# Tolley®CPD

September 2015

**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.

## CONTENTS


**1. Corporation and Business income Tax (Lecture B913 – 15.17 minutes) .......................... 5**

1.1 Corporation tax rates ........................................................................................ 5
1.2 Corporation tax payment dates.......................................................................... 5
1.3 Annual investment allowance ............................................................................ 5
1.4 Flood defence contributions............................................................................... 6
1.5 Averaging for farmers ........................................................................................ 6
1.6 Capital allowances ............................................................................................. 6
1.7 Internally generated goodwill and customer related intangible assets ............... 7
1.8 Rates of R & D relief .......................................................................................... 7
1.9 Other R & D changes.......................................................................................... 7
1.10 Employment allowance ..................................................................................... 8
1.11 Changes to the minimum wage.......................................................................... 9
1.12 Class 2 NI contributions .................................................................................... 9
1.13 Creative sector reliefs........................................................................................ 9
1.14 Loan relationships – late paid interest.............................................................. 10
1.15 Loan relationships – wholesale reform............................................................. 10
1.16 Diverted profits tax .......................................................................................... 11
1.17 Election of “designated currency”..................................................................... 12
1.18 Impact of transfer pricing provisions ................................................................ 12
1.19 Country by country reporting............................................................................ 12
1.20 Anti-avoidance measures................................................................................. 12

**2. Income Tax........................................................................................................... 14**

2.1 Tax rates and thresholds 2015/16 onwards ..................................................... 14
2.2 Indexation of personal allowances................................................................... 15
2.3 Income Tax lock................................................................................................ 15
2.4 National Insurance Contributions..................................................................... 16
2.5 Cars – the appropriate percentage .................................................................. 16
2.6 Zero emission vans.......................................................................................... 17
2.7 Abolition of £8,500 threshold for benefits in kind (Lecture B915 – 13.38 minutes) .......... 18
2.8 Exemption for reimbursed expenses and related benefits (Lecture B915 – 13.38 minutes)............................................................................................................ 18
2.9 Trivial benefits.................................................................................................. 19
2.10 Payrolling benefits in kind................................................................................. 20
2.11 The use of umbrella companies (Lecture B915 – 13.38 minutes) ........................... 20
2.12 Fixed rate deductions ...................................................................................... 20
2.13 Increase in rent a room relief........................................................................... 21
2.14 Removal of the wear and tear allowance (Lecture P912 – 12.34 minutes) ............... 21
2.15 Relief on interest for let domestic property (Lecture P912 – 12.34 minutes)............. 21
2.16 Dividend taxation (Lecture B911 – 11.21 minutes) .................................................. 24
2.17 Incorporation advice (Lecture B912 – 8.25 minutes) ............................................... 27
2.18 Remittance basis charge.................................................................................. 30
2.19 Proposed changes to non-domicile status ....................................................... 31
2.20 Charity gift aid relief......................................................................................... 31
2.21 Expenses of members of local authorities ....................................................... 31
2.22 Sporting testimonials....................................................................................... 31
2.23 Income tax exemption – 2015 Anniversary Games .......................................... 31
2.24 Tax credit changes .......................................................................................... 31
2.25 Tax credit claims by the self employed ............................................................ 32
2.26 Bereavement support payment........................................................................ 32
2.27 Anti-avoidance measures................................................................................. 33

**3. Savings and investment measures ........ 34**

3.1 Personal savings allowance ........ 34
3.2 Pensions lifetime allowance ........ 34
3.3 Pensions – annual allowance (Lecture P911 – 14.58 minutes) ........ 34
3.4 Restriction of annual allowance for high income individuals ........ 37
3.5 Pensions – lump sum death benefit tax charge ........ 38
3.6 Pensions – certain lump sum death benefits ........ 38
3.7 Further pension reform ........ 39
3.8 Sale of annuities ........ 39
3.9 Inherited annuities ........ 39
3.10 Excluded activities for investment reliefs ........ 39
3.11 EIS changes in Second Finance Bill 2015 ........ 40
3.12 VCT changes in Second Finance Bill 2015 ........ 41
3.13 Social investment tax relief ........ 41
3.14 Social Venture Capital Trusts (Social VCT's) ........ 41
3.15 Help to buy ISA ........ 42
3.16 Transfer of ISAs on death of spouse ........ 42
3.17 ISA and JISA limits ........ 42
3.18 The flexible ISA ........ 42
3.19 Premium Bond limit ........ 42
3.20 Relief for bad debts on peer-to-peer lending ........ 43

**4. Capital and property taxes ........ 44**

4.1 CGT annual exemption ........ 44
4.2 Capital gains tax – non-resident individuals (Lecture P914 – 9.44 minutes) ........ 44
4.3 PPR claims – non residents (Lecture P914 – 9.44 minutes) ........ 47
4.4 Entrepreneurs' relief restriction – goodwill (Lecture P913 – 6.22 minutes) ........ 49
4.5 Entrepreneurs' relief - other changes (Lecture P913 – 6.22 minutes) ........ 49
4.6 CGT on wasting assets ........ 50
4.7 IHT nil rate band ........ 50
4.8 Inheritance tax – nil rate band addition ........ 50
4.9 Inheritance tax – deeds of variation (Lecture P915 – 10.29 minutes) ........ 52
4.10 Inheritance tax – exemptions for medals ........ 54
4.11 Inheritance tax – exempt estates ........ 54
4.12 Inheritance tax – IHT rate on settled property ........ 55
4.13 IHT – ten yearly charge and heritage property ........ 55
4.14 IHT – interest in possession trusts ........ 55
4.15 IHT – distributions from property settled by will ........ 55
4.16 IHT and interest on liabilities ........ 55
4.17 Stamp duty land tax – reform ........ 56
4.18 SDLT – multiple dwellings relief ........ 56
4.19 ATED – increased rates and administrative changes (Lecture B914 – 8.39 minutes) 56
4.20 ATED – properties subject to relief (Lecture B914 – 8.39 minutes) ........ 57
4.21 ATED - Valuation dates ........ 57

**5. VAT ........ 59**

5.1 VAT refunds to certain charities ........ 59
5.2 VAT registration thresholds ........ 59
5.3 VAT lock ........ 59

**6. Tax administration ........ 60**

6.1 Disclosure of tax avoidance schemes (DOTAS) ........ 60
6.2 Accelerated payment notices (APNs) ........ 60
6.3 Promoters of tax avoidance schemes ........ 61
6.4 Penalties associated with offshore matters ........ 61
6.5 Offshore transfers – additional penalties ........ 61

6.6 Common Reporting Standard ..... 62
6.7 Direct Recovery of Debts ..... 62
6.8 DWP fraud and error teams ..... 64
6.9 Anti-avoidance – future measures ..... 64
6.10 "Last chance" disclosure opportunity ..... 64

# 1. CORPORATION AND BUSINESS INCOME TAX (LECTURE B913 – 15.17 MINUTES)

## 1.1 Corporation tax rates

There were no surprises in the Budget, and the Chancellor confirmed that the 20% rate of corporation tax would commence in April 2015 as planned, and will continue into the financial year 2016 (Finance Act 2015, s 6). Setting the rate in advance is important for companies paying CT by instalments, as they need to know the future rate of corporation tax in order to calculate their tax liabilities for future periods.

The second Finance Bill sets out the future rates. Financial years (beginning on 1 April) 2017 to 2019 inclusive will have a rate of 19%, and the rate for financial year 2020 will be 18%. (Cl 7)

## 1.2 Corporation tax payment dates

The payment dates for corporation tax by the largest UK companies will change once again in 2017. For accounting periods starting on or after 1 April 2017 the payment dates for companies with chargeable profits of £20 million or more (on a group-wide basis) will be 3 months, 6, 9 and 12 months from the start of the accounting period.

