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UK Budget 22 November 2017 - Simmons & Simmons' expert commentary

Simmons & Simmons' expert commentary on those tax aspects of the 2017 UK Budget, released on 22 November 2017, which are of particular interest to the business community.

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Budget overview

There is common consensus that the Chancellor of the Exchequer, Philip Hammond, has been dealt a bad hand. The Chancellor is charged with ensuring the budget deficit continues to fall (albeit at a more leisurely pace than previously targeted) during the period of political and economic instability created by Brexit, whilst at the same time coming under increasing political pressure to remove some of those fiscal constraints which have delivered deficit reduction and at the same time to increase public spending and bring an end to austerity. Moreover, he is the Chancellor of a Conservative Party reeling from the unforeseen set-back of the snap summer election and needing to regain political impetus and credibility, and a Chancellor viewed by many within his own party as being too negative on Brexit. Walking this tightrope risks the Chancellor being accused, on the one hand, of failing to take necessary bold political and economic decisions and, on the other hand, of being reckless with the public finances. And yet, 2017 has already seen a Budget, an election and two Finance Acts. Surely enough change for one year? The big question, therefore, was on which side of the fence the Chancellor would fall.

Perhaps unsurprisingly, the Chancellor has attempted to strike a balanced approach, re-affirming his intent to bring down debt, whilst using some “headroom” in the figures to increase public and private investment. In particular, the headline message of “building a Britain fit for the future” included ambitious announcements on house building targets and an eye-catching stamp duty exemption for first time buyers.

From a business tax perspective, the big announcement was that from April 2019 all gains realised by non-UK residents on disposals of UK commercial property will be subject to UK tax. This new announcement builds on the recent introduction of the non-resident charge on disposals of UK residential property and plans (now from April 2020) to bring non-resident corporates within the scope of UK corporation tax on certain UK property income and related gains. There is a clear aspect of “thin end of the wedge” to these cumulative changes - however, non-residents don’t get a vote and real estate can't leave the UK.

Also falling within the scope of “thin end of the wedge”, the Budget announced the intention to consult on extending rules making clients responsible for ensuring compliance with the IR35 rules to the private sector. There was also an announcement of a consultation on making the dividing line between employment and self-employment clearer and easier to determine. In his Spring Budget, the Chancellor made the near-fatal error of over-stepping the spirit (if not the letter) of the Conservative Manifesto pledge not to raise tax rates. His subsequent ignominious backtracking on the proposal to introduce a minor increase to NICs for the self-employed nearly cost him his office. It takes a brave man to return to the scene of such an embarrassing climb-down, but the pressure to address the way the tax system distorts the labour market remains. As such, it can be no surprise that the Chancellor has chosen to tread cautiously, employing the political shield of yet more consultation, when returning to the tortured topic of the differential taxation of the employed, self-employed and those working through personal service companies.

Finally, it is perhaps worth noting that the new autumn Budget timetable makes a lot of sense from a legislative point of view. It should allow the next Finance Bill to be enacted in time for the start of the new tax year in April 2018. As such, it should help to avoid the somewhat absurd nature of the current process in which new tax rules having effect from April are regularly enacted in late summer. Indeed, 2017 deserves special mention for the frankly ridiculous enactment of major new rules having effect from April 2017 only on 16 November! On that point, at least, perhaps we can all agree.

Company taxation

- ### Tax rates and allowances

  The rate of corporation tax will remain at 19% in 2018/19. The Government has previously announced its intention to reduce the rate to 17% in 2020/21, though this was not specifically re-affirmed in the Budget.

  For a table of the main tax rates and allowances for 2018/2019, see page see HM Revenue & Customs tax rates and allowances for 2017/18 below.

  ### Removal of indexation allowance

  To bring the UK in line with other major economies, the corporate indexation allowance will be frozen from 01 January 2018.

  Current rules calculate corporate indexation allowance up to the month in which the disposal occurs. The new rules will freeze the corporate capital gains indexation allowance for disposals which occur after 01 January 2018 so that the allowance is only based on the Retail Price Index for December 2017.

The Government hopes that this change will simplify companies' tax computations and remove potential errors. Doing so will also significantly increase the tax take by removing relief for inflation that is not available elsewhere in the tax system, particularly if inflation continues to increase. Another stealth tax?

Non-resident companies

Following consultation in summer 2017, the Government has announced that it will take forward its plans to bring income that non-resident companies receive from UK property into charge to corporation tax rather than income tax from April 2020. Also from that date, gains that arise to non-resident companies on the disposal of UK property will be charged to corporation tax rather than capital gains tax (CGT) (see below).

Non-resident companies: taxation of gains on UK commercial property

Currently non-resident investors can only be subject to UK tax on capital gains from direct sales of residential property which are within the scope of the charge on ATED-related gains or non-resident capital gain tax (NRCGT). The UK does not tax non-resident investors on gains from UK commercial property or gains from indirect disposals of UK property (commercial or residential).

The Government announced today significant changes to this status quo with effect from April 2019. When taken together with the measures, also announced today, to bring non-resident companies within the charge to UK corporation tax on UK income and gains from April 2020, this constitutes a major shake-up of the taxation of non-residents investing in UK property and the likely erosion of post-UK tax returns for many non-UK residents from UK property from April 2019 onwards.

Contrary to previously stated intentions in relation to the taxation of capital gains from UK commercial property held by non-UK resident corporates, the Government has announced that capital gains accruing on commercial property from April 2019 will be subject to UK tax for both non-UK tax resident individuals and non-UK tax resident corporates at the same rates applicable to the corresponding UK resident. For non-resident corporates, the charge will initially be to UK capital gains, moving to UK corporation tax from April 2020, when the wider changes to bring non-resident companies into UK corporation tax have effect.

The new rules are intended to apply both to direct disposals of UK property and indirect disposals of UK property by way of selling assets (eg shares in a company) which derive sufficient of their value from UK property.

