

# Tax Angle



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## DARLING “DEAR”

That is what 3.6 million higher rate taxpayers will be dubbing the Chancellor as a new nickname because the Budget endeavours to squeeze yet more tax out of high earners. A new top rate of 50% and restrictions on tax relief on pension contributions will endeavour to raise tax revenues from the few. In reality it will drive abroad “higher earners” and discourage people from coming to the UK.

“Those of us left resident in the UK will find our tax take increasing one way or another”.

I want to start my piece with a quote from my 2007 Budget Issue “If you were a foreign tourist in the UK today you would think that all was well with the UK economy and that taxes were falling as a percentage of GDP, that is if you believed what Gordon Brown said today”. Two years and one month later, I leave you to draw your own conclusions about my comments.

George Orwell in his book 1984 created a character named Goldstein, who was used by the Government, as a Public Enemy No.1, in 2009 we have Fred “the Shred” Goodwin. As we all know he is entirely to blame for all the economic woes of the UK economy and Regulators or Government were blameless. His two main vices were that he took an enormous salary/bonus and had a huge pension payout. Therefore, in order to perpetuate the myth, the two main victims of tax increases are those people earning more than £150,000 and top rate taxpayers prudently putting money aside into their pension schemes.

The tax raising measures will not raise taxes, watch professional footballers emigrate to play in Spain where a top rate of income tax of 25% applies; watch financial institutions and global corporates place their top executives in countries in Europe with lower tax levels. Watch the world’s wealthy gather in Switzerland or Monaco, rather than gravitating towards London. These people buy goods, buy services, employ people, own property, all these activities generate tax revenues. If they are not in London or indeed anywhere in the UK, then they will not be helping the UK

tax collection, whether it be VAT, PAYE, National Insurance, Betting Duty, or any other form of taxation.

Those of us left resident in the UK will find our tax take increasing one way or another. Last month J D Weatherspoon, the pub operator, announced its half-year results. £17.3m of post tax profits was hardly spectacular but during that 6 month period it paid the Government £79m in VAT, £53m in Excise Duty, £30m in PAYE and National Insurance, £18m in property taxes and finally £10m in Corporation Tax. A grand total of £190m in taxation, and you wonder why pubs are closing around the Country!

The Government Budget deficit has reached an historic post World War 2 high and it will take years, if not decades, for the Country to recover from a one time Chancellor and now Prime Minister who has spent years burying his head in the sand and ignoring the obvious.

Over the next few pages my colleagues comment on some of the specific measures contained in the Budget. I am sure there are things of interest to all our readers, and if you need more information then either contact the writer of the article or your usual BTG contact.

*Andrew Shaw*

# Living Accommodation

Legislation will be introduced with effect from 22 April 2009 to prevent employees from artificially reducing the tax charge on the benefit of living accommodation provided by their employer, by entering into an arrangement to pay a lease premium up front followed by smaller rental payments.

The legislation will ensure that where a lease premium is paid on a lease of 10 years or less, the premium will be treated as actual rent paid.

The taxable amount for the year will be the rent paid plus the

lease premium spread over the duration of the lease and will apply to leases entered into or extended on or after 22 April 2009.

This will be of particular interest to employers such as football and rugby clubs where the provision of accommodation is a standard feature of players' contracts.

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# Pension Relief

From 6 April 2011, if you have income over £150,000 per annum, the Government intends to restrict to basic rate, the tax relief on pension contributions. It has brought in provisions from today to limit relief on any "pre-emptive payments" which take your total premiums paid to over £20,000 per annum and which are not in line with any normal regular pattern of premiums paid.

You could therefore top up your premiums this year to £20,000 and still obtain higher rate tax relief. For those planning to utilise pension contributions to reduce their taxable income in the future to below £150,000, you have missed the boat!

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# Company Car Tax

The tax charge on the provision of a company car is calculated as a percentage of the list price of the vehicle subject to a price cap of £80,000. The percentage is derived from the carbon emission figures for the vehicle (the lower the CO2 emission, the lower the tax charge) less a number of discounts where the car runs on alternative fuels such as bio-fuels, bio-ethanol and electric/hybrids, collectively known as low emission cars.

From 6 April 2011, the rules will be simplified to remove the various discounts and calculate the charge simply on the CO2 emission figure. At the same time the £80,000 price cap will be abolished, leading to higher taxable benefits for expensive cars.

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# Investing in an ISA - Good News!

The current overall annual subscription of £7,200 is being raised to £10,200, of which up to £5,100 can be in cash.

For people aged 50 and over, this comes into effect during the 2009/10 tax year (from 6 October 2009) and, for everyone else, from 6 April 2010.

If you are over 50 and invest in an ISA prior to 6 October, an additional contribution can be made during the period 6 October 2009 to 5 April 2010 to take advantage of the new limit.

