Wolters Kluwer

When you have to be right

Crucial insight from Wolters Kluwer's in-house team of tax writers

Going going gone - Autumn Statement 2016: key tax measures

Foreword

Contributed by Paul Robbins

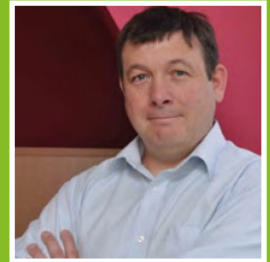
From a tax standpoint, the most exciting announcement of this Autumn Statement is probably that this will be the last one. There will be a transitional Budget in spring 2017 followed by a Finance Bill to get Royal Assent at (one assumes) the normal mid-July date. After a summer off there will be another Budget in the autumn, with the subsequent Finance Act 2018 to receive Royal Assent before the start of the 2018-19 tax year. The legislative cycle will then begin with publication of draft clauses for Finance Bill 2019 in summer 2018, a Budget in the autumn and Royal Assent to Finance Act 2019 in the first quarter of 2019.

Concentrating all tax changes on a single event makes a lot of sense and should help give business some of the tax certainty it craves. Also, the new timetable allows longer for consulting on draft clauses which could make that a more meaningful process than it sometimes is at present.

One further thought: all this assumes business as usual on the political front in 2017 (a noteworthy assumption in itself given talk of elections). Going forward, the revised timetable will fit better with May elections, and so make the two Budgets/two Finance Acts scenario less likely.

The Chancellor gave a clue to his intention to downgrade the Autumn Statement by studiously keeping tax changes in this one to a minimum. Once he had finished assuring the future of Wentworth Woodhouse, he confirmed that previously-announced changes would happen pretty much as announced. So he will continue to follow the business tax roadmap with a corporation tax rate of 17% for financial year 2020, favourable regime for the oil and gas industries, and changes to the business rate transitional relief cap, which are apparently "complicated - but it's good news".

Paul Robbins BA, ACA, CTA



Between graduating and joining Wolters Kluwer as a tax writer specialising in corporates, Paul worked in the tax teams of two large accounting firms – subsequently absorbed into the Big 4.

Paul is the lead technical editor on the Red and Green Books, the *Tax Reporter*, *Tax Planning Online* and *Tax Workflow* and leads our team of in-house tax writers.

Additionally, he is responsible for the quality and development of the entire tax information portfolio.

Some interesting developments are:

- **the intention to align employer and employee NIC thresholds from April 2017;**
- **a personal allowance of £12,500 and higher rate threshold of £50,000 by 2020;**
- **a review of non-cash payments by employers to their employees; and**
- **the introduction of 100 per cent first year allowances for electric car charge-points.**

Our team of experts have commented on these and other key tax issues in the Statement in more detail. We hope their thoughts and explanations will gently introduce you to the tax issues you will need to get your head round over the next few months.

With just the publication of the draft clauses for the Finance Bill 2017 (scheduled for 5 December) to come, we are nearly at the end of a very busy tax year unless of course you have Scottish connections - the Scottish Government will be delivering its Budget on 15 December.

Personal tax

Contributed by Meg Wilson
and Julie Clift

Income tax and National Insurance contributions

Personal allowance and higher rate threshold

The Government has announced it will meet its commitment to raise the income tax personal allowance to £12,500 and the higher rate threshold to £50,000, by the end of this Parliament. Next year, the personal allowance will rise to £11,500 and the higher rate threshold to £45,000. Increases to the personal allowance over the last Parliament took 4 million of the lowest paid out of income tax altogether.

Once the personal allowance reaches £12,500, it will then rise in line with the Consumer Prices Index as the higher rate threshold does, rather than in line with the National Minimum Wage. This will lock in the increases the Government has made to the personal allowance over the past six years, so they are not eroded by inflation, while increasing the sustainability of the public finances in the long term.

Off-payroll working rules

Following consultation, the Government will reform the off-payroll working rules in the public sector from April 2017 by moving responsibility for operating them, and paying the correct tax, to the body paying the worker's company. The Government believes public sector bodies have a duty to ensure that those who work for them pay the right amount of tax. This reform is designed to tackle the high levels of non-compliance with the current rules and means that those working in a similar way to employees in the public sector will pay the same taxes as employees. In response to feedback during the consultation, the 5% tax-free allowance will be removed for those working in the public sector, reflecting the fact that workers no longer bear the administrative burden of deciding whether the rules apply.

Meg Wilson BA, CTA

Meg joined Wolters Kluwer as a full-time tax writer in 2012 and works on several areas of the *Tax Reporter* and the *NIC Guide*. She also prepares case reports for tax decisions released by tribunals and courts.

Meg qualified as a Chartered Tax Adviser in 1999 and has previously worked for HLB Kidsons, KPMG and Hazlewoods, a top 40 firm in Gloucestershire.

Julie Clift BA, CTA

Julie joined Wolters Kluwer as a senior technical editor in 2003 and has worked on some of our leading tax products including *British Tax Reporter*, *Inheritance Tax Reporter*, *British Tax Guide* and *Tax Adviser*.

Julie began her career at Arthur Andersen before joining EY where she specialised in personal tax issues. She was deputy editor of *The Tax Journal* before returning to practice as a tax editor in the Deloitte Tax Policy Group.

There are concerns about the practicalities of moving to deduction at source and a number of unresolved issues which may be difficult to resolve before the Government's introduction of the new rules.

Legal support

From April 2017, all employees called to give evidence in court will no longer need to pay tax on legal support from their employer. This will help support all employees and ensure fairness in the tax system, as currently only those requiring legal support because of allegations against them can use the tax relief.

