

Budget Breakfast Seminar

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1 PERSONAL TAX

1.1 Income tax rates and bands

2011-12	Taxable income	2010-11	Taxable income
Starting rate for savings only: 10%	£0 - £2,560	Starting rate for savings only: 10%	£0 - £2,440
Basic rate: 20%	£0 - £35,000	Basic rate: 20%	£0 - £37,400
Higher rate: 40%/32.5%	£35,001 - £150,000	Higher rate: 40%/32.5%	£37,401 - £150,000
Additional rate: 50%/42.5%	Over £150,000	Additional rate: 50%/42.5%	Over £150,000

There are no changes in the starting rate, basic rate and higher rate of income tax. However, the point at which individuals start to pay higher rate tax has decreased to reflect the increase in the personal allowance.

Dividends are treated as the top slice of income.

The trust rate of income tax is 50%, with the trust dividend rate at 42.5%, where total trust income exceeds £1,000.

1.2 Income tax allowances

Allowance	2011-12 £	2010-11 £
Personal allowance *		
Aged under 65	7,475	6,475
Income limit for personal allowance	100,000	100,000
Age related personal allowance (aged 65 – 74)	9,940	9,490
Age related personal allowance (aged 75 and over)	10,090	9,640
Income limit for age-related allowances *	24,000	22,900
Married couple's allowance **		
Age 75 and over	7,295	6,965
Minimum amount	2,800	2,670
Blind person's allowance	1,980	1,890

* Allowances reduced by £1 for every £2 over limits. Age allowance reduced to minimum of personal allowance unless income more than £100,000. For those with income over £114,950 the personal allowance is reduced to nil.

** Available to people born before 6 April 1935. Relief is restricted to 10%.

The personal allowance is to increase by a further £630 to £8,105 in 2012-13. The point at which taxpayers begin to pay higher rate tax will also fall by £630, taking it from £35,000 in 2011-12 to £34,370 in 2012-13. The Government have stated that it is their intention to increase the personal allowance to £10,000 in the current Parliament.

1.3 National Insurance Contribution ('NIC') rates

Rate/limit	2011-12	2010-11
Employee's Class 1 on earnings between primary threshold and upper earnings limit	12%	11%
Employee's Class 1 on earnings above upper earnings limit	2%	1%
Employer's Class 1 on earnings above secondary threshold	13.8%	12.8%
Self-employed Class 4 on profits between lower and upper profits limits	9%	8%
Self-employed Class 4 on profits above upper profits limit	2%	1%
Lower profits limit	£7,225	£5,715
Upper profits limit	£42,475	£43,875

From 2012-13 the basis for indexation of general National Insurance Contribution rates, limits and thresholds will be in line with the Consumer Price Index ('CPI') instead of the Retail Price Index ('RPI') as previously announced.

1.4 Reform of income tax and NIC

The Office of Tax Simplification ('OTS') stated in its report into small business taxation that maintaining separate tax systems for income tax and national insurance contributions...

"...leads to a number of anomalies that provide incentives to distort behaviour. This leads to decisions being taken that are wholly tax driven, and in many cases are more complex and may not otherwise make commercial sense. Reducing the differential between the income tax and NIC rates and treatments for different income streams and legal forms would reduce this incentive and simplify the system for taxpayers, their advisers and HMRC".

The Chancellor stated he supports integration of income tax and national insurance, and announced a consultation into the options, stages and timing of reform.

1.5 Individual Savings Accounts ('ISAs')

The ISA annual subscription limit is increased to £10,680 of which £5,340 can be saved in cash. This was confirmed in December 2010.

This has increased in line with the RPI as announced last year.

From 2012-13 onwards the ISA subscription limit will be increased on an annual basis by reference to the CPI rather than RPI.

1.6 Introduction of Junior ISAs

All UK resident children aged under the age of 18 who do not have a Child Trust Fund account will be eligible for a Junior Individual Savings Account (Junior ISA).

They will have much in common with existing ISA products and account holders will benefit from tax relief on income and capital gains earned on their Junior ISA. They will be available as a cash or stocks and shares product and are expected to be available from autumn 2011. Details to follow.

1.7 Capital gains tax rates and exemption

Capital gains continue to be taxed at two main rates of Capital Gains Tax ('CGT'), 18% and 28%.

