MOORE STEPHENS

Budget Edition 2017

# Talking Tax

**Business and personal tax planning**

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# Looking forward, not backward

Building a Britain 'fit for the future': the Chancellor used his Budget speech to present a vision for the country that combines fiscal responsibility with infrastructure investment.

This was not the easiest environment in which to deliver a Budget, given stalling Brexit negotiations, a vulnerable government and an economy with downgraded growth rates. Nevertheless, Philip Hammond cracked several jokes while announcing a range of measures to help families, businesses and the NHS.

Encouraging technology and innovation formed an important part of the Chancellor's vision. Measures include an increase in the R&D tax credit to 12% and a doubling of Enterprise Investment Scheme investment limits for knowledge-intensive companies. Philip Hammond's high-tech future is also one where employees charging electric vehicles at work will not suffer a benefit-in-kind charge.

From a business tax perspective, the Chancellor reaffirmed the Government's commitment to retaining competitive corporate tax rates, but announced a freezing of the indexation allowance for corporate capital gains. A number of measures are being introduced to help alleviate the pressure of business rates. As for VAT, despite speculation, there will be no change in the current £85,000 registration threshold for the next two years.

Philip Hammond highlighted the challenge of maintaining a sustainable and fair tax system in this digital age, an issue addressed in a new position paper. Meanwhile, the Government will charge income tax on royalties relating to UK sales that are paid to low-tax jurisdictions, the latest move in the mission to ensure that multinationals pay their fair share of tax. A package of anti-avoidance provisions is expected to collect an extra £4.8 billion in tax by 2022/23.

Personal taxpayers may be pleased by the increase from April in the personal allowance to £11,850 and in the higher rate threshold to £46,350. MPs cheered the freeze in duty on most alcoholic drinks (except high-strength white ciders) and the continued fuel duty freeze. House-building is also being boosted through measures aimed at delivering 300,000 homes a year by the mid-2020s.

This year's final flourish was the announcement of help for first-time buyers – the abolition of stamp duty land tax on house purchases up to £300,000 or on the first £300,000 where houses cost up to £500,000.

## Inside

# Tax relief on high-risk investments

The Government is keen to encourage investment in innovative businesses, as indicated by the proposed changes to the Enterprise Investment Scheme (EIS).

Individuals investing in EIS companies can deduct 30% of the value of their investment from their income tax bill. From 6 April 2018, the annual investment cap for individuals investing in EIS will increase to £2 million, provided at least £1 million is invested in Knowledge Intensive Companies (KICs). The current individual investment cap of £1 million will continue to apply for investments in other EIS (non-KIC) companies.

The Chancellor also doubled the amount KICs can raise annually from £5 million to £10 million. However, the current lifetime limit for a KIC will remain at £20 million. Another Budget change will increase the time allowed for KICs to raise capital. Currently, EIS relief is not available for investments in KICs that have been trading for more than 10 years. From 6 April 2018, the 10-year clock will start from the date when the annual turnover exceeds £200,000, instead of the first commercial sale by the KIC.

As part of a tightening of the rules a new ‘risk to capital’ principles-based test will only allow EIS investment in companies aiming to grow and develop. Further, the investment must not be low-risk. This means that asset or property-backed companies, where the returns are almost certain or will outweigh the investment from the outset, may not qualify for EIS. HMRC will take a ‘reasonable’ view and apply a ‘rounded’ approach as to whether an investment has been structured to provide a low-risk return for investors. However, HMRC will cease to provide advance assurance on investments that appear not to meet this condition. This is likely to create uncertainty for investors and companies.

Under existing rules the relief for Venture Capital Trusts (VCTs) is withdrawn if an investor sells shares in a VCT and purchases new shares in the same VCT within a six-month period. This rule is being relaxed in certain cases involving mergers of VCTs.

Finally, from 1 December 2017, all EIS and VCT investments in a company (including investments received before 2012) will be considered as part of a company’s lifetime limit.

# Freezing of indexation allowance

Companies disposing of chargeable assets retained the indexation allowance, the relief available for inflation, when it was abolished for individuals in 2008.

