

## BUDGET REPORT 2009

The Tax Faculty's Budget Report has been produced by the Tax Faculty technical team.

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## 1. OVERVIEW

They say that a week is a long time in politics. If that is right, the five months since the 2008 Pre Budget Report (2008 PBR) must be the equivalent to a political lifetime. It certainly seems that way, as many of the assumptions underlying the 2008 PBR predictions about future growth and the state of the public finances have now proved to be wide of the mark.

The 2008 PBR growth estimate for 2009 was that GDP would decline to between - $\frac{3}{4}$ % and - $1\frac{1}{4}$ %. Five months on, the estimate of GDP has been revised downwards to - $3\frac{1}{2}$ %, with a forecast growth for 2010 of  $1\frac{1}{4}$ % and  $3\frac{1}{2}$ % for 2011. Given that the GDP has been reduced by about  $2\frac{1}{2}$ % in only five months, the 2010 and 2011 forecasts look at best optimistic, but nevertheless these growth forecasts underpin the financial projections in the Budget.

The 2008 PBR was dominated by 'fiscal stimulus' measures, in particular the temporary reduction in the rate of VAT from 17.5% to 15%. The rapid deterioration in the state of the public finances left little room for further fiscal stimuli, although the 'Red Book' shows that the Budget proposals will cost the Government a further £5bn this year, balanced by a rise in revenues of a similar amount in 2011/12: in other words, there is a further fiscal loosening in 2009 balanced by a tightening two years down the line.

Subject to the public finances, a subject to which we return later, this might have appeared a relatively uneventful Budget. Nevertheless, if you look at the detail behind the summary and speech, a rather different picture emerges. There were 93 Budget Notes stretching to 221 pages, not to mention a plethora of consultation documents, impact assessments and draft legislation. Whilst this detail is invariably

very helpful and informative, it all adds up to yet another complicated Budget, which will be followed by another long Finance Bill. Advisers will be kept very busy.

Turning to income tax, the Chancellor announced further changes to the tax increases that he announced in the 2008 PBR. Higher earners are once again targeted for special measures: the proposed new 45% tax rate for income over £150,000 announced in the 2008 PBR for introduction in 2011, has now been changed to a 50% tax rate from 2010. The complicated proposals for scaling back personal allowances for those earning over £100,000 and £140,000 have now been simplified: the personal allowance will be withdrawn at a rate of £1 for every £2 of income for all income over £100,000, resulting in an effective 60% income tax rate on income in the band from £100,000 to about £113,000. It is certainly simpler than the 2008 PBR proposals and it will raise some revenue.

There were other measures which are likely to prove unpopular. The restriction on the tax relief for pension contributions was widely trailed and will only affect those (for the present at least) who earn more than £150,000. Nevertheless, the measure is likely to discourage saving for retirement in pension schemes by those affected and in the long term may damage the pensions industry. Hidden away deep in the Budget material was another nasty: whilst the furnished holiday lettings rules will be extended in 2009 to include holiday homes anywhere in the EEA, the sting in the tail is that the scheme will then be abolished in 2010.

Whilst higher taxes for higher earners may be politically popular, the actual amounts they raise are relatively small and will make hardly a dent in the UK's overdraft: the Red Book anticipates that these measures will bring in only about £3bn, not a huge sum when compared to overall government spending of £671bn forecast for 2009/10 and receipts of £496bn. Closing this gap will require much more broadly-based tax increases.

Turning to business tax, there are some welcome developments which reflect considerable lobbying by the Tax Faculty and other professional bodies. First, the 2008 PBR announcement that current year losses could be carried back against profits of the previous three years was considered too restrictive. Many would find that their losses arose in the wrong period and we felt that the relief should be extended as the recession deepens. It has now been extended to cover two years losses, thus increasing flexibility whilst also potentially doubling the £50,000 limit. First year allowances have returned in the form of a temporary 40% first year allowance for a period of one year – this will help cash flow in the medium term and may encourage investment by some larger businesses, but the bigger problem faced by businesses is managing cash flow today.

The drive to counter avoidance continues unabated, with a raft of targeted new measures introduced. HMRC is also looking to bolster the tax avoidance disclosure rules by extending the types of scheme that need to be disclosed to HMRC and extending further the associated penalty regime. In a curious development more reminiscent of the US Sarbanes-Oxley Act, there will be a new requirement for the chief accounting officer of large companies to certify that the internal controls are sufficient to produce accurate tax returns. A further measure is the proposed new power to 'name and shame' tax defaulters. This is modelled closely on an Irish provision. It will be a high profile general reminder every quarter that HMRC are bearing down on tax defaulters.

And what about the nation's finances? We said at the time of the 2008 Budget that:

*'... we have now had a budget deficit for a total of seven years, a period that has seen steady and at times quite strong growth. It is a concern that with each successive Budget and PBR, the net position appears to deteriorate and the date when the budget returns to surplus recedes into the future. Looking back at previous Budgets, in 2001/02 it was predicted to return to surplus in 2006/07, whereas now it is predicted that a surplus will not arise until 2010/11, a further downgrade from the 2007 PBR which predicted that it would be 2009/10.'*

Since the 2008 PBR, the position has deteriorated at an even faster rate than hitherto. Net borrowing for 2009/10 is now expected to rise to £175bn, up from £118bn announced in the 2008 PBR and a predicted £38bn in the Budget 2008, a difference of £137bn in the space of a year. That's about the same as the total income tax receipts for the year.

Forecast net borrowing carries on in a similar vein for the following three years. The forecast borrowing for the period 2009/10 to 2012/13 has increased since the 2008 Budget estimate from £94bn to a staggering £606bn, an increase of £512bn (that's half a trillion pounds!). In the space of a year, the estimated borrowing requirement has increased by more than the expected total receipts for 2009/10 (now adjusted down to £496bn). As noted above, these figures are based on a forecast GDP growth in 2011 of 3¼ % (3½% less ¼% allowance for forecasting purposes), which most commentators believe is too optimistic. Borrowing as a percentage of GDP is now expected to rise to 76%, far above the self-imposed 40% borrowing limit the Government set shortly after it took office in 1997.

These figures make truly grim reading. If the economic situation can have deteriorated so drastically even since the 2008 PBR, basing forecasts on a strong recovery looks inherently risky. The Government will have to borrow huge sums to finance the deficit, but the risk must now be that the UK's credit rating will be damaged, the cost of Government borrowing will rise and the risk of default will become much more likely. At some stage the UK will have to take drastic action to avoid a major financial crisis: taxes will have to rise and spending will have to be cut. The tax rises announced so far will do little to plug the gap: there will have to be broadly based tax increases for all and/or a radical reduction or clawback of expenditure to make a serious difference to the amount the Government spends and what it receives.

In summary, with an election only just over a year away this was a very political Budget. There is no disguising the alarming deterioration in the public finances. To remedy it drastic remedial action will be necessary, but any tough decisions have been put off for the moment. Whoever wins the next election looks almost certain to inherit a huge financial millstone which will shackle them for the foreseeable future. Tough? Yes. Completely unprecedented? No. A correspondent in a national newspaper referred to the following commentary on a previous Budget which bears a remarkable similarity to the 2009 Budget:

*'Can there be a more lamentable picture than that of a Chancellor of the Exchequer seated on a empty chest by a pool of bottomless deficiency fishing for a Budget'.*

Who wrote those words and when? It was, apparently, written by Sir Robert Peel on the state of the Government's finances in 1841. We have been here before, but painful measures will be needed to put the UK's finances back in order.

## 2. RATES AND ALLOWANCES

### Rates and allowances

Budget Press Notice [PN02](#) sets out details for 2009/10 of rates and allowances for VAT, Income tax, Capital gains tax, Inheritance tax, Corporation tax, National Insurance contributions, the working and child tax credits and child benefit/guardian's allowance, Alcohol and duties, Fuel and Vehicle excise duties and Stamp taxes and duties.

VAT threshold changes are dealt with in Budget Note [BN70](#).

Corporation tax rate and limit changes are dealt with in [BN02](#) and [BN03](#).

The rates and allowances set out below include those which were announced previously in the 2008 PBR.

### Income Tax

Budget release [PN02](#) sets out the bands and rates and allowances for 2009/10, and [BN01](#) the new measures introduced in the Budget for 2010/11 which are set out below.

### 2009/10

#### Income tax rates and bands

- The basic rate of income tax remains at 20%
- The higher rate of income tax remains at 40%
- The basic rate tax band is increased by indexation plus an additional £800 to £37,400 (2008/09 – £34,800).
- The 10% starting rate limit for savings income has increased to £2,440 (2008/09 – £2,320). Note that this rate is not available if non-savings taxable income exceeds the starting rate limit.
- The rates applicable to dividends will remain at 10% and 32.5% respectively for the dividend ordinary rate and higher rate.
- There is a non-payable dividend tax credit of 1/9th currently available for UK individuals receiving dividends from UK resident companies and from shareholdings of less than 10% in foreign companies.  
The 2008 Budget extended this non-payable dividend credit from 22 April 2009 to include shareholdings of more than 10% in a non-UK resident company unless the source country does not levy a tax on company profits similar to corporation tax. This also applies to all dividends from offshore funds, except for distributions from offshore funds with more than 60 % of interest bearing assets, which will be taxed as interest.

#### Personal Allowances

- The basic personal allowance will be £6,475 (2008/09 – £6,035).

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- The 2009/10 age-related personal allowance for those aged 65 to 74 will be £9,490, and for those aged 75 or over, £9,640 (2008/09 – £9,030 and £9,180 respectively).
- The income limit for age-related allowances will increase in 2009/10 to £22,900 (from £21,800 in 2008/09).
- The married couple's allowance (MCA) for 2009/10 (which will also apply to registered civil partners) where one partner was born before 6 April 1935 will be £6,965 for those aged 75 or over (2008/09 – £6,625 respectively). No under 75 MCA figure is needed for 2009/10 as those eligible for the allowance will now all be over 75.
- The minimum amount of the MCA will be £2,670 (2008/09 - £2,540).
- The blind person's allowance is increased to £1,890 (2008/09 - £1,800).