The taxation of different forms of remuneration

Employers can choose to remunerate their employees in a range of different ways in addition to a cash salary. The tax system treats these different forms of remuneration inconsistently and sometimes more generously. The Government has announced it will therefore consider how the system could be made fairer between workers carrying out the same work under different arrangements, and will look specifically at how the taxation of benefits in kind and expenses could be made fairer and more coherent. The Government will take the following action:

- **Salary sacrifice** - following consultation, the tax and employer National Insurance advantages of salary sacrifice schemes will be removed from April 2017, except for arrangements relating to pensions (including advice), childcare, Cycle to Work and ultra-low emission cars. This will mean that employees swapping salary for benefits will pay the same tax as the vast majority of individuals who buy them out of their post-tax income. Arrangements in place before April 2017 will be protected until April 2018, and arrangements for cars, accommodation and school fees will be protected until April 2021.
- **Valuation of benefits in kind** - the Government will consider how benefits in kind are valued for tax purposes, publishing a consultation on employer-provided living accommodation and a call for evidence on the valuation of all other benefits in kind at Budget 2017.
- **Employee business expenses** - the Government will publish a call for evidence at Budget 2017 on the use of the income tax relief for employees' business expenses, including those that are not reimbursed by their employer.

It is good news that the Government has decided to omit ultra-low emission cars from the proposed salary sacrifice changes as this would have undermined the effectiveness of the company car regime as an incentive to choosing low-emission cars.

New tax allowance for property and trading income

As announced at Budget 2016, the Government will create two new income tax allowances of £1,000 each, for trading and property income. Individuals with trading income or property income below the level of the allowance will no longer need to declare or pay tax on that income. The trading income allowance will now also apply to certain miscellaneous income from providing assets or services.

See also the Property taxes section.

Non-domiciled individuals

Non-domiciled individuals

Individuals who live in the UK and make use of public services should pay their fair share of tax. The following reforms to the taxation of non-domiciled individuals make the tax system fairer for everybody:

- As previously announced, the Government will end the permanency of non-domiciled tax status. From April 2017, non-domiciled individuals will be deemed UK-domiciled for tax purposes if they have been UK resident for 15 of the past 20 years, or if they were born in the UK with a UK domicile of origin. Also, as previously announced, non-domiciled individuals who have a non-UK resident trust set up before they become deemed-domiciled in the UK, will not be taxed on income and gains arising outside the UK and retained in the trust.
- From April 2017, inheritance tax will be charged on UK residential property when it is held indirectly by a non-domiciled individual through an offshore structure, such as a company or a trust. This closes a loophole that has been used by non-domiciled individuals to avoid paying inheritance tax on their UK residential property (see the Property taxes section).
- The Government will change the rules for the Business Investment Relief (BIR) scheme from April 2017 to make it easier for non-domiciled individuals who are taxed on the remittance basis, to bring offshore money into the UK for the purpose of investing in UK businesses. The Government will continue to consider further improvements to the rules for the scheme to attract more capital investment in British businesses by non-domiciled individuals.

Charity tax

Gift aid digital

As announced at Budget 2016, the Government will give intermediaries a greater role in administering Gift Aid, simplifying the Gift Aid process for donors making digital donations.

Pensions and savings tax

As previously announced, the ISA limit will increase from £15,240 to £20,000 in April 2017.

Starting rate for savings

The band of savings income that is subject to the 0% starting rate will remain at its current level of £5,000 for 2017-18.

Money purchase annual allowance

The money purchase annual allowance will be reduced to £4,000 from April 2017. The Government does not consider that earners aged 55 and over should be able to enjoy double pension tax relief, such as relief on recycled pension savings, but does wish to offer scope for those who have needed to access their savings to subsequently rebuild them. The Government will consult on the detail.

Foreign pensions

The tax treatment of foreign pensions will be more closely aligned with the UK's domestic pension tax regime by bringing foreign pensions and lump sums fully into tax for UK residents, to the same extent as domestic ones. The Government will also close specialist pension schemes for those employed abroad (so-called 'section 615' schemes) to new savings, extend from 5 to 10 years the taxing rights over recently emigrated non-UK residents' foreign lump sum payments from funds that have had UK tax relief, align the tax treatment of funds transferred between registered pension schemes, and update the eligibility criteria for foreign schemes to qualify as overseas pensions schemes for tax purposes.

Tax-advantaged investment schemes

Social investment tax relief (SITR)

From 6 April 2017, the amount of investment social enterprises aged up to 7 years old can raise through SITR will increase to £1.5million. Other changes will be made to ensure that the scheme is well targeted. Certain activities, including asset leasing and on-lending, will be excluded. Investment in nursing homes and residential care homes will be excluded initially, however the Government intends to introduce an accreditation system to allow such investment to qualify for SITR in the future. The limit on full-time equivalent employees will be reduced to 250. The Government will undertake a review of SITR within two years of its enlargement.

Employee shareholder status

The measure removes the income tax reliefs on the receipt or buy-back of shares issued to an employee under an employee shareholder agreement made on or after 1 December 2016. It also removes the capital gains tax exemption relating to shares received as consideration for entering into an employee shareholder agreement on or after the same date. Shares received under agreements made before that date are not affected.

Corporation tax reliefs for the employer company are not affected.

Simplifying the Pay As You Earn Settlement Agreement (PSA) process

As announced at Budget 2016 and following consultation, the Government will legislate in Finance Bill 2017 to simplify the process for applying for and agreeing PSAs. This will have effect in relation to agreements for the 2018-19 tax year and subsequent tax years.

Dates for 'making good' on benefits in kind

As announced at Budget 2016 and following consultation, the Government will legislate in Finance Bill 2017 to ensure an employee who wants to 'make good' on a non-payrolled benefit in kind will have to make the payment to their employer by 6 July in the following tax year. 'Making good' is where the employee makes a payment in return for the benefit in kind they receive. This reduces its taxable value. This will have effect from April 2017.

Assets made available without transfer of ownership

The Government will introduce provisions in Finance Bill 2017 to clarify existing legislation so that employees will only be taxed on business assets for the period that the asset is made available for their private use. This will take effect from 6 April 2017.

