Insight and analysis for the business tax community

TAX JOURNAL

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Special edition

The Autumn Statement

Examining the key tax issues

'A wealth of eye-catching measures'
Chris Sanger • Head of tax policy • EY

'An amalgam of new measures and previously trailed changes'
Tony Beare • Partner • Slaughter and May

'The message from HMRC looks to be ... no more Mr Nice Guy'
James Bullock • Head of litigation & compliance • Pinsent Masons

'Hard working people on high incomes get absolutely nothing'
Peter Vaines • Partner • Squire Sanders

'For SMEs, there is nothing to cause paroxysms of despair'
David Whiscombe • Head of tax • BKL Tax

'The chancellor charts a prudent course'
John Hawksworth • Chief economist • PwC

BACK TO BASICS
Intra-group reorganisations
Howard Murray & Sara Stewart • Herbert Smith Freehills

ASK AN EXPERT
Purchase of own company shares
Jackie Wheaton • Senior manager • Moore Stephens

IN BRIEF
- Should HMRC value goodwill?
- Why EC proposals may not require significant UK changes
- The TUC's report on deficiencies in the GAAR

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From the editor

This Autumn Statement was the one the chancellor 'hoped he'd be able to deliver for the last three years' (Ian Stewart, p 10). There was good news on the economy 'but it all came with heavy caveats attached' (John Hawksworth, p 23). On the tax front, anti-avoidance remains centre stage – 'the message from HMRC looks to be "no more Mr Nice Guy"' (James Bullock, p 21). For SMEs, there was little to excite, but 'nothing to cause paroxysms of despair either' (David Whiscombe, p 22). It was all about rewarding 'hard-working people', but 'those with high incomes get absolutely nothing' (Peter Vaines, p 22). There was confirmation that non-residents will be charged CGT on disposals of UK property, but 'key questions remain' (Nick Farmer, p 13). Many advisers remain concerned about the partnership and NIC changes, but perhaps that's not surprising given that 'for a mid-tier law firm, the extra NIC bill could easily be over £1m' (Mark Saunders, p 15). Banks are again among the losers: 'seven rate rises in three years sends a stark message whether Britain really is open for business' (Matthew Barling, p 14). For VAT advisers, however, 'if ever there was a damp squib, this was it' (Richard Woolich, p 16).

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Note: Publication of the next edition will be on Saturday 14 December.

News

Covering the key developments in tax

People and firms

KPMG has announced the appointment to corporate tax partner of **Harinder Soor** and **Paul McCartney**, as well as six appointments to director within the corporate tax, people services and legal services teams.

Patrick Stevens has been appointed as the new tax policy director of **ATT** and **CIOT**, overseeing the professional and technical work of both bodies.

The winners of **HMRC's external engagement awards** for 2013, which 'recognise stakeholders who help to make the UK's tax system simpler and more transparent', were given to: the Public Protection Division of Blackpool Council, for its support of the Blackpool Holiday Industry taskforce launched in July 2013; Karen Thomson (Chartered Institute of Payroll Professionals and member of HMRC's Administrative Burdens Advisory Board) for helping to ensure that the impact of RTI on employers and their payroll processes was minimal; Philip Paur (Deloitte) for his contribution to the development and delivery of HMRC's policy and operational delivery on expatriate taxes; and Brian Palmer (Association of Accounting Technicians) for his dedication to transparency, including being instrumental in driving HMRC's decision to publish information about post and contact centre performance.

To publicise tax promotions, appointments, or firm news, email paul.stainforth@lexisnexis.co.uk.

Business taxes

Autumn Statement

The chancellor delivered his Autumn Statement on Thursday 5 December 2013. See page 8 onwards for coverage of the measures announced.

Draft clauses for inclusion in the Finance Bill 2014 are due to be published on 10 December 2013. There will then be a period of consultation on those clauses, which will close on 4 February 2014.

Survey on UK tax competitiveness

According to KPMG's annual survey on tax competitiveness, the UK's tax regime 'has maintained its position as one of the most attractive against key competitors as perceived by executives in large businesses operating in Britain', and 'simplicity and stability were ranked as more important than a low effective tax rate'. Key findings from the survey are as follows:

- The UK's tax regime has maintained its position as one of the most attractive against key competitors.
- The tone of the tax debate in the media has had a mixed effect: UK PLCs say it could deter investment; while foreign-owned subsidiaries are more neutral.
- The patent box is already stimulating research and manufacturing investment in the UK.
- Targeted incentives for capital investment could encourage growth over the next 12 months.
- The trend towards increasing transparency continues – companies generally recognise the need to become more transparent and many are taking action.
- Respondents overwhelmingly support the OECD's work on base erosion and profit shifting, although some say that some of the possible changes could reduce the UK's tax take.

264 banks signed up to code of practice on tax

The government has published a list of 264 banks which have unconditionally adopted its 'voluntary' code of practice on taxation for banks as at 5pm on 4 December (see www.bit.ly/IS8uVZ).

Chris Hutley-Hurst, European counsel in the London office of Skadden, Arps, Slate, Meagher & Flom, said: 'The publication of the names of banks operating in the UK that have newly adopted or re-adopted the code ... marks a key step towards the use of the "court of public opinion" and the tacit threat of reputational damage in order to ensure tax compliance from a specified group of UK taxpayers, and, in turn, to assist in the administration of UK taxes more generally. HMRC is wielding a powerful tool to ensure compliance with the code. As a result, banks could take highly conservative approaches to transactions, even where the risk of being in breach of the code is remote.

'Although the code and the rules regarding public naming are currently only aimed at banks, their likely success could pave the way for an expansion to other taxpayers, especially multinational enterprises which are currently the focus of proposals to prevent base erosion, profit shifting and double non-taxation,' he added.

RTI consultation

HMRC is seeking views on legislation about real time information (RTI), including penalties, direct collection and exempt employers. The deadline for the submission of comments is 11:45pm on 24 January 2014. See www.bit.ly/1bj7UK8.

International taxes

OECD BEPS timetable for 2014

The OECD has published a timetable of forthcoming consultations and discussion drafts scheduled for 2014 in connection with its action plan on base erosion and profit shifting (BEPS). See www.bit.ly/19jE7h6.

International tax agreements

Several international agreements have been signed in the past week. The UK has signed FATCA-style intergovernmental agreements with Montserrat, the Turks and Caicos Islands and the British Virgin Islands. As well as signing UK FATCA intergovernmental agreements, the Crown dependencies and overseas territories have also agreed to be part of the G5 multilateral automatic tax information exchange standard (which in April 2013, the G5 – the UK, France, Germany, Italy and Spain – committed to developing and piloting: the so-called 'G5 FATCA'). Of the UK's ten Crown dependencies and overseas territories, only Anguilla is yet to sign up. As with all these types of bilateral agreements, they will come into force when each party has notified the other in writing that it has completed the necessary internal procedures.

Luxembourg, Liechtenstein, Colombia, Greece, Iceland and Malta are the latest countries to commit to automatic exchange of tax information in the G5 FATCA pilot. A total of 37 countries have now signed up to the project. By way of background, in April 2013, the UK, along with France, Germany, Italy and Spain (the G5), committed to developing and piloting a multilateral, automatic tax information exchange standard. The standard, broadly based on the principles and approach set out in the model 1 agreement used to implement US FATCA between individual countries and the US, is intended to form the basis of a new international standard for the automatic exchange of tax information, which is seen as an essential part of enabling tax administrations around the world to address abusive tax evasion.

Costa Rica and the Cayman Islands have signed intergovernmental agreements (IGAs) with the US under US FATCA. The Costa Rican IGA (signed on 26 November 2013) is based on the reciprocal model 1A agreement. The Cayman Islands IGA (signed on 29 November 2013), based on the non-reciprocal model 1B, was originally initialled on 13 August 2013 pending formal UK governmental approval.

Following the announcement by the US a few months ago of a delay of six months before the commencement of US FATCA, the UK government has announced that this revised timeline will also apply to similar agreements signed with the Crown dependencies and overseas territories. This means that any commitments for UK financial institutions will now commence as of 30 June 2014. Only accounts in existence on or after this date will be subject to reporting, and 2014 will be the first year that the reporting covers.

Administration & appeals

PAC hearing into gift aid

The Public Accounts Committee hearing into gift aid took place on 2 December, with oral evidence being heard from Lin Homer, HMRC chief executive and permanent secretary, and David Richardson, HMRC director of counter avoidance.

In the sometimes heated discussion about the changes to the tax law in 2000 regarding charitable giving, PAC chair Margaret Hodge told Lin Homer: 'What is really irritating about this conversation is that when this was introduced in 2000, the Treasury at that point promised a proper evaluation. Had you done that at that time, we would not be having this argument this afternoon. This new system gives taxpayers' money back into the hands of high-worth individuals and companies. That is what it does. You are trying to say there is a bit of evidence, but if you had done a proper evaluation, you would not end up with the conclusion that the NAO came to in its report – which you signed off, Lin – that there is insufficient evidence to conclude that reliefs on donations in their current form and in the way they are implemented provide value for money'. Lin Homer responded that 'the 2000 legislation did not fundamentally change the nature of the tax system around charitable giving.'

The hearing also touched on the *Greene King* case, with Margaret Hodge asking: 'In this particular case, Ernst and Young devised the scheme. It asked Greene King for 10% of its tax saving, settled at 8%, and signed off the accounts as auditors to Greene King. Are you going to take action against the advisers and accountants in this instance?' Lin Homer replied: 'Where we believe that there is something we can do, civil or criminal, where we think there is a pattern or an approach that we should take, we will do it ... You can't do a criminal prosecution for tax avoidance.'

House of Lords Select Committee hearing

The House of Lords Personal Services Companies Select Committee hearing took place on Monday 2 December. Oral evidence was heard from Professor Judith Freedman, Pinsent Masons professor of taxation law at the University of Oxford; Kate Cottrell, tax consultancy expert and managing director of Bauer & Cottrell; Robin Williamson, technical director of the Low Incomes Tax Reform Group; Frank Haskew, head of the Tax Faculty at the ICAEW; Jason Piper, technical manager of tax and business law at the Association of Chartered Certified Accountants (ACCA); and Patrick Stevens, tax policy director at the CIOT.

Baroness Noakes opened the hearing with some figures, saying: 'HMRC believes that personal service companies have grown from around 90,000 in number when the IR35 legislation was introduced, to 200,000 now – while there has been a lack of clarity about these precise numbers, where is the growth coming from, and what's behind that?' Judith Freedman, Kate Cottrell and Robin Williamson broadly noted that this was due to different factors: a change in working practices over the past decade, increased flexibility, reduced headcount within organisations, and the recession, commenting that part of the problem was there was no standard definition for what a personal service company actually is. Judith Freedman said that there were different reasons why a worker might set up a personal service company – for example, a more entrepreneurial type might set one up with the intention of serving lots of clients, only to find that circumstances change and they only end up serving one – while Kate Cottrell noted that the IR35 population is 'massive': 'The statistics are questionable because no one exactly knows what a personal service company is, and the intention of a company can change after being set up.' Robin Williamson further pointed out that workers often have no real option; that for many low-paid workers, it was often a choice between working for an employer on their terms – even if that included personal service companies, umbrella companies, zero-hours contracts or a payday-by-payday arrangement – or not working at all. Written evidence can be submitted to the committee, to arrive no later than 31 December 2013, preferably by email to milnerp@parliament.uk.

GAAR 'will allow 99% of avoidance to continue', says TUC

The Trade Union Congress (TUC) this week released its report, *The deficiencies in the general anti-abuse rule*, criticising the government's GAAR as 'so poorly designed that it will allow 99% of tax avoidance to continue'. The report, written by Richard Murphy, concludes: 'It is our belief that the UK has not got the general anti-tax avoidance principle it needs from the general anti-abuse rule. We are not alone in thinking so.' (See also page 7.)

Paperless self-assessment

HMRC has announced plans for paperless self-assessment tax returns in a consultation document published last week. Under this system, customers will receive communications from HMRC electronically, rather than by letter. Changes to existing tax law are needed to enable HMRC to offer this improved service. The consultation, HMRC Digital Strategy – legislative changes to enable paperless self-assessment (available via www.bit.ly/1jqoJap), is seeking views on the proposed changes to legislation. The deadline for responses is 27 December 2013.

VAT gap estimate

HMRC has released its preliminary estimate of the VAT gap for 2012/13, based on full year consumer expenditure data, accounting for around two-thirds of the VAT total theoretical liability, with the remaining one-third being a forecast based on the estimates for the UK economy produced by the Office for Budget Responsibility. The VAT gap for 2012/13 is estimated at £12.9bn, which equates to around 11.4% of the estimated total VAT total theoretical liability. According to HMRC, the VAT gap has remained between 10% and 12% from 2009/10 onwards, and the second estimate for the VAT gap for 2012/13 will be published in spring 2014.

Press watch

Tax adviser in court over scheme exploiting rules on charitable giving: 'Tax adviser Matthew Jenner, the head of NT Advisors, has appeared in court amid claims his "blue box" tax planning strategy exploited rules on charitable giving, thereby allowing wealthy clients to avoid paying significant sums in tax. The scheme manipulated laws on charitable giving in order to allow clients to legally avoid paying tax. It follows controversy over a previous scheme marketed by Mr Jenner, known as the Cup Trust, which saw £176m raised for charity over two years, but the charities received only £155,000.'
The Times, 3 December 2013

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Cases

Reporting the tax cases that matter

Business taxes

Conditions for the application of FA 2003 Sch 23

In ***Metso Paper Bender Forrest Ltd v HMRC*** (TC03056 – 19 November 2013), Metso was applying against HMRC's decision to deny relief from corporation tax under FA 2003 Sch 23. The provisions grant relief from corporation tax by way of a deduction from business profits when share options are granted to employees. The deduction is equal to the difference between the market value of the shares at the time of the exercise of the option and the actual price paid by the employee under the option. For the provisions to apply, the shares must be granted 'by reason of employment'.

Mr Ritchie held an unpaid directorship in a company 'UK SubHoldco', but had no employment contract. The company was directly and indirectly owned by his family. As part of a management buy out of UK SubHoldco, Mr Ritchie had been granted share options in the acquiring vehicle, UK Buy-out. He had later surrendered his options and been granted new ones. Finally, in July 2007, the share capital of UK Buy-out had been sold to a Finnish conglomerate called Metso Paper. In anticipation of the sale, Mr Ritchie exercised his options, purchased the shares and then sold them to Metso Paper.

Metso Paper argued that it should be entitled to relief under FA 2003 Sch 23, suggesting that the provisions should be interpreted widely so as to include the grant of shares to a director.

However, the tribunal refused to go beyond a literal interpretation of the provisions. The stated purpose of Sch 23 had been to encourage employee ownership and the interpretation suggested by the appellant was not compatible with this purpose. The acquisition of the options 'by reason of employment' is 'the foundation on which the schedule rests'.

Why it matters: **Companies wishing to avail themselves of FA 2003 Sch 23 should ensure that the recipients of share options have employment contracts.**

Indirect taxes

Is it possible to be an 'eligible body' in relation to some activities only?

In ***Finance & Business Training Ltd v HMRC*** (FTC/82/2012 – 26 November 2013), a company provided educational services under arrangements with the University of Wales. Under VATA 1994 Sch 9 Group 6 item 1, the provision of educational services by an 'eligible body' is exempt from VAT. The taxpayer company therefore wished to claim the exemption, on the basis that it was an eligible body in relation to the services provided under the arrangements with the University of Wales. There was no doubt that the University of Wales was an eligible body. The issue was whether Finance & Business Training was a 'college or institution' of the University of Wales, in relation to courses provided under arrangements with the university.

The tribunal noted that article 132 of the Sixth VAT Directive asks two separate questions: is the body claiming the exemption a body covered by the words of the exemption; and is the supply by that body exempt? Consequently, if the answer to the first question is 'no', the second question does not arise. There is no suggestion in the drafting of the Directive that the answer to the first question depends on the activities of the body. VATA 1994 works in the same way.

Furthermore, it is an accepted principle of VAT interpretation that exemptions should be interpreted strictly. The tribunal concluded that a body cannot be eligible in relation to some of its activities only.

Why it matters: **Bodies that provide services, some of which may come within the scope of a VAT exemption if they are provided by an eligible body, should set a up a separate legal entity for the provision of those services.**

Are admission charges subject to bingo duty?

In ***Thomas Estates Ltd t/a Beacon Bingo*** (TC03044 – 14 November 2013), 'Beacon' ran several bingo clubs. The issue was whether admission charges were attributable to 'the opportunity or entitlement to play' bingo under the Betting and Gaming Duties Act 1981 s 19.

The clubs were run as members' clubs. Membership was free. Members were issued swipe cards, which they used to gain entry to the clubs. Beacon alleged that the element of receipts, which it recorded as admission charge, was calculated by reference to the number of swipes. The company therefore argued that these admission charges fell outside the scope of bingo duty.

