FINANCE ACT 2012

Tolley®CPD

Tolley Seminars Online

September 2012

Disclaimer

Tolley CPD takes every care when preparing this material. However, no responsibility can be accepted for any losses arising to any person acting or refraining from acting as a result of the material contained in these notes.

All rights reserved. No part of these notes may be reproduced or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of Tolley CPD.

Tolley®

Tax intelligence from LexisNexis®

CONTENTS

FINANCE ACT 2012

1 Corporation and business tax (Lecture B731 – 12.05 minutes).. 3

1.1 Corporation tax rates ... 3
1.2 Corporation tax on patent income (Patent Box) (Lecture B732 – 12.44 minutes) 3
1.3 R & D changes... 6
1.4 Group relief – meaning of normal commercial loan ... 7
1.5 Company distributions ... 7
1.6 Capital allowances : fixtures... 7
1.7 Capital allowances in enterprise zones ... 7
1.8 Capital allowances : feed in tariff... 7
1.9 Site restoration payments ... 7
1.10 Change of accounting policy ... 7
1.11 Business premises renovation allowance... 8
1.12 Controlled foreign companies (CFCs) (Lecture B733 – 7.05 minutes) 8
1.13 Corporate anti avoidance / complex areas ... 10
1.14 Looking further ahead ... 10

2 Personal Tax ... 11

2.1 Personal allowances and tax rates (Lecture P731 – 17.34 minutes). 11
2.2 National Insurance contributions 2012/13 ... 11
2.3 High income child benefit charge (Lecture P732 – 11.18 minutes) 12
2.4 Champions League final – tax exemption ... 14
2.5 Tax on company cars (Lecture P734 – 12.20 minutes) 14
2.6 Resettlement payments for MP's ... 15
2.7 Armed forces income exemption... 15
2.8 CGT annual exempt amount ... 15
2.9 Capital gains tax : foreign currency bank accounts ... 15
2.10 Seed EIS (Lecture P734 – 12.20 minutes) 15
2.11 Tax supported investment schemes... 17
2.12 Enterprise management incentive scheme ... 17
2.13 Taxation of non domiciled individuals (Lecture P733 – 11.50 minutes). 17
2.14 Gifts to the nation... 20
2.15 Anti avoidance – post cessation loss relief... 20
2.16 Anti avoidance – property losses ... 20
2.17 Anti avoidance – chargeable event gains... 20

3 Charities and philanthropy... 22

3.1 Gift aid and other tax reclaims ... 22
3.2 Giving through the self assessment return ... 22
3.3 Definition of community amateur sports club... 22

Tolley® Tax intelligence from LexisNexis®

4. VAT (Lecture B735 – 20.30 minutes). **23**
4.1 Changes to the categorisation of supplies 23
4.2 Cost sharing exemption 23
4.3 Low value consignment relief 24
4.4 Caravans 24
4.5 VAT registration threshold for non-established traders 24
4.6 Future changes 25

5. Inheritance tax 26
5.1 Indexation of threshold 26
5.2 Gifts to charities (Lecture P735 – 7.51 minutes) 26

6. Stamp duty land tax 28
6.1 New rate 28
6.2 Sub sale relief 28

7. Tax administration and other issues 29
7.1 Working with Tax Agents : dishonest conduct (Lecture B734 – 8.38 minutes) 29
7.2 Penalties 31
7.3 Incapacity and tax 31

1 Corporation and business tax (Lecture B731 – 12.05 minutes)

1.1 Corporation tax rates

The main rate of corporation tax has been reduced by an additional 1%, over and above the reduction due from April 2012. The rates now announced and legislated (Sections 5 to 7) for are therefore :

	FY 2011	FY 2012	FY 2013
Main rate	26%	24%	23%
Marginal rate (calculated)	27.5%	25%	23.75%
Small company rate	20%	20%	20%

Sections 5 to 7 set the marginal fractions, but the calculated rate will apply in effect to profits above the lower profit limit of £300,000 up to the upper limit of £1.5 million.

1.2 Corporation tax on patent income (The Patent Box) (Lecture B732 – 12.44 minutes)

Section 19 introduces Schedule 2 which sets out the new Patent Box regime – introduced as new Part 8A CTA 2010.

1.2.1 Summary

The legislation allows a company to elect that the relevant IP profits of a trade of the company for an accounting period for which it is a qualifying company are chargeable at a lower rate of corporation tax.

The lower rate is in effect 10%, but the calculation is legislated as a deduction in computing the profits of the trade in the corporation tax computation. The relevant deduction is :

$$Relevant\ IP\ profits\ x \frac{Main\ rate\ CT - 10\%}{Main\ rate\ CT}$$

Significant additional detail then sets out the definitions, anti avoidance and supplementary provisions.

1.2.2 Qualifying company

A company is a qualifying company for an accounting period if it meets either conditions A or B, and if a member of a group, also condition C. *(New section 357B CTA 2010)*

A – At any time in the accounting period the company holds any qualifying IP rights, or an exclusive licence in respect of any qualifying IP rights.

B – the company has held a qualifying IP right or exclusive licence in respect of such a right, and the company has received income which is taxable in the accounting period but which relates to an event which occurred in relation to the right or licence when the company was a qualifying company and had made a patent box election in respect of it.

C – the company meets the “active ownership” condition for the accounting period. This condition is set out in new Section 357BE, and requires that all or almost all of the qualifying IP rights held by the company in the period are either those in which the company performs a significant amount of management activity in relation to those rights, or the company meets the development condition in respect of the rights. The development condition is dealt with separately under the definition of qualifying IP rights, but for this purpose, the company concerned carried out development in relation to the right.

1.2.3 Qualifying IP rights

The definition of qualifying IP rights covers both the existence of a patent or similar arrangement in relation to the right, and the requirement that the company claiming patent box treatment was involved in the development of the right – the development condition.

Rights to which the legislation applies

- A patent granted under the patents Act 1977
- A patent granted under the European Patent Convention
- A right of a specified description which corresponds to a right within either of the above, and granted under the law of a specified EEA state
- A supplementary protection certificate
- Plant breeders rights granted in accordance with Part 1 of the Plant Varieties Act 1997
- Any Community plant variety rights granted under Council Regulation (EC) No 2100/94

There are some ancillary rights covered by new section 357BB which those dealing with cases might consider reviewing; they relate to patent applications affecting national security and EU

Tolley® Tax intelligence from LexisNexis®

marketing authorisation with marketing protection or data protection.

1.2.4 The development condition

In order for the rights to qualify for the new treatment, the company must meet the development condition in relation to them. This condition is expressed in new section 357BC, which in turn refers to section 357BD where qualifying development is defined.

The company must meet any one of four conditions, as follows:

A – the company has at any time carried out qualifying development in relation to the right, and has not ceased to be or become a controlled member of a group since that time. This covers the simplest situations, and in particular single development companies.

B – the company has at any time carried out qualifying development in relation to the right and has become or ceased to be a controlled member of a group since that time. However, the company has for a period of 12 months beginning on the day when control changed, carried on activities of the same description as those that constituted the qualifying development and either remains a member of that group or does not join another group.

C – the company is a member of a group and another group member has carried out qualifying development in relation to the right at a time when it was a member of the same group.

D – the company is a member of a group in which another member company carried on qualifying development activity, but which has joined the group. In this case, the developer company or its successor to the trade must have carried on activities of the same description as those that constituted the qualifying development for a period of 12 months (taken together if a successor company) from the date that the company joined the group.

Qualifying development

A company carries on qualifying development in relation to a right if it creates or significantly contributes to the creation of the invention, or it performs a significant amount of activity for the purposes of developing the invention or any item or process incorporating the invention, including ways in which the invention might be used or applied.

1.2.5 Exclusive licence

An important part of the legislation is that it applies not only to patent holders, but also to those who hold an exclusive licence in respect of such a right. The practical approach to this would be to establish whether a qualifying IP right exists (see above), and then to follow the definition of an exclusive licence, given by new section 357BA.

An exclusive licence is defined in relation to the right – termed the principal right. It is a licence granted by a person who holds either the principal right, or an exclusive licence in respect of the principal right, which confers on the holder (or those authorised by the holder) one or more rights conferred to the exclusion of all other persons in one or more countries or territories, and the right to enforce that exclusivity by bringing proceedings and being awarded damages.

1.2.6 Relevant IP profits

The relevant IP profits of the trade are calculated in one of two ways. The approach of Chapter 3 of Part 8A is to apportion the total profits of the trade by reference to the proportion of the gross income represented by relevant IP income, making some statutory adjustments along the way. Chapter 4 presents an alternative approach, which is called “Streaming”. The default position is that given by Chapter 3 under section 357C, with an election possible to amend to the streaming method – known as a streaming election which applies for all subsequent accounting periods. However, there are also conditions which make streaming the mandatory method. This is an area of considerable detail, so the methods are covered in outline below.

1.2.7 Standard method of calculation

Step 1

Calculate the total gross income of the company for the accounting period. Definition in section 357CA. Essentially this is revenues, compensation, proceeds from intangible fixed assets and sale of patent rights, but **excludes** finance income (defined in s 357CB).

Step 2

Calculate X%. This is the proportion of relevant IP income (as defined) out of the total gross income calculated at Step 1. Relevant IP income is defined

Tolley® Tax intelligence from LexisNexis®

in sections 357CC and CD, and includes sales revenues from goods incorporating the relevant IP (but not packaging unless it performs an essential function), licence fees and royalties, proceeds of disposals of rights, or granting exclusive licences, damages and compensation for infringement of rights (but only where the event giving rise to the damages happened when the company was a qualifying company and had made a patent box election). Excluded income for this purpose is ring fenced oil extraction income and income relating to non exclusive licences.