Life insurance policies

As announced at Budget 2016 and following consultation, the Government will legislate in Finance Bill 2017 regarding the disproportionate tax charges that arise in certain circumstances from life insurance policy part-surrenders and part-assignments. This will allow applications to be made to HMRC to have the charge recalculated on a just and reasonable basis. This will lead to fairer outcomes for policyholders. The changes will take effect from 6 April 2017.

Personal portfolio bonds

As announced at Budget 2016 and following consultation, the Government will legislate in Finance Bill 2017 to take a power to amend by regulations the list of assets that life insurance policyholders can invest in without triggering tax anti-avoidance rules. The changes will take effect on Royal Assent of Finance Bill 2017.

Junior Individual Savings Accounts (ISAs) and Child Trust Fund limit

The annual subscription limit for Junior ISAs and Child Trust Funds will be uprated in line with the Consumer Prices Index (CPI) to £4,128, alongside the ISA subscription limit increase from £15,240 to £20,000, which was previously announced at Budget 2016. This will be effective from 6 April 2017.

National Insurance contributions

National Insurance thresholds

From April 2017, the National Insurance secondary threshold (employer threshold) and the National Insurance primary threshold (employee threshold) are to be aligned. This move was recommended by the Office of Tax Simplification (OTS) in their March 2016 report on The closer alignment of income tax and national insurance in which it said that "aligning the NICs primary and secondary thresholds would be a good place to start", and the thresholds have been aligned at various stages in the past. This measure means that from April 2017 both employees and employers will start paying National Insurance on weekly earnings above £157.

Class 2 NICs

As announced at Budget 2016, Class 2 NICs are to be abolished from April 2018. The Autumn Statement confirmed that, once Class 2 NICs are abolished, self-employed contributory benefit entitlement will be accessed through Class 3 and Class 4 NICs. All self-employed women will still be able to access the standard rate of maternity allowance and self-employed people with profits below the small profits limit will be able to access contributory employment and support allowance through Class 3 NICs.

Removing National Insurance from the effects of the Limitation Act

From April 2018, the Government is to remove NICs from the effects of the Limitation Act 1980 and Northern Ireland equivalent. The Government is to consult on the details, but this measure will extend the time limits and recovery process for enforcing National Insurance debts to align them with other taxes (although Class 4 NIC debts are already aligned).

Termination payments

As announced at Budget 2016, and following a consultation over the summer, from April 2018 termination payments of over £30,000, which are subject to income tax, will also be liable to employer (but not employee) NICs. As a result of the consultation, tax will only be applied to the equivalent of an employee's basic pay if their notice is not worked. The first £30,000 of a termination payment will continue to be exempt from income tax and NICs. The Government is to monitor this change and will address any further manipulation if it deems it necessary.

Inheritance tax

Contributed by Julie Clift

Inheritance tax reliefs

From Royal Assent of the Finance Bill 2017, inheritance tax relief for donations to political parties will be extended to parties with representatives in the devolved legislatures, as well as parties that have acquired representatives through by-elections. This change is designed to ensure consistent and fair treatment for all national political parties with elected representatives.

See also the Property taxes section for coverage of the inheritance tax charge on UK residential property within overseas structures.

Julie Clift BA, CTA

Julie joined Wolters Kluwer as a senior technical editor in 2003 and has worked on some of our leading tax products including *British Tax Reporter*, *Inheritance Tax Reporter*, *British Tax Guide* and *Tax Adviser*.

Julie began her career at Arthur Andersen before joining EY where she specialised in personal tax issues. She was deputy editor of *The Tax Journal* before returning to practice as a tax editor in the Deloitte Tax Policy Group.

Capital gains tax

Contributed by Mark Cawthron

Offshore funds

UK taxpayers who have invested in offshore reporting funds pay tax on their share of a fund's reportable income, and capital gains tax (CGT) on any gain on disposal of their shares or units. The Government will legislate to ensure that performance fees incurred by such funds, and which are calculated by reference to any increase in the fund's value, are not deductible against reportable income from April 2017 and instead reduce any tax payable on disposal gains. The Government says "this equalises the tax treatment between onshore and offshore funds".

Authorised contractual schemes - reducing complexity for investors

Legislation will be introduced in Finance Bill 2017 and secondary legislation, to clarify the rules on chargeable gains and investments by co-ownership authorised contractual schemes (CoACS) in offshore funds, as well as information requirements on the operators of CoACS.

This follows on from announcement at Budget 2016 (March 2016) and subsequent consultation.

See also the Personal Tax section for the removal of the capital gains tax exemption relating to shares received as consideration for entering into an employee shareholder agreement.

Mark Cawthron LLB, Solicitor, CTA

Mark is a tax lawyer. He was formerly a partner in the City office of law firm Pinsent Masons and its predecessor firms from 1990 to 2007 and of the US law firm, Bryan Cave, from 2007 to 2010.

He has wide experience of corporate and business tax fields, particularly in: M&A; corporate finance and corporate restructurings; private equity (for institutional investors and management teams); real estate investment and development; employee share incentives; employment arrangements and their termination.

Corporation tax and business tax

Contributed by Paul Davies

Corporation tax rates

The Government reaffirmed its commitment to its business tax roadmap which means that previously enacted corporation tax rates remain as follows:

- **Financial year 2017 - 19%**
- **Financial year 2018 - 19%**
- **Financial year 2019 - 19%**
- **Financial year 2020 - 17%**

The Northern Ireland corporation tax regime will be amended in Finance Bill 2017 for the benefit of SMEs trading in Northern Ireland; to minimise abuse and to ensure it is fit for commencement when the Northern Ireland Executive demonstrates its finances are on a sustainable footing.

Corporation tax losses

Rules to impose a 50% restriction on the amount of profit that can be offset with carried forward corporation tax losses will take effect from 1 April 2017, subject to a £5 million allowance for each standalone company or group. The rules will also allow a greater degree of flexibility over the types of profit that can be relieved by losses incurred after that date. The restriction of the amount of profit that banks can offset with carried forward losses incurred prior to April 2015 remains at 25%. These proposals were the subject of a consultation exercise during 2016.

