Insight and analysis for the business tax community

TAX JOURNAL

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Special edition

Budget review

Your definitive guide to the pre-election Budget.

The drôle de guerre is over, let the battle commence!

Chris Sanger • Head of tax policy • EY

Compliance and enforcement remains centre-stage

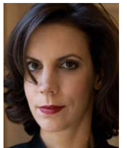
James Bullock • Head of litigation and compliance • Pinsent Masons

MNCs: good news for oil & gas, bad news for banks

Mike Lane • Partner • Slaughter and May

OMBs: striking changes to entrepreneurs' relief

David Whiscombe • Tax technical director • BKL Tax



Private client perspective: hints of things to come

Sophie Dworetzsky • Partner • Withers

Economic view: light at the end of the austerity tunnel

John Hawksworth • Chief economist • PwC

ASK AN EXPERT

SSE problems on business hive downs

Keith Gregory • Partner • NGM Tax Law

PLUS:

- European Commission presents ambitious tax transparency package
- The tax cases that matter

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TAXJOURNAL

From the editor

This was a Budget 'which makes us feel safe, rather than feel good' (Chris Sanger, p 6). For many multinationals, there was some good news that the diverted profits tax notification rules will be relaxed, but 'less welcome is the new anti-avoidance on loss refreshing' (Mike Lane, p 19). For OMBs, 'the most striking changes were to entrepreneurs' relief' (David Whiscombe, p 19). The Liechtenstein and Crown Dependencies disclosure facilities are to close early; private client advisers should act now before their replacement by 'a harsher facility' (Sophie Dworetzsky, p 20). The intention to abolish self-assessment returns for individuals and small businesses will certainly make things easier, but for whom – taxpayers or for HMRC? – asks James Bullock (p 18). And there is light at the end of the austerity tunnel, reports John Hawksworth (p 21).

With news of the introduction of a new corporate offence for failing to prevent evasion as we go to press, and only one day for Parliament to consider the Finance Bill next week, it's certainly all go!

Editor Paul Stainforth
paul.stainforth@lexisnexis.co.uk

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Editor: Paul Stainforth (tel:020 3364 4448; email: paul.stainforth@lexisnexis.co.uk)
Editorial team: Santhie Goundar & Julia Burns
Cases: Cathya Djanogly
Design: Mark Chanter
Production manager: Angela Waterman
Marketing manager: Victoria Newman
Publisher: Chris Jones

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Your Lexis®PSL Tax guide to the tax measures, which include:

- confirmation of the introduction of the diverted profits tax, with some modifications;
- immediately effective provisions to prevent corporation tax loss refresh planning;
- further restrictions on the availability of entrepreneurs' relief;
- changes to oil and gas taxation, with cuts in petroleum revenue tax and the supplementary charge;
- implementation of the OECD's common reporting standard;
- an increase in the bank levy rate from 1 April 2015;
- proposed restrictions on deductibility of compensation payments made by banks;
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News

Covering the key developments in tax

Business taxes

FB 2015

The (first) Finance Bill 2015 and accompanying explanatory notes will be published on Tuesday 24 March 2015. All stages of the Finance Bill are to be concluded in Parliament the next day, with royal assent expected on 26 March.

Worldwide debt cap provisions

The Tax Treatment of Financing Costs and Income (Change of Accounting Standards: Investment Entities) Regulations, SI 2015/662, amend the worldwide debt cap provisions, with effect from 2 April 2015. They increase the 'available amount' of a worldwide group's financing expenses for investment entities which do not consolidate accounts of certain subsidiaries, owing to changes in international accounting standards and UK GAAP. The change avoids a disallowance of finance expenses which would have been available but for the accounting standards changes.

Travel and subsistence consultation

HM Treasury has extended its consultation (see www.bit.ly/1CuWuUj) on the rules underlying the taxation of travel and subsistence expenses. The consultation was launched on 31 July 2014, alongside consultations on expenses and benefits and a broader call for evidence on remuneration launched on 18 June. The first stage of the consultation involved an information gathering exercise, which was due to run from 31 July 2014 to 23 October 2014. This stage was initially extended to 31 January 2015, and has now been extended again to 1 May 2016. Consequently, the government will not be able to report on the second stage at Budget 2015.

CT Northern Ireland Bill

The Corporation Tax (Northern Ireland) Bill completed its Parliamentary stages on Tuesday, and awaits approval from the Northern Ireland Assembly. Secretary of state Theresa Villiers welcomed the move, saying: 'It is fitting that the Corporation Tax Bill passed through the House of Lords today, on St Patrick's Day. This represents completion of the Bill's Parliamentary stages and is a significant milestone on the journey to devolve corporation tax setting powers to Northern Ireland.'

Determining market value of shares

The Market Value of Shares, Securities and Strips Regulations, SI 2015/616, implement the Office of Tax Simplification's recommendation to replace the 'quarter up' method of determining the market value of listed shares with the closing price on the relevant day, with effect from 6 April 2015. The final regulations differ from the July/August 2014 consultation draft in that they do not: specify a fixed test for establishing the market value of shares listed on a foreign exchange; or make specific provision for CGT 'no gain/no loss' on same-day disposals of employment related securities.

The Finance Act 2007, Schedule 26, Paragraphs 4 and 5 (Valuation of Shares) (Appointed Day) Order, SI 2015/635, appoints 6 April 2015 as the effective date for the switch to determining the market value of listed shares and securities by reference to the closing price on the relevant day, in place of the 'quarter up' method. Regulations implementing the change are contained in SI 2015/616 (see above). The Office of Tax Simplification recommended this change as part of its 2013 report on unapproved share schemes.

Class 2 NIC and LLPs

The Social Security Contributions (Limited Liability Partnership) (Amendment) Regulations, SI 2015/607, clarify that the class 2 NIC treatment of inactive members of LLPs is the same as that of sleeping partners and inactive limited partners, with effect from 6 April 2015. HMRC has treated sleeping and inactive limited partners as self-employed earners liable to class 2 and class 4 NICs since April 2013. The regulations modify the definition of 'employment' for NICs purposes to include membership of a limited liability partnership carrying on a trade. Members of a limited liability partnership are to be treated as self-employed earners for NIC purposes unless they fall within the salaried member rules.

People and firms

Spire Healthcare Group plc has appointed **Carl Isaac** (former head of group tax at RPS Group) as its new head of tax.

UK and European tax specialist **Daniel Friel** (formerly of Latham & Watkins) has joined **King & Spalding** as a partner in the firm's international tax practice, based in London.

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

Personal taxes

Pension regulations

The following regulations take effect from 6 April 2015:

- The Registered Pension Schemes (Provision of Information) (Amendment) Regulations, SI 2015/606, specify the information that scheme administrators must provide to the receiving scheme administrator when transferring pension funds which can be paid tax free; and to HMRC when schemes change their structure, range or number of members, in the interests of preventing pension liberation. A change from the draft version published in December 2014 ensures that individuals do not have to provide information to schemes before they become subject to the money purchase annual allowance.
- The Overseas Pension Schemes (Miscellaneous Amendments) Regulations, SI 2015/673, align the reporting requirements for overseas pension schemes more closely with those for registered pension schemes.
- The Registered Pension Schemes (Splitting of Schemes) (Amendment) Regulations, SI 2015/667, ensure that sub-scheme administrators of the new police and fire service pension schemes will be similarly responsible for the tax-related obligations of the new schemes, as they are for the current schemes.

Savings-related changes on 6 April

The Child Trust Funds (Amendment) Regulations, SI 2015/600, increase the annual child trust fund subscription limit to £4,080, with effect from 6 April 2015.

The Individual Savings Account (Amendment) Regulations, SI 2015/608, increase the annual ISA subscription limit to £15,240, with effect from 6 April 2015. The junior ISA subscription limit is increased to £4,080.

The Income Tax (Deposit-takers and Building Societies) (Interest Payments) (Amendment) Regulations, SI 2015/653, and The Data-gathering Powers (Relevant Data) (Amendment) Regulations, SI 2015/672, both make changes as a consequence of the reduction in the starting rate for savings income from 10% to 0% from 6 April 2015.

Revised eligibility for community amateur sports clubs

The Community Amateur Sports Clubs Regulations, SI 2015/725, set out revised eligibility conditions for community amateur sports clubs, following consultations in 2013 and 2014 and legislation in FA 2014. The new conditions cover: a new upper limit on trading and property income; maximum membership fees; payments to players and match officials up to specified limits; and a minimum 50% participating (i.e. sporting)

Our pick

Commission presents tax transparency package

The European Commission has presented its new tax transparency package 'as part of its ambitious agenda to tackle corporate tax avoidance and harmful tax competition in the EU'.

A key proposal concerns the automatic exchange of information between member states on tax rulings, which the Commission said was 'urgently needed to tackle aggressive tax planning and ensure fair tax competition between member states'. It is proposed that, every three months, national tax authorities will have to send a short report to all other member states on all cross-border tax rulings that they have issued. Member states will then be able to ask for more detailed information on a particular ruling. The aim is to encourage 'healthier' tax competition, 'as tax authorities will be less likely to offer selective tax treatment to companies once this is open to scrutiny by their peers'.

Other transparency initiatives include:

- assessing the impact of new requirements for multinationals in all sectors to publicly disclose certain corporate tax information, although the Commission noted that 'the objectives, benefits and risks of any such initiative need to be carefully considered';
- reviewing the EU's code of conduct on business taxation 'to make it more effective in ensuring fair and transparent tax competition within the EU';
- exploring how to better quantify the scale of tax evasion and avoidance; and
- repealing the Savings Tax Directive to ensure a more coherent, streamlined framework for the automatic information exchange.

The two legislative proposals of this package will be submitted to the European Parliament for consultation and to the Council for adoption. Member states should agree on the tax rulings proposal by the end of 2015, so that it can enter into force on 1 January 2016. 'Given that the European Council in December 2014 called on the Commission to make this proposal, full political commitment on reaching a timely agreement should be expected.'

The Commission said that the next milestone would be an action plan on corporate taxation, which will be presented before the summer. This plan will focus on measures to make corporate taxation fairer and more efficient within the single market, including a relaunch of the common consolidated corporate tax base (CCCTB) and ideas for integrating new OECD/G20 actions to combat base erosion and profit shifting (BEPS) at EU level.

Rob Fontana-Reval, CBI head of tax & fiscal policy, said the CBI supported the measures, but added: 'It is important that the proposals maintain normal levels of confidentiality that govern the exchange of tax information under current treaties and that the scope of information shared is restricted to formal written rulings. This will ensure businesses and tax authorities can continue having a transparent dialogue without creating an unreasonable burden on authorities that could jeopardise such arrangements.'

membership. Most of the changes are to be treated as having effect from 1 April 2010. Those relating to membership fees, definitions of 'amateur' and travel expenses will have effect from 1 April 2015.

The Finance Act 2013, Schedule 21 (Appointed Day) Order, SI 2015/674, brings into force the remaining elements of the revised eligibility conditions for community amateur sports clubs (CASCs), with retrospective effect from 1 April 2010.

International taxes

Hungary state aid investigation

The European Commission has announced an in-depth investigation into Hungary's advertisement tax, introduced in June 2014. It has also taken a separate decision to apply a suspension injunction with immediate effect, which prohibits Hungary from applying the tax rates of the advertisement tax stipulated in the country's Act XXII of 2014 on Advertisement Tax until the Commission has finished its assessment.

In particular, the Commission says it has concerns that the progressive tax rates, ranging from 0 to 50%, could selectively favour certain companies and give them an unfair competitive advantage. The EC also says that the opening of an in-depth investigation gives interested third parties the opportunity to comment and that it 'does not prejudge the outcome of the investigation'.

Under Hungary's Advertisement Tax Act, companies are taxed at a rate depending on their advertisement turnover and companies with a higher advertisement turnover are subject to a significantly higher tax rate. At this stage, the Commission considers that this progressivity of the tax rates, ranging from 0% to 50%, selectively favours certain media companies, in breach of EU state aid rules. Due to the progressive rates, companies with a low advertisement turnover are liable to pay substantially less advertisement tax, even in proportion to their advertisement turnover, than companies with a higher advertisement turnover. The Commission argues that a progressive tax based on turnover places larger players at a disadvantage, unlike a progressive tax based on profits, which can be justified by the higher burden bearing capacity of very profitable companies; and that the Hungarian authorities have not presented any objective reason that would justify this.

Commissioner Margrethe Vestager, in charge of competition policy, said: 'I welcome the signals from the Hungarian government that they intend to make changes to the advertisement tax. Our state aid investigation will look in detail both at how the advertisement tax applies currently as well as how it is amended, to make sure there is no unfair discrimination against certain media companies.'

Administration & appeals

Tax devolution

Wales: The Welsh government has established a Treasury team in order to progress the legislation and administrative arrangements for the new devolved taxes and wider financial powers, and to ensure a smooth transition towards April 2018. The Treasury is currently engaged in a range of projects, including: tax collection and management legislation; Welsh Revenue Authority implementation; land transaction tax; landfill disposals tax; full devolution of non-domestic rates; and future budgetary practices. Assistance is being provided from HMRC, the Office for Budget Responsibility and HM Treasury on current tax management and collection practices, while the Scottish government and Revenue Scotland have given advice on their experience of establishing new devolved taxes. A Bill establishing a tax collection authority for Wales is due in July.

Scotland: Separately, yet more regulations concerning the devolution of taxes to Scotland have been published. For details, see www.taxjournal.com.

First HMRC manual on gov.uk

The first HMRC tax manual appeared on gov.uk this week, on VAT and public bodies. See www.bit.ly/1H1L23t.

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Cases

Reporting the tax cases that matter

Business taxes

Failed challenge of a PAYE determination

In ***Poole Leisure v HMRC*** [2015] UKFTT 109 (6 March), the FTT found that a PAYE determination, issued by HMRC following an error by the employer, must stand.

Poole Leisure ran a successful bistro café bar. Mrs Ball had provided payroll services. Following a mistake by Mrs Ball, Poole Leisure had failed to deduct the correct amount of PAYE for one of its employees.

Under the Income Tax (PAYE) Regulations, SI 2003/2682, reg 72, HMRC has a discretion to direct that an employer is not liable to pay the 'excess' (i.e. the additional amount of PAYE due). This applies, in particular, when the failure to deduct the excess 'was due to an error made in good faith'.

The FTT pointed out that HMRC had not made a direction under reg 72(5), before the issue of a notice of determination under reg 80. Therefore, the only basis on which a direction could be regarded as having been sought would have been under a request by Poole Leisure under reg 72A. Such a request would have set out (inter alia) how reasonable care had been taken and how the error had occurred. In correspondence with HMRC, Mrs Ball had set out the sequence of events that had led to the error; but this did not amount to an account of how Poole Leisure had taken reasonable care. Furthermore, Mrs Ball had also not stated the amount at stake. Consequently, no valid request had been made to HMRC.

