MOORE STEPHENS

Budget Edition 2018

Talking Tax

Business and personal tax planning

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Austerity is coming to an end, but discipline will remain

With the Government already having pledged to end austerity, the Chancellor had to loosen the purse strings in his Autumn Budget. Fortunately, better than expected growth and borrowing forecasts gave scope for a few extra voter-pleasing announcements.

Philip Hammond appeared to enjoy delivering his third Budget speech (could it be his last?). A no-deal Brexit might spoil his plans, but assuming the best outcome, the Chancellor was upbeat about the UK's economic prospects, while stressing the need for continued discipline.

The Chancellor described this as a Budget for "the strivers, the grafters and the carers". Given pre-speech announcements, there was no revelation in the additional funding for the NHS. There were some surprises, even so.

The big news for personal taxpayers is that the Government will keep its promise of raising the personal allowance to £12,500 and the higher rate threshold to £50,000 – but a year early, from April 2019. More good news came in the freezing of beer, spirits and fuel duties. First-time buyers of shared-ownership properties also received stamp duty land tax relief.

From a business perspective, the Chancellor announced the introduction of a new Digital Services Tax aimed at online platforms generating at least £500 million a year in global revenues. The tax – expected to raise over £400 million a year – will come into effect from April 2020 unless an appropriate international solution can be agreed.

Other new measures continue the sustained attack on tax avoidance and evasion, including an end to the practice of purchasing services through overseas branches to avoid UK VAT. Changes to the enforcement of the 'IR35' rules for personal service companies – already made in the public sector – will be applied to large and medium-sized private sector organisations – but not until April 2020.

The Chancellor also announced a package of measures designed to stimulate business investment, including an increase in the Annual Investment Allowance from £200,000 to £1 million for two years, targeted relief for the cost of acquiring IP-rich businesses, and the introduction of permanent tax relief for new, non-residential structures and buildings. He left CGT Entrepreneurs' Relief intact, but doubled the minimum qualifying ownership period from one to two years.

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Capital allowances in the spotlight

The Budget included a raft of initiatives involving capital allowances, designed to stimulate business investment and encourage a thriving modern economy.

First in the spotlight is the Annual Investment Allowance (AIA). In order to help stimulate business investment, the Government will increase the AIA to £1 million for all qualifying investment in plant and machinery made on or after 1 January 2019 until 31 December 2020.

This dramatically reverses the previous cut in the incentive. Although the maximum amount of the AIA was temporarily increased to £500,000 in the 2014 Budget, the 2015 Summer Budget set the AIA permanently at £200,000 from 1 January 2016.

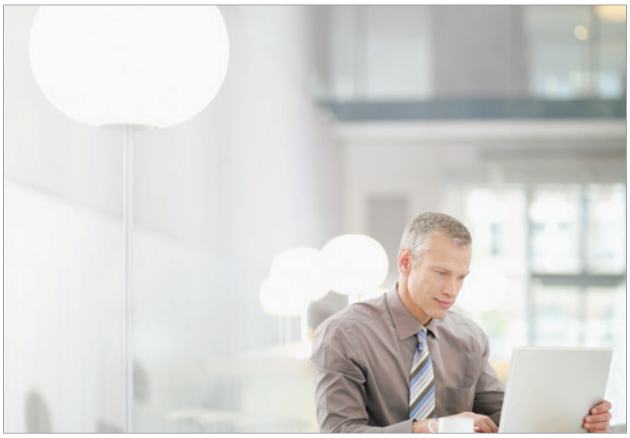
This latest about-turn will provide significantly faster tax relief for plant and machinery investment between £200,000 and £1 million, helping businesses to invest and grow.

Structures and buildings allowance (SBA)

New non-residential structures and buildings will be eligible for a 2% capital allowance where all the contracts for the physical construction works are entered into on or after 29 October 2018. This will address a gap in the current capital allowances regime and improve the international competitiveness of the UK's tax system.