The rate payable by individuals will depend upon the amount of their total taxable income after allowable deductions including losses and the income tax personal allowance.

Where total taxable income and gains after deductions are less than the upper limit of the basic rate tax band (£35,000 for 2011-12) the rate of CGT will be 18%. For gains and any part of gains above the upper limit the rate will be 28%. For trustees and personal representatives the rate will be 28% irrespective of the level of income and gains.

The annual exemption for 2011-12 has increased to £10,600 (£5,300 for trustees). Legislation will be introduced in the Finance Bill 2012 so that from 2012-13, the CGT annual exemption will be increased in line with the CPI rather than the RPI. However, the amount will still be subject to Parliamentary review.

1.8 Capital gains tax Entrepreneurs' Relief

Capital gains tax Entrepreneur's Relief was introduced from 6 April 2008 and reduces the rate of capital gains tax on qualifying gains to 10%.

For qualifying disposals made on or after 6 April 2011 the lifetime limit is increased from £5m to £10m. There are no other changes to the rules or conditions relating to the relief.

The lifetime limit was originally £1m, increased to £2m from 6 April 2010 and to £5m from 23 June 2010.

For individuals or trustees who have made gains in excess of the rate prevailing before 6 April 2011, no further relief will be available in respect of those earlier gains. If they make further qualifying gains on or after 6 April 2011 they will be able to claim relief, but the amount will depend upon the limit in force when the first gain is realised. If the limit was £1m at the time the earlier gain was made they can claim a further £9m; if the limit was £2m they can claim a further £8m, and if the limit was £5m they can claim a further £5m.

1.9 Inheritance tax rates and bands

In the June 2010 Emergency Budget the Chancellor announced that the inheritance tax nil rate band will remain frozen at the current level of £325,000 until 2014-15. Thereafter the threshold will be indexed in accordance with the CPI.

With effect from April 2012 a reduced rate of IHT of 36% will be introduced where 10% or more of the net estate is left to charity.

1.10 Pensions

The annual allowances and lifetime limits are as follows:

	2012-13 £	2011-12 £	2010-11 £	2009-10 £
Annual allowance	50,000	50,000	255,000	245,000
Lifetime limit	1,500,000	1,800,000	1,800,000	1,750,000

1.11 Pension reform

In October 2010 the Government announced a reduced annual allowance for pension savings of £50,000 (currently £255,000 subject to anti-forestalling legislation) to take effect from 6 April 2011.

A new Annual Allowance Charge will be applied on contributions in excess of the allowance of £50,000 at the tax payer's marginal rate of tax. At the same time it was announced that any unused allowance can be carried forward three years and there will be a deemed annual allowance for the tax years 2008/09, 2009/10 and 2010/11 of £50,000 per year.

If the "Pension Input Period" for a pension ends after 5 April 2011, the lower annual allowance of £50,000 may apply to the tax year 2010-11 as well as to subsequent years.

At the same time the Government proposed a reduced lifetime allowance to take effect from 6 April 2012 of £1.5m (currently £1.8m). Taxpayers who have already funded their pension plans based on an annual allowance of £1.8m will be able to apply by 5 April 2012 to fix their lifetime limit at £1.8m but will not be able to make any further contributions.

In the June 2010 Emergency Budget it was announced that the effective requirement to buy an annuity by age 75 would be removed from April 2011 and draft clauses were published in December 2010 to be included in the Finance Bill 2011.

1.12 Approved Mileage Allowance Payments

Regulations will be introduced so that with effect from 6 April 2011 the Approved Mileage Allowance Payments which can be claimed to cover the cost of business mileage in an employee's own vehicle will be increased. The rate will increase from 40 pence per mile to 45 pence per mile for the first 10,000 miles of business travel in the tax year. The rate for mileage in excess of 10,000 miles will remain at 25 pence.