The only remaining question was whether the reg 80 determination should stand. For these purposes, the determination was treated as an assessment; and so the burden of proof lay on Poole Leisure to satisfy the FTT that the determination was incorrect. No evidence had been provided and, therefore, the determination must stand.

Finally, the FTT had no jurisdiction to decide that the unpaid PAYE should be paid by the employee rather than by Poole Leisure.

Why it matters: **This case confirms that reg 72A of the PAYE regulations sets out very strict formal requirements and is therefore unlikely to be complied with in a mere exchange of letters between the taxpayer and HMRC.**

Indirect taxes

Supply of care workers by an agency

In ***'Go fair' Zeitarbeit OHG v Finanzamt Hamburg-Altona*** (C-594/13) (12 March), the CJEU found that the supply of care workers by a temporary work agency was not VAT exempt.

Go fair, a temporary work agency, hired out care workers it employed to inpatient and outpatient care establishments. It had appealed the decision of the German tax authorities that its services were not VAT exempt as it did not operate an establishment involved in nursing and caring.

The CJEU noted that it is for the national authorities, in accordance with EU law (in particular, the Principal VAT Directive 2006/112/EC art 132(1)(g)) to take a number of factors into account when determining which bodies must be recognised as 'devoted to social wellbeing'. German law had not recognised temporary work agencies as such bodies. The CJEU found that the workers were employed and therefore did not independently carry out an economic activity; and so the exemption could not apply to them. In any event, the relevant supply was that provided by Go fair. However, it could not be said that Go fair was a body 'devoted to social wellbeing', as the supply of workers is not, in itself, a supply of services of general interest carried out in the social sector.

Why it matters: **As pointed out by the German referring court, the services provided by Go fair were closely linked to welfare and social security work. However, this was not enough for the exemption to apply.**

Fleming claims and transfers of hospitals

In ***Northern Lincolnshire & Goole Hospitals NHS Foundation Trust v HMRC*** [2015] UKFTT 103 (4 March), the FTT found that, on the transfer of hospitals between NHS trusts, the right to reclaim VAT had also been transferred.

The appellants, NHS hospitals, had been the object of several transfers between NHS trusts. They had lodged *Fleming* claims and the issue was whether any right of any predecessor body had been transferred; in particular, the right to recover output tax and/or underclaimed input tax.

The FTT noted that although no document had been produced, a document was bound to exist. However, it cannot have referred specifically to VAT repayment claims as, at the time, no such claims were in contemplation.

The FTT found that the presumption of correctness could not prove what rights were transferred; it only proved that the transfers of the hospitals had been effected in correct form. Whether the transfers of rights included the right to reclaim VAT depended on circumstantial evidence.

The FTT accepted evidence that the hospitals had been transferred 'lock, stock and barrel', which corroborated the contention that all rights had been transferred. Finally, the FTT found it clear that the Secretary of State had intended each hospital to operate in the same way at each stage.

Why it matters: **The amounts at stake were not significant, but the FTT pointed out that the decision would be of interest to similar claimants, whose appeals had been stood over behind this case.**

The meaning of 'site' for the aggregate levy

In ***HMRC v Northumbrian Water*** [2015] UKUT 93 (13 March), the UT confirmed that a wide interpretation of 'site' should prevail for the purpose of the aggregate levy.

Northumbrian Water is a water and sewerage company which had engaged in construction work for the raising of the level of a reservoir. Gravel, which was needed to achieve this, was obtained from a nearby pit. The issue was whether the use of that gravel amounted to commercial exploitation of aggregates for the purpose of FA 2001 Part 2.

It was accepted that the gravel was aggregate. If the only exploitation resulted in the aggregate in its natural form becoming part of the land at the site from which it was extracted, that exploitation did not count as commercial exploitation. The FTT had found that a purposive interpretation was required. It had considered that exploitation by way of use for construction purposes was the most likely to lead to aggregates becoming part of the land again. The FTT also thought that it would be too narrow to interpret 'site' so that the exclusion only applied where the aggregate was used for construction purposes within the footprint of the pit from which the aggregate was extracted.

The UT confirmed that the FTT had applied the right test and that no commercial exploitation of the aggregate had taken place.

Why it matters: **The narrow interpretation of 'site', suggested by HMRC, would have made the exclusion for non-commercial exploitation redundant, as very few**

Our pick

HMRC v Colaingrove
The reduced rate of VAT and complex supplies

In ***HMRC v Colaingrove*** [2015] UKUT 80 (10 March), the UT found that the reduced rate could not apply to an element of a complex supply to which the standard rate applied.

Colaingrove provided serviced chalets and static caravans at holiday parks. The issue was whether the provision of electricity by Colaingrove to holiday makers should be taxed at a reduced rate of VAT (under VATA 1994 Sch 7A Group 1), notwithstanding that the charge for electricity was an element of a single complex supply of serviced accommodation taxed at the standard rate.

Colaingrove contended that UK domestic legislation, on its true construction, provided for a reduced rate to apply to the supply of electricity, where that supply formed a concrete and separate part of a wider supply. It therefore fell to the UT to decide whether the exemptions, as enacted in the UK, fell within the ambit of the derogation permitted by EU law.

The UT wondered why Parliament would only give a tax break to those holiday makers that received their electricity by means of a single supply. It considered, however, that Parliament may have wanted to draw a distinction between the provision of electricity in a verifiable amount and the provision of a fixed charge irrespective of use. Agreeing with *AN Checker* [2013] UKFTT 506, the UT concluded that the 'stumbling block' was the combined effect of the *Card Protection Plan* (*CPP*) (C-349/96) line and the provision in VATA 1994 s 29A that a reduced rate of VAT may only be charged on a 'supply that is of a description for the time being specified in Schedule 7A'. Neither *French Undertakers* (C-94/09) nor *Talacre* (C-251/05) 'trumped' the *CPP* analysis. The supply was not a supply specified in Sch 7A; and s 29A applied only to the single complex supply and not to elements of that supply.

Why it matters: Since *French Undertakers* and *Talacre*, many have wrestled with the notion that elements of a complex standard rated supply may be taxable at a reduced rate. This case suggests that those decisions were of limited application, so that most complex supplies should be charged at a single rate. In finding as it did, the UT recognised that its decision would have undesirable results when seen from the point of view of the recipients of the supply.

exploitations would have been able to qualify. This decision will therefore come as a relief to those that carry out activities subject to the levy.

Administration & appeals

Tax-geared penalties

In ***HMRC v Romie Tager*** [2015] UT 40 (6 March), the UT imposed nearly 100% of the tax due as a penalty.

Mr Tager had submitted his tax returns for the years 2008/09, 2009/10 and 2010/11 during the course of April 2012. He had then failed to comply with information notices relating to those returns. In the meantime, Mr Tager's father had died and Mr Tager had become liable to IHT. Again, information notices were issued in relation to the IHT return and penalties for non-compliance were imposed. HMRC had applied for permission from the UT to impose a tax-related penalty (FA 2008 Sch 36 para 50).

At a direction hearing in February 2014, the UT had decided to give Mr Tager one last chance. Mr Tager had been given a few more weeks to comply and had given an undertaking to do so to the UT.

Mr Tager had complied partially with the income tax notices and, until 7 October, had not complied at all with the IHT notices. The UT observed that the fact that he had failed to hire tax advisers when faced with longstanding enquiries undermined his claims that he wished to be transparent and to pay his tax.

The UT also noted that the imposition of a para 50 penalty was a last resort and was to be used in circumstances where it was likely that tax due would escape assessment. However, it was not a proxy for an assessment, as the imposition of a para 50 penalty did not preclude a future assessment – and last minute compliance could not avoid the penalty (although it might reduce it). A para 50 penalty was therefore punitive in nature.

The UT therefore imposed nearly 100% of the income tax due as a penalty (£75,000 out of £80,000), on the basis that Mr Tager had done 'too little too late'; and 100% of the IHT due (over £1m). The UT also invited submissions on the appropriate penalty to be imposed for Mr Tager's non-compliance with his undertaking to the UT.

Why it matters: This was the first application of this kind by HMRC since the enactment of Sch 36. The UT wrestled with the notion of a penalty geared to an unknown amount of tax and accepted HMRC's estimates. Having confirmed the punitive nature of the penalty, it showed no mercy to a taxpayer who 'commanded little sympathy' and who was a QC.

TMA 1970 s 34 and self-assessment

In ***The Queen (on the application of Andrew Michael Higgs) v HMRC*** [2015] UKUT 92 (11 March), the UT found that the time limit in TMA 1970 s 34(1) did not apply to self-assessment.

Mr Higgs had made payments on account (based on the previous year's liability) which had turned out to be too high, so that a repayment by HMRC may be due. HMRC, however, resisted the claim for repayment, on the ground that Mr Higgs' return had been received after the expiry of the four year time limit (TMA 1970 s 34(1)).

Mr Higgs contended that s 34(1) only applied to assessments by HMRC and not to self-assessment returns; and that, in the alternative, HMRC had a discretion to extend the deadline which it must exercise under art 1 of Protocol 1 to the European Convention of Human Rights (ECHR A1P1).

The UT referred to *Morris* [2007] EWHC 1181, which held that s 34 had no application to a self-assessment, and to *Whiteman on Income Tax*, which confirmed this position. It also noted that this interpretation was consistent with the natural reading of the section as a whole (including s 34(2), which cannot apply to self-assessment) and with the placing of the section alongside other provisions which relate exclusively to assessments by HMRC. Finally, applying s 34 to self-assessment would make it inconsistent with other provisions that contain different time limits, such as ss 8 and 28C.

The UT also found that, in the event that it was wrong and s 34 did apply to self-assessment, the matter should be remitted to HMRC for it to give full and proper consideration as to whether it should exercise its discretion; and, in particular, as to whether the refusal to extend the time limit would amount to 'a disproportionate interference' with Mr Higgs' rights under ECHR A1P1.

Why it matters: This case is particularly helpful to taxpayers. Not only does it confirm that the s 34 time limit does not apply to self-assessment, but it also accepts that ECHR A1P1 applies to cases where HMRC refuses to exercise its discretion to extend the time limit for a repayment claim.

Cases reported by Cathya Djanogly (*cathya.djanogly@hotmail.com*).

Osborne's final Budget this Parliament

Chris Sanger
Global head of tax policy, EY
Email: csanger@uk.ey.com
Tel: 020 7951 0150

However many numbers feature in the chancellor's Red Book, the one that really counts is 50 – the number of days between the Budget and the election. For such a small number, it has had a very big effect.

What was the wider economic position?

In most other pre-election Budgets, the numbers in the chancellor's ring binder would have given him plenty of room for manoeuvre and the scope for some impressive 'giveaways'. However, the Office for Budget Responsibility's forecast was more cautious than many would have expected, with just a 0.1% upward revision to 2015 growth and a rate of 2.3% for 2016, figures that the EY ITEM Club believes could be beaten in practice by some distance. This somewhat pessimistic view by the OBR means that the main revenue effect of the fall in oil prices is to reduce North Sea tax revenues by £2bn a year over the medium term, without much of an offset by other tax revenues. The main improvement is on the expenditure side, through the effect of lower inflation and interest rates on debt interest payments.

The chancellor used the improvement in the public finances to reduce borrowing. Debt starts to fall as a share of GDP in 2015/16, helped by sales of Lloyds Bank shares and other banking assets, which raise £25bn in 2015/16, rising to £30bn in 2016/17. This fall begins a year earlier than forecast by the OBR in December, but in line with the objective the chancellor set out in his June 2010 Budget.

However, the big change relative to December is that austerity is anticipated to come to an end a year earlier, in 2018/19. This allows both an increase in spending in 2019/20, in time for the 2020 election; and for the chancellor to sidestep the OBR's observation, made at the time of the Autumn Statement, that spending would fall back to the level of the 1930s. At 36% of GDP, total public spending will be back to the ratio seen in the year 2000 under Gordon Brown.

So did the chancellor opt for a giveaway budget?

Even with the constrained approach of the OBR, the chancellor was ideally placed to target significant sums on a few vote winners. Except that he wasn't, and for two reasons.

The first has to do with the coalition. Its days may be numbered (say, ten, if we give it until the signing off of the Finance Bill), but it is very much a presence in this Budget. On the one hand, it limited the range of options that Osborne could pursue to those he could agree with his Lib Dem partners; while, on the other, it has probably made him reluctant to spend good money on measures where the Lib Dems would share the credit. The second has to do with Osborne himself, as broad political strategist rather than narrow finance minister. His aim here is clearly to win the election campaign, rather than delivering short term sweeteners to the electorate.

The recurring themes through the Budget speech were about sticking to the plan and prioritising deficit reduction. That in itself was enough to rule out wholesale giveaways, while still leaving scope for some interesting, but targeted, hand outs.

Overall, we saw a net giveaway over the £140m in aggregate, being broadly neutral in the grand scheme of things. There were 43 measures in this Budget, of which 16 were tax reforming and 10 focused on fairness, evasion and avoidance. Interestingly, there are twice as many measures from Budgets past that are yet to come into force than are delivered by this Budget. The message from this Budget is clearly 'don't panic!' and to stick with the current plan.

Who were the winners?

In short, it was voters. In line with the chancellor's overall philosophy that we should be a nation of savers and investors, rather than of borrowers, the Budget includes several measures to reward and support savers. These include:

- more flexible access to annuity pots for pensioners;
- help for those saving for a home through the new help to buy ISA;
- greater ISA flexibility; and
- the promise of a new tax allowance that will lift most people out of tax on savings.

Add to that the increase in the personal allowance (more on that later) and you have some positive changes for many of the electorate.

Another 'winner' (at least in terms of tax reductions) is the oil industry, currently facing pressure from falling oil prices. Here we see:

- a new investment allowance (replacing all the existing field allowances and so-called brown field allowance with a cost based, basin-wide allowance);
- reductions in petroleum revenue tax from next year; and
- the return of the supplementary charge (backdated to the start of the calendar year) to the pre 2011 rate of 20%.

This is a big step towards creating the correct fiscal regime for the long term exploitation of the UK's natural resources. The OBR estimates that it will boost expected North Sea oil production by 15% by the end of the decade.

In another crowd pleasing measure, duty on beer, cider and spirits has been cut, while that on fuel and wine has been frozen.

What about business?

There is no clear, big ticket boost for business, rather a steady-as-she-goes approach of recommitting to the 20% CT rate, continuing to back venture capital schemes and enterprise investment schemes, some additional relief for the creative industries and orchestras, and a promised, but not priced, retention of the annual investment allowance at something more than £25,000. There was also some minor tinkering with the 'jobs tax', providing a break for the self-employed with the abolition of class 2 NICs.

More widely, the chancellor has offered a fundamental review of business rates in time for Budget 2016 and the revaluation in 2017. While this offers the opportunity for this tax to be reformed, the constraint that the outcome of the review must be revenue neutral is disappointing, particularly when other countries are reassessing where the tax burden arises. So the main gift for business in this Budget is the promise that the recovery will be protected and the conditions for growth maintained.

Who are losers?

