The Q&A **Osborne's fifth Budget**

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With 414 days to go before the general election on 7 May next year, this Budget was always going to be seen to be cocking, if not quite firing, the starting gun on the election campaign. In truth, the runners have been starting to take their position on the starting line for a while. The major political parties have been marking out their territory and tussling for ownership of flagship policies on tax. Whilst the Conservatives have championed the reduction of corporation tax to 20%, Labour committed at their party conference to reverse the scheduled corporation tax cut from 21% to 20% and use the revenue for cuts in business rates. The Liberal Democrats have pledged to raise the personal allowance to £12,500, and Labour want a mansion tax to pay for the reintroduction of a 10p starting rate of income tax. More recently, the shadow chancellor has proposed a bankers' bonus tax and further restrictions in pensions tax relief as a means of paying for a 'compulsory jobs guarantee'. So as the election manifestos start to take shape, how did George Osborne set out his stall?

Was this a pre-election giveaway?

First of all, the chancellor was quick to make clear from the outset that this would not be, in aggregate, a fiscal handout. As he told the House: 'Many chancellors, faced with a recovering economy and improved borrowing forecasts before an election, would be tempted to squander the gains. I will not do that today.' The numbers back him up – up to a point. In aggregate, over the five year fiscal period, the net impact of the policy decisions made at the Budget is to raise £150m for the exchequer. But this masks the fact that he is handing out around half a billion pounds in both 2014/15 and 2015/16, before clawing it back in subsequent years. You could argue he has handed out a slice of enticing pre-election cake, and eaten it too.

What tax cuts were announced?

So what flavourings were in the chancellor's fiscal cake? The biggest and most well-trailed announcement was the further increase in the personal allowance to £10,500, costing the public purse around £1.5bn per annum. There were also major tax changes for savers, including the replacement of the 10% savings tax rate with a 0% rate up to £5,000 and a significant reform to ISAs, which were rebranded as the somewhat, ahem, 'nicer' new ISA (NISA). The NISA will have an annual investment limit of £15,000, with equal limits for cash and stocks and shares ISAs, and more flexibility between the two. The other big winners were manufacturers, who were granted their request for action on energy prices with a cap to the carbon price support rate from 2016/17 to 2019/20 and an extension of the compensation scheme for energy intensive industries. Business investment was also supported by the extension and doubling of the annual investment allowance to £500,000 from 1 April 2014 until the end of December 2015.

The chancellor characterised yesterday as a Budget for 'the makers, the doers and the savers'. He could easily have added to that list with 'the drinkers'. Repeating the policy whose success he enjoyed last year, he announced another 1p off a pint of beer and a freeze in cider duty. He also froze spirits duty and abolished the wine escalator.

How are the handouts being paid for?

Continuing a familiar theme, the biggest sources of revenue for the chancellor's coffers were the public sector and tackling tax avoidance. The three biggest revenue-raising measures – each raising around £1bn per annum – were: public service pensions; an extension of the departmental spending savings already planned for 2015/16 into future years; and various measures on tax avoidance.

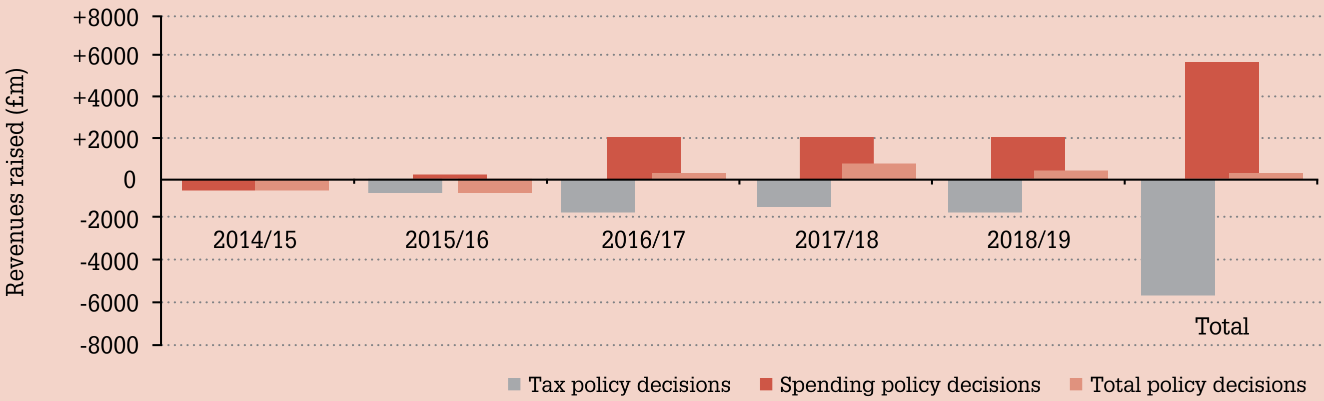
What more is planning on tackling tax planning and avoidance?

This time around, the chancellor focused on removing the cashflow advantage to those engaged in tax planning by requiring anyone involved in a tax dispute to pay the disputed tax upfront. If the taxpayer is subsequently successful in the courts, the chancellor acknowledged that they will be paid back with interest. The scheme will apply to disputed tax associated with schemes covered by the disclosure of tax avoidance scheme (DOTAS) rules or counteracted under the general anti-abuse rule. The measure will apply when HMRC issues an accelerated payment notice, which will be preceded by an enquiry notice or notice of assessment.

What next?

Further detail on many of the announcements will become available when the Finance Bill is published next Thursday (27 March).

Total exchequer impact of Budget 2014 policy decisions



Budget 2014

Your guide to the key measures

Key tax announcements

Key announcements that were new for the Budget include:

- an increase in the annual investment allowance for capital allowance purposes from £250,000 to £500,000 until the end of 2015;
- an extension of the 15% stamp duty land tax and the annual tax on enveloped dwellings to properties worth £500,000 (previously the limit was £2m);
- widely drafted anti-avoidance rules relating to transfers of profits within groups of companies;
- an increase in the payable R&D tax credit for loss-making SMEs from 11% to 14.5%;
- no delay for the introduction of the disguised salary rules for LLPs; and
- far-reaching amendments to the way people access their pension savings and important changes to individual savings accounts.

Background

The chancellor delivered his fifth Budget on Wednesday 19 March against a slightly paradoxical economic backdrop.

Economic conditions in the UK are clearly improving. The Office for Budget Responsibility (OBR) has revised its growth forecasts upwards for both 2014 to 2.7% (from 2.4% at the time of the Autumn Statement (AS) in December 2013) and 2015 to 2.3%. At the same time, the deficit (ie the amount by which the UK overspends) is falling, with the OBR predicting it will come in at 6.6% of GDP for 2013, fall to 5.5% of GDP in 2014 and then continue to fall until a small surplus is achieved in 2017.