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# Disappointment on Corporate Tax

The Chancellor has done little for the mass of taxpaying corporates, maintaining rates and allowances, only introducing temporary first year allowances by way of incentivising the sector into greater investment activity. Certain helpful measures, but outweighed in terms of tax by a wide range of anti-avoidance measures (covered elsewhere), are also introduced.

As expected, the Chancellor has maintained the principal rate of corporation tax at 28%, for profits above £1.5m, and the small companies' rate at 21% for profits up to £300,000.

Companies making losses may benefit from an extension of the periods to which trading losses may be carried back to three years but only for losses up to November 2010 and for a maximum of £50,000 for each loss period. And new rules are introduced regarding the exchange rates at which losses denominated in a foreign currency are carried between periods.

A new temporary 40% first year allowance on general plant and machinery is introduced for expenditure between April 2009 and March 2010. As well as on the first £50,000 of general plant and machinery expenditure (introduced last

year), 100% allowances are available on certain environmentally beneficial technologies and these have been extended to include uninterrupted power supplies, air to water heat pumps and close control air conditioning systems.

Other generally helpful measures apply to corporate structures: connected companies may be able to take advantage of changes in the rules on the release of debts and intergroup interest, companies in the same group may benefit from facilitating the use of capital losses where assets have become of negligible value and companies may be able to raise money by issuing certain types of preference shares to external investors, without prejudicing their status as members of a group.

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# Reform of Taxation of Foreign Profits

HMRC has been consulting for almost 2 years on a package of reforms affecting the taxation of foreign profits for UK groups. The proposals have been driven largely by a recognition that the current rules, whereby dividends received by one UK company from another UK company are exempt from tax while dividends received from non UK companies are taxable but with credit being given for underlying tax, are almost certainly in breach of EU law. However, as well as addressing this, HMRC also took the opportunity to package it up with other issues. The proposals, therefore, cover the following:

- A dividend taxation regime covering all dividends, irrespective of their source; there will be several classes of exemption and overwhelmingly the majority of dividends will be exempt from tax
- A provision limiting UK financing expense, principally interest, to the net consolidated worldwide interest expense
- Reform of the Controlled Foreign Companies (CFC) rules
- Abolition of the Treasury consent rules which apply to certain transactions involving non UK subsidiaries of UK groups

From the outset, HMRC has insisted that the first two proposals are linked in that a dividend exemption regime would not be introduced without the worldwide debt cap. Their argument was that this was required in order that the measures were, overall, fiscally neutral. This is somewhat disingenuous since

very little tax is currently collected on non UK dividends because groups will usually only repatriate profits from overseas where there is sufficient underlying tax to cover the UK tax liability. However, the worldwide debt cap would be a significant revenue raiser.

This has been frustrating in that, whilst everyone seems to be bought into a dividend exemption, the worldwide debt cap has been very problematical. The original draft legislation was horrendously complex and would create a huge additional compliance burden. Revised draft legislation was issued a couple of weeks ago, which addressed some of the issues but still left many unanswered questions. Much of the complexity seems to be caused by the need to make sure that the rules are EU compliant.

The repeal of the Treasury consent rules is to be welcomed. These rules are a hangover from the days of exchange control and their application was not always logical or sensible. Interestingly, this is the only provision in the Taxes Acts that carries criminal sanctions. In theory you could go to jail for 2 years - though no-one has ever been prosecuted. Its repeal is long overdue.

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## The Taxman goes Overseas

Once again we hear from the Treasury a sentence commenting on avoidance and evasion in the same breath. In an overall strategy focused on protecting the tax system from "abuse", today the Chancellor has announced a series of measures aimed at getting "taxpayers" to pay what is deemed by HMRC to be their fair share of tax. However, if you choose not to pay, then you will be named and shamed.

Two years on from the first Offshore Disclosure Facility (ODF), the Chancellor has today repackaged it as the New Disclosure Opportunity (NDO). Yet again the NDO will not be an "amnesty" but another opportunity for individuals and companies to reach a financial settlement of all taxes, interest and a reduced penalty. The details are yet to be published but it is expected the NDO will run from Autumn 2009 for a limited period to March 2010. HMRC will again be looking to underpin the NDO by obtaining further information from offshore tax havens following on from the G20 summit.

Legislation is to be introduced this year, possibly similar to that already found in the Republic of Ireland, in which HMRC has the ability to publish the names of all taxpayers who incur a penalty of over £25,000 as a result of a deliberate

understatement. Such potential embarrassment can only be avoided by making a full disclosure within the agreed time limit.

In addition to the continued pressure being exerted on tax defaulters around the world, those taxpayers that deliberately understate their tax liabilities to a far lesser extent are not exempt. If they incur a penalty of at least £5,000, then the errant taxpayer will be required to provide additional information to HMRC for up to 5 years afterwards to enable HMRC to ensure future compliance.

One is left to wonder though as to how HMRC are going to achieve the aspirations of their paymasters in the light of 25,000 staff reductions and fewer Inspectors left to undertake this work.