## 2010/11

[BN01](#) outlines amendments to the proposals announced in the 2008 PBR as follows:

### Income tax rates and bands

- From 6 April 2010 taxable income above £150,000 will be liable to income tax at a new rate of 50%. This brings forward the measure proposed in the 2008 PBR by one year and increases the rate from 45% to 50%.
- Dividends otherwise taxable at the new 50% rate will be liable to income tax at a new rate of 42.5%.
- The trust rate will also increase to 50% (2009/10 – 40%) and the dividend trust rate to 42.5% (2009/10 32.5%).

### Personal Allowances

The following changes replace the two-stage proposals announced at PBR 2008.

- From 6 April 2010 the basic personal allowance will be subject to an income limit of £100,000.
- Where an individual's adjusted net income is above £100,000, the personal allowance will be reduced gradually to £nil by £1 for every £2 of income above the income limit.
- For this purpose 'adjusted net income' is the same as the measure of income that is used currently to calculate existing income-related allowances (age allowances) for those aged between 65 and 74 and aged 75 and over.
- The adjusted net income calculation is set out in [BN01](#). Income subject to income tax after specified deductions (for example, trading losses and pension contributions paid gross) is reduced by grossed-up gift aid payments and grossed-up pension contributions. Payments to trade unions or police organisations are added back to arrive at net income.

The entitlement to personal allowances and reliefs for non-UK resident Commonwealth citizens will be removed from 6 April 2010 to comply with the Human Rights Act 1998 - see [BN54](#) for further explanation.

### Capital gains tax for 2009/10 ([PN02](#))

- The CGT annual exemption for individuals for 2009/10 is £10,100 (2008/09 -£9,600). This also applies to personal representatives of deceased persons and trustees of certain settlements for the disabled.

- The CGT annual exemption for most trustees is £5,050 (2008/09 – £4,800).
- The rate of CGT above the annual exemption remains at 18%.

### **Inheritance tax ([PN02](#))**

#### **2009/10**

- The inheritance tax nil rate band for 2009/10 is £325,000.
- The rates of tax for chargeable transfers over £325,000 for 2009/10 are 20% and 40% in lifetime and on death respectively.

#### **2010/11**

- As previously announced, the nil rate band will be £350,000.

Any unused nil rate band of a deceased spouse or civil partner is available to enhance that of the survivor on his/her death.

### **Corporation tax for 2009/10 ([PN02](#))**

- The main rate of corporation tax will remain at 28% for profits over £1,500,000 for the financial years 2009 and 2010.
- The small companies' rate will remain at 21%.

It was announced in the 2008 Pre-budget report that the planned increase from 21% to 22% from 1 April 2009 would be deferred until 1 April 2010.

- The fraction used to smooth the difference between the main rate of CT and the small companies' rate will remain 7/400 for the financial year 2009. The upper and lower limits also remain unchanged at £1,500,000 and £300,000.

For more detail see [BN02](#) for main rates, and [BN03](#) for small companies' rates.

### **VAT for 2009/10 ([PN02](#), [BN70](#))**

The standard rate of VAT is 15% until 1 January 2010 when it will revert back to 17.5%.

Turnover thresholds, with effect from 1 May 2009 (not 1 April 2009) are set out below.

- The registration turnover threshold will rise to £68,000 from £67,000.
- The deregistration limit will rise to £66,000 from £65,000.
- The registration and deregistration limits for relevant acquisitions from other European Union member states will also be increased to £68,000 from £67,000.

See below for other VAT announcements.

### **National Insurance contributions**

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[PN02](#) sets out the some of the measures announced in the 2008 PBR:

### ***Employees' contributions for 2009/10***

Class 1 NIC thresholds for 2009/10 are set out below.

- The lower earnings limit (LEL) for employees' Class 1 contributions will be £95 a week (2008/09 - £90).
- The primary and secondary thresholds (PT & ST) for Class 1 contributions will be £110 a week (2008/09 - £105).
- The upper accruals point (UAP) will be £770 a week (2008/09 - N/A).
- The upper earnings limit (UEL) for employees' Class 1 contributions will be £844 a week (2008/09 - £770).

The UAP is the upper threshold at which primary (employee) NICs will, with effect from 6 April 2009, stop being contributory. Between the UAP and the upper earnings threshold, employee Class 1 NIC will be simply a non-contributory levy (like Class 4 NICs).

Class 1 primary contribution rates for 2009/10 are set out below.

- The rate of employees' Class 1 contributions between the LEL limit and PT will continue to be zero%, the standard main rate between the PT and the UEL will continue to be 11%, and above the UEL will continue to be 1%.
- The employees' contracted-out rebate rate for both salary-related and money-purchase schemes remains at 1.6%.
- The married women's reduced rate between the PT and UEL remains at 4.85% and above the UEL remains at 1%.

### ***Employers' contributions for 2009/10***

Class 1 secondary contribution rates for 2009/10 are set out below.

- The rate will continue to be zero% between the LEL and ST, the standard rate of employers' Class 1 contributions above the ST will continue to be 12.8%.
- The employers' contracted-out rebate rate for salary-related schemes remains at 3.7%, and the rate for money-purchase schemes remains at 1.4%.

### ***Self-employed rates for 2009/10***

- The rate of Class 2 contributions for 2009/10 will increase to £2.40 per week (2008/09 – £2.30).
- The annual small earnings exception will be raised to £5,075 (2008/09 – £4,825).
- The annual lower and upper profits limits for Class 4 contributions will increase for 2009/10 to £5,715 and £43,875 respectively (2008/09 – £5,435 and £40,040) – an increase in profits liable to Class 4 NIC of £3,555.
- The rate of Class 4 contributions will be unchanged at 8% on profits below the upper profits limit and 1% on profits above that limit.

### ***Share fishermen***

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The special rate of Class 2 contributions for share fisherman, which allows them to build entitlement to contributory Jobseeker's Allowance and other contributory benefits available to the self-employed, will increase to £3.05 per week (2008/09 – £2.95).

#### *Volunteer development workers*

The special rate of Class 2 contributions for volunteer development workers, that entitles them to the full range of contributory benefits, will be increased to £4.75 per week (2008/09 – £4.50).

#### **Voluntary contributions for 2009/10**

The rate of Class 3 voluntary contributions will be increased to £12.05 a week. This represents a very significant increase over £8.10 in 2008/09. The new rate supports the amendment to the Pensions Bill that relaxes the time limits for people approaching retirement age to pay voluntary contributions.

#### **Class 1 primary and secondary and Class 4 self employed NIC contributions for 2011/12 onwards**

As announced at 2008 PBR, the rates from 6 April 2011 are set out below.

- The main employees' NIC rate will increase from 11% to 11.5% and the additional 1% chargeable above the UEL will increase to 1.5%.
- The main employers' NIC (including Classes 1A and 1B) rate will increase from 12.8% to 13.3%.
- The Class 4 NICs rate for the self employed will increase from 8% to 8.5% and the additional 1% rate above the upper profits limit will increase to 1.5%.

#### **Tax credits for 2009/10**

The rates are as announced at 2008 PBR.

The rates and income thresholds for working tax credit (WTC) and child tax credit (CTC) for 2009/10 are set out in [PN02](#).

The 2009/10 tax credit rates have in most cases increased in line with inflation by around 5%. Exceptions are:

- The basic child element of CTC increases by 7.2% – above inflation – to £2,235 per annum (2008/09 - £2,085).
- Both the family element and baby addition element of CTC remain unchanged at £545 per annum.
- The limits on eligible childcare remain at £175 a week for one child and £300 a week for two or more.
- The maximum tax credit for childcare costs remains at 80% of the weekly limit.
- The income threshold for those entitled only to CTC rises by 3% to £16,040 for the year.
- The income taper thresholds remain unchanged at £6,420 and £50,000 and the first and second withdrawal rates remain at 39% and 6.67% respectively.
- The income disregard for increases in income from one year to the next remains at £25,000.

## Child benefit and guardian's allowance for 2009/10

Child Benefit will increase to £20 a week for the first child and £13.20 for subsequent children. Guardian's Allowance will increase to £14.10 a week.

The increases in Child Benefit scheduled for April 2009 will be brought forward to 5 January 2009 but the increase in Guardian's Allowance will be made from April 2009 as planned.

## Stamp Duty Land Tax

Based on consideration.

Residential property	
£175,000* or less	Nil%
Over £175,000* up to £250,000	1%
Over £250,000 up to £500,000	3%
Over £500,000	4%

\* From 1 January 2010: £125,000 (or £150,000 for property in disadvantaged areas)

Non-residential property	
£150,000 or less	Nil%
Over £150,000 up to £250,000	1%
Over £250,000 up to £500,000	3%
Over £500,000	4%

## Stamp Duty (including SDRT)

Stocks and marketable securities 0.5% with no charge unless the duty exceeds £5.

## 3. SME BUSINESS TAX

### Business Payment Support Service

HMRC has now announced an [extension](#) to the Business Payment Support Service (BPSS), which will help businesses which think they are likely to make a loss in the current year.

The [BPSS](#) was launched following the 2008 PBR in November last year. It is designed to help viable businesses that, because of the economic conditions, are having difficulty in meeting payments due to HMRC.

In such circumstances, wherever possible, HMRC will agree to spread any payments due over a time which meets the individual business' circumstances. The service has proved very useful to businesses suffering temporary financial difficulties and we have had favourable reports from members whose clients have benefited.

Normally if a business makes a loss they can ask for a repayment to be made to them of any CT or IT which they have paid on last year's profit. To do this though they need to wait until the end of their accounting year to be sure about the size of the loss they have made.

HMRC has said that, with immediate effect, it will now take into account the fact that a business is likely to make a trading loss in the current year when deciding how much time it can give a business to pay any IT or CT due on its profits from last year.

A series of questions and answers about how the service will work is also published on the HMRC website.

Note that interest will be charged on any tax suspended in the normal way, although there will be no surcharges on late payment if HMRC agrees a Time to Pay arrangement, or a deferral of tax on the previous year's profits before a surcharge becomes due.