The main losers were: bankers and tax avoiders. Bankers took another hit with the bank levy

rate raised to 0.21% (raising an extra £920m per annum) and the denial of corporation tax relief for compensation payments. Taken together, these are expected to deliver £5.3bn over the forecast period.

Avoiders and evaders (increasingly being lumped together, along with other measures related to 'fairness') were the targets of 10 of the 26 tax measures in the Budget, including:

- a commitment to the common reporting standard (the OECD's flagship anti-evasion mechanism, building on the transparency that the US is seeking through FATCA);
- tighter rules around entrepreneurs' relief; and
- the adoption of the diverted profits tax.

In confirming the introduction of the diverted profits tax on 1 April, the chancellor has been unflinching in his timetable, if somewhat adjusting his approach to narrow the notification requirement and clarify rules for giving credit for tax paid, the operation of the conditions under which a charge can arise, specific exclusions and the application of the DPT to companies subject to the oil and gas regime.

The chief secretary to the Treasury, Danny Alexander, was due to announce further measures to tackle evasion, on the day after the Budget.

The lower paid could be said to be losers, due to the decision to press on with reduction to the personal allowance. This will deliver an uplift for many, but those at the bottom of the income distribution will see no benefit (the median of those in the lowest decile earn £2,000 less than next year's £10,600 allowance). For this group, an increase in next year's national insurance lower earnings threshold of £8,060 would have been preferable.

Anything new?

The main source of innovation in this Budget is in the realm of tax collection, with the announcement that the annual tax return is on the way out, to be replaced by digital tax accounts for five million small businesses and ten million individuals. These changes were announced earlier in the day, and a roadmap setting out the administrative changes is promised. This will deliver the pre-population of tax returns, with the idea being that, for many, personal tax compliance will now be more about checking for completeness and accuracy than gathering and entering data.

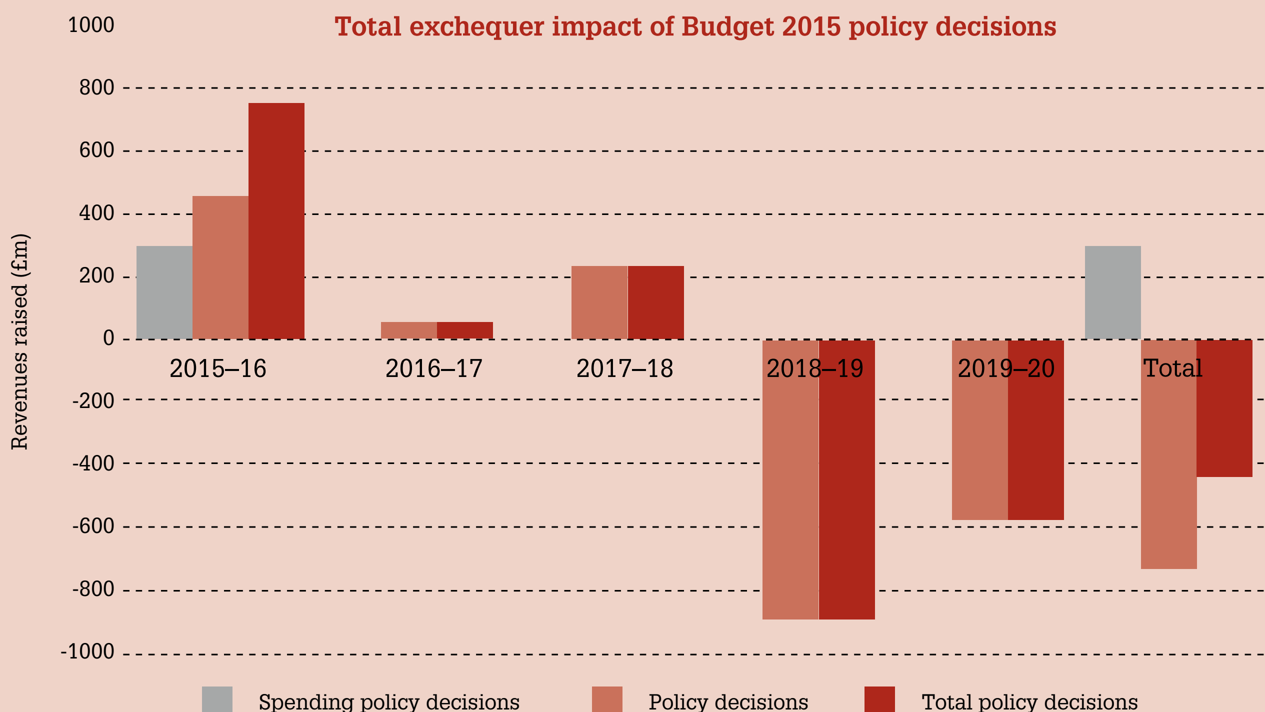
Dogs that didn't bark?

The main non-barking dog this time round (closely related to the shot fox from earlier Budgets) was the much trailed increase in the inheritance tax threshold to £1m. Another was the novel idea of introducing a tobacco levy (still in need of some refinement, apparently). We can expect both of these to return.

What happens next?

Usually, this section would include a slightly procedural account of the process from Budget to Finance Act. This year is different, as we will have at least two Finance Bills. The first will be published on 24 March and cover many of the Autumn Statement and Budget measures (including the DPT); but any hope of further debate will be short lived, as the Bill will pass from the House of Commons on the very next day. This will propel the Bill forward for Royal Assent before Parliament rises at the end of the month, clearing the way for what really happens next – the election.

By opting for a Budget which makes us feel safe (by telling us the recovery is secure) rather than feel good (by giving us goodies), the chancellor has staked out a key battleground for the upcoming campaign. His basic pitch is that the long term plan is delivering, and anything that deviates from that is going to return the UK back to crisis. By denying himself recourse to 'giveaways' in this Budget, he aims to deny his opponent recourse to them during the campaign. The *drôle de guerre* is over; let the battle commence! ■



Budget

Your guide to the key measures

Key tax announcements

Key announcements in Budget include:

- confirmation of the introduction of the diverted profits tax, with some modifications;
- immediately effective provisions to prevent corporation tax loss refresh planning;
- further restrictions on the availability of entrepreneurs' relief;
- changes to oil and gas taxation, with cuts in PRT and the supplementary charge;
- implementation of the OECD's common reporting standard;
- an increase in the bank levy rate to 0.21% from 1 April 2015;
- proposed restrictions on deductibility of compensation payments made by banks;
- enhanced civil penalties for offshore tax evasion;
- a review of the use of deeds of variation;
- further measures to encourage savings;
- pensions changes, including a reduction in lifetime allowance; and
- the intention to 'end the annual tax return'.

Background

The chancellor of the exchequer, George Osborne, delivered his sixth and what he will certainly hope is not his final Budget on Wednesday 18 March 2015.

With just 50 days to go before the general election, this was always going to be a Budget heavy on political positioning and soundbites but relatively light on substantive, new, content. Indeed, most of what was included had already been pre-announced or leaked to the national press. Not only, as the chancellor had promised, did the Budget speech not include any gimmicks, it did not contain much of surprise. The more important Budget (or Budgets), from an economic and tax perspective, will come after the election.

Against further improving economic data – upwardly revised growth figures, evidence that living standards are rising again and falling unemployment, inflation and deficit – the chancellor was keen to hammer home the distinctly Conservative election themes of a 'long-term economic plan', 'staying the course' and 'economic security'.

So far as tax measures were concerned, the major focus remains cracking down on aggressive tax avoidance: the introduction of a 'Google tax' was confirmed, measures to combat contrived loss arrangements were announced and, perhaps most importantly of all, this Budget marks a major step towards the automatic exchange of tax information on a global scale. The major beneficiaries included those in the creative arts industries, farmers and those within the oil and gas fiscal regime who saw new or expanded reliefs or relaxations. The main losers were, once again, probably the banks, which saw the rate of the bank levy rise to 0.21%, expected to raise an additional £900m each year.

Some will be disappointed that the boosted annual investment allowance was not renewed and that the proposal to introduce a new corporate rescue relief under the loan relationships rules for companies in financial distress will not be included in Finance Bill 2015. Perhaps understandably, however, the emphasis was on announcing measures that are more likely to attract votes in May including, in particular, the abolition of class 2 NICs and the annual tax return (perhaps heralding the first steps towards 'real time information' reporting for personal taxes), raising the basic, and higher rate, thresholds for income tax, and a proposal for a personal savings allowance.

Whether this was a Budget that will ensure Mr Osborne will still be chancellor after the election, or, indeed, whether it will ensure the Conservatives either form, or lead, a new government able to implement all of the proposals outlined in his speech, very much remains to be seen.

Business and enterprise

Entrepreneurs' relief

Budget 2015 contains new measures that continue the government's crackdown on the use of ER in circumstances where the relief was not intended to apply.

Associated disposals: Finance Bill 2015 will tighten the rules on ER for associated disposals. An associated disposal means the disposal of an asset that an individual owns personally, but is used in a business carried on by a partnership in which the individual is a partner, or a company in which the individual holds at least 5% of the ordinary shares and voting rights, then ER is available for associated disposals where certain conditions are met, including that the transaction must be part of a disposal by the individual of an interest in the partnership, or shares or securities in the company, that carries on the business. Finance Bill 2015 will increase this hurdle by providing that this disposal must be of at least a 5% partnership share, or a 5% shareholding in the company. The previous rules did not stipulate a minimum level and so it was relatively simple to contrive a small disposal in order to qualify for ER.

The draft legislation includes wording that is intended to prevent taxpayers entering into arrangements to sidestep the new rules, such as arrangements to reacquire the partnership share or shareholding at a later date. The measure takes effect from Budget day, i.e. 18 March 2015 (*Budget 2015*, para 2.96; *Overview of Tax Legislation and Rates 2015* (*OOTLAR 2015*), para 1.38).

Joint ventures and partnerships: Finance Bill 2015 will also tighten the rules on ER for disposals of shares in companies that do not have their own trade, but that invest in other, joint venture (JV), companies, or are members of partnerships. For a disposal of shares to qualify for ER, the company must satisfy certain conditions relating to its trading status. Under the previous rules, the trading status of a company that held shares in a JV company was determined by treating a proportion of the JV company's trade as carried on by the investing company. Finance Bill 2015 will change this by assessing a company's trading status without taking account of activities carried on by JV companies which the company has invested in, or of partnerships of which the company is a member. The measure takes effect from Budget Day, i.e. 18 March 2015 (*Budget 2015*, para 2.96; *OOTLAR 2015*, para 1.39).

Goodwill and business incorporations: As announced in Autumn Statement 2014, Finance Bill 2015 will contain a measure denying ER where goodwill is disposed of to a company that is related to the selling individual. Following consultation the new rules have been changed to allow ER for partners in a partnership who do not hold or acquire a stake in the successor company. Denying ER in these circumstances would not have been within the original policy intention of the new measure, as the change was intended to apply to business incorporations in which the disposing individuals would have a continuing interest in the newly-incorporated business. This measure took effect on 3 December 2014 and this relaxation will be back-dated to apply

from that date (*Budget 2015*, para 2.98; *OOTLAR 2015*, para 1.41).

Capital gains tax and wasting assets

The government will legislate in Finance Bill 2015 to reverse the effect of the Court of Appeal's judgment in *Henderskelfe* [2014] STC 1100 concerning the CGT exemption for wasting assets. The exemption is in TCGA 1992 s 45 and applies to (among other things) 'plant', which is defined so that it can only apply to assets that have been used in a trade, profession or vocation. In *Henderskelfe* the court decided that the exemption can apply even if the disposal is by someone other than the trader which had used the plant.

The government was concerned that it would be relatively easy for taxpayers to exploit this situation by lending assets (such as the valuable work of art that was the subject of the litigation in *Henderskelfe*) to another party to use in their business for a short period before a disposal, in order to qualify for CGT exemption. As a result Finance Bill 2015 will introduce a specific provision that the wasting asset exemption (both for CGT and corporation tax on chargeable gains) will only apply if the person selling the asset has used it as plant in their own business. The change takes effect from 1 April 2015 for corporation tax, and 6 April 2015 for CGT (*Budget 2015*, para 2.103; *OOTLAR 2015*, para 1.40).

Oil and gas taxation

Budget 2015 contained some surprise measures that were not announced at Autumn Statement 2014, but will be included in Finance Bill 2015. The two biggest changes are:

- a 15% cut in petroleum revenue tax (PRT); and
- a 12% cut in the supplementary charge (SC); rather than the 2% cut announced at Autumn Statement 2014.

The cut in PRT was unexpected because HM Treasury had previously played down this possibility. As PRT is only chargeable on oil fields established before 16 March 1993, the tax cut aims to extend these older fields' economic lifespan. The new rate of PRT is 35% for chargeable periods ending after 31 December 2015.

The aim of the original 2% cut in SC was to encourage additional North Sea investment and incentivise increased production. This goal appears to be unchanged, with the larger 12% tax cut needed in response to the oil price being far lower than the government anticipated at the end of 2014. The new rate of SC is 20% and applies retrospectively from 1 January 2015.

The Budget 2015 also included details of the new Investment Allowance (IA), announced at Autumn Statement 2014 and consulted on earlier this year. The IA exempts an amount of profits equal to 62.5% of the investment expenditure incurred by a company, in relation to an oil field, from SC. Existing allowances in CTA 2010 ss 333–356JB (Chapter 7) will be abolished in Finance Bill 2015. The allowance will apply to the qualifying investment expenditure a company incurs in relation an oil field on or after 1 April 2015. Transitional arrangements will be put in place for companies currently using a Chapter 7 allowance, although these measures are as yet unspecified (*Budget 2015*, paras 2.139–2.144; *OOTLAR 2015*, paras 1.19–1.22).

Relief for television and films

Finance Bill 2015 will:

- extend high-end television tax relief by reducing the minimum UK spend requirement from 25% to 10%, and making changes to the cultural test;
- introduce tax relief for producers of children's television programmes; and
- increase the rate of the payable film tax credit to 25% for all films.

The measures will have effect from 1 April 2015, subject to state aid clearance (*Budget 2015*, paras 2.122–2.124; *OOTLAR 2015*, paras 1.15–1.17).

Measures pre-announced

The following business and enterprise measures were announced in Autumn Statement 2014 and will be included in Finance Bill 2015 unchanged, or with the minor changes described:

- **Abolition of 'B share schemes':** the Finance Bill 2015 will include measures to block the tax advantages provided by special purpose share schemes, commonly known as 'B share schemes' with effect from 6 April 2015 (*Budget 2015*, para 2.213);
- **Restricting tax relief for business incorporations:** removing intangibles relief and ER where goodwill is transferred to a company that is related to the seller – this came into effect on 3 December 2014 (*Budget 2015*, para 2.98);
- **R&D tax credits:** restricting qualifying expenditure for materials incorporated in products that are sold, with a minor change following consultation to clarify the treatment where products are transferred as waste or for no consideration (*Budget 2015*, para 2.127; *OOTLAR 2015*, para 1.18);
- **R&D rate changes:** the 'above the line' (ATL) credit will increase from 10% to 11%, while the rate of the SME scheme will increase from 225% to 230% (*Budget 2015*, para 2.126);
- **Consortium relief:** removing requirements relating to the location of the link company (*Budget 2015*, para 2.129);
- **Corporation tax rate:** The main rate of corporation tax for the 2016/17 tax year will be 20% (*Budget 2015*, para 2.136; *OOTLAR 2015*, para 1.12);
- **Entrepreneurs' relief:** application to gains deferred into enterprise investment scheme (EIS) or social investment tax relief (SITR) (*Budget 2015*, para 2.99); and
- **Oil and gas taxation:** measures on the high pressure, high temperature cluster area allowance, the ring fence expenditure supplement, and £20m in support of seismic surveys for oil exploration on the UK continental shelf (*Budget 2015*, paras 2.139–2.141; and *OOTLAR 2015* para 1.20).