Once inside the clubs, members would purchase tickets to play from the book sales desk. These tickets carried the words: 'Notice: The admission charge is included in the main session price.'

The tribunal held that 'viewed realistically, admission is free for the main session players, just as it is for all other members entering the club'. The calculation of an admission charge was not based on reality and was therefore 'wholly artificial'. The whole of Beacon's receipts were therefore subject to bingo duty.

Why it matters: **In the light of the decision, bingo clubs may wish to charge an entry fee at the door, which may not be subject to bingo duty.**

Administration & appeals

Late notification of an appeal to the tax tribunal

In ***Folarin Bamgbopa v HMRC*** (TC03046 – 14 November 2013), the taxpayer sought permission to notify HMRC two years late of his intention to appeal under TMA 1970 s 49. HMRC had sent 'somewhat confusing' letters to the taxpayer's accountants; however, those letters did make it clear that a 'speedy' reaction was required if an appeal was to be lodged. The taxpayer argued that he had been abroad during the time when an appeal could have been lodged and was under the misapprehension that his accountants were dealing with the issue. Furthermore, given the amount of tax at stake, he would suffer a real prejudice if permission was denied in circumstances where all the evidence was still available.

The tribunal denied permission to notify the appeal late. The degree of prejudice to the taxpayer was established by the strength of his substantive case. He had engaged in an 'adventure in the nature of a trade' and so should not have suffered CGT. However, this prejudice could be offset by a claim for damages against his accountants if they were responsible for the delay. If the delay was the taxpayer's fault, 'he should bear the consequences of his actions'. Furthermore, no good explanation for the two year delay had been given.

Why it matters: **The length of the delay seems to have influenced the tribunal's decision. It is also interesting that the taxpayer's ability to obtain damages from his accountants was taken into account in assessing his potential prejudice.**

Careless inaccuracy in a self-assessment return

In ***Timothy Harding v HMRC*** (FTC/56/2013 – 15 November 2013), the taxpayer had received a 'severance payment' as compensation for the early termination of his employment, but had failed to record it in his self-assessment return. Although he now accepted that the payment was subject to income tax, he argued that he should not have been imposed a penalty for careless inaccuracy under FA 2007 Sch 24.

The appellant alleged that, at the time of filing his return, he had reasonable grounds to believe that the payment was not taxable. The compromise agreement duly recorded that it was the understanding of the parties that the payment was not subject to tax, and he had read an article on the Wolters Kluwer website confirming that no tax was payable on such a severance payment.

The Upper Tribunal dismissed the appeal, noting that the taxpayer was an 'intelligent person' occupying a 'senior position' in a company which formed part of a 'leading accountancy practice' (KPMG). The wording of the compromise agreement suggested at the very least that there was a possibility that tax would be payable and the article the taxpayer referred to was in no way unequivocal on the topic. Indeed, it suggested very clearly that a severance payment may be taxable in specific circumstances. Furthermore, the short tax return which the taxpayer had completed contained a note that such a return should not be used in circumstances where the taxpayer had received a lump sum payment from his employer.

Why it matters: **The case confirms that a taxpayer is under the duty to make some enquiries when his tax position is not clear.**

Jurisdiction to cancel disproportionate penalties

In ***HMRC v Anthony Bosher*** (FTC/3/2013 – 19 November), penalties had been imposed on the taxpayer for the late filing of returns under the construction industry scheme (CIS). The First-tier Tribunal (FTT) had held that the European Convention on Human Rights ('the convention') (s 3), permits the tribunal to read the word 'incorrect' in relation to penalties in TMA 1970 s 100B(2)(a)(iii), as including a reference to disproportionate penalties therefore in breach of the convention. The FTT had consequently reduced to zero some of the fixed penalties imposed by HMRC. HMRC had appealed against the decision.

Disagreeing with the FTT, the Upper Tribunal stressed that the legislation does not provide for a right of appeal against a decision of HMRC on the mitigation of a penalty, so that the only avenue open to the taxpayer is judicial review. Moreoever, it rejected arguments as to the cost and complexity of judicial review proceedings, noting that these proceedings 'represent an adequate and effective way to protect the taxpayer's rights'. The tribunal insisted that the fact that such proceedings are costly does not amount to a 'denial of access to justice' for the purposes of the convention.

The Upper Tribunal added: 'We have no doubt that the unambiguous meaning of the language used in s 100B(2)(a)(iii) is that the word 'incorrect' means not of the correct fixed amount as prescribed by the legislation: it does not include penalties which are incorrect by virtue of being disproportionate and breach the taxpayer's rights under … the convention.'

Finally, the Upper Tribunal robustly rejected arguments that all the tax penalties imposed on the taxpayer should be assessed as a whole which would then be found to be disproportionate.

Why it matters: **The case is a reminder that the tax tribunals do not have jurisdiction to decide whether a penalty imposed by HMRC is fair. This is the jurisdiction of the Administrative Court under the judicial review process.**

Claim for VAT repayment

In ***HMRC v Our Communications Ltd*** (FTC/87/2012 – 26 November 2013), HMRC had denied a claim for the payment of a VAT repayment supplement on the ground that the claim for repayment had not been made in a return. It was agreed between both parties that the taxpayer was entitled to a VAT credit and HMRC accepted that, on a literal interpretation, all the conditions of VATA 1994 s 79 were satisfied. However, HMRC argued that s 79 should be interpreted as applying only to claims made in returns. This turned on the interpretation of the expression 'return or claim' in s 79(2A).

The Upper Tribunal found in favour of HMRC, on the basis that:

- the whole scheme of s 79 revolves around the return;
- it would be very odd for the words 'return or claim' in s 79(2A) to have a wider meaning than the same words in s 79(2), which clearly concern returns only; and
- the limit of 5% (or £250) contained in s 79(2)(c) only applies to 'the amount shown on that return or claim', that is to say, the requisite return or claim referred to in s 79(2)(a).

Why it matters: **VAT traders wishing to submit repayment claims should endeavour to do so in their returns, as they may not be entitled to a repayment supplement if they do so by letter.**

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In brief

Views on recent developments in tax

Should HMRC value goodwill?

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We all know what goodwill is, that favourable disposition that a business fights hard to win but never really owns. A formal definition is quite another matter, however, as the OECD's consultation on its intangibles discussion draft has proved. HMRC's Jon Clark told the 12 November consultation in Paris that it was right to view goodwill, as an intangible as goodwill is property under most common law territories such as the UK.

Is that correct? True, common law protects a business from actions such as passing off that might otherwise harm the favourable disposition upon which a business relies. But that's hardly a right to require customers or employees to continue their favourable disposition beyond their wishes. Dispositions only protected by continuing to behave and act in a manner that maintains it. Even a business transfer can only involve a seller's commitment to do everything possible to ensure favourable disposition survives the change of ownership, something that places no constraints on those whose goodwill is valued.

Given these difficulties, why the HMRC emphasis? In Paris, it was explained as being in response to fears of 'artificial fragmentation' of goodwill associated with brands from underlying operations, also at the heart of action 8 of the OECD's BEPS action plan. Such value is often the result of public perception of what a brand says about its consumers, all carefully planned by brand strategists. If that valuable activity happens in the UK in respect of non-UK owned trademarks, then HMRC appears to regard the 'brand goodwill' as being UK property, on the basis that its ownership legally sits with the operations.

But there is a serious flaw here – all that valuable brand building goes up in smoke if the owner of the trademark to which the emotional response is attached prohibits its use, so how can brand goodwill arise to anyone else? A trademark buyer may or may not also want the existing brand team, but that is a quite separate matter than who owns what they have already helped to create.

HMRC's legal view may well be borne of the fear that an arm's length return for services related to brand strategy may not capture all the value that is created in the most successful brands, a factor that also appears to underpin wider BEPS debates. Although some would like to see BEPS lower the threshold at which legal ownership can be ignored, this could place huge uncertainty on many multinationals which locate research and marketing all over the world and want no more than a stable framework for legal protection and a mechanism to ensure that profits are taxed only once.

Of course, there can be a debate as to which territory has the right to tax goodwill. But any unilateral move by the UK to claim tax on what is owned elsewhere risks creating uncertainty, dispute and a disregard for institutions which it's in all our interests to support. Not to mention a loss of goodwill.

EC parent-subsidiary directive proposals 'may not require any significant changes' in UK

Judy Harrison, Norton Rose Fulbright
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The European Commission has published proposals to amend the parent-subsidiary directive (Council Directive 2011/96/EU). The main changes are to permit member states to tax distributions which are paid under hybrid instruments (i.e. where the payer received a deduction) and to strengthen the anti-avoidance provisions in the directive.

What is proposed?

The directive was introduced to eliminate double taxation of companies operating in different EU countries. This is achieved by preventing member states from withholding tax on certain distributions of profits and by restricting the ability of member states to tax the recipient of a distribution.

It is proposed that the recipient of a distribution under a hybrid instrument may be taxed without any need to give credit for tax paid by the company paying the distribution. Hybrid instruments typically have characteristics of both debt and equity, for example fixed rate preference shares and loans, which are dependent on the results of the borrower's business. As a result, the payer may obtain a tax deductible expense for the distribution, whilst the recipient may not be taxed. Where the payer receives a deduction, the directive will be amended, so that the recipient can be taxed on the distribution. It is worth noting that the changes to the directive do not require a member state to tax the distribution. They merely permit such taxation.

The proposals make two changes to strengthen the anti-avoidance provisions in the directive. The first is to permit member states to apply their own domestic or treaty based rules to prevent tax evasion (at present, such rules may only prevent fraud or abuse, which is a narrower concept). The second amendment is to introduce an anti-abuse rule which disapplies the directive in the case of 'an artificial arrangement or an artificial series of arrangements which have been put in place for the essential purpose of obtaining an improper tax advantage under this directive and which defeats the object, spirit and purpose of the tax provisions invoked'. The new rule appears to have been included to prevent conduit companies being inserted to improve the tax treatment of dividend flows. The effect of the new anti-abuse provision applying is that the directive will not prevent withholding tax being levied on a distribution or the recipient being taxed on the payment. Again, it should be noted that member states will not be required to tax the distribution (so, for example, the UK will not be required to withhold tax on dividends), though they will be permitted to do so.

The proposed changes will need to be approved by the EU Council (which requires the consent of all of the member states). Once adopted, states have until 31 December 2014 to amend their rules to comply.

The likely impact

It is likely in the UK, that to implement the amended directive may not require any significant changes. The UK already has rules which tax distributions where the payer has received a tax deduction in respect of the payment (CTA 2009 ss 931B, 931D and 931N) and the recently introduced general anti-abuse rule would counteract most if not all of the types of arrangement which the new anti-abuse rule could catch; however, any restriction under current EU law on these provisions applying will cease to operate if the European Commission proposals are implemented.

A general anti-abuse rule cannot fix the corporate tax system

Andrew Goodall
andrewgoodallcta.com

The Trade Union Congress (TUC) has claimed this week that the UK's new general anti-abuse rule (GAAR), enacted in July, will 'allow 99% of tax avoidance to continue'. The TUC links to a report written by Richard Murphy, director of Tax Research LLP, who advises the TUC on taxation issues (see www.bit.ly/1dS1i9V). The TUC is concerned that the GAAR is so narrow that it would have failed to deal with any of the 'scandals' surrounding the taxation of some of the world's biggest multinationals.

This TUC announcement seems to have received very little press coverage. This is perhaps because there is little or nothing new here, and it is too early to assess the impact of the new rule. Besides, it is worth remembering that:

- The GAAR is not, by any means, the only weapon in HMRC's armoury. Many targeted anti-avoidance rules remain on the statute book. Judith Knott of HMRC told peers on the House of Lords economic affairs Finance Bill sub-committee last February that 'there is a brand of avoidance that is not abusive that we would continue to tackle'. (As I reported for *Tax Journal*, she drew a 'three-way distinction' between legitimate tax planning, tax avoidance and abusive tax avoidance, and GAAR was targeted at abusive tax avoidance.)
- Richard Murphy regards as tax avoidance some activities that many tax experts inside and outside HMRC would regard as reasonable tax planning. Mike Williams of HM Treasury told the Lords committee that '[the GAAR] provides HMRC with an additional tool to tackle avoidance, and setting the 'bar' lower would give rise to uncertainty that could harm the economy'. I don't know whether that is true (how much lower is 'lower'?), but have a look at Jason Piper's blog (at www.blogs.accaglobal.com) in which he refers to the 'boundaries of uncertainty'.
- As HMRC's published guidance on the GAAR says, generally speaking 'international tax arrangements' cannot be caught by the GAAR, and the OECD's action plan on base erosion and profit shifting (BEPS) is designed to 'plug the gaps in the system'. Knott told the Lords committee: 'Where structures [adopted by multinationals] are abusive, the GAAR will apply to multinationals. But it is true that quite a bit of the media in relation to multinationals has fundamentally been about the way that taxing rights are allocated between countries. That is something which has to be determined in accordance with international principles agreed at the OECD, and it is not something that the GAAR can rewrite.'

We need to be clear about the type of avoidance that the GAAR is designed to address. Whether the GAAR is too narrow, and whether the BEPS action plan is adequate, are of course important questions for debate.

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THE SHARE VALUATION SPECIALISTS

The Autumn Statement

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Having focused so much on the continuing need to repay the debts of the past, many might have expected that the chancellor would be forced to stick to the mantra of yesterday being 'merely' an economic statement. Instead, in what was clearly a mini-Budget, we saw 59 measures announced which, taking into account cuts in spending, were neutral over the six years of the forecast, but nonetheless included a wealth of eye-catching measures.

How did the chancellor get his sums to add up?

To achieve fiscal neutrality over the forecast period, the chancellor used spending cuts to cover a net tax reduction. From a tax perspective, it was broadly neutral for the current and next year, before raising money in the year of the election, which it gives away in the last three years of the forecast.

Despite the flat position overall, the chancellor created the opportunity to spend over £11bn, predominantly by raising over £9bn from tackling tax avoidance and increasing the levy on the banks.

The government has spent the money raised by focusing over £6bn on the cost of living (with cuts in fuel duty costing over £3bn, £2.5bn for married couples, and energy grants, etc of a further £1bn). Another £2.5bn was spent on business rates and a further £2bn on employment (through a cut in national insurance for under 21s).

How significant are the reforms of business rates?

One of the most eye-catching announcements by the chancellor was the suite of measures designed to provide help for the UK high street. By spending over £1bn next year on business rates, the chancellor has shown that he has been listening to the pain felt by businesses through a system that has its origins in the Poor Laws of 1601 and was updated in 1990 alongside the introduction of the poll tax.

By capping the increase next year at 2%, as well as extending small business relief and introducing a measure targeted at lower rated retail properties, the government has reduced the immediate burden, perhaps in an effort to provide time for it to consider further reform.

The commitment to a review for changes in 2017, is arguably as important for driving growth for businesses in the UK – getting the system to be one that drives entrepreneurship, and investment, rather than being a millstone that constrains business. Whilst the announcement focuses on options for longer-term administrative reform, many will be arguing that the review needs to be both accelerated and more fundamental.

What were the other most significant tax cuts?

Another significant tax cut story was around the abolition (from 6 April 2015) of employer national insurance contributions for the under 21s earning up to the upper earnings limit of £42,285 (£813 per week). The move is set to spark a rise in the popularity of employer school leaver schemes, with the biggest beneficiaries expected to be those in the hospitality and retail industries.

Were there any hidden surprises?

The chancellor announced the bulk of his revenue-raising measures around avoidance, tax planning and fairness (£7bn); fraud, error and debt (£2m); and the bank levy (£2.5bn) in two short sections of his speech. Whilst there are a total of 12 distinct tax-raising avoidance measures, most were only very briefly alluded to in the speech, with the highest profile being given to the introduction of capital gains tax on future gains made by non-residents who sell residential property in the UK, which accounts for only 1% of these revenues. More significant revenue is expected to be raised by further actions against the use of intermediaries to avoid employment taxes and the extension of action against the abuse of partnerships.

Can we expect hand-outs ahead of the election?

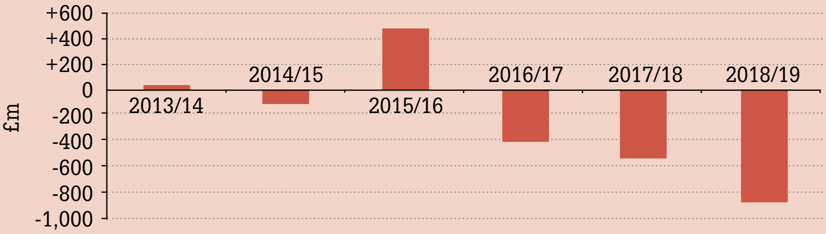
Whilst the upturn in the economy is bringing borrowing down faster than was thought likely at the time of the Budget, the OBR stressed that this is a cyclical rather than an underlying improvement, signalling that this is not an opportunity for a fiscal relaxation. The chancellor seems to concur – his measures reduce borrowing by about £2bn in the near term, then give some of this back over the next three years, but it is basically a recipe for four more years of austerity.