### **Alignment of three-line accounts with VAT threshold**

Buried in the Budget 2009 'Red Book' at paragraph 4.54 is a statement that the threshold for three line accounts in the income tax self-assessment return will be permanently aligned with the VAT threshold. We have been advised that this will apply for the tax year 2009/10 onwards. The change will also apply to property income.

## **4. CAPITAL ALLOWANCES**

### **Capital allowances: plant and machinery (BN04)**

Finance Bill 2009 will introduce a temporary first year allowance (FYA) of 40%, which will apply to expenditure on plant and machinery incurred in the 12 months beginning on 1 April 2009 for companies and 6 April 2009 for unincorporated businesses.

In his speech, Alastair Darling referred to doubling the current rate of the allowance. In fact, the rate of writing down allowance (WDA) for existing plant pool expenditure remains at 20%, so only new expenditure will benefit.

The Chancellor is rewarding businesses for new investment while hoping that it will also stimulate businesses to bring forward capital spending. It is always good to hear about higher rates of tax relief, but we are left wondering whether this will achieve all that he hopes. Businesses won't actually see the cash benefit of tax relief until they reach the payment date for the tax.

Since 1 April 2008 (corporation tax) or 6 April 2008 (income tax) most businesses, regardless of size, have anyway been able to claim the new Annual Investment Allowance (AIA) on the first £50,000 spent on plant or machinery. This means that most smaller businesses will already be getting relief at effective rate of 100%. The 40% FYA can only possibly benefit larger businesses. Since such businesses are likely to have well defined business plans, we wonder how many of these can be influenced, as he clearly hopes, to rush out and spend in the coming 11½ months?

As with previous and existing first-year allowances there are exceptions which include 'special rate' expenditure (including long-life assets and integral features), expenditure on cars, and on assets for leasing.

According to BN04, the temporary FYA will be available to any individual, partnership or company. However, it would not surprise us to learn that 'mixed' partnerships, for

example those which include a corporate partner, will not qualify. We shall see when the Finance Bill is published at the end of this month.

### **Modernising tax relief for business expenditure on cars (BN65)**

As announced in Budget 2008, the capital allowances system for cars changed with effect from 1 April 2009 for companies and 6 April 2008 for unincorporated businesses. A Technical Note was published in December 2008, together with draft legislation, which explains in more detail how the new system will work.

This Budget Note explains that anti avoidance legislation will be used to prevent balancing allowances being generated through selling cars in single asset pools at less than market value. Rules will also restrict the balancing allowances available to companies that cease a qualifying activity of providing cars, including cars with emissions over 160g/km, where another company in the same group of companies carries on a similar qualifying activity.

Note that from April 2009 the special rules that restrict the amount of capital allowances for cars costing more than £12,000 are abolished. In future, the amount of allowance will depend on the car's emissions level.

Expenditure on cars with very low CO<sub>2</sub> emissions (up to 110g/km) continue to qualify for 100% first-year allowances.

Other qualifying expenditure incurred on cars on or after 1 or 6 April 2009 will be allocated to one of the two general plant and machinery pools:

- Expenditure on cars with CO<sub>2</sub> emissions between 110g/km and 160g/km is dealt with in the normal pool and attracts WDAs at 20%.
- Expenditure on cars with CO<sub>2</sub> emissions over 160g/km is dealt with in the special rate pool and attracts WDAs at 10%.

The Tax Faculty published for its members [TAXline Tax Practice No 21 Capital Allowances: the new rules](#), in 2008, which explains the new capital allowances system in detail.

### **Enhanced capital allowances for energy-saving and water efficient (environmentally beneficial) technologies (BN11)**

The Energy Saving and Water Efficient (environmentally beneficial) Enhanced Capital Allowance (ECA) schemes allow businesses investing in designated technologies that reduce energy consumption, save water or improve water quality to write off 100% of the cost against the taxable profits of the period during which the investment was made.

The qualifying technologies are published in the Energy Technology Criteria List and Water Technology Criteria List. Both lists will be revised later this year and are available on the internet at [www.eca.gov.uk](http://www.eca.gov.uk).

## 5. OTHER BUSINESS AND COMPANY TAX

### Corporation tax rates (BN02 and BN03)

As noted in section 2, the main rate of corporation tax has been set at 28% for the Financial Year 2010. It applies to profits over £1,500,000. Companies will find it helpful to know next year's rate this far in advance.

The small companies' rate, which applies to profits below £300,000, remains at 21% for the Financial Year 2009. Although it is not mentioned in the Budget package, we anticipate that the Chancellor will continue with his plan to raise this to 22% for the Financial Year 2010.

### Extension of trading loss carry back for business (BN13)

The PBR 2008 announced a temporary extension to the rules which allow businesses to carry back trading losses against profits of an earlier period. The Tax Faculty asked for the proposals which would have been available for one year only, to be extended for a further two years. Although we didn't get an extra two years, we are pleased to note that the Budget extends the relief for an additional year's losses.

For companies, the current rules only allow trading losses of an ongoing business to be carried back for one year under s393A, ICTA 1988. The new relief will apply to losses of accounting periods ending between 24 November 2008 and 23 November 2010 and will permit carry back against total profits of the three years preceding the year of the loss, latest year first.

For unincorporated businesses the relief will apply to unrelieved trading losses of the tax years 2008/09 and 2009/10 which can be carried back and set against profits of the same trade, profession or vocation for three years before the tax years:

- 2008/09, latest year first, so 2007/08, 2006/07 and 2005/06, and
- 2009/10, latest year first, so 2008/09, 2007/08 and 2006/07.

The rules set out in the [Technical Note](#) published on 24 November 2008 explain some of the mechanics of these proposals.

As we noted previously, it seems that the available profits for the extended carry back for companies is total profits, but for individuals it is only against profits of the same trade.

The extension will also apply to losses of a furnished holiday lettings business.

One small planning point arises. It looks from the Technical Note as if a trader does not need to have claimed loss relief under s 64, ITA 2007, before claiming the extended carry back. If this is the case, then it would allow individuals with modest amounts of income from other sources to avoid wasting personal allowances, which has always been a problem with the all or nothing nature of existing s 64, ITA 2007 claims.

The amount of losses that can be carried back to the preceding year remains unlimited, as now, but this further carry back will be restricted. Up to £50,000 of the

balance of unused losses from each of the two loss making years is available for carry back to the two additional earlier years. If a loss making accounting period in question is less than 12 months the £50,000 cap will be reduced pro rata.

A company may make a loss relief claim under the new rules when it makes its return for an accounting period ending in the period 24 November 2008 to 23 November 2010.

Unincorporated businesses may make a loss claim under the new rules as soon as they have calculated their losses for their basis periods for the tax years 2008/09 and in due course 2009/10.

HMRC will make repayments arising from loss claims received under the new rules on or after 22 April 2009.

### **Taxation of foreign profits (BN05)**

Dividends and other distributions received by UK companies from foreign companies will be exempt from corporation tax. The government has now accepted that the relief should also apply to small business.

The exemption will apply to dividends and other distributions received on or after 1 July 2009. Provisions to this effect will be in Finance Bill 2009.

There will also be a potential restriction on the amount of interest that can be deducted in the UK, the world wide debt cap, which will in broad terms be limited to the consolidated gross (external) finance expense of the particular group. The proposals contained in draft legislation published last December have been modified and this part of the new regime will only be introduced for accounting periods beginning on or after 1 January 2010. The world wide debt cap rules have proved to be extremely controversial and even with the improvements since the original announcement in December last year there are still misgivings.

Peter Cussons, Chair of the Tax Faculty Large Business and International Tax Committee, says:

*'Continuing with the interest cap rules, with implementation from the start of accounting periods beginning on or after 1 January 2010, may still prove too much for some UK based businesses with overseas operations; and for some inbound companies. And ultimately the impact of today's decision may result in some businesses considering their options in other territories outside the UK, and may discourage investment into the UK from overseas.'*

Some changes will be introduced immediately to the Controlled Foreign Company (CFC) regime and discussions will continue as to what a new CFC regime will look like. The permanent regime is unlikely to be in place before 2011. The immediate changes are to remove the exemption for superior and non-local holding companies (subject to a two year transitional period) and the Acceptable Distribution policy exemption from the regime.

The Treasury Consents are also going to be abandoned. Under these provisions groups undertaking certain transactions involving subsidiary companies outside the UK had to obtain prior approval. There is now going to be a post-transaction

reporting requirement applying to transactions with a value of £100 million or more subject to certain exclusions including transactions involving trading transactions. Companies will have to report the transactions within six months.

### **Loan Relationships – connected companies (BN06)**

#### *Release of trade debts*

Under the existing law if a creditor formally releases a connected debtor from a trade debt (or a debt incurred in a UK or overseas property business) they are denied a deduction for the loss on the debt, but the debtor may be taxed.

Under the new law the loan relationship rules will apply to both the debtor and creditor on the release of the debt. This means that if the debtor company is connected with the creditor, no tax charge will arise on the debt release. If the creditor and debtor companies are not connected, the debtor is taxed (unless the release is part of a statutory insolvency arrangement) and the creditor will get relief – just as at present.

This change will apply to releases of trade debts that take place on or after 22 April 2009.

#### *Late paid interest*

HMRC issued a Consultation Document in July 2008 proposing to amend the rules in Sch 9 to the FA 1996 which apply where interest payable by a debtor company to a connected person remains unpaid 12 months after the end of the accounting period, and corresponding amounts are not brought into account for corporation tax purposes.

Draft clauses were published in December 2008 with two main options. Under the first the late payment rules would also apply in a UK to UK context but that option has now been rejected. It is the second option that is to be adopted and, with effect for accounting periods beginning on or after 1 April 2009, in the majority of cases where the creditor is a company, unless that company is located in a tax haven, normal loan relationships principles will apply, and interest will be deductible as it accrues in the accounts, not when it is paid.

It will, however, be possible for a company to elect for the 'paid' basis to continue for the first accounting period that begins on or after 1 April 2009.

### **Manufactured Interest**

Legislation is to be introduced to overcome uncertainty caused by the High Court decision in *DCC Holdings (UK) Ltd v HMRC* [2008] EWHC 2429 confirming the tax treatment of real manufactured interest payments.