1.13 Company car and fuel benefit in kind

The benefit in kind charge arising from a company car for a full year is obtained by multiplying the list price of the car by the "appropriate percentage":

From 6 April 2011	% of list price
Cars with CO ₂ emissions of 0g/km	0%
Cars with CO ₂ emissions of < or equal to 75g/km	5%
Cars with CO ₂ emissions of >75g/km but < or equal to 120g/km	10%
Cars with CO ₂ emissions of >120g/km but < or equal to 125g/km	15%
Each additional 5g/km of CO ₂ when car CO ₂ are over 125g/km	1%
Additional percentage if diesel	3%
Maximum charge	35%

The car benefit rules will be significantly simplified 6 April 2011 as follows:

- a) there will no longer be any reductions for alternative fuels (hybrids, bi-fuels and cars manufactured to run on E85);
- b) the diesel surcharge will apply to all diesels (previously there were some diesel cars which were exempt from the additional percentage);
- c) the £80,000 maximum list price of a car will no longer apply; and
- d) the lower threshold (the CO₂ emissions figure which sets the 15 per cent rate) is reduced from 130 to 125 g/km.

The value of fuel provided for private use in a company car is calculated as a percentage of a fixed sum, which sum has been increased from £18,000 to £18,800 in 2011-12.

1.14 **Reduced childcare relief for higher earners**

Legislation will be introduced in the Finance Bill 2011 to restrict the level of income tax relief available to higher and additional rate taxpayers who join Employer-Supported Childcare schemes on or after 6 April 2011. The restriction will ensure that the income tax relief is restricted so that it matches the amount available to basic rate taxpayers reducing the monetary value of the relief for higher and additional rate taxpayers.

The tax exempt limit of £55 per week will be reduced to £28 for higher rate taxpayers and to £22 for additional rate taxpayers resulting in a tax relief entitlement for all taxpayers of £11 per week.

1.15 **Enterprise Zones**

Investments in Enterprise Zones currently qualify for 100% first year capital allowances, although the Enterprise Zone legislation is to be withdrawn from 5 April 2011 (31 March 2011 for companies). In the Budget the Chancellor has announced 10 new urban Enterprise Zones, a further Enterprise Zone in London to be chosen by the Mayor and a further 10 Enterprise Zones yet to be established making 21 in total.

In a limited number of cases, the Government will consider the scope for introducing enhanced capital allowances where there is a strong focus on high value manufacturing.

1.16 **Review of residence and non-domicile taxation**

Following a period of consultation, the Government intends to introduce a number of reforms relating to the taxation of non-domiciled individuals to take effect from April 2012 as follows:

- a) remove the UK tax charge when UK resident non-domiciled individuals remit foreign income or gains to the UK for the purpose of commercial investment in UK businesses;
- b) simplify some aspects of the current rules for non-domiciles to remove undue administrative burdens;
- c) increase the existing £30,000 annual Remittance Basis Charge to £50,000 for non-domiciles who have been tax resident in the UK for more than 12 out of the last 15 years and who wish to claim the remittance basis of assessment. The £30,000 charge will be retained for those who have been resident in 7 or more out of the previous 9 years; and
- d) the Chancellor announced that there will be no other substantive changes to the domicile rules for the remainder of this Parliament.

The Government has confirmed that “the current rules that determine tax residence for individuals are unclear and complicated”. They intend to introduce the long awaited statutory definition of residence from April 2012 and will issue a consultation paper regarding this in June.

2 VALUE ADDED TAX

2.1 Increase in registration threshold

As happens in most Budgets, there is an increase in the registration threshold. From 1 April 2011, registration will be required where taxable turnover exceeds £73,000. The current limit is £70,000.

From the same date, the de-registration threshold is to be increased to £71,000, also an increase of £3,000.

In future, however, the registration thresholds will only apply to businesses established in the UK. There will be no such threshold for non-UK businesses with the effect that VAT registration may be required as soon as a non-UK business makes a supply in the UK of any value. This is to be introduced on 1 August 2012.

2.2 Low value consignment relief

Low value items are not subject to VAT upon importation into the EU. The UK limit is currently set at £18, meaning that items valued at less than this can be brought into the UK from a place outside the EU free of VAT. This allows items such as CDs, DVDs etc to be sold from places such as Jersey to UK consumers with no VAT.

On 1 November 2011, this limit will be reduced to £15.

The Government has announced that it will consult with the European Commission on measures which might be adopted to prevent the exploitation of this relief. EU law requires the limit to be between €10 and €2. No reason is given for the decision to reduce the limit only to £15 and not to the equivalent of €10.

2.3 Anti-avoidance - splitting of supplies

This measure is aimed at a planning device which seeks to achieve zero rating for printed matter when that matter is a part of a wider taxable service. From the date of Royal Assent, it will not be possible to zero rate supplies of printed material when that material is “connected” to services which are standard rated (but sold by a different person) and where the service and printed matter, if sold by one person, would constitute a single taxable supply.