The aim of the SBA is to relieve the costs of physically constructing new structures and buildings. This will encourage investment in the construction of new structures and buildings that are intended for commercial use, the necessary works to bring them into existence and the improvement of existing structures and buildings, including the cost of converting existing premises for use in a qualifying activity.

Neither land nor dwellings will be eligible for relief. Where there is mixed use – for example, between commercial and residential units in a development – relief will be reduced by apportionment. Premises used as hotels and care homes will qualify for the allowance.



Capital allowances special rate reduction

From April 2019, the capital allowances special rate for qualifying plant and machinery assets will be reduced from 8% to 6%. Businesses will thus continue to receive full tax relief to reflect the depreciation of plant and machinery assets, but over an extended timeframe. This measure does not change the writing down allowance on the main pool, which is currently 18%, nor does it change the writing down allowance on the special rate pool for ring fence trades (i.e. oil extraction activities), which is currently 10%.

Enhanced Capital Allowances

The Government will end Enhanced Capital Allowances (ECAs) and First Year Tax Credits for technologies on the Energy Technology List and Water Technology List from April 2020. The savings will be reinvested in an Industrial Energy Transformation Fund, to help significant energy users to cut their energy bills and transition UK industry to a low carbon future.

ECAs for electric vehicle charge points

The Government will extend the ECA for companies investing in electric vehicle charge points to 31 March 2023. This is to help achieve the Government's ambition for the UK to become a world leader in the ultra-low emission vehicle market.

Property: relief and rule tightening

Property remains a favoured area for Budget tinkering. In line with previous changes, the latest announcements seek to provide relief to first-time buyers while targeting those with second homes and buy-to-lets.

More help for first-time buyers

Introduced on 22 November 2017, first-time buyers' relief applies for main residence purchases of less than £500,000. Where the purchase price is below £300,000, first-time buyers pay no Stamp Duty Land Tax (SDLT). Where the value exceeds £300,000 but not £500,000, the amount exceeding £300,000 incurs SDLT at the rate of 5%.

This Autumn Budget extended the relief to 'qualified shared ownership property purchases'. The change takes effect for transactions on or after 29 October 2018, but will also apply retrospectively to 22 November 2017 to allow those eligible to amend their return and claim a relief.

The Government also intends to publish a consultation document in January 2019 on an SDLT surcharge of 1% for non-residents buying residential property.

Tightening up of private residence and lettings relief for capital gains tax purposes

Lettings relief is up to £40,000 for those who let out a property that is, or has been, their main residence. From April 2020 the relief will only be available to those in shared occupancy with a tenant. The Chancellor also announced a change to private residence relief. Final period exemption provides relief from capital gains tax on gains made in the final 18 months of ownership, even if the individual is not an owner-occupier during that period. From April 2020, the exemption will be reduced to nine months. There will be no change to the special rules giving 36 months of exemption to those in (or moving into) care homes and people with a disability.

Finally, in light of perceived avoidance, the Government announced its intention to consult on the criteria for self-catering and holiday lets to be within the scope of business rates rather than council tax.

Rates and allowances update

The 2018 Budget contained minimal changes to personal tax rates and allowances – but there was one dramatic announcement by the Chancellor.

This was to announce the acceleration of his party's 2017 election manifesto pledge and use his Budget speech to increase the income tax personal allowance and higher rate (40%) threshold. These will rise to £12,500 and £50,000 respectively from 6 April 2019, one year earlier than planned. These thresholds will then remain in place for the 2020/21 tax year.

The Chancellor confirmed that Class 2 NICs will not be abolished in this Parliament. However, the previously announced reforms to the NIC treatment of termination payments and income from sporting testimonials will be legislated for, taking effect from April 2020.

The starting (0%) rate band for savings income will remain at £5,000 for 2019/20. The ISA allowance will also remain at £20,000 for 2019/20, but the annual subscription limit for Junior ISAs will increase, in line with CPI, to £4,368.

The lifetime allowance for pension savings will also continue to increase in line with CPI for 2019/20, rising to £1,055,000.