The indirect disposal rules will apply where an entity (referred to as an "envelope") is "property rich". That is broadly where 75% or more of the entity's gross asset value (ie value before financing liabilities) at disposal is derived from UK immovable property (as well as direct property interests, this covers indirect interests, options and certain other arrangements). A charge will only be triggered where the person holds, or has held at some point within the five years prior to the disposal, a 25% or greater interest in the property rich entity. The 25% threshold will take account of connected persons and persons acting together, which will add to the challenge of monitoring the 25% threshold over the requisite five year period.

The charge on both direct and indirect disposals will only apply to gains which arise from April 2019 based on market value rebasing as at that point.

In addition to bringing gains arising to non-residents from commercial property within UK tax for the first time, the Government has announced that from April 2019 it will also extend the scope of capital gains tax on UK residential property so that it applies to direct disposals by widely held companies (removing the existing exclusion for disposals by such companies), as well as to indirect disposals. Where non-residents are currently within the charge to existing NRCGT an earlier rebasing point of April 2015, rather than April 2019, will continue to apply to direct disposals of the relevant asset.

The core aim of this new legislation is to align the tax treatment of UK property for non-UK tax residents with that for UK tax residents. In the case of UK corporates, the Government has also announced an intention to abolish the benefit of indexation allowance on gains, so gains falling within the new legislation will in all likelihood be taxed without taking into account the effect of inflation on a non-UK resident corporate's tax cost in the relevant asset.

Some of the UK's double tax treaties do not allow the UK to tax gains on indirect disposals of UK property. Whilst this may protect existing structures from the new UK tax charge on an indirect disposal, anti-avoidance provisions will be introduced with the intention of combatting arrangements implemented on or after 22 November 2017 with a main purpose of benefitting from such a treaty.

There are expected to be exemptions from the new charge where the property is owned by pension fund or other exempt investors, although these remain to be confirmed. In appropriate cases, these changes could increase interest in restructuring existing investments into a UK Real Estate Investment Trust (REIT), as well as structuring new investments via a REIT.

Amendments to the corporate interest restriction rules

Almost inevitably, barely a week after the corporate interest restriction (CIR) rules entered the statute book when Finance (No.2) Act 2017 received Royal Assent, the Government has announced changes to this new regime. These are advertised as "technical amendments to ensure the regime works as intended".

No fewer than eight changes have been announced, including four relevant to the public benefit infrastructure exemption (PBIE). In general the changes are taxpayer-friendly modifications and clarifications (including among other things (i) an alignment of the calculation of group EBITDA with the approach taken in relation to R&D Expenditure Credits and (ii) ensuring that having insignificant amounts of non-taxable income does not jeopardise the status of a qualifying infrastructure company for the purposes of the PBIE). However, the amendment likely to attract most interest is an anti-avoidance restriction to the PBIE to prevent avoidance of the limitation on relief for related-party interest through use of a conduit company, such that the creditor is not a "related party" – the natural conclusion being that HMRC is aware or suspects that some taxpayers were intending to try and work around the rules in this way.

Corporate tax and the digital economy: withholding tax on royalties

In a measure intended to level the playing field for "digital and bricks and mortar" businesses and raise £800 million by March 2023, royalties paid in connection with sales to UK customers and to a no/low tax jurisdiction will be brought within the scope of UK withholding tax, irrespective of whether the company paying the royalties has a presence in the UK. The measure will be introduced with effect from April 2019 and following a period of consultation on the detail. This is good news since there are some obvious questions still to be answered, such as how the UK will seek to enforce this withholding tax where neither the payer nor the recipient of the royalties has a presence in the UK. The Government is equally coy about how the measure will interact with double tax treaties, merely stating that "it will respect the international obligations in the UK's tax treaties in the application of the measure".

Clearly the Government is grappling with the “changing nature of our economies in the digital age”. This royalties withholding tax measure along with its position paper on corporate tax and the digital economy seem intended to engender international debate on, and prompt multilateral solutions to, the question of whether the current international tax framework is fit for purpose in taxing digital businesses in a way that is aligned with how and where their value is generated. The Government’s stated aim is that its paper and the debate it stimulates will “inform the interim report being presented by the OECD Task Force on the Digital Economy to the G20 next spring”. The question is an interesting one. Businesses globally are being fundamentally changed by digitalisation. Automation of business processes and increased connectivity and flexibility mean that digital businesses do not need to be physically located in the places where they do business. So how does the UK ensure it receives its fair share of tax revenues from such businesses? The answer is less clear. The Government wants reform but it seems we will have to wait a little longer to get clarity on what exactly the Government and international community propose to do.

Withholding tax exemption for the London Stock Exchange’s new International Securities Market MTF… eventually

Earlier this year, the London Stock Exchange launched its new International Securities Market (the ISM). This is a new UK multi-lateral trading facility (MTF) on which debt securities can be listed and traded on wholesale markets (ie between institutional investors) – and the first UK MTF which is regulated by the London Stock Exchange rather than the UK Listing Authority. This is part of the UK’s endeavours to catch up with other jurisdictions such as Ireland and Luxembourg whose MTFs have been very successful and already enjoy exemption from UK withholding tax under the Quoted Eurobond exemption (by counting as a “recognised stock exchange”). Until now, UK MTFs have been at a competitive disadvantage because they have had to be regulated by the (slower and more cumbersome) UK listing authority in order to access the Quoted Eurobond exemption, whereas their competitor overseas MTFs are regulated in a much nimbler and user-friendly way by their local stock exchanges. So UK MTFs have not previously taken off, and the lack of access to the Quoted Eurobond exemption has also (somewhat inevitably) caused the UK’s new ISM to have very little take-up so far – limited to overseas issuers able to pay interest free of withholding tax without relying on the Quoted Eurobond exemption, or secondary listings of securities which rely on their primary listing to access this exemption.