An example could be a magazine given to TV subscribers. The TV service itself is standard rated but a magazine is zero rated. Where the two are provided by the same person, the transaction should be treated as a single standard rated supply (ie the magazine is integral or ancillary to the broadcasting). If sold by a different entity, however, the magazine might currently be zero rated.

2.4 Cost sharing exemption

The 2010 Budget contained an announcement that the Government would consult on the introduction of a cost sharing exemption. VAT costs can arise where organisations agree to share costs and services and it is hoped that new rules can be introduced to relieve organisations such as charities, housing associations and universities from this cost.

This year's Budget has merely announced that the consultation will continue.

2.5 Public bodies

The Government will issue draft legislation later this year which will attempt to ensure that public bodies' VAT positions are correct when performing statutory duties in competition with the private sector.

2.6 Business samples

Following the decision of the European Court of Justice last year in the EMI Group Ltd case, the relief available for samples used for marketing purposes will be extended so that it no longer applies to just the first sample given to one person.

2.7 Fuel scale charges

These charges, which are a simplified means for taxing the private use of fuel, will be increased from 1 May 2011 by varying amounts but typically in a range of 10 to 18%.

2.8 Other indirect taxes

The Chancellor referred to the previously announced intention to consider a "per plane" tax to replace Air Passenger Duty ('APD') but said the Government has concluded that alternatives are currently illegal. He also announced a consultation on reform of APD. In the meantime, there will be no increase in the rates of APD and the anticipated increases in November this year will be deferred until next year. The rate bands will be reviewed.

The anticipated 1 April 2011 increase in fuel duty will be deferred until 1 January 2012. In addition, there is a reduction to the current duty rate with immediate effect of 1p per litre and the fuel duty escalator is cancelled until 2015.

In addition, most duties on alcohol and tobacco will increase by an amount equal to 2% above the rate of inflation.

3 BUSINESS TAX

3.1 Corporation tax rates and limits

Corporation tax rates/profit limits	Financial year 2011	Financial year 2010
Full rate	26%	28%
Small companies rate	20%	21%
Upper profits limit	£1,500,000	£1,500,000
Lower profits limit	£300,000	£300,000
Fraction	$\frac{3}{200}$	$\frac{7}{400}$
Marginal tax rate	27.5%	29.75%

The Chancellor announced a reduction of 2% in the main rate of corporation tax, in excess of the 1% reduction which had previously been announced.

Further reductions were also announced and as a result we now expect the main rate of corporation tax to be:

The year beginning 1 April 2012	25%
The year beginning 1 April 2013	24%
The year beginning 1 April 2014	23%

As expected no changes to the small company rate of 20% were announced.

3.2 Capital allowances - short life assets

Currently businesses investing in certain assets which they expect to sell or scrap within four years can elect for the asset to be treated as a "short life asset".

Typically this is an advantage for assets whose value is expected to decline faster than the statutory 20% (18% from April 2012) annual writing down allowance rate. The short life asset is kept separate from the general capital allowance pool for four years, the advantage being that if it is sold or scrapped in that time then a further balancing allowance will be immediately available which would not otherwise have arisen.

If after four years the asset has not been sold or scrapped the asset will be placed back in the general capital allowances pool.

The Chancellor has now announced that the short life asset election can be made in respect of assets which are expected to be sold or scrapped within eight years rather than four years. This is likely to benefit larger businesses only, since small businesses are unlikely to

have an annual capital investment budget in excess of the Annual Investment Allowance (currently £100,000 but due to reduce to £25,000 from April 2012).

3.3 Capital allowances – energy saving technology

The list of assets which qualify for enhanced capital allowances on the basis of energy efficiency has undergone its annual update.

The details are available on HMRC's website, but the Treasury have announced (subject to agreement from the European Commission) that "energy efficient hand dryers" will now qualify and "the criteria for automatic monitoring and targeting equipment will also be revised".

3.4 Research and Development ('R&D') tax relief for Small and Medium Enterprises

The additional corporation tax relief for small or medium sized companies engaging in R&D activity is to be improved in two stages.

The first stage will be included in the Finance Bill 2011, but will be subject to EU State Aid approval which means that it may be some time before this comes into force. This first stage increases the additional deduction for R&D activity from 75% to 100% of the R&D cost.