However, with only three more fiscal events to go before the general election, it would, to say the least, not be surprising to see some relaxation of this stance in the near future, as the chancellor seeks to weigh up the political payback for fiscal credibility versus cash in pockets.

What's next?

The draft 2014 Finance Bill will be published for consultation on so-called 'legislation day' or 'L-Day': Tuesday 10 December. The date for Budget 2014 has not yet been published.

Total tax policy decisions



Autumn Statement

Your guide to the key measures

Key tax announcements

Key announcements that were new for the Autumn Statement 2013 include:

- capital gains tax on non-residents disposing of UK residential property;
- employment intermediaries – amendments to prevent income tax and NICs avoidance through 'contrived contracts' involving employment intermediaries such as personal service companies;
- dual employment contracts – provisions to prevent the artificial splitting of duties between UK and non-UK employment contracts;
- rules obliging users of some tax avoidance schemes (follower cases) to pay the disputed tax before their case has been finally settled;
- changes to the grouping rules to extend the application, and prevent the artificial circumvention, of the worldwide debt cap; and
- CFCs and profit shifting – a new exclusion from the definition of a qualifying loan relationship, and an amendment to one of the existing exclusions, in the finance company partial exemption (both provisions taking immediate effect).

Background

In what was his fourth Autumn Statement, the chancellor of the exchequer, George Osborne, was at last able to point to some more encouraging statistics around the broad economy and its protracted recovery from the credit crunch and economic crisis. Two key factors underpinning many of the announcements made today were that:

- the forecast for economic growth for 2013 more than doubled (from its official estimate of 0.6% at the time of Budget 2013 in March to 1.4% today). It is expected to continue this upward trend to reach 2.7% in 2017 and 2018 (Autumn Statement 2013, table 1.2); and
- there has been a reduction in the official figures for public sector net borrowing during the 2013/14 financial year. This is now forecast to be 6.0% of GDP for 2013/14, to fall to 4.0% by 2015/16 and to reach 0.1% by the end of the next parliament in 2018/19 (Autumn Statement 2013, table 1.4). Government borrowing in 2013/14 will, at £111bn, therefore be £9bn lower than originally forecast in Budget 2013.

In effect, the chancellor was able to say that both of the core indicators of the UK's economic performance and stability are now moving in the right direction and are likely to continue to do so, stating that he was 'securing the recovery' and even anticipating, for the first time in a long time, the possibility of a small budget surplus (1.6% of GDP) towards the end of the new parliament in 2018/19 (Autumn Statement 2013, Table 1.4).

Even so, the UK's fiscal 'gap' is still huge and the global economy remains in a state of shock and fragility; the challenges that lie ahead remain significant. The chancellor has interpreted the improvement in the various UK economic indicia as proof that his medicine has been working; and, therefore, in order to ensure the economy fully recovers and continues to grow, there is a need to stay the course. Austerity, prudence and having the confidence to continue to take 'difficult decisions' all remain the order of the day.

Although the Autumn Statement has traditionally been a showcase for the latest economic forecast from the Office for Budget Responsibility (OBR), with major tax announcements and changes being reserved for the Budget the following spring, the distinction has become increasingly blurred in recent years. The Autumn Statement has, in effect, become established as a mini-Budget.

That said, very little came as too much of a surprise in relation to announcements on tax. With the increased emphasis placed on public consultation as part of the legislation-making process, 2013 has seen an unprecedented number of consultations open and close over the summer. The Autumn Statement represents a natural opportunity to announce the outcome of the majority of these consultations and to release the draft legislation that will form part of Finance Act 2014.

That said, with the current public focus on tax as a highly charged political issue, the Autumn Statement reflects the government's emphasis on continuing to ensure that taxpayers 'pay their fair share', with the Chancellor announcing 'the largest package of measures to tackle tax avoidance, tax evasion [and] fraud… so far this parliament'; it is hoped that these will raise (or rather protect) more than £9bn over the next five years.

This all comes by way of reinforcing efforts to tackle tax evasion, avoidance and aggressive tax planning – an area in which the government is keen to emphasise that it is making some significant progress. The Autumn Statement 2013 (at para 1.298) evidences this success by highlighting that the number of schemes disclosed under the disclosure of tax avoidance schemes (DOTAS) regime 'fell by almost 50% between 2011/12 and 2012/13 … with only 17 schemes disclosed in the six months to September 2013'.

Draft clauses, for inclusion in the draft Finance Bill 2014, are expected to be published next Tuesday, 10 December 2013.

Business and enterprise

Worldwide debt cap

The worldwide debt cap (WWDC) restricts interest deductions claimed by companies in the UK to no more than the total financing costs of its worldwide group. The debt cap applies to companies in worldwide groups, but only if a gateway test is failed (when the amount of net debt in the UK exceeds 75% of the group's gross debt). The regime is contained in TIOPA 2010 Part 7.

The Autumn Statement 2013 (at para 2.118) announces two changes to the regime concerning:

- grouping rules; and
- regulation-making powers.

Grouping rules: The current regime operates by reference to worldwide groups that contain at least one UK resident company that is a 'relevant group company' (RGC). At present, the definition of RGC for these purposes broadly reflects the general grouping rules for group relief (in CTA 2010 Part 5).

The changes announced today 'relax' these rules, making it clear that UK tax-resident companies that do not have ordinary share capital (and therefore would fall outside a group relief group) can be treated as an RGC for the purposes of the WWDC, and so are brought within the scope of the regime. In addition, by amending the definition of '75% subsidiary' for the purposes of the WWDC, the indirect ownership of companies by the ultimate parent of the worldwide group can now also be traced through companies that do not have ordinary share capital.

As a result of these changes, intended to 'improve the effectiveness' of the regime, the potential application of the WWDC is extended and its effect cannot be artificially circumvented. As a result of the divergence from the group relief

Statement reaction

Ian Stewart
Chief economist, Deloitte

An uncertain, long haul recovery ahead

This is the statement Mr Osborne has hoped he'd be able to deliver for the last three years. A strong recovery is, at last, eating into government borrowing. Yet the deficit continues to cast a long shadow. As a share of GDP, UK borrowing remains high by historic and international standards. The key to eliminating the deficit is maintaining the pace of the recovery. For that Mr Osborne needs a significant revival in consumer spending power and in companies' willingness to invest. The UK is on the mend, but the economy faces an uncertain, long haul recovery.

Neal Todd
Partner, Berwin Leighton Paisner

A return to the bad old days of legislative uncertainty?

The government has brought in five new tax measures that have immediate effect in its Autumn Statement, which is a return to the bad old days of legislative uncertainty. This is especially disappointing as the government had previously pledged to introduce measures in a considered way and had criticised the previous government for bringing in measures too quickly. These measures have an immediate, unforeseen effect on the taxpayer, which flies in the face of reforms to the tax system and adversely impacts on the relationship between taxpayers, businesses and government. The taxpayer should be entitled to a certain degree of predictability on tax law, instituted by a government that takes adequate deliberation before introducing legislative changes.

David Hannah
Principal consultant, Cornerstone Tax

Time for a review of SDLT?

As a nation obsessed by home ownership, we are penalised by paying the highest amount of property taxes in the developed world. By not implementing fundamental changes to SDLT, the chancellor has simply taken the easy option and attempted to smoke screen the clear need to change a tax that punishes hard working professionals by making it look like an issue just for the elite.

It has been ten years since SDLT, in its current form, replaced stamp duty. Previously, it was simply an admin charge; now, it is a revenue generating tax. This changed emphasis has a major bearing on the economic viability of a property purchase, thereby impacting the still-fragile housing market.

HMRC and the government need to decide how they move SDLT forward; making it clearer for the tax payer and fairer at all levels of property purchases. A simpler system needs to be implemented and I can only hope that the Budget will bring better news for homeowners.

rules, extra care will now be needed when applying the group membership tests for the WWDC.

Regulation-making powers: At the same time, the special regulation-making powers contained in the WWDC regime are being changed, allowing regulations to be made that specify the conditions that will need to be met by WWDC group companies which elect to transfer their WWDC liabilities to other group members.

This minor amendment should allow such regulations to ensure that the impact of the WWDC regime is reduced on companies that are involved in whole business securitisation, by allowing WWDC liabilities to be passed around the group so that the companies remain 'bankruptcy remote'.

This relaxation is likely to be welcomed and will remove the possibility that the regime might apply in an area in which it is not intended to have effect.

The changes made to the grouping rules have effect for accounting periods starting on or after 5 December 2013.

The change to the regulation-making powers will have effect on or after the date that Finance Bill 2014 receives royal assent.

Details of the proposals, along with draft legislation, can be found in the *Changes to the debt cap provisions Tax Information and Impact Notice* (TIIN), published on 5 December 2013.

Loan relationships and derivative contracts

A number of announcements were made in relation to the taxation of corporate debt and derivative contracts.

Modernising the taxation of corporate debt and derivative contracts: The government announced, at Budget 2013, that it would carry out a review of the loan relationships (corporate debt) and derivative contracts regimes, with the combined aims of redesigning them to be simpler, clearer and more resistant to tax avoidance.

The Autumn Statement 2013 contains several specific (and relatively narrow) announcements that the government will introduce legislation:

- to enhance the anti-avoidance provisions (in CTA 2009 s 492) in order to prevent abuse of, and to clarify, rationalise and (in certain circumstances) disapply, the 'bond fund' rules. Broadly, this anti-avoidance rule applies where the loan relationships regime interacts with the specialist tax regimes for authorised investment funds (AIFs) and offshore funds. In short, a company's holdings in AIFs and offshore funds are not normally within the scope of the loan relationships regime. However, to prevent companies using AIFs as vehicles to circumvent the corporate debt regime, certain holdings giving rise to interest distributions (ie in effect, distributions received from a 'bond fund') are brought within the regime by treating the holdings as rights under a creditor relationship, brought into account using a fair value basis of accounting. The anti-avoidance provision is triggered where the investment was made (or the liability was incurred) with a 'relevant avoidance intention', i.e. where the company makes the investment in order to create (or increase) debits or eliminate (or reduce) credits;
- to clarify and rationalise the taxation of corporate partners where loan relationships and derivative contracts are held by a partnership; and
- to allow, in certain circumstances, corporate investors to disapply the 'bond fund' rules.

Details in each of these areas is awaited. Legislation implementing any changes may be introduced as part of FA 2014 but may be delayed to FA 2015, although any simplification of what are complex rules will be broadly welcomed (Autumn Statement 2013, para 2.120).

Release of debts: The general rule under the loan relationships regime is that credits and debits arising to a company from its loan relationships brought into account for tax purposes are those shown in its GAAP compliant accounts for that period. The general rule, however, does not apply in all circumstances. In certain important areas, special rules require the tax treatment of a company's loan relationships to depart from their treatment in the accounts. One area where, subject to certain special exclusions, the tax treatment 'departs' from the accounts is where the relevant loan relationship is 'released', i.e. where the debt is written off or forgiven in part or its entirety. Where the rules apply, generally in circumstances connected with a corporate rescue, the debtor does not need to recognise a credit (and so won't be taxed on the 'profit' realised as a result of the release).

The government has confirmed that, with effect from 26 November 2013, these rules will be extended so that credits arising on a release will not be required to be brought into account where that release occurs as a result of the application of any of the stabilisation powers contained in Banking Act 2009 Part 1 (Autumn Statement 2013, para 2.148).

Derivative contracts – contracts for differences: In a very minor amendment that will extend the scope and application of the derivative contracts regime (contained in CTA 2009 Part 7), the government has announced that the definition of 'contracts for difference' in the corporation tax derivative rules will be widened to include 'investment contracts' and 'contracts for difference', as introduced in the Energy Bill (currently at the ping-pong stage in its progress through parliament) (Autumn Statement 2013, para 2.81).

Bank levy

The chancellor announced that legislation will be introduced in Finance Bill 2014:

- to set the full rate of the levy to 0.156%, with effect from 1 January 2014 (Autumn Statement 2013, para 2.82). The announcement of this rise in the rate has already led to concerns that some banks might consider redomiciling outside the UK, and that it could affect the availability of loans; and
- to make certain other amendments to the bank levy, including amending the base in respect of which the bank levy is charged, with effect from January 2015 (Autumn Statement 2013, para 2.83). This follows a review of the bank levy earlier in 2013.

Transfer pricing compensating adjustments

As previously announced, the government has confirmed its intention (Autumn Statement 2013, paras 1.303 and 2.127) to introduce legislation in Finance Bill 2014 (with effect from 25 October 2013) preventing individuals from claiming compensating adjustments under the transfer pricing legislation (in TIOPA 2010 Part 4) in relation to transactions with companies and, in certain circumstances, treating excess interest payments received by individuals as dividends (subject to income tax at the dividend rate).

Creative industries

Following the introduction of corporation tax relief for animation and high end TV from 2013 (CTA 2009, Part 15A), the Autumn Statement 2013 contains two further announcements for the creative industries:

- new corporation tax relief for theatre. The government will consult in 2014 on the introduction of targeted tax relief for commercial theatre productions and theatres investing in new works or touring productions to regional theatres (Autumn Statement 2013, paras 1.190 and 2.87); and
- extended corporation tax relief for film (Autumn Statement 2013, paras 1.190 and 2.88):
  - including provisions in Finance Bill 2014 to increase from April 2014 (subject to state aid approval) the amount of the payable tax credit (in CTA 2009 s 1202) to 25% on the first £20m of qualifying UK expenditure. This will be capped at 80% of total qualifying expenditure for large budget (as well as small budget) films and continuing at 20% thereafter (i.e. increasing the maximum effective rate of the film tax credit from 16% to 20% on the first £20m of qualifying spend for large budget films);
  - reducing the minimum UK expenditure requirement from 25% to 10%;
  - modernising the cultural test to align it with other member states' tests and support visual effects and wider film production; and
  - seeking state aid clearance (when renotifying the regime in 2015) to increase the rate of the film tax credit to 25% for all qualifying expenditure (i.e. including expenditure on large budget films above £20m).

Associated companies rules

The government will introduce legislation in Finance Bill 2014, to have effect from 1 April 2015, to remove the current rules on associated companies and replace them with simpler rules based on 51% group membership (Autumn Statement 2013, para 2.114). From 1 April 2015, the main and small profits rate of corporation tax will be harmonised at 20% and so the need for associated company rules in calculating corporation tax (CTA 2010 s 25) will disappear. However, we will need to wait for draft legislation (possibly on 10 December 2013) to see:

- the detail of the proposed 51% test; and
- whether this change is extended to other uses of the defined term 'associated company', such as in the close company (CTA 2010 s 449) or intangible fixed asset de-grouping (CTA 2009 s 788) rules (which already use different variations on the definition of an associated company).

Close company loans to participators

The government has confirmed that, following consultation earlier this year (which closed on 2 October 2013), no immediate changes will be made to the rules on close company loans to participators (Autumn Statement 2013, para 2.128).

CFCs: profit shifting through loan relationships

TIOPA 2010 Part 9A Chapter 9 provides an elective regime to exempt (or partially exempt) certain non-trade finance profits of CFCs from the CFC charge. The aim of this regime is to enable multinational groups to have a non-UK finance company making intra-group loans to other non-UK companies, without incurring a significant UK tax charge.

The government has announced two amendments to these rules to 'ensure the CFC rules operate as intended and continue to protect the UK's corporation tax base'.

The first change introduces an additional exclusion from the definition of a qualifying loan relationship (QLR) by reference to which a CFC's exempt non-trade finance profits are calculated. The new rule excludes creditor relationships of the CFC (ie where the CFC has lent money) from being a QLR if:

- that loan relationship is connected, directly or indirectly, to an arrangement; and

- the arrangement is:
  - made directly or indirectly in connection with a creditor relationship of a UK connected company (i.e. a UK resident company that is connected to the CFC); and
  - the main purpose (or one of the main purposes) of the arrangement is to secure a decrease in loan relationship or derivative contract credits (or an increase in such debits) for the UK connected company, when compared with what they would have been had the arrangement not been made.

The explanatory notes (para 10) give an example that shows the amendment is intended to target groups that attempt to shift existing UK loan relationships profits out of the UK into CFCs in order to take advantage of the 75% exemption.

This change comes into effect for arrangements entered into from 5 December 2013, i.e. it does not capture the profits arising on any pre-existing arrangements.