The legislation will ensure that tax treatment follows the treatment of the payments in company accounts prepared in accordance with Generally Accepted Accounting Practice ('GAAP').

The High Court decision could have resulted in payers being able to claim additional deductions for tax purposes that bear no relation to their economic position, and recipients being taxable on amounts in excess of their actual income.

### **Real Estate Investment Trusts (REITs): artificial restructuring (BN41)**

Property rental companies or groups can elect to join the REIT regime if they meet the entry requirements in the legislation and, on an ongoing basis, the conditions for staying in the regime. The requirements include conditions relating to the company itself, to the properties it rents, and to the nature of its business and assets.

A number of groups have proposed ways of restructuring their activities that would allow properties to be let by one member of a group to another without the properties leaving the group, while still meeting the REIT conditions. It was not the intention of the REIT legislation that this should be allowed. As a result, previously non-qualifying groups could become groups to which the legislation applies.

Primary legislation will be amended to introduce a power for HM Treasury to make regulations concerning the use of artificial structures to circumvent the existing REIT legislation.

Legislation will also be amended so that owner occupied properties are excluded from the tax exempt business of the REIT.

Finally, the REIT legislation will be amended so that the 'tied premises' legislation in the Income and Corporation Taxes Act 1988 is disapplied for companies or groups of companies seeking to join the REIT regime.

### **REITs: Amendments (BN42)**

The law will be changed to allow a REIT to raise funds by issuing convertible preference shares.

The existing legislation for the 'balance of business asset' test (where a REIT has to have 75% of its assets involved in the property rental business) has different definitions of asset for grouped REITs and single company REITs. The amendment will provide an accounting based definition for all REITs.

When a REIT disposes of a property involved in its property rental business the current legislation allows funds from the disposal that are awaiting reinvestment to be treated, for up to 24 months, as an asset of the property rental business for the purpose of the balance of business asset test (mentioned in the above paragraph). The legislation allows apportionment of these funds when the asset has been partly used for the property rental business and partly for non-rental purposes. The measure will clarify how the apportionment is to be applied.

In addition, when a REIT elects to join the regime the legislation allows that two of the REIT conditions to be met before a company can become a REIT do not have to be met on joining the regime. Currently these two conditions are linked. The measure will uncouple the conditions with the result that either or both the conditions do not have to be complied with on joining the regime.

## **6. PERSONAL AND EMPLOYMENT TAXES**

## **Changes to Company Car taxation from 2011/12 (BN64)**

Amended rules will be introduced for computing the amount of taxable benefit arising in respect of cars provided to employees where those cars are used for private purposes. The new provisions will have effect from 6 April 2011 and will have the following effects:

- reduce the lower threshold at which the 15% rate applies by 5g/km to 125g/km of CO<sub>2</sub> - this will increase the taxable benefit for all cars with emissions higher than this figure until the 35% rate is reached;
- abolish the £80,000 cap which currently applies when calculating the cash equivalent of the car;
- remove all the discounts for various alternative fuels so that the benefit is linked only to the emissions levels; and
- introduce a 9% rate for electric cars (this merely reinstates the current position where the rate is 15%, reduced by 6%).

The measures will affect both individuals who pay income tax on the benefit and businesses who pay Class 1A NICs on the benefit.

## **Save as you earn savings arrangements: certification**

HMRC published on Budget Day [draft legislation and explanatory notes](#) on changes to the administration process relating to HMRC approved Save As You Earn (SAYE) employee share option schemes.

The intention is to simplify certain administrative aspects, and make it possible for HMRC to ease practical difficulties that can arise for companies sending invitations to employees shortly before a change in the certification and bonus rates applying to SAYE contracts.

These changes will:

- provide for the transfer of certain administrative functions under the legislation from HM Treasury to HMRC;
- remove the requirement for HMRC to send some documents by post;
- allow HMRC to specify in the notices of withdrawal and variation of certified savings arrangements that certain savings contracts using the previous specifications entered into after the date of withdrawal or variation will be valid; and
- reduce from 28 to 15 days the minimum period between the date when a notice with revised SAYE requirements is issued, and the date when the new requirements (including changes to interest rates) come into force.

## **Anti-avoidance: employer/employee taxes**

### **Living accommodation provided by reason of employment: payments of lease premiums (BN56)**

For leases entered into or extended on or after 22 April 2009, legislation will be introduced in Finance Bill 2009 to stop attempts to avoid tax and NIC on the benefit of employer-provided living accommodation where the employer holds the

accommodation on a short-term lease and an up-front payment, often described as a 'lease premium', is made by the employer to the owner of the property.

Where a lease premium is paid for a lease of 10 years or less, the same tax treatment will follow as if the lease premium were actual rent paid so that not only the rent, as hitherto, but also the lease premium, spread over the duration of the lease, is to be taken into account when computing the cost to the employer of providing the accommodation.

The new rules will not apply to leases entered into in relation to a property used mainly for a business purpose by the employer and partly for the domestic use of an employee.

### **Employment losses and employment-related liabilities (BN58)**

In order to close down avoidance schemes that seek to abuse reliefs available for employment-related liabilities and losses incurred by employees and former employees, the Finance Bill 2009 will amend s 346 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003), insert a new s 556A into ITEPA 2003 and amend s 128 of the Income Tax Act 2007 (ITA 2007).

A common feature of the abuse is that liabilities and losses are created through intentional acts of default in the context of contrived employments. The measure will have effect on the tax liabilities of affected persons on and after 12 January 2009 but are intended to have no impact on those using the reliefs who are not attempting to avoid tax.

Individuals who have made a claim for employment loss relief against general income under s 128 ITA 2007 between 12 January 2009 and 1 April 2009 inclusive that is precluded by the proposed change to s128, ITA 2007:

- will not be liable to penalties under s 95, TMA 1970, and
- will not be liable to surcharges under s 59C, TMA 1970 provided they re-order their affairs and pay any additional tax due in accordance with the proposed change on or before 28 April 2009.

The Financial Secretary to the Treasury announced these measures on 13 January 2009 and 1 April 2009 in Written Ministerial Statements. Technical Notes explaining who would be affected and how were published on HMRC's website on [12 January 2009](#) (linked via our news item dated [19 January](#)) and [1 April 2009](#).

## **7. INHERITANCE TAX**

### **Agricultural property and woodlands reliefs: extension to land in the European Economic Area (BN50)**

Inheritance tax (IHT) agricultural property relief (APR) and woodlands relief (WR) will be extended to property in the European Economic Area (EEA). Property qualifying for these extended IHT reliefs will also qualify for capital gains tax (CGT) hold over relief, which will include agricultural property in EEA states which has been farmed by a person other than the owner.

The extension of APR and WR against IHT and CGT hold over relief will have effect on and after 22 April 2009 as well as for earlier events as described below.

IHT due or paid on or after 23 April 2003 in relation to agricultural property located in an EEA state rather than, as hitherto, the United Kingdom, the Channel Islands or the Isle of Man at the time of the chargeable event will become eligible for relief.

For deaths before 22 April 2009, WR will apply to property located within an EEA state rather than, as hitherto, in the United Kingdom only.

Hold over relief will also become available in respect of disposals of agricultural property located in a qualifying EEA state in the past.

The time limits for making claims including for events before 22 April 2009 are explained in the Budget Note. Those affected, ie executors and personal representatives of people who have died, individuals and trustees, should bear in mind that the powers review reductions to time limits mean that different time limits apply depending on when a claim is made.

## **8. PENSIONS AND INVESTMENTS**

### **Tax relief changes for pension contributions (BN47)**

From 2011/12 onwards, the Government intends that those with taxable incomes of over £150,000 will receive reduced tax relief on [pension contributions](#). For those with taxable incomes of £180,000 and more, the tax relief will be limited to 20%. Where an individual has taxable income of between £150,000 and £180,000, the relief will be tapered down as income increases until the relief reaches 20% at income of £180,000.

In the meantime a 'special annual allowance charge' is being introduced, the effect of which is to limit tax relief on certain pension contributions made after 22 April 2009, by those on higher incomes, to a maximum of 20%. The charge will not, however, apply where such contributions do not exceed the existing 'normal' level of contribution or £20,000 in total, whichever is the higher. For these purposes, contributions include both employer and employee pension contributions.

The charge will apply only to those whose taxable income is above £150,000 in the year of contribution or in either of the two preceding tax years. Taxable income is, very broadly, total taxable income after adding back pension contributions deducted at source under 'net pay' arrangements (for occupational pension schemes), after deduction of Gift Aid payments and most losses but before deduction of pension contributions paid by the individual.

The charge will also apply, with special computational rules, to contributions to defined benefit (final salary) schemes.

HMRC has issued extensive guidance with illustrations, see [tax relief changes for pension contributions](#) .

## **Changes ahead (twice) for Furnished Holiday Lettings**

Currently the special rules which treat furnished holiday lets (FHLs) as a trade (including allowing offset of losses against other income) only apply where the property is in the UK. This may not be compliant with European law. Two changes and various transitional provisions have been announced.

Properties in the European Economic Area which meet the criteria to be treated as FHLs can now be so treated. Claims may also be made for previous tax years, with a special extension to 31 July 2009 for some out-of-date periods. The various provisions and guidance are set out in a [supplementary document](#).

The second change will be the repeal in 2010/11 of the FHL rules. It therefore follows that such lettings will be treated in the same way as other property lettings and the various reliefs available to traders but not to property owners will cease to be available.

## **Foreign dividends – extension of 10% tax credit (BN21)**

From 22 April 2009, subject to certain conditions, individuals receiving a dividend from a non-UK resident company will be entitled to a tax credit of 1/9 of the amount paid.

Currently individuals who receive such dividends are only entitled to the tax credit if they directly own less than 10% of the company paying the dividend. The proposed change will put most recipients of dividends from abroad in the same position as if they had received the dividend from a UK company.

## **Increased ISA allowances (BN51)**

The upper limits for ISA investments will be increased. Those aged 50 and over will benefit from the new higher limits a year earlier than others.

Individuals aged 16 or over will be able to invest up to £10,200 in an ISA each tax year, of which a maximum of £5,100 may be in cash. For those aged 50 and over the new limits will apply to the 2009/10 tax year, with the higher limit being introduced from 6 October 2009. The same limits will apply to the under 50s from the 2010/11 tax year.