There is also the facility to impute IP income, where income is received which does not meet the categories of relevant income but never the less relates to the IP rights (and is not excluded income). This is termed "IP – derived income". A percentage of this income can be treated as notional royalty income, by election. The "appropriate percentage" must be determined at the start of the accounting period in accordance with the OECD Model Tax Convention and transfer pricing guidelines.

Step 3

Apply X% to the profits or loss from the trade, after making certain adjustments. The adjustments required are given by section 357CG. These require the add back or deduction of debits and credits in relation to loan relationships and derivative contracts (stripping out these from the profits to be used for patent box purposes), and the exclusion of R & D credits in the profit computation. There is also a requirement to smooth R & D expenditure, so that a "shortfall" – that is a year with low R & D spend – is adjusted against 75% of the average spend over a four year period. The detail of this is quite complex at first – see section 357CH if you are needing the detail for an actual computation.

Step 4

The amount arrived at in step 3 is deducted from the "routine return figure". If the result is negative or zero then go to step 7.

The routine return figure is X% x 0.1 of the "routine deductions" made by the company in calculating the profits of the trade. These are specified in section 357CJ and include capital allowances (but not in relation to R & D or patents), premises and personnel costs (but not R & D expenses), specified professional services and specified overheads such as fuel, power, phone and computing costs. In all cases, costs relating to R & D (and any related uplift) are excluded as are loan relationship and derivative contract debits relating to the trade. There are some additional considerations for costs borne by other group members.

If the result of this step is positive, then continue at step 5.

The result of Step 4 is known as the qualifying residual profit.

Step 5

If the company has elected for small claims treatment, compute the small claims amount; otherwise proceed to step 6. Small claims treatment is possible if either the aggregate amounts of qualifying residual profit of each trade of the company does not exceed £1 million in the accounting period (12 month assumption), or the aggregate amount of qualifying residual profit of each trade does not exceed the relevant maximum and the company has not claimed a deduction for relevant marketing assets (see step 6) in any of the last four years (section 357 CL). The relevant maximum is £3 million where there are no associated companies (suitably adjusted where there are, or for periods other than 12 months). The small claims amount is 75% of the qualifying residual profit of the trade(s) provided this does not exceed the small claims amount of £1 million. This limit is split across the number of trades carried on by the company, and any negative qualifying residual profits are ignored rather than deducted. The limit of £1 million is adjusted for associated companies and periods other than 12 months. (section 357 CM)

If no election has been made then move to Step 6.

Step 6

Deduct from the qualifying residual profit the marketing assets return figure. This is defined in section 357CN, and is the difference between the Notional marketing Royalty and the Actual marketing Royalty as defined. Sections 357CO and 357CP refer.

Step 7

This provides an option to add profits arising before the grant of a right (see conditions in section 357CQ) to either the result of Step 5, Step 6 or the negative amount arrived at after step 4.

Tolley® Tax intelligence from LexisNexis®

1.2.8 Streaming

Elections for streaming take effect in respect of the accounting period for which the election is made and all subsequent accounting periods. The same method of allocation must be used from year to year, but if the circumstances of the trade change so that the method used is no longer appropriate the company can use another method or withdraw the streaming election. It may subsequently make another streaming election at a later date.

Streaming is mandatory if:

- Any amount brought into account as a credit in calculating the profits of the trade is not fully recognised as revenue in the accounting period, and the amount is "substantial" – more than the lower of £2 million and 20% of the total gross income of the trade for the period, (subject to a minimum of £50,000) or
- The total gross income of the trade includes relevant IP income and a substantial (using the definition above) amount of licensing income that is not relevant IP income; licensing income is the income from granting rights over intellectual property held by the company, or
- The total gross income includes income that is not relevant IP income and a substantial amount (as before) of Head 2 income. See the definitions in s 357DC(8) and s 357CC.

Streaming essentially involves splitting the profit and loss account into IP income and Non IP income, and allocating credits and debits to the columns accordingly. Allocations are on a just and reasonable basis, and amounts related to loan relationships and derivative contracts are excluded.

The steps 4 through to 7 are no different than for the standard method.

1.2.9 Supplementary & anti avoidance

There are anti avoidance provisions to ensure that relief is excluded when certain steps are taken solely to secure relief, and to exclude tax advantage schemes. (Sections 357F to 357FB).

An election for Patent Box treatment is to be made by the last date on which the company's CT return for the period can be amended, and must be made in writing. The election continues in force until revoked, which is done in a similar manner and with the same time limit. The legislation applies to partnerships if any member of the firm is liable to corporation tax.

1.2.10 Commencement

The regime commences for periods beginning on or after 1 April 2013. Straddling periods will be split into two separate accounting periods on a just and reasonable basis. However, the proportion of relevant IP profits which attract relief will rise through a transitional period as follows :

Financial year	Percentage of RP used in formula
2013	60%
2014	70%
2015	80%
2016	90%

1.3 R & D changes

Section 20 and Schedule 3 deal with the R & D changes which were announced some time ago, all of which have an effective date of 1 April 2012 – in most cases based on expenditure incurred. Where this is not the case, this is indicated below. and in others based on the accounting period end date.

- Amend s 1044 CTA 2009 to provide 125% additional relief for SME's rather than 100%;
- Amend s 1045 regarding pre trading expenditure, inflating the allowance from 200% to 225%;
- Amend s 1058 to reduce the payable tax credit from 12.5% to 11%.
- Amend ss 1043 to 1045 and delete s 1050 to remove references to the minimum amount of expenditure, which has been abolished; similar occurrences in relation to subcontract expenditure also amended; (in relation to accounting periods ending on or after commencement date)
- Amend s 1046 to refine the going concern requirement. The new subsection 2A states that a company is not a going concern if it is in administration or liquidation. Terms defined; other occurrences of the test amended; (in relation to claims made on or after commencement date);
- Amend s 1058 and abolish s 1059 to remove the requirement that payable tax credit is capped at the company's PAYE and NIC liabilities; (in relation to accounting periods ending on or after commencement date);
- Amend ss 1039 onwards to remove SME's from vaccine research relief.
- Amend s 1128 to change the definition of an externally provided worker, and provide additional relief in some circumstances, in

response to requests from large businesses.

1.4 Group relief – meaning of normal commercial loan

Section 32 amends the definition of normal commercial loan to include loans that carry a right to conversion into shares or securities in quoted companies that are not connected to the company issuing the loan. This means that the holders of such loans are not considered to hold equity in the issuing company, with implications for group status.

1.5 Company distributions

Section 33 amends the definition of a distribution for corporation tax purposes to include certain transfers of assets and liabilities between UK resident companies; the anomaly that excluded them was a hangover from the abolition of the repeal of ACT.

1.6 Capital allowances : fixtures

Section 43 introduces Sch 10 which makes the changes to the capital allowances on fixtures regime that have been widely consulted on.

<u>1.6.1 Practical effect</u>

The original proposal that expenditure on qualifying fixtures should be pooled within 1 to 2 years of purchase has not been implemented. Instead, from 1/6 April 2014 such expenditure must be pooled before a subsequent transfer onto another person, if the new owner is to be able to claim capital allowances.

From 1/6 April 2012 joint elections under s.198 CAA 2001 may still allocate any value to the fixtures, as long as that value does not exceed the vendor's original cost. Where a s.198 election is not made, presumably as agreement cannot be reached, the matter will have to be referred (under s.563 CAA), within 2 years, to a First-Tier Tribunal for an independent determination. If neither is done then the purchaser will not be able to claim allowances on fixtures purchased.

The expectation is that a s.198 election will be the norm, so as to avoid the cost and uncertainty of referral to the FTT.

There is a provision to allow, in a small number of cases where an election is not appropriate, for a "disposal value statement" to be provided which can achieve the same end. The example provided in the explanatory notes to the Bill is that of a trader who ceased business and prepared cessation accounts (using market value for the disposal of the assets) and subsequently some years later disposed on the premises in which the fixtures are situated.

It is up to the purchaser – that is the entity seeking to claim allowances on the fixtures – to establish whether a disposal value statement or a fixed value agreement is necessary and to ensure that these are in place.

1.7 Capital allowances in enterprise zones

Rather than the old style blanket allowances, the new modern enterprise zone legislation will make provision for 100% capital allowances on plant and machinery only. The allowances will be available only to trading companies purchasing new plant and machinery for use in a *designated assisted area* within an enterprise zone.

A further condition is that the plant and machinery is purchased for the purposes of a business of a kind not previously carried on by the company, or for expanding the business or starting up an activity which represents a fundamental change in a product or production processes or services provided by the purchasing company. The allowances are capped at €125 million in respect of that area.

1.8 Capital allowances : feed in tariff

Section 45 makes it clear that assets for which feed in tariff and similar payments are made will not qualify for 100% allowances under the energy efficiency scheme.

1.9 Site restoration payments

Section 53 restricts tax relief for site restoration payments when they are made to a connected person in advance of the work being carried out. In future, tax relief will only arise when the work is complete when a connected person to the payer is the contractor. The change applies from 21 March 2012.

1.10 Change of accounting policy

Section 54 makes some changes to the existing legislation dealing with the tax effect of a change in accounting policy to ensure that it adequately covers all changes in accounting policy which might arise. There is no change to the treatment for tax purposes, and the amendments are merely to the

Tolley® Tax intelligence from LexisNexis®

scope of the existing legislation in preparation for changes to GAAP which are due in the next year.

1.11 Business premises renovation allowance

This 100% relief for capital expenditure incurred in bringing empty business premises in designated assisted areas back into use was due to end this year. As previously announced it will now continue for a further 5 years to April 2017.