The second change makes a small amendment to the last of the exclusions from the definition of QLRs. The exclusion relates to loans from CFCs that are ultimately funded from the UK. Under the previous rules, a loan had to be used 'wholly or mainly' to pay off a loan from a third party. For accounting periods beginning on or after 5 December 2013, the loan need only be used 'to any extent (other than a negligible one)' for paying off a loan from a third party. There are transitional rules to deal with the accounting periods of CFCs that straddle the 5 December 2013.

This is a surprise announcement and it is not clear what the source of the government's concern is here. However it is unlikely to be welcomed by multinationals and their advisers since further changes to the CFC regime in its first year of operation introduce uncertainty.

Partnerships

Finance Bill 2014 will include measures implementing the proposals in HMRC's consultation document *Partnerships: a review of two aspects of the tax rules*, published on 20 May 2013 (Autumn Statement 2013, para 2.124).

The 'two aspects' of the partnership rules were:

- the use of limited liability partnerships (LLPs) to disguise employment relationships; and
- the tax-motivated allocation, by partnerships with a mixture of individual and corporate partners, of profits (or losses) to partners paying tax at a lower (or higher) rate.

The consultation document stated that the changes would take effect from 6 April 2014. The Autumn Statement 2013 has announced that some of the measures will have effect immediately (from 5 December 2013) 'to protect against risks to tax revenue'. However, the draft legislation published as part of this announcement has the effect that any partnership accounting period that straddles 6 April 2014 will be treated as two periods, with the new rules only applying in the period after 6 April. The need for a 5 December commencement date may be to do with the mechanics of taxing individuals on the profits of a partnership with an accounting period that does not coincide with the income tax year.

The measures taking immediate effect concern tax-motivated profit allocations. A typical scenario would involve a partnership with individual members, where the individuals set up a company which becomes a member of the partnership. In a profitable year, the partners could allocate more profits to the company in order to take advantage of the lower rate of corporation tax as compared to income tax. The partners would retain their economic interest in the profits through their ownership of the company; they could, for instance, withdraw the profits as dividends in a later, less profitable year.

Under the new provisions, in this situation the individual partners' profits would, for tax purposes, be increased to reflect the profit they have foregone.

As is so often the case, the devil is in the detail. In order to identify the profit that should be reallocated to the individual partners, the draft legislation requires an assessment of what would be an appropriate return for any capital invested, or services rendered, by the corporate partner. This may be problematic to quantify, and there is a risk that the measures will go too far.

Draft legislation has also been published to implement the complementary measures countering arrangements which seek to allocate losses (as opposed to profits) to partners paying a higher (as opposed to lower) rate of tax. These have effect from 6 April 2014.

Corporation tax: amending loss relief provisions

The government has announced that it will be including legislation in Finance Bill 2013 which will amend the current corporation tax provisions that restrict relief where there is a change in the ownership of a company (CTA 2010 Part 14). Although details of the proposed amendments have not been provided, they are expected to ease the application of the relevant restrictions (Autumn Statement 2013, para 2.85).

Change of ownership is defined as, broadly, more than half of the company's ordinary share capital changing hands. Currently, the rules ignore any change of ownership of a company that remains, broadly speaking, in the same corporate group (CTA 2010 s 724). The first proposal appears to extend this rule to allow a holding company to be inserted on top of a group of companies although there is no reference to the specific part of the legislation that is targeted.

The second proposal relates to restrictions on relief where there has been a change of ownership of a company with investment business, followed by a significant increase in the amount of the company's capital (CTA 2010 s 679). Currently, there is a significant increase in the capital of a company if, broadly, the capital has either increased by £1m or doubled since the change of ownership (CTA 2010 s 688(2)). Once amended, the government proposes that corporation tax relief will only be restricted where the amount of capital after the change in ownership exceeds that before the change by both £1m and 25%. It is not clear whether the alternative test (i.e. where capital has doubled) will remain.

Abolition of stamp taxes on transfers of shares in UK exchange traded funds

The chancellor stated that, with effect from April 2014, neither stamp duty nor SDRT would apply to a transfer of shares in UK domiciled exchange traded funds (Autumn Statement 2013, para 2.150). This announcement follows the popular announcement made at Budget 2013 to abolish stamp taxes on transfers of shares listed on growth markets, such as AIM.

OECD: base erosion and profit shifting (BEPS)

The government has reiterated its commitment to work with other countries on the action points identified in the OECD's *Action plan on base erosion and profit shifting* (published by the OECD in July 2013 and endorsed by the G20 in September) (Autumn Statement 2013, para 1.300).

No specific announcement has been made about how the UK will implement the action plan. However, the OECD's work in this area forms the context for the UK's recent activity in the field of tax transparency (including the automatic tax information sharing agreements described in the previous section).

Employment taxes

Employment intermediaries

The government proposes to amend existing legislation to prevent 'contrived contracts', involving employment intermediaries that disguise employment as self-employment, being used to avoid income tax and NIC (Autumn Statement 2013, paras 1.306 and 2.129). Provisions will be included in Finance Bill 2014, to take effect from April 2014, presumably amending the intermediaries legislation relating to personal service companies (commonly known as IR35) (ITEPA 2003 ss 48–61) and possibly also the legislation relating to managed service companies (ITEPA 2003 ss 61A–61J).

This proposal follows the formation, on 12 November 2013, of a House of Lords Select Committee seeking evidence on the use of personal service companies, and the income tax and NIC implications, as well as wider issues for workers and their clients, and considering whether the intermediaries legislation should be reformed. The Committee aims to finalise its report to the House in March 2014.

Dual employment contracts

Provisions will be included in Finance Bill 2014 to take effect from April 2014 preventing 'high-earning non-domiciled employees' from avoiding tax by artificially splitting the duties of a single employment to shift some of their employment income offshore and therefore outside the scope of UK tax (Autumn Statement 2013, paras 1.303 and 2.126).

Currently, non-UK domiciled employees who work partly in the UK and partly overseas can enter into separate employment contracts with a view to claiming the remittance basis (and reducing their UK income tax liability) in respect of earnings from one such employment, the duties of which are performed wholly overseas for a foreign employer (ITEPA 2003 s 22).

There is no further detail at present on the proposed legislation, except that UK tax will be charged on the full employment income where a comparable level of tax is not payable overseas on the overseas contract (Autumn Statement 2013, para 2.126). It is hoped that these new rules will not impinge on overseas workday relief, now available (under ITEPA 2003 ss 26–26A) in respect of duties performed overseas by non-UK domiciled employees who meet the three-year non-residence requirement.

NIC

Following the announcement in Budget 2013 of the annual £2,000 employers' NIC allowance from April 2014, the Autumn Statement 2013 contains three further announcements on NIC:

- the abolition of employers' NIC in relation to existing and new employed earners under the age of 21 from April 2015, except for those paying higher (or additional) rate income tax (i.e. those earning more than the upper earnings limit of £42,285 per year) in relation to whom employers' NIC will arise as normal. Legislation will be included in the NIC Bill currently before parliament (Autumn Statement 2013, paras 1.195 and 2.48);
- the introduction, from October 2015, of new class 3A voluntary NIC to enable pensioners who reach state pension age before 6 April 2016 to top up their additional pension records (Autumn Statement 2013, para 2.56); and

Statement reaction

Nick Farmer
Partner, Menzies

CGT for non-residents: 'the devil will be in the detail'

Some of the key questions to be answered about introducing CGT for non-residents disposing of UK residential property include how any gain will be measured, how principal private residence relief will be applied, and how this will interact with the legislation on enveloped dwellings. As is often the case with tax, simple sounding objectives can become complicated, and the devil is in the detail. There is a time delay here as this change will not be introduced until April 2015, with a consultation period announced for early 2014. We have seen that consultations can lead to better tax policy, but there will obviously be a period of uncertainty as the details behind the proposal get ironed out.

The CGT changes announced today do bring the UK into line with most other countries. Following the principles of source-based taxation, it was always a bit of an oddity that the UK did not previously tax non-residents disposing of UK residential property. We'll keep our fingers crossed for a simple and workable solution.

Martin Shah
Partner, Simmons & Simmons

Jumping the gun on partnerships?

The Autumn Statement confirmed that the government will move forward with its controversial plans to reform the UK taxation of partnerships, although the government could been seen as rather jumping the gun with the release of some draft clauses in advance of the full draft Finance Bill. Accordingly, we now know that both aspects of the UK partnership taxation rules targeted by the government's earlier consultation, tackling disguised employment through the use of LLPs and what may be broadly termed as 'profit and loss allocation schemes' adopted by all forms of partnership, including LLPs, will be taken forward – including draft legislation coming into force from 5 December 2013 for profit allocation arrangements, albeit only taking effect from 6 April 2014.

The anticipated revenues expected by government, significantly increased since the original consultation to £3.27bn through to 2018/19, show the importance in fiscal terms of these proposals and no doubt this has influenced the government's resolve to move forward with the measures, despite significant adverse comment from industry and practitioners.

Although the revised proposals are somewhat more focused than those advanced in the original consultation document, it is disappointing that the government remains unconvinced by arguments that commercially motivated arrangements, such as working capital retention and profit deferral, should clearly fall outside the new rules, and that an approach targeting only more aggressive tax avoidance arrangements has not been adopted.

Statement reaction

Paul Rutherford
Partner,
DLA Piper

Some welcome news for the UK asset management industry

The chancellor's announcement of the abolition of stamp duty on shares in exchange traded funds from April 2014 will be welcomed by the UK asset management industry – it should give that industry in the UK further assistance in competing with other jurisdictions for locating funds and their support services. It also follows moves in the March 2013 Budget to stimulate investment into UK equities – notable at a time when bank lending is constrained – by the abolition from April 2014 of stamp duty on AIM and ISDX quoted shares and on UK mutual funds.

David Cohen
Employee incentives lawyer, Keystone Law

SAYE and SIPs changes: 'long overdue'

The increases in the individual limits for approved all-employee share schemes, which will take effect on 6 April 2014, have remained unchanged since the schemes were first introduced; SAYE schemes in 1980 and share incentive plans in 2000. So it may be thought that these increases are long overdue. However, the number of employees who will actually benefit is likely to be relatively small.

The SAYE contribution limit will increase from £250 to £500 per month. This means, for someone taking out a three-year share option, an increase from £9,000 to £18,000. However, HMRC statistics show that an average employee saves only about £3,800 – equating to a monthly contribution of barely more than £100. Even those already saving £250 may cavil at putting more of their savings into a product which has since August 2011 paid a bonus rate of precisely zero.

The more modest increases for share incentive plans (SIPs) should have more impact. The rise in the amount of pre-tax salary which an employee can spend on 'partnership shares' from £1,500 to £1,800 will be attractive to many. The annual limit for 'free shares' will also go up by 20% – from £3,000 to £3,600.

Matthew Barling
Banking tax partner,
PwC

Bank levy hit: is Britain really open for business?

Each bank levy rate rise is a double hit for the UK's competitiveness – it makes the UK a less competitive location for banking business and it makes UK headquartered banks less competitive when doing business overseas. Seven rate rises in three years sends a stark message regarding whether Britain really is open for banking business.

- the government confirmed that a summary of responses and details of next steps will be published in due course following the consultation (which closed on 9 October 2013) on simplifying NIC processes for the self-employed and collecting class 2 NIC alongside class 4 NIC and income tax through self-assessment (Autumn Statement 2013, para 2.115).

Indirect employee ownership

Following Budget 2013, the Autumn Statement 2013 (Autumn Statement 2013, para 2.60) confirms that Finance Bill 2014 will introduce three new tax reliefs to encourage and promote indirect employee ownership:

- from April 2014, disposals of shares that result in a controlling interest in a company being held by an employee ownership trust (such as an employee benefit trust) will be relieved from CGT;
- the transfer of shares and other assets to employee ownership trusts will be exempt from inheritance tax provided that certain conditions are met; and
- from October 2014, an annual cap of up to £3,600 worth of bonus payments will be exempt from income tax and NIC if made to employees of indirectly employee owned companies which are owned by an employee ownership trust.

SIPs and SAYE

The annual limits for HMRC approved share incentive plans (SIPs) will increase (for the first time in over 10 years) from April 2014 to:

- £3,600 (from £3,000) for free shares (shares awarded to participants without payment); and
- £1,800 (from £1,500) for partnership shares (shares acquired on behalf of employees out of sums deducted from their salary).

In addition, the amount that an employee can contribute to an HMRC approved save as you earn (SAYE) scheme will double from April 2014 to £500. (Autumn Statement 2013, para 2.61)

Office of Tax Simplification review of employee benefits and expenses and employee share schemes

Following the implementation of four of the 'quick wins' identified by the Office of Tax Simplification (OTS) in its *Interim Report on Employee Benefits* (8 August 2013), the government has committed to deliver an additional nine 'quick wins' in January 2014 and consider a further ten by the end of this parliament. The OTS has produced a list prioritising the 43 'quick wins'.

As anticipated, the government has confirmed its intention to enact 'a package' of simplifications proposed by the OTS in its *Review of Unapproved Share Schemes*. As yet, no details have been announced as to which specific OTS proposals will form part of this 'package', but we understand it will consist of five recommendations. The changes will take effect during 2014. (Autumn Statement 2013, paras 2.111-2.112).

Incentivised investment

Social investment tax relief

Following introduction in Budget 2013 and a consultation on social investment tax relief in June to September 2013, the government has announced that it will introduce a new tax relief for equity and certain debt investments in charities, community interest companies and community benefit societies, with the aim of encouraging individuals to invest in such social organisations. Following consultation, investment in social impact bonds issued by limited companies will also be eligible for the relief.

The government plans to publish a road map for social investment in January 2014, setting out its next steps in relation to social investment. However, it is intended that provisions implementing the relief will be included in Finance Bill 2014 and the relief will be available with effect from April 2014 (Autumn Statement 2013, paras 1.173–1.175 and 2.51).

Venture capital trusts (VCTs)

Following the consultation on VCT share buybacks (which closed on 26 September 2013), the government confirms its intention in the Autumn Statement 2013 that, from April 2014, reinvestment in a VCT conditionally linked to a share buyback or made within six months of a disposal of shares in the same VCT, will not qualify for new tax relief (Autumn Statement 2013, para 2.52).

Implementing provisions will be included in Finance Bill 2014 (amending the existing rules in ITA 2007 Part 6).

Additionally, the government proposes (Autumn Statement 2013, para 2.52):

- to consult on further changes to address the use of converted share premium accounts to return capital to investors, where that return does not reflect profits on the VCT's investment; and
- to relax the existing rules to permit investors to subscribe for VCT shares via nominees to facilitate the use of VCTs by different types of retail investors.

Income tax relief for qualifying loan interest

Legislation will be included in Finance Bill 2014 which will extend the availability of income tax relief for interest payments on loans acquired to invest in close companies and employee controlled companies. Currently, relief is only available where the investment is in a UK resident company. From April 2014, however, the relief will be extended to apply to companies resident throughout the European Economic Area (EEA) (Autumn Statement 2013, para 2.50).

Property taxes

Real estate investment trusts (REITs)

Following a series of three consultations that finally concluded on 14 June 2013, the government has confirmed that REITs will be included within the definition of 'institutional investor' (for the purposes of the REIT regime contained in CTA 2010 Part 12), with effect from 1 April 2014 (Autumn Statement 2013, para 2.109).

The change, likely to be widely welcomed by existing REITs and property companies that may be considering converting into a REIT, will allow a REIT to invest in another REIT in a tax efficient way; in essence, without this change, a REIT investing in another REIT would be subject to tax on the property income distribution (PID) it receives. Although this means that the investing REIT does not necessarily have to distribute the income received as its own PID, the tax transparency of the structure is lost.

It is hoped the amendment announced today will enhance the UK's REIT regime (by avoiding tax 'sticking' in a REIT fund vehicle), promote investment diversification and encourage a greater number of property companies to consider conversion into a REIT.

SDLT charities relief and joint purchasers

Relief from SDLT is available on UK property acquisitions where the purchaser is a charity, subject to the satisfaction of various conditions. The Court of Appeal recently confirmed in *Pollen Estate Trustee Company* [2013] EWCA Civ 753 that where there is a joint property purchase and one (or more) of the joint buyers is a charity, SDLT is not payable on the portion of the purchase attributable to the charity (or charities). The Court of Appeal held that the SDLT legislation should be purposively interpreted, so that the correct construction of the FA 2003 Sch 8 para 1 is that a land transaction is exempt from charge 'to the extent that' the purchaser is a charity.

Following this decision, the Autumn Statement 2013 confirms that the SDLT legislation will be amended to reflect this decision, with the effect that, where a charity purchases a property jointly with a non-charity, the charity will be able to claim relief from SDLT on its proportion of a property purchase. The amendments to the SDLT legislation will be included in Finance Bill 2014 (Autumn Statement 2013, para 2.69).