This compares with the current QUIP regime applying to companies with group wide profits in excess of £1.5 million, under which companies pay after 6, 9, 12 and 15 months. This three month acceleration for the largest companies will bring a windfall cash flow benefit to the Exchequer of £4.5bn in 2017/18 and £3.1bn in 2018/19.

## 1.3 Annual investment allowance

The summer budget announcements included confirmation that the AIA limit will reduce on 1 January 2016, but that the new long term limit is to be £200,000. Large businesses and smaller businesses with an accounting date early in the calendar year will still need to plan the date of expenditure carefully in order to maximise the benefit of the allowances, but very small businesses should have no issues with the reduction. (Second Finance Bill, clause 8).

### 1.3.1 Closing transitional period

This legislation was included in FA 2014 s 10, when the limit was increased to £500,000. It will not need modification to cope with the latest change, as it is not limit-specific.

The total AIA for the accounting period is found by time apportioning the relevant limits.

There is then a restriction on the part period falling at the end of the AP – that part of the period falling after 31 December 2015. The maximum AIA in this part of the period is the time apportioned amount calculated for the purposes of the total limit.

**Example**

For the year ended 31 March 2016, the maximum AIA for the whole period is

(9/12 x £500,000) + (3/12 x £200,000) = £375,000 + £50,000 = £425,000

However, the allowance available for expenditure between 1 January 2016 and 31 March 2016 is only 3/12 x £200,000 = £50,000.

### 1.4 Flood defence contributions

Contributions by companies, sole traders and partnerships to partnership funding schemes for flood defences are an allowable deduction in arriving at the trading profits of the business for both income tax and corporation tax purposes. The relief applies to contributions made on or after 1 January 2015.

FA 2015, s 35 and Sch 5 set out the terms of the relief. It permits a deduction for a monetary contribution, or for other expenses incurred in making a contribution in kind (probably through donated services) provided the donor does not receive any benefit in return for the contribution. The relief is also available to property businesses, and under corporation tax to investment businesses. Qualifying projects are defined in the legislation which adds new SS 86A and 86B to both ITTOIA 2005 and CTA 2009.

### 1.5 Averaging for farmers

In response to lobbying by the NFU, the Chancellor announced that the averaging period for farmers' profits would be extended from two to five years. Accordingly, a consultation was released on 8 July 2015 setting out the options considered. Under both options suggested, all years of the five would be averaged, and under the second option, averaging would be mandatory for five years, once elected for.

The Tax Faculty will be making representations during the consultation period to ensure that the practical issues are identified and considered appropriately. The proposed measure will commence in 2016.

### 1.6 Capital allowances

The 100% ECA (enhanced capital allowances) applying to zero emissions goods vehicles, low emission cars and refuelling equipment were all due to end on 31 March 2015 for companies and 5 April 2015 for income tax businesses. Finance Act 2015, s 45 extends the period for each to 31 March (or 5 April 2018), with some small additional limitations.

## 1.7 Internally generated goodwill and customer related intangible assets

There are two changes affecting the write down of customer related goodwill and other customer related intangibles.

The first change commenced on 3 December 2014, and excludes tax relief for amortisation of goodwill when it has been purchased from a related party. The restriction will prevent any amortisation gaining a tax deduction for purchased goodwill on or after 3 December 2014 (FA 2015, s 26). This will affect incorporation of businesses which commenced on or after 1 April 2002, preventing the company benefitting from the goodwill write down. Note that there is a corresponding change to entrepreneurs' relief.

The change will not affect past incorporations, and tax relief will continue to be available for amortisation of existing goodwill.

The second change takes effect on 8 July 2015, in relation to similar assets purchased at arm's length on or after that date. The change, made by Cl 32 of the second Finance Bill, excludes relief for all purchased goodwill and customer related intangible assets unless they are sold at a loss, in which case a non-trade debit arises. In consequence, from 8 July 2015, the changes made by FA 2015, s 26 (above) are repealed.

## 1.8 Rates of R & D relief

The rates of tax relief on research and development expenditure by companies increased from 1 April 2015 (FA 2015, s 27). The new rates are :

- Small and medium sized companies (SMEs) – total rate of relief increases from 225% to 230%
- Large company above the line (ATL) relief increases from 10% to 11%. Note that this relief also applies to SMEs on subcontracted and grant aided R & D projects. There is no increase in the rate for the traditional R & D scheme for large companies which stands at 130%; this scheme comes to an end on 1 April 2016, and is replaced by ATL, which is currently optional.

## 1.9 Other R & D changes

### 1.9.1 Qualifying expenditure

The qualifying expenditure boundaries have been re-drawn to exclude expenditure on consumable items which are incorporated into a product which is subsequently sold. (FA 2015, s 28 which inserts new s1126A into CTA 2009). The change has effect from 1 April 2015. Where the consideration for the sale is the provision of test results, this is ignored. The section also makes changes to allow Treasury regulations to further modify classes of qualifying expenditure in relation to consumable items,

### 1.9.2 Small companies

Access to R & D relief by small companies is still quite poor, so Government is launching a strategy to help small companies (and their advisers) claim the relief. This will include:

- A voluntary advanced assurance scheme under which first time claimants from Autumn 2015 will be able to apply for clearance that their project qualifies for R & D relief. The clearance will then apply for three years (provided there are no material changes).
- Reducing the time taken to process a claim – from 2016
- Specific stand-alone guidance for smaller companies which will be written specially for them
- A two year publicity strategy to raise awareness of the relief in the small business sector

### 1.9.3 Ineligible companies

The second Finance Act, clause 30 excludes certain types of company from claiming R & D tax relief. It proposes to introduce new s 104WA into CTA 2009, which excludes R & D expenditure credits for:

- Higher education institutes
- Charities, and
- Other companies which are prohibited under Treasury regulations.

## 1.10 Employment allowance

### 1.10.1 Increase in allowance

The employment allowance of £2,000 will increase to £3,000 from April 2016; the change will be made by statutory instrument. However the allowance remains restricted to businesses that do not receive their income from the public sector. This, together with the new living wage rules will mean that businesses in the care and childcare sectors will see wages for the over 25s rise by £0.70 an hour in 2016, with a consequent rise in NIC.

Example

An employee aged 26 working 30 hours a week paid the current minimum wage (£6.50 an hour) earns a total of £10,140 per annum. The NIC costs to the employer are £237.74. When their wage goes up to the living wage of £7.20 an hour the cost will be £11,232 per annum plus NIC of £287.04. The total annual cost increase for the employer will be £1,141, which is £913 after relief for corporation tax.

Put another way, if the employer does not wish to pay NIC on staff wages, he will need to restrict hours to 23.5 per week, and after the increase will need to reduce those hours to 21.5 per week.

1.10.2 Further restrictions

It was also announced that Employment Allowance would no longer be available for companies where the sole director is the only employee. However, as this is easily circumvented by companies employing a member of the family, and would not immediately seem to apply where there are husband and wife directors, it may well be refined during the enactment of the change, which will be made by statutory instrument.

Having said that, where a director has other income, paying him £10,600 to utilise the full personal allowance will usually leave him worse off, so this is unlikely to cause widespread problems.