Finally, a consultation will be held in 2019 on draft regulations for maturing Child Trust Fund accounts. The Budget also announced that the annual subscription limit for Child Trust Funds will be increased for 2019/20, again in line with CPI, to £4,368.

UK pushes ahead with a Digital Services Tax

The Chancellor has made good his promise on leading the reform of international tax systems and how they should apply to the digital economy. Targeting 'global giants' and ensuring they contribute to a 'fair and sustainable' UK tax system, the new Digital Services Tax is the first step towards wider long-term global tax reform.

The announcement of the new tax is not unexpected; it follows the Government's position paper last year on corporate taxation and the digital economy, as well as the EU's proposals published in March 2018. The Government's position paper recognised the need for a temporary measure, such as a revenue-based tax. Frustrated by the slow progress towards reaching a global agreement on how to tax digital businesses, the Chancellor has now confirmed the Government's commitment to introducing a 2% tax on the revenues generated by large digital businesses from April 2020.

The new Digital Service Tax will be narrowly targeted to search engines, social media platforms and online marketplaces that are linked to value generated by the participation of UK users. It will only affect large businesses generating global revenues in excess of £500 million a year from the targeted activities. There will also be a £25 million annual allowance for taxable revenues linked to UK users.

Safe harbour provisions will be included to ensure that the introduction of the new tax does not adversely impact start-ups. These will exempt loss-making businesses and give relief where the activities generate very low profit margins.

The Government recognises that the most effective way of dealing with the taxation of global digital businesses is through international agreement. The Digital Services Tax is therefore designed to be a temporary measure until a global long-term solution is identified.

Further consultation on the introduction of the rules will follow in due course, with legislation being included in the Finance Bill 2019/20.

Reducing admin for charities

HMRC has listened to calls from the charity sector and announced several measures that will go some way to reduce charities' admin burden.

The most welcome change updates the non-primary purpose trading limits, which have been static for many years. The limits enable charities to carry out a small amount of non-primary purpose trading without being subject to tax. The lower limit has now been increased from £5,000 to £8,000 where a charity's relevant turnover is less than £32,000; the upper limit has increased from £50,000 to £80,000 where a charity's relevant turnover is in excess of £320,000.

Many charities do undertake a small amount of non-charitable trading, so this update will save them the admin time and costs associated with running a trading subsidiary. The change takes effect from 1 April 2019 for incorporated charities and 6 April 2019 for unincorporated charities.

In a second measure, HMRC has increased the limit of the Gift Aid Small Donation Scheme (GASDS) to £30. This scheme allows charities to collect small amounts without the need for a declaration, while still being able to claim the gift aid uplift – a valuable source of income. This measure will take effect from 6 April 2019, subject to legislation.

A final announcement benefitting charitable shops is the update to the Retail Gift Aid Scheme. Current rules require relevant shops to write to donors annually, but this has been changed to once every three years where donated goods raise less than £20 per annum.

Tackling tax evasion, avoidance and 'unfair outcomes'

The Chancellor announced a number of measures designed to tackle tax evasion, avoidance and what are described as 'unfair outcomes' for the UK taxpayer.

The initiative builds on previous policies to reduce tax leakage. The Government claims that additional tax revenues of £185 billion have been raised since 2010 as a result of its compliance measures introduced so far.

Tax debts in business insolvencies

In a significant move, the Government proposes to reintroduce preferential status for HMRC in respect of certain business taxes owed when an entity fails. The taxes are those deemed to be held 'on trust' by a business, including PAYE, VAT and NICs. Financial institutions holding fixed charges over assets will, however, remain above HMRC in the hierarchy of creditors. The change will apply from 6 April 2020 and is expected to raise over £185 million a year – a significant proportion of the targeted £2.1 billion that the full set of new compliance measures is designed to raise by 2023/24.

Another proposed measure will make directors or shareholders jointly and severally liable for tax debts where tax avoidance, evasion or phoenixism is involved – a move expected to raise a more modest sum of £35 million.

Business taxes

Further changes to the Diverted Profits Tax, introduced in 2015, will be made in order to prevent UK businesses artificially shifting profits to low profit jurisdictions. Research and development tax relief credits will also be restricted, to prevent abuse.