Business premises renovation allowance (BPRA)

Following a technical note on BPRA published on 18 July 2013, the government will include amendments in Finance Bill 2014 to simplify the scheme, make it more certain in its application and reduce the risk of the scheme being used in tax planning structures.

Statement reaction

Mark Saunders
Tax director, PwC

Partnership changes could mean 'extra £1m NIC bill' for mid-tier law firm

Some businesses have exploited the use of partnerships to avoid NIC and this needs to be tackled. At one extreme, we've heard of fruit pickers trading as partners making a few pounds of profit per hour, a clear wheeze to avoid NIC and paying the minimum wage. But in some professions, such as the legal sector, there are good commercial reasons why someone has the title of partner without having a real equity stake in the business. It will be hard to work out where the dividing line is in practice between what's legitimate and disguised remuneration, and today's changes move the bar much higher than expected. For the many law firms where salaried partners are off the payroll, the tax changes could mean crippling costs. It's not uncommon for half or two thirds of a law firm's partners to be salaried and off payroll. For a mid-tier law firm, the extra NIC bill could easily be over £1m, and across the sector as a whole the costs could run to many tens of millions a year.

Chris Chapple
Tax director, BDO

Partnerships with nixed members: a 'greatest hits' of anti-avoidance

The accelerated changes to partnership taxation are going to cause a major headache for many firms in the financial services industry (notably alternative investment fund managers). Deferral of remuneration and retaining profits for working capital – both sensible objectives - are now going to be considerably more expensive. It was only in March this year that the Treasury's strategy document for the investment management industry promised to attract fund managers to the UK with a tax system that was simple, fair and streamlined. In this context, the consultation draft on partnerships with mixed members (due to take effect from 5 December) is really quite extraordinary. It reads like a 'greatest hits' of anti-avoidance language. All the old favourites are there: 'reasonable to suppose', 'power to enjoy', 'just and reasonable basis', 'acting at arm's length' and so forth. It is going to take firms and tax practitioner's considerable time to evaluate current structures, impose greater burdens on the industry, and lead to a prolonged period of uncertainty.

Statement reaction

Andrew Roycroft
Senior associate, Norton Rose Fulbright

Employment taxes: treating the symptoms, not the disease?

Many of the government's measures to counter 'avoidance' concern employment taxes. The implication is that individuals and their employers are artificially arranging their affairs in order to qualify for less heavily taxed regimes, such as those for the self-employed, non-domiciliaries and companies. The measures aimed at partnerships and offshore intermediaries were expected, but it is disappointing that relatively little has been done to address legitimate concerns about the scope of the former; is deferring taxation until profits are received really an abusive practice? The proposal to prevent the use of dual contracts is new. However, it is debatable how many internationally mobile executives can properly implement such arrangements when modern commerce requires, and technology permits, people to be instantly accessible wherever in the world they may be.

What these changes will do is add further complexity – and uncertainty – to our tax legislation, without addressing the incentives which motivate this behaviour. In a country where employment income is taxed at much higher rates than other income or gains and employers are required to pay a levy – employers' NIC – on remuneration, there is a clear economic incentive for income and gains not to take the form of employment income. Might it not be simpler to reduce this disparity, by lessening the burden of employment tax? A similar approach based on reducing corporation tax seems to be paying dividends.

Richard Woolich
Partner, DLA Piper

VAT: some peace at last

If ever there was a damp squib, this was it! VAT practitioners could pack off to the pub early on Autumn Statement night because however hard they tried to find nuggets of VAT, the only reference to VAT in the pack of announcements was the promise that the government would consult on draft amendments to regulations which would clarify the exceptional circumstances in which HMRC would allow alternative options for VAT registered businesses that are not able to file VAT returns online. (Since 1 April 2012, all registered businesses, whatever their turnover, have to file returns online.) The calm before the storm, perhaps?

The BPRA gives investors tax relief for capital costs involved in regenerating buildings in designated deprived or disadvantaged areas for business use. It provides 100% allowances on the capital costs of renovation. The technical note outlined four main areas of concern for HMRC in how BPRA was being used in practice following DOTAS disclosures.

To address these concerns, the technical note included proposals for both specific pieces of legislation to clarify the law and close perceived loopholes and also a targeted anti-avoidance rule. However, we will need to see what approach is taken in the draft Finance Bill to achieve the government's goals in modifying this scheme (Autumn Statement 2013, para 2.117).

Business rates

The government showed its support for high street businesses facing challenges as a result of changing customer preferences, by announcing a series of measures in relation to business rates as follows:

- indexation of business rates based on RPI increases will be capped at 2% for one year;
- the introduction of a discount of £1,000 for retail and food and drink premises with a rateable value of up to £50,000 for two years up to the state aid limits;
- the introduction of a 50% relief for 18 months up to the state aid limits for businesses moving into retail premises that have been empty for a year. The relief will be available when businesses move into such premises between 1 April 2014 and 31 March 2016;
- the small business rate relief (SBRR) will be doubled for a further year;
- the SBRR rules will be changed to allow businesses claiming SBRR to take on an additional property and continue to claim SBRR on the first property for one year; and
- businesses will be able to pay business rates over 12 months rather than ten months.

These measures will apply from 1 April 2014 unless otherwise indicated (Autumn Statement 2013, paras 1.162–1.165 and 2.101–2.106).

It was also confirmed that the government will consult on reforms to the business rates appeals process and is aiming to clear the backlog of appeals concerning business rates before July 2015. The government has today published the consultation *Checking and challenging your rateable value*, which sets out the government's proposals in relation to improving transparency in the business rates valuation and formal challenge system; the consultation closes on 3 March 2014. In respect of longer-term reform of business rates, the government will publish a discussion paper in spring 2014 setting out different options to reform business rates administration (Autumn Statement 2013, paras 2.107–2.2.108).

Tax avoidance and evasion

Code of practice on taxation for banks

The code of practice on taxation for banks and buildings societies was introduced in 2009. Although it is voluntary (in that it is up to the banks whether they commit to complying with it), its aim is to get banks to follow not just the letter of the law, but also the spirit of tax law. Draft legislation (published on 5 December 2013) to be included in Finance Bill 2014:

- requires HMRC to publish an annual report listing those banks that have unconditionally adopted it, those that have not adopted the code and those that HMRC considers to have breached the code despite having adopted it. This list will put pressure on banks that have adopted the code to comply with it, as well as on those that have not adopted it to do so;
- requires procedural safeguards to be followed prior to naming a bank as non-compliant in an annual report on the code. These procedural safeguards include:
  - requiring HMRC to publish and follow a protocol, called the governance protocol, in operating the code and listing a bank as non-compliant in an annual report – the protocol, among other things, makes it clear that any transaction in respect of which a counteraction notice has been given under the GAAR, and in respect of which all or a majority of the members of a GAAR advisory

sub-panel have issued an opinion or opinions that the arrangements are not a reasonable course of action, is considered to constitute a breach of the code;
    - obtaining a report from a reviewer who is independent of HMRC (an 'independent reviewer') on whether the bank has breached the code and should be named as non-compliant before HMRC makes the final decision; and
    - where HMRC has come to a different decision to that of the independent reviewer, HMRC must: have compelling reasons for taking a different decision, such as the independent reviewer's determination being unreasonable; set out its reasons for this and, if litigation ensues, the burden of proof is on HMRC to show that it was lawful for it to come to a different decision; and mention in the annual report that HMRC's decision differed from that of the independent reviewer; and
- requires HMRC to notify the bank in writing of its decision to name the bank as non-compliant and to delay publishing the report for at least 90 days after the day on which the notice is given.

(See the draft Finance Bill 2014 legislation on the banking code of practice on taxation and Autumn Statement 2013, para 2.123.)

Along with the draft legislation, the government has also published:

- a list of those banks which have unconditionally adopted or readopted the code as at 5pm on 4 December 2013;
- a revised governance protocol which, with effect from 5 December 2013, replaces the 26 March 2012 version of the protocol. It is this protocol that sets out the process for HMRC to follow in determining whether a participating bank:
    - has breached the code, and
    - from 2015, should be named in HMRC's annual report; and
- a document entitled *Establishing HMRC's view on a bank's compliance with the code of practice on taxation for banks.*

(See HMRC's web page on the banking code of practice for the code and the 2013 consultation on strengthening the code which underlies the changes announced in the Autumn Statement 2013.)

Avoidance schemes using total return swaps

Finance Bill 2014 will include legislation to counteract the use of avoidance schemes that utilise total return swaps linked to company profits. The measures target schemes where two group companies are party to derivative arrangements (although not necessarily at the same time) and one makes payments to the other that are, in effect, a transfer of (all or part of) the profits of a company within their group. The legislation, which will apply from 5 December 2013 to schemes entered into on any date, will prevent any deduction being given for the payments (Autumn Statement 2013, para 2.116).

Double taxation relief

Two anti-avoidance measures relating to double tax relief will be included in Finance Bill 2014 (Autumn Statement 2013, para 2.119). The first measure relates to repayments from a tax authority made to a person as part of a scheme. Under the existing legislation, the amount of relief that can be claimed (whether by way of a credit against UK tax or as a deduction from foreign income assessable to UK tax) for a payment of foreign tax is reduced where a payment in respect of that foreign tax is made by a tax authority to either the claimant or a connected person (TIOPA 2010 ss 34 and 112). This will be extended to include where a payment is made to another (unconnected) person as a consequence of a scheme that has been entered into. This change is in response to attempts to circumvent the existing legislation by entering into schemes that result in the relevant payment being made to an unconnected person. The new legislation will have effect in respect of payments made by the foreign tax authority on or after 5 December 2013.

The second measure relates to the cap on the amount of relief that can be claimed against UK corporation tax for foreign tax paid in respect of non-trading credits from a loan relationship (such as foreign withholding tax on interest under a loan) or an intangible fixed asset (TIOPA 2010 s 42). The legislation in Finance Bill 2014 will clarify that the amount of relief for foreign tax on a non-trading credit from a loan relationship or intangible fixed asset is limited to the amount of UK tax on that net amount of the credit after deducting related debits. The government says this is in response to avoidance schemes that attempt to exploit mismatches between the foreign and UK tax treatment of items of income in order to effectively cross-credit the foreign tax against UK tax on other income. This measure relates to accounting periods beginning on or after 5 December 2013. Where an accounting period straddles this date, the rules will apply as if there are two accounting periods – one relating to the period before 5 December 2013, and one relating to the period on or after that date.

Loss buying

The government has made a statement about the commencement provisions for certain of the loss-buying anti-avoidance measures announced at Budget 2013 and legislated in FA 2013. The statement (Autumn Statement 2013, para 2.125) appears to relate to the commencement provisions for:

- capital allowance buying (FA 2013 Sch 26 para 13); and
- transfer of deductions (FA 2013 Sch 14 para 3).

Both of these were amended late in the parliamentary process of Finance Bill 2013 to exclude arrangements where there was common understanding between the parties on the principal terms of the change of ownership prior to the announcement on 20 March 2013. The statement (which does not suggest that any new changes are proposed beyond these existing transitional provisions) is linked with a fiscal impact (46 in table 2.1 of the Autumn Statement 2013) of £30m less tax revenue in 2013/14. This suggests that the change to the commencement provisions excluded a number of transactions that the government had originally calculated would be included in the additional revenue arising from the measures.

Tax avoidance schemes: disclosures, penalties and payment of disputed tax

High-risk promoters: Finance Bill 2014 will implement the government's proposal, contained in the *Raising the stakes on tax avoidance* consultation document published on 12 August 2013, to amend the DOTAS (disclosure of tax avoidance schemes) rules to introduce new obligations on high-risk promoters (Autumn Statement 2013, para 2.137).

The Autumn Statement 2013 proposes that high-risk promoters will be identified according to objective criteria. The consultation document suggested that these could include whether a promoter has failed to notify a scheme via DOTAS, or whether HMRC has used an information power in relation to that promoter.

The consequences of being designated as a high-risk promoter will include:

- a higher standard of reasonable excuse and reasonable care (when deciding whether the promoter should be subject to penalties for non-compliance with the DOTAS rules); and
- an obligation on clients of high-risk promoters to identify themselves to HMRC.

The consultation document referred to some other potential consequences of high-risk promoter status, including increased obligations to provide information to HMRC, and being 'named and shamed'. The Autumn Statement 2013 does not specifically refer to these measures, although they may be in the draft Finance Bill legislation published on 10 December.

Users of failed schemes (follower cases): Often, tax avoidance schemes will be implemented by a large number of taxpayers, but HMRC will take just one or two test cases to court. The government is increasingly concerned that, even when a scheme has been shown not to work because HMRC has won the case, other users of the same arrangements (follower cases) are not paying the disputed tax.

If a taxpayer has used a scheme that has failed in another party's litigation, Finance Bill 2014 will give HMRC the following powers:

- to require the taxpayer either to amend their tax return, or to face penalties if they pursue litigation on the same scheme and are unsuccessful (Autumn Statement 2013, para 2.138); and
- to issue a 'pay now' notice requiring the taxpayer to pay the disputed tax, rather than waiting for the matter to be settled (Autumn Statement 2013, para 2.139).

The first of these measures (follower penalties) was in the *Raising the stakes* consultation document. The second ('pay now' notices) is new for the Autumn Statement 2013 and comes in the wake of the Supreme Court's decision in *Cotter* [2013] UKSC 69, in which it was held that in some (currently fairly limited) circumstances HMRC is entitled to enforce payment of a tax debt, and to withhold tax relief arising from a tax avoidance scheme, while it is investigating the scheme.

The Autumn Statement 2013 indicates that the government will also consult on issuing 'pay now' notices in a wider range of circumstances.

Tax evasion

Offshore evasion – use of exchanged information: In recent months, the UK has entered into automatic tax information sharing agreements with most of the UK's Crown dependencies and overseas territories (the Isle of Man, Guernsey, Jersey, the Cayman Islands, Gibraltar, Bermuda, Montserrat, the Turks and Caicos Islands and the British Virgin Islands: only Anguilla has yet to sign up).

HMRC is now addressing the question of how best to make use of the information it receives under these new agreements. It will consult, at the time of Budget 2014, on some enhanced sanctions for taxpayers who hide money offshore (Autumn Statement 2013, paras 2.132 and 2.133).

Register of company beneficial ownership: As previously announced, the UK will create a publicly accessible central registry of information on company beneficial ownership. This is intended to help combat tax evasion, money laundering and other crimes (Autumn Statement 2013, para 1.314).

Private client

Income tax rates and thresholds

Income tax rates and personal allowance

	2013/14		2014/15	
	Tax rate	Income bands	Tax rate	Income bands
Personal allowance for those whose income does not exceed £100,000*	0%	£0–£9,440	0%	£0–£10,000
Basic rate**	20%	Up to £32,010	20%	Up to £31,865
Higher rate**	40%	£32,011–£150,000	40%	£31,866–£150,000
Additional rate**	50%	Over £150,000	45%	Over £150,000

* *This table includes only the personal allowance applicable to those born on or after 6 April 1948. The personal allowance for those born between 6 April 1938 and 5 April 1948 remains unchanged at £10,500 and the personal allowance for those born before 6 April 1938 remains unchanged at £10,660.*

** *These figures ignore the effect of the personal allowance. The combined effect of the amount of income that is subject to the basic rate of income tax being reduced to £31,865 (from £32,010) and the higher personal allowance is that the threshold at which the higher rate of tax will start to apply will be £41,866 (up from £41,451).*

Transferable income tax allowance for married couples

The Autumn Statement confirms that, from 2015/16, spouses and civil partners will be able to transfer £1,000 of their income tax personal allowance to their spouse or civil partner. Only couples where neither partner is a higher or additional rate tax payer will be eligible to take advantage of this new measure.

The effect of making this transfer is that the spouse or civil partner who has received the transfer will benefit from a reduction in their income tax liability of £200. It has been announced that the transferable amount will be increased in proportion to the personal allowance (Autumn Statement 2013, para 2.47).

CGT private residence relief: reduction in final exemption period

It was announced that the final period exemption under CGT private residence relief will be halved from 36 months to 18 months from April 2014 (Autumn Statement 2013, para 2.58). This provision is designed to reduce the incentive for taxpayers to engage in the practice commonly known as 'flipping', whereby the taxpayer purchases a property, lives in it as their main residence and then benefits from private residence relief for the last 36 months of ownership when they come to sell the property, regardless of whether they are still using it as their principal residence at the time of sale.

This announcement will come as a nasty surprise to many second-home owners, and some commentators are suggesting that affected home owners may well try to sell second homes before this measure comes into effect in April 2014.

CGT non-residents

As widely predicted, the government has confirmed its intention to introduce CGT on future gains made by non-residents disposing of UK residential property from April 2015 (Autumn Statement 2013, para 2.59). Non-residents are currently exempt from CGT on gains made on UK property. The government plans to open a consultation on how best to introduce this new CGT charge in early 2014.

