



# AUTUMN TAX UPDATE

06 December 2011

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# INTRODUCTION

With the publication today of a considerable amount of draft legislation, the government maintained its commitment to provide details of intended tax changes at least three months in advance.

The further detailed proposals for reduced corporation tax rates, taxation of intellectual property and changes to the taxation of foreign profits and Real Estate Investment Trusts bear out the government's intention to make the UK corporate tax system the most competitive in the G20. The corporate measures are complemented by a new relief for non-domiciled individuals wishing to remit funds to invest in UK businesses.

Domestic investment in business is also encouraged with various tax measures improving and adding to the existing venture capital schemes, together with improvements to tax relief for research and development and the prospect of 100% first year allowances in some of the new enterprise zones.

Finally, the drive to simplify and modernise the domestic UK tax system continues, with draft legislation on a wide range of issues, 'tidying up' some areas, preventing avoidance in others, and providing new charitable reliefs.

All of this positive news was however counter-balanced by some negatives:

- It is disappointing that the long-awaited statutory residence test, which will be an important step in bringing greater certainty on the residence position of individuals, will not now come into effect until 6 April 2013
- The UK's tax legislation will be longer, much longer, following the enactment of the draft clauses (over 1,000 pages of material was released)
- The enterprise-inhibiting consequences of the 50% rate of income tax continue unchecked.

Whilst there were no great surprises or headline-grabbing measures, some of the announcements will be important to businesses and individuals.

This update focuses on the main announcements and their relevance to you and your business. We look forward to the next major instalment in Budget 2012 but if you have any questions in the meantime on how you might be affected by these announcements please do not hesitate to contact your usual BDO adviser or me.

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# CORPORATION TAX

## Corporation tax rates

The main rate of corporation tax for the financial year 2013 has been confirmed as 24%, although ring-fence profits from oil activities will continue to be charged at 30%.

The small profits rate of corporation tax will be 20% (19% for ring-fence profits) and the fraction used in calculating marginal relief will be 1/80th (11/400ths for ring fence profits). The small profits rate applies to taxable profit up to £300,000. Companies with profits between £300,000 and £1,500,000 will benefit from marginal relief from the main rate.

## How might this affect you?

The gradual reduction in the main rate of corporation tax to an eventual 23% has been announced previously and was welcomed by companies. This is in line with the Government's aim for the UK corporate tax regime to be the most competitive in the G20 by the end of the current Parliament. In our view, the main corporation tax rate is the core ingredient in determining whether the UK has a competitive business tax system that is attractive to entrepreneurs and multi-national companies. It is therefore no surprise that the small companies profits threshold again remains unchanged.

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## Corporation tax administration

There were no further updates to the requirement to submit corporate tax returns electronically in iXBRL format. Whilst this was not unexpected, it is disappointing that the Government did not take this opportunity to clarify its longer term vision for iXBRL, which has been a source of administrative pain for many businesses in its first year.

## How might this affect you?

With the deferral of the Companies House mandate to introduce iXBRL filing to at least 2015, and whilst rumours abound that HMRC will defer full iXBRL tagging until that time, further clarification would have been welcome. However, in the absence of any announcements, businesses should review their response to iXBRL and ensure that conversion/accounts production processes are robust.

# CORPORATION TAX

## Controlled Foreign Companies (CFCs) reform

The Government has made significant changes to the proposals set out in the June 2011 consultation document. The focus, however, remains for a more territorial and internationally competitive system that will apply to situations that pose the highest risk of artificial diversion of UK profits whilst minimising the compliance burden. The expectation is that the new CFC rules will be included in FB 2012 and will apply to accounting periods beginning on or after the date of Royal Assent, subject to further consultation.

### Key changes for FB 2012

The introduction of a gateway designed to expressly define profits within the scope of the CFC regime should provide another opportunity for groups to choose how they self assess. Profits arising in groups with foreign subsidiaries will only fall within the scope of the regime to the extent all conditions of the gateway are met. The gateway will apply separately to business profits and finance profits.

The proposed Territorial Business Exemptions (TBEs) will be replaced with a number of mechanical safe harbours designed to establish the extent to which business profits of foreign subsidiaries are outside the scope of the regime.

- A commercial activities safe harbour will replace the manufacturing and commercial activities TBEs. The UK income and IP transfer conditions will be narrower than previously proposed and the definition of IP will exclude IP that was transferred more than six years ago. In addition, the condition will now look at the split between UK and non-UK expenditure with a view to removing the need for a local management condition
- An incidental finance income safe harbour defined as 5% of business profits has been introduced to cater for a wider range of business circumstances
- There will also be a safe harbour for holding companies for investment income up to 5% of exempt dividend income
- Changes to the profits rate safe harbour have also been proposed.

The Government has also proposed changes to some of the entity level exemptions, including:

- An increase in the threshold for the low profits exemption from £200,000 to £500,000
- Simplification of the excluded territories exemption to include territories with a headline tax rate of greater than 75% of the main UK corporation tax rate
- Further clarification on the proposed application of the finance company partial exemption, which will apportion one quarter of the finance profits of the CFC, as well as the possible introduction of a full exemption in limited circumstances, subject to further consultation

- Proposed modifications to the sector-specific rules so as to assist insurance companies and banks to self assess with the minimum compliance burden.

The intention is that groups can choose to use the gateway, the safe harbours, the finance company rules or the entity level exemptions.

Further clarification on the definition of a CFC under the new regime is also proposed, including the removal of the lower level of tax condition for a CFC that otherwise qualifies for full exemption. It will instead be available as one of the entity level exemptions.

### How might this affect you?

The proposed reform of the CFC legislation is essential to ensure that the UK remains tax competitive in comparison to its G20 (and other) competitors for in-bound foreign direct investment. However, the detailed draft legislation will require further analysis to conclude that it meets this objective, as well as protecting the UK's corporate tax base.

There are, however, encouraging signs that the administrative burden of CFC legislation will be reduced.

- Business profits arising in foreign subsidiaries will only be subject to the regime if they are derived from UK activities that relate to the assets or risk of the foreign subsidiary
- A number of the proposed changes should provide flexibility for groups in terms of choosing how they self assess, either by excluding foreign subsidiaries from the regime entirely by the gateway or applying one of the mechanical exemptions. To the extent a group satisfies the conditions of the gateway it will not be necessary to review the exemptions that may apply to each foreign subsidiary individually
- Foreign subsidiaries will be in a position to meet business needs for a more efficient supply chain of goods, services and licensing arrangements without the CFC constraints that exist under the current regime
- IP portfolios should be reviewed to identify whether non-UK connected IP can now be more efficiently licensed and exploited intragroup
- EU subsidiaries with a proper business presence that still remain exposed to a CFC apportionment may still have a defence following the ECJ decision in Cadbury Schweppes. The Government will presumably want to ensure that the final rules are EU compliant.

# CORPORATION TAX

## Intellectual property (IP) - Patent Box

Following consultation on the Patent Box regime issued in June 2011, the Government has set out a number of amendments to the proposals following feedback.

The revised proposals are broadly in line with those set out in the draft consultation, namely:

- The corporate tax rate on income from relevant patents will be 10%
- The benefit of the regime will be phased in over a five year period from the start of the regime
- The relief will also apply to embedded income included in the price of the patented product.

There are, however, some improvements in the way the relief is to be calculated.

- The improved method for determining the level of profits which are within the Patent Box should mean more profit is eligible for the reduced rate
- The scope of the regime has been extended, making it easier for groups to qualify where IP is held centrally but actively owned and managed in the UK, and for companies to qualify for the regime following the acquisition or immediate sale of IP. It has also been extended to include patents issued by certain other EU national patent regimes
- The period over which a company can claim profits arising prior to the grant of a patent has been increased from four to six years.