The allowance provides for an up-front claim of 100%, or alternatively a straight line claim of 25% of the balance of expenditure. It is available to businesses letting the property in addition to those using the property for the purpose of their own business.

There will be some modest changes to the rules to ensure compliance with state aid rules, so those familiar with the scheme should check the detail, which will be released in secondary legislation.

1.12 Controlled foreign companies (CFCs)

(Lecture B733 – 7.05 minutes)

The new controlled foreign company (CFC) rules are the final stage in the reform to the taxation of foreign profits, which has also introduced the exemption for foreign dividends and foreign branch profits. Interim changes were made to the CFC rules from 2009, including the abolition of the holding company exemption, and the introduction of new rules in 2011 for certain trading companies and intellectual property. The complete overhaul to the rules in Schedule 20 will apply to accounting periods beginning on or after 1 January 2013.

Basic principles

A CFC will be any company which is resident outside the UK, but controlled by UK residents. As under the current rules, the definition of control is extended to include certain structures where UK residents hold 40% of the rights in the overseas company. There is a new targeted anti-avoidance rule which will apply where artificial steps have been taken to avoid a subsidiary being controlled from the UK.

Cells in protected cell companies (PCCs) will now be treated as separate companies for CFC purposes. This anti-avoidance provision will prevent groups from arguing that they do not control the PCC, while at the same time participating in all the profits of a particular cell.

The profits of a CFC are attributed to UK companies in accordance with their interest in the CFC (whether direct or indirect). These profits are then subject to an amount of tax equivalent to corporation tax — but, under the current rules, it is not actually corporation tax and therefore does not qualify for relief under double tax agreements.

Under the current rules, an overseas subsidiary will only be a CFC if it is subject to a lower level of tax. The basic principle of the new rules is that all overseas subsidiaries will be CFCs unless an exemption applies. All exemptions will need to be claimed. This is likely to increase compliance and disclosure requirements as a UK company will need to include a claim for exemption on its corporation tax return for all its overseas subsidiaries.

Gateway

The gateway test in its original form was widely held to be too complicated. In light of these responses the Government published an update in February 2012 which outlined a simplified operation of the gateway. This new gateway test provides a series of qualitative tests which make it much easier and quicker for foreign subsidiaries to decide whether they fall within the regime.

The CFC rules will not apply to a subsidiary if:

- none of its assets or risks are managed by connected parties from the UK,
- where assets or risks are managed by connected parties in the UK, these could be replaced by unconnected parties, or
- the subsidiary holds assets or risks for bona fide commercial purposes, and not for the purpose of avoiding tax

Exemptions

The CFC rules will not apply if an exemption is available in respect of an overseas subsidiary. The exemptions are as follows.

The low profits exemption

This exemption will apply where the accounting profits of the subsidiary are not more than £50,000, or not more than £500,000 provided non-trading income is not more than £50,000. These limits are the same for all groups regardless of their size.

A targeted anti-avoidance rule will prevent groups splitting profits to take advantage of low profits exemption in different companies.

Tolley® Tax intelligence from LexisNexis®

The low profit margin exemption

This exemption will apply where accounting profits are less than 10% of operating expenditure. Profits are calculated before interest, but not including income received via partnerships and trusts. Operating expenditure excludes the cost of goods purchased (unless for they are purchased for local resale), and amounts paid to related parties.

This exemption will apply to low-risk overseas subsidiaries, such as those providing services to other group companies which are charged on a cost-plus basis.

The excluded territories exemption

Where the CFC is resident in an excluded territory this exemption will apply. Excluded territories will be specified in regulations, and the draft regulations do not include some European Union members such as Ireland and Cyprus, and Switzerland.

The exemption will only apply if specified income is not more than the 'threshold amount'. The threshold amount is the higher of 10% of profits or £50,000.

The high tax exemption

This exemption replaces the lower level of tax test under the current CFC rules. The exemption will apply if the local tax paid is at least 75% of the UK corporation which would have been paid on the same profits.

The temporary period exemption

A CFC will be exempt for the 12 months after it first becomes a CFC, provided restructuring is undertaken during this period so that no CFC charge arises subsequently.

This exemption will be relevant where for example a UK company acquires a CFC from a third party with the intention of restructuring it into a non-CFC entity, or where a parent company becomes UK resident whilst owning a CFC.

Attributable profits

Where a CFC does not satisfy any exemption, its profits are attributed to UK companies in accordance with their interest in the CFC.

Attributable profits are broadly those which arise from a 'significant people function' (SPF) or a 'key entrepreneurial risk-taking function' which is located in the UK. These functions can be carried on by the CFC itself or by a connected company, so services which are provided under intercompany arrangements must be taken into account.

The profits attributable to such functions will be calculated in accordance with OECD guidelines, but the profits will not include:

- profits attributable to assets or risks held by the CFC (even if the functions are undertaken in the UK) where the CFC adds additional value, provided it does not result in a UK tax reduction
- profits attributable to UK functions if the CFC would have used independent parties to carry out the same functions were they not undertaken by a connected company

In addition, there are exclusions for certain types of income.

Trading profits

All trading profits are excluded from an attribution provided that the CFC has local premises and no more than 20% of income, staff and goods exported derive from the UK.

A targeted anti-avoidance rule will prevent groups from restructuring existing activities to take advantage of this exclusion.

Finance income

Non-trading finance profits (for example interest income) are only attributable if they arise from:

- funds provided from the UK (for example an increase in share capital which is then loaned), or
- loans to a connected company, if it is reasonable to assume that the reason for the loan (rather than a dividend) was to reduce the overseas tax

It will be possible to make a claim to reduce the attribution to 25% of any non-trading loan relationship profits provided:

- the CFC has local premises
- the CFC is the creditor
- the ultimate debtor is connected to the CFC
- the debits in the ultimate debtor are not brought into account for UK corporation tax purposes

Finally, there are special rules for banks and insurance companies, and other companies which

Tolley® Tax intelligence from LexisNexis®

receive finance income as trading income. Further rules were announced on 31 January 2012 to provide for full exemption in some cases.

Other exclusions from attributable profit

Certain other income is excluded from an attribution, including:

- property income
- non-trading financial profits if they are no more than 5% of total profits
- non-trading financial profits from funds held specifically for the purposes of a trade
- non-trading financial profits of holding companies provided its profits (and those of its own subsidiaries which are also CFCs) are no more than 5% of its exempt dividend income

1.13 Corporate anti avoidance / complex areas

There is a substantial list of measures to prevent avoidance through disclosed scheme, much of this affecting the leasing industry and capital allowances. The detail is not dealt with here, but the total yield from these measures is expected to be around £60m in a full year. This is quite low as some of the behaviours will change and thus tax will be protected rather than saved. There are also some measures which of minor significance to the average practice. The measures include :

- Section 22 – treatment of manufactured overseas dividends
- Section 23 loan relationships – debts becoming held by a connected company
- Section 23 – companies carrying on leasing of plant and machinery businesses – sale of lessor company
- Section 24 – corporate members of Lloyds : treatment of stop loss insurance
- Ss 26 – 29 – general insurance provisions
- S 31 and Schedule 5 – amendments to the debt cap
- S 42 and Sch 9 – capital allowances anti avoidance

1.14 Looking further ahead

Announcements for which we have little detail at present, but in respect of which consultation will begin shortly with a view to inclusion in FB 2013 are as follows :

- Corporation tax reliefs for the creative sector, including
  - Culturally British video games
  - Television animation programmes, and
  - High end television productions
- Above the line tax credit for R & D for large companies
- Extension of relief for gas refuelling stations for a further two years (100%)
- First year allowances for fuel efficient cars – due to expire in March 2013, but will now continue. The threshold will reduce from 110g/km to 95 g/km in 2013. The allowance will not be available on leased cars.

2 Personal Tax

2.1 Personal allowances and tax rates

(Lecture P731 – 17.34 minutes)

The personal allowance for 2012/13 was announced in the 2011 Budget. In the 2012 Budget, the Chancellor took the opportunity to announce further substantial increases in the personal allowance, and the phasing out of the age related allowances. Those issues which have now been legislated for are detailed below.

Table 1 : rates and limits for tax 2012/13

	2011/12	2012/13	2013/14
Personal allowance	7,475	8,105	9,205
Age related allowance: 65-74	9,940	10,500	10,500*
Age related allowance: 75 and over	10,090	10,660	10,660*
Income limit for personal allowance	100,000	100,000	100,000
Income limit for age related allowances	24,000	25,400	25,400*
Basic rate band (20%)	35,000	34,370	32,245
Higher rate limit (40%)	150,000	150,000	150,000
Additional rate	50%	50%	45%
Dividend additional rate	42.5%	42.5%	37.5%

*Frozen from April 2013, and only available to those born before 6 April 1948

The married couple's allowance (given at 10% to elderly taxpayers, but available only to those born before 6 April 1935) is unaffected.

Section 1 sets the rates of income tax for both 2012/13 and 2013/14. Which includes the reduction of the additional rate to 45%. This reduced rate will also apply to charges on benefits provided under EFRBs (S 394 ITEPA 2003), and to charges under s 640 ITTOIA 2005 (gross up of capital attributed to settlor as income).

The limit of the basic rate band for 2012/13 is set by section 2. Section 3 sets the age related allowances for 2012/13.

2.1.1 Age related allowances

The changes to the age related allowances from April 2013 are made by section 4. The practical effect of the changes is that no taxpayers will acquire the right to an age related personal allowance after 5 April 2013, and those taxpayers currently receiving the first enhanced level of allowances (£10,500) will not move to the higher level (£10,660) after 5 April 2013. This freezes the allowances for those born before 6 April 1948 at their current level at 5 April 2013, and prevents anyone born on or after that date from acquiring an entitlement to enhanced personal allowances.