However, the scale of the economic challenges facing the UK remains huge with the level of government borrowing still an enormous (£108bn in 2013/14) and, although this is expected to fall in 2014/15, it is predicted to remain at around £95bn (representing about 7% of GDP). According to the chancellor, the country will need to continue to borrow until 2018/19 and even then the total national debt will still represent 73.8% of GDP. And all of this, only if the current economic and fiscal plans are maintained.

In addition, there is wider socio-political uncertainty caused by the looming Scottish independence referendum, the fragile equilibrium in the Eurozone and, in particular, the disturbing deterioration of the crisis in Ukraine and the implications it has for global economic co-operation and the UK's energy security.

The chancellor, therefore, asserting that the economy was entering a critical stage, committed himself to staying on the same path and ruled out spending and borrowing more. His central themes were focusing on nurturing the slowly strengthening recovery and building economic resilience for the long term. His main announcements were, then, around encouraging investment, infrastructure, exports and manufacturing while emphasising that this was a fiscally neutral Budget where 'all decisions are paid for' and where 'taxes are lower but so too is spending'.

Although this was effectively the last major Budget before the next general election (in 2015), this was not, perhaps, the political Budget that many had expected. Most of the changes had been pre-trailed – in accordance with the policy cycle – or leaked – such as the increase to the basic rate income tax threshold to £10,500 (coupled to a moderate increase to the higher rate thresholds) – and with a few exceptions including the abolition of the 10% savings rate and an overhaul of the tax rules affecting pensions, there was little that came as much of a surprise. All of the 'giveaways' (such as they are) are paid for and balanced by the continued spending cuts, constraining the welfare budget and reaffirming the government's determination to end tax abuse.

Business and enterprise

Increased R&D tax credit for SMEs

Legislation will be introduced in FB 2014 to increase the rate of the payable research and development (R&D) tax credit for loss-making small or medium sized enterprises (SMEs) to 14.5% (from 11%) for qualifying expenditure incurred on or after 1 April 2014. This equates to a new effective rate of 32.625% of the qualifying R&D expenditure (compared to the current effective rate of 24.75%).

Capital allowances

Annual investment allowance: With effect from 1 April 2014 for corporation tax (6 April 2014 for income tax), the annual investment allowance (AIA) giving 100% relief for capital allowances purposes will be increased from £250,000 to £500,000. The increased limit will last until 31 December 2015.

Enterprise zones: 100% enhanced capital allowances for enterprise zones will be available for an extra three years, until 31 March 2020. These allowances, which previously would have been available only until 31 March 2017, are available for plant and machinery in designated assisted areas in enterprise zones, in the first year in which expenditure is incurred.

Loss-buying rules – research and development allowances: Rules introduced in FA 2013, known as the deduction transfer TAAR (targeted anti-avoidance rule), have effect in some circumstances to restrict the use of deductions in a company that has undergone a takeover or other change of control. The restriction operates where, at the time of the takeover, it was highly likely that the deductions would arise in the future, and one of the main purposes of the takeover was to use those deductions in a claim for sideways relief or group relief. FB 2014 will provide that these rules will not apply to deductions in the form of research and development allowances (RDAs). The change is being made because the rules had a more significant adverse effect on RDAs than was intended, creating uncertainty and risks that have undermined capital investment in research and development. The change will take effect for changes of control occurring on or after 1 April 2014.

Partnership tax simplification

Following the Office of Tax Simplification's (OTS's) interim report on its review of partnership tax rules (*OTS review of partnerships: interim report*, January 2014), the government will, in April 2014, publish a draft partnership manual linking all HMRC partnership guidance. The government will also implement six short term fixes identified in the OTS's interim review, and examine the feasibility of the recommendations relating to partnership and corporation tax returns, by the end of 2014. The new partnership manual will include guidance on:

- the application of entrepreneurs' relief to partnerships;
- SDLT liabilities on changes in partnership profit sharing ratios;
- inheritance tax and partnerships;
- VAT registration for limited partnerships and joint ventures; and
- VAT grouping for LLPs.

Creative sector reliefs

Budget 2014 includes a number of further announcements for the creative industries:

- new corporation tax relief for theatre: the government will consult shortly after the Budget 2014 on the introduction of targeted tax relief for theatre productions (at 20%) and touring productions to regional theatres (at 25%) with effect from 1 September 2014. Legislation is not expected to be published in the FB on 27 March but will be introduced during the passage through parliament;
- the provisions extending corporation tax relief for film previously announced in the AS 2013 are going ahead (and have received state aid approval from the European Commission; and
- technical changes will be made in FB 2014 in relation to: video games relief (amendments to make it state aid compliant, although it is still subject to state aid approval, including extending the relief to goods and services provided from within the EEA and a cap on subcontracting of £1m per game); and television and video games relief (amendments to clarify that only those television programmes or video games on which relief is claimed are treated as separate trades).

Capital gains roll-over relief: intangible fixed assets

With effect from 19 March 2014, an error in the rewriting of the legislation on capital gains rollover relief is corrected. This:

- prevents companies claiming chargeable gains rollover relief on the disposal of tangible assets where the proceeds are reinvested in an intangible fixed asset; and
- adjusts the tax cost of the replacement intangible fixed asset for claims made on or after 1 April 2009 and before 19 March 2014, preventing double tax relief being given on any roll-over relief claims that have already been made.

Construction industry scheme

The government will consult in summer 2014 on:

- options to improve the operation of CIS for smaller businesses;
- introducing mandatory online filing for contractors, although the government should perhaps make allowances for some form of paper filing in view of the successful challenges before the First-tier Tribunal against online filing of returns in 2013;
- revisions to reporting obligations; and
- improvements in registration for joint ventures.

Changes to the UK oil and gas fiscal regime

Budget 2014 contained a number of announcements in respect of the UK oil and gas fiscal regime, including the following:

- the scope of the substantial shareholding exemption will be extended, so that a company disposing of a subsidiary that uses assets for oil and gas exploration and appraisal activity that have been transferred from other group companies will be treated as having held a substantial shareholding in the subsidiary for the 12-month period prior to disposal;
- legislation that prevents a taxable chargeable gain arising on the disposal of an asset used in the course of oil and gas exploration and appraisal activities where proceeds are reinvested in the UK and UK Continental Shelf, will be extended to include reinvestment in oil assets used in a ring fence trade;
- the government will consult on a new allowance to support investment in ultra-high pressure, high temperature oil and gas projects: legislation is expected in FB 2015;
- the government will review the oil and gas regime to make sure it continues to remain suitable and competitive: initial conclusions are expected in AS 2014; and
- the new arm's length oil and gas body will be tasked with reviewing how best to encourage exploration and reduce decommissioning costs.

Finance

Loan relationships and derivative contracts

The government announced, at Budget 2013, that it would carry out a review of the loan relationships (corporate debt) and derivative contracts regimes with the combined aims of redesigning them to be simpler, clearer and more resistant to tax avoidance. This was followed by the consultation document *Modernising the taxation of corporate debt and derivative contracts* (6 June 2013).

The reform of the regimes continues to slowly take shape and the government is expected to release a technical note outlining the changes that the are intended to make them simpler, more certain and more robust against avoidance.