## 1.11 Changes to the minimum wage

The new living wage rules will apply to employees aged at least 25 from April 2016. Instead of minimum wage of (currently) £6.50 they will be entitled to a living wage of £7.20. This amount is arrived at by adding a 50p per hour premium to the rate of minimum wage from April 2016 which will be £6.70. It is Government’s ambition to increase this amount to 60% of median earnings by 2020 which would put the figure at over £9 by that date on current data.

## 1.12 Class 2 NI contributions

It would seem that just as the collection of Class 2 NI contributions is to be simplified, the decision has been taken to abolish Class 2 altogether. It will be accompanied by reform of Class 4 contributions to provide the contributory element previously available through payment of Class 2 contributions. One might envisage an LEL type threshold for profits at which point state pension credits are awarded, and a threshold equal to the Class 1 threshold at which contributions become payable. However, it does open the prospect of contributions being levied at 12%, as there would seem to be no real reason for the differential.

## 1.13 Creative sector reliefs

The following changes were announced for the creative sector.

- A new orchestra tax relief of 25% on qualifying expenditure will commence from 1 April 2016. There has already been an “in principle” consultation on this, and work will now start on the detail.
- Film tax relief will in future be available at a single rate of 25% on all films, bringing the rate on large budget films up to the rate available previously on small budget productions. This commenced on 1 April 2015, subject to state aid clearance. (FA 2015, s 29)
- The high end television relief introduced for the production of mainly drama at a cost of £1 million per hour screened has been amended to reduce the required UK spend to 10% of the total budget (down from 25%) from April 2015. Relief is, however, only available on UK spend in any event. (FA 2015, s 31)

- High end television relief will also benefit from a modernisation exercise on the “culturally British” test. It is not clear when this might be complete.
- A new children’s television relief has been introduced, which will also cover game shows and competitions, both of which are excluded from the high end version of the relief. There is a total prize limit of £1,000 on game and quiz shows. Commencement date 1 April 2015. (FA 2015, s 30)

## 1.14 Loan relationships – late paid interest

The late paid interest rules restrict deductions of interest under the loan relationship rules when the interest is unpaid after 12 months. However in a company to company debt, the rules only apply to connected companies where the creditor company is based in a non-qualifying territory (in general terms a tax haven). This has enabled groups of companies to manipulate the rules by timing payments appropriately to obtain the most effective use of any losses generated. To the extent that these rules apply to connected companies or when one company has a major interest in the other the rules have been repealed by Finance Act 2015, s 25.

The changes take effect from 3 December 2014 for loans entered into on or after that date (or for changes in the terms of existing loans) and from 1 January 2016 for loans in existence at 3 December 2014.

## 1.15 Loan relationships – wholesale reform

Clause 31 and proposed Schedule 7 of the second Finance Bill enact the outcome of an in-depth review of the loan relationship rules. The rewrite of the legislation is intended to remove anomalies and align the legislation with modernised accounting standards, including those coming into force in the near future. In addition, the opportunity has been taken to simplify areas that have caused difficulty in the past and to create robust anti-avoidance provisions. The Schedule also does a similar job on the derivative contract legislation which was based on the original loan relationship rules.

The legislation covers 42 pages of the Bill, and is not covered in depth here. The main areas of change :

- Clarifying the relationship between tax and accounting for loan relationships;
- Basing taxable loan relationships on accounting profit and loss entries
- New “corporate rescue” provisions to provide tax relief where loans are released or modified in cases of debtor companies in financial distress and
- Regime-wide anti-avoidance rules.

## 1.16 Diverted profits tax

The diverted profits tax proposed in the Autumn Statement has been implemented in the Finance Act 2015 and commenced on 1 April 2015. There is significant concern that this measure has been rushed through without adequate consultation, but clearly Government is determined to "do something" about multinational companies which are frequently in the news about their tax affairs.

The detail of the tax is unlikely to be of concern to those advising SMEs, but a broad outline follows for reference. Statutory references are to the relevant sections in Finance Act 2015.

### 1.16.1 Triggers

Diverted profits tax is chargeable on a company only if one or more of ss 80, 81 or 86 apply to the company in an accounting period. (s 77)

- Section 80 applies to a UK company and entities or transactions which lack economic substance. Section 80(1)(g) excludes small and medium sized enterprises from this test.
- Section 81 applies to non UK companies and entities or transactions which lack economic substance
- Section 86 applies where despite carrying on activities in the UK the company avoids carrying on a trade in the UK in circumstances where
    - Provision is made or imposed which involve entities or transactions lacking economic substance, or
    - There are tax avoidance arrangements.

  There is an exclusion in relation to s 86 where the UK related sales of the foreign company and connected companies do not exceed £10 million, and the UK related expenses of the foreign company and connected companies do not exceed £1 million.

### 1.16.2 Lacking economic substance

This is defined in s 110. It looks at the tax effects of the transaction or series of transactions and compares this to the actual financial effect of the transaction on the two parties concerned. If the "real" effect of the transaction(s) over the duration of the period to which they apply is less than the tax saving then there is insufficient economic substance to the transaction.

The tax effect of the transaction is known as the "Effective tax mismatch outcome" – a tax saving; this is defined in detail in section 107.

### 1.16.3 Tax rate

The tax charge on diverted profits is 25% of the taxable diverted profits. The tax is collected by notice given by HMRC. The taxable diverted profits are computed according to a formula in the legislation at ss 82 to 85 for section 80 and 81 cases, and ss 88 to 91 for section 86 cases.

#### 1.16.4 Duty to notify chargeability

Companies within the scope of sections 80 and 81 must notify HMRC within 3 months of the beginning of the relevant chargeable period. More detail is in section 92.

### 1.17 Election of “designated currency”

Changes are proposed to the rules permitting companies to choose their currency for tax purposes. The changes are made to complement the changes made to the loan relationship rules proposed by Sch 7 to the second Finance Bill, as they deal with the calculation of exchange gains and losses on loan relationships and derivative contracts.

The amended rules apply to UK resident investment companies, and when a company ceases to be a UK investment company this terminates any election in force at the time. (Clause 33)

### 1.18 Impact of transfer pricing provisions

Clauses 37 to 39 of the second Finance Bill deal with transfers of stock other than in the course of trade, valuation of stock at cessation of trade and transfers of intangible fixed assets respectively. In each of these cases, when the provisions of transfer pricing apply this can eliminate the impact of ITTOIA 2005 and CTA 2009 which require the transaction to be accounted for at market value. These changes correct that position so that the transactions always take place at market value, irrespective of whether the transfer pricing provisions in TIOPA 2010 apply.

### 1.19 Country by country reporting

Finance Act 2015, s 122 includes a provision to allow HMRC to require multinational enterprises to provide information about their global allocation of profits and taxed paid in each jurisdiction, together with information about the economic activity they carry on in each country. The reporting model will be that proposed by the OECD for country by country reporting. The enabling legislation which is not specific, but permits powers to be put in place in broad terms, will be supplemented by Regulations in due course.

### 1.20 Anti-avoidance measures

In addition to any measures dealt with in more detail above, the Finance Act 2015 and second Finance Bill include the following measures in relation to corporation tax avoidance:

- Section 33 and Schedule 3 – provisions to limit the use of carried forward trading losses, non-trading deficits and surplus management expenses against profits generated for tax avoidance purposes. Amended by Cl 36 Second Finance Bill 2015.

- Section 46 and Sch 10 – restrictions on capital allowances in relation to sale and leaseback and similar transactions when no capital expenditure has actually been incurred, with effect from 25 February 2015.
- Clause 35 of the Finance (No 2) Bill 2015 excludes companies from setting UK expenses and losses against a charge arising under the CFC rules.