The Budget seeks to address this issue, albeit without the level of urgency that it deserves. Changes to the Quoted Eurobond exemption are proposed to correct the current anomaly that prevents exchange regulated UK MTFs from qualifying for the Quoted Eurobond exemption from withholding tax though permits exchange regulated MTFs outside the UK to qualify. From 01 April 2018 the Quoted Eurobond exemption will also apply to MTFs operated by any recognised stock exchange in the EEA. This includes (and indeed is wholly motivated by a desire to include) the ISM even though the Budget announcement is carefully crafted to avoid mentioning it by name! The 01 April 2018 timing is disappointingly slow, though in line with previous announcements, and effectively confirms the London Stock Exchange’s new ISM will have to wait until April before it can really get going. The Government’s intentional foot-dragging on this measure reflects politics more than policy – there is already considerable political sensitivity over the Quoted Eurobond exemption due to previous Labour Party manifesto promises to restrict its scope, so the Government is keen to tread gingerly. The London Stock Exchange was effectively required to launch the ISM without the access to the Quoted Eurobond exemption that it needs to make it commercially viable, because of Government perceptions that the political will to expand the Quoted Eurobond exemption would be easier to acquire in favour of a market that already exists (albeit mostly only theoretically). At least from April all will hopefully be well, and the ISM will finally be able to move forward in earnest with the WHT exemption it needs.

The changes also expand the scope of sharia compliant ‘sukuk’ bonds treated as debt instruments for UK tax purposes to include sukuk admitted to trading on an MTF.

R&D tax credits

In a Budget that was tinged with futurism and focussed on productivity and growth, it should come as no surprise that the Government is increasing tax relief for companies that carry out qualifying research and development and claim research and development expenditure credit (also known as "above the line" credit). By increasing the rate from 11% to 12% (with effect for expenditure incurred on or after 01 January 2018), the Government aims to incentivise companies to carry out research and development activities, by enabling them to claim more support for doing so.

Bank levy

The Budget announcement on Bank Levy changes largely reconfirms existing policy ie Bank Levy rates will continue to be scaled down annually until they reach 0.10%/0.05% for short term/long term liabilities from 2021, and from 2021 UK banking groups will be subject to Bank Levy only on UK balance sheet equity and liabilities to level the playing field with non-UK banking groups. The changes announced in this Budget are largely technical in nature but generally helpful ie dealing with the mechanics to implement the existing policy (which involves substantial change to the Bank Levy legislation), and building in some related simplifications and additional flexibilities into existing legislation. However, one key substantive point clarified in the Budget is that UK entities will be able to disregard liabilities attributable to overseas branches (from 2021), which will also be helpful in ensuring parity between UK and non-UK headquartered banking groups. Also, a new deduction from a group's equity and liabilities subject to Bank Levy will eventually be introduced of certain loss-absorbing instruments issued by overseas subsidiaries – though details are not expected for some time until appropriate regulatory standards are in place for this. Overall the Budget announcements on Bank Levy are taxpayer-friendly (eventually) and moving in the right direction, but only at a very leisurely pace.

Double tax relief and permanent establishment losses

With effect for accounting periods ended on or after Budget day, UK companies with foreign permanent establishments (PE) will be restricted in the amount of credit or deduction they will be given in the UK for foreign taxes suffered in circumstances where losses of the foreign PE have been set off against non-PE profits in the foreign jurisdiction in the same or earlier periods. This measure is aimed at ensuring that relief for foreign tax is only given in the UK to the extent that the profits are taxed twice (in the UK and foreign jurisdiction). The available double taxation relief will be limited by adjusting the amount of foreign tax suffered by the PE to take account of the reduction of foreign tax resulting from the PE's losses being relieved against non-PE profits in the foreign jurisdiction.

Corporation tax changes relating to intangible fixed assets

Two anti-avoidance measures were announced that will have effect for transactions made on or after Budget day.

The profit or loss for UK corporation tax purposes made on the disposal of intangible fixed assets is calculated by reference to the proceeds for accounting purposes, which for cash transactions is generally the amount received, subject to any market value adjustment. The first measure clarifies that for UK tax purposes the proceeds of realisation for accounting purposes should recognise the market value of any non-cash consideration paid, such as shares or other assets, so that such transactions are treated similarly to cash transactions.

The second measure is aimed at preventing unfair tax advantages when a licence of intangible fixed assets is granted to a related party. The mischief counteracted relates to where the granting of the licence is treated by the licensor as a disposal at “cost” or “net book value” but the licensee recognises the higher commercial value or “step up” in the value of the asset acquired, creating asymmetrical tax treatment of the transaction price. There was previously no market value adjustment to the disposal value recognised by the licensor because no transfer of an underlying asset occurs on the grant of the licence. The new measure will close this loophole by applying the market value adjustment rule to the grant of licences between related parties in the same way as it applies to transfers.

In addition, the Government announced that it will consult in 2018 on the tax treatment of intellectual property under the Intangible Fixed Asset regime. The consultation will consider whether there is an economic case for targeted changes to this regime, so that it better supports UK companies investing in intellectual property.

Powers to implement the Multilateral Instrument

The Government will enact changes to the existing powers for giving effect to double taxation arrangements in UK law. The amendments will allow the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI), which was signed by the UK on 07 June 2017, to be implemented and ensures that the UK can give full effect to the MLI provisions. The measure will take effect on the date of Royal Assent to Finance Bill 2017-18.

Changes to the hybrid and other tax mismatch regime

Finance Bill 2017-18 will amend UK anti-hybrid and other tax mismatch legislation, which aims to counteract tax mismatches in relation to entities, permanent establishments and financial instruments, to ensure that it operates as intended. This appears to be an admission by the Government that the anti-hybrid legislation is overly complex and was not fully thought through before being introduced. The legislation was introduced earlier, and in a form that goes further, than the OECD required in connection with the Action 2 of Base Erosion and Profit Shorting (BEPS).

The legislation counteracts hybrid tax mismatches that involve the double deduction of the same expense or deduction of an expense without the corresponding receipt being recognised for tax purposes. Some of the clarifications being introduced by Finance Bill 2017-18 include clarifying that withholding taxes are ignored for the purposes of the regime, disregarding taxes charged at the nil rate, clarifying the scope of the legislation in relation to multinational companies, and taking account of adjustments made for accounting purposes that fully or partially reverse hybrid mismatches in earlier periods that have already been counteracted under the legislation.

The amendments relating to taxes charged at a nil rate and multinational companies will take effect from 01 January 2018. Other changes will take retrospective effect from the date the anti-hybrid mismatch regime took effect (ie 01 January 2017).