Interestingly, the proposals, originally intended to be included in FB 2014, to clarify the application of the regime to loan relationships and derivative contracts held by partnerships, are to be deferred for inclusion in FB 2015.

FB 2014 will include new rules in two areas:

- degrouping charges (CTA 2009 ss 335–347 and 624–632): to ensure that both profits (credits) and losses (debits) are always brought into account for tax purposes when a member of a group transfers a loan or derivative to another group company which subsequently (within six years) ceases to be a member of the group. Under the current law, the debits are only brought into account in certain, limited, circumstances. The change will have effect where the transferee ceases to be a member of the group on or after 1 April 2014; and
- collective investment schemes and offshore funds: to enhance the existing anti-avoidance provisions (in CTA 2009 s 492) in order to prevent abuse of, clarify, simplify and (in certain circumstances) disapply, the 'bond fund' rules.

This change is expected to be as announced in AS 2013, although further details are likely to be included in the Technical Note when it is published. Assuming no substantive changes are being proposed, to prevent companies using AIFs as vehicles to circumvent the corporate debt regime, certain holdings (currently not covered by the loan relationships rules) giving rise to interest distributions (i.e. in effect, distributions received from a 'bond fund') will be brought within the regime by treating the holding as rights under a creditor relationship. The anti-avoidance provision will be triggered where the investment was made (or the liability was incurred) with a 'relevant avoidance intention', i.e. where the company makes the investment in order to create (or increase) debits or eliminate (or reduce) credits.

The changes will have effect in accounting periods beginning on or after 1 April 2014.

Bank levy

On 27 March 2014, the government will publish a consultation document that will propose a new charging mechanism for the bank levy based on:

- allocating banks into different bands according to their chargeable equity and liabilities; and
- charging an amount set for each band.

The intention is for the new charging mechanism for the bank levy to apply for all chargeable periods commencing on or after 1 January 2015.

Insurers' Solvency II regulatory capital securities

FB 2014 will include legislation to amend FA 2012 s 221 to enable regulations to be made to set out the tax treatment of Solvency II compliant capital instruments issued by insurers. Much like the Taxation of Regulatory Capital Securities Regulations, SI 2013/3209, applicable to regulatory capital securities issued by banks, the government intends to make regulations to ensure that insurers' Solvency II compliant debt securities are taxed as debt instruments since the tax treatment of them would otherwise be uncertain. (Note: the heading in the *Overview of tax legislation and rates* (OOTLAR), published on 19 March 2014, para 1.26 refers incorrectly to FA 2012, s 212 when it should have referred to FA 2012 s 221.)

Abolition of SDRT charge in FA 1999 Sch 19

Legislation will be introduced in FB 2014 to abolish the SDRT charge in FA 1999 Sch 19, which fund managers are liable to pay when investors surrender their units in UK unit trust schemes or shares in UK open-ended investment companies (i.e. UK collective investment schemes). This abolition was first announced at Budget 2013 and will take effect on 30 March 2014 on the basis of a Budget resolution voted on in Parliament on 19 March 2014, which will be followed by the legislation which will come into force when FB 2014 receives royal assent.

The draft legislation was published on 10 December 2013. A slightly amended version will be included in FB 2014.

On 19 March 2014, the government also published guidance notes on this abolition which, among other things, explains how the principal charge to SDRT (which is chargeable on agreements to transfer chargeable securities) will apply to non-pro rata in specie redemptions of units in UK collective investment schemes following the abolition of the SDRT charge in FA 1999 Sch 19.

Employment taxes and share incentives

Dual employment contracts

As announced at AS 2013, legislation will be introduced in FB 2014 to prevent 'high-earning non-domiciled employees' from avoiding tax by artificially splitting the duties of a single employment to shift some of their employment income offshore and therefore outside the scope of UK tax.

Currently non-UK domiciled employees who work partly in the UK and partly overseas can enter into two separate employment contracts with a view to claiming the remittance basis (and reduce their UK income tax liability) in respect of earnings from one such employment the duties of which are performed wholly overseas for a foreign employer (ITEPA 2003 s 22). Equivalent provisions also permit an employee to claim the remittance basis in relation to foreign securities income from employment-related securities (ITEPA 2003 ss 41A–41E) and employment income from a foreign employer provided through a third party (ITEPA 2003 s 554Z9).

The new legislation will tax in the UK, on an arising basis, income associated with an overseas employment where:

- an individual has both UK and overseas employment(s) either with the same employer, or where the UK employer is 'associated' with an overseas employer;
- a UK and an overseas employment are 'related' to each other; and
- the foreign tax rate that applies to the income associated with the overseas employment is less than 65% (reduced from the originally proposed threshold of 75%) of the UK's additional tax rate (currently 45%)

The measure will have effect for earnings arising on and after 6 April 2014. Following consultation on the draft FB provisions, the legislation will be amended to:

- prevent income arising on or after 6 April 2014 but which is related to employment duties performed in a year prior to 2014-15 from being subject to the legislation;
- prevent directors with less than a 5% shareholding in their employer from being caught by the legislation; and
- take into account employments held for legal/regulatory reasons.

'Marketable' security & employee shareholding vehicle

The government will consult on two recommendations of the OTS relating to unapproved share schemes, namely:

- the point at which employment-related securities are subject to income tax and NIC so that such charges only arise when such securities are on acquisition, or later become, 'marketable' (i.e. can be sold for cash or money's worth): this is a radical, but welcome, proposal which has the potential to remove current 'dry' tax charges and significantly simplify the existing employment-related securities legislation (in ITEPA 2003 Part 7 ss 417–554), provided any accompanying anti-avoidance safeguards are appropriately targeted in scope; and
- model rules for the provision of a holding vehicle for employee shares that would be outside the tax provisions that currently cause problems for legitimate employee benefit trusts (EBTs).

NIC simplification for the self-employed

Following the consultation last year, the government has confirmed that it will introduce legislation to simplify administrative processes for the self-employed and collect class 2 NIC alongside class 4 NIC and income tax through self-assessment with effect from April 2016.

Budget reaction

Andrew Hubbard
Partner, Baker Tilly

A quiet Budget for corporates

Generally this was a quiet budget for corporates. The gradual reduction of rates down to 20% was announced in advance and it won't be until next year that we see the detail of any changes to reflect the widespread concern about perceived avoidance by multinationals. The increase of the annual investment allowance to £500,000 will be welcomed by companies who invest heavily in new equipment, though in reality the vast majority of businesses get nowhere near that level of expenditure.

Stephen Coleclough
CIOT president

Retrospective measures without proper safeguards go too far

The CIOT is disappointed that the government has decided to go ahead with controversial proposals to demand that users of existing disclosure of tax avoidance schemes (DOTAS) pay the tax in dispute up front without a right of appeal. The Institute sympathises with the government's need to strike down mass-marketed tax avoidance schemes, but allowing HMRC to act as prosecutor, judge and jury based on the DOTAS regime, which was not meant to be used for these purposes, is going too far.