## **Pensioner Taxback Campaign**

Pensioners in particular will have suffered as a result of reductions in investment returns. The Government will therefore be launching a targeted campaign to encourage pensioners to claim back tax deducted from interest income and to register for interest to be paid gross in future. With significantly increased personal age allowances, many more pensioners should be eligible to register for gross payment of interest.

## **Final Salary Pension Schemes – payments by FAS (BN48)**

When Final Salary (also called Defined Benefit) Pension Schemes can no longer meet their obligations the Government Funded Financial Assistance Scheme (FAS)

provides financial assistance. In future the FAS will be making lump sum payments as well as paying or topping up pensions.

Legislation is being introduced so that payments made by the FAS will, broadly, attract the same tax treatment as they would have if the payments had been made from a registered pension scheme, which the FAS is not. This should permit pensioners to receive tax free lump sum payments provided certain conditions are met.

### **Child Trust Fund payments for disabled children (BN52)**

From April 2010, the Government will contribute £100 a year to the Child Trust Fund of disabled children and £200 a year for a severely disabled child.

The payments will be made for children born on or after 1 September 2002 who were in receipt of Disability Living Allowance at any time in 2009/10.

### **Distributions from offshore funds (BN22)**

Two changes are being introduced from 22 April 2009 in respect of distributions from offshore funds. The first will restore the dividend tax credit to investors in funds which are invested largely in equities. The second will treat distributions from funds which are 60% or more invested in interest bearing (and similar) assets as interest rather than dividends and consequently the dividend tax credit will not be available.

### **Tax elected funds (BN23)**

A new regime is being introduced from 1 September 2009 so that Authorised Investment Funds which meet certain conditions may elect to be treated as a 'Tax Elected Fund'. This will result in the investors being treated as owning the underlying assets directly.

### **Investment Trust elective regime introduced for interest (BN27)**

Similarly, from 1 September 2009, Investment Trust Companies (ITC) will be able make an election in respect of interest bearing assets so that where such interest is paid to investors, it is treated as income of the investor rather than of the ITC.

### **Offshore Funds – new definition (BN25)**

The definition of Offshore Fund is to change from 1 December 2009 and the regime will be modernised. Draft legislation was originally published after PBR 2008 and some changes have been made to this as a result of the comments received.

### **Offshore Funds – chargeable gains (BN24)**

Some offshore funds are treated as fiscally transparent and this can lead to complications when calculating capital gains on disposals of the underlying foreign investments. Legislation is to be introduced from 1 December 2009 so that holdings in such funds will be treated in the same way as if the holding was in shares (or units of a unit trust).

Individuals may irrevocably elect, where the fund comes within the new definition of an offshore fund (see above), that the new legislation should be applied for tax years from 2003/04 onwards.

HMRC will consult about changing the rules for corporate investors.

### **'White list' to be introduced for investment fund activities (BN26)**

Legislation will be introduced to give certainty of tax treatment to various types of transactions undertaken by Authorised Investment Funds from 1 September 2009 and equivalent offshore funds from 1 December 2009. There will be various restrictions and anti-avoidance measures to counter exploitation of the rules.

### **Avoidance using life policies (BN57)**

As previously announced on 1 April 2009 (see our news item [changes we knew about before Budget 2009](#)), anti-avoidance legislation will be introduced to counteract exploitation of income tax loss relief using offshore life insurance policies.

### **Avoidance by employees using artificial arrangements (BN57)**

Legislation announced in January 2009 and earlier this month (see our news item [changes we knew about before Budget 2009](#)) will be enacted to counteract artificial tax avoidance arrangements in connection with employment-related liabilities arising from employment and former employment.

### **Compensation Payments from Financial Services Compensation Scheme (BN15)**

In our Budget 2009 Representations, TAXREP 14/09, we asked for clarity on the tax treatment of compensation payments made by the Financial Services Compensation Scheme ('FSCS') to investors in failed financial institutions. We also asked that consideration be given to a temporary relief from tax where interest cannot be withdrawn due to restrictions imposed by the institution.

HMRC is introducing measures to treat as interest, and charge to income tax, any amounts of interest paid by the FSCS. The legislation is retrospective and applies to payments received on or after 6 October 2008 which means that care will need to be taken when preparing 2008/09 tax returns to include these amounts.

There is no mention of temporary relief where interest cannot be withdrawn, nor of how amounts will be split between capital and interest where the compensation payment is less than the amount invested.

### **Pension schemes receiving payments from the FSCS (BN49)**

The FSCS may assist an insurance company which is holding tax-relieved pension savings. Provisions are to be introduced to allow HMRC to introduce regulations so that individuals are not disadvantaged as a result of the intervention of the FSCS.

### **Venture Capital Scheme Improvements (BN08)**

### **EIS, CVS and VCT rules relaxed; carry back provisions improved**

The existing rules for employing funds raised by Venture Capital Schemes will be relaxed to allow a two year time period during which the funds must be wholly employed, with no requirement to use at least 80% within the first year.

An anomaly which results in a capital gains charge on share-for-share exchanges is also being rectified. The requirement for funds from non-EIS same class share issues on the same day to be employed within the same timescale is also being removed.

The provisions which allow investors effectively to 'carry back' income tax relief to the previous tax year are being improved so that a total investment of up to £500,000 can now be carried back from one tax year to the previous one, regardless of when in the tax year the investment is made. The previous provisions were much more limiting.

## **9. VAT AND DUTIES**

### **Rates and thresholds**

See the **Rates and Allowances** section, above.

#### **VAT: Change of standard rate (BN71)**

The standard rate of VAT is to return to 17.5% with effect from 1 January 2010.

Zero rated supplies, such as basic foodstuffs, children's clothing and books; exempt supplies, such as education and health; and supplies subject to VAT at 5%, such as domestic fuel and power, are not affected by this change.

The Tax Faculty and others had requested that the change of rate be postponed, both to avoid the busy Christmas and New Year sales periods for retailers and also because of the changes to the place of supply of services rules (see below for further details) which will also be introduced on 1 January 2010, but this regrettably has been unsuccessful. The necessary systems changes will now need to be implemented on New Year's Day 2010.

#### **VAT: Change of standard rate: anti-forestalling legislation (BN72)**

Targeted legislation will be introduced to counter schemes that purport to apply the 15% VAT rate to goods or services to be supplied on or after the date that the rate returns to 17.5%. This will provide that, in certain circumstances, a supplementary charge to VAT of 2.5% will be due on supplies of goods or services on which VAT of 15% has been declared. The supplementary charge will have to be accounted for on the date that the VAT rate reverts to 17.5%.

The legislation is being targeted at organisations that are unable to fully recover the VAT they incur and which enter into schemes or arrangements to avoid the effect of the standard rate of VAT reverting to 17.5%. It will introduce a supplementary charge to VAT on the supply of goods or services (or the grant of the right to receive goods or services) where the customer cannot recover all the VAT on the supply and one of the following conditions is met:

- the supplier and customer are connected parties; or

- the supplier funds the purchase of the goods or services (or grant of right); or
- a VAT invoice is issued by the supplier where payment is not due for at least six months.

A supplementary charge will also apply where a pre-payment in excess of £100,000 is made on or after 31 March 2009, but before the rate rise, in respect of goods or services (or in relation to the grant of the right to receive goods or services) to be provided on or after the date of the rate rise. However, it will not apply if the prepayment is in accordance with normal commercial practice in relation to such supplies when no VAT rate increase is expected.

#### **VAT: Simplifying the procedure for opting to tax land and buildings (BN67)**

Taxpayers that have previously made exempt supplies of land and buildings and now wish to opt to tax them require HMRC's formal permission to do so, unless they meet any one of four automatic permission conditions. A new automatic permission condition (APC) is to be introduced with effect from 1 May 2009, which should apply to more taxpayers than the existing condition.

The current APCs are set out in tertiary legislation and published in Notice 742A – Opting to Tax Land and Buildings at section 5.2 in Box D. Condition 3 is to be replaced by the new APC. The new APC legislation and associated guidance (also covering the informal concessions) will be published shortly in an Information Sheet.

#### **VAT: Reduced rate for children's car seat bases (BN68)**

The 5% reduced rate of VAT for children's car seats will be extended to include bases for such seats with effect from 1 July 2009.

The reduced rate of VAT applies to supplies of children's car seats. The relief includes the combination of a safety seat and a related wheeled framework, booster seats and booster cushions.

#### **VAT: Changes in fuel scale charges (BN69)**

The VAT scale charges for taxing private use of road fuel are to be reduced with effect from the start of the first VAT period beginning on or after 1 May 2009, to reflect the decrease in fuel prices since the 2008 Budget.

BN69 shows the revised scale charges and output tax payable in each accounting period, depending whether it is a 12 month, 3 month or 1 month accounting period for each CO<sub>2</sub> band. In a 12 month period the VAT fuel scale charge ranges from £505 for the 120 or lower CO<sub>2</sub> band to £1,765 for the 235 CO<sub>2</sub> or higher band (reduced from £555 and £1,935 respectively).

VAT is payable on these scale charges at the rate applicable at the time the charge is due. To calculate standard rate VAT from the VAT inclusive amount, multiply the VAT inclusive scale charge by the appropriate VAT fraction. At present, the standard rate VAT is 15% for which the VAT fraction is 3/23. At 17.5%, the VAT fraction is 7/47.

The scale charge for a particular vehicle is determined by its CO<sub>2</sub> emissions figure. Where the CO<sub>2</sub> emissions figure of a vehicle is not a multiple of five, the figure is

rounded down to the next multiple of five to determine the level of charge. For a bi-fuel vehicle which has two CO<sub>2</sub> emissions figures, the lower of the two figures should be used. For cars which are too old to have a CO<sub>2</sub> emissions figure, HMRC has prescribed a level of emissions by reference to the vehicle's engine capacity.

### **Cross-border VAT changes 2010: Place of supply of services rules (BN74)**

The place of supply of service rules, which determine the country where a supply of services is made and where any VAT is payable, are to be changed, starting from 1 January 2010. They also determine whether, if VAT is due on a supply, it should be accounted for by the supplier of a service or their business customer.