Corporate interest expense

Corporation tax relief on interest payments by large companies will be restricted with effect from 1 April 2017. The rules will limit corporation tax relief where:

- a corporate group has net interest expenses of more than £2 million;
- the group has net interest expenses of more than £2 million; and
- the group's net interest to earnings ratio in the UK exceeds that of the worldwide group.

Paul Davies MA (Cantab), ACA

Paul qualified as a Chartered Accountant with PWC where he gained experience of audit and business advisory services and specialised in corporate tax matters.

From PWC he moved to become Head of Tax for Northern Rock where he spent 16 years, after which he was in charge of managing the worldwide tax affairs of a fast growing hi-technology company in the communications sector.

Paul has a wide range of tax experience ranging from employee share schemes to VAT partial exemption matters. He was awarded North East Tax Advisor of the Year in 2010.

Exceptions to the rules will be designed to protect investment in public benefit infrastructure. The rules will apply equally to banking and insurance groups. These changes were consulted on during 2016 and implement into UK law Action 4 of the OECD's Base Erosion and Profit Shifting (BEPS) Project.

Patent box

The Government will amend the Patent Box rules to cover situations in which research and development (R&D) activity is undertaken collaboratively under a cost-sharing arrangement. The intention is that companies should neither be penalised nor able to gain an advantage under these rules by organising their R&D activities in this way. Legislation will be enacted in Finance Bill 2017 so that the measures are effective for accounting periods commencing on or after 1 April 2017.

Substantial shareholdings exemption

The Government intends to reform the substantial shareholding exemption rules by “removing the investing requirement and providing a more comprehensive exemption for companies owned by qualifying institutional investors”. The changes follow a consultation exercise in 2016 and will be effective from 1 April 2017. Although further information is not presently available, this would appear to involve the abolition of the transferor company trading condition. No mention is made in the Autumn Statement documents of the target company trading condition.

Non-resident companies

The Government will consult on proposals to bring certain income streams of non-resident companies (currently charged to income tax) within the charge to corporation tax. This is to ensure that all companies are subject to the rules which apply generally for the purposes of corporation tax, including the rules for the limitation of tax relief for corporate interest expense and restriction of losses carried forward as described above. A consultation on these proposals will take place at Budget 2017 so they will not be in place for the commencement of the corporate interest expense and loss relief restrictions.

Insurance linked securities

Regulations will be made under powers in *Finance Act 2016* to establish a new tax regime for the issue of insurance linked securities (ILS). The regime allows the transfer of insurance risk to capital markets and investors in those markets and forms part of wider work to establish the UK as an attractive base for insurance special purpose vehicles (ISPVs) issuing ILS. The measures will involve:

- exempting the reinsurance activity of ISPVs from corporation tax;
- a withholding tax exemption for investors;
- UK investors being taxed on investment income according to their facts and circumstance; and
- overseas investors being taxed according to the regime in their country of residence.

To qualify, businesses must be authorised to issue ILS by the Prudential Regulation Authority and Financial Conduct Authority. The measures were first announced at Budget 2015 and consulted on during 2016.

Separate regulations are also being published on the authorisation, supervision and corporate structure of ILS vehicles.

Banks

The bank levy will be restricted to UK balance sheet liabilities with effect from 1 January 2021 and there will be exemptions for:

- certain UK liabilities relating to the funding of non-UK companies; and
- UK liabilities relating to the funding of non-UK branches.

The Government will provide further information at Budget 2017 and legislation is expected in Finance Bill 2017. The measure was originally announced at Summer Budget 2015.

Oil and gas

The Government reaffirmed its commitment to Driving Investment, the long term plan for the oil and gas industry designed to ensure a stable tax regime that will maximise the North Sea-based economy. The Government will also simplify Petroleum Revenue Tax (PRT) reporting requirements and reduce administrative costs by simplifying the process for opting fields out of the PRT regime and removing certain reporting requirements from PRT forms.
The simplification measures are effective from 23 November 2016.

Authorised investment funds

The Government intends to modernise the rules on the taxation of dividend distributions by authorised investment funds to corporate investors. This will allow exempt investors (e.g. pension funds) to obtain credit for tax paid by the funds. The proposals can be implemented by way of secondary legislation, a draft of which will be published in early 2017.

Museums and galleries tax relief

The Government will ensure that the museums and galleries tax relief announced at Budget 2016 will be accessible to a wider range of institutions by extending it to include permanent exhibitions. Relief will be available as follows, (subject to an overall cap of £500,000 of qualifying expenditure per exhibition):

- relief for touring exhibitions; and
- 20% for non-touring exhibitions

The relief will be effective between 1 April 2017 and 1 April 2022 although it may be renewed following a proposed review in 2020.

Other measures

Other measures include:

- expanding corporation tax relief for contributions to grassroots sports with effect from 1 April 2017;
- clarification of capital allowance, chargeable gains and investment rules for the investment by co-ownership authorised contractual schemes in offshore funds, and to clarify information requirements for their operators;
- minor changes, effective 1 January 2017, to the hybrid and other mismatches rules enacted in Finance Act 2016 to ensure they operate as intended;
- an inflationary increase in the annual charges for the Annual Tax on Enveloped Dwellings (ATED) for the 2017-18 chargeable period;
- clarification and improvement of certain aspects of partnership taxation to ensure profit allocations to partners are fairly calculated for tax purposes.

Property taxes

Contributed by Mark Cawthron

Property income and gains

£1,000 property income allowance

At March Budget 2016, the Government announced the introduction of a £1,000 allowance for property income, from 6 April 2017 (the 2017-18 tax year). The Budget materials indicated that individuals (emphasis added) with property income below £1,000 in a tax year would no longer need to declare or pay tax on that income. Those with income above the allowance would be able to calculate their taxable profit either by deducting their expenses in the normal way or by deducting the allowance from their gross income.