It is also interesting to note that by 31 December 2009, HMRC plans to put in place a new Tax Charter setting out the standards of behaviour and values to which HMRC will aspire. It is stated this will affect all taxpayers - we can only wait with interest to read its contents!

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## Changes to Venture Capital Schemes

The Chancellor announced that legislation will be introduced in the Finance Bill to make the following improvements to Enterprise Investment Schemes ("EIS"), Corporate Venturing Schemes ("CVS") and Venture Capital Trusts ("VCT") for investments made on or after 22 April 2009.

### EIS

- The time limit whereby all the money raised by the issue of the shares is required to be employed in the company will be extended to 2 years
- There will be no time limit on the employment of money raised by the issue of non EIS shares

- Income tax relief on subscriptions of up to £500,000 will be able to be claimed in full in the tax year prior to the year of subscription
- There will be no Capital Gains Tax charge in the event of a disposal of EIS shares that form part of a share for share exchange

### CVS & VCT

The time limit whereby all the money raised by the issue of the shares is required to be employed in the company has been extended to 2 years.

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# The Remittance Basis

Finance Act 2008 introduced significant changes to the remittance basis regime which became effective from 6 April 2008 for individuals who are resident but not domiciled, or not ordinarily resident, in the UK for tax purposes. Finance Bill 2009 will introduce further "minor" changes, the majority having effect from 6 April 2008.

Legislation is to be amended putting beyond any doubt that a claim for the remittance basis is not required where an individual's unremitted foreign income and gains are less than £2,000 in any tax year. Such individuals are assumed to have used the remittance basis unless notifying HMRC that they wish to be taxed under the arising basis. Individuals with UK income or gains of £100 or less taxed in the UK, will also not be required to make a claim for the remittances basis provided no remittances are made to the UK in that tax year.

Individuals employed in the UK are currently required to file a Self Assessment tax return if they also receive income from overseas employment in the same tax year. This is the case even where little or no UK tax is payable due to the overseas employment income being taxed in the other country. The obligation to file a tax return is to be removed where an individual's overseas employment income is less than £10,000 and overseas bank interest is less than £100 in any tax year, all of which is subject to foreign tax.

Exemptions currently exist allowing individuals using the

remittance basis to bring property into the UK without triggering a UK tax liability where the property has been purchased from relevant foreign income (i.e. income from overseas investments and savings). The exemptions are to be extended to include property purchased out of foreign employment income and foreign chargeable gains.

Transitional provisions were introduced by Finance Bill 2008 which prevent certain income arising before 6 April 2008 from being taxed as a remittance if brought to the UK on or after that date. These provisions are to be extended to ensure that they operate as intended in their application to individuals who are taxed under the settlements legislation. Legislation will also be introduced to clarify the interaction between the remittance basis regime and the tax rules which apply to settlements which are settlor-interested. The second of these changes comes into effect from 22 April 2009.

A number of anti-avoidance provisions have also been announced to remove the scope for abuse of the remittance basis rules.

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## Income Tax

From 6 April 2010, if you have taxable income over £100,000, the basic personal tax allowance will be gradually reduced to Nil and there will be a 50% tax rate for income over £150,000.

Owner managed companies will want to consider paying dividends to shareholders before 6 April 2010. Any dividends paid on or after 6 April 2010 which would otherwise be taxable at 50% will now be taxable at 42.5%. These changes mean

savings could be achieved by maximising your income or delaying expenditure in this current tax year.

The rate at which Trusts will pay tax will also increase to 50% (42.5% for dividends) from that date.

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## VAT Update

As widely publicised, the standard rate of VAT will return to 17.5% from 1 January 2010. Anti-forestalling measures will be introduced to prevent taxpayers who cannot recover VAT in full from entering into arrangements to purchase goods and services at 15% VAT, when they are to be supplied or delivered after 1 January 2010.

From 1 May 2009, where exempt supplies have been made from a building, a new condition allowing for automatic permission to opt to tax is to be introduced thereby avoiding the need to seek specific prior permission from HMRC.

The VAT registration and deregistration thresholds have increased to £68,000 and £66,000 respectively, from 1 May 2009. Children's car seat bases will be taxed at the 5% VAT rate from 1 July 2009. And finally certain bingo, and other games of chance, participation fees will have VAT removed from 27 April 2009.

From 1 January 2010, cross-border services in the EU will be

taxed where the business customer is established and not, as currently, where the supplier is established. The customer will be required to account for VAT under a reverse charge in their own EU member state. However, there will be a number of significant exceptions to the basic rule.

There are also changes to the tax point of reverse charges, the introduction of EC sales lists for services and a new electronic 8th Directive refund procedure. The changes are likely to mean revisions to accounting systems and procedures with only 8 months to address them.

We are publishing more details on the changes in our VAT Bulletin Budget Special which will be sent out shortly.

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