On the other hand, the equivalent rules applying to follower cases where an example case has lost before the courts, seem acceptable given the backlog of unsettled avoidance cases.

SIPs and SAYE limits

As announced in the AS 2013, the annual limits for HMRC approved share incentive plans (SIPs) will increase (for the first time in over ten years) from 6 April 2014 to:

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

In addition, following consultation, the legislation has been extended to enable further adjustments of SIP limits to be made by Treasury Order. This change has effect from Royal Assent to FB 2014.

There were no further changes made in the Budget 2014 to the previously announced increase in the amount that an employee can contribute to an HMRC tax-favoured save as you earn (SAYE) scheme from £250 to £500.

Response to OTS reviews

On tax advantaged share schemes: The draft FB 2014 clauses published on 10 December 2013 contained legislation to give effect to OTS proposals to simplify the tax rules and administrative processes for employee share schemes. The main changes included:

- the withdrawal of the system of securing prior HMRC approval of company share option plans (CSOPs), SIPs and SAYE schemes, and the introduction, from 6 April 2014, of a requirement to self-certify and notify HMRC of the existence of a plan intended to qualify as a tax-favoured scheme;
- online filing of all employee share scheme returns and information for both tax advantaged schemes and non-tax advantaged arrangements that provide employment-related securities
- amendments to the purpose tests in respect of CSOPs, SAYE schemes and SIPs; and
- various technical changes to the CSOP, SAYE, enterprise management incentives (EMI) and SIP rules.

Following consultation, it was announced in the Budget 2014 that the draft legislation has been revised to include several technical modifications including in relation to:

- the declaration required from companies when self-certifying or notifying alterations to schemes;
- the requirements upon SIP trustees;
- SAYE and CSOP option exercise rights;
- the tax chargeable in certain circumstances where SIP shares are forfeited; and
- the general requirements in relation to CSOP options.

These changes will have effect from 6 April 2014 and details will be contained in FB 2014.

On unapproved share schemes: Legislation will be introduced in FB 2014 and by secondary legislation to implement nine simplification measures recommended by the OTS in its *Review of unapproved share schemes* in relation to the taxation of employment-related securities. Following consultation, the legislation has been revised to:

- enable corporation tax (CT) relief to be available in a range of circumstances where companies employ or host internationally mobile employees;
- correct an anomaly in relation to employer contributions to overseas pensions schemes; and
- provide other minor and technical updates.

Whilst many of the recommendations will have effect from 6 April 2014 or from royal assent to FB 2014, but measures to simplify the income tax, NIC and CT rules for internationally mobile employees will be delayed and will only apply to events after 6 April 2015.

On employee benefits and expenses: In response to the OTS report of 29 January 2014, the government will consult on the following recommendations, with a view to introducing legislation in FB 2015:

- abolishing the threshold for the taxation of benefits in kind for employees earning less than £8,500;
- introducing a statutory exemption for trivial benefits;
- introducing a system of voluntary payrolling for benefits in kind; and
- replacing the expenses dispensation regime with a reimbursed expenses exemption.

Private client

Income tax

Income tax rates and thresholds:

Income tax rates and personal allowance	Tax rate	2013/14	2014/15	2015/16
Personal allowance for those whose income does not exceed £100,000* **	0%	£0–£9,440	£0-£10,000	£0–£10,500
Basic rate	20%	Up to £32,010	Up to £31,865	Up to £31,785
Higher rate	40%	£32,011–£150,000	£31,866–£150,000	£31,786-£150,000
Additional rate	45%	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 remains unchanged at £10,500 and the personal allowance for those born before 6 April 1938 remains unchanged at £10,660.*

*** There is a starting rate for savings income only. The starting rate limit for savings is £2,790 for 2013-14 and will increase for £2,880 for 2014-15. If an individual's taxable non-savings income exceeds the starting rate limit the 10% starting rate for savings will not be available for savings income. From 6 April 2015, the starting rate for savings income will be reduced to 0% and the maximum amount of an individual's income that qualify for this starting rate will increase to £5,000.*

Transferable income tax allowance for married couples: As announced in AS 2013, from 2015/16, an individual who is not liable to income tax above the basic rate will be able to transfer part of their income tax personal allowance to their spouse or civil partner, provided that the recipient of the transfer is not liable to income tax above the basic rate.

This measure will have effect from 2015/16 and the transferable amount will be £1,050. From 2016/17, the transferable amount will be 10% of the basic personal allowance.

Legislative changes resulting from the introduction of the Scottish rate of income tax: The government announced in

Budget 2013 that it will legislate to require the National Audit Office to report annually to the Scottish Parliament on HMRC's administration of the Scottish rate of income tax. Legislation will be introduced in FB 2014 to amend the structure of the income tax legislation, which sets out the application of the Scottish rate of income tax to Scottish taxpayers. This will allow subsequent consequential changes to be made in secondary legislation in a more straightforward manner. It has no effect on the amounts of tax that will be paid by any Scottish or other taxpayer.

Personal allowances for non-residents: The government intends to consult on whether and how the personal allowance could be restricted to UK residents and those living overseas who have strong economic connections to the UK. Similar restrictions already exist in many other countries, including most other countries in the EU.

Artificial use of contracts by non-domiciliaries: Where a resident but non-UK domiciled employee is required to work partly in the UK and partly abroad all earnings would normally be taxed in the UK on the arising basis. But the employee may be offered two employment contracts, one covering the performance duties in the UK and the other with an associated employer resident overseas covering duties performed in the rest of the world excluding the UK. The intention of such dual contracts is for the earnings from the second employment contract to be chargeable overseas earnings and taxable only if remitted to the UK. HMRC has long taken the view that in most cases separate contracts of this nature will have been artificially arranged in order to obtain a tax advantage and legislation will now be introduced to tackle this perceived abuse.

The legislation will be introduced in FB 2014 and will apply to income associated with an overseas employment where:

- an individual has both UK and overseas employment(s) either with the same employer, or where the UK employer is 'associated' with an overseas employer;
- a UK and an overseas employment are 'related' to each other; and
- the foreign tax rate that applies to the income associated with an overseas employment is less than 65% of the UK's additional tax rate (currently 45%).

The income caught by this measure will be taxed on the arising basis. The measure will have effect for earnings arising on and after 6 April 2014. Income which arises on or after this date but which is related to employment duties performed in a year prior to 2014/15 will not be subject to the legislation.

Directors with less than a 5% shareholding in their employer will not be caught by the legislation and it will take into account employments held for legal/regulatory reasons. This is to ensure that charges will not arise on dual contracts which are not motivated by tax avoidance.

Capital gains tax

Annual exemption: As announced in AS 2012, the government will increase the annual exempt amount by 1% for two years, ie to £11,000 from 6 April 2014 and to £11,100 from 6 April 2015.