The new rules aim to ensure that, as far as possible, VAT is due in the country in which the service is consumed (eg where the customer is established) rather than where the supplier is established. The result for UK business customers is that they will be liable to account for UK VAT on most services provided by their overseas supplier under the reverse charge provisions, rather than the supplier charging VAT.

The measure forms part of a package of changes to simplify and modernise the VAT system for cross-border trading and to counter fraud that will come into effect from 1 January 2010 across the EU. The package includes:

- new time of supply rules for services (BN75);
- European Sales List (ESL) reporting for supplies of cross-border services and changes to ESLs for goods (BN76); and
- a new electronic refund procedure for VAT incurred in other EU Member States (BN77).

The current basic rule is that VAT is due where the supplier has established their business. That is the case for supplies to both business and non-business customers. From 1 January 2010, the new basic (or general) place of supply rule for business to business supplies will be where the customer is established. The basic rule for supplies to non-business customers will remain unchanged, i.e. it will be where the supplier is established. As now, there will continue to be exceptions to the new general rule.

Supplies to both business and non-business customers of cultural, artistic, sporting, scientific, educational, entertainment and similar services, as well as valuation and work on goods, are currently taxed where the service is performed. There will be no change to the taxation of these supplies when made to non-business customers. For supplies to business customers:

- from 1 January 2010, valuation and work on goods will be taxed where the customer is established under the new general place of supply rule; and
- from 1 January 2011, most supplies of cultural, artistic, sporting, scientific, educational, entertainment and similar services will be taxed where the customer is established, under the new general place of supply rule. However, supplies of admission to cultural, artistic, sporting, scientific, educational and entertainment events will remain taxable where the event takes place.

Land related services are currently deemed to be supplied where the land is situated. This will remain unchanged.

Currently there is a single treatment for the place of supply of hire of means of transport for supplies to business and non-business customers. This is where the supplier is established (basic rule). From 1 January 2010, there will be a distinction between short-time hire (no more than 30 days or 90 days for vessels) and long-term hire. For short-term hire, the place of supply will be where the vehicle is put at the disposal of the customer. For long-term hire, the place of supply will fall under the new general rule. However, from 1 January 2013, the place of supply of long-term hire to non-business customers will be where the customer is established (except for long term hire of pleasure boats to non-business customers which will be treated as supplied where the boat is actually put at the customer's disposal if the supplier has an establishment there).

There is no current exception for restaurant and catering services. From 1 January 2010 these services will be treated as supplied where they are physically performed. For restaurant and catering services carried out on board ships, aircraft or trains as part of transport in the EC, the place of supply will be the place of departure. This mirrors existing rules for goods sold for consumption on board.

Under the current rules the place of supply of intermediary services is in the same place as the service being arranged. This is subject to a simplification measure for supplies to business customers registered for VAT in another EU Member State. From 1 January 2010, the services provided by intermediaries to business customers will fall under the general rule. Supplies to non-business customers will be unchanged.

The place of supply of the transport of goods is where the transport takes place, except for intra-Community transport which is supplied in the place of departure. This rule will remain the same for supplies to non-business customers. Supplies to business customers will fall under the new general rule from 1 January 2010.

The place of supply of certain intangible services, e.g. legal advice, will continue to be treated as supplied where the customer belongs when provided to non-business customers outside the EC.

Ancillary transport services (such as loading, unloading or handling services) are deemed to be supplied where they are physically carried out. From 1 January 2010, these services will fall under the general rule when supplied to business customers. Supplies of these services to non-business customers will continue to be taxed where performed.

The place of supply of passenger transport services, the use and enjoyment provisions and electronically supplied services (for non-business customers) will remain unchanged.

For cross-border supplies, in most cases, the business customer will account for the VAT using the reverse charge procedure (and recover the tax subject to the normal rules) as happens now for a wide range of non basic rule services.

### **Cross-border VAT changes 2010: Time of supply rules (BN75)**

The changes to the time of supply rules for cross-border supplies of services will affect supplies made on or after 1 January 2010 that are treated as made in the UK

by the person who receives them. The time of supply determines when VAT is to be brought to account. The changes are linked to the introduction of EC Sales Lists (ESLs) for services (BN76). They are intended to harmonise the reporting of cross border supplies by the supplier (on an ESL) with the inclusion of the supply (by the customer) on the VAT return.

At present the time of supply (or tax point) for this category of cross border supply is normally the date of payment for the supply. If the consideration is non-monetary, the tax point will occur at the end of the VAT accounting period during which the service is performed. From 1 January 2010, the rules will be governed primarily by when a service is performed and a distinction will be made between single and continuous supplies.

For single supplies, the tax point will occur when the service is completed or when it is paid for if this is earlier.

For continuous supplies, the tax point will be the end of each billing or payment period. For example, if leasing charges are billed monthly or the customer is required to pay a monthly amount, the tax point will be the end of the month to which the bill or payment relates. Again, if a payment is made before the end of the period to which it relates or before the end of the billing period then that payment date, rather than the end of the period, will be treated as the tax point. For continuous supplies that are not subject to billing or payment periods, the tax point will be 31 December each year unless a payment has been made beforehand. In that case the payment will create a tax point.

#### **Cross-border VAT changes 2010: EC sales lists (BN76)**

UK businesses that supply services on or after 1 January 2010 where the place of supply is the customer's country will be required to complete EC Sales Lists (ESLs) for each calendar quarter. It will relate only to services on which the customer is required to account for a reverse charge in their country. The ESL should include the following information:

- the VAT registration number of the businesses to which the services were supplied; and
- the total value (excluding VAT) of those supplies to each of these businesses.

Further secondary legislation will be introduced later in 2009 to enable HMRC to meet a new obligation to exchange information with other EU Member States more quickly to counter fraud. This will:

- reduce the time available to business to submit ESLs from the current six weeks to 14 days for paper and 21 days for electronic submission;
- reduce the length of time available for HMRC to collect, process and exchange ESL data with the tax administrations in other Member States to one month in total; and
- require monthly ESLs for goods where the value exceeds £70,000 in a quarter.

#### **Cross-border VAT changes 2010: VAT refund procedure (BN77)**

A new electronic VAT Refund procedure is being introduced across the EU from 1 January 2010 to replace the current paper-based system. For claims made on or after 1 January 2010 businesses established in the UK will submit claims for overseas VAT electronically on a standardised form to HMRC rather than direct to the Member State of Refund.

The main changes from the paper-based system are:

- businesses will be able to submit claims up to nine months from the end of the calendar year in which the VAT was incurred, rather than six months as at present;
- tax authorities will have four months, rather than six months, to make repayments, unless further information is requested in which case the deadline extends up to a maximum of eight months;
- the Member State of Refund will pay interest in cases where the business meets all its obligations but deadlines are not met by the tax authorities; and
- all EU Member States will be required to afford a right of appeal against non-payment in accordance with the procedures of the Member State of Refund.

Similarly, overseas businesses will make their claims for UK VAT through the electronic interface in the EU Member State where their business is established.

### **VAT and excise: VAT exemption for gaming participation fees and other miscellaneous amendments (BN73)**

Various measures are being introduced that will:

- remove VAT on participation fees for playing bingo and other games of chance with effect from 27 April 2009 (participation fees are charges that a gaming operator makes to customers for participating in gaming);
- increase the money prize limit with effect from 1 June 2009 for bingo duty exemption that may be offered on small scale amusements provided commercially at, for example, family entertainment centres and adult gaming centres from £50 to £70;
- increase the rate of bingo duty to 22% for accounting periods beginning on or after 27 April 2009;
- remove the need to list individual games for the purposes of gaming duty and extend the scope of gaming duty to include charges for commercially provided equal chance gaming with effect from 27 April 2009;
- raise the gross gaming yield bandings for each gaming duty band in line with inflation with effect for accounting periods starting on or after 1 April 2009;
- extend the scope of remote gaming duty to include remote bingo and remove remote bingo from the scope of bingo duty with effect from 1 July 2009; and
- clarify the existing excise definitions of 'gaming' and 'gaming machine'.

## **10. STAMP DUTY LAND TAX**

### **Temporary increase in threshold (BN45)**

The 'holiday' from stamp duty land tax (SDLT) which exempts any acquisitions of residential property of not more than £175,000 is being extended so that it will now apply to acquisitions between 3 September 2008 and 31 December 2009 inclusive rather than ending after 2 September 2009. After that date the SDLT threshold for residential property will revert to £125,000.

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The effective date for SDLT is normally the date of completion, not the date of exchange of contracts. However, the effective date may be earlier than the date of completion if the contract is substantially performed, for example, if the purchaser takes possession or pays the purchase price in advance of completion.

### **Shared ownership (BN44)**

Legislation will be introduced in Finance Bill 2009 to:

- extend favourable stamp duty land tax (SDLT) treatment to purchasers under shared ownership schemes operated by profit-making Registered Providers of Social Housing, where the scheme is assisted by public subsidy;
- extend the SDLT relief for purchases by Registered Social Landlords (RSLs) to profit-making Registered Providers of Social Housing where the purchase is assisted by public subsidy; and
- simplify the SDLT treatment of purchasers under rent to shared ownership ('Rent to HomeBuy') schemes.

This will help individuals who are:

- seeking affordable housing, and are purchasing housing under a rent to shared ownership scheme;
- seeking affordable housing under a shared ownership scheme operated by a profit-making Registered Provider of Social Housing, where the scheme is assisted by public subsidy; and
- Registered Providers of Social Housing who receive assistance from public subsidy.

The provisions for rent to shared ownership schemes will have effect where the effective date of the grant of the shared ownership lease, or the declaration of the shared ownership trust, under the scheme is on or after 22 April 2009. The remaining provisions will have effect for land transactions where the effective date for SDLT purposes is on or after the date that Finance Bill 2009 receives Royal Assent.

### **Leasehold enfranchisement (BN46)**

Legislation will be introduced in Finance Bill 2009 to change the rules for the stamp duty land tax (SDLT) relief for leasehold enfranchisement by removing the requirement that the relief can only be claimed by a statutory 'Right to Enfranchise' (RTE) Company. This change will ensure that the relief can now be claimed by all who are exercising statutory rights of leasehold enfranchisement and operates as originally intended.