Further amendments will be made in the Finance Bill 2012, and these changes will take effect from 1 April 2012. The 2012 changes will be as follows:

- a) the additional deduction for R&D costs will be increased again to 125% of the R&D expenditure;
- b) the rule limiting the R&D tax credit to the company's PAYE payments to date will be abolished;
- c) the £10,000 minimum expenditure condition will be abolished; and
- d) changes will be made to the rules for large companies which conduct R&D work using subcontractors.

As a quid pro quo for the improvements to R&D tax relief, the similar relief for vaccine research by small and medium sized companies is to be withdrawn in two stages. The additional deduction will be reduced to 20% with effect from 1 April 2011, and will be withdrawn altogether on 1 April 2012.

3.5 UCITS IV – management companies

Due to an unintended interaction of EU regulations and UK corporation tax legislation, UK fund managers have previously been unable to manage certain authorised investment funds (referred to as "UCITS funds").

The Government therefore proposes that, from the date that the Finance Bill receives Royal Assent, the UK corporation tax rules will be amended to allow UK fund managers to carry out this work.

3.6 **Controlled foreign companies ('CFCs')**

The CFC rules are anti-avoidance legislation which allows HMRC to tax UK companies on profits of certain overseas subsidiaries.

The CFC rules are due to be reformed with effect from 1 April 2012 and this reform will have most impact for large international groups. Some recent cases where high profile corporate groups have relocated away from the UK have been motivated not by the UK's headline tax rate, but by the UK's ability to tax profits earned in other jurisdictions, and the motivation behind the forthcoming CFC reforms appears to be to make the UK more attractive to these entities.

The precise terms of the 2012 reforms are yet to be finalised, but the Treasury is to introduce a series of interim improvements taking effect for accounting periods beginning on or after 1 January 2011, as follows:

- a) a new exemption for intra group trading where there is minimal connection with the UK;
- b) a new exemption for IP holding companies where there is minimal connection with the UK;
- c) a three-year exemption from the CFC rules for some companies within the regime for the first time;
- d) a new de minimis exemption for companies with profits of less than £200,000 per annum; and
- e) extending certain exemptions from the CFC rules.

3.7 **Taxation of foreign branches**

The Government will introduce the ability for UK companies with foreign branches to elect for their foreign branch profits to be exempt from UK Corporation Tax.

The election will be irrevocable and will apply to all that company's foreign branches, wherever located, although the profits exemption will only apply to branches in countries with which the UK has an appropriate Double Taxation Treaty. The negative consequence of making the election will be that losses made on overseas branches will no longer be deductible against UK profits.

There will be transitional rules and restrictions to disallow some unused overseas branch losses arising in the six years prior to the making of the election.

The election will be available for accounting periods starting on or after the date of Royal Assent.

3.8 **Enterprise Investment Scheme ('EIS') and Venture Capital Trusts ('VCTs')**

The Government has announced several improvements to the EIS and VCTs. Collectively the EIS and VCT schemes are referred to as venture capital schemes:

- a) there will be an increase in the level of income tax relief available to those investing in an EIS company from 20% to 30%;
- b) there will be an increase in the maximum qualifying amount that an individual can invest under EIS each year from £500,000 to £1m;
- c) there will be an increase in the maximum qualifying amount that can be invested under the venture capital schemes in a company in a 12 month period from £2m to £10m; and
- d) there will be technical changes to allow some larger companies to issue shares under the venture capital schemes.

The technical changes to allow larger companies to qualify are firstly that EIS companies currently must have fewer than 50 employees. This will be changed to a requirement for EIS companies to have fewer than 250 employees.

The second technical change relates to the permitted "gross assets" of the company. At present the company may not have gross assets in excess of £7m prior to the share issue and gross assets in excess of £8m immediately after the issue. This will be changed so that the company must not have gross assets in excess of £15m immediately before the issue of shares, and there will be no upper limit on gross assets after the share issue.

Finally, companies which mainly trade by receiving "feed in tariffs" for the generation of renewable energy will no longer qualify under the EIS or for VCTs.

The increased income tax relief will take effect, subject to EU State Aid approval, for shares issued on or after 6 April 2011, whereas the other changes will take effect, subject to EU State Aid approval, for shares issued on or after 6 April 2012.