Notwithstanding the above, some tightening of the proposals has been made, including:

- An R&D floor is to be introduced by which actual R&D expenses incurred in the first four years of electing in to the Patent Box will be compared to the average R&D expenses incurred in the four years prior to electing into the Patent Box
- A targeted anti-avoidance rule (TAAR) will apply and comprehensive guidance will be published in summer 2012.

A consultation process on the draft legislation will take place until 10 February 2012.

## How might this affect you?

The changes announced make the regime more accessible and competitive and are broadly welcomed. However, there is still room for improvement.

- The 10% rate remains higher, and covers a narrower scope of IP, than equivalent regimes in, for example, Netherlands and Luxembourg
- Capital gains from the ultimate realisation of patents will not qualify for the 10% rate. A number of competing jurisdictions include gains in the patent box
- We await details of the extent and nature of the TAAR to be published in summer 2012.

# CORPORATION TAX

## Worldwide debt cap

The worldwide debt cap measures introduced from 2010 can restrict the availability of corporation tax relief to the interest and financing expense of large groups. In broad terms, the debt cap denies relief for UK financing costs to the extent that these exceed the group's worldwide financing costs. These rules were intended as a tax raising measure to counter perceived abuse by multinationals of the UK's relatively favourable tax regime for financing relief.

In practice, the drafting of this complex legislation has resulted in uncertainty over the operation of the rules with some groups unintentionally suffering financing restrictions. Following consultation, a number of amendments will be made to the debt cap effective for periods ending on or after the date that Finance Bill 2012 receives Royal Assent. These include:

- An election for groups to disapply de minimis debt cap limits, where beneficial
- Clarification of how the debt cap applies to changes to the composition of groups, such as following mergers, acquisitions and demergers
- Simplification of the provisions enabling group treasury companies to opt out of the rules, where beneficial
- Clarification that dormant companies can be ignored for group administrative purposes
- Regulation making powers to enable secondary legislation to be passed to counter any mismatches arising from the introduction of new international accounting standards.

The draft clauses also include new anti-avoidance rules intended to counter planning schemes designed to secure that large groups are not subject to the worldwide debt cap provisions.

## How might this affect you?

The proposal to introduce an election to opt out of debt cap de minimis limits is an especially welcome measure since it will enable businesses unintentionally suffering debt cap restrictions to mitigate tax leakage arising in the future. However, it is regrettable that the rules will not be amended with retrospective effect. In consequence some groups remain liable to pay corporation tax in respect of 2010 and 2011 as a direct result of a known, inadvertent defect in the original drafting of the legislation.

# CORPORATION TAX

## Capital allowances: fixtures

As expected the Government has announced a tightening up of the rules on claiming capital allowances on fixtures in a second hand property. The changes principally introduce a time limit for identifying qualifying expenditure and a prescribed method of valuing that expenditure.

The current legislation does not prescribe a time limit for pooling expenditure on fixtures. As long as the property is still owned, a capital allowance claim can be put through any open return. This led to concerns from HMRC that capital allowances were being claimed on the same expenditure by more than one business. Given the, sometimes significant, delay in identifying qualifying expenditure HMRC's records did not extend far enough back to be able to say with any certainty whether or not the claim was valid. Further detail on the changes is set out below.

For expenditure incurred on or after 1 or 6 April for corporation tax and income tax purposes respectively the availability of capital allowances will be conditional on:

- Previous business expenditure on qualifying fixtures being pooled before a subsequent transfer on to another person; and
- A seller and purchaser using one of two existing procedures (see below) to fix their agreement about the value of the fixtures transferred **within two years of the transfer**.

In exceptional cases the conditions above may be replaced by the past owner instead providing a written statement of the amount of the disposal value of fixtures, which he had some time earlier been required to bring into account (eg when he permanently ceased the business) within two years of a later sale of the property.

The existing procedures to fix the value of fixtures referred to above are:

- A joint election between the seller and purchaser to allocate a proportion of sales proceeds to fixtures (subject to original cost)
- Where the parties are unable to reach an agreement within two years, the facility to refer the matter to a First Tier Tribunal for an independent determination.

The legislation will also include a technical amendment to enable plant and machinery capital allowances to be claimed by a new owner on any fixtures expenditure to the extent that this has not already been relieved under the Business Properties Renovation Allowances scheme.

## How might this affect you?

The proposed changes to capital allowances have proved less restrictive than we feared. Whilst a two year time limit on claims on fixtures in properties purchased after April 2012 will be introduced, there will neither be a time limit for properties held before that date nor for expenditure on new fixtures. It seems that HMRC have taken heed of consultation responses - this proposal was highly unpopular.

The method of determining the value of fixtures on which the claim can be made will be more prescriptive and therefore purchasers should seek to formally agree the value by joint election with the vendor at the time of sale. Thankfully, HMRC are not seeking to restrict the value on which this joint election may be agreed at and therefore it remains a commercial decision for the parties involved.

These new rules simply further reinforce the importance of considering capital allowances at the time of a transaction.

# CORPORATION TAX

## Capital allowances: anti-avoidance rules for plant and machinery

Legislation will be introduced to tighten the current anti-avoidance legislation for expenditure incurred on plant and machinery.

The legislation currently restricts allowances where a relevant transaction (being a sale, hire purchase contract or assignment of a hire purchase contract) is entered into and it appears that the sole or main benefit from the transaction is to obtain allowances.

For expenditure incurred from April 2012 the legislation will be amended such that the anti-avoidance provisions will apply to relevant transactions which have an avoidance purpose, are part of schemes that have an avoidance purpose or occur as a result of a scheme or arrangement with an avoidance purpose.

The definition of avoidance purpose will be if the main purpose, or one of the main purposes, of a party entering into a transaction, scheme or arrangement is to enable any person to obtain a tax advantage that would not otherwise have been obtained then that transaction, scheme or arrangement has an avoidance purposes.

The exception from the capital allowances anti-avoidance rules that exists for certain transactions where unused plant or machinery is bought or hire purchased from the manufacturer or supplier in the normal course of business will also be removed. This change applies for expenditure incurred on or after 12 August 2011.

## How might this affect you?

A tightening of the anti-avoidance rules was expected and, from April 2012, care will need to be taken to ensure that commercial transactions are not caught by the provisions.

This is a further example of HMRC's crackdown on tax avoidance.

# CORPORATION TAX

## Capital allowances: feed-in tariffs and the Renewable Heat Incentive

As expected from April 2012 expenditure on plant or machinery which attracts tariff payments under either of the feed in tariff or renewable heat incentive schemes will be specifically excluded from the enhanced capital allowance regime (first year allowances giving 100% tax relief).

Clarification has now been given that with effect from April 2012 expenditure on solar panels will be designated as special rate expenditure attracting allowances at a rate of just 8% (10% until April 2012). This reflects HMRCs view that the useful economic life of the panels was more than 25 years.

## How might this affect you?

The legislation is as expected but as it does not come into effect until April 2012 there may be some scope to take advantage of the higher rates of capital allowances which may be available in the meantime.

# CORPORATION TAX

## Reform of the UK Real Estate Investment Trust (UK-REIT) Regime

A number of changes have been announced to the UK-REIT regime which are designed to address barriers to entry and investment in the regime and reduce the costs of compliance.

### Barriers to entry

- As expected, the entry charge has been abolished for companies joining the UK-REIT regime on or after the date on which Royal Assent for Finance Bill 2012 is received
- As previously announced, UK-REITs will be permitted to be listed on the AIM and PLUS markets, and their foreign equivalents. However, they will have a continuing requirement to have their ordinary shares admitted to trading on a recognised stock exchange and these shares must be traded in each accounting period
- The close company rules, as far as they apply to UK-REITs, are to be relaxed such that a UK-REIT will not be deemed to be close if the only reason for it being close is that it has one of a specified list of institutional investors as a shareholder. Further, UK-REITs will have three years, from entering the regime, in which to become non-close. If the close company rules are not met by the end of this grace period then the company will lose its UK-REIT status with no further penalty unless the company is deemed to have joined the REIT regime to gain a tax advantage.

