site as "underdeveloped". In broad terms, this means the tax site is likely to be characterised by under-utilised, brownfield land with vacant premises but with the potential for development, expansion, investment and to create new employment opportunities.

The bid must illustrate how the tax incentive measures available will directly help regenerate economic activity in the designated tax site area. To address one of the main criticisms of Freeports policy, it will be vital that bids show that the tax site will generate new economic activity and will not simply displace existing economic activity from the surrounding area into the Freeport. In short, the tax site should be specifically designated as being particularly suited to benefit from the particular tax incentives on offer.

The Tax Offering

The Freeport Tax site will benefit from the tax incentives outlined below. These are, in the main, unchanged from those confirmed in the government's Response to the Freeports Consultation. Perhaps surprisingly, given the emphasis on innovation and research and development, the scope of the Bidding Prospectus confirms the government's decision to not find room in its tax offering for either:

- Any special Freeports R&D incentive
- An enhanced Freeports Patent Box

However, given the type of business being targeted by the Freeports policy, and, therefore, likely to consider (re)locating in one, those looking to utilise the Freeports tax offering should not overlook the availability of these existing, non-Freeport-specific, UK tax reliefs and incentives.

There are six main reliefs. Most are targeted at businesses operating within the Tax site but the last one, the Local Retention of Business Rates, is intended to benefit the local authorities and provide them with a form of tax increment financing (TIF) in order to galvanise accelerated development and regeneration.

One other point to highlight is that the time periods for the commencement, duration and expiry of the various incentives are not aligned. The logic here may be to ensure that development takes place in a particular order (e.g. acquisition of property; then development of property; then acquisition of plant; then recruitment of new employees) but it is far from clear and care will be needed to ensure expected reliefs are available.

In addition, in light of the timing of the entire policy (i.e. with the formal announcement of successful bids not expected until the spring of 2021, and Freeport Tax sites not expected to be formally confirmed until the summer of 2021), the start date of 1 April 2021 for some of the reliefs (e.g. SDLT and SBA) appears odd.

Stamp Duty Land Tax (SDLT)

An (as yet undefined) relief from SDLT will be available for the purchase of interests in land within the Freeport Tax site provided the property is intended to be used for an (as yet undefined) "qualifying commercial activity".

The relief will be subject to being clawed back in circumstances where the property is not used for a "qualifying commercial activity" within three years (or, if earlier, a subsequent sale).

The relief will apply for purchases made during the five-year period between **1 April 2021 and 31 March 2026**.

Enhanced Structures and Buildings Allowance (SBA)

The Freeports enhanced SBA is an accelerated allowance for certain capital expenditure incurred on buildings. It will allow businesses that either construct or renovate commercial (non-residential) premises in a Freeport to claim (in their normal income or corporation tax return) a tax deduction equal to 10% of the total cost of the investment each year for a period of 10 years. Since April 2020, such costs would normally be spread across a period of 33½ years. The normal SBA clawback and anti-avoidance provisions will be extended to the enhanced Freeports SBA rules.

The Freeports SBA is available in respect of all qualifying expenditure incurred (provided associated construction contracts are concluded and structure in question is brought into qualifying use) in the five-and-a-half-year period between **1 April 2021 and 30 September 2026**.

Enhanced Capital Allowances (ECA)

In addition to the Freeport SBA for buildings, companies will also be entitled to claim (in their normal corporation tax return) an enhanced allowance for capital expenditure on qualifying new plant and machinery. The plant and machinery must be used (primarily) within the Freeport Tax site. The Freeports ECA allows a company to claim a tax deduction equal to full cost of its qualifying expenditure in the tax period that the costs are incurred. In a similar way to the SBA rules, normal disposal rules for capital allowances for plant and machinery will apply (including, in appropriate cases, balancing charges).

The Freeports ECA is available in respect of all qualifying expenditure incurred in the five-year period between **1 October 2021 and 30 September 2026**.

Employer National Insurance Contributions (NICs)

Employers operating in a Freeport Tax site will be allowed to pay 0% on the earnings of any newly recruited employee up to a maximum threshold of £25,000 per year. The normal threshold for the 0% rate is approximately £8,788 per year, after which the rate applicable is 13.8%. It is worth noting in passing that a higher 0% rate threshold (just over £50,000 per year) is already available for employers of apprentices and employees under 21.

Where an employer wishes to claim the relief (submitted through its normal Real Time Information returns), the employee will need to be working at least 60% of their hours within the Freeport Tax site. The 0% rate relief will last for three years and apply to each new qualifying employee.

The extended 0% rate relief is worth approximately £2,237 per employee, per year (and so up to £6,711 per employee in total).

Although subject to a review at some point part way through its life, the government intends the employer NICs relief to be available for recruitment during a nine-year period between **April 2022 and March 2031**. Irrespective of the timing of the review, the relief will be available until at least April 2026.

Robust anti-avoidance provisions are expected to accompany this relief. Employers found to be entering artificial arrangements or seeking to manipulate the requirements in order to qualify (for example by dismissing existing employees in order to appoint new qualifying staff) will be excluded from benefiting from the relief and may face stronger sanctions. In addition, employers will need to register with the body that oversees the governance of the Freeport (the Freeport Governance Body) and should expect to meet rigorous reporting and compliance obligations.

Business Rates Relief (BBR)

Certain business premises in a Freeports Tax site will be eligible for 100% relief from business rates. In broad terms, BBR will be available in relation to premises operated by:

- Newly formed businesses
- Businesses relocating to a Freeport

In addition, a partial BBR will be available for businesses that are already operating from premises in the Freeports Tax site to the extent they expand their business into new or additional premises, or expand or redevelop their existing business property.