In summary, if the taxpayer is born :

- After 5 April 1948 – they remain entitled to a normal personal allowance only for their lifetime
- Between 6 April 1938 and 5 April 1948 (inclusive) – they will be entitled to the first enhanced allowance for their lifetime, and
- Before 6 April 1938 – they will be entitled to the higher rate of enhanced allowance for their lifetime.

The amounts of the allowances have been frozen for 2013/14, and ultimately it is expected that the basic personal allowance will overtake the age related amounts, which can then be abolished.

2.2 National Insurance contributions 2012/13

Rates and limits for Class 1 contributions were announced in the November 2011 Autumn Statement. These do not appear in the Finance Act, as they are legislated for by Regulation. For completeness, the Table below shows the rates and limits that apply from 6 April 2012.

Table : rates and limits for NIC 2012/13

	2011/12	2012/13
Lower earnings limit	£102	£107
Primary threshold (employee)	£139	£146
Secondary threshold (employer)	£136	£144
Upper Earnings Limit	£817	£817
Primary main rate	12%	12%
Primary residual rate	2%	2%
Secondary rate	13.8%	13.8%

The Upper earnings limit will reduce from April 2013, to align it with the higher rate tax threshold. This will bring it to £797 per week.

2.3 High income child benefit charge
(Lecture P732 – 11.18 minutes)

The withdrawal of the child benefit to start in January 2013 will be implemented through the means of an additional tax charge on an earner with income over the revised threshold, dealt with by section 8 and Schedule 1.

2.3.1 Practical summary

The threshold for the tax charge will be £50,000 per annum, and the charge will taper the child benefit award between £50,000 and £60,000, at which point the award will be nil. The "adjusted net income" will be used, so the tax charge cannot reliably be calculated until after the end of the tax year, as it allows for the deduction of gift aid payments (gross) and pension contributions (gross amount). The charge is borne by whichever member of a couple (as defined) has the higher income for the tax year in question.

2.3.2 Technical detail

The legislation is inserted into ITEPA 2003 by Schedule 1 of FA 2012, which inserts new Ss 681B to 681H. There is also a consequential amendment to TMA 1970, and the Social Security Administration Act 1992.

A person P is liable to the charge if their adjusted net income is over £50,000 for the year and either:

(A) They are entitled to an amount of child benefit for a week in the tax year and there is no one who is a partner of P throughout that week, who has higher adjusted net income for the year, or

(B) Q, a partner of P is entitled to child benefit for any week throughout which P & Q are partners, and P's adjusted net income exceeds Q's.

The calculation of the charge for a year takes into account any amounts of child benefit to which either condition (A) or (B) is met – that is the total of these amounts.

The charge is calculated as a percentage of the total amounts of child benefit, which varies according to the adjusted net income for the year, as follows :

(Adjusted net income - £50,000)/£100 – expressed as a percentage

The percentage is rounded down to the next whole number. New section 681F allows alteration of the income limit of £50,000 by Treasury Order.

The charge commences from 2012/13, but only in respect of amounts of child benefit received for weeks beginning on or after 7 January 2013.

Special situations

Where someone is entitled to claim child benefit in respect of a child which they support, although that child is living with someone else, the charge is extended to the person with whom the child lives, by deeming them to be in receipt of the amount of child benefit for these purposes. This only applies if the person entitled (and their partner) is not liable to the charge.

Where a person entitled to child benefit has two or more partners, so that both would be liable to the high income child benefit charge, the charge arises only on the partner with the highest adjusted net income.

Definitions

A person is a partner of someone at any time when any of the following conditions are met:

- A man and woman who are married to each other and not separated (either by court order, or under circumstances in which the separation is likely to be permanent), or
- A man and woman living together as husband and wife but who are not married to each other, or
- Two men or two women who are civil partners of each other and not separated (either under a court order or under circumstances in which the separation is likely to be permanent), or
- Two men or two women who are not civil partners of each other but who are living together as if they were civil partners.

Adjusted net income is as per ITA 2007 s 58, which means the total income less gift aid (gross) and pension contributions.

A week is any week beginning Monday – a week is in the tax year if the Monday is in the tax year.

2.3.3 Consequential – election not to receive child benefit

The Social security administration Act 1992 has been amended to allow those who are affected by the charge to elect not to receive the child benefit to which they are entitled. The legislation then provides an exclusion from the charge to those who have made an election.

The election must be made by a person who is entitled to the child benefit payments – they may in fact be the partner of a person liable to the charge itself. The election can only be made if the person reasonably expects that they or another person will be liable to the charge in the tax year, and it takes effect from the week beginning after the election is made. The election may be revoked – this takes effect for weeks beginning after the revocation in made.

If an election is made and it eventually transpires that no charge was due in respect of the child benefit, the election may be revoked up to two years after the end of the tax year in which it was in place. This allows the revocation retrospectively for those who have income less than £50,000, where they expected it to be more than £60,000. It is likely that the Regulations will also permit revocation in respect of those with income between the limits, with suitable adjustment.

2.3.4 Consequential – PAYE regulations

The Regulations have been amended to allow the collection of the high income child benefit charge through PAYE in the year in which the charge applies. This is subject to the individual not objecting.

2.3.5 Consequential - liability to notify chargeability

A person now also has an obligation to notify chargeability to tax (for self assessment purposes) if they are not currently within self assessment and are liable for the high income child benefit charge for a year. The due date is 5 October after the end of the tax year concerned. Obviously taxpayers may not be in possession of all of the information to do this in time, but HMRC plans to write to potentially affected taxpayers each summer to prompt them to check.

Practical issues

2012/13 Child benefit amounts

The amounts of child benefit received by a family between the start date of Monday 7 January 2013 and the end of the tax year are as follows:

Number of children	Child benefit payable £
1	263
2	438
3	612
Each additional child	174*

*As the amount is calculated and then rounded down, the amount for additional children is calculated as £263.90 + (£174.20 x no of children – 1), rounded down to the whole pound.

For subsequent whole tax years (on a 52 week basis, although one year in four will be a 53 week year), subject to increases in the amount of child benefit (which is unknown), the amounts are:

Number of children	Child benefit payable £
1	1,055
2	1,752
3	2,449
Each additional child	697

Taking into account the tax and NIC rates, plus taper of tax credits, the marginal rate on £10,000 of income between £50,000 and £60,000 is as follows (for a full year only):

Tolley® Tax intelligence from LexisNexis®

	Number of children < 18									
	1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
Gross child benefit	1,055.60	1,752.40	2,449.20	3,146.00	3,842.80	4,539.60	5,236.40	5,933.20	6,630.00	7,326.80
Effective withdrawal rate %	10.56	17.52	24.49	31.46	38.43	45.40	52.36	59.332	66.3	73.268
Income tax %	40	40	40	40	40	40	40	40	40	40
NIC %	2	2	2	2	2	2	2	2	2	2
Total marginal rate	52.56	59.52	66.49	73.46	80.43	87.40	94.36	101.33	108.30	115.27
Tax on band	5,255.60	5,952.40	6,649.20	7,346.00	8,042.80	8,739.60	9,436.40	10,133.20	10,830.00	11,526.80
Tax credit award (gross)	7895	10585	13275	15965	18655	21345	24035	26725	29415	32105
TC taper at 41%					787.2	3477.2	4100	4100	4100	4100
OVERALL tax, ChB, TC rate %	52.56	59.52	66.49	73.46	88.30	122.17	135.36	142.33	149.30	156.27

2.4 Champions League final – tax exemption

No income tax liability will arise in respect of any income from the 2013 Champions League final (to be held in England) to any person who is not UK resident and is an employee or contractor of an overseas team that competes in the final.

The exemption relates to income related to duties or services performed by the person in the UK in connection with the final. It is restricted so that it does not relate to any income arising as a result of a contract entered into after the final, or similar amendment of a contract entered into before the final, nor to income that is the subject of tax avoidance arrangements – defined as entered into for the purpose of obtaining the exemption.

2.5 Tax on company cars (Lecture P734 – 12.20 minutes)

The Finance Act includes various measures in relation to the taxation of company cars over the next few years. The following summary outlines the announcements that have been made.

2.5.1 Practical summary

Significant changes came in from April 2012 which had already been legislated for. Key among these is the broadening of the table of tax rates so that it starts at 10% of list price rather than 15%. This involves reducing the lowest emissions rate from 125g/km to 99 g/km. Some drivers – those for example driving the Vauxhall Agillia with emissions of 119g/km will see a tax rise of 40% from 2011/12 to 2012/13.

Budget 2012 announcements continue the theme. The following announcements have been made (changes from April 2013 had already been announced):

- From April 2013, the lowest figure on the table will be below 95g/km, with a benefit in kind of 10%, producing a 1% increase for most drivers
- From April 2014, the 10% rate will disappear, with cars emitting less than 95g/km taxed at 11%
- The special 5% rate for cars emitting no more than 75g/km remains until 2015 but is abolished from April 2015. (this is subject to a 3% addition for diesel).
- The 0% rate applying to zero emission cars is abolished from April 2015.
- The resulting Table from 2015 will start at 13% - applying to emissions of up to 94 g/km (16% for diesels), with 14% applying to emissions of 95 – 99 g/km.
- From April 2015, the top rate increases from 35% to 37% - applying to cars emitting 210g/km and above.
- From April 2017 the 3% supplement for diesel cars will be abolished, but there is a further 2% increase in all benefits. At that point, emissions of 0 – 94 will be taxed at 15%, moving up to 37% for a car emitting 200g/km and above.

So a driver of a Citroen C1, emitting 109g/km, taxed at 10% of list price in 2011/12 will see his benefit in kind rise to 18% of list price by April 2016 – an 80% increase.