The Government confirmed that this measure will be brought forward in Finance Bill 2017. A similar (and separate) allowance is confirmed in respect of trading income, which will now also apply to certain miscellaneous income from providing assets or services.

Letting agent's fees

Whilst not strictly tax-related, the Government announced that letting agents will no longer be able to charge renters fees, for example when they sign a new tenancy agreement. This will be subject to consultation in due course, though the Chancellor in his speech indicated he wished to see the reform made "as soon as possible".

It will be interesting to see whether this reform, once introduced, will have an impact on residential lease rents (and perhaps first-year rents in particular).

Funds

Investment in real estate is often undertaken through funds, and fund operators will be interested in developments (whether or not related to the real estate asset class) that affect the funds sector. The Autumn Statement included a handful of announcements.

Authorised contractual schemes - reducing complexity for investors

Legislation will be introduced in Finance Bill 2017 and secondary legislation, to clarify the rules on capital allowances, chargeable gains and investments by co-ownership authorised contractual schemes (CoACS) in offshore funds, as well as information requirements on the operators of CoACS.

Mark Cawthron LLB, Solicitor, CTA

Mark is a tax lawyer. He was formerly a partner in the City office of law firm Pinsent Masons and its predecessor firms from 1990 to 2007 and of the US law firm, Bryan Cave, from 2007 to 2010.

He has wide experience of corporate and business tax fields, particularly in: M&A; corporate finance and corporate restructurings; private equity (for institutional investors and management teams); real estate investment and development; employee share incentives; employment arrangements and their termination.

This follows on from announcement at Budget 2016 (March 2016) and subsequent consultation.

Authorised investment funds: dividend distributions to corporate investors

The Government says it will modernise the rules on the taxation of dividend distributions to corporate investors in a way which allows exempt investors, such as pension funds, to obtain credit for tax paid by authorised investment funds and will publish proposals in draft secondary legislation in early 2017.

Offshore funds

UK taxpayers invested in offshore reporting funds pay tax on their share of a fund's reportable income, and Capital Gains Tax (CGT) on any gain on disposal of their shares or units. The government will legislate to ensure that performance fees incurred by such funds, and which are calculated by reference to any increase in the fund's value, are not deductible against reportable income from April 2017 and instead reduce any tax payable on disposal gains. The Government says this equalises the tax treatment between onshore and offshore funds.

Corporation tax interest and loss relief restrictions

The Government has confirmed it will proceed with the previously announced reforms to interest and loss relief, from April 2017. Both reforms have the potential to be relevant in connection with property businesses carried on by companies (or by groups of companies).

These rules will, firstly, limit deductions where a group has net interest expenses of more than £2 million, net interest expenses exceed 30% of UK taxable earnings and the group's net interest to earnings ratio in the UK exceeds that of the worldwide group. The Government says it will widen the provisions proposed to protect investment in public benefit infrastructure. Banking and insurance groups will be subject to the rules in the same way as groups in other industry sectors.

The rules will also restrict the amount of profit that can be offset by carried forward losses to 50% from April 2017, while allowing greater flexibility over the types of profit that can be relieved by losses incurred after that date. The restriction will be subject to a £5 million allowance for each standalone company or group. In implementing the reforms the Government says it will take steps to address unintended consequences and simplify the administration of the new rules. The amount of profit that banks can offset with losses incurred prior to April 2015 will continue to be restricted to 25% in recognition of the exceptional nature and scale of losses in the sector.

Background

At March Budget 2016, the Government had announced the introduction of new rules to limit the tax relief that companies can claim for their interest expense. This tied in with the OECD recommendations, published in October 2015, for best practice in this area as one of the outputs from its Base Erosion Profit Shifting ("BEPS") project.

At the same time, the Government also announced reform of the rules governing certain corporate losses carried forward from earlier periods:

- to give all companies more flexibility by relaxing the way in which they can use losses arising on or after 1 April 2017 when they are carried forward. These losses would be useable against profits from different types of income and other group companies;
- to restrict the use of carried forward losses so that companies cannot reduce their profit arising on or after 1 April 2017 by more than 50%. This restriction would apply to a company or group's profits above £5m. Carried forward losses arising at any time would be subject to the restriction. For banking companies, losses within the separate bank loss restriction would continue to be subject to those rules.

Consultation documents in relation to the detailed design and delivery of these two reforms (as distinct from the policy principle) were issued in May 2016. The Consultation document on use of corporate losses set out a detailed model for delivery of the Government's stated objectives. At its simplest, this works as follows:

- calculate the company's taxable profit after all reliefs (including in-year losses and in-year group relief), but exclusive of (a) carried forward losses, (b) carried back reliefs, and (c) post-April 2017 carried forward losses to be claimed from other group companies,
- allow up to £5m of that profit to be relieved in full by carried forward losses,
- allow up to 50% of remaining profit to be relieved by remaining carried forward losses (with pre-April 2017 losses used in priority to post-April 2017 losses),
- if there is still profit that can be relieved within the 50% limit, allow this profit to be relieved by post-April 2017 carried forward losses that have been claimed from other companies in the group,
- carried back losses are not to be taken into account in calculating the amount of profit to which the restriction applies, instead carry back to be allowed and set against any profit that remains after the restriction has been applied.

Social investment tax relief

From April 2017, the amount of investment that social enterprises aged up to 7 years old can raise through social investment tax relief (SITR) will increase to £1.5 million. Certain activities, including asset leasing and on-lending, will be excluded. Investment in nursing homes and residential care homes will be excluded initially, however the Government says it intends to introduce an accreditation system to allow such investment to qualify for SITR in the future. See also the Personal tax section.