## 2. INCOME TAX

### 2.1 Tax rates and thresholds 2015/16 onwards

The amount of the personal allowance for 2015/16 was increased by £100 in the Autumn statement, and this was confirmed in the March budget. The married allowance (the amount transferrable between married couples and civil partners who are basic rate taxpayers at most) increases to £1,060 as it is set at 10% of the personal allowance.

The announcements also add the amount of the income limit for abatement of the remaining age related allowances at £27,700, (FA 2015, s 2) which thereby imposes a tax charge of 30% on income in the band £27,701 to £27,820.

**Table 1 : rates and limits for tax 2014/15 and 2015/16**

| | Note | 2014/15 | 2015/16 |
|---|---|---|---|
| Personal allowance | | 10,000 | 10,600** |
| Age related allowance | 1 | 10,660 | 10,660 |
| Transferrable married allowance | | N/A | £1,060** |
| Age related married couples allowance | | £8,165 | £8,355* |
| Married couples' allowance (minimum) | | £3,140 | £3,220* |
| Income limit for personal allowance | | £100,000 | £100,000 |
| Income limit for age related allowances | 2 | £27,000 | £27,700* |
| Starting rate for savings | 3 | 10% | 0% |
| Starting rate band | 3 | £2,880 | £5,000 |
| Basic rate band (20%) | | £31,865 | £31,785 |
| Higher rate limit (40%) | | £150,000 | £150,000 |
| Additional rate | | 45% | 45% |

* Implemented by Finance Act 2015, s 2.
** Implemented by Finance Act 2015, s 3.

**Notes to Table 1**

1. The age related allowance is available to those born before 6 April 1938.
2. Only the excess over the basic personal allowance is tapered
3. The rate applies to savings income within the band, provided the taxable non savings income does not exceed the limit of the band.

#### 2.1.1 Subsequent years

The Chancellor decided to give advance notice of a variety of key income tax figures for the future, but revised the amounts upwards in the July budget.

We have the following from FA 2015:

**Table 2 : Tax allowances looking further ahead**

| | **2016/17** | **2017/18** |
|---|---|---|
| Personal allowance | £10,800** | £11,000** |
| Marriage allowance | £1,080 | £1,100 |
| Entry point to HR tax (and NIC UEL/UPL) | £42,700* | £43,300* |

*Implemented by Finance Act 2015, s 4.
**Implemented by Finance Act 2015, s 5.

Accordingly, the age related personal allowance is abolished in 2016/17. The Chancellor also set out his aspiration for a £50,000 entry point to higher rate by 2020 (the end of the next Parliament).

However, the second Finance Bill amends these once again as follows:

**Table 3 : Tax allowances looking further ahead**

| | **2016/17** | **2017/18** |
|---|---|---|
| Personal allowance | £11,000* | £11,200* |
| Marriage allowance | £1,100 | £1,120 |
| Entry point to HR tax (and NIC UEL/UPL) | £43,000** | £43,600** |

*Implemented by second Finance Bill, cl 5
** Implemented by second Finance Bill, cl 6

## 2.2 Indexation of personal allowances

The provisions which index personal allowances by CPI will cease to have effect from the date at which the personal allowance reaches at least £12,500. It will be replaced by indexation based on the adult rate (over 21) of minimum wage for a 30 hour week over 52 weeks (second Finance Bill, clause 3).

Clause 4 imposes a duty on the Chancellor to consider the impact of rises in the personal allowance on persons paid the adult minimum wage (30 hour week). This provision applies until the personal allowance reaches £12,500.

## 2.3 Income Tax lock

The second Finance Bill includes legislation at clause 1 to implement the "Triple tax lock" promised by the Government during the election campaign. If passed without amendment, the following will apply:

For all tax years up to the date of the general election:

- The basic rate of income tax will not exceed 20%
- The higher rate of income tax will not exceed 40%
- The additional rate of income tax will not exceed 45%.

The lock will also apply to employee and employer NIC, legislated for separately in the National Insurance Contributions (Rate Ceilings) Bill 2015.

### 2.4 National Insurance Contributions

The upper limit NIC limit, applicable to both employed and self employed earners will increase to keep in line with the entry point to 40% tax, so will rise as set out above. Above this limit both employees and the self employed will pay only 2% National Insurance Contributions.

### 2.5 Cars – the appropriate percentage

The benefit in kind rate applying to company cars with various emissions ratings have been further increased by Finance Act 2015, broadly in line with previous indications.

- Increasing the rates for cars without an emissions rating, and for those registered before 1 January 1998 in both 2017 and 2018, by 2% on each occasion, although these changes had not previously been announced
- Capping the maximum percentage for diesel cars registered after 1 January 1998 at 37% (From 6 April 2015 FA 2015, s 9)
- Changing the minimum benefit on the main table to 17% in 2017 and 19% in 2018, and
- Increasing the favourable rates for very low emission cars by 2% each in 2017 and 4% each in 2018.
- Budget 2015 further announced that the minimum rate on the main table in 2019-20 would be 22%, and that very low emission cars would see a slightly slower rise in that year.

So the following rate of benefit in kind will apply:

**Table 4: New rates – cars with no emissions rating**

| Engine size | 2015-16 | 2016-17 | 2017-18* | 2018-19** |
|---|---|---|---|---|
| 1400cc or less | 15% | 16% | 18% | 20% |
| 1400 cc to 2000 cc | 25% | 27% | 29% | 31% |
| Over 2000 cc | 37% | 37% | 37% | 37% |

**Table 5 : New rates – cars registered before 1 January 1998**

| Engine size | 2015-16 | 2016-17 | 2017-18* | 2018-19** |
|---|---|---|---|---|
| 1400cc or less | 15% | 16% | 18% | 20% |
| 1400 cc to 2000 cc | 22% | 27% | 29% | 31% |
| Over 2000 cc | 32%* | 37% | 37% | 37% |

**Table 6 : Main table of benefit in kind rates**

| Emissions (g/km) | 2014/15 | 2015/16 | 2016/17 | 2017/18* | 2018/19** | 2019/20♦ |
|---|---|---|---|---|---|---|
| Zero | 0% | 5% | 7% | 9% | 13% | 16% |
| 1 - 50 | 5% | | | | | |
| 51 - 75 | 5% | 9% | 11% | 13% | 16% | 19% |
| 76 - 79 | 11% | 13% | 15% | 17% | 19% | 22% |
| 80 | 11% | 13% | 15% | 17% | 19% | 22% |
| 85 | 11% | 13% | 15% | 17% | 19% | 22% |
| 90 | 11% | 13% | 15% | 17% | 19% | 22% |
| 95 | 12% | 14% | 16% | 18% | 20% | 23% |
| 100 | 13% | 15% | 17% | 19% | 21% | 24% |
| 105 | 14% | 16% | 18% | 20% | 22% | 25% |
| 110 | 15% | 17% | 19% | 21% | 23% | 26% |
| 115 | 16% | 18% | 20% | 22% | 24% | 27% |
| 120 | 17% | 19% | 21% | 23% | 25% | 28% |
| 125 | 18% | 20% | 22% | 24% | 26% | 29% |
| And then in increments of 5g = 1% until | | | | | | |
| 160 | 25% | 27% | 29% | 31% | 33% | 36% |
| 165 | 26% | 28% | 30% | 32% | 34% | 37% |
| 170 | 27% | 29% | 31% | 33% | 35% | 37% |
| 175 | 28% | 30% | 32% | 34% | 36% | 37% |
| 180 | 29% | 31% | 33% | 35% | 37% | 37% |
| 185 | 30% | 32% | 34% | 36% | 37% | 37% |
| 190 | 31% | 33% | 35% | 37% | 37% | 37% |
| 195 | 32% | 34% | 36% | 37% | 37% | 37% |
| 200 | 33% | 35% | 37% | 37% | 37% | 37% |
| 205 | 34% | 36% | 37% | 37% | 37% | 37% |
| 210 and above | 35% | 37% | 37% | 37% | 37% | 37% |

* Finance Act 2015, s 7
** Finance Act 2015, s 8.
♦ Not yet legislated for

## 2.6 Zero emission vans

Finance Act 2015, s 10 deals with the changes to the benefit in kind rates for zero emission vans, announced in 2014.

| | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 |
|---|---|---|---|---|---|
| % of van benefit chargeable | 20 | 40 | 60 | 80 | 90 |

In 2020/21 the benefit on zero emission vans will be the same as for all other vans. The current van benefit is £3,150.