Capital gain on depreciatory transactions within a group

The Government has confirmed its intention to amend the capital gains treatment of depreciatory transactions. This change targets an increasing tendency for companies to hold onto valueless subsidiaries for a specific period of time in order to avoid rules on capital loss adjustment.

Current rules require companies to adjust their calculations of losses on the shares that they have sold where certain intra-group “depreciatory transactions” have stripped value out of those shares prior to them being sold.

Section 176(1) TCGA 1992 currently requires companies to reduce the amount of loss they can calculate on a just and reasonable basis where assets have been transferred out of the company being sold within a period of six years ending with the disposal. Companies only have to adjust the loss figure if the transaction has materially reduced the value of the shares.

The latest changes seek to remove the six year limitation. This will mean that companies will have to consider the entire history of asset transfers when calculating a loss. They will also be required to adjust for any prior depreciatory transactions.

The Government believes that implementing this measure will mean that it will gain access to additional revenue where the six year time limit is yet to expire. The Government expects to gain an additional £10m in revenue each year between 2018 and 2023 as a result of this change.

Assets transferred to non-resident companies: reorganisations of share capital

Legislation is to be introduced to correct an existing anomaly which results in an unintended tax charge which occasionally arises in corporate reconstructions. This change comes into effect on and after 22 November 2017.

Current rules in TCGA 1992 allow for a postponing of any chargeable gains where a UK company transfers the trade and assets of its foreign branch in exchange for shares in that company. This postponement lasts until the overseas company then ultimately sells the assets. However, an unintended consequence is that where the shares that are exchanged qualify for the substantial shareholding exemption (SSE), the postponed tax charge may in fact become immediately payable.

The measure will insert new rules to ensure that corporate structures are able to benefit from SSE while ensuring that the ‘no disposal’ treatment for share exchanges continues to apply. Existing international corporate structures should not need to restructure as a result.

Tax advantaged schemes

No Budget would be complete without the announcement of various tweaks to the tax regimes applicable to the UK’s various tax-advantaged investment schemes: Venture Capital Trusts (VCTs), Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS) and the lesser-known Social Investment Tax Relief (SITR). Today’s instalment did not disappoint in this regard - measures announced were:

In relation to all of EIS, SEIS and VCTs:

- Introduction of a new qualifying condition for investments made on or after 06 April 2018 to exclude tax-motivated investments where the tax relief obtained provides most of the investor’s return and the original capital is preserved/subject to only limited risk – the new condition has two limbs and looks at (i) whether the company’s objectives look to growth and development over the long term; and (ii) whether there is a significant risk that there could be a loss of capital to the investor of an amount greater than the net return. Guidance published today suggests that the condition depends on taking a reasonable view as to whether an investment has been structured with the intention to provide a low-risk return, with all relevant factors being considered holistically.

In relation to EIS and VCTs:

- Increases in investment limits for investments in knowledge-intensive companies (KICs): the annual limit for individuals investing in KICs under EIS will increase to £2m for shares issued after 06 April 2018, provided that anything above £1m is invested in KICs; and the annual EIS and VCT limit on the amount of tax-advantaged investments an individual KIC may receive will be increased to £10m for shares issued on or after 06 April 2018 or new VCT qualifying investments made on or after the same date.
- In addition the "permitted maximum age" rules applicable to KICs will be relaxed to allow a KIC to measure the period from the date from which its annual turnover exceeded £200k, rather than the date of its first commercial sale.

In relation to EIS, VCTs and SITR:

- The EIS and VCT rules both use a concept of "relevant investments" in relation to the lifetime investment limit on the amount of EIS and VCT investments a company may receive. However, for historic reasons certain investments received before 2012 do not currently count towards this limit. The Government has today announced that the definition will be amended to ensure that all investments, including all risk finance investments made before 2012, count towards the lifetime limit. In addition the revised definition of relevant investment will extend to the new lifetime limit for the purposes of SITR. The change will apply in relation to qualifying investments made on or after 01 December 2017.

In relation to VCTs only:

- A retrospective limitation on the scope of an existing anti-abuse rule applying to share buy-backs by VCTs which was introduced to target "bed and breakfasting" where (i) a new subscription by an investor in one VCT takes place within six months of a buy-back from that investor of shares in another VCT and (ii) the relevant VCTs merge – for subscriptions made on or after 06 April 2014, income tax relief may not be withdrawn if the merger is more than two years after the last share subscription, or where one of the main purposes of the merger is not to obtain a tax advantage.
- Changes to the rules on VCT investments relating to: expiration of grandfathering provisions (06 April 2018), the level of new funds raised during an accounting period which must be invested in qualifying holdings within 12 months after the end of the accounting period (30% with effect from 06 April 2018), the permitted time period for reinvesting gains (doubled to 12 months) and the proportion of VCT funds which must be held in qualifying holdings (increased from 70% to 80%) (both from 06 April 2019) and requiring qualifying loans to be unsecured and returns on loan capital above 10% to represent no more than a commercial return (with effect from Royal Assent).

First year allowances for energy saving assets

The energy-saving first year allowances (FYA) scheme allows 100% of the cost of a business' investment in certain energy-saving technologies to be written off against the taxable income of the business in the period in which the investment is made. This is particularly beneficial for businesses that have fully used their annual investment allowance (AIA).

A statutory instrument will amend the list of technologies that qualify for the energy-saving scheme. It will add three new products, modify nine products and remove two items. The updates (with certain grandfathering provisions) will come into effect soon after the Autumn Budget 2017 for those businesses that have fully used their AIA.

Loss-making businesses are able to surrender the losses attributable to these FYAs in exchange for cash payments known as First Year Tax Credits (FYTC). The current rate of claim for FYTC is 19%. This was two-thirds of the prevailing 28% rate of corporation tax when the scheme started in 2008. The Finance Bill 2017-18 will amend the existing legislation to extend the scheme for five years until 31 March 2023 and set the rate of claim at two-thirds of the corporation tax rate. The changes to the scheme will come into effect on 01 April 2018.