The fact that the introduction of this measure is delayed until April 2015 means that it is unlikely to have an immediate effect on the housing market.

The government does not expect to raise money from this new charge until 2016/17, although it expects to receive annual revenues of about £70m by 2018/19.

It is anticipated that this charge will hit non-residents from low tax jurisdictions harder than those from higher tax jurisdictions such as Europe or the US. This is because many non-residents from higher tax jurisdictions already pay an equivalent local tax on UK residential property gains and will therefore be able to claim a refund of some or all of the new UK tax charge under the relevant double tax treaty. In contrast, a non-resident who currently pays no tax on gains realised on the sale of UK property will really notice the new charge.

Annual exemption

It has not been announced what the annual exempt amount for capital gains tax will be for 2014/15, so it is likely to be increased in line with the consumer price index (CPI).

Inheritance tax and trusts

There are a number of issues that the government has mentioned in the Autumn Statement and will address at a later date:

- legislation will be introduced to simplify filing and payment dates for IHT relevant property charges. It is supposed that this will encompass electronic filing and that dates to match current personal tax filing times will be introduced, but details will be forthcoming in due course with an operational date of 2015/16 (Autumn Statement 2013, para 2.62);
- a major change to the relevant property trust income situation will be introduced to the effect that any income from trust assets that remain undistributed after five years will be treated for all purposes as capital for the purposes of the ten-yearly charge (Autumn Statement 2013, para 2.62). It is not yet clear how the five year period will be calculated (e.g. from when income arises, is paid, date of trust, is it retrospective etc) but the message to practitioners is clear: distribute, do not accumulate, although the finer details of the legislation will require careful perusal;
- as flagged up well in advance of the Statement there will be legislation to combat the pilot trust 'threat' from 2015 (Autumn Statement 2013, para 2.62). There will be consultations on how to split the IHT nil rate band between multiple trusts and it will be necessary to await the draft legislation before remedial action can be contemplated, but the creation of multiple trusts at this stage is perhaps a highly speculative operation and perhaps plans for unbundling those in current use will need to be considered;
- recognising the special need of the 'vulnerable beneficiary', the government has with immediate effect, extended the CGT uplift provisions that apply on the death of a vulnerable beneficiary. Therefore, trusts benefiting vulnerable beneficiaries will be able to enjoy the full CGT uplift provisions (Autumn Statement 2013, para 2.63); and
- the government will extend the range of trusts that will qualify

Statement reaction

Andy Treavett
Of counsel, Hogan Lovells

Concerns over the code of practice for banks

The government is pressing ahead with its plan to name and shame banks who don't comply with the code of practice on taxation for banks, through the publication of an annual report (prepared at 'negligible' cost by HMRC).

Before determining whether a bank has breached the code, HMRC will have to commission an 'independent reviewer' (a person of 'suitable stature', such as a retired High Court judge) to report on whether the bank has breached the code and whether the bank should be named in HMRC's annual report. The bank is given the opportunity to make representations and the reviewer must take into account exceptional circumstances that might justify not naming the bank. What is missing from both the legislation and HMRC's governance protocol, however, is an answer to the fundamental question of when, or perhaps why, 'should' a bank be named?

Further guidance (and consultation) is promised on HMRC's views on what is meant by the 'intentions of Parliament' for the purposes of the code. It will be interesting to see what the guidance can add to our understanding of this already murky area.

Tracey Wright
Associate director, Osborne Clarke

Employment intermediaries: sufficient time to deliver workable rules?

The government started the process of countering tax avoidance, especially employer's NIC, by offshore employment intermediaries back in May. Proposals arising from the consultation were announced in October and we are expecting the draft legislation to be released next week.

The knock on effect of the proposals is that intermediaries may looking for other ways to avoid the employer NIC and may do so by encouraging the use of self-employed solutions. The government is clearly alive to this and has announced in the Autumn Statement that it will take action to prevent employers and employment intermediaries from avoiding employer NICs and circumventing their employer obligations.

Whilst acknowledging that it supports genuine self-employment, the government plans to legislate to prevent employment intermediaries being used to avoid employment taxes by disguising employment as self-employment. The government will consult on strengthening existing legislation to ensure the correct amount of tax and NIC are paid where the worker is, in effect, employed.

The legislation is due to take effect from April 2014, which is less than four months away. One issue here is that of timing and any consultation period is likely to be very short. The concern at this stage must be whether the government can get this right in the time it has and whether we will end up with measures which are workable in practice. For now, we will need to wait for the legislation in respect of the original proposals and for the consultation.

for special income tax, CGT and IHT treatment as well as consult on the tax treatment of trusts designed to safeguard the property of vulnerable people. There are no specific proposals as yet (Autumn Statement 2013, para 2.63).

Charities

There is a willingness on the part of the government to extend the use of gift aid, but there is also potential for abuses of the system. With that in mind, it is proposed that a working group be established to revise the gift aid declaration to make it more user friendly; and to develop new promotional material to help increase the take-up of the scheme, but further consultation will take place on this and other issues (Autumn Statement 2013, para 2.65). There has been confusion on the SDLT position where charities purchase with non-charities but this will now be clarified in legislation to enable charities to claim SDLT relief on that proportion of the purchase price supplied by the charity (Autumn Statement 2013, para 2.69).

Fairly predictably in the wake of recent high profile cases, the government will introduce legislation in FA 2014 to amend the definition of a charity for tax purposes to put beyond doubt that entities established for the purpose of tax avoidance are not entitled to claim charitable tax reliefs (Autumn Statement 2013, para 2.130). One such high profile case was that of the Cup Trust, which was registered as a charity by the Charity Commission in 2009 with a British Virgin Islands company as its sole trustee. Over the next two years, the trust generated income of £176m, claimed £46m of gift aid, but gave only £55,000 to charitable causes.

Pensions

The basic state pension will rise by £2.95 per week to £113.10 per week from 6 April 2014 (Autumn Statement 2013, para 2.73). The increase in the state pension age to 68 could be brought forward to the mid-2030s from the current date of 2046 (Autumn Statement 2013, para 2.72). A new scheme will be introduced to allow pensioners to top up their additional state pension by paying a new class of voluntary national insurance contribution (Autumn Statement 2013, para 2.56).

CGT for non-residents

As widely predicted, the government has confirmed its intention to introduce CGT on future gains made by nonresidents disposing of UK residential property from April 2015 (Autumn Statement 2013, para 2.59). Non-residents are currently exempt from CGT on gains made on UK property. The government plans to open a consultation on how best to introduce this new CGT charge in early 2014. The fact that the introduction of this measure is delayed until April 2015 means that it is unlikely to have an immediate effect on the housing market. The government does not expect to raise money from this new charge until 2016/17, although it expects to receive annual revenues of about £70m by 2018/19.

It is anticipated that this charge will hit non-residents from low tax jurisdictions harder than those from higher tax jurisdictions such as Europe or the US. This is because many non-residents from higher tax jurisdictions already pay an equivalent local tax on UK residential property gains and will therefore be able to claim a refund of some or all of the new UK tax charge under the relevant double tax treaty. In contrast, a non-resident who currently pays no tax on gains realised on the sale of UK property, will really notice the new charge.

Individual savings accounts (ISAs)

New annual subscription limits: The chancellor has announced that the ISA, junior ISA and child trust fund annual subscription limits will be increased in line with the CPI. The 2014/15 ISA limit will be increased to £11,880, half of which can be saved in a cash ISA. The junior ISA and child trust fund limits will both be increased to £3,840 (Autumn Statement 2013, para 2.55).

Retail bond eligibility for stocks and shares ISAs: The government has indicated that it is exploring the possibility of increasing the number of retail bonds eligible for stocks and shares ISAs by reducing the requirement that such securities must have a remaining maturity above five years (Autumn Statement 2013, para 2.151).

Tax administration

VAT returns and electronic filing

The government will consult on amendments to the VAT regime to allow alternative options for VAT registered businesses to file VAT returns (Autumn Statement 2013, para 2.96). This follows a series of cases where taxpayers contested the requirement for various tax returns and payments of tax in the UK to be made by electronic means on the grounds that such requirement is a breach of the European Convention on Human Rights. In particular, in the test case *LH Bishop Electric Company,* a number of taxpayers appealed against HMRC notices requiring them to pay VAT and file VAT returns electronically. The First-tier Tribunal accepted the taxpayers' argument that the obligation to file tax returns online was a breach of their human rights.

OTS review of tax administration

The government has asked the Office of Tax Simplification (OTS) to carry out a new review on measures to further improve the competitiveness of UK tax administration, with particular regard to the World Bank's *Doing business* reports, which includes a report produced jointly with PWC called *Paying taxes 2014* (Autumn Statement 2013, para 2.110). That report compares the tax systems of 189 economies worldwide, looking in particular at three measures: total tax rates; time to comply; and number of tax payments. The most recent report ranked the UK at 14 of the 189 economies (up two places from 16 the year before).

The government has published the terms of reference for this review, which is expected to cover all types of business but focus on SMEs, and to be released by summer 2014.

Publication of anonymised HMRC data

HMRC is pressing ahead with the proposal, published for consultation on 17 July 2013, to publish anonymised data (on, for instance, the amount of tax collected from certain categories of taxpayer). HMRC is currently prohibited from releasing information in this way, but considers that there may be benefits in releasing certain categories of data that do not identify individual taxpayers. This could be used, for example, for research, or for policy development across different government departments. Draft legislation will be issued for further consultation in 'early 2014'.

The government is also considering releasing non-financial VAT registration data, and anticipates that this could be used by credit reference agencies (Autumn Statement 2013, para 2.147).

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Enforcement and compliance issues

James Bullock
Head of the litigation and compliance group, Pinsent Masons

The message from HMRC looks to be very much 'no more Mr Nice Guy'.

The signs were that something big was coming in relation to tax avoidance, notably the number of initiatives that have been announced in recent weeks as being funded from a 'clampdown on tax avoidance'. This was the 'signature' announcement of the Autumn Statement insofar as enforcement and compliance are concerned.

The backdrop is a comprehensive 'audit' which estimates that there are 65,000 live avoidance cases awaiting resolution. This is a significant uplift from the previous estimate of 41,000, but it is understood to be a much harder figure. We do not know how much revenue is tied up in these cases but it is presumably very significant.

One of the enticements to taking part in a tax avoidance scheme is the cashflow benefit that such schemes bring. Even if the scheme is found ultimately to fail, a taxpayer undertaking a scheme can (and could until recently even for PAYE and NIC) generally secure the benefit of holding the tax whilst the dispute is determined. With 'marketed' schemes the deal was even better, as generally only one taxpayer is litigated – and it is open to so-called 'follower' taxpayers to argue that their fact patterns are different – and therefore they have to sit and wait until HMRC gets around to them.

HMRC is now acting to put an end to this particular party. January 2014 will see a comprehensive proposal document with some draft legislation introducing two significant enforcement measures. It is expected that the final proposals will be included in the 2014 Finance Bill.

1. **Follower penalties:** Where an avoidance case has been decided in favour of HMRC, it will be open to HMRC to write to all participants in the relevant scheme, inviting them to amend their self-assessments in line with the lead decision and to pay the tax. They will be given a time period in which to take advice and to operate the mechanics. If they fail to do so, their case will be taken to litigation – and if they also lose on determination of their case, HMRC will have the power to impose a penalty (in addition to the tax and interest) on the grounds that they failed to amend their return when given an opportunity to do so.
2. **'Pay now' notices:** It will also be open to HMRC at the same time as in (1) to require the participant to pay the tax immediately in accordance with the decided case, even if the participant wishes to continue with litigation and run the risk of a follower penalty. This will have the effect of removing the 'cash flow advantage' referred to above.

There are no apparent proposals to accompany this with a more flexible approach to 'deals' under the litigation and settlement strategy – and it must accordingly be assumed that this is not on HMRC's agenda. HMRC is clearly relying on a 'big stick' approach. The further details to be published in January will make interesting reading and will hopefully answer some of the myriad of questions which come to mind about how this will operate in practice. One immediate thought is that this could ultimately be extended to all future cases where HMRC alleges tax avoidance, with the practical effect that the disputed tax has to be paid 'upfront'.

There will also be a 'Counter-avoidance Directorate'. This will bring together the Anti-avoidance Group with elements of Specialist Investigations and Local Compliance. The focus will be on anti-avoidance policy and on marketed avoidance in particular. It is understood that avoidance by large businesses will continue to be dealt with by the Large Business Service – and avoidance by the very wealthy will continue to be handled by the HNW Unit. But it demonstrates wider focus and a concentration of 'firepower' on avoidance. Along with a new information disclosure and penalty regime for high risk promoters of avoidance schemes – with an obligation on the part of clients to identify themselves – the message from HMRC looks to be very much 'no more Mr Nice Guy'.

The impact on MNCs

Tony Beare
Tax partner, Slaughter and May

As has now become customary, the chancellor's statement was an amalgam of new measures and previously trailed changes.

Perhaps the most welcome development is the proposal to restrict the rules which limit the carrying forward of losses on a change of ownership. After much lobbying, these rules are to be amended in 2014 in two important respects. First, the insertion of a new holding company on top of an existing group (a purely technical change of ownership) will no longer constitute a change of ownership. Second, a significant increase in capital (which is capable of triggering the application of the rules in the case of investment companies) will now require an increase of both £1m and 25%.

The proposal to introduce regulations providing certainty to insurers in relation to Solvency II – compliant instruments in advance of agreement to Solvency II is of a similar ilk. In the past year, draft regulations designed to facilitate regulatory capital issues by banks have been produced and this proposal should put insurers in a comparable position.

Following the general review of the partnership rules announced earlier this year, two changes were announced in relation to partnerships and LLPs comprising both individuals and non-individuals. The first change will apply to increase an individual partner's profit share, where excess profits are allocated to a non-individual partner and the individual partner has the power to enjoy those profits or those profits represent deferred remuneration. The second change precludes an individual partner from claiming relief for a trading loss where the loss arises in connection with arrangements which have securing that loss as their main purpose or one of their main purposes.

The chancellor also announced two anti-avoidance measures in relation to double tax relief. The first change is designed to prevent the 'cross-crediting' of foreign taxes borne on non-trading profits, by applying the existing limit on the availability of relief (the UK corporation tax payable on the profits in question) to each non-trading credit to which the foreign tax relates, instead of the entire pool of non-trading profits. The second change extends the existing rules on refunded foreign taxes to provide that double tax relief is to be reduced not only where the refund is made to the claimant or someone connected with the claimant, but also where the refund is made to any other person 'directly or indirectly in consequence of a scheme that is being entered into'. This appears to be unduly broad. One might have expected the relevant provision to contain a motive test.

The property sector is unlikely to be pleased with the chancellor's proposals. Along with changes to the private residence exemption, from April 2015 a capital gains tax charge is to be introduced on disposals of UK residential property by non-UK residents. It remains to be seen whether this regime will be extended to commercial property in due course. It is certainly something of an anomaly that the UK has not hitherto sought to cash in on its valuable real estate.

The private client perspective

Peter Vaines
Partner, Squire Sanders

This was an Autumn Statement for 'hard working people', except those on high incomes.

Well, goodness me – the sun is shining and Mr Osborne is out there fixing the roof. Although by the sound of it, nothing needed fixing. Growth is shooting up unexpectedly and better than practically everywhere else in the world; employment is at an all-time high, the deficit will be gone soon and we will be surplus by 2018. Can it really be that good? Apparently, the Office of Budget Responsibility says that this is part of the cyclical improvement. Perhaps this means that everything is much better because we have all got on our bike.

Mr Osborne made it clear that he has done so well that he is now able to benefit all hard working people. Well, not *all* hard working people. Hard working people with high incomes get absolutely nothing.

The chancellor tells us that the top 1% of earners now pay 30% of the tax, so you would think that he might at least be polite. If I had a business where 30% of my income came from 1% of my customers, I think I would be really nice to them. Funny that the Treasury does not see it that way.

There was not very much to get excited about on the private client front although, as widely predicted, capital gains tax is being extended to non-residents to a limited extent. It is proposed that from April 2015, future capital gains on UK residential property in the hands of non-residents will be chargeable to capital gains tax. There is no indication of which non-residents will be affected; individuals and trusts, I expect, because they have already done companies. Whether this refers to gains realised after April 2015 or to increases in value from that date is not clear – and whether there is a £2m threshold (and reliefs for let property) like there is for the ATED and SDLT is not known – but they will be telling us soon. The BBC described this as the 'oligarchs' tax', but I am not sure how many oligarchs would find anything suitable in central London for £2m.

From 2015, there will be a transferable married couple's allowance of £1,000 but only for those paying tax at the basic rate. I understand that Mr Cameron considers marriage to be a very good thing that needs to be encouraged, but apparently not if you are a higher rate taxpayer.