## 2.7 Abolition of £8,500 threshold for benefits in kind (Lecture B915 – 13.38 minutes)

The abolition of the £8,500 threshold in relation to benefits in kind has been implemented in Finance Act 2015, ss 13 and 14, but will not commence until 6 April 2016. However, there are two exemptions from the change:

- Ministers of religion will still be subject to an income limit of £8,500 before benefits in kind are taxable, (new sections 290C – 290G ITEPA 2003, introduced by s 13) and
- There is an exemption for carers who are provided with accommodation (board and lodging on a reasonable scale) at the home of the person they are caring for. (new s 306A ITEPA 2003, introduced by FA 2015, s 14). The care must be personal care provided in the home of a person in need of care because of:
    - Old age
    - Mental of physical disability
    - Past or present dependence on drugs or alcohol
    - Past or present illness
    - Past or present mental disorder.

These two changes will also be reflected across in NIC legislation by statutory instrument.

## 2.8 Exemption for reimbursed expenses and related benefits (Lecture B915 – 13.38 minutes)

Employees who are reimbursed work related expenses are not at present liable to tax on them if they claim a deduction in their tax return or by writing to HMRC.

This legislation has been restructured by Finance Act 2015, s11 which introduces new Chapter 7A into Part 4 of ITEPA 2003. New section 289A of ITEPA removes the tax liability on business expenses that are reimbursed to employees, providing they would otherwise be deductible from income under Chapter 2 or 5 of Part 5, and are not paid as part of a salary sacrifice scheme.

The tax exemption depends on two qualifying conditions which seek to protect the system from abuse. Condition A is that the payer operates a system for checking that the employee is in fact incurring and paying the expenses, and that a deduction would otherwise be available for them. Condition B asserts the reverse – that neither the payer nor anyone operating the system knows or suspects, or could reasonably be expected to know or expect that the employee has not incurred and paid an amount in respect of the expenses or that a deduction would not be available for the expenses.

New section 289B (and related 289C) allows an employer to apply to HMRC to reimburse expenses at a flat rate, which once approved would also qualify for the exemption above.

Once the amounts are agreed HMRC will issue an "approval notice" which will specify:

- The rate at which the expenses are to be paid or reimbursed
- The date from which this takes effect (earliest date is the date of the notice)
- The date of expiry (no more than 5 years after the date of commencement)
- The type of expenses to which the approval notice applies.

Section 289C sets out the details for the revocation of approval notices, which can be done if an officer considers there is reason to do so. The revocation can be backdated to the date of approval.

New section 289D provides an exemption for benefits in kind which are similarly covered by a deduction. This will be an unusual situation, but the exemption therefore covers all possible scenarios.

Section 289E provides an anti-avoidance test looking at whether the expenses have been paid to replace earnings on which either tax or NIC is payable by any person (including the employer), the main purpose of the arrangements (or one of the main purposes) being the avoidance of tax or NIC. The exemption is then withdrawn.

This will mean that the employer will have no need to report the expenses on form P11D, nor will the employee need to claim an exemption (dispensations are abolished by Finance Act 2015, s 12). The change will come into force on 6 April 2016. As a result, employers will no longer need to seek dispensations for expenses either. This is anticipated to save employers, their advisers and HMRC very considerable sums of money in administration costs. Secondary legislation will follow.

### 2.9 Trivial benefits

Certain trivial benefits – such as a modest gift at Christmas or similar – are disregarded in taxing employees; however this is not a statutory arrangement – merely HMRC practice. It was anticipated that Finance Bill 2015 will put this exemption on a statutory footing, with a list of qualifying benefits and a financial limit of £50 which would apply from 6 April 2015, but the measure was withdrawn at the last minute. Employers will not need to report qualifying benefits on forms P11D, nor settle tax on them through a PAYE settlement arrangement.

Budget 2015 announced that directors of close companies will be restricted to £300 per annum, in gifts to themselves or members of their family.

It is likely that this will now fall into Finance Bill 2016.

## 2.10 Payrolling benefits in kind

Employers will have the option to tax charge tax on benefits in kind through the payroll if they choose to. Finance Act 2015, s 17 sets out enabling legislation to allow HMRC to make changes to the PAYE regulations to achieve this. The legislation allows HMRC to authorise P to make deductions of PAYE in respect of benefit in kind. The primary legislation does not contain a provision for the employee to object, but this may be given in the Regulations.

Given the time savings for HMRC in dealing with benefits, work is likely to progress very quickly with this, although there is no firm start date quoted in the legislation briefings. Further legislation is proposed for Finance Bill 2016, and regulations are also available for comment.

## 2.11 The use of umbrella companies (Lecture B915 – 13.38 minutes)

The discussion document released in December 2014 on the subject of travelling expenses in umbrella companies has borne fruit.

There will be new legislation in Finance Bill 2016, but commencing in April 2016 which will restrict tax relief on travel and subsistence expenses where a worker works through an umbrella company or personal service company, but nevertheless is under the supervision, direction or control of the end user.

This test will use the same principles established in Finance Act 2014 in relation to agency workers, bringing those workers within PAYE for the first time. There is little doubt that those with personal service companies will be disappointed with the change, but the arrangements have been widely abused by businesses using low paid labour, to the benefit of themselves rather than the workers concerned.

There is also a proposal that workers in these arrangements are given more transparency on how they are employed and what they are being paid. The consultation on this aspect will be undertaken by the Department for Business, Innovation and Skills. (BIS)

## 2.12 Fixed rate deductions

The fixed rate deduction regime introduced in 2013 is to be amended to ensure that the amounts applying to business use of home, and to business premises also occupied for non-business purposes can be used by partners in firms in addition to the self-employed, but the change will require the application of fixed rate expenses to apply across the whole firm. The proposed change applies to the tax year 2015/16 and subsequent years and will be included in the Finance Bill 2016.

## 2.13 Increase in rent a room relief

The amount of rent a room relief will rise from £4,250 to £7,500 from April 2016; the change will be made by statutory instrument. The exempt amount is shared if the property is jointly owned so that each owner can claim only his share of the relief against his income; this means that the limit is £7,500 per property.

Small B&B establishments will also benefit as they can claim the relief too, provided the owners live on the premises.

This increase is an above inflation rise over the period from April 1992 when the allowance was introduced. Updating in line with inflation to today would bring the allowance to £6,854.

## 2.14 Removal of the wear and tear allowance (Lecture P912 – 12.34 minutes)

From April 2016 the wear and tear allowance will end, to be replaced by a deduction for landlords when they actually spend the money. The change will be included in Finance Act 2016.