### REIT condition improvements

- Cash is now considered as a good asset for the balance of business test
- The financing costs test is to be amended so that financing costs are restricted to interest on loans only. As a result, costs associated with loan finance and accounting period movements related to debt are to be excluded
- Two amendments are proposed to the distribution requirement.

The measures relating to the barriers to entry to the regime will have effect for companies that join the regime on or after the date of Royal Assent to Finance Bill 2012. For the balance of measures, they will have effect for REITs in the regime on or after the date of Royal Assent.

### How might this affect you?

The announcements in Budget 2011 confirmed that the Treasury are supporters of REITs and are very keen for new entrants to the REIT regime, particularly companies focussed on residential property investment. The question, in light of today's publication, is whether these provisions will result in a slew of new entrants to the regime? The answer, we fear, may be, no.

The proposals will effectively result in two UK-REIT regimes running in parallel, one for existing UK-REITs and one for companies joining the regime on or after the date that Finance Bill 2012 receives Royal Assent. This is because a number of the amendments only apply to new entrants.

That said, there are a couple of very welcome changes to the regime that will make compliance with certain of the ongoing tests easier and will affect both new entrants to the regime and existing UK-REITs. In particular, the restriction of the definition of financing costs to interest on loans and the inclusion of cash as a good asset.

# CORPORATION TAX

## Research and development relief and vaccine research relief

Small and medium sized enterprises (SMEs) carrying out R&D activities are currently entitled to claim enhanced relief for qualifying expenditure such that, for every £100 of expenditure, relief of £200 is available. Legislation in Finance Bill 2012 will increase this relief to £225.

To facilitate this increase in R&D relief, whilst remaining within state aid thresholds, the enhanced relief available to SMEs carrying out qualifying vaccine research will be abolished for expenditure incurred on or after 1 April 2012 and the rate of the payable R&D tax credit for SMEs will be reduced to 11% for expenditure incurred on or after 1 April 2012.

Legislation will also be introduced in Finance Bill 2012 to simplify the R&D legislation as follows:

- A company's entitlement to claim an R&D tax credit from HMRC will no longer be capped at the amount of PAYE and National Insurance contributions it has paid for accounting periods ending on or after 1 April 2012
- The £10,000 minimum expenditure requirement will be abolished for accounting periods ending on or after 1 April 2012
- The externally provided worker rules will be simplified to allow for cases where additional parties are involved in providing workers for expenditure incurred on or after 1 April 2012
- It will be clarified that where a company is in administration or liquidation it is not a 'going concern' and hence is not eligible for relief under the SME scheme. This will apply to claims made for relief on or after 1 April 2012.

As part of the continuing consultation process the Government will launch a further review in the 2012 Budget how best to deliver an above the line credit rather than the current additional deduction, with the intention of introducing the new system from April 2103.

## How might this affect you?

These measures are intended to encourage companies to carry out R&D activities and to increase the level of innovation in the UK. By removing the minimum expenditure entry hurdle R&D relief can now be claimed regardless of how little a company spends on R&D. At the same time the tax credit available for SMEs is no longer restricted to the company's PAYE/NIC liabilities, and as such the tax credit is available to companies regardless of how they organise their R&D. Therefore SMEs who subcontract their R&D and/or use externally provided workers should no longer be penalised when compared to SMEs who carry out R&D using their own employees.

The introduction of the above the line credit is generally favoured by large companies, and the Government has given assurances that relief for SMEs will not be reduced as part of these changes.

# CORPORATION TAX

## Enterprise Zones: first year allowances for designated areas

It has been announced that first year allowances of 100% will be available for expenditure incurred by trading companies on qualifying plant and machinery in certain designated areas within Enterprise Zones. Qualifying expenditure incurred in the five year period from 1 April 2012 to 31 March 2017 will qualify for this allowance as long as the area is an assisted area at the time the expenditure is incurred and the plant and machinery is not held for use in an area outside of the designated area for a period of five years.

The allowance, in line with other first year allowances, will not be available for expenditure on assets used for leasing purposes. There are also certain restrictions on the type of company incurring the qualifying expenditure and the plant and machinery must be unused and meet a number of other conditions.

To encourage growth in the manufacturing sector, the designated areas are those where there is a strong focus on manufacturing.

### How might this affect you?

The news that first year allowances of 100% will be available for qualifying expenditure on plant and machinery in a five year period is welcomed.

It is disappointing, though as expected, that these allowances will only be available in six assisted areas and are therefore less generous than the previous Enterprise Zone Allowances which were abolished in April 2011.

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## Changes to UK Generally Accepted Accounting Practice (UK GAAP)

As a result of the Accounting Standard Board's decision to significantly change UK GAAP, numerous one-off accounting adjustments will be required in the financial statements of entities affected by the changes.

For tax purposes, the law will be changed to ensure that these one-off accounting adjustments will be dealt with on the same basis as changes in accounting policy are currently dealt with.

Draft legislation to be included in Finance Bill 2012 has been published and it is intended that the new rules will apply to financial statements adopted after 1 January 2012 (even if these relate to a period beginning before that date).

### How might this affect you?

Although this measure has not previously been announced, it maintains the Government's existing policy objective that income should only be taxed once and allowable expenditure should only be deductible once. Nevertheless, entities should consider how the changes to UK GAAP will impact their statutory accounts and consequently whether the new legislation will affect the timing of receipts and deductions for tax purposes and whether this could, for example, adversely affect the utilisation of tax losses.

# CORPORATION TAX

## Bank levy/Basel III tax treatment of regulatory capital

The bank levy applies to UK and foreign owned banking groups, and non-banking groups with a UK bank as a member, where their relevant liabilities exceed \$20bn.

There has been a further increase in the bank levy rate up to 0.088% for the full rate and 0.044% for the reduced rate. This change is unlikely to be welcome but has been introduced to ensure the yield (which was projected to fall) remains above £2.5bn. It is effective from 1 January 2012.

In addition there are a number of technical changes relating to the operation of the tax in relation to joint ventures and also double taxation relief.

The Treasury remains committed to ensure that the tax rules are consistent with the financial stability and economic impacts of Basel III and also with the proposed Independent Commission on banking proposals. The tax rules will be finalised by 2013.

### How might this affect you?

If you are subject to the bank levy, it is likely to mean higher bills. Given that the aim is to maintain the yield, it could also mean volatility in the future rate of levy applied. In making projections banks will have to take account of possible variations, making forecasting extremely difficult.

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## Life assurance taxation

Currently, tax computations for life assurance companies are based on the FSA regulatory return. There are different tax rules for the calculation of the liability for different classes of business and an allocation of income and gains has to be made between these classes of business. In addition there is a difference in the rate of tax applied to income attributed to policyholders and the shareholder profit.

As a result of the introduction of Solvency II, the regulatory return will no longer be suitable as a basis for preparing the tax return and thus Finance Bill 2012 introduces changes to the way in which life assurance taxation operates. The proposed regime, however, distinguishes between basic life assurance and general annuity business and other classes of long term business and retains the I-E basis of tax. One key difference is in the level of detail now set out in the legislation. Even after these reforms, the system remains extremely complex.

### How might this affect you?

HMRC has consulted extensively on the proposed changes but, for those involved, there remain significant complexities and there will be costs associated with adapting to the changes.