For some reason, the principal private residence exemption has found its way onto the chancellor's list of priorities and in particular the continuation of the relief for the last 36 months of ownership after you have moved out – giving a period of grace to sell the property without a charge to capital gains tax. From April 2014, this period is being reduced to only 18 months. I was not aware that this was a matter of any great concern in the corridors of power, but you live and learn.

The hostility towards tax schemes hots up still further, which is entirely understandable, but there is an increasing danger that ordinary and innocent transactions will get caught up in all this as collateral damage. That will be of real concern to those who regard the rule of law as a good thing.

Roll on next March, when I am sure Mr Osborne will have even better news.

The impact on SMEs

David Whiscombe
Director, BKL Tax

Every little helps.

While there is nothing in the Statement to send SMEs into frenzies of delight, there is nothing (in most cases, and with one notable exception) to cause paroxysms of despair either; and a few things which may help out a little. Employers' NIC is abolished (from April 2015) for workers under 21; but I do wonder, in the light of recent publicity about the poor educational standards of the young, if that will be enough to bribe employers to take on younger workers. Modest increases in the limits for SIPs and SAYE share schemes (from April 2014) marginally improve the attractiveness of these schemes but are not game-changing, though altruistic SME owners with no younger generation to inherit the business may find some attraction in the three new tax reliefs designed to encourage indirect employee ownership through the medium of employee ownership trusts.

The package of changes to business rates will be especially welcomed by beleaguered high street traders. These include the discount of £1,000 for small retail and catering premises; the 50% re-occupation relief for businesses moving into retail premises which have been vacant for a year or more; and the extension of small business rates relief to qualifying businesses taking on an additional property.

The welcome conclusion of the consultation on close company 'loans to participators' is that none of the proposed changes will be adopted in the immediate future. On the other hand, the outcome of the consultation on the taxation of partnerships will be unwelcome: the scope of the draft legislation is unclear but potentially seems to go further than was foreshadowed in the consultative document, extending not only to 'mixed partnerships' as expected, but also in some cases to pure 'corporate partnerships'. Certain aspects of the changes take immediate effect. These changes are bound to affect not only the many professional firms which have introduced companies into their partnership structures, but – perhaps more importantly for the yield to the UK exchequer – a large number of small but highly profitable financial trading and dealing businesses which will now be seriously considering relocating away from London.

Interestingly, the documents issued at the time of the Statement do not seem to refer to the separate proposal in the consultative document to treat certain members of LLPs as if they were employees. It would be too much to hope that that proposal (actually a comparatively sensible one) has been dropped; one assumes that further detail will follow.

The crackdown on avoidance and deferral continues apace. First, a taxpayer who declines to accept that he is bound by the outcome of a 'test case' and litigates independently will be at risk of a penalty should he, too, lose; and, flushed with success in the *Cotter* case ([2013] UKSC 69), the 'pay now, litigate later' mantra of HMRC is to be backed by law in avoidance cases. Finally, hot on the heels of its FTT success in *Boyle* on 'offshore contractors', HMRC will be strengthening existing legislation dealing with employment via 'offshore intermediaries' (essentially agencies) from April 2014.

Economic view

John Hawksworth
Chief Economist, PwC

The chancellor charts a prudent course.

There was plenty of good news in the Autumn Statement, but it all came with heavy caveats attached from the both the chancellor and the Office for Budget Responsibility (OBR).

As expected, the OBR has raised its UK growth forecasts to 1.4% this year and 2.4% next year (see table above), exactly in line with our own projections published last month. But this upgrade is almost entirely due to stronger consumer spending, buoyed by the recent bounce in house prices. In contrast, business investment growth and net exports were revised down in both years compared to the OBR's March forecasts.

Eventually, the OBR does expect a strong business investment recovery to come through, but not until 2015 and beyond. Meanwhile, continued sluggish growth in the Eurozone remains a drag on our export performance, so we have to rely on domestic demand to drive the recovery.

Notably, the OBR has not increased its estimates of underlying productivity growth at all. It clearly regards recent good news as a short-term cyclical improvement on the consumer demand side that has the effect of using up the spare capacity in the economy faster than expected, rather than implying higher potential output in the long run. The OBR now expects all that spare capacity to be used up by early 2019, two years earlier than it projected back in March.

The OBR has also revised down its estimates of real earnings growth in future years, although this will help to keep employment growing at a healthy rate. As a result, it expects unemployment to come down to the Monetary Policy Committee's 7% threshold in 2015, suggesting that this may also be the year when official interest rates start to edge up from current record lows.

Headline public borrowing figures are significantly lower than expected in March, with the undershoot increasing from around £9bn this year to around £20bn by 2017/18 (see table). This is largely due to higher projected growth in tax receipts, notably VAT because of stronger consumer spending and stamp duty due to the recent revival in the housing market.

Comparison of key OBR forecasts at the time of the 2013 Budget and the Autumn Statement

GDP growth (%, calendar years)	**2013/14**	**2014/15**	**2015/16**	**2016/17**	**2017/18**
Budget (March 2013)	0.6	1.8	2.3	2.7	2.8
Autumn Statement (Dec 2013)	1.4	2.4	2.2	2.6	2.7
Public sector net borrowing (£bn)*					
Budget (March 2013)	120	108	96	67	43
Autumn Statement (Dec 2013)	111	96	79	51	23
Cyclically adjusted current budget balance (% of GDP)**					
Budget (March 2013)	-2.8	-1.7	-1.2	0.1	0.8
Autumn Statement (Dec 2013)	-2.9	-2.0	-1.4	-0.2	0.7
Public sector net debt (% GDP)					
Budget (March 2013)	79	83	85	86	85
Autumn Statement (Dec 2013)	76	78	80	80	78

**Excluding effects of Royal Mail pension fund transfer and APF transfers*
*** Structural deficit*
Source: OBR

Public spending plans have been fine-tuned but not altered significantly from what was announced in the June Spending Review, although the chancellor made clear his intention to keep bearing down on welfare spending (excluding state pensions) in the medium term.

Critically, however, the OBR judges that this lower path for headline borrowing is a purely cyclical improvement. In fact, the estimated structural budget deficit is projected to be marginally higher than in the OBR's March projections throughout the forecast period, although it still returns to a small surplus by 2017/18, as required by the government's fiscal mandate.

The lack of any structural improvement in the economy or the public finances supports the chancellor's decision to deliver a fiscally neutral package. There were giveaways in areas such as fuel duty, the transferable marriage allowance, small business rates, youth training and energy bills, but these were almost exactly offset by reductions in some departmental spending limits, an increased bank levy and a range of measures aimed at reducing tax avoidance and fraud.

The net impact on the economy will probably be minimal, but the giveaways were focused on helping working households whose average real wages have declined for the past five years, with the extra burdens being borne mostly by banks and other large companies. Small businesses should welcome the limit on rate increases and the help with employers' national insurance for young workers.

In summary, this was a prudent package based on the view that recent economic improvements may not be sustainable in the long run. The real challenge will be to boost longer term productivity growth, not just short term consumer spending. The chancellor recognised this fact in his longer term plans for infrastructure and skills development, but these will take decades rather than years to deliver.

Back to basics
Intra-group reorganisations

SPEED READ This article considers group reorganisations involving the transfer of businesses, shares or individual assets between members of a group. A group may wish to reorganise for a number of commercial reasons, commonly in anticipation of a sale or after an acquisition. We look at the main tax issues and particular issues arising from pre-sale hive-downs and debt reorganisations.

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General tax considerations

The tax position for simple intra-group transfers is detailed below.

Corporation tax on chargeable gains and intangibles: The transfer of capital assets (such as shares in a group company and property assets) will be on a no gain/no loss basis if within a chargeable gains group under TCGA 1992 s 171. If the transfer is not within a chargeable gains group it is likely that the connected party rules will apply so that market value will be imputed (TCGA 1992 s 18). This may lead to a tax charge for the transferee. It may be, though, that the group has access to capital losses, or can benefit from the substantial shareholdings exemption (SSE) in TCGA 1992 Sch 7AC.

The position is similar as regards the transfer of goodwill, intellectual property and other intangibles under the tax regime for such assets introduced with effect from 1 April 2002 (CTA 2009 Part 8) or the 'post-2002' intangible asset regime.

Where shares in a group company are transferred in consideration for the issue of shares by the transferee company, the transfer will not be within the no gain/no loss rules in TCGA 1992 s 171 but should instead be within the share for share exchange rules in TCGA 1992 s 135 (assuming the exchange satisfies the bona fide test in TCGA 1992 s 138) (TCGA 1992 s 171(3)). The effect of this is that the transferor will obtain a base cost in the new shares equal to the base cost in the shares in the company transferred. However, the transferee company will obtain a market value base cost in the shares in the company transferred which may be of benefit in the future on any disposal. This is only of significance if the SSE will not apply on any future disposal.

If shares are transferred in exchange for a debt instrument which is a QCB (almost all debt instruments held by corporates are QCBs), then TCGA 1992 s 116 would apply with the result that the intra-group disposal would not be on a no gain/no loss basis but instead any gain would be calculated and held over until the disposal of the QCB.

Intra-group share transfers and the SSE: TCGA 1992 s 171 intra-group no gain/no loss treatment applies in priority to the SSE by virtue of TCGA 1992 Sch 7AC para 6(1)(a).

The interaction between the SSE and TCGA 1992 s 135 on intra-group share for share exchanges in very broad summary is that if the SSE was capable of applying to the intra-group transfer (ignoring s 135), which would otherwise be an intra-group transfer within s 171, then the s 135 treatment applies in the normal way. See the boxed example which follows an example in HMRC's guidance (*Capital Gains Manual* at CG53170a).

Capital allowances: Where a 'trade' is transferred but remains in the same ultimate ownership, there is continuity in the capital allowances position as between transferor and transferee. This means that no balancing allowances or charges should arise where assets in respect of which capital allowances can be claimed are transferred – under CTA 2010 Part 22 Chapter 1, the pools of expenditure transfer from the transferor to the transferee at 'tax written down value' regardless of the consideration given for the transfer.

Trading losses: Similar to the position in relation to capital allowances, trading losses associated with the trade being transferred will generally move across to the transferee automatically. They can be set against profits arising to the transferee in relation to the *same* trade, subject to certain anti-avoidance rules (CTA 2010 Part 22 Chapter 1).

Stock: The transfer of a trade (or part of a trade) would normally constitute the cessation by the transferor company of its trade. A cessation normally results in an actual sale or deemed market value disposal of the trading stock. Special rules apply, though, if the transferor and transferee are connected. They may jointly elect that the stock be treated for tax purposes as transferred at the greater of cost and the sale price (CTA 2009 s 167).

VAT: If the transferor and transferee are in the same VAT group, the transfer will not be subject to VAT. If transferor and transferee are not grouped for VAT purposes the sale may be treated as a 'transfer of a going concern' (TOGC) and therefore outside the scope of VAT (VATA 1994 s 49 and the VAT (Special Provisions) Order, SI 1995/1268). There are a number of conditions which must be satisfied in order for a sale to be a TOGC.

If the transferor and transferee are not grouped for VAT purposes and the sale is not a TOGC, the transferor will have to account for VAT on any part of the sale price which is apportioned to VAT standard-rated assets. If the transferee carries on a fully VATable business (i.e. charges VAT on all its onward supplies in respect of that business), VAT will be a cash flow cost only. If this is not the case, the irrecoverable VAT may be a real cost. In this situation consideration should be given to putting a VAT group in place before the transfer.

Where assets (land, buildings and certain computer equipment) which are subject to the VAT 'capital goods scheme' (The VAT Regulations, SI 1995/2518, Part 15) are sold as part of a TOGC, the transferee takes over the transferor's position under the capital goods scheme. Normally the question of whether VAT charged on assets is recoverable is determined by the immediate use to which those assets are put. The capital goods scheme, broadly, spreads recovery of VAT on certain assets over a number of years (called the 'adjustment period') according to the use made of the asset over the adjustment period. The effect of this is that the transferee may suffer a clawback of VAT previously recovered by the transferor if the use to which the assets are put changes during the adjustment period (particularly if the assets are put to an exempt use).

Stamp duty and SDLT: The transfer of shares is prima facie subject to stamp duty and the transfer of UK land interests is prima facie subject to SDLT. Intra-group relief under FA 1930 s 42 or (in the case of SDLT) FA 2003 Sch 7 Part 1 is often available, however, for an intra-group reorganisation.

Pre-sale hive-downs

Intra-group transfers before a sale raise a number of further issues as detailed below.

Tax on chargeable gains and intangibles: Where capital assets are transferred to a transferee company within a chargeable gains group on a no gain/no loss basis, and if the transferee company is then sold (broadly, within six years of acquiring the assets in question), the transferee will be deemed to have disposed of and reacquired those assets for the market value of those assets at the time they were acquired intra-group.

Any resulting gain or loss will then either:

- add to or reduce the consideration for the sale of the transferee company (or, if different, the company whose sale triggered the degrouping) – this is the impact of changes made by FA 2011, now at TCGA 1992 s 179(3A)–(3H); or
- in some limited circumstances, trigger a chargeable gains 'degrouping charge' in the transferee company itself when it is sold.

Where the gain or loss is added to the consideration for the sale of the transferee company (or, if different, the company whose sale triggered the degrouping) then, if SSE is available, there will be no gain or loss on that sale.

Where the degrouping charge is triggered in the transferee company itself, this may lead to a significant tax liability. It is possible for the transferee to elect jointly with a member of the transferor group that any degrouping charge will fall on the transferor group member rather than the transferee (TCGA 1992, s 171A).

Example: The SSE and intra-group share for share exchanges

Assume that:

- there is a group consisting of three companies (the principal company, A, and subsidiaries B and C, both of which are 100% owned directly by A);
- the SSE conditions are satisfied; and
- TCGA 1992 s 137 would not prevent TCGA 1992 s 135 from applying to the exchange.

Company A transfers the shares in company B to company C in exchange for an issue of shares by company C to company A.

TCGA 1992 Sch 7AC para 4(1)(b) tells us to disregard TCGA 1992 s 127 (as applied by TCGA 1992 s 135) for these purposes. Therefore, there is a disposal by company A of the shares in company B ('the assumed disposal').

The assumed disposal is intra-group, so TCGA 1992 s 171(1) applies. Section s 171(3) will not have the effect of switching off s 171(1) because there is an assumed disposal. The assumed disposal is, therefore, a no gain/no loss disposal. SSE is not available in relation to the assumed disposal because TCGA 1992 Sch 7AC para 6(1)(a) applies. Accordingly, TCGA 1992 s 127 (as applied by virtue of s 135) does, in fact, apply in relation to the share exchange.

In consequence:

- company A is treated as having acquired the newly-issued shares in company C at the same date as it acquired the shares in company B and at the same cost; and
- company C is treated as acquiring the shares in company B at their market value at the time of the share exchange.

A 'degrouping' charge may also arise in respect of assets subject to the 'post-2002' intangible asset regime (CTA 2009 ss 780–790) and the gain may be reallocated or rolled over in a way similar to the TCGA provisions (CTA 2009 ss 791–793). A significant point is that the changes contained in FA 2011 essentially extending the protection offered by SSE to s 179 degrouping charges do not apply to the degrouping provisions in the 'post-2002' intangible asset regime.

Important changes to the SSE were also introduced in FA 2011 which affect pre-sale hive-downs. Broadly, from 1 April 2011, where capital assets which have been used in the trade of a member of a group ('trade-related assets') are transferred to another group company, the period for which the transferee company is treated for SSE purposes as having been held by the group (and the period in which the transferee is deemed, pre-transfer of assets, to be a trading company) is extended by the period of time during which these assets were held and used by the group (TCGA 1992 Sch 7AC para 15A).

It is important to note that HMRC does not consider that TCGA 1992 Sch 7AC para 15A applies unless a 'group' existed for the whole of the relevant period (HMRC's *Capital Gains Manual* at CG53080C). So, for example, if a single non-grouped company establishes a new subsidiary and transfers trade-related assets to that subsidiary, para 15A does not operate to deem the parent company to have held shares in that new subsidiary for the period during which the trading assets were held. In contrast, where a group had been in existence for more than 12 months, a transfer of trade-related assets to a newly formed subsidiary benefits from these provisions.

In practice, the changes introduced by FA 2011 mean that, where the assets to be sold are capital assets used in the group's trade and provided that the other SSE conditions are met, the seller is likely to be able to hive down those assets into a new special purpiose vehicle (SPV) and sell that SPV to the purchaser without triggering any tax on capital gains. This is likely to be attractive to purchasers and sellers alike. From a seller's perspective, the sale can be structured free of tax on capital gains without the need to sell an existing group company (and so without the need to give the extensive warranty and indemnity protection likely to be required on such a sale). From the purchaser's perspective, the assets are acquired packaged in a clean new company (reducing due diligence and the need to negotiate substantial indemnity and warranty protection). In addition, by virtue of the operation of the degrouping provisions, those assets will be held by the SPV at or near current market values, as opposed to historic market values (as would have been the case had purchaser instead acquired an existing group company holding those assets).