It remains to be seen whether the deduction for money spent will apply to all expenditure, including that on kitchen appliances such as ovens, and whether it will be subject to a "cap". Landlords of partly furnished properties were stopped from claiming for the replacement cost of white goods in 2013 – a move that has been very unpopular. Some of those landlords have now started to provide fully furnished homes – so they will be very disappointed if their tax relief is once again restricted.

## 2.15 Relief on interest for let domestic property (Lecture P912 – 12.34 minutes)

At present, full tax relief is available for interest on a loan used in a property business. The funds may have been used to purchase the let property, to make major repairs, or just to fund the working capital of the property business.

From April 2017, tax relief on interest in property businesses (including single buy to lets) will be restricted so that by 2020, interest will not be an allowable expense in computing the profits of the business, but will attract tax relief at 20%. The legislation is in the second Finance Bill at clause 24, and introduces new ss 272A, 272B and 274A into ITTOIA 2005, plus similar restrictions for partnerships at 399A and 399B. The change does not affect furnished holiday lettings. The change will be phased in as follows:

| | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---|---|---|---|---|
| % of interest allowed as a deduction (by new s 272A) | 75 | 50 | 25 | 0 |
| % of interest given as a relief at 20% (by new s 274A) | 25 | 50 | 75 | 100 |

The effective interest deduction will therefore be:

- 2016/17 – 100%
- 2017/18 – 80%
- 2018/19 – 60%
- 2019/20 – 40%
- 2020/21 – 20%

There is a restriction to limit the relief to the individual's adjusted total income where this is less than the total finance costs for relief. The adjusted total income for this purpose is the individual's total income less savings and dividend income, less any personal allowances available to him. (new s 274A).

Illustration

Tom has income for the tax year 2019/20 as follows: Loss from a trade £20,000, rental profits (before interest deduction) £20,000. The interest on his borrowings related to his rental properties is £12,000.

Tom's adjusted total income for the year is:

| | |
|---|---|
| Rental profit | 20,000 |
| Less allowable interest (25%) | (3,000) |
| Total income | 17,000 |
| Less personal allowance (say) | (12,000) |
| Adjusted total income | 5,000 |

Gross finance costs for relief (the balance) £9,000. The relief would always be restricted to ensure that the gross finance costs for this purpose do not exceed the net property income – here £17,000. However in the absence of other income the relief is further restricted as follows:

$$\frac{\text{Adjusted total income}}{\text{Gross finance costs}} \times \text{Basic rate} \times \text{Finance costs limited to rental profit}$$

So : $$\frac{£5,000}{£9,000} \times 20\% \times £9,000 = £1,000$$

***Commentary***

A letting activity that has a low level of interest in relation to the borrowings will not be too badly affected, but larger property businesses using debt to expand the portfolio will find that their business model has been severely undermined. The primary solutions (where appropriate) include:

- Full incorporation – move properties and loans
- Partial incorporation – personal borrowing to invest in shares in a property letting company (but this may well be closed as a "loophole)
- Pay down borrowings
- Sell up

*Example 1 – single buy to let*

Jo is a teacher and is 49 years old; he is a 40% taxpayer. He has purchased a buy to let property as an investment. As he has owned the property for some time, the outstanding debt on the property is relatively low:

| | 2016-17 | 2020-21 |
|---|---|---|
| Gross rents | 7,200 | 7,200 |
| Repairs and other tax deductible costs | 1,000 | 1,000 |
| Interest on mortgage | 2,500 | - |
| Net rental profit | 3,700 | 6,200 |
| | | |
| Tax at 40% | £1,480 | £2,480 |
| Less interest relief at 20% on £2,500 | | 500 |
| Net tax liability on rental income | £1,480 | £1,980 |
| | | |
| Tax Increase | | £500 |
| Effective rate on “real” rental profit | 40% | 53.5% |

If Jo decided to increase his borrowings to allow him to buy a second buy to let, he would see his tax rate rise still further, as his interest costs will be higher initially, and his net return lower.

*Example 2 – substantial property portfolio*

John and Julie are married and together run a sizeable rental property business. They have not run this through a limited company due to the difficulty in obtaining finance for purchases with limited company status.

| | 2016-17 | 2020-21 |
|---|---|---|
| Gross rents | 600,000 | 600,000 |
| Repairs and other tax deductible costs | 200,000 | 200,000 |
| Interest on mortgage | 350,000 | - |
| Net rental profit | 50,000 | 400,000 |
| Personal allowances (x2) | 22,000 | - |
| Taxable income | 28,000 | 400,000 |
| | | |
| Basic rate tax (2 taxpayers) | 5,600 | 17,200 |
| Tax at 40% | - | 85,600 |
| Tax at 45% | - | 45,000 |
| | | 147,800 |
| Less interest relief at 20% on £350,000 | - | 70,000 |
| Net tax liability on rental income | £5,600 | £77,800 |
| | | |
| Tax Increase | | £72,200 |
| Effective rate on “real” rental profit | 11.2% | 144.4% |

Although John and Julie spend at least 35 hours a week on the business (and their cash return is modest) that is because they have ploughed most of their profits back into building up the portfolio, and taken risks to allow them to grow their business. Their current business structure is now unsustainable.

*Example 3 – increase in interest rates*

Finally we return to Jo, who has presently got borrowings of £50,000 on his property which has a current market value of £160,000. His interest rate is 5%. If his interest rate was to rise to 10% he would see the following change:

| | **2016-17** | **2020-21** |
|---|---|---|
| Gross rents | 7,200 | 7,200 |
| Repairs and other tax deductible costs | 1,000 | 1,000 |
| Interest on mortgage | 5,000 | - |
| Net rental profit | 1,200 | 6,200 |
| | | |
| Tax at 40% | £480 | £2,480 |
| Less interest relief at 20% on £5,000 | | 1,000 |
| Net tax liability on rental income | £480 | £1,480 |
| | | |
| Tax Increase | | £1,000 |
| Effective rate on “real” rental profit | 40% | 123.3% |

***Advice point***

Many buy to let owners happily complete their own tax returns, but there is a market for advice to these potential clients to help them decide what they should do regarding the changes.

## 2.16 Dividend taxation (Lecture B911 – 11.21 minutes)

The bombshell announcement was regarding the taxation of dividends. For many investors this will not pose any issues, but for the owner manager of a small company, major changes are in store. The whole issue of the right structure for a smaller business is considered in more detail later in this document, but the basic information about the taxation of dividends is as follows. This has been updated to reflect how the £5,000 dividend allowance will work, based on a draft of the guidance provided to us by HM Treasury on 11 August 2015. This guidance is expected to be finalised and published sometime after that date.

- Abolition of the tax credit – dividend income will no longer be grossed up in the personal tax computation
- A Dividend Tax Allowance of £5,000. This does not reduce the taxable income, but is better regarded as a nil rate band applying to the first £5,000 of taxable dividend income. Any dividend income over and above the first £5,000 is taxed as if the £5,000 has **used up** either basic rate band or higher rate band. The effect of this is easier to appreciate with examples – see below.

- Dividends will then be liable to tax at 7.5% in the basic rate band, 32.5% in the higher rate band and 38.1% in the additional rate band.
- The new savings allowance of £5,000 introduced this year (2015) **is not** available against dividend income – only interest and similar.
- The new personal savings allowance of £1,000 for basic rate taxpayers and £500 for higher rate taxpayers which is due to commence in 2016 will **not be available** against dividends; it will be restricted to savings income only.

Detailed computations on the impact on small businesses run through companies is in the next section, but here is a view of the impact on a private investor with substantial dividend income.

Example 1

Peter is a higher rate taxpayer with a significant inherited portfolio of shares on which he receives dividends of £9,000 a year (net amount).