CGT private residence relief: As announced in AS 2013, the FB 2014 will amend TCGA 1992 s 223 to halve the final period exemption under CGT private residence relief from 36 months to 18 months from April 2014. The draft FB clauses suggest this measure will only have effect where contracts for the sale of the property are exchanged on or after 6 April 2014 and not when contracts are exchanged on or before 5 April 2014 and completed on or before 5 April 2015. The draft FB clauses excepts from these changes disposals by disabled persons and long-term care

Budget reaction

Nigel May
Partner, MHA MacIntyre Hudson

'Government blunders on' with LLP changes

It is perhaps not unsurprising that the government is blundering on with proposed new rules for mixed partnerships and status rules for members of an LLP. The lack of movement by the government in these areas does call into question the purpose and objective of any pre-legislative consultation process.

The Budget releases do not add anything to the guidance issued in the aftermath as the Autumn Statement and we must assume that the Finance Bill will contain woefully ill thought out proposals consistent with HMRC's previous missives.

In what appears to be a money grab as opposed to a logical extension to the tax code, it remains to be seen wherever these provisions will raise the projected annual revenues of up to £1,045m.

Richard Woolich
UK head of tax, DLA Piper

More anti-avoidance with one eye on the election

A buoyant and 'proud' chancellor will catch the headlines for his proposed reforms to savings, ISAs and pensions. But he has also brought in a raft of anti-avoidance provisions in keeping with public sentiment. Notably, taxpayers using companies to buy residential property exceeding £500,000 (up from £2m) will after today incur a stamp duty land tax charge of 15%. Exceptions will apply, for example, if the property is let to an unconnected person on an arm's length basis. The government continues to believe that such owner occupied properties are bought in companies to avoid SDLT. But this is very rarely the case. Non-UK incorporated companies are used to own properties to enable the asset to fall outside the IHT net. It is therefore puzzling why the chancellor is doing this, other than for political ends, with one eye on the election.

Michael Wistow
Head of tax, Berwin Leighton Paisner

Missed opportunity for overhaul

What we need is a radical overhaul of the UK taxation system, which needs simplifying rather than complicating. The Office for Tax Simplification has singularly failed in its aim. This Budget is a missed opportunity to announce a much needed overhaul of the tax system.

The government has accepted the fundamental economic tenet that a dynamic approach to tax, that is, low rates and fewer reliefs, actually raises tax receipts. That fundamental principle is being applied for corporate taxes but should also apply to personal taxes. Coalition politics seems to preclude its application to personal tax.

The top 1% of earners are paying an ever-increasing percentage of overall tax receipts, which currently stands at a third. This is what fairness in tax should be about: whether the top earners pay a higher proportion of the overall tax take rather than a mindless and populist fixation on headline rates.

home residents or the spouses of such persons. Under the draft legislation, the final period exemption remains at 36 months for such disposals.

CGT non-residents: As announced in AS 2013, the government has confirmed its plans to introduce CGT on future gains made by non-residents disposing of UK residential property from April 2015. A consultation on how best to introduce the charge will be published shortly.

Remittance basis, CGT and split year treatment: Legislation will be introduced in FB 2014 to ensure that capital gains made by a remittance basis user in the overseas part of a split year of residence are not charged to tax. This corrects a defect in the split year rules contained in the statutory residence test which was inserted by FA 2013 Sch 45 and applies from 6 April 2013.

Inheritance tax and trusts

IHT nil rate band (NRB): As announced in Budget 2013, the government has confirmed its intention to keep the NRB frozen at the current level of £325,000 until 2017/18.

IHT exemptions: The government is to consult on options to 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, with a view to introducing legislation in FA 2015.

Vulnerable beneficiary trusts: As announced in AS 2013, the government extended from 5 December 2013 the CGT uplift provisions that apply on the death of a vulnerable beneficiary enabling trusts benefiting vulnerable beneficiaries to enjoy the full CGT uplift provisions. The range of trusts that will qualify for special income tax, CGT and IHT treatment will also be extended from 6 April 2014.

Trusts simplification: As announced in AS 2013, the government intends to simplify filing and payment dates for IHT relevant property trust charges. Amendments to section 216(6) IHTA 1984 (time for delivery of accounts) and section 226 IHTA 1984 (payment of tax) will mean that trustees of relevant property settlements must deliver the IHT account six months after the end of the month in which the chargeable event occurs and pay the tax by the end of the same period.

In addition, income arising in relevant property trusts which remains undistributed more than five years at the date of the ten year anniversary will be treated by new section 64(1A) IHTA 1984 as part of the trust capital when calculating the ten year anniversary charge. Tax would be charged on the ten year anniversary at the full rate on any such undistributed income without any proportionate reduction to reflect the period during which the income has been retained.

These changes will be introduced by FA 2014 and will come into effect in relation to tax charges on or after 6 April 2014.

IHT, liabilities and foreign accounts: IHT is charged on the net value of a deceased person's estate after taking into account any liabilities outstanding at the date of death and after deducting available reliefs and exemptions. But property which is situated outside the UK and which belongs to, or was settled by, a non-UK domiciled individual is 'excluded property' and is not chargeable to IHT.

New rules introduced by FA 2013 restrict the extent to which an individual or trustees may deduct debts in calculating their liability to IHT in certain situations. A deduction for a liability is not allowed if it has been used directly or indirectly to acquire excluded property, or to maintain or enhance the value of such property. The new rules can be sidestepped through the use of foreign currency bank accounts if the depositor is non-UK domiciled and non-UK resident immediately before their death as the balance on the account is not excluded property but is nonetheless not chargeable to IHT.

Legislation will be introduced to amend the rules so that foreign currency accounts in UK banks are treated in a similar way to excluded property for the purposes of restricting the deduction of a liability. This measure will apply to liabilities incurred at any time but only where the death has occurred on or after the date of royal assent to FB 2014.

Cultural gift scheme

The government announced that the combined annual budget for the cultural gift scheme (CGS) and the acceptance in lieu scheme is to be increased from £30m to £40m from 2014/15.

The government has confirmed that following the announcement in AS 2013, legislation will be introduced in FA 2014 to ensure that the CGS works as intended in relation to estate duty.

The amendment will ensure that the donors of objects, on which there is potentially a charge to estate duty, are not financially better off by donating the object under the CGS than if they were to sell the object on the open market.

Charities

Charities and tax avoidance

Following an announcement at AS 2013, the government is consulting further with a view to introducing legislation to amend the definition of a charity for tax purposes to prevent charities established for the purpose of tax avoidance from claiming charitable tax reliefs.

These changes come further to a highly critical report by the House of Commons Public Accounts Committee on the Charity Commission's role in the registration and investigation of the Cup Trust, which was registered as a charity by the Charity Commission in 2009 with a British Virgin Isles company as its sole trustee. The Cup Trust allegedly used its charitable status for tax avoidance purposes by generating income of £176m over a period of two years while claiming £46m of gift aid and giving only £55,000 to charitable causes.