# CORPORATION TAX

## Abolition of relief for claims equalisation reserves

An insurance company which underwrites certain types of general insurance business has a regulatory obligation to maintain claims equalisation reserves for regulatory purposes. This obligation will cease as a result of Solvency II. The Treasury therefore proposes to abolish tax relief for such reserves, and will tax the balance on reserves over six years starting with the date Solvency II rules come into effect.

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## Stop loss insurance

The Treasury has amended the timing of tax relief for stop loss insurance policy premiums. In future this will obtain relief only in the period in which the related profits or losses arise.

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## Tax transparent funds

The Treasury has included power to amend the capital gains tax treatment by regulation for UK investors in collective investment schemes. This is to facilitate the introduction of tax transparent collective investment schemes governed by contract (rather than trust law or open ended company provisions) which are introduced by UCITS IV. There is also a power to provide stamp duty and SDRT relief as appropriate.

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## Investment trusts

We have commented in the past on the consultation and changes to the Investment trust company regime. The draft regulations introducing the modernising provisions for investment trusts are expected to become effective by 1 January 2012. Consequently, investment trust companies will be able to apply for approval under the new rules for accounting periods commencing on or after that date. Once approval is given, it will remain in force unless withdrawn either on request or for a serious breach of the rules.

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## Foreign exchange matching rules

Rules were announced that put beyond doubt that companies can only defer foreign exchange gains or losses under the Loan Relationship & Derivative Contract regulations from the date that they have a foreign currency loan relationship or derivative contract which is matched with shares, a ship or aircraft. These changes are designed to block a particular tax planning arrangement.

The change will apply to shares, ships or aircraft which are matched on or after 6 December 2011.

# CORPORATION TAX

## Distributions in the form of assets and liabilities

Finance Bill 2012 will contain legislation to make clear that the tax treatment of transfers of non-cash assets and liabilities between one UK resident company and another UK resident company (which is a member of the first company) is the same as that which applies to such transfers between UK resident and non-UK resident companies.

This change is as a result of HMRC identifying areas of uncertainty arising out of the new legislation on distributions included in Finance (No.3) Act 2010. The measure will have effect for such transfers of assets and liabilities made on or after the date Finance Bill 2012 receives Royal Assent.

### How might this affect you?

Currently, certain transfers of assets between UK companies (principally those that take place at below market value) are not technically within the definition of “distribution” for tax purposes. The effect of this is that such transfers may be taxable capital distributions. The proposed changes in Finance Bill 2012 will, however, ensure that such transfers are excluded from the chargeable gains regime (which is already the case for such transfers from a UK to a non-UK resident company).

## Manufactured Overseas Dividends

Anti-avoidance legislation, originally announced on 15 September 2011 and effective from that date, will counter tax planning intended to achieve a tax set off or repayment in relation to UK income tax that has not been paid. This is in response to a scheme previously disclosed to HMRC.

Due to repeated abuse of the manufactured overseas dividends tax legislation a consultation process is to take place during 2012, with the objectives of simplifying the rules and reducing the need for reactive changes to be made in response to disclosed tax schemes. Due to its potential impact on the financial markets, any changes resulting from the consultation would not be effective before 1 April 2013.

### How might this affect you?

The anti-avoidance measures are not expected to adversely affect normal commercial transactions involving manufactured overseas dividends.

## Other allowances

The business premises renovation allowance has been extended for a further five years to April 2017. There are also some minor technical amendments.

Following a review by the Office of Tax Simplification, flat conversion allowances (which were introduced in 2001) will no longer be available from April 2013. It is unlikely that there will be any significant impact by this change as the relief was taken up by a very small number of taxpayers.

### How might this affect you?

If you are currently contemplating conversion of qualifying flats then clearly it would make sense to plan this work in the period before the relief is withdrawn.

# CORPORATION TAX

## Property Authorised Investment Funds

Further to lobbying from the property funds industry, HMRC have announced that they will amend the PAIF regulations to enable investors to exchange units in a PAIF feeder fund for PAIF units and vice versa without any tax on capital gains arising at that point.

### How might this affect you?

A condition of the PAIF regime is that corporate investors are not permitted to directly hold 10% or more of the Fund. Such a holding may however be achieved by investing indirectly through an authorised unit trust feeder fund. As currently enacted however, once an investor has chosen to invest by a particular route, there are potential tax charges should they wish to move from a direct to indirect investment or vice versa. By removing a tax obstacle which can result in taxable capital gains without a cash profit being made, HMRC will be hoping that the PAIF regime will be more attractive for those property funds considering conversion.

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## Employer asset-backed pension contributions

Following the consultation that took place between May and August 2011, and as announced in Budget 2011, legislation will be introduced effective from 29 November 2011 to change the tax rules for giving relief to employers for asset-backed pension contributions.

Prior to the legislation it was possible for an employer to obtain excessive tax relief in respect of asset-backed contributions. Certain funding arrangements, where the asset generated an income stream, meant that it was possible for the employer to obtain both a deduction for the pension contribution upfront and then to receive another deduction for income payments derived from the asset. In addition, if there was a final payment mechanism in place and the payment was not made, then the employer would have gained excess relief at the start of the arrangement.

The new legislation is designed to ensure that the amount of tax relief will now accurately reflect the total amount of payments made to the pension scheme.

### How might this affect you?

Whilst the Government will still allow the use of asset-backed contributions, this anti-avoidance rule will prevent an artificial reduction in tax liabilities. Depending on the circumstances it will ensure that, either in the longer-term (or at the time the planning is undertaken) excessive tax relief does not arise.

# PERSONAL AND EMPLOYMENT TAXES

## Tax rates and allowances

Income tax rates and allowances are in line with what was expected. The personal allowance for 2012/13 for income tax (for individuals under 65) has increased to £8,105. No announcements have been made on the additional rate of 50% for taxable income over £150,000 but the basic rate band will decrease by £630 to £34,370.

The annual exemption for capital gains tax will remain at £10,600, in line with 2011/12. The capital gains tax rates of 18% and 28% are unchanged.

## How might this affect you?

The first £8,105 of income will normally be sheltered by the personal allowance. Taxable income up to, and including, £34,370 will be taxed at 20%. Taxable income from £34,371 to £150,000 will be taxed at 40% with taxable income over £150,000 continuing to be taxed at 50%. We should expect further announcements on the 50% rate once its impact has been measured by the Treasury in early 2012.

We are disappointed that the Chancellor has again followed the practice of his predecessor and clawed back the benefit of the increase in the personal allowance from higher rate tax payers by reducing the basic rate tax band by £630. This means that fiscal drag will again increase the number of individuals (the 'squeezed middle') who are paid less than twice median earnings but will be subject to the higher rate of tax.

As with previous years, the personal allowance will be reduced for individuals with income over £100,000, resulting in a total loss of the allowance for individuals with total income over £116,210.

Capital gains exceeding £10,600 will be taxed at 18%, in line with current rates, if total income and gains are less than £34,371. Where total income and gains exceed this threshold, capital gains will continue to be taxed at 28%.

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## Statutory residence test

In Budget 2011 the Government announced its intention to introduce a statutory residence test with effect from 6 April 2012. A consultation period followed during the summer, after which it was anticipated that the draft legislation would be released. The Government has decided to allow further time to finalise the test and this will now be introduced with effect from 6 April 2013. Reforms to the concept of ordinary residence will also take place at the same time. Draft legislation is expected to be published around the time of the 2012 Budget together with a further consultation period.

## How might this affect you?

Although the Government has reiterated that it remains committed to the introduction of the new statutory residence test (as outlined in the previous consultation document) the deferral of the new test by one year is very disappointing for both professionals and taxpayers. Although it was accepted that the test in its draft form required some clarification and further thought on the practical implications, it was generally very well received and initial reaction was positive. For individuals who are directly impacted by the lack of clarity in respect of their residence positions, particularly those who are considering leaving or coming to the UK, it is unfortunate that the uncertainty under current law and practice will be prolonged for a further tax year. We are unconvinced that the delay will resolve the inevitable ambiguities that will persist in more complex cases. It is imperative in these cases that appropriate professional advice is sought.