Income Tax and NICs

- ### Income tax rates and allowances

No changes were announced to the income tax rates so that the basic rate of income tax for 2018/2019 will remain at 20%, the higher rate at 40% and the top (or additional) rate of income tax at 45%.

The personal allowance for those aged under 65 will rise to £11,850, and the higher rate threshold will rise to £46,500 in 2018/2019. The Government has committed itself to raising the income tax personal allowance to £12,500 and the higher rate threshold to £50,000, by the end of this Parliament. Once the personal allowance reaches £12,350, the Government has said that it will then rise in line with the Consumer Prices Index (CPI) as the higher rate threshold does, rather than in line with the National Minimum Wage. These changes will take effect by the end of this Parliament.

For a table of the main tax rates and allowances for 2018/2019, see HM Revenue & Customs tax rates and allowances for 2017/18 below.

National insurance contributions

No changes to national insurance contribution (NICs) rates were announced for 2018. Accordingly, the main rates of NICs from April 2017 will be 12% for Class 1 employee contributions, 13.8% for Class 1 employer contributions and 9% for Class 4 contributions. The additional rate that applies over the Upper Earnings Limit will be 2%.

The Government had previously announced its intention to abolish Class 2 NICs from April 2018 and reform Class 4 NICs. However, those changes have been delayed by one year to ensure there is sufficient time to work with Parliament and stakeholders on the detail of the reforms.

Reform of tax treatment of termination payments: removal of foreign service relief

In line with previous announcements, the Government has confirmed that it will legislate in Finance Bill 2017/18 to ensure that employees who are UK resident in the tax year their employment is terminated will not be eligible for foreign service relief on termination payments. This change forms part of a wider package of reforms to the termination payments rules. Under the current rules, certain termination payments made to employees who have worked all or part of their employment overseas may (in certain circumstances) benefit from full or partial exemption from income tax. Following the changes, employees whose employment terminates on or after 6 April 2018 and who are UK tax resident (as determined under the UK's existing "statutory residence test") in the tax year in which their employment terminates will no longer be eligible for foreign service relief. Special provisions are retained for seafarers. HMRC and HM Treasury have indicated that around 1,000 individuals claim foreign service relief each year therefore the change is expected to impact on comparatively few taxpayers.

Personal service companies in the private sector

The intermediaries legislation (known as the "IR35 rules") aims to ensure that individuals who effectively work as if they were employees are actually taxed as employees, even if they choose to provide their services to the end client via a company (eg a personal service company). In April 2017, the IR35 rules for engagements in the public sector were reformed to make the public sector end client bear the income tax and NICs risk. Accordingly, the public sector end client (rather than the individual's personal service company) now has to determine whether or not the individual would be an employee absent the personal service company, and if they would, the public sector end client must account for income tax and National Insurance contributions by way of deduction from payments it makes to the personal service company.

At present, where IR35 applies to private sector arrangements, the income tax and National Insurance contributions risk is effectively borne by the supplier (ie the personal service company) as the individual is treated as an employee of the supplier.

The Government perceives that public sector compliance with the intermediaries rules is improving as a result of the recent reforms. It has therefore decided to undertake a consultation on tackling non-compliance in the private sector, including whether to make equivalent reforms to the IR35 rules applicable to private sector arrangements.

If such changes are ultimately adopted, private sector taxpayers engaging large numbers of contractors may be likely to take a cautious approach to such engagements and choose to operate PAYE by default rather than wrangling with questions of employment status and bearing the associated financial risk. In the longer term, such a change (if implemented) could well lead to many fewer engagements through personal service companies.

Employment status consultation

The Government has announced that it will publish a consultation paper as part of its response to "Good Work: The Taylor Review of Modern Working Practices" (July 2017), which reviewed employment practices in the modern economy. It is seeking to explore the case and options for longer-term reform to make the employment status tests for both employment rights and tax clearer. The dividing line between "employed" and "self-employed" is often not clear-cut and there is no objective test. Clearly the distinction has significant implications for both the individual and the engager (whose interests may not always be entirely aligned). The Government recognises that this is an important and complex issue and intends to work with stakeholders to ensure that any potential changes are considered carefully.

Disguised remuneration

As (hopefully) the final chapter in the numerous changes on the disguised remuneration rules, the Government has been making over the last few years, further changes were announced today that:

- make clear when the rules applies to disguised remuneration schemes used by the owners of close companies
- clarify the scope of the interaction between the disguised remuneration rules and other tax charges
- introduce a duty to provide information of outstanding disguised remuneration loans to HMRC for users of disguised remuneration schemes, and
- ensure that the employee who benefitted from the disguised remuneration avoidance scheme is liable for the tax arising on the loan charge where their employer is based offshore.

It is extremely unsatisfactory that there have been so many changes to what is a horrifically complicated set of rules over such a short space of time. Hopefully this will be the last of such changes, and taxpayers will be able to catch their breath and work out where they now stand.

Partnership taxation: proposals to clarify tax treatment

Have we reached the end of the road on the much consulted upon package of reforms to partnership taxation? The package, ostensibly intended to simplify, clarify and make more fair the existing tax regime, would in its original form have created substantial administrative and other burdens for taxpayers operating or investing through partnerships and LLPs.

Following adverse feedback to its original consultation, the Government, clearly in listening mode, removed or modified a number of the more egregious proposals. In its further consultation released in Autumn 2017, the Government however continued to propose changes to the basis upon which profits were allocated for tax purposes, broadly to bring these into line with the allocation of accounting profits. This again drew adverse comment, given the range of commercial situations that could be affected by the proposed change.

It seems from the Autumn Budget 2017 documentation that the Government does not now intend to make this change. Instead, the Budget pack refers to four measures, dealing with nominee and bare trustee partners, chains of partnerships (looking up and down) and simplifying tax compliance for investment partnerships. As regards profit allocations, the suggestion is that the partnership tax return should be determinative, subject to the new dispute resolution mechanism where a partner wishes to challenge the basis of allocation of profits or losses. Assuming that is all that is now proposed, for which we will have to await publication of the draft legislation on 01 December, many taxpayers can breathe a sigh of relief….