The indexation allowance currently available to companies reduces the gain subject to corporation tax but cannot create or increase a capital loss. The disposal of chargeable assets up to 31 December 2017 will continue to attract a full indexation allowance. However, disposals of chargeable assets from 1 January 2018 will only attract an indexation allowance for periods up to December 2017, with no further relief for inflationary increases.

The freezing of the indexation allowance will lead to companies paying more corporation tax on the disposal of their chargeable assets. All companies holding capital assets and shares or securities in share pools will be affected by the change in the rules.

# Boosting UK R&D and electric vehicles

With encouraging technology a key Budget theme, the Chancellor announced a range of measures to stimulate research and development (R&D) activity.

Philip Hammond promised support for innovative businesses at the 'forefront of … technological revolution' by taking a significant step to increase R&D investment in the economy to a targeted 2.4% of GDP by 2027.

From 1 January 2018, companies that claim relief under the Research and Development Expenditure Credit (RDEC) scheme will see their rate of relief increase by 1% to 12%. The RDEC scheme (otherwise referred to as the 'above the line' credit) is available to large companies, but sometimes used by SMEs. The increase in the rate of relief will result in an effective tax saving of 9.72%, up from the previous 8.91%, based on the current rate of corporation tax of 19%. The change should make the UK more attractive for investment by multinational entities.

In another move to encourage more companies to carry out R&D, the Government has announced plans to change the immigration rules in order to encourage world-leading scientists and researchers to apply for settlement in the UK.

The Chancellor also promised support for the next generation of vehicles, pledging £400 million to a new Charging Investment Infrastructure Fund and introducing a long-term aim of having 25% of central government's cars producing zero emissions.

In addition, a further £100 million has been promised to guarantee the continuation of the Plug-In Car Grant to 2020 to help consumers with the cost of buying new battery-powered electric vehicles.

# Good news on business rates

Following reforms to business rates in previous Budgets, the Government, in light of the rise in inflation, will provide a further support package worth £2.3 billion in England over the next five years.

Measures in the package include bringing forward to 1 April 2018 the planned switch in indexation from RPI to CPI. The Government will also legislate retrospectively to address the so-called 'staircase tax' under which, following a recent Supreme Court decision, non-contiguous floors within the same multi-occupancy building cannot be treated as the same hereditament for the purpose of business rates. Affected businesses will be able to ask the Valuation Office Agency (VOA) to recalculate valuations so that bills are based on previous practice, backdated to April 2010. The option will be open to those that lost Small Business Rate Relief following the Supreme Court judgment.

The VOA will revalue non-domestic properties every three years following the next revaluation, currently due in 2022.

Ratepayers will be required to provide regular information to the VOA on who is responsible for business rates and property characteristics, including use and rent.

The support package also includes continuing the £1,000 business rate discount for public houses with a rateable value of up to £100,000, subject to state aid limits for businesses with multiple properties, for one year from 1 April 2018.

For London, the Government has agreed a pilot of 100% business rates retention in 2018/19. The Greater London Authority and London boroughs will come together to form a pool and invest revenue growth strategically on a pan-London basis.

# Tackling tax avoidance

A number of measures have been announced to tackle tax avoidance, evasion and non-compliance, which are forecast to raise an additional £4.8 billion between now and 2022/23.

## Witholding tax on royalties

With effect from April 2019, withholding tax obligations will be extended to royalty and certain other payments made to some low or no tax jurisdictions in connection with sales to UK customers, regardless of where the payer is located.

## Online VAT fraud

In order to tackle VAT fraud, the forthcoming Finance Bill is to introduce joint and several liability provisions in relation to online marketplaces. This means:

- any future UK VAT that a UK business using the online marketplace fails to account for after the issue of an HMRC notice against the platform provider will be payable by that provider;
- the platform provider will also be accountable for the VAT that any non-UK business selling goods via the online market place fails to account for, if the platform provider should have known that the non-UK business was liable to be VAT registered; and
- the online marketplace must show the third party's VAT registration number.