His tax position in 2015/16 and 2016/17 is as follows:

| | **2015/16** | | **2016/17** | | |
|---|---|---|---|---|---|
| Dividend income received | | 9,000 | | | 9,000 |
| Plus tax credit | | 1,000 | | | - |
| Taxable dividend income | | 10,000 | | | 9,000 |
| Tax at | 0% | - | 0% on | 5,000 | 0 |
| | 32.5% | 3,250 | 32.5% on | 4,000 | 1,300 |
| Less tax credit | | 1,000 | | | |
| Tax due | | 2,250 | | | 1,300 |

The dividend tax allowance is worth £1,625 (£5,000 x 32.5%) to this taxpayer, as his non dividend income is already in the higher rate band.

For an additional rate taxpayer the numbers are:

Example 2

| | **2015/16** | | **2016/17** | | |
|---|---|---|---|---|---|
| Dividend income received | | 9,000 | | | 9,000 |
| Plus tax credit | | 1,000 | | | |
| Taxable dividend income | | 10,000 | | | 9,000 |
| Tax at | | | 0% on | 5,000 | 0 |
| | 37.5% | 3,750 | 38.1% | 4,000 | 1,524 |
| Less tax credit | | 1,000 | | | |
| Tax due | | 2,750 | | | 1,524 |

Here, the dividend tax allowances saves tax at the additional rate for dividends and is therefore worth £1,905.

It is only where dividends are the majority of an individual's income that we shall see the reverse.

Example 3

In the following examples, the taxpayer has non savings income of £8,000 and a personal allowance of £10,600 in 2015/16 and £11,000 in 2016/17

| | | 2015/16 | | | 2016/17 |
|---|---|---|---|---|---|
| Salary | | 8,000 | | | 8,000 |
| Dividend income received | | 10,000 | | | 10,000 |
| Plus tax credit | | 1,111 | | | |
| | | 19,111 | | | 18,000 |
| Less : Personal allowance | | 10,600 | | | 11,000 |
| Taxable income | | 8,511 | | | 7,000 |
| Tax at | 10% | 851 | 0% on | 5,000 | 0 |
| | | | 7.5% on | 2,000 | 150 |
| Less tax credit | | 851 | | | |
| Tax due | | Nil | | | 150 |

Although we have a dividend allowance of £5,000, the basic rate taxpayer would not previously have been liable to tax at all on his dividend income, so the £150 tax charge is an increase for him.

The following example illustrates the effect of the allowance when some of the dividend is taxable at higher rate.

Example 4

| | | | 2015/16 | | | 2016/17 |
|---|---|---|---|---|---|---|
| Salary | | | 8,000 | | | 8,000 |
| Dividend income | | | 40,000 | | | 40,000 |
| Plus tax credit | | | 4,444 | | | |
| | | | 52,444 | | | 48,000 |
| Less : Pers allowance | | | 10,600 | | | 11,000 |
| Taxable income | | | 41,844 | | | 37,000 |
| Tax at | 10% on | 31,785 | 3,178 | 0% on | 5,000 | 0 |
| | 32.5% on | 10,059 | 3,269 | 7.5% on | 27,000 | 2,025 |
| | | | | | 32,000 | |
| Less tax credit | | | 4,184 | 32.5% on | 5,000 | 1,625 |
| Tax due | | | 2,263 | | | 3,650 |

Note that the taxable dividend is £37,000, which is tested against the higher rate limit before applying the dividend allowance. Doing so establishes that £5,000 is therefore taxable at higher rate. The dividend allowance forms part of the basic rate band of £32,000, and is therefore worth £5,000 x 7.5% = £375.

2.16.1 Impact on restriction of personal allowances

Because the dividend allowance does not reduce the taxable income, the full dividend is included when calculating the income for the purpose of personal allowance reduction (and indeed abatement of child benefit). However, some taxpayers will benefit from the change in any event because the dividend income is no longer grossed up for the tax credit.

Example 5

Non dividend income is £85,000. Dividends paid are £20,000. The personal allowance computation is as follows:

| | **2015/16** | **2016/17** |
|---|---|---|
| Non savings/dividend income | 85,000 | 85,000 |
| Dividend income received | 20,000 | 20,000 |
| Tax credit | 2,222 | |
| Total income | 107,222 | 105,000 |
| | | |
| Excess income over limit | 7,222 | 5,000 |
| | | |
| Abatement of allowance (50%) | 3,611 | 2,500 |

## 2.17 Incorporation advice (Lecture B912 – 8.25 minutes)

The changes to dividend taxation announced in the July Budget impact significantly on the advice about incorporation. Following the changes made in December 2014 affecting goodwill on incorporation, this change makes it even less attractive for some clients to run their business through a limited company.

2.17.1 Numerical examples - assumptions

In all cases the following assumptions apply:

- The comparisons are between a single person operating as a sole trader and a company owned by one person. The tax, and Classes 2 and 4 NIC are included in the current year; thereafter Class 2 NIC is excluded as it is likely to be abolished in 2016.
- Incorporated business assumes that the taxpayer takes the most aggressive view about distribution of profits and draws a salary roughly equal to the NIC threshold (£8,000) and the balance by way of periodic dividend. It is assumed that the tax and NIC limits set for 2016 will continue through to 2020.
- A 100% profit distribution route has been considered, which puts maximum disposable income in the hands of the taxpayer. If profits are retained in a company over and above the personal higher rate threshold, this will produce further tax savings. This way, the figures below show the “worst case scenario”.

- These examples exclude any other differential arising from operating in the particular business structures; in particular, there will be differences in the cost of business motoring arising from the tax treatment, and the administrative costs borne by the business operating through a limited company.

**Table 1 : Tax & NIC burden self employed to limited company 2015/16**

| Profit | Sole trader | Tax % | Company | Tax % in co. | Saving |
|---|---|---|---|---|---|
| £20,000 | £3,100 | 15.5% | £2,388 | 12% | £712 |
| £30,000 | £6,000 | 20% | £4,388 | 14.7% | £1,612 |
| £40,000 | £8,900 | 22.3% | £6,388 | 16% | £2,512 |
| £50,000 | £12,790 | 25.6% | £9,053 | 18.1% | £3,737 |
| £75,000 | £23,290 | 31.0% | £19,053 | 25.4% | £4,237 |
| £100,000 | £33,790 | 33.8% | £29,053 | 29.1% | £4,737 |

With the tax savings shown above it is unlikely that it is worth incorporating at profits of less than £40,000, given the additional administrative costs.

2.17.2 Changes in 2016

The change to taxation of dividends produce the following results, using the same assumptions.