The withdrawal of relief for feed in tariff companies will take effect where energy generation commences on or after 6 April 2012, although shares issued prior to 23 March 2011 will not be affected.

3.9 **Loan relationships and derivative contracts**

Changes to the regulations which govern loan relationships and foreign exchange transactions will be made to ensure that where a company uses derivative contracts to manage their foreign exchange risk the tax position better reflects the economic outcome.

3.10 **Furnished holiday lettings**

As previously announced, from April 2011 new tax rules for furnished holiday lettings businesses will take effect so that loss relief may only be offset against income from the same business. It will no longer be possible to offset such losses against other sources of income via a “sideways loss relief” claim.

In addition the qualification criteria for furnished holiday lettings treatment will be tightened from April 2012 as follows:

- a) the minimum period over which a qualifying FHL property must be available for letting to the public is 210 days in a year (increased from 140 days) with effect from April 2012; and
- b) the minimum period over which a qualifying FHL property is actually let to the public is 105 days in a year (increased from 70 days) with effect from April 2012.

Where a person fails the new 105-day “actually let” condition (referred to above) in the 2012-13 and 2013-14 tax years then, in some circumstances, it will be possible to make an election for HMRC to treat the business as if this condition had been satisfied.

3.11 **Patent box**

As announced in November 2010, the Government has confirmed that it will introduce an effective 10% rate of corporation tax for profits arising from patents effective from 1 April 2013. A consultation document will be issued in May 2011 and legislation included in the Finance Bill 2012.

3.12 **Stamp Duty Land Tax (‘SDLT’)**

At present where a single transaction, or a series of transactions, involves the purchase of more than one property, SDLT applies at a rate based on the total value of all of the properties involved. Typically this means that such transactions usually attract SDLT at 4% (or possibly 5% in some cases from 6 April 2011) or more, even where the properties if sold individually would normally be taxed at a lower rate.

A new tax relief will be available for transactions occurring on or after the date of Royal Assent, and it will be possible to claim for the SDLT charge to be at a rate based on the average value of the properties being transferred (with a minimum of 1%). The effect of this will be a lower rate of SDLT in some cases.

3.13 **Tax simplification**

After a review by the OTS, 43 reliefs are to be abolished which are mostly obsolete. The Government also intends to abolish in the Finance Bill 2012 (after a period of consultation) reliefs which are in current use including late night taxis, luncheon vouchers and mineral royalties relief.

3.14 IR35 simplification

The Chancellor has announced improvements to the operation of the IR35 legislation as follows:

- a) HMRC will provide greater pre-transaction certainty, including a dedicated helpline;
- b) HMRC will publish guidance on those types of cases they view as being outside the scope of IR35; and
- c) IR35 reviews will be restricted to high risk cases and will be carried out only by specialists.

4 CHARITIES

4.1 Gift Aid

Where an individual makes a gift to charity under Gift Aid, and subsequently receives a benefit from the charity, then in some cases the amount of tax relief given under Gift Aid can be restricted.

The restrictions apply where the value of the donor's benefit exceeds a set amount as follows:

Amount of donation	Maximum value of benefits
£0 to £100	25% of gift
£101 to £1,000	£25
In excess of £1,000	5% of gift, subject to an overall maximum of £500

The Chancellor has announced that the overall maximum benefit will be increased to £2,500 for donations made on or after 6 April 2011. This will still be subject to the rule that the benefit cannot be worth more than 5% of the gift, and therefore will only be of interest to those making Gift Aid donations in excess of £10,000.

Similar Gift Aid rules apply for companies, and from 1 April 2011 the maximum benefit receivable by a corporate donor will be extended in a similar manner.

A small donations Gift Aid scheme will be introduced in April 2013. This will allow charities that have been registered for Gift Aid for more than 3 years to claim Gift Aid on small donations of £10 or less without the need for Gift Aid declarations up to a value of £5,000 in total per annum.

Bureaucracy for charities will be reduced through the introduction of a new system of online filing which "will bring Gift Aid into the 21st century".

The Government will also explore how to increase the take up of Payroll Giving which allows individuals to give through their pay and reduce their income tax bills.

4.2 SA Donate

The SA Donate scheme allows self assessment taxpayers to direct their tax repayments to be paid to charity instead of to them. The scheme has not been well used, and it has been announced that it will be scrapped for 2011-12 tax returns, and earlier tax returns where the repayment is made on or after 6 April 2012.