Charities and gift aid

The government has confirmed that it will follow through the announcement in AS 2013 to introduce legislation in FA 2015 to allow non-charity intermediaries to take a greater role in operating gift aid. The Treasury consulted last year on proposals to modernise gift aid to enable charities to reclaim tax on donations made by online or by text message. Detailed rules on the role and regulatory regime of non-charity intermediaries are likely to be introduced by secondary legislation following FA 2015.

Charity donor benefits

The government intends to work with stakeholders with a view to simplifying the current rules which determine the treatment of benefits given to donors by charitable organisations. The current rules are very complex. Any legislation arising from this review will be included in a future Finance Bill.

Pensions

The biggest surprise of the Budget were the revolutionary changes announced to pensions. They are the biggest changes for almost a century and will fundamentally change the way many people fund their retirement.

The changes affect those over 55 years who have savings in a defined contribution pensions scheme. The position for those in a defined benefit or final salary pension is unlikely to change.

Increased flexibility: From 27 March 2014, the government will allow individuals with defined contribution pension wealth more flexibility to access their savings by:

- increasing the capped drawdown limit to 150% of an equivalent annuity;
- reducing the minimum income requirement for accessing flexible drawdown to £12,000, subject to their pension scheme rules;
- increasing the amount that can be taken as a lump sum from small individual pension pots, regardless of total pension wealth, from £2,000 to £10,000;
- increasing the number of small personal pension pots that can be taken as a lump sum from two to three; and
- increasing the total pension wealth that individuals may have before they are no longer entitled to receive lump sums under trivial commutation rules to £30,000.

The above changes will all be introduced in FB 2014.

In addition, it was announced that the following broader changes will come into effect from April 2015 and beyond:

- the government will ensure that those with defined contribution pensions will be allowed from April 2015 to draw down from them without restriction from age 55;
- savers will be able to take the first 25% of their lump sum tax free and the remainder will be available for draw down subject to the saver's marginal rate of income tax and the scheme rules. This effectively means that no one with a defined contribution pension will be forced to buy an annuity;
- all individuals with defined contribution pension pots will be offered free and impartial face-to-face guidance at the point of retirement. The government will make available up to £20m over the next two years to develop this initiative;
- the government will consult on increasing the minimum pension age so that it remains ten years below state pension age;
- the government will consult on options to simplify the Dependants' Scheme Pension rules, to ensure the rules apply fairly and to reduce administrative burdens;
- the government will explore with interested parties whether those tax rules that prevent individuals over the age of 75 from claiming tax relief on their pension contributions should be amended or abolished.

New powers to fight pension liberation fraud: The pensions tax rules set a minimum age (currently 55) at which pension benefits can normally be taken from a registered pension scheme. Where pension benefits are taken before this age except in certain prescribed circumstances, for example on the payment of an ill health pension, the payment of benefits will be an unauthorised payment and tax charges apply which are intended to recover all the tax reliefs previously given.

A number of promoters have set up schemes intended to allow individuals to access some or all of their pension benefits before age 55. To do this, they normally try to register a new pension scheme or use an existing registered pension scheme which the member is encouraged to transfer their pension fund to before it is passed to the member. In some cases, payments are made to the member after age 55, but because they are in the form of a loan, will be unauthorised payments. This is commonly known as 'pension liberation' and has significant tax consequences for the member and the scheme administrator. In many cases the member is not told of the tax charges that will apply where these payments are made and therefore they are often left with little or no money after any fees have been deducted in addition to the tax charges due.

Budget 2014 announced that legislation will be introduced in FB 2014 to amend FA 2004 in order to:

- provide greater powers to HMRC to help it detect and prevent liberation schemes being registered, and to detect and de-register liberation schemes that have already been registered;
- prevent authorised surpluses being artificially created as a potential means of liberation; and
- ensure that where the Pensions Regulator becomes involved with a pension scheme suspected of involvement in pension liberation, the tax charges that may apply are applied fairly.

Budget reaction

Sean Drury
Head of employment solutions, PwC

Welcome changes to HMRC's stance on dual contracts

It's good news that HMRC has made clear that multiple employment arrangements or 'dual contracts' have their place as part of the commercial arrangements used by organisations and are not inherently artificial in nature. Dual contracts are common for international workers with different roles inside and outside the UK. HMRC is looking to raise £55m–£75m a year from blocking artificial arrangements, but it has listened to the various responses to the consultations and made some changes to the detail which will reduce the impact on commercial arrangements. These clarifications are helpful in attracting businesses with senior executives with responsibilities across multiple jurisdictions to base themselves in the UK.

Sean Randall
Head of stamp taxes, KPMG

'Indiscriminate' stamp duty changes

The measures introduced to discourage sales of residential property bought via 'corporate envelopes' will now apply to all dwellings worth £500,000 or more. The measures include a super rate of SDLT of 15% on the purchase of a dwelling by a company and an annual charge on the ownership of a dwelling by a company.

The extent to which corporate envelopes are used for SDLT avoidance is unclear. But extending these measures sends a strong message that perceived stamp duty avoidance is not tolerated. The rate of tax for dwellings worth between £500,001 and £1m will rise by almost 400% where a company is the purchaser. Put another way, a company owning a dwelling worth £500,001 will need to be sold four times before the tactic of purchasing the dwelling using a company to avoid tax becomes cost effective.

The measures are controversial. They are designed to discourage the act of individuals putting high value residential property intended for personal use into corporate vehicles for tax avoidance. But they are indiscriminate in nature, failing to distinguish between 'good' enveloping and 'bad' enveloping, for example recognising that there are genuine reasons why companies are used to hold residential property that are unconnected with stamp duty avoidance, like privacy.

Qualifying non-UK pension schemes (QNUPS): QNUPS are sometimes used by expats planning for retirement. One advantage has been the exemption from IHT on the member's death. The government will consult on ways to give equivalent treatment to QNUPS and to UK registered pension schemes to remove opportunities to avoid IHT. This measure will be introduced in FB 2015.

Incentivised investment

ISAs

Secondary legislation will be introduced for new ISAs (NISAs). The new rules for NISAs will take effect from 1 July 2014 when all existing ISAs will become NISAs, which will allow:

- the transfer of funds between cash NISAs and stocks and shares NISAs;
- an increase in the annual subscription limit to £15,000 which may be held in cash, stocks and shares or any combination of the two;
- a maximum of one cash NISA and one stocks and shares NISA per saver each year;
- savers to transfer any funds previously invested in stocks and shares into cash outside of annual subscription limits;
- savers to subscribe £5,940 into a cash ISA and a stocks and shares ISA from 6 April 2014 to 30 June 2014, which will count towards the NISA limit for 2014/15;
- savers aged 16 to 18 to subscribe up to the £15,000 limit to a cash NISA but not a stocks and shares NISA; and
- the restrictions on the maturity dates of securities brought into a stocks and shares NISA to be removed.

The annual limit for junior ISAs and child trust funds will be increased from £3,840 to £4,000.

In addition, secondary legislation will be introduced to enable peer to peer loans to benefit from the tax advantages within an ISA and the government has suggested that it will explore the possibility of further extending the list of qualifying investments to include debt securities offered via crowdfunding platforms.