UK residential property within overseas structures

The Government has confirmed that from April 2017, inheritance tax will be charged on UK residential property when it is held indirectly by a non-domiciled individual through an offshore structure. In the Autumn Statement document, this is referred to as closing a "loophole" used by non-domiciled individuals to avoid IHT.

Background

HM Treasury previously issued, in August 2016, a consultation document, Reforms to the taxation of non-domiciles: further consultation. This confirmed that UK residential properties owned indirectly through offshore structures would be taken out of the definitions of "excluded property" in IHTA 1984, s. 6 and (for settled property) s. 48. This would apply therefore whether the overseas structure is owned by an individual or a trust.

The Consultation document said:

> "Once the legislation comes into effect, shares in offshore close companies and similar entities will no longer be excluded property if, and to the extent that, the value of any interest in the entity is derived, directly or indirectly, from residential property in the UK. **There will be no change to the treatment of companies other than close companies and similar entities (emphasis added).**
>
> Similarly, where a non-domiciled individual is a member of an overseas partnership which holds a residential property in the UK, such properties will no longer be treated as excluded property for the purposes of IHT."

The proposal was for the new rules to be brought forward in Finance Bill 2017, and have effect from 6 April 2017.

The issues thrown open for consultation included:

How to define the types of property that will become liable to IHT: The Government was leaning towards the definition used for disposals of UK residential property by non-residents (introduced by Finance Act 2015 and found in Taxation of Chargeable Gains Act 1992, Sch. B1, para. 4);

- **changes of use:** the proposal was for an "all-or-nothing" approach (rather than "time apportionment"), namely that a dwelling will be within the charge to IHT where it has been a dwelling at any time within the two years preceding the chargeable event;
- **valuation:** the proposal was that the "estate" for IHT purposes will include the value of property (that would otherwise be excluded property) to the extent that any underlying assets consist of UK residential property. This will take account of relevant debts - those which relate exclusively to the property, such as amounts outstanding on a mortgage taken out to purchase the property (one assumes too the latent CGT charge on growth in value of the underlying property may, or ought to, get taken into account in valuing the relevant property). The Government also proposes to include a targeted anti-avoidance rule, to disregard any arrangements whose whole or main purpose is to avoid or mitigate a charge to IHT on UK residential property; and
- **accountability:** the proposals included that HMRC should have an expanded power to impose the IHT charge on indirectly-held residential property so that the property cannot be sold until any outstanding IHT charge is paid. It would seem that the mechanism here will be important if it is to be administratively workable.

The view has been expressed by some commentators that, in light of this change to the IHT treatment, the right option for a company which is subject to the annual ATED charge may well be for the company to be wound up and the property transferred to individual shareholders.

But a company holding commercially let residential property which is outside the ATED charge might be considered for retention within the corporate envelope, despite the loss of IHT protection from April 2017. This is because such a company may enjoy a lower rate of income tax on rental income, and a lower rate of CGT on sale.

Annual tax on enveloped dwellings

The Government confirmed that the annual charges for the Annual Tax on Enveloped Dwellings (or ATED) will rise in line with inflation for the 2017-18 chargeable period.

Business rates

In his Autumn Statement speech, the Chancellor said that, as part of "sticking to the Business Tax Roadmap" set out at March 2016, the Government would "implement the business rates reduction package worth £6.7 billion"; further, that the Communities Secretary "will lower the transitional relief cap from 45% next year to 43%, and from 50% to 32% the year after".

Full-fibre infrastructure relief

A new 100% business rates relief for new full-fibre infrastructure, for a five year period, will be provided from April 2017.

This is part of a package which involves £1bn government investment to support the private sector to roll out more full-fibre broadband by 2020-21, and to support trials of 5G mobile communications.

Rural rate relief

The Government says that to remove the inconsistency between rural rate relief and small business rate relief it will double rural rate relief, from 50% to 100%, from 1 April 2017, saving a business up to £2,900 a year.

This relief is available to businesses in rural areas with a population under 3,000, where that business is:

- the only village shop or post office with a rateable value of up to £8,500; or
- the only public house or petrol station with a rateable value up to £12,500.

Budget 2016 announcements

Business rates have gained a much higher profile in recent years, particularly as we approach the 2017 revaluation. It's of interest to note therefore HM Treasury's Budget 2016 document (March 2016), which had included the following announcements on business rates:

- **Indexation** a change to the annual uprating of business rates in England from the Retail Prices Index to the Consumer Price Index, from 1 April 2020;
- **Small Business Rate Relief:** the permanent doubling of SBRR in England from 1 April 2017, and the raising of the threshold in England to rateable values of up to £12,000 tapering to £15,000 from 1 April 2017;
- **Standard Multiplier:** the raising of the threshold at which business rates bills in England are calculated using the standard multiplier to properties with rateable values of £51,000 and above from 1 April 2017;
- **Local newspapers:** the introduction of a £1,500 business rates discount for office space occupied by local newspapers in England, up to a maximum of one discount per local newspaper title and per hereditament, and up to state aid limits, for two years from 1 April 2017;
- **Business rates long-term review:** publication of a summary of responses received as part of the long-term review of business rates in England in March 2016;
- **Business rates modernisation:** working with local authorities to standardise business rates bills by 1 April 2017, ensure that all ratepayers can receive bills and make payments online by 1 April 2017 and ensure that all local authority billing and collection systems link with HMRC digital tax accounts by 2022;
- **Business rates valuation reform:** the introduction of more frequent (at least 3 yearly) revaluations of properties in England for business rates purposes and publication of a discussion paper in March 2016 outlining options to deliver this;
- **100% Business rates retention:** the piloting of 100% retention of business rates with Liverpool City Region, Greater Manchester and the Greater London Authority, and other city regions that have ratified their devolution deals.

Business rates appeals

The Government consulted in October 2015 on proposals for a new three-stage approach to business rates appeals: “Check, Challenge, Appeal”.