Tolley® Tax intelligence from LexisNexis®

2.5.2 Legislation in FA 2012

Security features

FA 2012, section 14 introduces new s 125A into ITEPA 2003 to restrict the calculation of the cost of accessories to a vehicle in arriving at list price, where those accessories are security features. The "relevant security features" (defined below) must be provided in order to meet a threat to the employee's personal physical security which arises wholly or mainly because of the nature of the employment.

The definition of a relevant security feature for these purposes is

- Armour designed to protect the car's occupants from explosion or gunfire;
- Bullet-resistant glass;
- Modifications to the fuel tank to protect the tank's contents from explosion or gunfire, and
- Other modifications to the car in consequence of any of the above.

The change applies to the tax year 2011/12 and subsequent years.

Benefit in kind percentages

Section 17 legislates for the changes to the appropriate percentage for 2014/15, changes for earlier years having already been legislated for. This sets the percentage for cars emitting no more than 75g/km at 5%, for other cars below the threshold of the table for the year at 11%, and for cars emitting at the threshold for the year 12%.

The relevant threshold for the year is not covered by section 17.

The car fuel benefit scale charge has increased from £18,800 to £20,200, an increase of 2% over the rate of inflation. Government has also committed to increasing this by 2% over the rate of inflation for the foreseeable future.

The van fuel scale charge is frozen for this year at £550, but will be increased by inflation in future.

2.6 Resettlement payments for MP's

When an MP leaves parliament, other than through voluntary resignation, a resettlement payment is made. The new expenses rules provide for a contractual entitlement. Section 15 of FA 2012 amends ITEPA 2003 s 291 to provide tax exemption on the first £30,000 of the amount paid.

2.7 Armed forces income exemption

Section 16 amends the wording of two elements of armed forces income tax exemption to apply to new legislative arrangements, and introduces a new exemption at s 297C in respect of payments of the Continuity of Education Allowance to or in respect of members of the armed forces during their employment or after their deaths. The changes apply from 6 April 2012.

2.8 CGT annual exempt amount

The annual exempt amount for 2012/13 is £10,600 as for last year, Section 34 also provides that the amount is indexed in line with CPI rather than RPI in future.

2.9 Capital gains tax : foreign currency bank accounts

Section 35 amends the CGT rules to exclude gains arising in respect of foreign currency bank accounts held by individuals, trustees and personal representatives.

2.10 Seed EIS (Lecture P734 – 12.20 minutes)

Section 38 and Schedule 6 set out the new Seed enterprise investment scheme, which is based on EIS. The main legislation inserts Part 5A into ITA 2007.

2.10.1 Overview

The tax relief for amount subscribed under the scheme applies to shares issued on or after 6 April 2012, and before 6 April 2017. The relief is intended to apply to amounts subscribed by individuals for shares in companies carrying on new businesses.

The rate of relief is 50% with a limit of £100,000 per year on the amount subscribed. The relief is given as a tax reduction, as for other investment schemes.

There is also CGT reinvestment relief for investments and an exemption for gains on qualifying investments.

2.10.2 The investor

The investor is a qualifying investor in relation to the relevant shares, provided the following requirements are met :

- Neither the investor nor an associate of the investor may at any time in period B (see

Tolley® Tax intelligence from LexisNexis®

below) be an employee of the issuing company or any qualifying subsidiary

- The investor does not have a substantial interest (see below) in the issuing company at any time during period A
- The investor must not subscribe for the shares as part of an arrangement which provides for a reciprocal subscription for shares in a company in which the investor has a substantial interest.
- No linked loan (a loan on more preferable terms as a result of the investment) must be made to the investor or his associates at any time in period A
- The shares are subscribed for for genuine commercial reasons, and not as part of a tax avoidance arrangement.

The substantial interest test works on a 30% qualification, and is phrased in familiar terms. (Section 257BF).

2.10.3 Time periods

Period A is the period from incorporation of the company to the third anniversary of the date the shares are issued.

Period B is the period of three years from the date the shares are issued.

2.10.4 General requirements

There are six general requirements in relation to the scheme which are set out in Chapter 3 of new Part 5A. These are very similar to most of the standard EIS requirements and are as follows :

- The shares must be ordinary shares, subscribed for wholly in cash and fully paid up at time of issue, which do not at any time during period B carry any present or future preferential right to dividends (as defined)
- The relevant shares must be issued in order to raise money for a qualifying business activity carried on by the company or a 90% subsidiary;
- Before the end of period B the money raised by the issue of the relevant shares is spent for the purposes of the relevant business activity for which it was raised.
- The issuing arrangements for the shares do not include arrangements which provide for the purchase of the shares or the assets of the relevant trade or a other arrangements intended to exploit the relief available.
- The relevant shares are not purchased as a result of a tax avoidance arrangement;
- The relevant shares must not be issued as a result of disqualifying arrangements. (See s 275CF).

2.10.5 The issuing company

Much of these restrictions emanate from legislation dealing with EIS. The following conditions apply to the issuing company :

- The issuing company must meet the trading requirement throughout period B. This condition requires that the company exists wholly for the purpose of carrying on one or more new qualifying trades. The qualifying trades test is as normal, and there are provisions to allow holding companies of a group to qualify.
- The company (or a 90% subsidiary) must also actually carry on the qualifying business activity during the whole of period B; qualifying business activity comprises the new qualifying trade, relevant preparation work or relevant R & D.
- The company must have a permanent establishment in the UK throughout period B
- The company must not be in financial difficulty throughout period B, within the meaning of EU guidelines on state aid (2004/C 244/02).
- The company must be unquoted at the beginning of period B and there must be no arrangements in existence for this to change.
- The issuing company must not at any time in period A control a company which is not a qualifying trading company, nor must it be under the control of any other company.
- The issuing company (no any 90% subsidiary) must not be a member of a partnership at any time during period A.
- The gross assets of the issuing company must be no greater than £200,000 immediately before the relevant shares are issued.
- The issuing company must have no more than 25 full time employees at the date of issue of the shares
- The issuing company must not have benefitted from either EIS or VCT investment at any time prior to the issue of shares
- The total raised through SEIS by the company is limited to £150,000 in a three year period
- Any subsidiary that the issuing company has at any time in period B is a qualifying subsidiary company
- Any property managing subsidiary that the company has at any time in period B must be a qualifying 90% subsidiary.

The remaining provisions mirror the existing EIS regime as to claims and procedures, and also to withdrawal of relief if the investor receives more than insignificant value from the company in period A.

2.10.6 New qualifying trade

New section 257HF defines this as a trade which does not begin to be carried on before the two year pre investment period, which has not been carried in previously by the issuing company or any 51% subsidiary of it.

2.10.7 CGT reinvestment

Part 2 of Schedule 6 introduces reinvestment relief for SEIS investments, which is an exact copy of other similar relief for EIS. It also provides for CGT exemption if the shares are retained for the whole of period B. Losses will take into account the tax relief awarded in respect of the issue of the shares.

2.11 Tax supported investment schemes

A range of changes to the tax supported investment schemes have been announced. These include changes to simplify the operation of EIS and VCT, to widen the application of the schemes, and to introduce the new seed enterprise investment scheme. There are also enhancements to the Enterprise management incentive scheme. The changes are introduced by Schedules 7 and 8 to the Act.

2.11.1 VCT and EIS

The size criteria were reduced some years ago, and it has now been decided to reinstate the higher size criteria with effect from April 2012. The old and new limits are: (Sch 7 paras 11 & 12; Sch 8 paras 8 & 9)

	Old	New
Maximum number of employees	50	250
Maximum gross assets before investment	£7m	£15m
Maximum gross assets after investment	£8m	£16m

2.11.2 EIS limits

The lower limit for investment under EIS of £500 will be removed from April 2012. (Sch 7 para 2). The maximum amount invested will be increased to £1 million in a tax year (Sch 7 para 3).

2.11.3 Simplification

Measures consulted on and now approved include changing the definition of "connected" for the schemes to exclude loan capital, and permitting shares with preferential dividend rights to benefit from the schemes under certain circumstances. (Sch 7 para 6)

2.11.4 VCT limits

VCT's have previously been limited in the amount that they can invest in a single company. The limit of £1 million will no longer apply to investments except to companies in partnership or joint venture arrangements. (Sch 8 para 5)

2.11.5 Tax benefitted funding

The maximum amount that a company can raise through tax relieved investment schemes (particularly, but not limited to EIS and VCT) is capped at £5 million in a 12 month period. (Sch 7 para 7)

2.11.6 New excluded activity

The subsidised generation or export of electricity is now an excluded activity (Sch 7 para 14; Sch 8 para 12).

2.11.7 Disqualifying arrangements

The income tax and CGT provisions are now subject to a disqualifying arrangements test to ensure that the schemes are not available to those who seek to circumvent the rules. For income tax the rules will appear in new s 178A of ITA 2007(EIS) and s 299A (VCT).

2.12 Enterprise management incentive scheme

The maximum value of options that an individual can hold under this scheme has increased from £120,000 to £250,000. The change will be made by Statutory instrument, and implemented as soon as possible, subject to state aid approval. Changes will be made in 2013 to allow EMI shares to automatically qualify for entrepreneurs' relief.

2.13 Taxation of non domiciled individuals (Lecture P733 – 11.50 minutes)

Schedule 12 deals with the changes to the remittance basis.

On 28 May 2012 HMRC issued a couple of documents with important guidance on Changes to the Remittance Basis. The first is a short information note running to 20 pages whilst accompanied by a more detailed guidance note running to 54 pages.