In addition, Finance Bill 2015 will include the capital allowances anti-avoidance measures that were announced on 26 February 2015 (and took effect from that date) in relation to connected party transactions and sales and leasebacks. See the draft legislation and tax impact information note (TIIN) published on 26 February 2015.

Finance

Bank levy

The bank levy rate for the 2015/16 tax year will rise to 0.21%, from its current rate of 0.156% (*Budget 2015*, para 2.131; *OOTLAR 2015*, para 1.47).

Measures pre-announced

The following finance measures were announced in Autumn Statement 2014 and will be included in Finance Bill 2015 unchanged, or with the minor changes described:

- **Bank loss relief restriction:** restricting carry-forward loss relief for banks so that only 50% of a bank's annual profits can be offset by pre-2015 carried-forward losses (this broadly comes into effect for accounting periods beginning on or

after 1 April 2015), although at Budget 2015, the chancellor announced that Finance Bill 2015 will include a £25m allowance for groups headed by a building society (*Budget 2015*, para 2.138; *OOTLAR 2015*, para 1.14);

- **Investment managers and disguised fee income:** ensuring that management fees received by investment fund managers for their management services are charged to income tax rather than capital gains tax. Following consultation, the government has announced that the new rules will be revised to: (i) better reflect industry practice on performance related returns, (ii) restrict the charge on non-UK residents to UK duties, and (iii) ensure that the rules apply to investment trust managers (*Budget 2015*, para 2.214; *OOTLAR 2015* para 1.4);
- **Exemption from withholding tax for qualifying private placements:** Finance Bill 2015 will introduce the power to enable regulations to be made to give effect to this exemption, although the condition relating to the minimum term of the security will have been removed from the primary legislation – the regulations will, however, not be made until later in 2015 (*Budget 2015*, para 2.130; *OOTLAR 2015*, para 1.6);
- **Late paid interest rules**: Finance Bill 2015 will include legislation to repeal provisions of the late-paid interest rules that apply to loans made to a UK company by a connected company in a non-qualifying territory. Parallel rules that apply to deeply discounted securities will also be repealed (*Budget 2015*, para 2.137).

Employment taxes

As confirmed in Autumn Statement 2014, the government has accepted the recommendations of the Office of Tax Simplification (OTS) in their report on employee benefits. The draft Finance Bill provisions published in December 2014 included provisions implementing these recommendations. The recommendations will be implemented in four parts as set out below (*Budget 2015*, para 2.190; *OOTLAR 2015*, paras 1.3 and 1.5):

- **a new exemption for trivial benefits in kind:** a statutory exemption for trivial benefits in kind costing £50 or less will be introduced. Following consultation, an annual cap of £300 will be included for office holders of close companies and employees who are family members of those office holders. This exemption will have effect from 6 April 2015;
- **a new exemption for reimbursed business expenses:** certain reimbursed business expenses will be exempted from income tax. Following consultation, the draft legislation has been revised to ensure that the exemption cannot be used in conjunction with other arrangements that seek to replace salary with expenses. These changes will have effect from 6 April 2016;
- **voluntary payrolling of benefits**: no significant changes have been made to the draft legislation implementing this change. These changes will have effect from 6 April 2016; and
- **the abolition of the £8,500 threshold for benefits in kind:** no significant changes have been made to the draft legislation implementing this change. These changes will have effect from 6 April 2016.

Incentivised investment

Changes to EIS, SEIS and VCT rules and new industry forum

The government announced at Budget 2015 that legislation will be introduced to amend the rules for EIS and venture capital trusts (VCT) schemes to:

- require all investments to be made with the intention to grow and develop a business;
- require all investors to be 'independent' from the company at the time of the first share issue;
- introduce new qualifying criteria to limit relief to companies where the first commercial sale took place within the previous 12 years (this rule will apply except where the total investment represents more than 50% of turnover averaged over the preceding five years);
- cap the total investment a company may receive under EIS and VCT at £15m, or £20m for 'knowledge intensive' companies; and
- increase the employee limit for knowledge intensive companies to 499 employees.

The government announced that Finance Bill 2015 will, from 6 April 2015, remove the requirement that 70% of seed enterprise investment scheme (SEIS) money must be spent before EIS or VCT funding can be raised. These amendments are subject to state aid clearance and will take effect from the date clearance is received. The government also announced that it intends to launch a new industry forum on the operation and use of venture capital schemes (*Budget 2015*, para 2.75 and 2.76; *OOTLAR 2015*, para 1.8).

Measures pre-announced

The following incentivised investment measures were announced in Autumn Statement 2014 and will be included in Finance Bill 2015 unchanged, or with the minor changes described:

- **Social investment tax relief:** SITR will be extended to qualifying community organisations from 6 April 2015 (*Budget 2015*, para 2.77; *Overview of Tax Legislation and Rates 2015*, para 1.7);
- **Interaction of SITR with SEIS, EIS and VCT:** as announced at Autumn Statement 2014, legislation will be introduced in Finance Bill 2015 to exclude, from 6 April 2015, companies (other than qualifying community energy organisations) that benefit substantially from subsidies for the generation of renewable energy from also benefiting from EIS, SEIS and VCT. Following consultation, the legislation has been expanded to exclude companies from the schemes if they receive foreign subsidies similar to contracts for difference (*Budget 2015*, para 2.77; *OOTLAR 2015*, para 1.7)
- **EIS, SEIS and SITR:** the annual investment limit for these reliefs will be increased to £5m per organisation (*Budget 2015*, para 2.77; *OOTLAR 2015*, para 1.7).

Property taxes

SDLT

Treatment of shared ownership properties: As announced at Autumn Statement 2014, SDLT multiple dwellings relief will be extended to include superior interests in residential property, such as shared ownership. This will apply where the transaction is part of a lease and leaseback arrangement, if acquired from a qualifying body such as a housing association. The change will take effect from the date on which Finance Bill 2015 receives royal assent (*Budget 2015*, para 2.183).

Alternative property finance reliefs: As announced at Autumn Statement 2014, the government will amend the definition of a 'financial institution' for the purposes of the SDLT alternative property finance reliefs to include all persons authorised to provide home purchase plans. The change will take effect from the date on which Finance Bill 2015 receives royal assent (*Budget 2015*, para 2.185).

Annual tax on enveloped dwellings (ATED)

Increase in charges: As announced at Autumn Statement 2014, the annual rates of ATED will increase by 50% above the rate of inflation for residential properties worth over £2m with effect from 1 April 2015 (*Budget 2015*, para 2.186).

Reducing the administrative burden: As announced at Autumn Statement 2014, the government will introduce new 'relief declaration returns', which can be filed on an annual basis by any entity eligible for an ATED relief. This change will be included in Finance Bill 2015 and will take effect from 1 April 2015 (*Budget 2015*, para 2.195).

Capital gains tax

CGT for non-UK residents disposing of UK residential property: From 6 April 2015, non-UK resident individuals, trusts, personal representatives and narrowly controlled companies will be subject to CGT on gains accruing on the disposal of UK residential property on or after that date.

In Budget 2014, the government confirmed its plans to introduce CGT on future gains made by non-residents disposing of UK residential property from April 2015. A consultation, *Implementing a capital gains tax charge on non-residents*, on how best to introduce the charge was published on 28 March 2013 and closed on 20 June 2014. The government set out the framework for the extended charge in their summary of responses, which was published on 27 November 2014.

Non-resident individuals will be subject to tax at the same rates as UK taxpayers (28% or 18% on gains above the annual exempt amount). Non-resident companies will be subject to tax at the same rates as UK corporates (20%) and will have access to an indexation allowance (*Budget 2015*, para 2.100).

CGT: PPR on properties located in other jurisdictions: Under current rules, individuals are entitled to principal private residence relief (PPR) on their only or main residence. If an individual has more than one residence in any given period they can elect which of them is their main residence, and therefore qualify for PPR, for that period. That residence can be either a UK residence or an overseas residence. The government will restrict access to PRR in circumstances where a property is located in a jurisdiction in which a taxpayer is not tax resident. In those circumstances, the property will only be capable of being regarded as the person's only or main residence for PRR purposes for a tax year where the person meets a 90-day test for time spent in the property over the year (*Budget 2015*, para 2.101).

VAT

VAT recovery and foreign branches

It was announced in Budget 2015 that changes are to be made to the VAT Regulations, SI 1995/2518, to prevent partly exempt businesses from taking account of supplies made by foreign branches when calculating how much UK VAT on their overheads can be recovered. This announcement is designed to implement the CJEU's decision in *Credit Lyonnais* (C-388/11) that the VAT Directive could not be interpreted so as to allow a company to take into account the turnover of its EU or non-EU foreign branches when calculating how much input tax it can deduct in the member state where it has its principal establishment. In addition, by continuing to allow this type of VAT recovery, there is a risk that businesses could artificially increase the amount of input they are entitled to deduct by over-allocating overhead costs to non-EU foreign branches.

Implementing this change in the UK means that UK businesses will not be able to take into account supplies made by foreign branches when determining their partial exemption calculations irrespective of any special method agreed with HMRC. This measure is expected to impact financial institutions making exempt supplies with establishments both within and outside the UK. Draft regulations implementing these changes have been published, and it is intended these regulations will have effect on or after 1 August 2015, although there will be transitional provisions where 31 July 2015 falls within the VAT longer period of account for a business (*Budget 2015*, paras 1.249 and 2.153; *OOTLAR 2015*, para 1.25 and draft regulations).

Registration and deregistration thresholds

The VAT registration threshold for the 2015/16 tax year will be £82,000, while the VAT deregistration threshold for the 2015/16 tax year will be £80,000 (*Budget 2015*, para 2.154; *OOTLAR 2015*, para 1.24).

Avoidance and evasion

BEPS: automatic exchange of information

Laying of regulations to implement automatic exchange of information: Conspicuous by not being mentioned in Autumn Statement 2014, the chancellor confirmed in his speech that the government will now legislate for the new OECD common reporting standard (CRS). It will also invest £4m in data analytics resource to maximise the yield from information reported under the CRS.

The CRS is designed to enhance the automatic exchange of tax related information across the globe. How to implement agreements under the CRS was the subject of an HMRC consultation – *Implementing agreements under the global standard on automatic exchange of information* – during the late summer of 2014. The CRS, very broadly, is intended to implement the principles that underpin the US Foreign Account Tax Compliance Act (FATCA) across the globe. As a result it has sometimes been referred to as 'GATCA'.

A statutory instrument setting out regulations will be made in March 2015 to implement the UK's automatic exchange or information agreements with non-EU jurisdictions (including the Crown Dependencies and Gibraltar), and adopt the updated EU Revised Directive on Administration Cooperation (Council Directive 2014/107/EU) (the DAC) which effectively implements the CRS within the EU.

The regulations will:

- introduce obligations on financial institutions to identify accounts maintained for account holders who are tax resident in the EU or jurisdictions with which the UK has entered into an agreement to automatically exchange tax information, and collect and report such information in a specified manner to HMRC;
- introduce penalty provisions for breaching the obligations;
- include an anti-avoidance provision that will be triggered where a person enters into arrangements intended to avoid the obligations; and
- revoke and replace the International Tax Compliance (United States of America) Regulations, SI 2014/1506, i.e. the current regulations implementing the intergovernmental agreement between the UK and USA for the implementation of FATCA (UK/US IGA).

In effect, the new regulations will consolidate the various requirements for the automatic exchange of tax information into a single regime.

The regulations will have effect on and after (*Budget 2015*, paras 2.196 and 2.201):

- 1 January 2016 in relation to the DAC and the CRS;
- 21 days from the date these regulations are laid in relation to the FATCA agreement.

Common reporting standard – new disclosure facility: In advance of the receipt of data under the CRS the government will offer a new time limited disclosure facility. This will be on less generous terms than existing facilities with penalties of at least 30% and no guarantee around criminal investigation. The disclosure facility will be available from 2016 to mid-2017 (*Budget 2015*, para 2.197; *OOTLAR 2015*, para 2.27).

Liechtenstein disclosure facility: The government will close the disclosure period of the Liechtenstein disclosure facility (LDF) before the new disclosure facility referred to above becomes available. The LDF is a voluntary disclosure facility that extends to all main taxes. It opened in September 2009 and was originally scheduled to run until 2015 but it was subsequently extended to 5 April 2016. The LDF will now be closing at the end of 2015 (*Budget 2015*, para 2.198; *OOTLAR 2015*, para 2.29).

Crown Dependencies disclosure facilities: The government will also close the disclosure period of the Crown Dependencies disclosure facilities in advance of the new disclosure facility. In October 2013, the Isle of Man, Jersey and Guernsey each signed inter-governmental agreements (IGAs) with the UK to implement the automatic exchange of tax information. Under the IGAs, financial institutions in the Isle of Man, Jersey and Guernsey are required automatically to report financial information on UK resident individuals, partnerships and companies to HMRC from January 2015. Information for the 2014 and 2015 calendar years must be reported by 30 September 2016.

The Crown Dependencies disclosure facilities were introduced by HMRC to enable those with irregularities in their tax affairs to set their affairs in order prior to the automatic exchange of information. The disclosure facilities were scheduled to run from 6 April 2013 to 30 September 2016, when the first exchange of information will take place. The Crown Dependencies disclosure facilities will now be closing at the end of 2015 (*Budget 2015*, para 2.199; *OOTLAR 2015*, para 2.30).

Financial Intermediaries notifying their customers in advance of receipt of data under the CRS: Financial intermediaries and tax advisers will be required to notify their UK resident customers with UK or overseas accounts to explain the full impact of the CRS, the opportunities to disclose, and the penalties they could face for non-disclosure (*Budget 2015*, para 2.200; *OOTLAR 2015*, para 2.28).

BEPS: diverted profits tax

As announced at Autumn Statement 2014, the new diverted profits tax (DPT) will be included in Finance Bill 2015 albeit with a few modifications as a result of a period of informal consultation.

Broadly, the DPT intends to counter the use of complex, aggressive, tax planning techniques – including, for example, the 'double Irish' corporate structure adopted by Google – used by MNEs to artificially divert taxable profits away from the UK tax base, through the manipulation of international tax rules. The DPT will be charged at a rate of 25% (notably higher than the main rate of corporation tax – falling to 20% from 1 April 2016 – to enhance its deterrent effect) and will applied to 'diverted profits' (as defined).