The Local Government Finance Act 1988 contains regulation making powers that are used to establish the existing business rates appeals system. These powers have been extended through provisions in the Enterprise Act 2016. The secondary legislation that deals with the existing appeals process is the *Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations* 2009 (SI 2009/2268) and the *Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations* (SI 2009/2269).

A further Consultation was put out in August 2016 on the statutory implementation of the “Check, Challenge, Appeals” approach.

One of the Government’s proposals in relation to appeals has been that the Valuation Tribunal, in considering an appeal, should order a change in the rateable value only where their view is that the valuation is outside the bounds of reasonable professional judgement. In cases where the Tribunal considers the valuation is within the bounds of reasonable professional judgement, no change will be made to the valuation. It is understood the Government has indicated a margin of up to 15 per cent might be regarded as acceptable for these purposes. This aspect has generated some considerable disquiet in business circles.

Subject to Parliamentary approval, the reformed system will come into force from 1 April 2017 (by way of the *Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations* 2016, to coincide with the national revaluation of rateable values.

Business rates are a devolved matter and these proposals apply to England only.

VAT and indirect taxes

Contributed by Stanley Dencher

Soft drinks industry levy

Draft legislation for the soft drinks industry levy is due to be published on 5 December 2016.

Insurance premium tax

The standard rate of insurance premium tax (IPT) is due to rise to 12% from 10% with effect from 1 June 2017.

Value added tax

VAT grouping

There will be consultation on the treatment of VAT groups.

Retail export scheme

There will be government funding to helpfully digitise the retail export scheme (RES), which should cut the administrative burden for travellers.

Zero-rating for adapted motor vehicles

Some persons have exploited the zero-rating of adapted motor vehicles for disabled users of wheelchairs. Thus, the relief will be clarified.

Flat-rate scheme

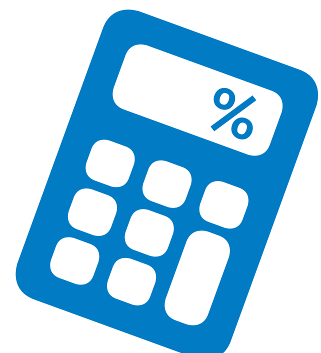
A new 16.5% rate applies to the flat-rate scheme (FRS) from 1 April 2017 for businesses with limited costs, such as many labour-only businesses. There will be anti-forestalling provisions.

See also the tax avoidance and evasion section.

Stanley Dencher BCom, FCA, CTA (Fellow), AIIT

Stanley was a practitioner for nine years before joining Wolters Kluwer as a technical editor in 1984, working primarily on VAT publications. He wrote *Personal Trading Losses* and is co-author of *Company Cars*, both published by Wolters Kluwer.

For many years Stanley presented tax seminars for the ICAEW and CIOT and for training organisations all over the UK.



Energy and transport taxes

Contributed by Stanley Dencher

Fuel duty

The fuel duty rate is frozen for the seventh successive year.

Company car tax

For company car tax in 2020-21:

- there will be new and lower bands for the lowest emitting cars; and
- the appropriate percentage for cars emitting greater than 90g CO_2/km will rise by 1 percentage point.

Air passenger duty

After the UK has left the EU, there should be a review of supporting regional airports in England from the potential effects of the devolution of air passenger duty (APD). Given the interaction with EU law, the government does not intend to legislate now.

Oil and gas

The reporting process will be simplified and the administrative costs of petroleum revenue tax (PRT) will be cut. Also, the government is still committed to the long-term plan for the oil and gas ring-fence regime. This discussed further at the Corporation and business taxes section.

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Tax avoidance and evasion

Contributed by Stephen Relf

The Government estimates that tax of £130bn has been secured as a result of action taken since 2010 to tackle avoidance, evasion and non-compliance; and the measures summarised below are expected to add another £2bn to the pot. Many of these measures have been announced before. However, one new measure stands out - the introduction of a new VAT flat rate for limited cost traders, effective from 1 April 2017. The Government has published a Technical Note ahead of the publication of draft legislation in December.

Avoidance

Disguised remuneration schemes

Measures to tackle the use of disguised remuneration schemes by employers and employees were announced at Budget 2016. The Government will extend these changes to the self-employed, and will restrict relief for employers' contributions in order to make the schemes less attractive for employers.

The Government expects to raise £630m by 2021-22 as a result of its actions in this area.

Strengthening tax avoidance sanctions and deterrents

The Government will push ahead with its plans to introduce a new penalty for a person who enables another person or business to use a tax avoidance scheme that is defeated by HMRC. Further, the Government will remove the defence of having relied on non-independent advice as taking reasonable care when considering penalties for users of tax avoidance schemes.

This measure was consulted on earlier in the year.

HMRC counter-avoidance

The Government will invest further in HMRC to increase its activity on countering avoidance and taking cases to court. The Government expects this measure to bring forward over £450m in revenue by 2021-22.

Stephen Relf BA, MPhil, ACA, CTA

Stephen is a Chartered Accountant and Chartered Tax Adviser with a wide experience of tax gained at a Big Four firm, in industry and in his own practice.

Stephen has written extensively on tax, contributing to a number of publications including CCH products *Tax Reporter and Tax Planning*.

Prior to joining Wolters Kluwer, Stephen led the CIOT's technical team. This involved engaging with the UK Government and others through written submissions and face-to-face meetings with a view to improving the UK's tax system. Stephen continues to be involved with the CIOT through its technical sub-committees and in particular the Working Together Sub-committee.

Tackling exploitation of the VAT relief on adapted cars for wheelchair users

The Government will clarify the application of the rules in this area in order to prevent abuse of the relief.

VAT Flat Rate Scheme

A new 16.5% rate will apply from 1 April 2017 for limited cost traders. The Government hopes that this measure will "level the playing field", bringing in a staggering £695m of additional revenues by 2021/22, without impacting on "the small businesses that use the scheme as intended".