VCTs, EIS and SEIS

Various announcements were made relating to venture capital trusts (VCTs), enterprise investment scheme (EIS) and seed enterprise investment scheme (SEIS) regimes, which are each designed to encourage investment in smaller, higher-risk, unquoted, trading companies (companies listed on AIM or PLUS markets (other than the PLUS-listed market) are unquoted for these purposes). Each regime offers (different) tax reliefs to individual investors who either subscribe for shares directly in such companies (in the case of EIS and SEIS) or invest indirectly via a VCT (which is an HMRC approved, listed company (not a trust), which in turn itself subscribes for newly issued shares or debt in unquoted companies).

VCT-specific changes: Legislation will be included in FB 2014 (amending the existing rules in ITA 2007, Pt 6) to implement the following changes relating to VCTs:

- with effect from 6 April 2014 (and as previously announced, reinvestment in a VCT conditionally linked to a share buyback or made within six months of a disposal of shares in the same VCT will not qualify for new tax relief;
- with effect from 6 April 2014, VCTs will be prevented from using converted share premium accounts to return capital subscribed by investors within three years of the end of the accounting period in which the shares were issued where that return does not reflect profits on the VCT's investment;
- with effect from 6 April 2014, HMRC will be able to withdraw upfront investment income tax relief if VCT shares are disposed of within five years despite the general time limits on HMRC for making assessments to recover tax; and
- with effect from royal assent (and as previously announced), investors will also be able to subscribe for shares in a VCT via a nominee (to facilitate the use of VCTs by different types of retail investors and put VCT investors on a level footing with EIS and SEIS investors) and secondary implementing legislation will also subsequently be introduced.

Extending SEIS: Legislation will be introduced in FB 2014 to remove the expiry clauses for SEIS relief, making the regime permanent (beyond its original expiry date after 5 April 2017) and permanently extending CGT re-investment relief (available currently only in relation to disposals in tax years 2012/13 and 2013/14).

The extension of CGT re-investment relief will be in relation to 50% of qualifying gains accruing in 2014-15 and subsequent years.

New excluded activities for companies seeking EIS, SEIS and VCT investment: Legislation will also be introduced in FB 2014 to prevent companies benefiting from renewables obligation certificates (ROCs) or renewable heat incentive (RHI) subsidies from also benefitting from investment qualifying for relief under the EIS, SEIS or VCT regimes (Budget 2014, para 2.79; OOTLAR 2014, para 1.59).

These provisions will take effect for:

- in the case of EIS and SEIS, shares issued on or after royal assent; and
- investments made by a VCT on or after royal assent.

Forthcoming consultation on VCTs, EIS and SEIS: Finally, a 'consultation and evidence gathering exercise' will take place over summer 2014 to consider:

- introducing a general exclusion for investment into 'low-risk activities that benefit from income guarantees via government subsidies': to date this has been counteracted on a piecemeal basis by reference to specific subsidies and the government remains concerned about the growing use of contrived structures; and
- extending EIS and SEIS relief where investments are in the form of convertible loans: currently EIS and SEIS investors may only subscribe for ordinary shares (or preference shares in limited circumstances) in qualifying companies, whereas VCTs may currently invest in shares or securities issued by such companies.

Social investment tax relief: Following announcement in Budget 2013 and a consultation in June to September 2013, the government has confirmed, in accordance with its social investment roadmap that it will introduce a new tax relief for investments in certain social enterprises.

With effect from 6 April 2014, the income tax relief, which will be structured based on the EIS regime, will be available at 30% and eligible organisations will be able to receive up to €344,827 of tax advantaged investment over three years. Provisions implementing the relief will be included in FB 2014 and guidance will be published on 27 March 2014.

International

Offshore funds: UK based management

As announced in Budget 2013 and following a consultation on the issue during last summer, the government has confirmed that existing rules (in TIOPA 2010 s 363A) applying to offshore UCITS funds – ensuring that locating fund management activities in the UK does not (subject to certain conditions) result in the fund being treated as UK tax resident – will be widened so that they apply to certain non-UCITS funds including, in particular, alternative investment funds. The measure will be widely welcomed by hedge funds and should encourage the UK's important fund management industry.

Interestingly, although there was no direct mention of the measure at the time of the AS 2013 or any formal publication of responses or conclusions arising from the consultation, TIOPA 2010, s 363A will be amended with effect from 5 December 2013.

BEPS

Alongside Budget 2014, the government has published what it is calling a 'position paper', *Tackling aggressive tax planning in the global economy*, setting out the UK's priorities for the future direction of the OECD's action plan to counter base erosion and profit shifting (BEPS). It is an interesting document that aligns the UK firmly with the G20/OECD BEPS project but in a way that shows the government's determination to protect the UK's own tax base.

Real estate taxes

SDLT

Application to certain authorised property funds: The government will consult on the SDLT treatment of:

- seeding, i.e. transfer of the first properties, to property authorised investment funds (PAIFs); and
- more generally co-ownership of authorised contractual schemes, i.e. tax transparent contractual funds (TTFs).

Assuming the consultation will be focused on removing SDLT charges arising on the formation of PAIFs (and the new TTF regime), it will be widely welcomed. Although the current rules already provide for SDLT relief on the conversion of an existing, onshore, authorised unit trust (AUT) or open-ended investment company (OEIC) into a PAIF there is no equivalent relief where UK property interests are held through structures involving an *offshore* unit trust (including, for example, the widely used Jersey property unit trust (JPUT)). As a result, existing property funds structured offshore, holding UK real estate, face substantial SDLT liabilities should they bring the fund onshore – one of the main stated aims of the government's investment management strategy – when 'seeding' that property into a new PAIF. As a result, very few PAIFs have been formed since their inception in 2008.

Extension of high value residential property taxes

There are to be significant extensions to the SDLT, ATED and ATED-related gains rules on high value residential properties held by non-natural persons (mainly companies, but also certain partnerships and collective investment vehicles) so that they will all apply to properties valued at over £500,000. The implementation date of the changes depends on the tax in question.

This is set in the context of ATED having raised five times more tax revenue in 2013/14 than was expected, so that an extension of the regime is presumably considered an easy revenue raiser, and a political desire to discourage leaving property empty or underused. These measures may drive a number of property owners to consider de-enveloping their properties from a corporate wrapper. However this may or may not be tax efficient depending on the circumstances (and there are no specific reliefs to encourage such de-enveloping).

SDLT: The punitive SDLT rate of 15% on the acquisition of dwellings by non-natural persons (which was introduced for dwellings costing more than £2m with effect from 21 March 2012) will now apply to dwellings costing more than £500,000. It will apply to all transactions with an effective date (usually completion) on or after 20 March 2014. For contracts that have exchanged, but not completed, by 20 March 2014 transitional rules will be introduced so that the old threshold will continue to apply in most cases. Legislation will be included in FB 2014.