Following the consultation, the rules will be slightly revised to:

- narrow the notification requirement; and
- clarify: rules for giving credit for tax paid; the operation of the conditions under which a charge can arise; certain, specific, exclusions; and the application to companies subject to the oil and gas regime.

It remains unclear how far the modification will ease the concerns of business but a number of questions remain unanswered, including, in particular:

- how the UK's unilateral action to introduce the DPT will complement the OECD's final recommendation for multilateral action under the BEPS project
- the status of the DPT under the UK's existing network of double taxation conventions (DTCs), and
- the impact of the DPT on the competitive attractiveness of the UK's tax system in the short-term

The new DPT rules will be introduced in Finance Bill 2015 and take effect from 1 April 2015. The government anticipates the implementation of the DPT will yield £1.365bn in the period up to and including the 2019/20 tax year (*Budget 2015*, para 2.133 and *OOTLAR 2015*, para 1.46).

Corporation tax loss refresh prevention

At Budget 2015 it was announced that Finance Bill 2015 will add a new Part 14B to CTA 2010 to prevent corporate tax advantages resulting from contrived arrangements to effectively convert carried forward losses into in-year losses.

Various conditions must be satisfied before the provisions apply, including that obtaining a tax advantage involving both a deduction and the use of carried forward reliefs is a main purpose of entering the arrangement. When they apply, they deny certain tax reliefs (in the form of carried forward trading losses, carried forward non-trading loan relationship deficits, carried forward management expenses and/or management expenses arising on the cessation of a property business) from being set against profits arising from the arrangements.

This anti-avoidance provision has effect in calculating a company's taxable profits for accounting periods beginning on or after 18 March 2015 or, for accounting periods straddling that date, the part of the accounting period falling on and after that date. It will apply to pre-commencement measures where those measures result in profits on or after 18 March 2015 (*Budget 2015*, para 2.210; *OOTLAR 2015*, para 1.13).

Enhanced civil penalties for offshore tax evasion

The government is set to introduce legislation on enhanced civil penalties for offshore tax evasion. Draft legislation was published on 10 December 2014. A tougher penalties regime already applies to liabilities arising from 6 April 2011, where non-compliance involves an offshore matter and the offshore territory in question is not considered to have the highest level of information-sharing arrangements. The increased penalties currently apply to income tax and CGT.

Under the new legislation, the existing regime will be extended to IHT and 'offshore transfers' and a new aggravated penalty for moving hidden funds to circumvent international tax transparency agreements ('offshore asset moves') will be introduced. In addition, the territory classification system will be updated to reflect the jurisdictions that adopt the CRS. The increased penalties for evasion involving IHT and offshore transfers will apply from 6 April 2016 whereas the new aggravated penalty relating to offshore asset moves will come into effect following royal assent in 2015 (*Budget 2015*, para 2.202).

Measures pre-announced

The following tax avoidance and administration measures were

announced in Autumn Statement 2014 and will be included in Finance Bill 2015 unchanged, or with the minor changes described:

- **BEPS, country-by-country reporting:** implementing the OECD's model for country-by-country reporting in the UK, in full, in accordance with BEPS action 13;
- **BEPS, hybrid mismatches:** although a line has been included in table 2.2 of the Budget, which lists measures announced at Autumn Statement 2014 which are expected to take effect from April 2015, it is unclear what has happened to the government's intention to introduce a general anti-hybrids rule that would be significantly wider in scope and operation than the UK's existing anti-arbitrage regime. The government consulted on its plans to implement the G20–OECD agreed rules for neutralising hybrid mismatch arrangements under action 2 of the BEPS action plan between 3 December 2014 and 11 February 2015 but neither a summary of responses, nor any draft legislation, has been published to date;
- **Accelerated payments (APNs) and group relief:** to ensure that the APN regime applies not only to cases where one taxpayer reduces its own tax liability by entering into arrangements that attract APNs, but to extend it where the asserted tax advantage is in fact enjoyed by a separate taxpayer through the use of group relief (Budget 2015, para 2.208);
- **DOTAS:** strengthening the disclosure of tax avoidance schemes (DOTAS) regime, including in relation to employees, HMRC powers, increased penalties and protection for whistle-blowers (Budget 2015, para 2.207);
- **Increased remittance basis charge non-domiciliaries:** the £50,000 charge payable by individuals who have been resident in the UK for at least 12 out of the last 14 tax years will be increased to £60,000. A new charge of £90,000 will be introduced for individuals who have been UK resident for at least 17 out of the last 20 tax years. with effect from 6 April 2015 (*Budget 2015*, para 2.7 and *OOTLAR 2015*, page 12).

Administration

'The end of the tax return'

In what will be a shock to many tax advisers, the chancellor announced the 'end of the annual tax return'. Whilst many commentators have focused on the self-assessment tax return for individuals and sole trader businesses, the documents released on Budget day seem to suggest that this will apply to other returns as well.

The Budget 2015 report and the accompanying documentation provide the following details:

- the tax return will be replaced by a secure digital tax account that allows taxpayers to make real time changes to their information and pay any tax due;
- it appears that this will apply to 'individuals and small businesses' only and that 15m taxpayers will be brought within the new regime by 2016, and 50m taxpayers by the end of 2020;
- HMRC will pre-populate the digital account with the information it has already received (e.g. earnings and taxable benefits from the employer, pension income from the insurer and bank and building society interest from financial institutions);
- it will be possible to link business accounting software with the digital tax account by 2020, feeding data directly into the digital tax account;
- agents will be able to access digital tax accounts on behalf of their clients.

More details are to be published later in 2015. The precise scope of the proposals are unclear, but page 5 of *Making tax easier* makes it clear that those businesses with corporation tax, VAT and PAYE liabilities will also be included in this simplification measure (although there is nothing to suggest that VAT returns and RTI submissions would not continue as normal).

It is unclear how the legislative framework will be amended to support these changes, such as: whether taxpayers need to click to 'approve' the information or whether inaction (on the basis that all the information is correct) will be sufficient; the deadline for checking and 'approving' the information or advising HMRC of further tax to pay, and any penalties associated with failing to comply with obligations.

It will be interesting to see if, as appears to be case based on the information released, other taxpayers such as trusts, personal representatives and larger businesses are to continue to file tax returns as normal and whether there will be separate tax administration legislation, which will run in parallel with the existing rules.

The introduction of digital tax accounts also raises serious questions of digital exclusion. The Low Income Tax Reform Group has already issued a press release warning that alternatives must be found for those taxpayers who are unable (for various reasons) to access the internet. However if this leads to the end of punitive penalties for late filing of returns where little or no tax is due (or even where a repayment arises) then this is to be welcomed (*Budget 2015*, para 2.187; *OOTLAR 2015*, para 2.26).

New payments process

The chancellor announced in Budget 2015 that the government will consult over the summer on a new payment process to support the use of digital tax accounts, which allow tax and NIC to be collected outside of PAYE and self-assessment. Currently, it is only possible to set up a regular weekly or monthly payment plan if the taxpayer has a direct debit payment plan set-up and files his tax return online using the free HMRC software. However, *Making tax easier* suggests that the digital account will open up a 'pay as you go' option for a much greater number of taxpayers. This has clear upsides for HMRC in facilitating more regular tax payments from taxpayers outside of the PAYE system (*Budget 2015*, para 2.188; *OOTLAR 2015*, para 2.26).

Private client

Income tax personal allowance

At Autumn Statement 2014, it was announced that the government will increase the income tax personal allowance to £10,600 for the 2015/16 tax year. At Budget 2015, it was announced that the income tax personal allowance will be increased to £10,800 for the 2016/17 tax year and to £11,000 for the 2017/18 tax year.

The basic rate limit for 2015/16 will be £31,785, as announced at Autumn Statement 2014. At Budget 2015 it was announced that the basic rate limits for 2016/17 and 2017/18 will increase by indexation, which means that most higher rate taxpayers will get the full benefit of the increases. Legislation will be introduced in Finance Bill 2015 to increase the basic rate limit to £31,900 for 2016/17 and to £32,300 for 2017/18.

The higher personal allowance for those born before 6 April 1938 will be removed with effect from 2016/17 so that everyone, regardless of their age, will be entitled to the same personal allowance (*Budget 2015*, paras 2.66–2.67).

Income tax rates and thresholds

Income tax rates and personal allowance	2014/15	2015/16	2016/17	2017/18
Personal allowance for those whose income does not exceed £100,000*	£10,000	£10,600	£10,800	£11,000
Basic rate: 20% (10% for dividends)	Up to £31,865	Up to £31,785	Up to £31,900	Up to £32,300
Higher rate: 40% (32.5% for dividends)	£31,866–£150,000	£31,786–£150,000	£31,900–£150,000	£32,300–£150,000
Additional rate: 45% (37.5% for dividends)	Over £150,000	Over £150,000	Over £150,000	Over £150,000

** This table only includes 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 will increase to £10,600 from 6 April 2015. The higher personal allowance for individuals born before 6 April 1938 will be removed from 2016 so that all are entitled to the same personal allowance (Budget 2015, paras 2.66–2.67; OOTLAR 2015, para 1.1).*

Blind persons' allowance, married couples' allowance and income limit for 2015/16: As announced in Autumn Statement 2014, blind persons' allowance, married couples' allowance and the income limit for 2015/16 will be raised by amounts equivalent to the retail prices index. This will take the blind persons' allowance to £2,290, and the maximum married couples' allowance to £8,355, for 2015/16. Budget 2015 also announced a marriage allowance of £1,050, available to married couples and civil partners born after 5 April 1935. From 2016/17 the transferable amount will be 10% of the basic personal allowance (Budget 2015, para 2.70).

Extending the averaging period for farmers: Currently farmers are, for the purpose of income tax, able to average their profits over a two-year period. Bowing to external pressure, Budget 2015 announced that the government will extend the period over which self-employed farmers can average their profits from two to five years. A consultation process will commence later in 2015 on the detailed design and implementation of the extension. The measure will come into effect from 6 April 2016 and a future Finance Bill will include the appropriate legislation (Budget 2015, paras 2.68; Overview of Tax Legislation and Rates 2015, para 2.13).

Abolition of class 2 NIC

The government will abolish class 2 NICs in the next parliament as part of the planned reforms to tax administration. The government also intends to reform class 4 NICs to introduce a new contributory benefit test. The government will consult on the timing and details of these changes later in 2015 (*Budget 2015*, para 2.74).

Employment intermediaries: travel and subsistence (umbrella companies)

It was announced at Autumn Statement 2014 that the government would review the use of over-arching contracts of employment allowing temporary workers and their employers to benefit from tax relief for home-to-work travel expenses. Following the *Employment Intermediaries: travel and subsistence expenses relief* discussion document, it was announced at Budget 2015 that the government intends to consult on detailed proposals to restrict tax relief for travel and subsistence for workers engaged through an employment intermediary, such as an umbrella company or a personal service company (*Budget 2015*, para 2.79; *OOTLAR 2015*, para 2.37).

Social investment

The government will set the rate of income tax relief for investment in social venture capital trusts (social VCTs) at 30%, subject to state aid clearance. Social VCTs use the same principle as social investment tax relief (SITR), introduced last year, which allows investors to make equity or unsecured debt investments in charities, community interest companies, community benefit societies and social impact bond companies. Investors will pay no tax on dividends received from a social VCT or CGT on disposals of shares in social VCTs. Social VCTs will have the same excluded activities as SITR. The government will legislate for social VCTs in a future Finance Bill. The government will change the regulatory status of SITR funds so that they can be promoted on the same basis as EIS funds (*Budget 2015*, para 2.78; *OOTLAR 2015*, para 2.12).

The non-dom remittance basis charge

The government has confirmed that it will increase the remittance basis charge (RBC). The increase was first announced in Autumn Statement 2014 and draft legislation was published on 10 December 2014. As announced, the £50,000 charge payable by individuals who have been resident in the UK for at least 12 out of the last 14 tax years will be increased to £60,000. A new charge of £90,000 will be introduced for individuals who have been UK resident for at least 17 out of the last 20 tax years. These changes will take effect on 6 April 2015 (*Budget 2015*, para 2.73; *OOTLAR 2015*, page 12).

Savings

'Help to buy' ISA: In Budget 2015, the government announced the introduction of a new type of ISA aimed at assisting first time buyers in saving a deposit for their first home. This scheme is a response to rising house prices and increased deposit requirements combined with low returns on savings, all of which are making it difficult for first time buyers to get onto the housing ladder. Savers will be able to save up to £200 per month in a Help to Buy ISA and the government will then top-up this amount by 25%, so individuals who save the maximum of £200 each month will receive a monthly bonus of £50. The bonus will be capped at a total of £3,000 on £12,000 of savings. The bonus will apply to both the amount a person saves into their Help to Buy ISA and the interest that is built up during the period the account is open. The bonus will be tax free. The bonus will be calculated

by the scheme administrator on the account balance at the point of claim. The bonus can only be put towards a first home worth up to £450,000 in London or £250,000 elsewhere in the UK. The bonus can only be used towards a property that is being used for the first time buyer to live in as their only residence and may not be put towards a buy-to-let property.

Accounts are limited to one per person rather than one per home so those buying together can both receive the bonus. Accounts can be opened for a period of four years from the start date of the scheme although once an account is opened there is no limit on how long a person can save into a Help to Buy ISA and no time limit on when they can use their government bonus. The Help to Buy ISA will be available through banks and building societies and will operate in a similar way to any other cash ISA account. Interest received on the account will be tax free and it will only be possible for a saver to subscribe to one cash ISA per year. Providers will be free to apply their normal ISA withdrawal rules to the account. The operational details of the scheme now need to be finalised further to discussions with the industry and the government intends the scheme to be available from Autumn 2015 (*Budget 2015*, para 2.80).

Extending ISA eligibility: The chancellor announced in Budget 2015 that it will extend the range of ISA qualifying investments to include listed bonds issued by co-operatives and community benefit societies and SME (small and medium enterprise) securities admitted to trading on a recognised stock exchange. These changes will be introduced by new regulations and will take effect from 1 July 2015. The government will also consult during summer 2015 on further extending this list of qualifying investments to include debt securities and equity securities offered via crowd funding platforms, as announced in Autumn Statement 2014 (*Budget 2015*, para 2.83; *OOTLAR 2015*, para 2.10).

Making ISAs more flexible: The chancellor also announced in Budget 2015 that ISAs are to be made much more flexible with savers able to withdraw and replace money from their cash ISA during any given tax year without it counting towards their annual ISA subscription limit. These changes will be introduced by regulations, to be introduced in Autumn 2015, following consultation with ISA providers on technical detail (*Budget 2015*, para 2.85; *OOTLAR 2015*, para 2.11).

Premium bond investment limit: The chancellor announced in Budget 2015 that the national savings and investment premium bond investment limit will be increased to £50,000 from the current limit of £30,000. This increase will take effect from 1 June 2015 (*Budget 2015*, 2.90).