The guidance note focuses on:

- The higher remittance basis charge;
- The business investment relief for remittance basis taxpayers (including important information regarding the advance assurance procedure for qualifying investments)
- Sales of exempt property and
- Simplification of the remittance basis rules

2.13.1 Higher Remittance Basis Charge

The £30,000 Remittance Basis Charge (RBC) is payable by a taxpayer who is UK resident in a tax year, is not domiciled or not ordinarily resident in the UK, makes a claim to use the remittance basis and meets the 7-year residence test for the tax year.

From tax year 2012-13 a higher annual RBC of £50,000 applies if a taxpayer is UK resident in a tax year, is not domiciled or not ordinarily resident in the UK, makes a claim to use the remittance basis in 2012-13 or in later tax year and meets the 12-year residence test for the tax year.

2.13.2 Business investment relief for remittance basis taxpayers

Money or property that is, or that derives from, foreign income or gains of a remittance basis user, and is used, brought to or received in the UK is normally taxable as a remittance. From 6 April 2012 remittance basis taxpayers who bring their foreign income or gains to the UK and invest it in a target company may claim relief from the UK tax charge that would otherwise arise. The investment can be made in the form of money or other property derived from foreign income and gains.

In order for the foreign income or gains to qualify for relief from UK tax, the conditions that must be met are:

- the investment is a qualifying investment made in a target company, within 45 days of the foreign income and gains being brought to the UK
- the taxpayer must claim relief from UK tax under this provision as part of their Self Assessment tax return

Relief is not available where the investment is made, or where the foreign income and gains are brought to the UK, as part of, or as a result of, a scheme or arrangement whose main purpose, or one of the main purposes of which, is tax avoidance.

Prior to 2012-13, foreign income and gains of a remittance basis user which were brought to or received in the UK to make investments were regarded as remitted to the UK and liable to tax.

From 2012-13 the business investment relief allows foreign income and gains from years in which a person was taxed on the remittance basis (before or after 2012-13) to be treated as not remitted to the UK when money or other property is:

- used by a relevant person to make a qualifying investment, or
- brought to or received in the UK to be used by a relevant person to make a qualifying investment.

This is called a ‘relevant event’. The investor may be taxed on either the arising basis or the remittance basis in the tax year in which the investment is made and still benefit from the relief.

A relevant event is also treated as occurring when:

- proceeds from the disposal of all or part of a previous qualifying investment are re-invested in another qualifying investment;
- disposal proceeds from the sale of exempt property (see Section 3 of this Guidance) are used to make a qualifying investment; or
- all or any part of a tax deposit made in relation to the business investment relief is withdrawn by the depositor and used to make another qualifying investment.

A qualifying investment can be made by either:

- obtaining newly issued shares in, or
- making a loan (secured or unsecured) to

a target company. To qualify for relief there are two qualifying conditions that must be met - Conditions A and B.

Condition A

To meet the requirements for a qualifying investment, the investment must be made in an eligible trading company, an eligible stakeholder company or an eligible holding company. The company in which the investment is made is referred to as a target company. An eligible trading company is a private limited company which is:

- carrying on at least one commercial trade, or
- is preparing to do so within two years of the date on which the funds to be invested were brought to the UK (this is the 2-year start-up rule) and
- carrying on a commercial trade is all or substantially all it does, or it is reasonably expected to do once it begins trading.

In most cases it is obvious when a trade exists, but where there is doubt you will need to fully investigate the facts and consider case law. Further guidance on what is trade can be found in the Business Income Manual at BIM20050. For business investment relief purposes, there is an additional requirement that the trade should be

Tolley® Tax intelligence from LexisNexis®

commercial, that is, conducted on a commercial basis with a view to making profits. Trade also includes:

- any activity that is treated as if it were a trade for corporation tax purposes. This includes farming or market gardening, the commercial occupation of land (but not woodland) and the profits of mines, quarries and other concerns
- a business of generating income from land. This will include profits arising from the renting or leasing of land or property.
- a company carrying on research and development activities which are intended to lead to a commercial trade. However, preparing to carry out research and development activities is not itself a commercial trade for the purposes of the business investment relief.

The extension of the definition of trade to include generating income from land and research and development activities only applies for business investment relief purposes. It does not change the definition of trade for other tax purposes.

Condition B

In addition to making an investment in a target company, the relief is available provided that:

- no relevant person has either directly or indirectly obtained a benefit or become entitled to obtain a benefit, and
- there is no expectation that such a benefit will be received

which is related, directly or indirectly, to the making of the investment.

A benefit for these purposes can include anything (for instance money, in any form, property, capital, goods or services of any kind) that is provided to a relevant person. In particular it includes, but is not limited to, the provision of anything that:

- would not be provided by the company to the relevant person in the ordinary course of business, or
- would be provided but on less favourable terms, or
- would not be available at all in the absence of the investment.

However, a benefit for these purposes does not include anything that would be provided to the relevant person in the ordinary course of business on arms length terms.

2.13.3 Advance assurance procedure for qualifying investments

An individual intending making a business investment will be able to ask HMRC (after Royal Assent) for their opinion on whether a proposed investment can be treated as a qualifying investment under the Business Investment Relief provisions. The remittance basis user, or a person authorised to act on their behalf, may make this request using the CAP1 service (How non-business customers or customers with a query about non-business activities get advice on HMRC's interpretation of recent tax legislation). Where the investment is made by someone other than the remittance basis user, the remittance basis user will need to make the request.

There is significant guidance on other aspects such as:

- income or gains treated as remitted following certain events
- Ceasing to be an eligible trading company
- The extraction of value rule
- Appropriate mitigation steps
- Grace periods
- Mixed funds records
- Record keeping

2.13.4 Simplification of the remittance basis rules

There are two other changes which will simplify the remittance basis rules in the following areas:

- nominated income
- foreign currency bank accounts

Nominated income

If you claim the remittance basis and are liable to pay the Remittance Basis Charge you are required to nominate some of your foreign income and gains on your Self Assessment tax return for that year. The foreign income and gains you nominate cannot be treated as remitted to the UK before any other foreign income and gains your have overseas, and there are special ordering rules to ensure this is the case. However from tax year 2012-13 onwards you can remit nominated income up to £10 for any tax year for which you made a nomination without becoming subject to the ordering rules. This means you will not need to keep detailed records of your nominated foreign income and gains in any tax year provided you nominate no more than £10 for that tax year.

Foreign currency bank accounts

If you have bank accounts denominated in a currency other than sterling, for tax years up to and including 2011-12, any withdrawals from the account are part disposals of chargeable assets for Capital Gains Tax purposes. Because of fluctuations in international currency exchange

Tolley® Tax intelligence from LexisNexis®

rates, a capital gain or loss can arise every time a withdrawal is made from such accounts. This could create the need for a significant number of detailed Capital Gains Tax calculations in a tax year. From 6 April 2012 the proposed change removes your foreign currency bank accounts from the Capital Gains Tax charge and you will no longer need to make these complex calculations.

Sales of exempt property: Taxation of assets sold in the UK

Exempt property is property which has been purchased overseas using foreign income and gains and brought to the UK, where certain conditions are met. If you bring exempt property to the UK and sell it (or otherwise convert it to money), for tax years up to and including 2011-12 the foreign income and gains are treated as having been remitted. For tax years 2012-13 onwards the original foreign income and gains will not be considered as remitted to the UK and the gain arising on the sale will not be treated as a UK gain, provided certain conditions are met.

2.14 Gifts to the nation

Schedule 14 provides for tax relief to be given over a period of up to five years when an individual gives a gift of a pre eminent object for the public benefit. The relief is treated as a payment of income tax or capital gains tax due in respect of the relevant year, made on the due date. Relief is similarly available to companies in respect of gifts made by them, but only in respect of a single accounting period.

The Schedule sets out the detail of the scheme, which is supervised by the secretary of state, or ministers of the devolved administrations in Scotland, Northern Ireland and Wales. There are provisions to allow tax due to be postponed while negotiations are going on, and for the tax to become payable in the event that the gift is withdrawn.

The total value of tax relief given is 30% of the agreed value of the gift in the case of income/capital gains tax, and 20% of the value of the gift in the case of corporation tax.

Pre eminent objects are defined by the Schedule at para 22 as any picture, print, book, manuscript, work of art, scientific object or other thing that the relevant minister is satisfied is pre-eminent for its national, scientific, historic or artistic interest, or a similar collection of objects.

Gifts which are made under these provisions will automatically be exempt property under IHT. The commencement date for this provision will be set by Treasury Order.

2.15 Anti avoidance – post cessation loss relief

Section 9 makes changes to ITA 2007 to restrict post cessation loss reliefs for both a trade and property business where the loss arises due to a payment or event which is made or occurs directly or indirectly in consequence of or in connection with relevant tax avoidance arrangements – defined as arrangements the main purpose of which is the reduction in tax liability as a result of the availability of post cessation relief. The change commences on the date of the relevant announcement – 12 January 2012 in respect of trade relief and 13 March 2013 in relation to property losses.

2.16 Anti avoidance – property losses

Section 10 makes changes to the limited provisions for sideways loss relief for property business losses at ITA 2007 s 120. The relief is further restricted when it arises as a result of a property business with a relevant agricultural connection and in relation to allowable agricultural expenses incurred as a result (directly or indirectly in connection with or as a consequence of) of relevant tax avoidance arrangements. Here these are defined as arrangements whose purpose (only or main) is to obtain a reduction in tax liability by means of property relief against general income.

The change commences from the date of the announcement – 13 March 2012.

2.17 Anti avoidance – chargeable event gains

Section 11 makes changes to the chargeable event legislation. The changes deal with two types of arrangement intended to minimise or defer the tax that would otherwise arise on chargeable events. New section 473A of ITTOIA 2005 treats connected policies and contracts as if they were a single contract – this avoids gains on policies coming to maturity being switched into related policies which are not currently nearing maturity, thus deferring the tax charge which would otherwise arise.