Employee business expenses

Following the call for evidence published in March 2017, the Government has announced that it will make several changes to the taxation of employee expenses:

- Self-funded training: the Government will consult in 2018 on extending the scope of tax relief currently available to employees and the self-employed for work-related training costs.
- Subsistence benchmark scale rates: to reduce the burden on employers, from April 2019 they will no longer be required to check receipts when reimbursing employees for subsistence using benchmark scale rates. The existing concessionary accommodation and subsistence overseas scale rates will be placed on a statutory basis, to provide greater certainty for businesses.
- Guidance and claims process for employee expenses: HMRC will work with external stakeholders to improve the guidance on employee expenses, particularly on travel and subsistence and the process for claiming tax relief on non-reimbursed employment expenses.

Benefits in kind: electric vehicles

From April 2018, there will be no benefit in kind charge on electricity that employers provide to charge employees' electric vehicles.

Offshore trusts: anti-avoidance rules

In connection with the extensive changes to the non-domicile rules that took effect on 06 April 2017, the Government had previously announced that it would review and tighten the rules relating to taxation of income and gains from offshore trusts.

Autumn Budget 2017 announces new rules that will take effect from 06 April 2018, the effect of which will be to tax UK residents on certain payments and benefits received from an offshore trust. There will be a number of amendments to existing legislation – in particular to capture capital payments to close family members of a UK resident settlor, to change the matching rules to exclude capital payments to non-residents, to treat benefits provided to close family members of a UK settlor as received by the settlor and to target arrangements where capital payments or benefits received by individuals who are not taxed on such receipt but who make an onward gift to a UK resident. In the latter case, the onward gift will be treated as a receipt of a capital payment or benefit equal to the amount of the gift.

A number of these measures will already have been considered by affected taxpayers, given that they were originally scheduled for April 2017 and then deferred following feedback. However, it may be beneficial to consider again what actions can be taken prior to April 2018 to mitigate the impact of the changes, given their breadth.

Taxation of trusts

More generally, the Government has announced that it will publish a consultation in 2018 on how to make the taxation of trusts “simpler, fairer and more transparent”.

Rent-a-room relief

The Government will publish a call for evidence to establish how rent-a-room relief is used and ensure it is better targeted at longer-term lettings.

Stamp Duty and SDLT

- ### Rates

The main rates and thresholds for stamp duties and stamp duty land tax (SDLT) on both residential property and non-residential property remain unchanged for 2018/2019, however an additional relief was introduced for first time buyers of residential property (see below).

For a table of the main tax rates and allowances for 2018/2019, see HM Revenue & Customs tax rates and allowances for 2017/18 below.

SDLT: relief for first time buyers

In light of falling levels of home ownership, especially among millennials, the Government has introduced SDLT relief for first time buyers to make it easier for people to get on the property ladder. The relief applies to residential property transactions in England, Wales and Northern Ireland with an effective date (usually the date of completion) on or after 22 November 2017.

First time buyers paying £300,000 or less for a residential property will now pay no SDLT. First time buyers paying between £300,000 and £500,000 for a residential property will now pay SDLT at 5% on the portion of the purchase price in excess of £300,000 and no SDLT on the portion of the purchase price below £300,000. This equates to a reduction of £5,000 compared to the amount of SDLT such buyers would previously have paid. First time buyers paying more than £500,000 for a residential property will continue to pay SDLT at the full standard rates.

For these purposes, a first time buyer is an individual or individuals who have never owned an interest in a residential property in the UK or anywhere else in the world and who intend to occupy the property as their main residence.

SDLT: minor amendments to higher rates

The Government has also introduced relief from the higher rates of SDLT in certain circumstances. The higher rates of SDLT apply to people who purchase residential property when they already own at least one residential property and who are not replacing their main residence. The higher rates are 3% above the standard SDLT rates.

Relief from the higher rates of SDLT will now be granted in the following circumstances:

- where a divorce related court order prevents someone from disposing of their interest in a main residence
- where a spouse or civil partner buys property from another spouse or civil partner
- where a deputy buys property for a child subject to the Court of Protection, and
- where a purchaser adds to their interest in their current main residence.

The Government has also sought to counteract abuse of the relief from the higher rates of SDLT where a purchaser replaces their only or main residence. Relief on this ground will now only be available where a purchaser has disposed of the whole of their former main residence to someone who is not their spouse or civil partner.

1.5% SDRT on clearing systems

The Government has announced that it does not intend to re-introduce the 1.5% stamp duty and SDRT charge on the issue or transfer of shares into a clearing system or depositary receipt system following the UK's exit from the EU.

Financial institution bail-in exemption

The Government has announced that it will legislate to exempt certain transfers of shares and land from stamp taxes when resolving failing financial institutions. The exemption will be limited to transfers to public bodies and affected creditors. This will help simplify and strengthen the process of resolving a failing financial institution and help to ensure that the "no creditor worse off" principle is upheld.

Pensions and investments

- ### Save as you earn scheme

Employees on maternity and parental leave will be able to take up to a 12 month pause from saving into their Save As You Earn employee share scheme, increased from 6 months currently. The change will take effect from 06 April 2018.

ISAs

The ISA annual subscription limit for 2018-19 will remain unchanged at £20,000. The annual subscription limit for Junior ISAs and Child Trust Funds for 2018-19 will be uprated in line with CPI to £4,260.

Inheritance Tax

- ### Tax rates and allowances

The Government has previously announced that the inheritance tax (IHT) threshold will remain frozen at £325,000 until 2021/2022.

The rate remains at 40%. However, a reduced rate of IHT of 36% applies where a person leaves 10% or more of the net estate to charity.

For a table of the main tax rates and allowances for 2018/2019, see HM Revenue & Customs tax rates and allowances for 2017/18 below.

Value Added Tax and indirect taxes

- ### Thresholds

The standard rate of VAT remains at 20%. For a table of the main tax rates and allowances for 2018/2019, see HM Revenue & Customs tax rates and allowances for 2017/18 below.