Personal savings allowance: A new personal savings allowance will reduce the tax payable by basic and higher rate taxpayers on interest earned on savings. Basic rate taxpayers will not have to pay tax on the first £1,000 of interest received on savings while higher rate taxpayers will not have to pay tax on the first £500 of interest received. Additional rate taxpayers are not eligible for the allowance. The allowance, announced in Budget 2015 applies from April 2016 and builds on a previous allowance announced in Budget 2014. The allowance in Budget 2014 applies from April 2015 and provides that no tax is payable on interest on savings for those with a taxable income of less than £15,600 (*Budget 2015*, para 2.84; *OOTLAR 2015*, para 2.1).

Pensions

Flexibility of annuities: The government will legislate to allow flexibility of annuities so that those in receipt of income from an annuity can agree with their annuity provider to assign their income to a third party in exchange for a lump sum or an alternative retirement product. The proposed legislation in a future Finance Bill will take effect from April 2016 and a consultation has been published on how best to remove barriers in the market for secondary annuities; see www.bit.ly/1xf0si1 (*Budget 2015*, para 2.81).

Taxation of inherited annuities: Tax rules will be amended to allow beneficiaries of individuals who die under the age of 75 to receive annuity payments tax free. Beneficiaries of individuals who die under the age of 75 with a joint life or guaranteed term annuity will receive future payments tax free where no payments have been made to the beneficiary before 6 April 2015. If the individual was over 75 when they died, a marginal rate of Income Tax will be payable. The amended rules will also allow joint life annuities to be paid to any beneficiary. These changes will take effect in Finance Bill 2015 (*Budget 2015*, para 2.82).

Lifetime allowance for pension contributions: The government will reduce the lifetime allowance for pension contributions from £1.25m to £1m from 6 April 2016. Transitional protection for pension rights already over £1m will be introduced alongside this reduction to ensure the change is not retrospective. The lifetime allowance will be indexed annually in line with consumer prices index from 6 April 2018 (*Budget 2015*, para 2.86; *OOTLAR 2015*, para 2.35).

Accessing guidance and key information about pension benefits: Shortly after Budget 2014, HM Treasury issued the consultation *Freedom and choice in pensions*, seeking views on details of the government's plans to offer greater flexibility in accessing defined contribution (DC) pension savings. The consultation ran from 19 March 2014 to 11 June 2014 and the government's response to the consultation was issued on 21 July 2014.

In Budget 2015, the government announced that additional funding of £19.5m in 2015/16 will be provided to support the new pension freedoms and the new pensions guidance service, Pension Wise. This funding will extend the availability of state pension statement and pension tracing services. It will also provide for extra delivery capacity for Pension Wise. The government has put plans in place in case there is a need to draw on Department for Work and Pensions resources to help manage any initial spike in demand for the service (*Budget 2015*, para 2.88).

Bad debt relief on investments made through the peer-to-peer (P2P) lending industry: As announced in Autumn Statement 2014, Budget 2015 confirms that the government will introduce a new relief to allow individuals lending through P2P platforms to offset bad debts arising against the interest receiving from P2P loans when calculating their taxable income. The government is expected to publish a technical note on these measures shortly after Budget 2015. The government will then publish draft legislation later in 2015 (*Budget 2015*, para 2.89; *OOTLAR 2015*, para 2.7).

Inheritance tax

Deeds of variation: At Budget 2015, the chancellor announced that the government will review the use of deeds of variation for tax purposes. A deed of variation is an inter vivos transfer from a beneficiary of a deceased person to the recipient. Without the available relief from inheritance tax (IHT) and CGT, the beneficiary would be treated as making a transfer of value for IHT and CGT purposes. Presently, if the deed of variation is made within two years of the deceased's death, IHT and CGT is calculated on the deceased's estate as if the variation had been effected by the deceased.

Deeds of variation varying the will or intestacy of the deceased are often used to correct mistakes so as to avoid expensive litigation or to make legitimate use of available business and agricultural property reliefs or where a widow or other family members wish to change the devolution of the deceased's estate. The deed of variation is not always used for tax reasons and is not viewed as a tax avoidance tool (*Budget 2015*, para 2.91).

IHT changes to support the new IHT digital service: As announced in Autumn Statement 2014, the government will amend existing legislation dealing with interest to support the introduction of the new IHT digital service as part of its new digital and online services strategy for agents and taxpayers. In Autumn Statement 2013 the government announced that, as part of the government's digital strategy to improve the process for customers and the administration of IHT, an online service will be introduced in 2015/16 for the submission of IHT returns.

These changes will ensure that the relevant provisions relating to late payment interest are updated and apply consistently when the new online service becomes available in 2015/16. To support the introduction of the new online service, legislative changes will be made in Finance Bill 2015, to align the treatment of interest and penalties for IHT purposes, with that for other taxes to ensure that the relevant provisions will apply correctly when the new online service is launched. HMRC's digital roadmap for 2015 estimates that the new online IHT digital service will be used by 600,000 customers. As part of the introduction of the new IHT digital service, HMRC will also shortly publish draft regulations to facilitate the use of electronic communications (*Budget 2015*, para 2.92; *OOTLAR 2015*, para 2.24, 2.37)

IHT exemption for medals and other awards: As announced in Autumn Statement 2014, the government will extend the existing IHT exemption for medals and other decorations that are awarded for valour or gallantry so that it will apply to all decorations and medals awarded to the armed services or emergency services personnel and to awards made by the Crown for achievements and service in public life.

The amendment will provide that a relevant decoration or other award is excluded property if it has never been the subject of a disposition for money or money's worth. The amendment will mean that the exemption will also include orders, decorations or awards made by other countries and territories. Legislation will be introduced in Finance Bill 2015 with the amendment applying to transfers of value made, or treated as made, on or after 3 December 2014 (*Budget 2015*, para 2.93; *OOTLAR 2015*, para 1.48).

IHT exemption for emergency services personnel and humanitarian aid workers: As announced in Autumn Statement 2014, the government will extend the exemption from IHT for service personnel who die on active service or who later die from wounds received on active service, to all emergency services personnel who die in the line of duty or whose death is hastened from injury that occurs in the line of duty as well as to humanitarian aid workers responding to emergencies and police constables and armed service personnel who die as a result of being attacked due to their status. The amendment is intended to apply to all emergency service personnel in the UK whose death has been caused directly or hastened by an injury sustained while responding to emergency circumstances. The amendment will also apply to armed forces personnel who are supporting emergency service personnel. The amendment will provide that their estates will be exempt from IHT.

At Budget 2014, the government announced its intention to introduce IHT exemptions for members of the emergency services in line with the existing exemption for armed service personnel who die in the line of duty or whose death is hastened by an injury incurred in the line of duty. In Autumn Statement 2014 the government announced the further intention for the amendment to apply to serving and former police officers and services personnel who are attacked and die because of their status. Following consultation since Budget 2014, legislation was published in draft on 10 December 2014 and following further consultation, the government has clarified that the amended legislation will extend to serving and former police officers and services personnel who are targeted because of their status. The revised legislation will be introduced in Finance Bill 2015 and the exemption apply to all deaths on or after 19 March 2014 (*Budget 2015*, para 2.94; *OOTLAR 2015*, para 1.42).

IHT and trusts: As announced in Autumn Statement 2014 and following a third consultation, the government will not now introduce a single settlement nil-rate band but will instead introduce new rules to target tax avoidance through the use of multiple trusts and simplify the calculation of IHT on trusts rules, with the new rules to be introduced in a future Finance Bill. The government had announced plans in Autumn Statement 2013 to allow just one nil rate band per individual, to be split across all relevant property trusts to simplify the calculation of IHT charges on relevant property trusts.

The value of property held in most forms of trust is subject to IHT at 6% every ten years on the amount above the nil rate band (currently £325,000) with a proportionate 'exit' charge when the value of the property leaves the trust between ten-year anniversaries. Where more than one trust is settled on the same day by the same person, they are 'related settlements' and the value comprised in them is aggregated when determining the rate at which IHT is charged. This rule can be avoided by creating multiple settlements on different days. The purpose of the government's proposed amendment was to prevent the leakage of IHT through the use of multiple trusts by the same settlor. The value of property in trusts that were not related would be aggregated, together with the initial value of any property settled into those trusts, for the purpose of determining the rate at which IHT is charged when the value of property in those multiple trusts is increased on the same day. It also intended to exclude property that has never become relevant property and simplify some of the rules for calculating the rate of IHT for the purposes of the ten year anniversary and exit charges. There are no further proposed changes following the legislation that was published in draft on 10 December 2014 and the nil rate band will remain unchanged at £325,000 (*Budget 2015*, para 2.95; *OOTLAR 2015*, para 2.25).

Charities

Gift aid small donations scheme (GASDS): The chancellor has announced the introduction of an increase to the maximum annual donation amount which can be claimed by charities and community amateur sports clubs through the GASDS. GASDS enables charities to claim back 25p for every £1 that is donated to the charity or to a community amateur sports club (CASC). The claim enables charities to this top up payment where their small (£20 or less) cash donation income is up to £5000. Government guidance on the GASDS scheme can be found at www.bit.ly/1uYxAHl.

It has been announced in Budget 2015 that the amount that can be claimed through GASDS will increase to £8,000 allowing charities and community amateur sports clubs to claim Gift Aid top-up payments of up to £2,000 a year. The measure will be introduced in secondary legislation and take effect in April 2016 (*Budget 2015*, para 2.104).

Gift aid digital: In Autumn Statement 2014, it was announced that intermediaries will be given a greater role in administering gift aid. The government has confirmed that it will legislate to give effect to this announcement. There is no indication as to when the measure will be effective (*Budget 2015*, para 2.106).

Charity authorised investment funds (CAIFs): A new investment vehicle for charities has been announced in Budget 2015. The government will be working with the Charity Investors' Group (CIG) and the Charity Commission to introduce a new CAIF structure. Existing common investment funds are unregulated, but the new CAIFs will be regulated by the Financial Conduct Authority and will be exempt from VAT. According to the CIG in their Budget release the new structure will have the charitable purpose of 'promoting the efficiency and effectiveness of charities by enabling participating charities to carry out their purposes more economically and efficiently'. Existing common investment funds will be allowed to convert to the new status. There is no indication as to when these new structures will be operational (*Budget 2015*, para 2.108).

Help for hospices: In the Autumn Statement 2014 it was announced that hospice charities will be eligible for VAT refunds. Currently charities providing palliative care (hospice charities) do not receive any refund of the VAT they incur. The announcement in Budget 2015 will mean that those charities will be able to claim a refund of the VAT they incur on their non-business activities. The Finance Bill 2015 will include legislative measures to provide for VAT refunds on the non-business activities of these charities incurred after 1 April 2015 (*Budget 2015*, para 2.109; *OOTLAR 2015*, para 1.23).

VAT refunds for search and rescue charities: In Autumn Statement 2014 it was announced that search and rescue and air ambulance charities will be eligible for VAT refunds. Currently those charities that operate search and rescue vehicles and air ambulances do not receive refunds on the VAT that they incur in purchasing goods and services for their non-business activities. Finance Bill 2015 will include legislation to enable such charities to claim refunds of VAT. The measure will take effect from 1 April 2015 (*Budget 2015*, para 2.110).

Medical courier charities: The VAT refunds available to search and rescue and air ambulance charities will be extended to include blood bike charities. Medical courier charities transport urgently needed blood and other items of a medical nature. It is a free out of hours service that is not generally a business activity for VAT purposes as their expenses are mostly met by donations rather than fees charged. As such the charities operating the service are unable to recover the VAT charged on their non-business activities.

There is no specific VAT legislative provision that covers this situation. New legislation in Finance Bill 2015 will rectify this by providing that charities will be able to reclaim the VAT incurred on the purchase of goods and services, and the acquisition and importation of goods from outside the UK, used for their non-business activities. This measure will take effect from 1 April 2015 (*Budget 2015*, para 2.111).

Future changes

The following proposals (whether announced at Budget 2015 or earlier) will not be included in Finance Bill 2015 but may be enacted in future legislation:

- **Non-deductibility of compensation payments made by banks:** In the government's view, announced at Budget 2015, banks should not obtain tax relief for compensation payments made by them as a result of their own misconduct. The government would like to consult on this proposal with a view to legislating in a future finance bill (*Budget 2015*, paras 1.248, para 2.132; *OOTLAR 2015*, para 2.15);
- **Modernising the taxation of corporate debt and derivative contracts:** This includes wide-ranging measures to establish a clearer and stronger link between commercial accounting profits and taxation, the introduction of a new relief for companies in financial distress, and further rules to protect the regime against tax avoidance (*Budget 2015*, para 2.193);
- **Entrepreneurs' relief and spin-out companies:** At Budget 2015, the government announced its intention to consult on the availability of ER for gains made by academics on disposals of shares in 'spin-out' companies, with a view to ensuring that academics and researchers are appropriately rewarded when they contribute towards valuable intellectual property used in these companies (*Budget 2015*, para 1.189, *OOTLAR 2015*, para 2.22);
- **Serial avoiders:** The government intends to introduce measures in a future Finance Bill applying to those who repeatedly enter into tax avoidance schemes that fail (serial avoiders). The proposed measures would include a special reporting requirement, a surcharge, restricting access to reliefs, and naming and shaming. This proposal follows the *Strengthening sanctions for tax avoidance* consultation that ran from 29 January 2015 to 12 March 2015 (*OOTLAR 2015*, para 2.32);
- **General anti-abuse rule (GAAR) penalties:** The government's intention, announced first at Autumn Statement 2014 and reiterated at Budget 2015, is that the deterrent effect of the GAAR should be increased by introducing a penalty based on the amount of tax that is counteracted by the GAAR (*Budget 2015*, paras 1.244 and 2.205; *OOTLAR 2015*, para 2.33);
- **Authorised property funds:** As announced at Autumn Statement 2014, the intention is to introduce a seeding relief for property authorised investment funds (PAIFs) and co-ownership authorised contractual schemes (CoACSs) and also to make changes to the SDLT treatment of CoACSs investing in property so that SDLT does not arise on transactions in units as part of the government's investment management strategy (*Budget 2015*, para 2.184; *OOTLAR 2015*, para 2.23);
- **Tax enquiry closure rules:** The government consulted between 15 December 2014 and 12 March 2015 on a proposal to introduce a new power for HMRC to be able to achieve early resolution and closure of any aspect of a tax enquiry even if other issues are left open. The government is currently considering the responses to the consultation (*OOTLAR 2015*, para 2.31);
- **Direct recovery of tax debts (DRD):** As pre-announced, when DRD is introduced, it will, subject to various safeguards, permit HMRC to recover tax debts (including an amount owed as a result of an accelerated payment notice) of at least £1,000 directly from debtors' bank and building society accounts, including ISAs (*OOTLAR 2015*, para 2.34);
- **Business rates long term review**: As announced at Autumn Statement 2014, the government will conduct a review of the structure of business rates, to be completed by Budget 2016 as part of a package of measures of 'backing business'. The *Business rates review: terms of reference and discussion paper* was published on 16 March 2015 (*Budget 2015*, paras 1.110, 1.114, 2.181, 2.182 and 2.240).