The measure will have effect for land transactions where the effective date for SDLT purposes is on or after 22 April 2009.

### **Disclosure of tax avoidance schemes: stamp duty land tax**

As HMT and HMRC have been concerned for some time about tax avoidance schemes for high value residential property which are still being actively marketed despite the downturn, On Budget Day HMRC published a [consultation document](#) containing an impact assessment with a deadline for comment of 15 July 2009

outlining draft legislation that would make changes to the Disclosure of Tax Avoidance Schemes (DOTAS) regime as it affects Stamp Duty Land Tax (SDLT).

Those changes concern:

- Extending the regime which presently covers only commercial property to residential property with a value of at least £1 million; and
- Introducing arrangements for HMRC to identify users of disclosed SDLT schemes for both residential and commercial property.

The Government intends, subject to the outcome of the consultation, to introduce regulations towards the end of 2009.

### **SDLT, Capital Allowances and tax on Capital Gains: Alternative Finance Investment Bonds**

Legislation will be introduced in Finance Bill 2009 to provide relief from the provisions of stamp duty land tax (SDLT) and the Taxation of Chargeable Gains Act 1992 for persons wishing to raise finance by using land assets in the United Kingdom.

Further legislation will also set out the capital allowances consequences of the SDLT and capital gains measures.

## **11. OTHER ANTI-AVOIDANCE**

### **Naming and shaming tax cheats (BN63)**

Currently details of tax cheats only become public when a person or organisation is convicted of the tax default crimes or an appeal against a civil tax penalty is heard in Court. Traditionally HMRC has taken a limited number of cases to the Courts, often those cases involving high profile individuals or professional advisers. It has often been commented that, for penalties and other sanctions to be effective deterrents, HMRC should also publicise more 'ordinary cases' to which errant taxpayers can relate.

Legislation will be introduced, effective from some future date, to give HMRC wider powers to publicise the details of persons (individuals, businesses and companies) who have deliberately understated tax liabilities, failed to disclose tax liabilities or made excessive claims for relief. The tax lost must be more than £25,000 and the offence must be either deliberate or both deliberate and concealed. The new provisions will not apply to Tax Credits but the reason for this is not explained in the Press Release.

There will be various safeguards built into the legislation including an appeals process and exemption from publication for those who make either full unprompted disclosure or full disclosure within an agreed timescale once prompted.

### **Developing the disclosure of avoidance schemes regime**

Disclosure of Tax Avoidance Schemes (DOTAS) is an important part of the tax framework giving HMRC early warning of avoidance schemes. HMRC will begin discussions with interested parties with a view to extending the 'hallmarks' used to identify avoidance schemes, to ensure they continue to bear down on avoidance, and revising the penalty regime to introduce tougher sanctions for the non compliant.

## **Tacking avoidance of tax on disguised interest and transfers of income streams (BN36 and 37)**

Following consultation the Government will introduce principles-based legislation to counter avoidance in two areas involving financial products, in response to continued attempts at abuse. Specifically, the legislation will prevent schemes designed to avoid tax on interest received and schemes seeking to side-step existing anti-avoidance legislation on the sale of income streams.

## **Proposals to counter avoidance using financial products (BN32)**

A measure will be introduced to counter avoidance schemes involving the use of convertible securities within a group to create accounting asymmetries and the creation of artificial losses on loans and derivatives.

## **Foreign exchange targeted anti-avoidance rule (BN35)**

The Government will introduce a targeted anti-avoidance rule to stop the use of tax avoidance schemes that seek to exploit the foreign exchange tax matching rules. Exchange gains or losses on borrowings or currency derivatives will only be disregarded for tax purposes if they do not arise from tax avoidance arrangements.

## **Exploitation of the double tax relief and manufactured overseas dividend rules (BN59, 60 and 61)**

New measures will clarify the rules that provide relief for UK tax against foreign tax payable on foreign income (double taxation relief) and the rules dealing with manufactured overseas dividends. These changes, effective from Budget Day (22 April 2009) will:

- prevent a deduction for foreign tax on the receipt of a Manufactured Overseas Dividend by a company, where the economic cost of the foreign tax has not been borne by the company; and
- ensure that banks always take a reasonable proportion of their funding costs into account in the calculation of double taxation relief.

The changes will also put beyond doubt:

- that any receipts that are in substance trade income will be taxed accordingly. Banks and other financial institutions will be unable to gain a tax advantage by fragmenting parts of their trade into investment companies; and
- that double taxation relief will be given net of any repayments of foreign tax, whether made to the original payer or otherwise.

## **Countering abuse in the corporate intangible fixed asset regime (BN31)**

The Government will introduce a measure to clarify the intangible fixed assets regime rules by confirming that goodwill is treated as intended. Effective from 22 April 2009, the legislation will confirm that for the purposes of the corporate intangible regime, goodwill includes internally-generated goodwill. It also confirms that all goodwill is created in the course of carrying on the business in question and is subject to rules determining whether goodwill is treated as created on or after 1 April 2002.

### **Ensuring tax and National Insurance paid on lease premiums (BN56)**

The Government will introduce a measure to prevent tax avoidance where an employee or director of a company is provided with living accommodation through the payment of a lease premium rather than a full market rent for the use of the property. From 22 April 2009, those who take out new leases using a lease premium will pay tax and National insurance contributions as if the full market rent had been paid.

### **North Sea Fiscal Regime: Preventing Accelerated Decommissioning Relief (BN34)**

The Government will introduce a measure that changes the North Sea fiscal regime to ensure companies cannot access tax relief for decommissioning oil and gas infrastructure years in advance of the decommissioning activity actually being carried out. As originally intended, tax relief for this expenditure will only be incurred when decommissioning work is actually carried out.

### **Spotlight on selected avoidance schemes**

HMRC will shortly publish a Spotlight giving notice of selected avoidance schemes that are thought to be ineffective to discourage potential users. HMRC will challenge these schemes when encountered.

### **Structured foreign exchange arrangements**

The Government will publish a technical note in the summer. The note will set out the issues and potential approaches to certain structured financial arrangements (often described as overhedging or underhedging) that, although not undertaken for tax avoidance, seek to pass on to the Exchequer, through tax relief, commercial risk that would otherwise be borne by groups on such transactions. The Government believes that the economic risks should be shared between the Exchequer and business as Parliament intended.

### **Anti-avoidance: interest relief**

Legislation will counter arrangements which seek to benefit from interest relief when a loan is made as part of arrangements that are certain (ignoring insignificant risk) to produce a post-tax surplus for the investor by virtue of the interest being eligible for relief. The legislation will not catch genuine commercial investments in business where there is real uncertainty as to whether the level of return will secure a post-tax surplus for the investor.

### **Anti-avoidance: plant and machinery leasing (BN33)**

Legislation will be introduced in FB 2009 to counter avoidance involving the leasing of plant and machinery. This will ensure that:

- a business entering into a sale and leaseback or lease and leaseback does not gain more relief than it would have done had it obtained loan finance;
- tax is not avoided when a lessor grants a long funding lease; and

- when a long funding lease ends the lessee has obtained an appropriate amount of relief.

As this legislation was announced on 13 November 2008 when draft legislation was also published the above provisions will apply to transactions entered into on or after that date.

In addition:

- the definition of sale and leaseback arrangements in existing anti-avoidance legislation will be amended for consistency and to achieve their objectives; and
- amendments will be made to ensure initial payments under a lease do not escape taxation and to ensure consistency with the taxation of chargeable gains.

The first of the above changes will affect sales on or after 22 April 2009 and the amendments will have effect from the same date.

### **Corporation Tax: Agreements to forgo tax reliefs**

Legislation will be introduced to ensure that provisions of the CT Acts do not override an undertaking by a company to surrender its rights to tax losses or other reliefs in connection with the Government's Asset Protection Scheme, or other similar arrangements designated by the Treasury.

### **Double Taxation Relief on Dividends**

Legislation will ensure that there is not double taxation on dividends paid after 1 April 2008 in respect of an accounting period which straddles that date when the rate of corporation tax was reduced from 30 to 28%.

Without this provision the UK tax charge would be more than 28% to reflect the part of the accounting period falling before 1 April 2008 but the amount of double tax relief would, without this current provision, be restricted to 28% the rate in force at the time the dividend is paid.

### **Foreign denominated losses (BN19)**

The aim of the legislation is to ensure that when a company prepares its tax computation in a foreign currency, any losses can, in effect, be carried forward or back in that currency rather than sterling. The draft legislation is intended to take effect for accounting periods beginning on or after 29 December 2007 although the company can elect to defer this date to the beginning of the first accounting period beginning on or after the legislation is enacted, i.e. the date of Royal Assent for Finance Bill 2009.

### **Group Relief: Preference Shares**

The policy underlying these changes is that the holders of preference shares that provide the holder with no more than an interest like return should not be regarded as equity holders in the issuing company.

The changes will make it more difficult to inadvertently break a group structure or trigger an anti-avoidance provision through issuing a common commercial financing instrument to external investors.

There will be an amendment to para 1(3) of Sch 18 ICTA 1988, to ensure that preference shares that carry a right to a dividend of a fixed amount or at a fixed percentage of the nominal value of the shares, but that give the issuer the right to pay a smaller dividend in certain circumstances are not disqualified from being treated in the same way as 'Fixed Rate Preference Shares' for the purposes of the tax group rules solely due to this feature.

This change was announced in a Ministerial Written Statement on 18 December 2008 and draft clauses were [published](#) on 9 March 2009.

### **Groups: reallocation of chargeable gains (BN28)**

A company can elect under s 171A TCGA 1992 to deem an asset to have been transferred from one group company to another prior to a disposal outside the group. But the election can only currently be made when there is a disposal to a third party and that third party has acquired an asset. So the election is not available when for instance an asset is subject to a claim that it has become of negligible value.

Section 171A is to be modified so that instead of deeming a transfer of an asset from one group company to another before the disposal, the section will allow the transfer of the gain or loss from the company making the disposal to one or more specified companies within the group. The companies concerned will have to make a joint election for this treatment to apply.