There is also a technical change in the calculation of the chargeable event gain to ensure that previous gains taken into account (reducing the current gain) have been taxable on someone. In some cases, circumstances can be contrived so that the previous

Tolley® Tax intelligence from LexisNexis®

gains were attributed to a non resident policyholder, providing a more favourable outcome to a subsequent policyholder in that those gains are excluded from his own chargeable event calculation.

The change applies form the date of the announcement, as follows :

- To new policies and contracts taken out on or after 21 March 2012
- To existing policies and contracts where there is a variation in the policy, increasing the benefits, or if the policy or contract or rights under it are assigned (in full or in part), or some or all of the rights become security for a debt on or after 21 March 2012.

Tolley® Tax intelligence from LexisNexis®

3 Charities and philanthropy

3.1 Gift aid and other tax reclaims

Technically the reclaim of tax suffered on gift aid donations and on income received under deduction of tax should be done on a tax return, meaning that it would be delayed until after the end of each financial period. However, on a concessionary basis, HMRC has accepted in year reclaims for some time. Schedule 15 makes the necessary changes to put this on a statutory footing in respect of all types of charity, and also for community amateur sports clubs.

It also makes the necessary changes to the legislation on gift aid in respect of community amateur sports clubs, which was defective.

3.2 Giving through the self assessment return

On the recommendation of the OTS, this relief is abolished on 6 April 2012, and accordingly, Section 50 makes the appropriate changes.

3.3 Definition of community amateur sports club

Clubs must meet a number of qualifying conditions in order to register and benefit from similar tax breaks to charities. The legislation requires that a number of things must be included in the constitution of the club, but in fact in respect of two conditions it is not common for these to be in the constitution. Section 52 restructures the definition of a CASC to allow for this, but in essence this statutory change merely implements current HMRC practice.

4. VAT (Lecture B735 – 20.30 minutes)

4.1 Changes to the categorisation of supplies

Schedule 26 makes the following changes to categorisation from 1 October 2012 with resulting changes in liability:

- Food: Sports drinks (advertised or marketed as products designed to enhance physical performance, accelerate recovery after exercise or build bulk) and syrups, concentrates and powders used to make such drinks are now an excluded item and thus standard rated.

- Food: the definition of hot food has been amended to cover food which is:
  - hot at the time it is provided to the customer, **and**
  - has been heated for the purposes of enabling it to be consumed hot,
  - has been heated to order,
  - has been kept hot after being heated,
  - supplied in packaging that retains heat or any other packaging that is specifically designed for hot food, or
  - advertised or marketed in a way that indicates it is supplied hot.

  Something is "hot" if it is at a temperature above the ambient air temperature.

  Something is "kept hot" after being heated if the supplier stores it in an environment which provides, applies or retains heat, or takes other steps to ensure it remains hot or to slow down the natural cooling process.

  References to food being heated include references to it being cooked or reheated.

  The practical impact of this change is that from 1 October 2012 goods which are sold to be consumed hot (jacket potato, burger, hot dog etc) or goods heated to order (toasted sandwich) for consumption off the premise will remain standard rated. Where goods are freshly baked they will remain zero rated after 1 October 2012 unless the trader makes any effort to keep them hot. For example, if freshly baked pasties are taken out of the oven and left on a heat rack then their sale will be standard rated as the trader is keeping them hot. If they are left on an unheated rack to cool naturally then they can be zero rated even if they are above the ambient room temperature when sold.

- Food : the definition of premises in relation to catering has been extended to include food courts in shopping malls and similar areas;

- Protected buildings : removing approved alterations and building materials from the definition of zero rated works and refining the definition of "substantially reconstructed" to limit it to retaining only the external walls and other external features of architectural or historic interest.

- Land : the grant of facilities for self storage has been added as an excluded item in the exempt group, and thus becomes standard rated

- Land : the grant of facilities to someone who uses them wholly or mainly to supply hairdressing services has also been made an excluded supply, again making it standard rated. Where the grant relates to an entire floor, building or clearly defined area it remains exempt provided the grantor does not also provide services relating to hairdressing to the tenant (such as a booking clerk, laundry of towels or making refreshments).

Unless otherwise indicated above, the changes take effect from 1 October 2012, but some have anti forestalling provisions. There are transitional provisions affecting building works on protected buildings which allow for contracts placed or approvals sought before 21 March 2012 to remain zero rated until **1 October 2015**, but only in relation to the works included in the pre March 2012 contract.

The anti forestalling provisions are in Schedule 27 and relate to supplies made after 21 March 2012 in respect of the changes to the protected buildings liability and the self storage facilities change.

4.2 Cost sharing exemption

The changes to implement the exemption in relation to group cost sharing are made by section 197, introducing the supply into Schedule 9 as Group 16.

The new group will exempt from VAT the supply of services by an independent group of persons where each of the following conditions is satisfied:

(a) each of those persons is a person who is carrying on an activity ("the relevant activity") which is exempt from VAT or in relation to which the person is not a taxable person within the meaning of Article 9 of Council Directive 2006/112/EC;

(b) the supply of services is made for the purpose of rendering the members of the group the services directly necessary for the exercise of the relevant activity;

Tolley® Tax intelligence from LexisNexis®

(c) the group merely claims from its members exact reimbursement of their share of the joint expenses; and

(d) the exemption of the supply is not likely to cause distortion of completion.

This exemption is mandatory by virtue of the Principal VAT Directive but had not previously been introduced into the UK VAT legislation because it was not clear how it should be implemented. Following extensive consultation with businesses in 2011, the UK considers itself in a position to implement the exemption. The exemption can be used by, amongst others, organisations such as charities, universities, higher education colleges and housing associations that seek to make efficiency savings by working together to achieve economies of scale. Prior to the introduction of this legislation VAT could be a barrier to the sharing of services as it was necessary for one business recharging a share of costs to another to add VAT to the recharge.

4.3 Low value consignment relief

Low value consignment relief (LVCR) provides for the VAT-free importation of goods from outside the EU, and its use has increased substantially in the past 5 years.

Finance Act 2011 introduced legislation to reduce the threshold for LVCR from £18 to £15 with effect from 1 November 2011.

The Government consulted the European Commission regarding options to limit the scope of the relief where it is used for purposes for which it was not intended. Following this consultation, Finance Act 2012 s.199 has now removed Low Value Consignment Relief from **1 April 2012** for goods sent from the **Channel Islands** under a distance selling arrangement. This would ordinarily apply to goods ordered over the internet or by mail order.

This provision now prevents the importation of low value goods (DVDs, CDs etc) from the Channel Islands without the addition of VAT.

It should be noted that the Channel Islands are part of the Customs territory of the EU but not part of the VAT territory. Any goods received from the Channel Islands are therefore regarded as imports.

4.4 Caravans

From 6 April 2013 zero rating is restricted to caravans which exceed the limits of size of a trailer for the time being permitted to be towed on roads by a motor vehicle having a maximum gross weight of 3,500 kilogrammes and which—

(a) were manufactured to standard BS 3632:2005 approved by the British Standards Institution, or

(b) are second hand, were manufactured to a previous version of standard BS 3632 approved by that Institution and were occupied before 6 April 2013.”

Many holiday static caravans will exceed the weight limits but will not meet the British Standard condition and will therefore fall outside of the zero rating provisions from 6 April 2013. From the same date a new Group 12 is added to Schedule 7A to allow the 5% reduced rate to apply to those larger caravans which no longer qualify for zero rating.

4.5 VAT registration threshold for non-established traders

From 1 December 2012 a new Schedule 1A to the VAT Act 1994 changes the rules for determining when a business that makes taxable supplies in the UK but has no establishment here has to register for VAT. Non-UK established businesses will no longer be able to benefit from the UK VAT legislation threshold.

There amendments are to bring UK VAT law into line with the ECJ decision in the case of *Schmelz.* The decision confirmed that a business without an establishment in a member state is prohibited from benefiting from that state's registration threshold.

4.5.1 Liability to register

A person becomes liable to register under this schedule when he reasonably anticipates making supplies within the next 30 days, does in fact make supplies or a business is transferred to that person as a TOGC. A person must notify its liability to register within 30 days of the liability arising and must be registered from the date when the liability arises.

4.5.2 Cancellation of registration

HMRC must cancel a person's registration if they are satisfied that that person is not liable to be registered under this schedule and the person requests deregistration. Cancellation is made from the date the person ceased tobe liable or a later date if agreed with HMRC.

4.5.3 Exemption from registration

HMRC can exempt a person from registration under this schedule if the person satisfied them that the taxable supplies it intends to make are all zero-rated or would be if the person were a taxable person.

4.6 Future changes

The reduced rate applying to the installation of energy saving materials in village halls and other charity buildings will be abolished from 2013. The reduced rate will continue to apply to residential buildings.

Tolley® Tax intelligence from LexisNexis®

5. Inheritance tax

5.1 Indexation of threshold

Section 208 changes the basis of indexation for IHT thresholds from RPI to CPI, with effect from April 2015.

5.2 Gifts to charities (Lecture P735 – 7.51 minutes)

The reduction in IHT as a result of a bequest to charity is enacted through Schedule 33. The lower rate of tax is 36%, and this applies if the donated amounts are at least 10% of the estate or the component of the estate from which they are donated.

5.2.1 Components of the estate

To make the relief more useable, the donation can be made from a component of the estate, allowing that component to attract the reduced tax charge. The three components are:

- The survivorship component,
- The settled property component, and
- The general component.

The survivorship component

This comprises all of the property in the estate that immediately before the donor's death was joint or common property liable to pass by survivorship (in England and Wales or Northern Ireland) or equivalent law elsewhere.