This summary was provided by the Lexis®PSL Tax and Private Client teams. Lexis®PSL provides advisers with practice notes and precedents, with links to trusted sources.

Compliance and enforcement aspects

James Bullock
Head of litigation and compliance,
Pinsent Masons
Email: james.bullock@pinsentmasons.com
Tel: 020 7054 2726

No real surprises, but compliance and enforcement remains centre stage for the foreseeable future.

Almost certainly the biggest surprise was the announcement (pre-released in Wednesday morning's *Daily Telegraph*) of the intention to abolish self-assessment returns for individuals and small businesses. This was duly confirmed as a centrepiece of the Budget speech – and in the Budget overview document under the heading 'Making taxes easier'. The outline proposal is to create a system of 'digital tax accounts' whereby taxpayers can (somehow) return their taxable income and gains in real time – and pay more 'flexibly'. Of course, it rather begs the question of whether the overriding intention is to 'make taxes easier' for taxpayers – or for HMRC? 'Both' would be the chancellor's likely answer. The main concern here is that a new regime of tax reporting makes it much easier for future governments to increase powers (particularly in relation to information gathering) without appropriate or commensurate safeguards. Likewise, it creates a template for a gradual move to 'equivalent' treatment for self-employed people to those on PAYE, i.e. a monthly payment on account of tax. This has the potential to remove the cashflow advantage which is such a significant benefit for small business. A 'roadmap' setting out the proposals and a consultation on a new payment process (leading to legislation) is promised for the next Parliament. It is almost inconceivable that a Labour-led government would not wish to press ahead with this proposal, so we can await developments with great interest. Put some time aside to respond to any consultation that leads to a 'dumbing down' of taxpayers' rights.

The other big announcement – already much trailed – will not be made until Thursday 19 March (after this edition of *Tax Journal* goes to press). This is the proposal for new criminal offences relating to tax evasion and penalties, specifically aimed at those who 'facilitate' or promote it (principally the banks in the wake of the Swiss banking 'saga' that so dominated the news in February). The chief secretary to the Treasury was stated as being due to make this announcement, which was originally a Liberal Democrat proposal. The Conservatives seem to have endorsed it as well – and, once again, it would be very odd if Labour did not press ahead with its introduction – or possibly something even stronger. Once again, therefore, we can expect a consultation and in due course (probably in the Autumn Statement) draft legislation. One 'dog that did not bark' once again was the chancellor's own proposal from April last year of a strict liability offence relating to offshore tax evasion – which was consulted on in the Autumn of 2014, but in respect of which no mention was made in the last Autumn Statement. This might be one of the offences announced by the chief secretary.

Something of a surprise was a suite of announcements around disclosure facilities. The existing (and long running) Liechtenstein disclosure facility will be closed three months prematurely, in December 2015, whilst the life of the Crown Dependencies disclosure facility will be shortened by nine months and will end at the same time. In their place will come a 'new disclosure facility' (NDF) relating to tax evasion, but on much less generous terms (penalties in excess of 30% and, most significantly, no guarantee of immunity from criminal investigation). In the first place, this really does mean that there is a 'burning platform' in respect of disclosures that have not already been made. Taxpayers with offshore accounts – and particularly those who have moved money out of Switzerland – need to bear in mind that most jurisdictions have now signed up to the common reporting standard. The result is that financial information from (inter alia) Singapore, Hong Kong, Israel, Turkey and the UAE will be fairly freely available to HMRC by 2018. The remainder of 2015 will go down in history as the 'last chance saloon' for anyone with such irregularities to benefit from very generous terms – and, in particular, from immunity from prosecution. The NDF is clearly intended to present an opportunity for people still to come forward. The absence of a guarantee of immunity is perhaps a mistake if the NDF is genuinely intended to be effective. This aspect is likely to have been included as a result of the outrage of the Public Accounts Committee in February (volubly expressed to Lin Homer, HMRC's CEO), at a perceived ineffectiveness on the part of HMRC to prosecute tax evaders. The real issue will be what the attitude of the next government will be to criminal investigations for tax evasion. Will the 90 year old policy of only prosecuting a tiny proportion of cases finally come to an end?

The announcement of a material change to the closure rules relating to enquiries (enabling HMRC to close an aspect of an enquiry unilaterally, notwithstanding the overall return remaining open) was announced in principle in the Autumn Statement, with a consultation document being published just before Christmas. The consultation closed on 12 March 2015. The principal mischief here was the lack of a commensurate right on the part of a taxpayer (perhaps safeguarded by a requirement to seek approval from the tribunal) to close an aspect of their return with a view to proceeding to litigation. We are told that the government is 'currently considering' the responses and we can perhaps anticipate a revised proposal (or possibly the same proposal) in the post-election Budget, which is expected in June.

Legislation relating to the once highly controversial direct recovery of debt proposals, which was published in draft form for consultation around the time of the Autumn Statement, will be introduced 'in a future Finance Bill'. In the event of a Conservative-led government, we might expect this in the post-election Finance Bill. A Labour-led government may have more immediate priorities in its post-election Budget and Bill and in such circumstances this might be expected in the 2016 Bill. It is interesting, given the extent of previous consultation, that this provision was not included in the current Bill. That said, it is perhaps more surprising how much legislation will be included in the forthcoming Bill, given the minimal amount of parliamentary time available to consider it, before Parliament is prorogued next week.

Finally, two other provisions which have been announced previously and consulted upon will be legislated upon 'in

a future Finance Bill'. The first is the proposal for tougher measures against people, known as 'serial avoiders', who persistently enter into tax avoidance schemes which fail; this comes in tandem with a widening of the current scope of the promoters of tax avoidance schemes regime. The second is a tax-geared penalty regime aimed specifically at the GAAR. This was another measure that the Public Accounts Committee has been calling for (with increasing volume) for quite some time. One wonders whether a Labour-led government might want to introduce something more robust? In the event of a Conservative-led government, we can expect these provisions in the post-election Finance Bill.

So the days of the coalition of 2010–15 are very nearly over, but its legacy of weapons of mass enforcement very much lives on – and can only increase under the next government, whatever that looks like…

The impact on multinationals

Mike Lane
Partner, Slaughter and May
Email: mike.lane@slaughterandmay.com
Tel: 020 7090 5358

Two changes particularly catch the eye, one welcome and one not so.

If you are the sort of multinational group that makes its money extracting oil or gas from beneath the sea, you were probably quite pleased with a Budget that promises to bring some welcome respite from falling oil prices by reducing both petroleum revenue tax (from 50% to 35%) and the supplementary charge (from 30% to 20%), as well as introducing a simplified investment allowance.

It is not such good news if you operate in the financial services sector. For banks, there is the now almost obligatory annual hiking of the bank levy, this time intended to raise a fairly hefty additional £900m a year (the levy originally having been intended to raise £2bn a year in total), as well as the restriction on using carry forward losses announced at Autumn Statement 2014. This latest hike will only increase the competitive disadvantage for UK headed banks operating overseas. Perhaps more surprising was the announcement that the government intends to change the law, so that customer compensation payments will no longer be tax deductible. While the public policy argument for punishment fines not being deductible is relatively clear, not allowing a deduction for what is, in effect, the rebate of taxable income is singling the banks out for special treatment. And both banks and insurers can expect an increased VAT burden from 1 August 2015 onwards, as the VAT rules are tightened to prevent supplies made by non-UK branches being taken into account in determining input tax recovery. (A company with branches outside the EU and making supplies of financial services to predominantly non-EU customers previously tended to give a good bump to its VAT recovery rate on overheads.)

For multinationals more generally, there are two changes which particularly catch the eye, one welcome and one not so.

The welcome change is that the diverted profits tax (DPT) notification rules are to be relaxed. One of the main (many?) criticisms levelled at the 10 December 2014 draft of the DPT legislation was that the notification threshold was set far too low, leading to an increased compliance burden for many groups that would not ultimately suffer a DPT charge. At the DPT open day, HMRC said this was deliberate to ensure that it was notified of anyone even potentially within scope and received sufficient information to judge for itself whether certain conditions were met for the charge to apply. Although we are still waiting to see the details, the government has announced that the notification requirement has been narrowed, amongst other changes, which ought to reduce the compliance burden for many groups.

The less welcome change is the new anti-avoidance rule intended to prevent loss refreshing. Many multinational groups engage in some form of what might be called loss refreshing – entering into an arrangement intended to convert a less useful carry forward loss into a more useful current year loss. To date, this would generally have been regarded merely as good corporate housekeeping – the group is simply ensuring that it pays tax on its actual net economic profit. Indeed, HMRC even acknowledges in its *Corporate Finance Manual* at CFM92210 that: 'Planning of this sort, designed to utilise reliefs in the most efficient way, is widespread and has never been regarded as particularly offensive by HMRC.' No longer. According to the Red Book this is now regarded as 'side stepping' the rules and is not on. Groups should be aware that they need to consider the impact on any existing arrangements, as the rule will apply with effect from 18 March 2015 to arrangements entered into at any time.

At least the new rules contain a main purpose test, which ought to help those looking to structure a commercial transaction in an efficient manner. They will also be conditional on the anticipated value of the tax advantage being greater than the anticipated value of the other economic benefits of the transaction. However, in the real world such value comparison tests are notoriously difficult to apply. While a tax advantage may have a readily ascertainable monetary value, the 'other economic benefits' of the transaction may not. The final point to note is that this is only targeted at loss refreshing. Planning that consists of moving a profitable activity or income producing asset into a company with stranded losses is still considered to be the right side of the line – at least for now.

How OMBs fared

David Whiscombe
Tax technical director, BKL Tax
Email: david.whiscombe@bkltax.co.uk
Tel: 020 8922 9306

In a Budget that had little to say specifically about owner managed businesses, the most striking changes were to entrepreneurs' relief.

The withdrawal of entrepreneurs' relief in respect of companies whose only activity is to hold shares in a joint venture company is not unexpected. Using such companies

to aggregate what would otherwise be non-qualifying shareholdings was never within the spirit of the relief. More controversial is the withdrawal of relief in respect of companies where the only trading activity is carried on in partnership or as members of an LLP. Coming after last year's attack on 'mixed member' partnerships, this underlines HMRC's hostility to partnerships involving companies, though the underlying justification for such hostility is not entirely clear (at least not to the writer).

As to the change to the rules on 'associated disposals', there is an understandable logic in restricting the relief to cases where the 'main disposal' is substantial; but the proposal seems flawed in its detail. For example, a partner owning less than a 5% interest in a partnership will not now be capable of meeting the requirements for associated disposal relief, even if the disposal is associated with his complete withdrawal from the partnership on retirement. Replacing one anomaly favouring the taxpayer with another favouring HMRC is hardly something to be welcomed. Already in place, of course, is the Autumn Statement change denying entrepreneurs' relief on the transfer of goodwill to a company of which the transferor is a related party (though the Budget does announce a small technical change to that rule, correcting an unintended effect of the change).

There has been much discussion as to the cost to the exchequer of entrepreneurs' relief and talk of its wholesale abolition. It is to be hoped that now these perceived anomalies have been removed, the fundamentals of the relief will be safe. Indeed, the proposal to consult on the extension of the relief to gains made by academics on the disposal of shares in 'spin out' companies bespeaks a reassuring commitment to the continuation of the relief.

Elsewhere, the chancellor declined to commit himself to the level to which the annual investment allowance would return, following the end of the £500,000 enhancement in December 2015. It is encouraging that he recognised that £25,000 would 'not be remotely acceptable', but a commitment to something more specific than 'a much more generous rate' would, perhaps, have been welcome.

Farmers will be happy that the two-year period over which they may average their profits for tax purposes is to be increased to five (but only with effect from 2016/17). There is, however, no indication that the enhancement will also apply to the creators of 'creative works', who currently benefit from the same two-year averaging as farmers, let alone to other businesses with notably volatile profits.

The proposed abolition of class 2 NICs seems to have generated an interest out of all proportion to its value, especially as one suspects that the modest saving it represents is likely to be clawed back (and more) by adjustment of class 4 contributions.

OMBs, like other taxpayers, that have 'something to declare' will need to consider HMRC's apparent rethink on disclosure facilities. Both the Liechtenstein and the Crown Dependencies disclosure facilities are to be brought to an end earlier than expected on 31 December 2015, presumably to clear the decks for the introduction of a new, much less generous disclosure facility. For the same reason, one suspects that the early closure of the various settlement opportunities currently applying to specific arrangements may also be in prospect, though this is at present mere speculation.

The private client perspective

Sophie Dworetzsky
Partner, Withers
Email: sophie.dworetzsky@withersworldwide.com
Tel: 020 7597 6378

Hints of things to come.

George Osborne's last hurrah as chancellor of a coalition government was hotly anticipated and there has been much speculation about likely giveaways, bombshells and all manner of surprises in the weeks leading up to it.

I am sorry to say it disappointed on all those fronts, which is not to say it was a bad Budget. It was a highly political Budget, with little in the way of detailed substantive announcements – and what more could and should we have expected? We all know the real story will be in a post-election Budget, whoever wins. No doubt the chancellor was seeking to indicate some of what he might do if given a clear mandate at the general election, but at this stage hint is all he can really do.

Against that backdrop, what were the announcements of note for private clients?

Act now: As ever, fairness is a hot topic, which appears to translate into further focus on anti-avoidance measures and harsher disclosure facilities. In terms of immediate actions, the Liechtenstein and Crown Dependencies disclosure facilities will close early: in December 2015, instead of April 2016. They will be replaced by a harsher facility on less generous terms, with no guarantees of immunity in some cases; tax of at least 30% of the undeclared amount will be charged, as well as penalties and interest. This really does seem to be a last call for those wishing to come forward under the existing facilities while still possible.

Anti-avoidance: Onshore, the deterrent effect of the GAAR is to be strengthened through the introduction of penalties for planning which is found to be in breach of the GAAR. At the moment, it is rather hard to assess the impact of the GAAR, as it has not been visibly deployed since it came into force in July 2013. That said, it does have a deterrent effect and these new measures will surely add to that.

The disclosure of tax avoidance schemes (DOTAS) rules have also been further enhanced. New measures in these rules, announced on Budget day, include protection for those wishing to notify HMRC of non-compliance; and a requirement for employees to notify employers of participation in schemes around employment income. Additionally, there will be measures to assist HMRC in detecting schemes which it has not been notified about.

Pensioners: Those with significant pensions will not be pleased by the reduction of the lifetime allowance from £1.25m to £1m with effect from 6 April 2016, although a slight softening to the blow is that this will be index linked from 2018. On the upside, those who are already receiving annuities can receive a lump sum in exchange for assigning the income to a third party. Details of how precisely this will be put into practice are awaited.