The VAT registration and deregistration thresholds will remain at £85,000 and £83,000 respectively from April 2018. In particular, the Government has listened to the recommendations of the Office of Tax Simplification concerning the distortions created by the high registration threshold in the UK. The Government is carefully considering the future of the VAT threshold and will consult on its future design. In the meantime, the Government has decided to freeze the current registration threshold for two years from April 2018.

VAT and online market places

Under the current rules, an online marketplace can be liable for VAT on a joint and several basis where a non-UK business makes taxable supplies of goods through the online marketplace and fails to comply with its UK VAT obligations. Where HMRC is satisfied that the non-UK business is in a non-compliant position, it can issue a notice to the online marketplace. The notice will require the online marketplace to either take steps to secure that the non-compliant business ceases making taxable supplies via the online marketplace for the period specified in the notice, or be liable jointly and severally with the non-compliant business for the tax due on any such supplies that are made during that period.

The new measures will extend the current rules on joint and several liability so that they will apply where:

- a UK business makes taxable supplies of goods through the online marketplace and fails to comply with its UK VAT obligations, and
- a non-UK business which is not registered for VAT in the UK makes supplies of goods through the online marketplace and the online marketplace knew or should have known that the non-UK business was

required to register for VAT in the UK.

In addition the new rules will require online marketplaces to display valid UK VAT numbers for all sellers using their platform where a UK VAT number is provided. Online marketplaces will also be required to take steps to ensure that the VAT numbers displayed on their websites are valid. These latter requirements are intended to ensure that fictitious and/or hijacked VAT numbers are not used, and will be supported by a penalty regime.

These changes will have effect from Royal Assent to Finance Bill 2017-18.

The changes have been described as intended to level the playing field between suppliers of the same goods. The extension of the joint and several liability rules to supplies made by UK businesses is described as giving HMRC strengthened powers to address VAT evasion and non-compliance by UK sellers failing to account for VAT on supplies made via online marketplaces. The changes are also described in terms of encouraging online marketplaces to ensure that non-UK users of their platforms comply with the VAT registration rules.

From a customer perspective, the changes are intended to allow consumers to make informed choices when purchasing online 'enabling those consumers wishing to buy from a VAT registered business to do so with confidence.'

The measure is expected to generate additional revenue of around £10m in the year 2018/2019, increasing to £50m per annum by 2021/2022.

Operators of online marketplaces/platforms will be expected to develop functionality to enable their websites to display sellers' VAT numbers and to enhance procedures for verifying the validity of those VAT numbers and other seller information. Some training may be required to familiarise employees with the 'knew or should have known' aspect of the VAT registration measure.

The measures will only apply in relation to seller businesses that are not complying with their UK VAT obligations and should therefore have no impact on compliant sellers. As with the current rules, HMRC will only issue notices to online marketplaces where it is satisfied that a selling business is in a non-compliant position.

VAT fraud in labour provision in the construction sector

Following a consultation into options for tackling fraud in construction labour supply chains, the Government has announced that it will introduce a VAT domestic reverse charge to prevent VAT losses. This will shift responsibility for paying VAT along the supply chain to remove the opportunity for it to be stolen. Changes will have effect on and after 01 October 2019. The long lead-time reflects responses to the consultation and the Government's commitment to give businesses adequate time to prepare for the change. Nevertheless, the introduction of a reverse charge is likely to introduce significant complexity, given the various VAT liabilities that can attach to construction services.

VAT and vouchers

The Government has announced plans to consult on legislation which it intends to include in Finance Bill 2018-19 to ensure that when customers pay with vouchers, businesses account for the same amount of VAT as when other means of payment are used, aligning the UK with similar changes being made across the rest of the EU.

Import VAT

The Budget notes that businesses currently benefit from postponed accounting for VAT when importing goods from the EU. The Government recognises the importance of such arrangements to business due to the cash flow advantage they provide. In a move that seems designed to reassure businesses concerned at future post-Brexit arrangements, the Government has stressed that it will take this into account when considering potential changes following EU exit and will look at options to mitigate any cash flow impacts.

Landfill tax

The Government has announced that the scope of landfill tax will be extended to disposals of waste made without the required permit or licence. Offenders will face tough civil and criminal sanctions. Whether HMRC will be able to successfully levy a tax on illegal activity is of course a point of debate. In addition, the Government is providing £30m extra funding over the next four years to help the Environment Agency tackle waste crime and reduce the harm caused to the environment and to legitimate operators.

In response to a recent consultation, the Government has introduced a measure to further align the landfill tax legislation with environmental law to ensure that operators of quarries will not be required to register for landfill tax. The draft Statutory Instruments are to be published in December 2017 and laid after Royal Assent to Finance Bill 2017-18. Due to devolutionary changes the measure will only apply to sites in England and Northern Ireland from 01 April 2018.

The Government will set the Landfill Communities Fund for 2018-19 at £33.9m, in accordance with the announcement at Spring Budget 2017 that the cap on contributions by landfill operators would be set at 5.3%.

As announced in the Spring Budget, an increase in landfill tax rates to £88.95/tonne (lower rated £2.80/tonne) takes place on 01 April

Climate change levy (CCL)

In Budget 2016, the Government announced plans to rebalance the main CCL rates of gas and electricity. The Government has now announced that they will set CCL main rates for the years 2020-21 and 2021-22 at Budget 2018.
In addition, and to ensure better consistency between portable fuels for commercial premises not connected to the gas grid, the Government has also announced that it will freeze the CCL main rate for LPG at the 2019-20 level until April 2022. This is to help ensure a better consistency between portable fuel used for commercial premises that are not connected to the national gas grid.

In a Brexit related measure, the Government has announced that the definitions of the CCL exemptions in respect of mineralogical and metallurgical processes will be clarified in Finance Bill 2018-19. It is envisaged that the revised definitions will also ensure that the exemptions work better in landlord-tenant situations.

Aggregates levy

The Government announced that it will continue to freeze the rate of the aggregates levy for 2018/19 at £2/tonne but confirmed that in the longer term increases in the levy will be index-linked. In a surprise move, the Government has decided against introducing an exemption from the Aggregates Levy for aggregates extracted when laying underground utility pipes.