The settled property component

This comprises all of the settled property in the estate in which there subsisted immediately before the donor's death, an interest in possession to which the donor was beneficially entitled immediately before death.

The general component

This is the balance of the estate, after excluding the survivorship and settled property components and any property that forms part of the estate by virtue of the gifts with reservation legislation.

5.2.2 The 10% test

This compares the donated amount from a component of the estate (using the value given out of the assets of that component of the estate) with the "baseline amount". This is calculated as follows:

Step 1

Determine the part of value transferred by the chargeable transfer that is attributable to the property in that component.

Step 2

Deduct from the amount determined under Step 1 the appropriate proportion of the available nil rate band (that is, the amount remaining after taking into account transfers in the last 7 years). The appropriate proportion is the value of this component of the chargeable estate compared to the value if the chargeable estate as a whole.

Step 3

Add back to this amount the value of the donation from that part of the estate.

When performing this computation for these purposes, grossing up will be done at the reduced rate, not the full rate.

5.2.3 Election to merge part of the estate

If one component of the estate meets the 10% test it is known as a qualifying component. An election may be made to merge the qualifying component with any other component of the estate, including property subject to the gift with reservation rules. The election must specify which components are to be merged. The election must be made in writing no more than two years after the death of the donor. It can be withdrawn up to two years and one month after the death of the donor.

The election may allow more of the estate to benefit from the reduced rate, on the basis that the donation may be more than 10% of the merged components. It is also possible to opt out of the lower rate for one or more components of the estate.

5.2.4 Other points

Where a conditional exemption fails and is brought into tax subsequently, the full rate of IHT will apply to the charge calculated at that time, even if the 10% condition was met at the time of death so that the lower rate applied.

Where a donation is made by and Instrument of variation after the death, the reduced rate cannot apply unless the persons executing the instrument can show that the relevant person in relation to the charity or club recipient has been notified of the Instrument of variation.

The new rules apply to deaths on or after 6 April 2012.

6. Stamp duty land tax

6.1 New rate

SDLT will be levied at 7% on all residential property over £2 million with effect from Budget day. It is anticipated that this will affect around 3,000 transactions a year based on current market activity.

The 7% rate increases to 15% when the property is purchased by certain persons, including corporate bodies.

6.2 Sub sale relief

DOTAS now applies to SDLT, and the sub sale relief will be restructured to prevent it being used in avoidance schemes.

7. Tax administration and other issues

7.1 Working with Tax Agents : dishonest conduct (Lecture B734 – 8.38 minutes)

7.1.1 Consultations

HMRC has also consulted on how the Tax Authority should deal with dishonest agents. The original consultation document on this topic was universally slated by the profession, with the definition of dishonest conduct attracting particularly scathing criticism. The second consultation closed on 16 September received a generally muted response, and therefore may be considered to be unexceptional.

Unlike the Agent Strategy, it is clear that HMRC is ready to make changes in pretty short order, as the document included draft legislation to implement the proposals. A second draft was issued on 6 December 2011, as part of the exposure on the Finance Bill 2012, to which the CIOT issued a response dated 9 February 2012. The legislation now forms part of the recently issued Finance Act 2012, as s 223 and Schedule 37.

7.1.2 Overview – policy aims

HMRC's policy aim is to select the most effective, appropriate and proportionate approach to handling those few tax agents who have been identified as dishonest, either by effective and firm civil action or in more serious cases by the use of criminal procedures. Not all cases are suitable for criminal investigation, and even prosecuting all that are suitable could unbalance HMRC's criminal investigation coverage. The initial consultation sought to devise an effective civil approach to dishonest agents.

7.1.3 Definition of a tax agent

Para 2 of the Schedule sets out the definition of a tax agent for these purposes.

2 (1) A "tax agent" is an individual who, in the course of business, assists other persons ("clients") with their tax affairs.

(2) Individuals can be tax agents even if they (or the organisations for which they work) are appointed—

(a) indirectly, or

(b) at the request of someone other than the client.

(3) Assistance with a client's tax affairs includes—

(a) advising a client in relation to tax, and

(b) acting or purporting to act as agent on behalf of a client in relation to tax.

(4) Assistance with a client's tax affairs also includes assistance with any document that is likely to be relied on by HMRC to determine a client's tax position.

(5) Assistance given for non-tax purposes counts as assistance with a client's tax affairs if it is given in the knowledge that it will be, or is likely to be, used by a client in connection with the client's tax affairs.

There are real concerns, raised by the CIOT in the response, and by others, that para 2(4) encompasses far more than the intended targets. However, this paragraph is unamended from the draft issued in December 2011.

7.1.4 Dishonest conduct

Para 3 follows with the definition of dishonest conduct as follows :

3 (1) An individual "engages in dishonest conduct" if, in the course of acting as a tax agent, the individual does something dishonest with a view to bringing about a loss of tax revenue.

(2) It does not matter whether a loss is actually brought about.

(3) Nor does it matter whether the individual is acting on the instruction of clients.

(4) A loss of tax revenue would be brought about for these purposes if clients were to—

(a) account for less tax than they are required to account for by law,

Tolley® Tax intelligence from LexisNexis®

(b) obtain more tax relief than they are entitled to obtain by law,

(c) account for tax later than they are required to account for it by law, or

(d) obtain tax relief earlier than they are entitled to obtain it by law.

(5) "Tax" is defined in Part 6 of this Schedule.

(6) "Tax relief" includes—

(a) any exemption from or deduction or credit against or in respect of tax, and

(b) any repayment of tax.

(7) A reference in this paragraph to doing something dishonest includes—

(a) dishonestly omitting to do something, and

(b) advising or assisting a client to do something that the individual knows to be dishonest.

7.1.5 Sanctions

Dishonest conduct notice

This is issued if HMRC determine that the individual has engaged in dishonest conduct. It forms the basis of the next steps in sanctions against the agent, and must state the grounds on which the determination is based. The agent may appeal against the determination; the Tribunal may confirm or set aside the determination.

Access to working papers

One of the key sanctions is that HMRC will be able to access the files of a dishonest tax agent. The definition includes two situations :

- Someone subject to a conduct notice, or
- Someone who has been convicted of an offence relating to tax that involves fraud or dishonesty.

Access can be demanded in relation to "relevant documents", which means the tax agent's working papers (whenever acting as a tax agent) and any other documents received, created, prepared or used by the tax agent for the purposes of or in the course of assisting clients (including former clients) with their tax affairs.

In the first consultation document, HMRC described working papers as all documents that relate to the work the agent has done in relation to the client's tax affairs, including the preparation of accounts, returns and claims, and covering correspondence, analysis, calculations etc. Documents include electronic documents. Working papers include tax advice and audit papers. They would not include material which is subject to legal privilege. Existing procedures to settle whether any particular material is privileged will apply.

- There will be no access to working papers until the appeal route against the notice of dishonest conduct has been exhausted (i.e. no appeal, or the appeal has run its course);
- Once the appeal route is exhausted HMRC is able to apply to the First tier Tribunal for permission to issue a notice to access working papers of the dishonest tax agent; this is known as a file access notice.
- This application will require the consent of an authorised officer within HMRC;
- The agent will have the right to make representations to the officer from HMRC and have these put before the tribunal;
- A notice cannot be approved in respect of papers over 20 years old unless still relevant for tax purposes;
- A notice cannot be approved in respect of papers covered by Legal Professional Privilege, personal information etc;
- A third party who holds the papers will have a right of appeal to the tribunal;
- If the tribunal approves a notice there will be a penalty for not complying with it. This will carry a right of appeal to the tribunal.

The penalties for failure to comply with a file access notice start at £300; once this penalty has been issued, daily penalties run at up to £60 per day. It is possible to plead reasonable excuse for delayed production.

Destruction or concealment of material subject to a file access notice, or in anticipation of a file access notice (after notice that a conduct notice is to be issued) is a criminal offence, with a maximum penalty of two years imprisonment.

Penalties

Once HMRC has quantified the dishonest conduct it may assess a penalty for

the dishonest conduct. The penalty to which an individual is subject is a minimum of £5,000 and a maximum of £50,000.

The amount of the penalty will reflect the level of disclosure ("telling, giving and helping") by the agent, the quality of any disclosure and whether the agent complied with the file access notice (if issued). The agent will have a right of appeal to the First-tier tribunal against the penalty and the amount, and it is possible to have a special reduction in the £5,000 penalty.

Publication of details

The publication of details of a dishonest agent can be undertaken if a penalty is imposed at an amount of more than £5,000. The following information would be published:

- the individual's name (including any trading name, previous name or pseudonym),
- the individual's address,
- the nature of any business carried on by the individual,
- the amount of the penalty,
- the periods or times to which the dishonest conduct relates,
- any other information the Commissioners consider it appropriate to publish in order to make clear the individual's identity, and
- the link (if there is one) between the dishonest conduct and any inaccuracy, failure or action as a result of which information is published under section 94 of FA 2009 (which relates to deliberate tax defaulters).

The policy aim is to follow the approach taken in section 94, so that publication of the details will follow automatically, without tribunal involvement, if the maximum reduction for disclosure is not earned. Publication would only take place once all avenues of appeal are exhausted. Where the individual works for an organisation, it is possible that details of the organisation may be published to identify the individual, but in such a case, the organisation must be notified in advance and given a reasonable opportunity to make representations.

7.2 Penalties

New powers will allow the fixed rate penalties to be uprated for inflation. The further reform of penalties was not considered appropriate.

7.3 Incapacity and tax

The long consultation on this topic will lead to measures in FB 2012, introducing a more modern approach to the treatment of incapacitated persons.