# PERSONAL AND EMPLOYMENT TAXES

## Encouraging UK business investment

An exemption will be introduced from 6 April 2012 which will allow non-domiciled individuals (non-doms) to use non UK source income and capital gains to invest in 'qualifying investments' in the UK. The remittance of funds to the UK for the purpose of making to make the investment will not create an immediate taxable remittance.

The rules set out in the draft legislation are complex and include a number of anti-avoidance provisions to ensure this exemption is not abused.

Broadly, provided the investment is made in shares, or via a loan, to an 'eligible trading company' or an 'eligible stakeholder company' and the company is trading (or is preparing to trade and will trade within two years) the exemption should apply.

An 'eligible company' is a private limited company which is not listed on a recognised stock exchange. This would seem to suggest that AIM listed companies would be eligible companies if the other conditions were also met. An 'eligible stakeholder company' is a company used to make investments in 'eligible trading companies'.

A 'trade' includes anything that would be treated for the purposes of the Corporation Tax Acts as a trade, together with generating income from land (eg operating a rental business). The latter is a relaxation in the proposals made in the Budget 2011 statement.

## How might this affect you?

This exemption is a welcome addition to the tax legislation impacting on non-doms living in the UK by encouraging such individuals to make UK investments. It is also a sensible move for the UK Government in attempting to kick-start the UK economy with foreign investment.

Allowing investments to be made into companies developing or letting commercial property is a welcome addition to the proposals in the original consultation document.

The overall benefits are somewhat limited by the fact that investment can only be made into corporate bodies and not other investment vehicles, such as partnerships, which may be more attractive to non-UK domiciled individuals.

HMRC have taken on board some of the suggestions made during the consultation period. These include increasing the time period allowed to make investment once funds have been remitted to the UK for these purposes from two weeks to 45 days. A similar extension has been made for repatriating funds out of the UK once the investment has been sold.

The draft legislation is complex and there are many traps for the unwary. As such, non-doms should continue to take professional advice in respect of any contemplated UK investments.

## Increased Remittance Basis Charge (RBC)

The annual RBC to be paid by a non-dom who has been tax resident in the UK for 12 of the previous 14 tax years and wishes to continue to benefit from the remittance basis of taxation will increase from 6 April 2012 to £50,000 per annum.

## How might this affect you?

For individuals who have been resident in the UK since 2000/2001 or earlier this increased charge will apply from tax year 2012/2013.

Non-doms will now need to re-evaluate whether payment of the increased annual charge is beneficial in respect of the level of their non UK source income and capital gains on a year-on-year basis.

# PERSONAL AND EMPLOYMENT TAXES

## Taxation of assets remitted to and sold in the UK

Currently assets purchased outside the UK using overseas income and gains will trigger a UK tax charge of such income or gains when the asset is brought to the UK. There are limited exemptions for certain assets; however the exemption will cease to apply if the asset is subsequently sold in the UK.

From 6 April 2012, there will be an extension of the existing exemptions to remove the tax charge where an asset ceases to be an exempt asset as a result of being sold in the UK.

There is a raft of anti-avoidance provisions which must be complied with, such as the proceeds must be received by the seller within 95 days and the whole of the proceeds must be taken offshore or invested in a UK qualifying asset within 45 days of receipt.

### How might this affect you?

The original legislation meant that the UK was an unattractive place to sell an asset (in particular art and antiques held by UK resident non-doms). Certain individuals will therefore find this relaxation welcome although great care will still be needed not to inadvertently breach one of the numerous conditions that apply in order to obtain the advantages of this change.

It appears that a non-dom will still face a capital gains tax charge if the asset itself is standing at a gain. However, in some cases the asset will be held by a non-resident trust in which case it can be sold in the UK without any immediate capital gains tax charge arising.

## Foreign Currency Bank Accounts (FCBA's)

As expected, an exemption from capital gains tax (CGT) on currency movements on FCBA's will apply from 6 April 2012 onwards. The new rules will apply to such bank accounts held by individuals, trustees and personal representatives.

The draft legislation sets out that the exemption from CGT will apply on a disposal of a foreign currency debt, which is broadly defined as a debt owed by a bank represented by a credit balance held on a FCBA.

### How might this affect you?

This change is a significant benefit in reducing the amount of administration required to calculate gains and/or losses to ascertain the annual exposure to CGT and, as such, is a welcome relaxation to the rules for both taxpayers and their professional advisers.

## Overseas pension schemes - Transfers to QROPS (qualifying recognised overseas pension scheme)

HMRC were concerned that there were potential abuses of the current QROPS system. Regulations are therefore to be introduced to revise the conditions that a scheme has to meet to be a QROPS, and strengthen the information and reporting requirements in order to ensure better compliance with the regime and to deter misuse. Following consultation, it is intended that the changes will take effect on 6 April 2012.

### How might this affect you?

Where a transfer meets the originally intended purpose of the regime, ie to allow individuals who are leaving the UK permanently to take their pension savings with them free of UK tax, then there is unlikely to be any impact.

# PERSONAL AND EMPLOYMENT TAXES

## Nominated income

With effect from 6 April 2012, the nominated income rules will be amended to allow individuals to remit up to £10 of overseas nominated income or capital gains without being subject to certain complicated identification rules. The concept of 'nominated income' was previously introduced as part of the administration of the remittance basis charge and to ensure that it is recognised as a tax charge on income/gains for the purposes of UK double taxation agreements.

This simplification will apply for both the existing £30,000 charge and the new increased £50,000 charge.

### How might this affect you?

This is a welcome simplification as it will reduce the impact of the identification rules which currently impose a penal tax regime if any nominated income is remitted to the UK.

Unfortunately it will still be necessary for an individual claiming the remittance basis to go through the annual process of identifying up to £10 of offshore income or capital gains to nominate. The amount of £10 remains woefully low.

## Gifts of pre-eminent objects

A special scheme is being introduced (and will take effect from an appointed day after the date on which Finance Bill 2012 receives Royal Assent) which encourages individual and corporate owners of pre-eminent objects to donate or loan these items to the nation. Pre-eminent objects are items such as works of art of national, scientific or artistic interest. Those making qualifying donations will receive a reduction in their UK tax liability (which can be income tax, capital gains tax or corporation tax depending on the circumstances of the donor) based on a percentage of the value of the object they are donating. For individuals this reduction will be 30% of the object's agreed value and for companies it will be 20%. Individuals can spread the tax reduction forward across a period of up to five years, starting with the tax year in which the object is offered to the nation.

### How might this affect you?

Where there is a willingness to gift pre-eminent objects for the benefit of the nation then significant tax savings can be achieved. However, care will need to be taken in respect of agreeing a suitable valuation of the asset and, in the cases of individuals, on how best to utilise the relief if it is to be carried forward.

## Philanthropy and charitable giving

Finance Act 2012 will contain provisions to reduce the effective rate of inheritance tax where 10% or more of an individual's chargeable estate on death is left to qualifying charities. The chargeable estate is the value of the estate left after deducting inheritance tax exemptions (such as the spouse exemption), reliefs (such as business property relief) and the nil rate band. Where such a gift is made the effective rate of tax on the chargeable estate will be reduced from 40% to 36%. The change will take effect for deaths on or after 6 April 2012.

### How might this affect you?

If you already have philanthropic intentions then your will should be reviewed to ensure that, where appropriate, it is drafted to take advantage of the new reduced rate of tax. Additionally couples should review joint arrangements to ensure that philanthropic giving takes place on the second death as the reduction in the rate of inheritance tax will not have any value to an estate that is otherwise spouse exempt.