Reducing plastics waste

In a widely anticipated move in response to recent high-profile media campaigns and the success of the plastic bag charge, the Government will launch a call for evidence in 2018 seeking views on how the tax system or charges could reduce the amount of single-use plastics waste.

Tax Administration

- ### Offshore avoidance and evasion

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

In addition, following a consultation in spring 2018, assessment time limits for non-deliberate offshore tax non-compliance will be extended so that HMRC can always 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 ways to prevent UK traders or professionals from avoiding UK tax by fragmenting their UK income between unrelated entities.

Late submission penalties and late payment interest

The Government has announced that it intends to reform the penalty system for late or missing tax returns, adopting a new points-based approach. It will also consult on whether to simplify and harmonise penalties and interest due on late payments and repayments. This will ensure that the system is fair, simple and effective across different taxes. Final decisions on both measures will be taken following this consultation.

Tackling the hidden economy

The Government will consult further on how to make the provision of some public sector licences conditional on being properly registered for tax. This is intended to make it more difficult to trade in the hidden economy, helping to level the playing field for compliant businesses.

Tackling tax avoidance, evasion and non-compliance

In a barely disguised attempt to stress its “tough on tax avoidance and evasion” credentials, the Government has released a document, “Tackling tax avoidance, evasion and non-compliance”, setting out the measures it has taken since taking over from the Labour Government in 2010. Including the action taken in today’s Budget, the Government notes that it has introduced over 100 measures since 2010 to legislate against a minority of taxpayers who try to break the rules, enter into avoidance schemes or employ aggressive tax planning arrangements which clearly are intended to navigate around what Parliament intended. It is estimated these measures have collected and protected an additional £160bn of tax revenue since 2010.

In particular, the Government notes that it has taken action in four main areas.

Marketed tax avoidance - The use of schemes marketed to promote tax avoidance schemes have been discouraged through increased penalties and other consequences for those who devise, enable or use the schemes.

Offshore tax evasion and the use of offshore structures - The Government has led the global drive to tackle offshore tax evasion by promoting the sharing of information and creating tough new penalties to encourage compliance.

Cross boarder tax arrangements of multinational businesses - In addition to the Diverted Profits Tax legislation introduced the 2015, the Government has today announced that it will expand the UK's withholding tax rights on royalties to prevent multinational businesses, primarily in the digital sector, recognising profits which relate to UK sales in companies in low-tax countries.

Other measures to tackle avoidance, evasion and non-compliance - The Government has acted to tackle onshore evasion by extending HMRC's data gathering powers to organisations that process credit and debit card transactions, by introducing a registration scheme for alcohol wholesalers and addressed online fraud by overseas traders by making the online marketplace jointly liable for any VAT unpaid by the trader.

The document stresses that the Government will continue to invest in staff and new technology to tackle avoidance, evasion and non-compliance. In particular, the Government will invest a further £155m in additional resources and new technology for HMRC. This investment is forecast to help bring in £2.3bn of additional tax revenues by allowing HMRC to:

- transform their approach to tackling the hidden economy through new technology
- further tackle those who are engaging in marketed tax avoidance schemes
- enhance efforts to tackle the enablers of tax fraud and hold intermediaries accountable for the services they provide using the Corporate Criminal Offence
- increase their ability to tackle non-compliance among mid-size businesses and wealthy individuals, and
- recover greater amounts of tax debt including through a new taskforce to specifically tackle tax debts more than 9 months old.

HM Revenue & Customs tax rates and allowances for 2017/18

Income tax allowance	**2017/18 (£)**	**2018/19 (£)**
Personal allowance	11,500	11,850
Income limit for personal allowance[1]	100,000	100,000
Transferrable marriage allowance[2]	1,150	1,185
Blind person's allowance	2,320	2,390

[1] The individual's personal allowance is reduced where their income is above this limit. The allowance is reduced by £1 for every £2 above the limit.

[2] The marriage allowance cannot be transferred to a recipient spouse liable to income tax at the higher or additional rate.

Other allowances/thresholds	2017/18 (£)	2018/19 (£)
Capital gains tax annual exempt amount for individuals etc	11,300	11,700
Inheritance tax threshold	325,000	325,000

Income tax bands	2017/18 (£)	2018/19 (£)
Starting savings rate 0%[3]	5,000	5,000
Basic rate 20%	0 - 33,500	0 - 34,500
Higher rate 40%	33,501 - 150,000	34,501 - 150,000
Additional rate 45%	Over 150,000	Over £150,000

[3] If non-savings taxable income exceeds the starting rate limit the starting savings rate will not apply to savings income.

Corporation tax profits	2017/18 (£)	Corporation tax profits	2018/19(£)
Main rate 19%	Whole of profits	Main rate	Whole of profits

Stamp duty land tax				
Rate	Residential [4, 5]		Non-residential or mixed-use property	
	2017/18** (£)	2018/19(£)	2017/18 (£)	2018/19 (£)
Total value of consideration				
0%	0 - 125,000	0 - 125,000	0 - 150,000	0 - 150,000
2%	125,001 - 250,000	125,001 - 250,000	150,001 - 250,000	150,001 - 250,000
5%	250,001 - 925,000	250,001 - 925,000	Over 250,000	Over 250,000
10%	925,001 - 1,500,000	925,001 - 1,500,000	N/A	N/A
12%	Over 1,500,000	Over 1,500,000	N/A	N/A
15%*	Over 500,000	Over 500,000	N/A	N/A

[4] Stamp duty land tax will be charged at a rate of 3% above the current stamp duty land tax residential rates from 01 April 2016 on purchases by individuals of additional residential properties (such as second homes and buy-to-let properties), and by non-natural persons (companies, partnerships including companies or collective investment schemes) of a residential property, even if they do not own another residential property.

[5] For purchases by first-time buyers of property worth £500,000 or less from 22 November 2017, the stamp duty land tax rate for a property valued £0 – 300,000 is 0% and for a property valued £300,001 – 500,000 is 0% on the consideration up to £300,000 and 5% on the remainder.

[6] The 15% rate applies to certain acquisitions of residential property by “non-natural persons” (a company, a partnership including a company or a collective investment scheme).

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