### **Hedging proceeds from future share issues (BN40)**

The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (Statutory Instrument 2004/3256) will be amended to bring in special rules that apply when a company announces a rights issue of shares denominated in a currency other than its functional currency and enters into a currency derivative contract that seeks to hedge the risk to the value of the future share issue proceeds from currency fluctuations. Where this is the case, any exchange gain or loss on the currency derivative contract will be excluded from being brought into account for tax purposes.

Any such exchange gain or loss will be permanently excluded from being brought into account unless, in the case of a gain, any part of that gain is subsequently distributed to shareholders. In that case, the gain will be brought back into charge for tax purposes in the accounting period in which the distribution takes place and to the extent that the gain has been distributed

The new rules will in the main apply to all currency derivative contracts entered into on or after 1 January 2009 with the intention of hedging the exchange risk to the future share proceeds.

### **Sale of lessor companies: anti-avoidance and fairness**

Legislation will be introduced to make changes to the 'Sale of Lessor Companies' provisions in FA 2006 to ensure that they operate appropriately in complex

transactions involving partnerships and consortia. It will also extend the period over which losses arising as a consequence of the existing legislation can be utilised by the wider purchasing group.

## 12. HMRC POWERS AND ADMINISTRATION

### Working with tax agents

HMRC has published a consultation document on working with tax agents. This consultation is part of its Modernising Powers, Deterrents and Safeguards work.

The consultation document looks at the way HMRC interacts with agents and builds on the work of the OECD study undertaken last year on the role of intermediaries in the operation of tax systems. The latest document again explicitly recognises the vital role played by agents, acknowledging that without them the UK tax system as we know it would simply not function. It further recognises the contractual relationships that agents have with their clients. It also recognises that agents may need to be robust

The document is very much a 'starter for ten', in that it invites discussion on a number of issues but does not propose definitive solutions. It poses a number of questions which are summarised in Annex A of the document.

The key substantive issues appear to be:

- The new Sch 24, FA 2007 penalty provisions do not apply a penalty if the taxpayer relied on a tax agent and the agent made a careless error. HMRC is concerned that some agents are taking responsibility for careless errors to protect clients and thereby avoid any penalty. HMRC have suggested that this is not always reasonable and that in certain circumstances it would be reasonable for the agent to suffer a penalty for careless errors.
- The paper examines options for action where a tax agent has been deliberately non-compliant. Suggestions include a requirement to put matters right, possible penalties, reports to professional bodies and closer monitoring and risk assessment.
- Whether the UK might adopt a registration scheme for tax agents and whether the UK needs a definition of tax agent. The conclusion of the paper (see paragraph 5.5) is that HMRC is not convinced of the need for a registration scheme but they would be interested in 'credible light touch alternatives'.

The consultation paper notes that a significant number of agents have not been through formally recognised training and are not subject to monitoring procedures. While acknowledging that these agents should not be disadvantaged where they demonstrate their competence in tax, the paper considers approaches that might be taken to address HMRC's concerns, particularly in the high volume repayment claim market.

The ICAEW looks forward to participating in the consultation and welcomes the fact that it is intended to raise issues and ask questions rather than propose definite solutions and, furthermore, that it acknowledges the role of professional bodies in setting standards for their members and in monitoring. If you have any comments on the consultation document please get in touch with Frank Haskew at [frank.haskew@icaew.com](mailto:frank.haskew@icaew.com). The deadline for comments is 7 August 2009.

## HMRC Charter (BN92)

HMRC plans to finalise the Charter, published in draft form in the Consultation Document of February 2009, by Autumn 2009. Tax Faculty has responded to the Consultation, see [TAXREP 20/09](#).

After the initial consultation last summer the Chancellor announced at the time of the 2008 Pre-Budget Report in November that there would be statutory underpinning for the legislation. We still do not know what the provisions will say except that the Budget Notice indicates that it will require HMRC to prepare and maintain a Charter and to report annually on how well it is doing in meeting the standards in the Charter.

The Budget Notice states that:

‘The Charter will set out standards of behaviour and values to which HMRC will aspire in dealing with taxpayers and others.’

This is very disappointing because this means that the Charter will be not much different from the HMRC Visions, published last November, and it will not seek to address the key issue, which is setting out the rights of taxpayers.

We are also concerned that the Budget Notice is headed up HMRC Charter whereas the Charter is not for HMRC, it is for taxpayers and its title should reflect that fact.

We will be pressing for an early meeting with the HMRC Charter Team when the February Consultation comes to its formal end on 9 May 2009 to make sure that the final version of the Charter is as good as it can be.

## Withdrawal of Extra Statutory Concessions

HMRC has published a list of ten Concessions which it is proposing should be withdrawn with effect from 1 April 2010.

There is to be no formal period of consultation in relation to this latest list of concessions to be withdrawn but there is a contact name given for each concession who can be contacted by anyone who is concerned or affected by the proposed withdrawal.

### *Equitable liability*

One of the non-statutory arrangements which is going to be withdrawn, is [Equitable Liability](#) for income tax and corporation tax. The current concessionary arrangements in respect of equitable liability will be withdrawn with effect from 1 April 2010. The note is tucked away at the back of the document.

We do not believe that the need for Equitable Liability is spent and find this very disappointing. In the light of the powers review and the increasing lack of human intervention as HMRC computerises more of its processes, it is probably more important than ever.

Equitable liability is a concession which concerns the acceptance of time barred returns, accounts etc for debts of direct tax in instances where there was never a

legal right to adjust the liability. The amount of the legal liability is not actually amended, but the difference between the original liability and the excess amount is not pursued by HMRC.

### **Reclaiming overpayments of income tax, CGT and corporation tax (BN87)**

There will be new legislation in the Finance Bill 2009 to implement a mechanism which allows taxpayers to claim back overpaid tax where there is no other statutory right to do so. The measure will effectively reform the old 'error or mistake relief' rules under which HMRC **may** give relief, and introduce a statutory right to claim under which claimants will determine the amount to be reclaimed. The conditions governing when and on what grounds a claim may be made will be set by the new legislation. The new right will also include normal rights of appeal.

### **Review of powers : Payments, repayments and debt (BN 88)**

Three measures have been proposed as part of the ongoing review into payments and tax debt.

- Taxpayers will, probably with effect from April 2011, be able to spread their tax payments so that liabilities to income and corporation tax are paid in monthly instalments, broadly straddling the normal due date for payment; these arrangements will be termed Managed Payment Plans (MPP's).
- HMRC intend to introduce new powers to collect small tax debts through the Pay as You Earn system, although changes needed to HMRC systems mean that this cannot commence until 2012.
- HMRC will be able to issue third party information notices to businesses to require them to provide contact details for tax debtors that HMRC has lost trace of. This final measure was relaxed from the consultation to restrict an information notice to data already held by the recipient, rather than extending it to information the business 'could reasonable acquire'.

### **Review of powers: Compliance checks (BN89)**

The compliance powers introduced in Schs 36, 37 and 39 to the FA 2008 in relation to the main direct taxes and VAT will be extended (by new legislation to be included in the Finance Bill 2009) so that they also apply for the purposes of a variety of other taxes.

The affected taxes are aggregates levy, climate change levy, landfill tax, insurance premium tax, SDLT, SDRT, IHT and petroleum revenue tax. As a result a variety of redundant powers will also be repealed, and the new legislation will introduce aligned record keeping requirements, new inspection and information powers and a modernised HMRC valuation power. There will also be new time limits for making assessments and claims, broadly similar to those now coming into force for other taxes, aligning assessment periods at four years for mistake, 6 years for careless understatements and 20 years for deliberate mis-statement. Claims will be capped at four years. Most of the changes will apply from April 2010 but the alteration to time limits cannot fully commence until April 2011.

### **Review of powers : Late filing and late payment penalties (BN 90)**

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Finance Bill 2009 will also include new legislation to create a single aligned penalty regime applying to the majority of HMRC taxes but not duties. The measures will affect income tax, corporation tax, PAYE and NIC, CIS tax, SDLT and SDRT, IHT and PRT. Pension scheme tax returns and liabilities will also be covered by this regime. After long and detailed consultation the legislation will have the following broad structure:

- For annual or occasional returns an initial penalty for late filing of £100, followed by £10 per day for annual returns which are more than three months late. Tax geared penalties will apply once the return is six and 12 months late and higher penalties for deliberate failure to submit a return after 12 months.
- In respect of CIS returns a fixed penalty of £100 for any late return, followed by £200 if the return is more than three months late. Tax geared penalties follow at the six and 12 month point with again higher penalties for deliberate failure of more than 12 months.
- Late payment of tax liabilities which are normally annual or occasional will attract penalties of five per cent of the tax after one month, and generally a further 5 per cent at the six and 12 month point. The penalties will be suspended when the taxpayer agrees a time to pay arrangement.
- Late payment of taxes collected through the PAYE system will for the first time attract penalties on all employers. However, because implementing this measure will require additional information to be provided on the P35 annual return, HMRC will apply the penalties on a risk assessed basis from April 2010. Consideration of the additional burdens imposed by this regime remains under review.

The surprise here is that the measures do not also cover VAT which was consulted on at the same time as the main taxes. The Budget Note indicates that changes to VAT penalties for late returns and late payment will be brought forward for Finance Bill 2010, when most of the remaining taxes and duties will be aligned with the above rules.

### **Interest harmonisation (BN 91)**

A harmonised interest regime on both underpaid and overpaid tax will be introduced in respect of all taxes and duties administered by HMRC with the exception of Corporation Tax and petroleum revenue tax, which are expected to be harmonised in Finance Bill 2010. Rates of interest will be harmonised across all of the taxes, and the change will take effect shortly after Royal assent to the Finance Bill 2009. All taxes will carry interest from the due date for payment until they are paid, and repayments will carry interest from the date that the tax was due to be paid, or if later the actual date paid. The rates of interest will be set by reference to the Bank of England base rate and be updated automatically each time the base rate changes. Corporation tax liabilities arising under the Quarterly Instalment Payment (QIP) arrangements will not be included within the new regime.

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