5 ANTI-AVOIDANCE

5.1 Sale of leasing companies

On the sale of a company with a leasing business it will no longer be possible to elect out of the “sale of lessor company” tax charge, and where such an election has already been made the full value of leased assets will now be brought into charge on a later disposal of those assets.

5.2 SDLT

Changes to the SDLT rules will be made to close two types of tax avoidance schemes with effect from 24 March 2011.

Firstly, two technical changes will be made to prevent avoidance schemes which took advantage of rules originally intended to mitigate SDLT charge on Islamic finance structures. These avoidance schemes mimicked certain aspects of Islamic finance structures to avoid SDLT altogether.

Secondly, where land is exchanged the consideration deemed to be given for SDLT purposes is currently deemed to be the market value of the land acquired. This will be changed to the greater of the value of the land acquired or the consideration which would be treated as occurring “under the normal rules for consideration”. This change is intended to prevent avoidance of SDLT by manipulating the values of the land involved in the exchange.

5.3 Corporation tax de-grouping charge

Where a company leaves a corporation tax group and in the previous six years there has been a transfer of an asset to that company, then a corporation tax charge may arise, referred to as a ‘de-grouping charge’. There is an exemption from the de-grouping charge where, very broadly, the asset was transferred by a company that is leaving the group at the same time, and both companies join the same new group.

There was a tax avoidance scheme which operated whereby the two companies would join a new group and the asset-owning company would then be transferred out a second time, and it was claimed that this was a way of avoiding the de-grouping charge. There is anti-avoidance legislation which purports to deal with this scheme, but it is unclear whether this anti-avoidance legislation is effective in its present form. The legislation will be amended to repair the potential defect, with effect from 23 March 2011.

5.4 Disguised remuneration - EBT, EFRBS and other similar arrangements

In December 2010 the Government released draft legislation which affects employers, directors, and employees who use or have used trusts and other vehicles to reduce or defer liabilities to income tax on rewards from employment or to avoid restrictions on pension tax reliefs.

Very broadly, there will be a tax charge whenever funds or non-cash assets are transferred or otherwise made available to employees, or when assets within the vehicle are “earmarked” for a specific individual.

The rules are very widely drafted and appear to catch a wide range of arrangements which might not normally be considered to constitute tax avoidance. In addition the potential tax charges are very large, and can apply even where assets are not available to the employee to pay them. The Institute of Chartered Accountants in England and Wales stated in its response to the draft legislation:

“We believe that the current structure and fundamental principles underlying [the rules] are wrong. While we understand the wish not to leave scope for abuse ... we do not accept that it can be right to impose severely penal tax charges on a wide range of very common commercial remuneration arrangements”.

HMRC responded to the comments on the draft legislation on 22 February 2011, and there were some further comments released in this Budget. While HMRC acknowledge some deficiencies in the rules, it appears likely from their comments to date that the final legislation, which is yet to be published, will be substantially similar to the draft.

The rules come into full effect on 6 April 2011, although there are “anti-forestalling” arrangements in place which catch transactions prior to that. Due to the slightly narrower drafting of the anti-forestalling rules there is some potential tax planning which may allow assets to be extracted from such vehicles prior to 6 April 2011 and in particular these strategies typically involve transfers of non-cash assets. The lack of published final legislation is unhelpful and therefore all such structures involve a degree of risk in our view.

5.5 A general anti-avoidance rule

The Government announced in December 2010 that a leading tax barrister, Graham Aronson QC, would prepare a report into the case for a General Anti-Avoidance Rule (“GAAR”) for UK taxation. The terms of reference for the report were that such a GAAR, if considered to be appropriate, would need to:

- a) be effective at deterring and countering tax avoidance;
- b) be fair in scope;
- c) provide certainty to taxpayers; and
- d) require an acceptable level of resources from HMRC to police.

The report is due on 31 October 2011, and there will be a further consultation if the Government decide to proceed with legislation.

5.6 Dishonest tax agents

The Government has previously explored proposals allowing HMRC to take action against “dishonest tax agents”. Draft legislation was published in this area for consultation but was not enacted.

The Budget included confirmation that there will be a further consultation on this measure and will issue a consultation document and revised draft legislation in July 2011.



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