In Technical Note (www.gov.uk/government/publications/tackling-aggressive-abuse-of-the-vat-flat-rate-scheme-technical-note/tackling-aggressive-abuse-of-the-vat-flat-rate-scheme-technical-note) the term "limited cost trader" is defined as a trader whose VAT inclusive expenditure on goods is either:

- less than 2% of their VAT inclusive turnover in a prescribed accounting period; or
- greater than 2% of their VAT inclusive turnover but less than £1,000 per annum.

The Government will introduce an online tool that will help businesses determine whether they should use the new rate.

The new rate will apply from 1 April 2017. Legislation intended to prevent a limited cost trader from continuing to use a lower flat rate beyond 1 April 2017 has been published. (see sections 8.2 and 9.7 of *VAT Notice 733: Flat rate scheme for small businesses* - www.gov.uk/government/publications/vat-notice-733-flat-rate-scheme-for-small-businesses/vat-notice-733-flat-rate-scheme-for-small-businesses)

Draft secondary legislation providing for the new rate will be published on 5 December 2016. Interested parties will have 8 weeks to comment on the draft legislation.

Updating the VAT Avoidance Disclosure Regime

Following consultation (www.gov.uk/government/consultations/strengthening-the-tax-avoidance-disclosure-regimes-for-indirect-taxes-and-inheritance-tax), the government will strengthen the regime for disclosure of avoidance of indirect tax, making scheme promoters primarily responsible for disclosing schemes to HMRC and extending the scope of the regime to include all indirect taxes.

Legislation to have effect from 1 September 2017 will be introduced in Finance Bill 2017.

A penalty for participating in VAT fraud

The Government will introduce a new fixed rate penalty of 30% for businesses and company officers who knew, or should have known, that their transactions were connected with VAT fraud. This measure was first announced at Budget 2016 and was consulted on (www.gov.uk/government/consultations/penalty-for-participating-in-vat-fraud) earlier this year.

Legislation providing for the new penalty will be included in Finance Bill 2017. It will be implemented following Royal Assent of the Finance Bill.

Power to examine and take account of goods at any place

The Government will introduce legislation in Finance Bill 2017 to extend the current Customs and Excise powers of inspection, enabling officers to examine goods away from approved premises, to search goods liable for forfeiture, and to open or unpack any container.

This measure will take effect from Royal Assent of the Finance Bill.

Non-compliance

HMRC support for emerging insolvency risks

The Government has announced that HMRC will develop its ability to identify emerging insolvency risk, using external analytical expertise. HMRC will use this information to tailor its debt collection activity, improve customer service and provide support to struggling businesses.

Offshore tax evasion

Requirement to correct

The Government will introduce a new legal requirement to correct a past failure to pay UK tax on offshore interests within a defined period of time, and there will be new sanctions for those who fail to do so.

Requirement to register offshore structures

The Government will consult on a new legal requirement for intermediaries arranging complex structures for clients holding money offshore to notify HMRC of the structures and the related client lists.

Hidden economy

Hidden economy and money service businesses

The Government will legislate to extend HMRC's data-gathering powers to money service businesses in order to identify those operating in the hidden economy.

Tackling the hidden economy

Following consultation (www.gov.uk/government/collections/proposals-to-tackle-the-hidden-economy), the Government will consider the case for making access to licences, or services for businesses conditional on them being registered for tax. Further, the Government will develop proposals to strengthen sanctions for those who repeatedly and deliberately participate in the hidden economy.

Further details are promised at Budget 2017.

Tax administration

Contributed by Meg Wilson

Making Tax Digital

The Government has advised that in January 2017 it will publish its responses to the Making Tax Digital (MTD) consultations. It will also publish provisions to implement previously announced changes.

The MTD consultations set out the Government's proposals for transforming the tax system to make it one of the most digitally-advanced tax administrations in the world by 2020. The changes are set to be rolled out from April 2018 and among the issues addressed in the consultations were mandatory digital record keeping and the provision of quarterly updates by businesses, self-employed people and landlords. The consultations closed on 7 November 2016 and HMRC are currently reviewing the responses submitted.

Meg Wilson BA, CTA

Meg joined Wolters Kluwer as a full-time tax writer in 2012 and works on several areas of the *Tax Reporter* and the *NIC Guide*. She also prepares case reports for tax decisions released by tribunals and courts.

Meg qualified as a Chartered Tax Adviser in 1999 and has previously worked for HLB Kidsons, KPMG and Hazlewoods, a top 40 firm in Gloucestershire.

Tax simplification

The Government has welcomed and responded to the Office of Tax Simplification (OTS) reviews published this autumn, including on the alignment of income tax and NICs. The Government has now asked the OTS to carry out reviews on aspects of the VAT system and on stamp duty on share transactions.

Tax enquiries: closure rules

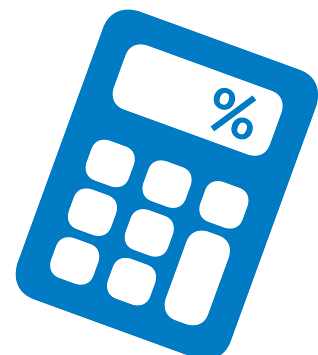
The Government has announced that it will legislate to provide HMRC and taxpayers with earlier certainty on individual matters in large, high risk and complex tax enquiries.

No further details have been published on this measure, but it is hoped that the Government has taken on board the responses received to its Tax enquiries: closure rules consultation which closed in March 2015. The consultation proposed that HMRC should be able to refer matters to the tribunal, with a view to achieving early resolution of one or more aspects of an enquiry into a tax return.

The summary of responses noted that there was overwhelming disagreement with the suggestion that HMRC should be able to use the proposed legislative change unilaterally. Instead, respondents thought that both parties involved in a tax enquiry should have the ability to approach the tribunal, to seek closure of a particular aspect.

Increased HMRC external performance reporting

From 2017 HMRC are going to publish their customer service performance data more regularly and in greater detail. This will include monthly publications of digital, telephony and postal performance data, and new customer complaints data.



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