Stamp duty and SDLT: Intra-group relief from stamp duty and SDLT on a hive-down may be denied if the hive-down is part of an arrangement for the transferee company to be sold out of the relevant group (FA 1967 s 27(3) and FA 2003 Sch 7 para 2). For this reason, it is advisable to carry out the hive-down as soon as possible after the decision is taken to sell the business, before entering into negotiations with a potential purchaser. In addition, in relation to land, intra-group relief previously obtained may be subject to clawback on a sale of the transferee out of the group if within three years (FA 2003 Sch 7 para 3).

Trading losses: In order for trading losses to be transferred under CTA 2010 Part 22 Chapter 1 to the transferee company, one of the conditions is that the transferee must carry on the trade before it is sold out of the group. It is therefore important to have some 'daylight' between the hive-down and the sale. It should also be noted that the carry forward of losses will be restricted under CTA 2010 Part 14 Chapter 2 if:

- within any period of three years there is both a major change in the ownership of the company (broadly, more than 50% of share capital changing hands) and a major change in the nature or conduct of the trade; or
- there is a change of ownership at any time after the scale of the activities in a trade carried on by the company has become small or negligible and before any considerable revival in the trade.

The current rules provide that losses arising in a trade in the 12 months prior to its cessation may be carried back and set off against profits made in the previous three years. Taxpayers may not artificially engineer a deemed cessation of trading to enable the company to access relief for losses earlier than Parliament intended.

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Intra-group reorganisations involving debt and derivative contracts

The loan relationship rules in CTA 2009 Part 5 govern the taxation of company debt. The amounts that are deductible for a company under Part 5 are those that are recognised in determining the company's profit or loss for the period, in accordance with generally accepted accounting practice. UK resident creditor companies (and UK permanent establishments of non-resident companies) are subject to corporation tax on interest under the loan relationships rules in Part 5. Derivative contracts are taxed on a similar basis under CTA 2009 Part 7.

There are special rules relating to the transfer of loan relationships between group companies. Broadly speaking, by virtue of CTA 2009 ss 336 and 340, the transfers are treated as being on a tax neutral basis (generally treated as transferred at notional value or at fair value where fair value accounting applies). These rules do not apply where the intra-group transaction is likely to be followed by a transfer to a third party and (one of) the main purpose(s) is to secure a tax advantage for the transferor or a person connected with it (CTA 2009 s 347).

There is also the potential for a degrouping charge where there has been a s 336 transfer (other than a fair value transfer under CTA 2009 ss 336 and 341) within the six years before the transferee company leaves the group. In such a case, the transferee is deemed to have disposed of the loan relationship at its fair value at the time immediately before ceasing to be a member of the group, but only if that results in a gain.

Very similar rules apply to the intra-group transfer of derivative contracts (see CTA 2009 Part 7).

Anti-avoidance legislation was introduced to stop groups seeking to take advantage of differing accounting treatments for financial instruments and/or differing tax treatment of transactions as between companies in the same group with the broad effect that relief arises in one group company without a corresponding tax charge in the other (FA 2011 ss 28, 30).

HMRC published a consultation document on 6 June 2013 which set out various options for a reform of the loan relationships and derivative contracts regime, including in relation to intra-group transfers. After a period of consultation, the intention is to include draft legislation in Finance Bill 2015.

VAT: Supplies in respect of loan transactions are generally exempt under VATA 1994 Sch 9 Group 5.

It should be noted that the EU is currently investigating the extent of the VAT financial services exemption and change of law is likely. No draft legislation has yet been produced.

Stamp duty: The transfer of 'loan capital' is generally exempt from stamp duty (FA 1986 s 79). In the context of intra-group reorganisations, the transfer of loan capital which otherwise attracts a stamp duty charge is likely to qualify for group relief. ■

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Ask an expert

Purchase of own shares

Q My client holds 20% of the shares in a profitable trading company and wishes to retire, leaving the remaining shareholders to manage the company. The other shareholders do not have sufficient funds to purchase the shares from my client directly and are reluctant to take on personal borrowings. A sale of the shares to a third party is also not acceptable to the other shareholders. Is there a tax efficient solution to this problem?

Jackie Wheaton
Senior manager,
Moore Stephens
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A A company purchase of own shares is useful for dealing with succession planning in owner-managed businesses and could be a solution in this case. The purchase consideration would be satisfied by the company and the purchased shares can be cancelled, leaving the remaining shareholders in control of the company.

The legal requirements: The share purchase arrangements must follow the detailed legal requirements laid down in the Companies Act 2006. Failure to comply with all the relevant rules could mean that the purported acquisition of the shares by the company is void. The requirements include:

- There must be no restrictions or prohibitions in the company's articles.
- The contract for the share purchase must be approved by resolution of the shareholders, filed with the Registrar of Companies, and retained at the registered office for ten years.
- The shares must be paid for on purchase, and can be cancelled or held in treasury (following the changes introduced by The Companies Act 2006 (Amendment of Part 18) Regulations, SI 2013/999).
- The shares can be bought by the company out of: its distributable profits; the proceeds of a fresh issue of shares; or capital, provided that all distributable profits are used first.
- A non-distributable capital redemption reserve must be created equal to the nominal value of the shares purchased to the extent that shares are purchased from distributable reserves.

Further requirements apply when shares are purchased out of capital.

Tax treatment of distribution: The basic principle is that any amount paid in excess of the capital subscribed for the shares will be taxed as an income distribution under CTA 2010 s 1000(1)B, which will be subject to income tax according to the individual's personal circumstances.

However, where a number of requirements are met, a purchase of own shares can be treated as a CGT transaction, and if entrepreneurs' relief is available the rate of tax on the gain will be 10%. The relevant provisions are in CTA 2010 ss 1033–1048 and apply only to unquoted trading companies or groups which satisfy either condition A or condition B of s 1033. Condition B applies where the purchase of shares provides funds to pay inheritance tax.

Condition A is that the redemption, repayment or purchase of shares is made wholly or mainly for the purpose of benefiting a trade carried on by the company or any of its 75% subsidiaries. Also, the purchase must not form part of a scheme or arrangement the main purpose, or one of the main purposes of which is either to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or the avoidance of tax. In addition, the requirements set out in ss 1034–1043 (so far as applicable) must be met.

HMRC's view is that the trade benefit test is not satisfied where the transaction serves the personal or wider commercial interests of the vending shareholder, or where the intended benefit for the company is to some non-trading activity which it also carries on. However, the test will often be satisfied where a shareholder wishes to retire and make way for new management, or where there is a disagreement between shareholders over the management of the company which is having or is expected to have an adverse effect on the company's trade and, in order to resolve the situation, the dissenting shareholder is removed completely.

Requirements of ss 1034-1043: These include the following:

- The seller must be resident in the UK in the tax year in which the purchase is made.
- The shares must have been owned by the seller throughout the five years ending with the date of the purchase.
- If, immediately after the purchase, the seller still owns shares in the company, the seller's interest in the company, including shareholdings of associates, must be substantially reduced.
- The seller's interest in the profits available for distribution immediately after the purchase must not be more than 75% of the corresponding interest immediately before the purchase. This is to prevent a shareholder from selling shares back to the company but retaining a disproportionate interest in the profits available for distribution.
- The seller must not, immediately after the repurchase, be connected with the company making the purchase or any other company which is a member of the same group as that company. Connection is defined in s 1062. A person is connected with a company if the person directly or indirectly possesses or is entitled to acquire more than 30% of the issued ordinary share capital, loan capital and issued share capital, or the voting power of the company.

HMRC clearance: Advance clearance should be sought from HMRC under CTA 2010 s 1044 that the detailed conditions for CGT treatment will be satisfied. A capital gain share repurchase by a close company could potentially be subject to an income tax charge under the transactions in securities provisions in ITA 2007 ss 682–713 as it falls within the prescribed circumstances in ITA 2007 s 685. Advance clearance should therefore be sought under ITA 2007 s 701 at the same time, on the basis that the buy-out is undertaken for bona fide commercial reasons.

CTA 2010 s 1046 requires the company to submit details of the buy-back transaction to HMRC within 60 days of the transaction, where capital treatment under s 1033 applies. ■

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What's ahead

Dates for your diary

One minute with ...

Gill Morris
Director of tax and treasury, Specsavers

How did you end up in tax?
I completed a degree in agriculture at a point where the industry was going through a periodic decline, so reconsidered my options. An accountancy qualification seemed like an excellent springboard, but I didn't fancy spending three years auditing, so I took a new tax route through ACA with Touche Ross, as it was then.

What's keeping you busy at work?
I've been working at Specsavers for almost 20 years and have seen the group grow from 200 stores in the UK and Republic of Ireland to a global leader in the optical market, with 1,700 stores and a retail turnover of more than £1.6bn. Ensuring that our team continues to give support as the business grows, often very rapidly and in unexpected directions, always provides a series of healthy challenges. We are currently supporting new contracts for NHS hearing aid provision and a recent acquisition in domiciliary eyecare.

How do you see the in-house tax function evolving?
Our in-house tax function is unusual in that we have been part of a shared service for years and have literally thousands of companies within the group, which has meant a heavy compliance burden. We have to make sure that our housekeeping is excellent, especially as the senior accounting officer regime gets tougher. We will continue to improve our processes to allow our team to engage more with the commercial side of the business, adding extra value at an earlier stage of new projects and ventures.

What advice would you give to someone entering the profession?
In this industry, you have to be pragmatic and understand the art of the possible. There is absolutely no point in coming up with something clever if the organisation cannot guarantee that all the requirements are fulfilled on an ongoing basis, especially after everyone has forgotten the reasons for making the change in the first place!

How do you engage with business to become a 'real' business partner?
Persistence and being helpful are essential attributes. To ensure that the team is involved at the right stage, we have to continue to maintain our credibility within the business by being available, helpful and pragmatic.

Is there a recent development in tax that concerns you?
We are keeping a close eye on the BEPS project. Our office location in Guernsey means that assumptions are sometimes made about our tax strategy, without tax authorities necessarily taking the time to fully understand our position and approach; this might be the springboard for more of the same but I am happy to say that our compliance reputation is exemplary.

What's your view of HMRC?
Much as the bosses might like to think that they are providing a better service to taxpayers, the fact is that they need to invest more in people. The reduction in frontline staff has reduced HMRC's service levels and impacted their ability to collect the tax that the UK desperately needs to get back on track.

You might not know this but...
At heart, I'm a walker. I'm currently engaged in a ten-year goal to walk from Land's End to John O'Groats, which is not so easy when you have a young family. This is the first year and I've walked 135 miles and raised £1,200 so far!

December

09 **Upper Tribunal hearing:** *HMRC v McLaren Racing Ltd* [2013] SFTD 18: HMRC appeal against earlier decision over whether £100m fine imposed by the World Motor Sport Council under article 28 of the FIA statutes was deductible for corporation tax.
Treasury Select Committee: Hearing on the Autumn Statement 2013 with the Office for Budget Responsibility chairman Robert Chote, and two other members.

10 **Finance Bill 2014:** Draft clauses to be included in FB 2014 will be published.
First-tier Tribunal hearing: *Avon Cosmetics Ltd v HMRC*: Company appeal against VAT notice of direction regarding demonstration items and samples.
Court of Appeal hearing: *Birmingham Hippodrome Theatre Trust Ltd v HMRC* [2013] UKUT 57 (TCC): Company appeal over set-off of repayment claim under VATA 1994 s 81(3A).

11 **Upper Tribunal hearing:** *HMRC v Lok'nStore Group PLC* [2012] UKFTT 589 (TC): HMRC appeal against FTT decision that VAT partial exemption attribution was fair and reasonable.

16 **Upper Tribunal hearing:** *Dr Samad Samadian v HMRC* [2013] UKFTT 115 (TC): Commencement of doctor's appeal against FTT decision over the deductibility of travel expenses in the course of self-employment.

18 **Parliament:** House of Lords rises for Christmas recess.

19 **Court of Appeal hearing:** *BT Pension Scheme Trustees v HMRC* [2013] UKUT 105 (TCC): Company appeal against Upper Tribunal decision on the time limits for a foreign income dividends repayment claim
Parliament: House of Commons rises for Christmas recess.

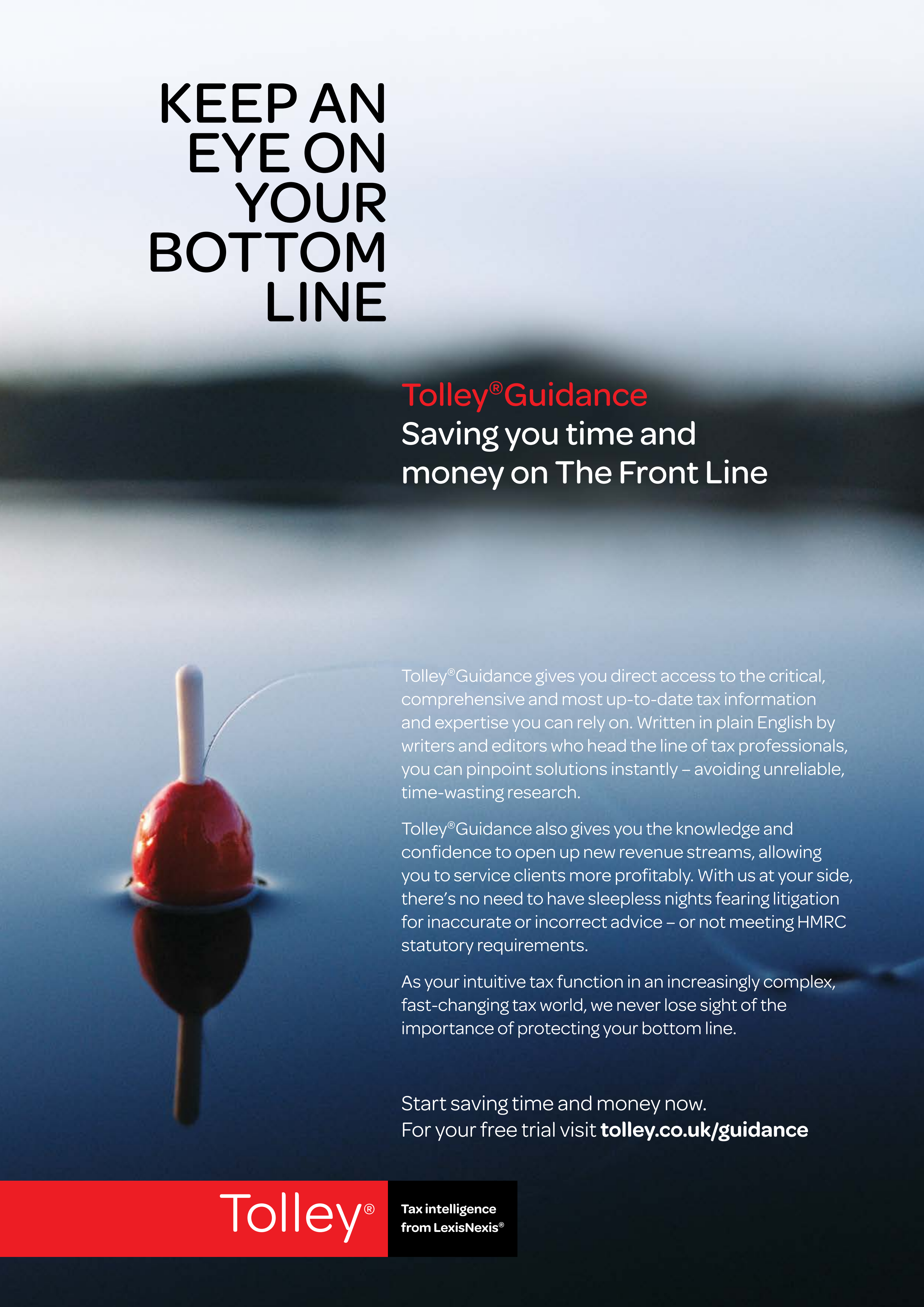
22 **OECD consultation:** Deadline for comments to OECD on an approach to addressing the tax challenges of the digital economy, as well as gathering information on specific business models employed in the sector, as part of the BEPS action plan.

27 **Consultation:** Deadline for comments to the HMRC consultation *HMRC digital strategy: legislative changes to enable paperless self-assessment.*

30 **Self-assessment:** Tax return submission deadline for those wanting HMRC to collect any tax they owe through their tax code (for amounts up to £3,000).

Coming soon in Tax Journal:

- Examining the partnership proposals.
- Reflections on 2013.



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