# PERSONAL AND EMPLOYMENT TAXES

## **In-year repayments of tax to charities**

The Finance Bill 2011 has incorporated into statute the practice already undertaken by certain charities of making claims for the repayment of tax outside the tax return process. Current legislation only allowed charities to make in-year claims of repayments of tax in relation to Gift Aid donations. However the new legislation will allow charities to also make in-year claims for repayment of tax from other income sources. This measure is legislating for an existing extra-statutory concession.

### **How might this affect you?**

Where trustees are not already making in-year claims they may wish to do so for cash-flow purposes rather than wait until the end of the tax year. Trustees can now use a statutory rule to make an in-year claim rather than relying on an extra-statutory concession.

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## **Distributions to shareholders - enactment of ESC C16**

Where a company distributes surplus assets to shareholders and is then struck off the register, Extra Statutory Concession ESC C16 treats the distributions as the equivalent of a distribution in a winding up, and the distributions are treated as capital payments, provided the relevant conditions are met. ESC C16 is to be put on a statutory basis with effect from 1 March 2012, but capital treatment will only apply to distributions of up to £25,000.

### **How might this affect you?**

This measure will continue to enable small companies to be dissolved in a low cost and tax efficient way. The increase in the distributions limit from £4,000 as originally proposed to £25,000 will be welcomed by those who were concerned that the proposed limit was too low, but a £25,000 limit will still restrict the number of companies that can be dissolved tax efficiently in this way in future.

# PERSONAL AND EMPLOYMENT TAXES

## Enterprise Investment Scheme (EIS) and Venture Capital Trusts

### Changes to the connected persons rule and definition of qualifying shares.

The rules concerning when a person is connected to a company, and therefore disqualified from EIS relief, are to be relaxed. From 6 April 2012, loan capital will be disregarded for the purposes of determining whether an investor holds more than 30% of an EIS company. The requirement will only be that the investor holds no more than 30% of the ordinary share capital, issued share capital or voting rights of the company.

Additionally, EIS shares will be able to carry preferential rights to dividends, providing their amount and dates of payment are not dependent on a decision by the company, shareholder or any other person.

### How might this affect you?

In addition to the Seed Enterprise Investment Scheme announcements, these are significant and welcome relaxations to the rules which will help SMEs raise tax advantaged capital from investors without falling foul of the EIS legislation. It is a clear commitment to the future of EIS as a valuable fiscal incentive to assist the economic recovery.

## Increases to individual investment limit

As announced in Budget 2011, the amount an individual can invest under EIS will be increased from £500,000 to £1m per tax year with effect from 6 April 2012. This measure has already received EU State Aid approval.

### How might this affect you?

Individuals who invest substantial sums in EIS companies will welcome this increase in the amount of relief available. Small and medium enterprises will now be able to view EIS as a strategic option when considering larger fundraisings.

## Increases to company thresholds

As announced in Budget 2011, the thresholds beyond which companies no longer qualify for EIS and VCT investment are set to be increased from 6 April 2012 as follows:

- The number of full time equivalent employees requirement is to be raised from less than 50 employees at present to less than 250
- The gross assets test is to be raised from £7m before the share issue to £15m, and from £8m after the share issue to £16m
- The maximum sum a company can raise from EIS and VCT share issues is to be raised from £2m in any 12 month period to £10m.

These changes are still subject to EU State Aid approval.

### How might this affect you?

Many larger, established, and growing companies should qualify for EIS and VCT investment in future, helping those companies raise much needed capital.

Investors should also benefit from being able to claim tax reliefs for investing in larger, more established businesses, which potentially derisks the nature of tax advantaged investments.

# PERSONAL AND EMPLOYMENT TAXES

## Abolition of £1m investment limit

The rule capping investment by a VCT in a company at £1m is to be abolished. In practice, many VCT managers circumvented the rule by investing via multiple VCTs.

### How might this affect you?

This is a pragmatic change to cut out an unnecessary rule that increased compliance costs, whilst being easily capable of circumnavigation.

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## Anti avoidance legislation

Companies will no longer be able to use money raised from the issue of EIS and/or VCT shares to acquire another company unless the acquisition is by means of a subscription for shares - this counteracts the practice of using a new company to raise EIS qualifying funds and then using that money to acquire a company which might not itself qualify for EIS relief.

A new disqualifying purpose test is to be introduced which will disqualify shares issued under arrangements whose main purpose is to generate access to the reliefs in circumstances where the benefit of the investment is passed to another party, or the business activities would otherwise be carried on by another party.

### How might this affect you?

This will affect companies seeking to raise capital purely for tax planning or as consolidators, potentially removing a channel for investors to make less risky investments. However, it may release such potential funds for direct investment into EIS companies.

# PERSONAL AND EMPLOYMENT TAXES

## New Seed Enterprise Investment Scheme (SEIS)

The Government is introducing a new scheme to encourage individuals to make equity investments into seed stage companies. The new scheme offers income tax relief at 50% of the sum invested and capital gains tax exemption on gains made in 2012/13 where the gains are re-invested in qualifying seed stage companies. This represents up front tax relief of up to 78%. Disposals of SEIS shares will also be exempt from CGT after a three year qualifying period.

The new scheme is modelled largely on the existing Enterprise Investment Scheme, with the following key differences:

- There is no restriction on directors investing under the scheme, providing they broadly hold less than 30% of the company
- Investors will not be able to claim relief until the company has spent 70% of the money raised.

In addition to meeting the general EIS requirements, seed stage companies must also (or, where relevant, instead):

- Have less than 25 employees
- Have gross assets of less than £200,000
- Be less than 2 years old
- Not have raised any money from EIS or VCT investors
- Carry on a genuine new trade.

The amount that a company can raise under the SEIS is limited to £150,000 in total.

This new scheme is not subject to EU State Aid approval as it falls below the EU's de minimis limits.

## How might this affect you?

The new scheme offers significant tax-saving opportunities, but the key will be choosing the right seed stage companies to invest in. In practice, the opportunities to secure the full 78% tax relief may be limited.

## How might this affect you?

The new scheme is directed at seed stage companies, and the definition of seed stage is tightly drawn. Nonetheless, if your company does meet the requirements, or you are thinking of starting a new enterprise, this scheme should be a great help in raising capital from private investors.

# PERSONAL AND EMPLOYMENT TAXES

## **PAYE Real Time Information**

Real Time Information (RTI) is the forthcoming HMRC initiative that will significantly change the way that all payroll related deductions are reported to them. Employers and pension providers will inform HMRC of the tax, National Insurance Contributions and other deductions made via a data transmission, every time an employee is paid.

Finance Bill 2012 will include amendments to PAYE regulations that provide HMRC with additional powers intended to ease the introduction of RTI. Specifically, the regulations will allow HMRC to request additional information in the data transmissions, including a cross reference of information being provided about the payment and the instruction to the payment service provider to make the payment. This will enable HMRC to connect and check the information submitted to them against the actual payments being made.

## **How might this affect you?**

Our recent survey showed that, whilst business has a high level of awareness (over 90%) of RTI, over 30% are unsure when they will be required to file using RTI and fewer than 20% are actively considering how to prepare for its introduction.

In many instances, software providers will be responsible for ensuring that their payroll/payment products are compliant under RTI. This is, however, an additional 'real time' check by HMRC that payroll deductions align with actual payments made, which means extra attention should be paid to employers' PAYE controls and payment procedures.

# INDIRECT TAXES

## VAT: low value consignment relief

From 1 April 2012 the low value consignment relief will be abolished for goods originating from the Channel Islands. This relief allows consignments of goods costing less than £15 to be imported into the UK to be imported without the payment of VAT and duty. Goods will still be able to benefit from the relief if they are imported from anywhere else outside the EU, apart from the Channel Islands.