## Offshore issues

The Government will publish a consultation response on the proposed requirement for designers of certain offshore structures to notify HMRC of both the structures and clients using them. In a separate move, assessment time limits for non-deliberate offshore tax non-compliance will be extended so that HMRC can assess at least 12 years of back taxes without needing to establish deliberate non-compliance.

## Profit fragmentation

The Government will consult in 2018 on the prevention of the avoidance of UK tax by the fragmentation of UK income between unrelated entities.

## Intangible fixed assets

The rules will be updated so that a licence granted by a company to a related party in respect of intellectual property is subject to a market value rule. A company making such a disposal will be prevented from recognising less than the market value of the licence.

## Depreciatory transactions

The Government will remove the six-year time limit that applies to the requirement for companies to adjust for transactions that have reduced the value of shares being disposed of in a group company, to ensure that any losses claimed are in line with the actual economic loss to the group.

## Double taxation relief

A restriction to the relief for foreign tax incurred by an overseas branch of a company will be introduced where the company has already received relief overseas for the losses of the branch against profits other than those of the branch.

## Insolvency and phoenixism risks

The Government will explore further means for tackling the perceived abuse of the insolvency regime and 'phoenixism'. A discussion document will be published in 2018.

# Property in the spotlight

The Budget contained a number of notable property-related measures.

Although not specifically mentioned within the Chancellor's speech, significant changes are being made to the taxation of UK property held by non-UK resident individuals and companies.

One of the key changes involves the taxation of capital gains made by non-residents on the sale of all types of UK immovable property. This is an extension to the existing rules, which apply only to residential property, and the intention is to create a single regime for disposals of interests in both residential and commercial property.

This will have a substantial impact on commercial property, although the measures include a rebasing of these properties to their market value at April 2019. Although some aspects of the reforms are fixed, these changes will be considered through a consultation document published today.

Another significant change concerns the taxation of income and gains arising from UK properties that are held within non-UK resident companies. From April 2020, income that non-resident companies receive from UK property, both residential and commercial, will be chargeable to corporation tax rather than income tax.

In addition, any gains arising on the sale of these properties will also be chargeable to corporation tax, rather than capital gains tax (CGT). For residential properties held prior to April 2020, it is likely that these will remain liable to Annual Tax on Enveloped Dwellings (ATED) CGT and non-resident CGT, where applicable, on gains accruing prior to that date.

## SDLT help for first-time buyers

One of the Budget's eye-catching announcements concerned the new relief from Stamp Duty Land Tax (SDLT) for first-time buyers. This relief will apply from 22 November 2017 on the purchase of residential property for £500,000 or less, provided that the purchaser intends to occupy the property as their only or main residence.

Where the purchase price is £300,000 or less, first-time buyers will pay no SDLT at all. Where the property costs more than £300,000 but does not exceed £500,000, they will pay 5% SDLT only on the amount that exceeds £300,000.

Draft legislation introducing the relief has been published, and we expect this to be included within the Finance Bill to be published early next month.

## Other property issues

In the 2015 Autumn Statement, it was announced that from April 2019 the payment window for any capital gains tax liability arising on the sale of residential property would be reduced to 30 days from the date of disposal. It has been announced that this change will still go ahead, but will be deferred to April 2020.

It has also been confirmed that the annual chargeable amounts under ATED will be increased by inflation for the year ended 31 March 2019. These amounts are due for payment by 30 April 2018.

Local authorities will also be given the power to charge a council tax premium of up to 100% on empty properties.

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# Multiple changes to employment taxes

There were yet again a myriad of small yet important tax changes affecting employers.

### Off-payroll workers

Initial indications are that the recently-introduced public sector rules on off-payroll workers have resulted in increased compliance and they are being considered for adoption in the private sector. A discussion paper is due on a potential reform of existing employment-status tests.