Savers: As of this autumn, savers with ISAs should be

able to replace cash withdrawn from an ISA without that counting towards their annual limit.

Also, one assumes, to incentivise further saving, a new personal savings allowance covering bank and building society interest is to be introduced from 6 April next year. The allowance will be £1,000 for basic rate taxpayers, £500 for higher rate taxpayers and zero for additional rate taxpayers. The requirement for banks to apply an automatic 20% deduction will also cease from April 2016.

Filing to be made easier: The chancellor was clearly delighted to announce the end of self-assessment in the Budget. The push to make compliance simpler, with the introduction of online accounts to be fully rolled out for individuals and small businesses by 2020, is welcome.

Of course, the real message is to wait and see what happens in the early summer and the Budget that will be expected to follow the election.

Economic view

John Hawksworth
Chief economist, PwC
Email: john.c.hawksworth@uk.pwc.com

Light at the end of the austerity tunnel.

Comparison of key OBR forecasts at the time of the Autumn Statement and the 2015 Budget

GDP growth (%, calendar years)	2015/16	2016/17	2017/18	2018/19	2019/20
Budget (March 2015)	2.5	2.3	2.3	2.3	2.4
Autumn Statement (Dec 2014)	2.4	2.2	2.4	2.3	2.3
CPI inflation (%, calendar years)					
Budget (March 2015)	0.2	1.2	1.7	1.9	2.0
Autumn Statement (Dec 2014)	1.2	1.7	2.0	2.0	2.0
Public sector net borrowing (£bn)*					
Budget (March 2015)	75	39	13	-5	-7
Autumn Statement (Dec 2014)	76	41	15	-4	-23

**Excluding borrowing of public sector banks*
Source: OBR

The chancellor largely stuck to his fiscal plans in the Budget, but the one big change was to end major spending cuts in 2018/19 – a year earlier than set out in the Autumn Statement in December. With the economy performing well, he does now see some light at the end of the austerity tunnel.

Since December, the Office for Budget Responsibility (OBR) has slightly raised its real GDP growth forecasts to 2.5% this year and 2.3% next year (see table). But the differences are minor and do not alter the underlying trend growth rate in any material way. This reflects benefits from lower than expected oil prices and higher net inward migration of workers being offset by a somewhat weaker outlook for the global economy.

The OBR has also revised down its inflation projections over the next few years, reflecting lower oil and food prices and the impact of the strong pound against the euro. This is good news for consumers, but less so for UK exporters.

Overall, tax receipts are projected to be around £4bn lower in cash terms in 2018/19 than the OBR forecast in December. This is due primarily to lower than expected inflation, fewer residential property transactions and reduced North Sea oil revenues. This is offset, though, by a slightly greater reduction in projected public spending in 2018/19, due in particular to lower than expected debt interest and welfare benefit payments.

As a result, public sector net borrowing is marginally lower than previously forecast up to 2018/19, but only by around £1–2bn per year, which is tiny compared to the margin of error surrounding any such projections.

The biggest change in the Budget, however, was the chancellor's decision to end austerity a year earlier than planned in his Autumn Statement. The projected Budget surplus therefore levels out at £7bn in 2019/20, which is still a healthy outcome but well below the £23bn surplus projected back in December.

As a result, total public spending is now projected to fall to 36.0% of GDP in 2019/20, marginally above the low point of 35.9% of GDP reached under Gordon Brown in 1999/2000, rather than dropping to the lowest levels seen since the 1930s, as in the December plans.

Together with reduced welfare and debt interest costs, this should significantly reduce the scale of the squeeze on departmental spending over the course of the next Parliament. In fact, the OBR estimates that this element in total spending will now be around £28bn higher in 2019/20 than estimated in December. There will, however, still be some severe spending cuts to come over the next four years in non-protected areas other than the NHS, schools, overseas aid and military equipment budgets.

The new Budget measures announced seem overall to be broadly fiscally neutral. There were giveaways on personal income tax and savings allowances, alcohol duty cuts, a further freeze in petrol duty, and support for North Sea oil activity; but these were balanced by revenue raising measures, such as a higher bank levy, further steps to combat tax avoidance and evasion, and a reduced lifetime limit on pension tax relief.

These tax rises were carefully designed not to affect directly the great majority of households, which may therefore feel better off due to the various tax cuts in the Budget. But the overall net impact on the economy will be minimal, at least until 2019/20 when austerity comes to an end a year early. ■

Ask an expert

SSE on hive down of business to SPV

Keith Gregory
Partner, NGM Tax Law

Email: **keith.gregory@ngmtaxlaw.co.uk**
Tel: **020 7148 0380**

Our clients are the owners of a long established family trading company (TradeCo). They are thinking about selling TradeCo, but are concerned about the risk that a buyer could require them to place a significant percentage of the sale proceeds into an escrow arrangement for a number of years, as security for their contingent liability under the representations and warranties that would typically be given in an agreement to sell the shares in TradeCo. It has been suggested that once a buyer has been found, but well before the main terms of the sale have been agreed, TradeCo should establish a wholly owned subsidiary (NewCo); and then, third party consents permitting, transfer its entire trade and undertaking to NewCo a week or so later, so that NewCo would begin to carry on the trade. If the negotiations for the sale conclude successfully, TradeCo would sell Newco to the buyer. TradeCo would then be placed in liquidation and the sale proceeds would be distributed to the members in the course of the winding up. It is hoped that the hive down of the trade would be tax neutral and that the substantial shareholding exemption (SSE) would apply to the sale of NewCo. What are the main tax risks?

There is a clear commercial purpose to these arrangements, as the clients wish to avoid having to tie up a part of the sale proceeds in escrow. This risk would be taken off the table as a result of the buyer acquiring NewCo, rather than TradeCo. Furthermore, the clients are not looking to put themselves into a better tax position as a result of implementing these arrangements. They would have been entitled to entrepreneurs' relief (ER) on the sale of TradeCo; and, similarly, ER should be given in respect of the distribution of the sale proceeds to the members on a winding up of TradeCo. (CTA 2010 s 1030 provides that a distribution in a winding up is not an income tax distribution.) Taking into account all of the circumstances, the conditions for the general anti-abuse rule to apply in FA 2013 Pt 5 should not be met.

Transfer of a going concern

The transfer of the trade from TradeCo to NewCo should fall within TCGA 1992 s 171 and it should be treated as the transfer of a going concern for VAT purposes, provided that at the time of the hive down there was no binding agreement to sell NewCo to the buyer. Accordingly, the transfer of the trade should not trigger any liability to taxation. (We understand that TradeCo owns no assets for which SDLT would be chargeable as there would be a clawback of intra-group relief from SDLT on the sale of NewCo.)

Application of the SSE rules

There is, however, a potential technical difficulty with these arrangements under the SSE rules. FA 2011 inserted a new para 15A in TCGA 1992 Sch 7AC to extend the relief for SSE where the conditions in Sch 15 para 2 are met. Paragraph 15A treats the minimum 12 month shareholding condition as satisfied for the period that assets are used for a trade carried on by a member of a group before being transferred to the company being sold. According to the explanatory notes to the Finance Bill 2011, the rules were changed to facilitate companies operating on a divisional basis. A company which runs a number of divisions can now transfer one of its trades to a newly formed subsidiary and then sell the subsidiary within SSE. This can occur, notwithstanding the fact that it may not have owned the shares in the subsidiary for the 12 month period, provided that the assets transferred have been used by another company in the group for a 12 month period ending on the date of sale of the subsidiary.

On the basis of the wording of the conditions in para 15A, it would seem that they ought to apply to a sale of Newco, so that the degrouping charge under s 179 (as amended by FA 2011) would be exempt from corporation tax on chargeable gains in the hands of TradeCo. Unfortunately, HMRC interprets the provisions of para 15A rather more narrowly. At para CG53080C of HMRC's *Capital Gains Manual*, it is stated that para 15A cannot apply where the transferee company is a newly acquired subsidiary of what was previously a single trading company. No detailed explanation is given for this view. And it would appear to be illogical, since in the example provided in CG53080C as to the application of the new rules, company A has one wholly owned subsidiary, company B. Company A receives an offer from company X to sell a particular part of its trading activity. In order to accommodate the wishes of company X, company A sets up a new wholly owned subsidiary, company C; and company B transfers a part of its trade to company C, which is then sold to company X. According to HMRC, para 15A can apply when a company has a single trading subsidiary, but not when a single trading company sets up a new subsidiary to which its trade is transferred.

HMRC's narrow interpretation appears to overlook the fact that, if there is an interval between the transferor forming the subsidiary and transferring the trade, there would be a period during which the transferor carried on the trade as a group member. Moreover, if the policy objective of para 15A is to accommodate companies operating on a divisional basis, it would appear that a divisionalised single trading company would not benefit from the relief in the light of HMRC's view, whereas a holding company with a divisionalised single trading subsidiary would. There would appear to be no policy reason why para 15A should apply if part of a trade is transferred (as in the example in CG53080C), but would not apply to the transfer of an entire trade, assuming that there is an interval between the single trading company forming a subsidiary and the transfer of the trade. In both cases, the trade would be carried on by a member of a group. It seems to us that it is unlikely that HMRC would deny the benefit of the relief to a divisionalised single trading company which transfers parts of its trade to a subsidiary, owing to the express policy objective. And, in our view, there is no policy reason why HMRC's narrow interpretation should prevail in relation to a company that carries on a single trade. ■

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What's ahead

Dates for your diary

March

20 **EU VAT Forum:** Applications due to become a member from October 2015 (www.bit.ly/1vl6ImW). **HMRC online services:** HMRC is to run a trial version of its agent online self-serve tool during April 2015. Agent volunteers are invited to sign up for the trial via an online questionnaire by this date.

23 **Upper Tribunal:** *Steven Price and John Myers and related appeals v HMRC* [2013] UKFTT 297 (TC): taxpayers' appeal regarding decision on CGT avoidance scheme. **Public Accounts Committee:** Further hearing on HSBC and tax avoidance and evasion scheduled for 3:15pm. Witnesses invited are Dave Hartnett, former HMRC permanent secretary for tax; and Edward Troup, HMRC's second permanent secretary and tax assurance commissioner.

24 **Finance Bill 2015:** FB 2015 and accompanying explanatory notes will be published on this day. **Small Business, Enterprise and Employment Bill:** Consideration of the House of Lords' amendments to take place in the House of Commons.

25 **Finance Bill 2015:** All Parliamentary stages to be concluded.

26 **Finance Bill 2015:** Royal assent expected. **Regs:** The Authorised Investment Funds (Tax) (Amendment) Regulations, SI 2015/485, which remove a restriction preventing AIFs from making interest distributions where the fund receives property income; and The Life Insurance Qualifying Policies (Statement and Reporting Requirements) (Amendment) Regulations, SI 2015/544, come into force.

27 **OECD BEPS:** Expected date for output on action 11 of BEPS concerning data analysis. **Regs:** The Finance Act 2014 (High Risk Promoters Prescribed Information) Regulations, SI 2015/549, set out the information that 'monitored' promoters of tax avoidance schemes, their clients and intermediaries, must publicise and report to HMRC in connection with their monitored status.

30 **Dissolution of Parliament.**

For a 'what's ahead' which looks further ahead, see taxjournal.com (under the 'trackers' tab).

Coming soon in Tax Journal:

- Examining the FA 2015.
- Ingenious and HMRC's allegations of dishonesty.
- More on the government's plans to tackle evasion and avoidance.

One minute with…

Jason Lester
Managing partner, tax, UK & Ireland, EY

Name a memorable moment in your career.
It has to be when I was promoted to partner at EY. And that's for two reasons: the sense of achieving my career goals, on the one hand; but also the feeling of being even more empowered to lead and make a difference in the market and to our people.

Looking back on your career to date, what key lesson have your learned?
Looking back, any wisdom can be summarised in one sentence: you cannot spend enough time with your clients. So to anyone starting now, I'd say take all the time you can to develop deep and open relationships with your clients. Invest in understanding their needs better than anyone.

Where do you see the growth areas for EY's tax practice?
All our different tax services currently experience double digit growth, so I see opportunity across all areas. If I could single out one area, it would be our legal services offering that we launched recently.

Are you seeing the emergence of any trends/developments to watch out for in tax?
BEPS will clearly create change, but I see technology impacting our clients more and more in the coming years. Businesses are increasingly coming to terms with ways they can use technology through their tax affairs to create efficient processes and minimise risk, but also to create value.

What stood out for you in the Budget?
The Budget confirmed that we will have a diverted profits tax by 1 April. The uncertainty over DPT has been a dampener on the enthusiasm for businesses to invest in the UK since it was announced at the end of last year. We will have to wait until next Tuesday for the Finance Bill, to see the full context. Whatever the detail it will be better for us to know, uncertainty is bad for the UK.

On the wider investment aspect, the Budget was neutral overall, spending only £140m over the five years. With 26 measures on tax, of which 10 were badged 'fairness, evasion and avoidance', there were precious little gimmicks for business, which will need to be satisfied with the one percentage point cut in corporation tax. However, given that the rates cut was listed in EY's Budget survey as the principal reason for the UK's recent increase in competitiveness, perhaps this is not too bad an outcome.

If you could make one change to UK tax law or practice, what would it be?
The tax practice is no different to any other part of the economy when it comes to that, so I would say stability and certainty. We have done well in having a clear roadmap for many years, but we need more of it.

Finally, you might not know this about me but…
I couldn't be happier than when bobbing around the Atlantic. Otherwise known as trying to surf!

For an archive of Tax Journal's 'One minute with' interviews with more than 150 leading experts from across the tax profession, such as John Whiting (OTS), Michael Conlon QC (Hogan Lovells), Paul Morton (Reed Elsevier), Peter Cussons (PwC) and Colin Hargreaves (Freshfields), see www.taxjournal.com.

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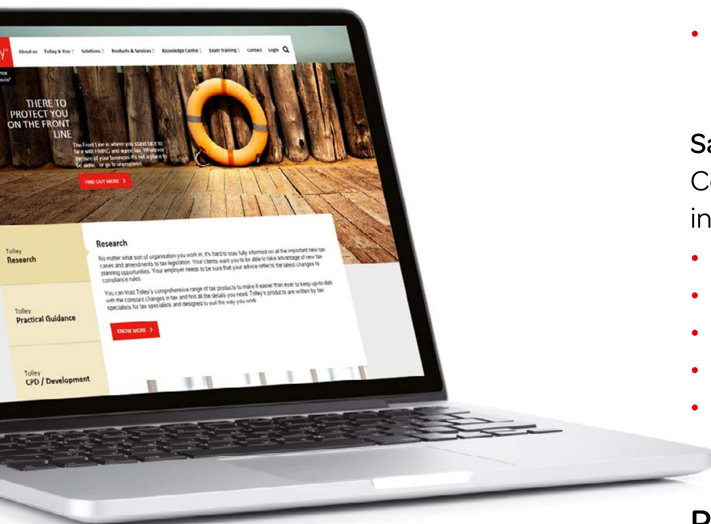

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Assistant tax editor

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