In relation to VAT, the Government announced that anti-avoidance rules will be introduced to prevent some insurance companies from setting up offshore in order to gain a VAT advantage over purely UK-based competitors.

In a much anticipated move, the Chancellor confirmed that the so-called IR35 off-payroll rules would be extended to the private sector, but not until April 2020. Only medium-sized and large companies using workers through personal service companies will be affected. See following article on 'Off-payroll working in the private sector' for more detail.

Tax evasion

HMRC is to publish a call for evidence in respect of Electronic Sales Suppression (ESS) tools, which a business may use to evade tax by manipulating sales data. ESS is becoming a major issue for tax authorities across the globe as tax fraudsters embrace the technological age.

Following an earlier consultation on 'tax conditionality' measures, in 2019/20 a tax registration check will be introduced linked to licence renewal processes for some public sector licences. Applicants will need to provide proof of this check to be granted a license.

Last but not least, in order to support international tax enforcement and compliance, new legislation will be introduced to allow disclosure between jurisdictions of offshore structures that could be used to avoid tax. HMRC will also publish an updated offshore compliance strategy.

"The Government proposes to reintroduce preferential status for HMRC in respect of certain business taxes owed when an entity fails."

Chancellor tightens rules on Entrepreneurs' Relief

Chancellor Philip Hammond today announced two measures to tackle the misuse of Entrepreneurs' Relief by individuals disposing of business interests.

Entrepreneurs' Relief is an attractive tax relief. It allows an individual to benefit from a flat 10% tax rate on disposals of shares in their personal trading companies, sole trades and partnerships, together with other associated assets. Multiple disposals can qualify, up to a lifetime limit of £10 million.

However, the Chancellor wants to make sure that only genuine entrepreneurs benefit. From 6 April 2019, the minimum holding period for all such disposals will increase by 12 months to two years, with an exception for businesses that ceased prior to 29 October 2018. Although there are already checks in place to ensure an individual making the disposal is involved in the underlying business, the Government believes that longer-term involvement would be more indicative of 'true entrepreneurial activity'.

Under the second measure to tackle abuse, which is effective immediately, an individual disposing of shares in their personal company will only qualify for Entrepreneurs' Relief if they are entitled to 5% of the distributable profits and net assets of a company – in addition to 5% of share capital and voting rights previously required.

However, as previously announced, the Government will legislate to protect individuals' entitlement to Entrepreneurs' Relief where shareholdings are 'diluted' below the 5% qualifying threshold as a result of a new share issue. This is to ensure that entrepreneurs are not discouraged from seeking external investment. This measure will have effect for shares held at the time of fundraising events which take place on or after 6 April 2019.

Changes to corporate capital loss relief

The Government is proposing to harmonise the tax treatment of corporate capital losses with income losses from 1 April 2020.

As the proposal stands at the moment, the relief for brought forward capital losses would be restricted to 50% of the annual capital gains that can be relieved by such losses. The measure includes an allowance that gives companies unrestricted use of up to £5 million capital or income losses each year, meaning that a large proportion of companies will be unaffected.

The aim of the proposal is to ensure that large companies pay tax when they make significant capital gains.

A consultation process will be launched later this year or early in 2019 on the detailed design of this change and legislation will be introduced in Finance Bill 2019/20. The measure will be subject to anti-avoidance rules.

"The Government is proposing to harmonise the tax treatment of corporate capital losses with income losses from 1 April 2020."

Detailed changes to employment taxes

Alongside the headline-grabbing change – the extension of the off-payroll workers rules to the private sector (see below) – the Budget included a number of other tweaks and reforms to the employment tax landscape.

Employment Allowance: From April 2020, the £3,000 allowance against employer NIC costs will be restricted to those employers with an annual employer NIC charge of less than £100,000 in their previous tax year.

NIC on termination payments: The alignment of the NIC rules with the current tax rules on termination payments has been postponed until April 2020.