### How might this affect you?

The abolition of the relief for goods coming from the Channel Islands will have a major effect on businesses that have established their fulfilment operations in the Channel Islands. These businesses will need to consider if there are alternative methods of operation available to them to preserve their VAT advantage.

## VAT: cost sharing exemption

Finance Bill 2012 will introduce legislation that will allow certain businesses/organisations with exempt and/or non-business income to form cost sharing groups. An entity will be formed that incurs costs on behalf of the group, with any recharges of costs onto the members of the cost sharing group being exempted from VAT.

While the legislation as provided for in the EU Principal VAT Directive is being adopted by the UK, it defines the exemption in very broad and general terms. HMRC will be developing detailed guidance on this to ensure easy operation and that avoidance/abuse is limited.

### How might this affect you?

The proposal on cost sharing is welcomed as it should lead to a reduction in costs for entities that are not able to recover all of their VAT. The businesses/organisations that will be able to benefit from the proposed cost sharing arrangements are charities, universities, further education colleges, banks, housing associations and insurance companies.

However, it will be necessary to review the detailed guidance to be produced by HMRC to see if the proposal will be beneficial enough to warrant use.

## VAT: grouping extra-statutory concession

VAT groups which are partially exempt (ie have a restriction on the VAT that can be recovered on costs due to making exempt supplies) and have overseas members will be affected by this change. Where the overseas group member incurs costs abroad and then supplies them intra-VAT group, the VAT group will have to account for a VAT reverse charge on these costs, based on the cost of the services purchased overseas.

### How might this affect you?

This provision replaces the current extra statutory concession and puts the provision onto a statutory footing. It will apply from the Royal Assent to Finance Bill 2012. This provision does not introduce a new charge but is part of HMRC's policy of putting the current extra statutory concessions onto a statutory basis.

## VAT: online services

In October 2012, HMRC plans to update its online VAT services which are currently quite limited. When the enhanced services are operational it will give businesses the ability to not only register for VAT and submit declarations online, they will also be able to deregister and make changes to their VAT details online.

### How might this affect you?

This is a significant step forward, as currently the majority of VAT processes are still completed manually on paper and are often mislaid, resulting in delay and confusion for the business concerned. The use of the online system will give a business the certainty that the required information has been provided to HMRC or the requested change made.

# INDIRECT TAXES

## VAT: registration

Non-UK established businesses will no longer be able to benefit from the VAT registration threshold and will therefore need to register as soon as they start making taxable supplies in the UK. This change will become effective on 1 December 2012 and will bring the UK in line with the majority of EU Member States in the treatment of non-established businesses.

### How might this affect you?

This change will not affect UK businesses, but it will mean that businesses established outside the UK will need to review their activities and consider if it is beneficial creating an establishment in the UK to obtain the benefit of the VAT registration threshold.

## VAT: supplies made by the public sector

Legislation will be introduced to confirm that certain supplies of goods and services made by public bodies under a special legal regime specific to the public sector are not liable to VAT. This non-business treatment will not apply if it would lead to a significant distortion of competition with private sector suppliers or to certain supplies specified in the VAT Directive.

### How might this affect you?

This change confirms the current position that is applied by public sector bodies and HMRC in practice, but places the exemption set out in the Principal VAT Directive onto a statutory basis. In a number of recent cases there have been doubts whether the relevant EU provision had been correctly implemented in the UK, but this new legislation will remove those doubts.

## VAT: evasion and road vehicles

From a date to be announced in 2013 anyone bringing a new or used motor car into the UK for permanent use on the road will have to notify HMRC of the arrival of the vehicle within 14 days and prior to the vehicle being registered with the DVLA.

If a non-registered business or private individual brings a car into the UK from an EU supplier, it will be required to make a payment of the VAT due to HMRC at the same time as the notification is made. Any vehicle that has not had the appropriate VAT charges paid will not be able to be registered with the DVLA. For VAT registered businesses, the VAT charge due on the vehicle will be accounted on their VAT return, as with other goods acquired from the EU.

Visitors bringing cars to the UK on a temporary basis, UK based holiday makers returning to the UK with their vehicle (presumably only if that vehicle was the one that left the UK in the first place), private importers and vehicles brought into the UK under secured schemes approved by the DVLA will not be required to notify HMRC of the arrival of their vehicle.

### How might this affect you?

This provision is part of a crackdown by HMRC on VAT being underdeclared on vehicles brought into the UK from elsewhere in the EU. The requirement that HMRC must be notified before the vehicle can be registered for use on the roads should help to reduce the evasion that has existed in this area.

# INDIRECT TAXES

## Stamp Duty Land Tax

### Disclosure of Tax Avoidance Schemes

Two new changes to the Disclosure of Tax Avoidance Schemes (DOTAS) regime in relation to stamp duty land tax (SDLT) schemes will have effect from the date of Royal Assent of Finance Bill 2012.

The first is that the grandfathering rules will be removed for SDLT avoidance schemes involving sub-sales. The grandfathering rules mean that SDLT schemes which were first made available, by any promoter, for implementation before 1 April 2010 are currently exempt from disclosure.

The change will mean that these schemes will need to be disclosed one additional time by promoters so that new users of those schemes must provide the Scheme Reference Number to HMRC so that they can be identified.

It is not clear whether the change will apply retrospectively to schemes which have been implemented between 1 April 2010 and the date of Royal Assent of Finance Bill 2012.

The second change is to remove the property valuation thresholds for disclosure. Currently, only schemes which involve either commercial property with a valuation of £5m, or residential property with a value of £1m, need to be disclosed. It appears that this change will apply to all schemes, not just those involving sub-sales.

### Other stamp taxes changes

Following the review of the Office of Tax Simplification, certain stamp duty reliefs will be removed. It is not expected that these will have any impact as they are considered to be reliefs which have no current practical application. The reliefs relating to land applied to land transactions which were entered into before the introduction of SDLT on 1 December 2003, but not completed before then. It is not expected that there are any outstanding claims for these reliefs, which will be abolished with effect for transactions on or after 6 April 2013.

Finally, a technical change was announced to update the existing SDLT relief for acquisitions of land by certain NHS bodies. This will have effect from the date of Royal Assent of Finance Bill 2012.

### How might this affect you?

HMRC's previous blanket grandfathering provision which excluded all sub-sale schemes meant that they were not directly informed where purchasers undertook these types of SDLT avoidance schemes or used new schemes involving sub-sales. It is not surprising that HMRC has changed the regime as it meant that they were unaware of the technical detail of new schemes involving sub-sales and the extent to which schemes were being used. The removal of the property valuation thresholds is slightly more surprising, although it does reflect HMRC's battle on perceived avoidance of SDLT on low value transactions which may otherwise slip under its radar.

There were no other announcements or legislative changes specifically targeting SDLT avoidance. This is surprising given the recent bad press, particularly around foreign buyers of trophy homes in Britain who are reported to be avoiding SDLT - whether by the use of a scheme or, quite legitimately, by buying shares in a company which owns the property rather than the property itself.

# INDIRECT TAXES

## Air Passenger Duty

From 1 April 2013 Air Passenger Duty (APD) is to be extended to smaller aircraft, including business jets. Passengers who travel on luxury business jet flights will have to pay a new premium rate of APD which will be set at double the standard rates of APD (business/first class).

The legislation will be amended to reduce the de minimis weight limit below which aircraft are not subject to APD, while still keeping the exemption for aircraft that are currently exempt from APD e.g. those used for emergency flights.

The change to make journeys in business jets had already been announced, but it was confirmed last week that the rates of Air Passenger Duty (APD) announced in the Budget earlier this year would come into force from 1 April 2012, despite heavy lobbying from all sections of the airline industry.