ATED: The annual tax on enveloped dwellings (ATED) was introduced with effect from 1 April 2013 and applied to non-natural persons owning UK residential property valued at in excess of £2m at that date (or at acquisition if later). ATED sets an annual charge in a number of bands based on the taxable value of the property. FB 2014 will introduce two new bands:

Band	Annual charge	Effective date
> £1m–£2m	£7,000	1 April 2015
>£500,000–£1m	£3,500	1 April 2016

The annual charges will be increased by CPI each year.

For properties in the £1m–2m band in the first year, returns will have to be filed by 1 October 2015 and payment made by 31 October 2015.

There will be a consultation on simplifying ATED for businesses that qualify for relief from the tax.

ATED-related gains: The CGT charge that applies to non-natural persons that dispose of properties that have been subject to ATED (ATED-related gains) was introduced with effect from 6 April 2013. These rules will be extended to apply to properties falling within the new ATED bands with effect from 6 April 2015

Budget reaction

Heather Self
Partner, Pinsent Masons

UK response to OECD's proposals: 'black cloud on the horizon'?

The paper on *Tackling aggressive tax planning in the global economy* is a helpful summary of the UK's position on the various actions in the OECD BEPS project. There is a clear acknowledgement that the benefits of additional transparency – in areas such as country by country reporting, and transfer pricing – should be balanced against the potential additional compliance burdens on business.

However, there is a worrying hint that the UK may succumb to pressure to limit interest deductions, set out in the response to action 4 ('limit base erosion via interest deductions'). The defence of the current position is lukewarm at best: the UK 'looks forward' to the output from the BEPS work, 'especially the identification of best practice'. Contrast this with the robust response on CFCs (action 3), where the UK 'has recently reformed' its rules and no further substantive change is anticipated.

I said in my comments last year (see 'Special report: The OECD's Action Plan on Base Erosion and Profit Shifting', *Tax Journal*, dated 26 July 2013) that it was important for the UK not to cede competitive advantage, particularly in relation to interest deductibility. It seems that the UK may now be coming under pressure to accept some form of general interest-stripping rule, perhaps as a lesser evil than comprehensive interest allocation rules.

Although there is an acknowledgement in the Budget paper that infrastructure and financial services sectors could be adversely impacted by any 'structural' changes to the UK system, there seems to me to be a black cloud on this particular horizon – and I fear that it is growing.

and 6 April 2016 respectively. The portion of the gain that arises after the relevant date will be subject to capital gains tax at 28%. These changes are not being legislated until FB 2015.

Business premises renovation allowance (BPRA)

The business premises renovation allowance (BPRA) is a special, capital allowances incentive scheme, which provides 100% initial allowances for the capital costs incurred in converting or renovating empty business premises that have been vacant for a year. As announced in the AS, FB 2014 will include legislation that will clarify the scope of BPRA and ensure that it is limited to building and renovation works and associated services.

The draft legislation that was published for consultation in December 2013 has now been amended to:

- extend the time in which the works must be carried out, from 24 to 36 months from when the relevant expenditure was incurred;
- prevent claims where another form of state aid is received; and
- include additional listed items within the definition of qualifying plant and machinery.

Avoidance, evasion & administration

Disclosure rules

Disclosure of tax avoidance schemes (DOTAS): The government will consult on:

- refining the existing DOTAS hallmarks;
- introducing new DOTAS hallmarks (through secondary legislation later in 2014), although it remains to be seen which new hallmarks are being proposed, perhaps the financial products and losses hallmarks that were proposed in 2012 will reappear; and
- strengthening HMRC's powers to tackle non-compliance with the rules through legislation to be introduced in FB 2015.

VAT avoidance disclosure regulations (VADR): In a bid to align VADR with the DOTAS rules, the government will consult on changes to VADR, which have largely been untouched for years. The consultation will include a proposal to shift the primary disclosure responsibility to promoters of VAT avoidance schemes. Unlike the DOTAS disclosures, VADR disclosures are currently made by the users of the schemes.

Avoidance involving transfer of corporate profits

At AS 2013, the government introduced anti-avoidance legislation to deny deductions in respect of payments made under intra-group derivative contracts where the payments were, in effect, a transfer of the profits of a group company. A new measure has been announced in Budget 2014 which broadly aims to ensure that a deduction is denied where there is a similar transfer of group profits, but without the specific use of a derivative contract. The new measure was introduced in response to avoidance schemes that aimed to circumvent the original legislation by using arrangements other than derivative contracts but which achieved the same effect.

Draft legislation published with the Budget applies where profits of a group company are transferred to another group company and the arrangements have a main purpose of avoiding tax. Key points to note include that:

- the company transferring the profits will be treated as though the transfer did not take place but there will be no corresponding adjustment for the company to which profits were diverted;
- the new measure will not apply to transactions caught by the original anti-avoidance legislation on derivative contracts but may still apply to derivative contracts where the original legislation does not apply;
- although the guidance (published with the legislation) states that arrangements that are an essential commercial part of the company's business are unlikely to be caught, the measure is a broad provision which could potentially apply to a number of transactions and is only limited by the need for a tax avoidance motive;
- challenges under the legislation will be run in parallel with other anti-avoidance provisions, for example interest charged at an excessive rate may be challenged under this legislation but also under transfer pricing rules or unallowable purpose legislation;
- the legislation has immediate effect and applies to payments made on or after 19 March 2014, irrespective of when the arrangements were entered into.

Direct recovery of debts

The government has announced that, shortly after Budget 2014, it will consult on legislation to be introduced in FB 2015 that will permit HMRC to recover tax and tax credit debts of at least £1,000 directly from debtors' bank and building society accounts (including their cash ISAs). We will have to wait for the consultation document to see what the safeguards entail. For now, there are merely references in the Budget 2014 documents to the direct recovery of debts:

- being 'subject to rigorous safeguards;
- limited to debtors who have been contacted multiple times for payment; and
- leaving a balance of £5,000 across the debtor's accounts after the debt has been recovered.

High-risk promoters

New rules will be introduced to identify high-risk promoters of tax avoidance schemes and subject them to enhanced information powers and penalties. Following consultation, various changes have been made to the draft legislation published on 24 January 2014 (see *Raising the stakes on tax avoidance*). Details of the changes have not been announced at this stage, but will be in FB 2014. The rules will take effect from royal assent.

Requirements for users of failed avoidance schemes

A new power for HMRC, taking effect from royal assent to FB 2014, to require taxpayers who have used avoidance schemes that have been defeated in another party's litigation to amend their returns or settle their dispute with HMRC. HMRC will also be able to demand payment of the disputed tax up front. A consultation document and draft legislation were published on 24 January 2014 (*Tackling marketed tax avoidance*).

Accelerated payment in tax avoidance cases

A new power for HMRC, taking effect from royal assent to FB 2014, to require disputed tax to be paid up front where the taxpayer has taken part in an avoidance scheme that has been disclosed under the DOTAS (disclosure of tax avoidance schemes) rules, or is counteracted under the GAAR (general anti-abuse rule). This proposal was previously published for consultation, but without draft legislation.

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