### Cars and vans

The Budget included increases in the van, van fuel and car fuel rate multipliers in line with the retail prices index. There will also be an increase from 3% to 4% to the diesel supplement for those not meeting the higher Real Driving Emissions Step 2 (RDE2) standards. There was a welcome removal of a benefit-in-kind charge where employees charge their own electric cars at their place of work.

### Other expenses and benefits

The Government will hold a consultation on extending tax relief for employees and the self-employed who self-fund work-related training. It is also removing the requirement to check receipts where scale rates for subsistence are claimed, with overseas scale rates to be legislated. In a specialist change, the seafarers' earnings deduction will be extended to the Royal Fleet Auxiliary.

### Share schemes

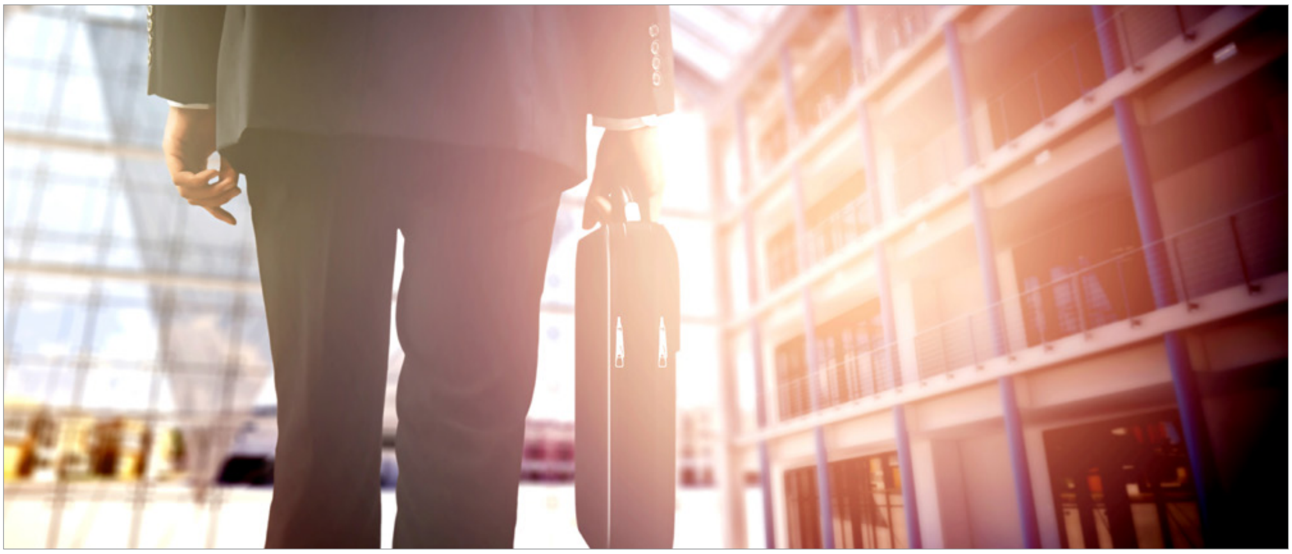
The allowable break for employees in SAYE schemes who take maternity or parental leave is increasing from six months to 12 months.

### Payroll issues

HMRC will recover self-assessment debts through PAYE codings from April 2019. The Budget also announced the closing of a potential loophole using offshore arrangements for claiming the national insurance employment allowance. In addition, the abolition of foreign service relief for termination payments has been confirmed.

### Disguised remuneration

There will be new provisions intended to put beyond doubt when the disguised remuneration rules apply to the remuneration of owners of close companies. New legislation will also confirm that a charge under the disguised remuneration rules can apply regardless of whether contributions to disguised remuneration avoidance schemes should previously have been taxed as employment income.



# VAT: small businesses and importers

The Chancellor announced that the VAT threshold would remain at £85,000 for at least two years.

In doing so, Philip Hammond resisted the pre-Budget lobbying to reduce the VAT threshold to bring it more into line with the rest of Europe. It had been argued that the current high threshold creates a barrier to the growth of small businesses, as it is a disincentive to exceed it. However, HMRC is going to consult on the future design of the VAT threshold – so watch this space.