## Climate Change Levy

### Reduced Rate for Electricity

In the 2011 Budget, it was announced that the Climate Change Levy (CCL) on electricity would be reduced to 20% from 35% for utility companies and some consumers. It has been announced today that CCL on electricity, will, in fact, be reduced to 10% and not 20%, as previously announced.

This new reduced rate will take effect from 1 April 2013 and will apply to supplies of electricity made on or after this date.

### How might this affect you?

CCL is only paid by businesses and not by individuals but this reduction in the levy is welcomed and may result in lower prices being passed onto consumers.

### Electricity produced in combined heat and power stations

In Budget 2011, it was announced that the exemption from CCL for electricity produced in a Combined Heat and Power station (CHP) would cease. The exemption had previously covered direct supplies to consumers (from 2001) and also, indirect supplies to consumers (from 2003).

Finance Bill 2012 will legislate that regulators will no longer be able to issue a Levy Exemption Certificate (LEC) for electricity generated in a CHP from 1 April 2013. Electricity utilities will still be able to issue a CHP LEC they acquired relating to the generation of electricity pre 1 April 2013. However, this will only last for a small number of years and enable them to use up all of their stocks, while at the same time, ensuring that electricity generated post 1 April 2013 is not able to benefit from the exemption.

### How might this affect you?

This is not good news, and will result in higher prices for businesses and indirectly for consumers, but is part of the Government's commitment to reduce carbon emissions.

# INDIRECT TAXES

## Metal recycling processes

From 1 April 2012, supplies of taxable commodities used in the recycling of steel and aluminium will benefit from an effective discount of 80% on the full rates of CCL. This reduction is being brought in by introducing a new lower rate of CCL of 20% of the full rates.

The reduction in the levy for these commodities is welcome and the Government is looking to increase this level of relief further in the future.

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## Machine games duty

Machine games duty (MGD) will be charged on net takings from dutiable gaming machines which will be defined as a machine where the player plays with the hope of winning more money than he puts in the slot. When MGD is introduced the takings from Gaming Machines will become exempt from VAT, and amusement machine licence duty (AMLDD) will be abolished.

The rates of MGD have not yet been announced, but there will be a higher rate for machines where the stake is more than 10p for a single game, and the lower rate will apply to all other machines. MGD will be operative from 1 February 2013, with transitional arrangements coming into play when Finance Bill 2012 receives Royal Assent.

### How might this affect you?

The introduction of the new duty was expected, but until the rates are announced the impact on the industry will not be known. If the rate is over 15% it is likely to have an adverse effect on the industry as a whole. The exemption for gaming machine takings, although expected as a result of a number of cases, will result in many pubs becoming partly exempt and having to restrict their VAT recovery under the partial exemption rules.

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## Gambling duties

To keep the UK a viable option for online gambling businesses, the Government is introducing double taxation relief (DTR) for general betting duty, remote gaming duty and pool betting duty for accounting periods ending on or after 1 April 2012.

### How might this affect you?

This relief is welcome as without such a relief the UK would be less appealing to businesses that supply remote gaming to overseas customers as UK gaming companies could end up having to account for duty twice on the same supply.

# ADMINISTRATION

## Tax Agreement between the UK and Switzerland

This measure will give effect to the agreement between the UK and Swiss Governments, dated 6 October 2011. The agreement will apply on and after 1 January 2013, as anticipated.

Where relevant, existing funds held by UK residents in Switzerland will be subject to a one-off charge of between 19% and 34% of principal to settle past tax liabilities. The actual tax rate will depend on the length of time the account was held and the value of funds deposited and withdrawn since 2003. The one-off charge is based on the total balance in the account at 31 December 2010 and will settle all outstanding UK income tax, capital gains tax, inheritance tax and VAT liabilities. However the payment will not provide tax immunity for any untaxed amount which passed through the account prior to 31 December 2010.

From 1 January 2013, UK residents with funds in Swiss banks will have a choice: they can either authorise a full disclosure of their affairs to HMRC, or be subject to a new withholding tax. The rates of the new withholding tax are 48% on investment income, 40% on dividends and 27% on capital gains.

HMRC can request account details in any tax year of up to 500 people they suspect of tax evasion, regardless of whether the individual authorises their bank to respond. The Swiss authorities will also provide information on where funds have been transferred if outside Switzerland.

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## Dishonest Tax Agents

This proposal follows earlier consultations on 'Working with Tax Agents'. The objective is to deal with 'rogue' advisers to improve tax compliance and reduce risk for HMRC.

An agent who is found to be 'dishonest' can be fined up to £50,000. The agent's details can be published on HMRC's website if they do not cooperate in making a full disclosure. 'Dishonest conduct' will be determined by HMRC and appealable to the First Tier Tribunal.

HMRC will have the power to obtain the working papers of dishonest tax agents; however this new power will not override legal professional privilege.

HMRC may consider agents who submit a high volume of incorrect claims or returns on a frequent basis or those involved in high risk cookie cutter schemes which are not properly disclosed or implemented as a particular risk and seek to apply this new legislation, which is intended to come into effect on 1 April 2013.

## How might this affect you?

Whilst there are specific provisions for non-UK domiciled individuals which will lessen the impact of the agreement, it will impact anyone who is resident in the UK who own monies held in Switzerland. Individuals who are already tax compliant are expected to disclose and will not be liable to the one-off levy; however they may incur some costs in proving that they are already compliant.

The main impact will be on those individuals with a UK tax problem and who will be subject to the one-off levy to settle past liabilities. They should seek professional advice as a matter of urgency.

The favourable terms of the Liechtenstein Disclosure Facility (LDF) remain unchanged. Therefore, those who wish to legitimise funds need to make a voluntary disclosure to HMRC before the end of 2012, before this agreement takes effect.

## How might this affect you?

Anyone can register as a 'tax agent' so it is important that there is some way of policing their work and we therefore welcome this legislation. It is also important for the reputation of the tax adviser community, the majority of whom are giving helpful, honest advice to taxpayers.

HMRC have not used the words 'evasion' or 'fraud', but it is clear that the real target is to stamp out agents who are complicit in tax evasion. There is a risk that aggressive and poorly implemented tax avoidance schemes could be deemed to be 'dishonest' and drawn into the legislation.

It will be crucial that these powers are used proportionately. The inclusion of an appeals procedure is a welcome safeguard.

# ADMINISTRATION

## Information powers

HMRC are extending their powers to obtain information from third parties.

HMRC already have the power to ask a third party to provide information about a taxpayer if HMRC know the taxpayer's name. HMRC may also obtain information from a third party about a class of people whose names they do not know.

This new power will be used when HMRC knows some information which the third party may use to identify the taxpayer concerned, for example, where HMRC know a bank account number or a transaction reference. HMRC will be able to approach a third party to ask them for the person's name, date of birth and most recent address.

## How might this affect you?

With this new information, HMRC will be able to check the taxpayer's records to see whether they have disclosed any income and gains as appropriate. This may lead to HMRC opening an enquiry or investigation into the taxpayer's affairs.

This power may lead to HMRC providing the information to an offshore jurisdiction in accordance with information exchange agreements. It is a further turning of the screw in relation to past underdeclaration of tax and to deter future such behaviour.

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## Incapacitated persons: a modern approach

This proposal is intended to remove outdated terms from the tax legislation. It does not impact the rights and obligations applying to those with mental health conditions or to children.

## How might this affect you?

There will be no new tax-specific laws for incapacitated persons. Instead, these changes allow the general legal framework to operate to assist people who lack capacity to cope with their own tax affairs.

Any effort to make the tax system fairer and simpler is a welcome change, especially for those who are most vulnerable in society.



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