Work-related training: Following consultation responses, rather than amend the current scope of tax relief on such costs, the Government has instead concentrated on extending the wider availability of skills training.

Share schemes: The change to the Entrepreneurs' Relief qualifying period (increased to 24 months from April 2019) will impact Enterprise Management Incentive (EMI) share options as well as direct share ownership. The Budget also included some housekeeping of stamp duty rules for Share Incentive Plans (SIPs) to reflect current HMRC policy following the move to self-registration.

Short Term Business Visitors (STBVs): There will be a widening of eligibility as well as some administrative easements in the reporting and payment of tax under the STBV special arrangements from April 2020.

Company vehicles: From April 2019, the multiplier for the car fuel benefit charge will increase to £24,100, the flat-rate van benefit charge to £3,430 and the flat-rate van fuel benefit charge to £655.

Off-payroll working in the private sector

As seemed almost inevitable following the wording of HMRC's prior consultation document, the off-payroll worker rules currently in place for the public sector are to be extended to the private sector.

There is some good news. First, the changes will not apply until April 2020. Secondly, the new rules will only apply to large and medium-sized employers, thus saving smaller employers from having to grapple with the implications.

The effect of the new rules will be to change both who determines whether the engagement of an individual's services constitutes disguised employment and who accounts for PAYE and NIC where the 'IR35' rules apply. The client receiving the individual's services will take on responsibility for determining whether IR35 applies and will also be responsible for deducting and paying over any PAYE tax and NIC, unless another intermediary is in the chain.

Because these new rules will apply to payments made on or after 6 April 2020, they could apply to payments made under existing contracts.

HMRC has indicated that it will continue to work with stakeholders to improve the online employment status tool and will not undertake targeted campaigns in respect of past periods where a worker's tax status changes as a result of this new legislation. The delay in implementation will also allow for greater feedback following the public sector's adoption of these rules, which took place in April 2017.

Trusts and IHT

Consultation on taxation of trusts

The Autumn Budget of 2017 announced that the Government would hold a consultation in 2018 on the taxation of trusts. The 2018 Budget has now confirmed that this will take place, with the focus on making the taxation of trusts simpler, fairer and more transparent. No further information was given.

IHT residence nil rate band

The inheritance tax residence nil rate band (RNRB), introduced on 5 April 2017, is an additional nil rate band that applies where, broadly, a residence is passed to a direct descendant. The relief is being phased in. The current band is £125,000, with the full band of £175,000 being available in 2020/21.

Two minor technical amendments are to be introduced, to be contained in the Finance Bill 2018/19, which will take effect in relation to deaths after 29 October 2019. The amendments relate to the 'downsizing' provisions and clarify the definition of 'inherited' for RNRB purposes in cases where the 'gifts with reservation of benefit' rules apply.

Intangibles: new relief and new income tax charge

Intangibles featured in the Budget in a number of ways.

Intangible fixed assets regime

Following amendments to the tax treatment of goodwill over a number of years, a further change is now on the horizon. Targeted relief for the cost of goodwill will be introduced from April 2019. It is uncertain whether pre-2002 goodwill will be included or not.

Concerns over the lack of relief for pre-2002 goodwill were raised during preceding consultation.

Currently, intangible fixed assets do not get relief when a de-grouping charge arises on the sale of a group entity. Relief is, however, given for tangible assets under the Substantial Shareholding Exemption rules. The Government is aiming to bring the intangible regime into line with these rules and a response to the consultation process is expected to be published on 7 November 2018.

Income from intangible property

The Chancellor announced that UK income tax will be levied on amounts received in a low tax jurisdiction in respect of intangible property, to the extent that those amounts refer to the sale of goods or services in the UK.

The measure will apply equally to income receivable from connected or unconnected parties and will be effective from 6 April 2019.

The measure was originally announced in the Autumn 2017 Budget and consulted upon. Since then the income in scope has broadened. Legislation will be introduced in Finance Bill 2018/19 and a consultation response document issued.

Anti-avoidance provisions will apply from 29 October 2018 to counteract arrangements entered into with a main purpose of avoiding a charge under this measure.

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