The de-registration limit of £83,000 has also been frozen for two years.

Budget documents also included news on the postponed accounting system used by businesses that import from other EU countries (currently referred to as 'acquisitions' within the Single Market). Under the postponed accounting system businesses avoid the need to fund the import VAT before being able to reclaim it via their quarterly VAT returns.

The Government has indicated that it recognises the importance of these arrangements and will take them into account when considering changes in the light of the potential exit from the Single Market in 2019. Although in the small print, this is a significant and major development because UK businesses importing from the EU were becoming increasingly alarmed about the negative VAT cash flow impact they appeared to be facing. For example, the UK imports around £5 billion per month from Germany alone, which means that UK businesses would potentially have to fund £1 billion of VAT per month, for up to two to three months.

# Rates and allowances update

The Chancellor once again used his Budget speech to announce further increases in the income tax personal allowance and higher rate (40%) threshold. These will rise to £11,850 and £46,350 respectively for the 2018/19 tax year.

Capital gains tax allowances will be increased in line with the Consumer Prices Index (CPI). The annual exempt amount for individuals and personal representatives rises from £11,300 to £11,700 from April 2018, while the amount for trustees rises from £5,650 to £5,850.

No changes were announced to national insurance, following the rapid scrapping of the proposals announced in the last Budget.

The starting (0%) rate band for savings income will remain at £5,000 for 2018/19. The ISA allowance will also remain at £20,000 for 2018/19, but with an increase to £4,260 for Junior ISAs and Child Trust Funds.

The lifetime allowance for pension savings will be increased for 2018/19 from £1 million (where it has remained since April 2016, when it was reduced to that figure) to £1,030,000, in line with CPI.

# Consultation overload?

As we have come to expect, this Budget was marked by a flurry of consultation announcements.

### Encouraging compliance by users of digital platforms

The Government expects digital platforms to play a wider role in ensuring their users are compliant with the tax rules. It will publish a call for evidence in Spring 2018 to explore what more digital platforms could do to prevent non-compliance among their users.

### Employment status

The Government will publish a discussion paper to review employment practices in the modern economy, exploring the case and options for longer-term reform to make the employment status tests for both employment rights and tax clearer.

### Entrepreneurs' relief: relief after dilution of holdings

In Spring 2018 the Government will consult on how access to the relief might be given to entrepreneurs whose holding in their company is reduced below the normal 5% qualifying level as a result of raising funds for commercial purposes through issues of new shares. Allowing relief in these circumstances would incentivise entrepreneurs to remain involved in their businesses following external investment.

### Gaming duty

The Government will publish a consultation in early 2018 on gaming duty return periods to seek views on bringing the administration of gaming duty more into line with the other gambling duties. It will also seek views on removal of the requirement to make payments on account.

### Extension of security deposit legislation

In Spring 2018 the Government will consult on the most effective means of introducing changes to extend existing security deposit legislation to include corporation tax and Construction Industry Scheme deductions.

### Simplifying late payment sanctions

On 1 December 2017 the Government will publish a response to the recent consultation on proposals for late submission penalties and reform of sanctions for late payment. Alongside the summary of responses, a further consultation on harmonised interest and late payment sanctions will also be published. The Government will be taking forward the points-based model for late submission sanctions through consultation on draft legislation in the Summer of 2018.

### Single-use plastics waste

The Government will launch a call for evidence in early 2018 on how the tax system or charges could help to reduce the amount of single-use plastic waste.

### VAT fraud in labour provision in the construction sector

In Spring 2018 the Government will publish a technical consultation on draft legislation for a VAT reverse charge. The final draft and guidance in expected by October 2018, with changes taking effect on or after 1 October 2019. The measure shifts responsibility for paying the VAT along the supply chain in order to remove the opportunity for it to be stolen.

### Hidden economy: conditionality

In December the Government will publish a consultation response on the proposed requirement for designers of tax arrangements to notify HMRC of certain offshore structures that could be misused to evade taxes, and the clients using them. This work will be taken forward in conjunction with the OECD and EU.

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