BBR schemes will be overseen by the Ministry of Housing, Communities and Local Government (MHCLG) but ultimate responsibility for the design and operation of the scheme will lie with local authorities. Businesses looking to claim BBR should expect to have to adhere to strict tests designed to minimise regional economic displacement.

The relief will be available for new and some existing businesses operating from premises in the Freeports Tax site for the five-year period between **1 October 2021 and 30 September 2026**. The relief applies to each qualifying premises and continues for a period of five years from the point it is first obtained (provided that is on or before 30 September 2026).

Freeport Tax Site Reliefs

A Timeline

	2021	2022	2023	2024	2025	2026	...	2031
SDLT	1 April 2021 – 31 March 2026							
SBA	1 April 2021 – 30 September 2026							
ECA		1 October 2021 – 30 September 2026						
BRR		1 October 2021 – 30 September 2026						
NIC		April 2022 – March 2031*		*subject to review				

Local Retention of Business Rates (Tax Increment Financing)

In addition to BBR, local authorities of areas in which the Freeport has been established will also be empowered to retain the growth in business rates, above an agreed threshold, in their area. The intention is that as the Freeport grows, and economic activity in the Freeport and surrounding area is generated and also grows, so will business rates receipts. The idea is similar to the policy introduced (with relatively limited success, primarily due to a technical design flaw) as part of the 2011 plans to establish 21, relatively small, Enterprise Zones.

In essence, the policy rationale is twofold:

- First, to retain and reinvest the “profits” arising as a result of the Freeport in the local area in order to stimulate further investment, regeneration and growth.
- Second, to allow local authorities to attract private investment from funds secured on the retained “excess” business rates revenue. The business rates growth will be guaranteed by central government for a period of 25 years meaning that local authorities will not need to assume excessive risk, enabling them to obtain the funding they need to invest in establishing the Freeport and its infrastructure.

In order to achieve these aims, the government intends that retained receipts should only be used for three purposes, namely:

- To cover increased borrowing costs (if any)
- To reinvest in the Freeport tax site in order to generate further growth
- To offset any effect of displacement of local economic activity from deprived areas

The terms and conditions surrounding who controls the retained revenues, who oversees how they should be reinvested and the level of involvement of other interested parties will be a key component in ensuring the effectiveness of the policy. Bidders will be required to specify how the decision-making process will operate in their proposed Freeport.

Although not new, this is a particularly intriguing proposal and potentially significant. It is similar to other forms of tax increment financing (TIF) models adopted around the world (including, for example, in the US) and has the benefit of providing a basis for attracting some private investment in the Freeport through, for example, a bond fund structure or the creation of some other Special Purpose Vehicle (SPV). The fund (or SPV) would invest monies in the Freeport project with the return on that investment covered by the guaranteed level of excess business rates revenues.

The Customs Offering (and Import VAT)

It is worth noting that businesses operating in the Freeport's Customs site (note, as explained already, not necessarily the same as Tax site) will be able to suspend Import VAT on goods they bring into the Freeport alongside the other customs-related advantages afforded by the Freeport (including, for example, duty deferral, duty inversion, possible duty exemptions and simplified import procedures) in addition to the suite of customs facilitations and procedures already available to businesses in the UK.

To minimise the risk of evasion and criminal activity (e.g. money laundering) – another main criticism of Freeport policy – the government has confirmed the Freeport Governance Body will need to maintain records of all businesses that operate (or apply to operate) within the tax site and information on the ultimate beneficial owner(s) of those businesses. The data collected will be shared with HM Revenue & Customs (HMRC), the National Crime Agency (NCA) and Border Force.

Timing

The official timeline set out in the Bidding Prospectus is broadly:

- **Submission** – Bidders wishing to establish a Freeport in England will need to submit their online application form before noon on **Friday 5 February 2021**.
- **Assessment** – MHCLG officials will assess bids through **March 2021**, creating and presenting a “longlist” of candidates that have met the necessary criteria.
- **Decisions** – The government will formally announce the successful bids and the location of the Freeports in England during **spring 2021**.
- **Establishment** – Freeport Governance Bodies will be set up, outline business cases submitted, Freeport tax site boundaries approved with HMRC and HM Treasury, and authorisations for Freeport Customs sites obtained, during **summer 2021**.

We Can Help

Freeports and free trade zones are used globally to incentivise inbound and domestic investment by providing businesses with tariff exemptions on inputs or warehousing for subsequently exported goods. As illustrated here, tax policy performs as a vital lever to support this aim, as well as support economic activity.

We can offer a truly integrated approach to free zones. We understand how they can make an impact on the local economy and, more importantly, we have been providing comprehensive legal advice on all aspects of the development of, and operations within, free zones for more than 20 years. Our unrivalled understanding, born from our track record in advising governments, ensures that we are the law firm of choice for companies incorporating, maintaining and liquidating entities established in many of the leading global free zones.

We have advised clients globally in connection with Freeports and similar zones, including all 46 of the United Arab Emirates' free zones and the China (Shanghai) Pilot Free Trade Zone. Our work encompasses free zone legislative and regulatory drafting, company formation within free zones, and wider regulatory and corporate experience.

In addition to tax, our specialist teams can advise on all aspects of Freeport planning, international trade compliance, state aid, anti-bribery and corruption, regulatory, compliance and infrastructure.

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