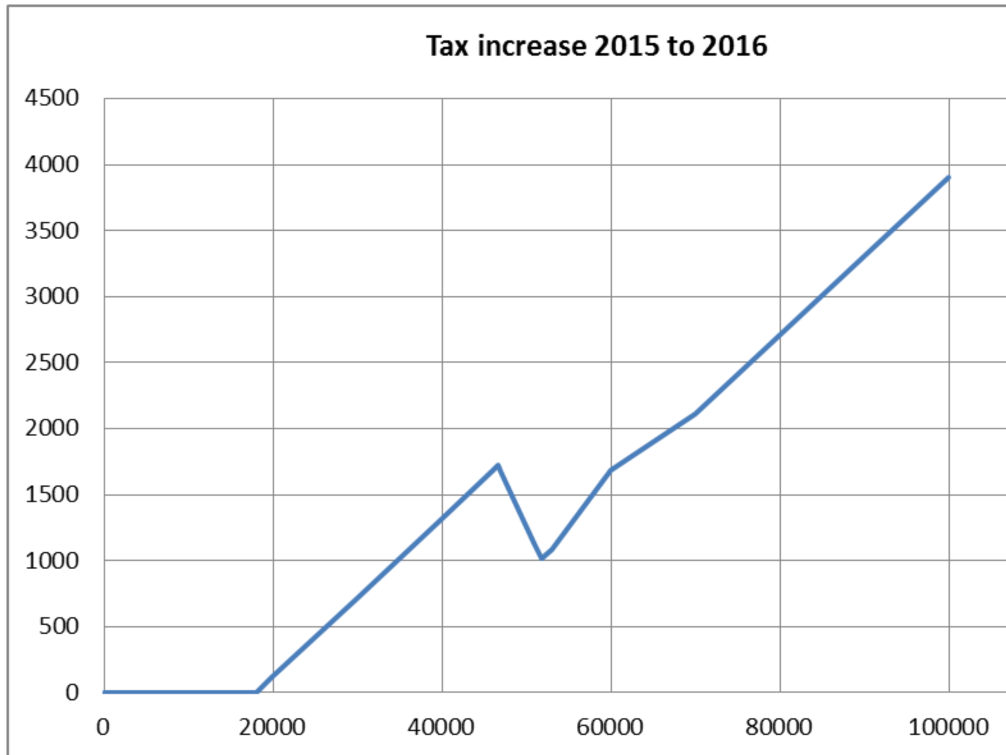
**Table 2 : Tax & NIC burden self employed to limited company 2016/17**

| Profit | Sole trader | Company | Tax % in co. | Saving |
|---|---|---|---|---|
| £20,000 | £2,875 | £2,520 | 12.6% | £355 |
| £30,000 | £5,775 | £5,120 | 17.1% | £655 |
| £40,000 | £8,675 | £7,720 | 19.3% | £955 |
| £50,000 | £12,485 | £10,320 | 20.6% | £2,165 |
| £75,000 | £22,985 | £21,470 | 28.6% | £1,515 |
| £100,000 | £33,485 | £32,970 | 33.0% | £515 |

**Table 3 : additional tax under corporate structure 2015/16 to 2016/17**

| Profit | Tax increase |
|---|---|
| £20,000 | £132 |
| £30,000 | £732 |
| £40,000 | £1,332 |
| £50,000 | £1,267 |
| £75,000 | £2,417 |
| £100,000 | £3,917 |

The tax increase from 2015 to 2016 is zero at profits of up to £18,000. The increase then rises until approximately £47,000 profit when the benefit of not grossing up the dividend starts to compensate – the entry to higher rate tax is delayed in 2016. This reverses at profits of around £52,000, when the impact of the higher rates of tax give a rising tax increase again. In all cases, because the majority of income is dividend income, the dividend allowance is worth only £375, irrespective of the total amount of income. The value of the dividend exemption is only worth more than this if the non-savings / non-dividend income is in excess of the higher rate threshold (see above).




2.17.3 <u>Marginal rates on dividends</u>

The combined marginal rate on dividends payable in each band are as follows:

| | **Basic** | **Higher** | **Additional** |
|---|---|---|---|
| Profit | 100 | 100 | 100 |
| Corporation tax | 20 | 20 | 20 |
| Net profit | 80 | 80 | 80 |
| Dividend tax | 6 | 26 | 30.5 |
| Net retained | 74 | 54 | 49.5 |
| Tax rate % | 26.0% | 46% | 50.5% |

2.17.4 Change to corporation tax rate in 2017

Assuming that all other factors remain the same, the one per cent reduction in the corporation tax rate in 2017 will reduce the impact of this, and the further reduction in 2020 will help still further.

**Table 4 : Corporate structure tax burden 2016 to 2020**

| Profit | 2015 | 2016 | 2017 | 2020 |
|---|---|---|---|---|
| £20,000 | £2,400 | £2,520 | £2,409 | £2,298 |
| £30,000 | £4,400 | £5,120 | £4,917 | £4,713 |
| £40,000 | £6,400 | £7,720 | £7,424 | £7,128 |
| £50,000 | £9,063 | £10,320 | £9,932 | £9,543 |
| £75,000 | £19,063 | £21,470 | £21,018 | £20,556 |
| £100,000 | £29,063 | £32,970 | £32,349 | £31,728 |

**Table 5 : additional tax under corporate structure 2015/16 to 2020/21**

| Profit | Tax increase |
|---|---|
| £20,000 | £(102) |
| £30,000 | £313 |
| £40,000 | £728 |
| £50,000 | £480 |
| £75,000 | £1,493 |
| £100,000 | £2,665 |

## 2.18 Remittance basis charge

The remittance basis charge which is payable for UK resident non domiciled individuals to continue to be taxed on a remittance basis will change from 6 April 2015 (Finance Act 2015, s 24 amending ss809C and 809H ITA 2007).

**Table 3 : Remittance basis charge**

| UK resident | 2014-15 | 2015-16 |
|---|---|---|
| in at least seven of the nine tax years immediately preceding the tax year | £30,000 | £30,000 |
| in at least 12 of the 14 tax years immediately preceding the tax year | £50,000 | £60,000 |
| in at least 17 of the 20 tax years immediately prior to the tax year | N/A | £90,000 |

Although the Autumn Statement suggested that HMRC would also consider forcing the remittance basis election to apply for three years, this has not been taken further at this time.

## 2.19 Proposed changes to non-domicile status

Several changes will be made to the domicile rules form April 2017 which will together make claiming non-domicile status much more difficult for those who are either UK resident and born in the UK to UK domiciled parents, or who are long term (15 out of 20 years) residents of the UK. There is already a “deemed domicile” rules for IHT (17 out of 20 years) but the new rule will apply to income and capital gains tax in addition to inheritance tax to prevent long term residents being able to claim the remittance basis. The likely upshot is that affected individuals will spend periods of time resident abroad to break up their periods of residence in the UK – although for those already resident here on a long term basis, this will not prevent them falling into the new regime in 2017 – although they may be able to restrict its impact to four years.

## 2.20 Charity gift aid relief

Charities will be able to reclaim tax on small cash donations up to a maximum of £8,000 a year from April 2016, an increase from the current limit of £2,000. Finance Act 2015 s 20 includes administrative provisions to allow intermediaries to deal with gift aid statements on behalf of individuals who appoint them.

## 2.21 Expenses of members of local authorities

Clause 28 of the second Finance Bill provides a tax exemption for members of local authorities in respect of payments by the authority for travel between their home and permanent workplace. This applies when the member’s home is either situated within the boundary of the authority or no more than 20 miles outside the boundary. The amount is limited to the mileage allowance payment, plus if relevant the passenger payment (using the usual requirements). The change applies form April 2016.

## 2.22 Sporting testimonials

This type of income is still covered by ESC, so a consultation has been launched, to end before the 2015 autumn statement on how the concession should be brought into legislation, in line with the principle in *Wilkinson*.

## 2.23 Income tax exemption – 2015 Anniversary Games

There will be an income tax exemption for non UK residents participating in the Anniversary Games taking place on 24 – 26 July 2015. This is in common with previous similar exemptions.

## 2.24 Tax credit changes

Those clients still within the scope of tax credits will see a number of changes reduce their tax credits, and also increase instability by making repayments more likely when income changes.

From April 2016 the following changes will apply:

| | Current rate | April 2016 |
|---|---|---|
| Income threshold for taper | £6,420 | £3,850 |
| Taper rate | 41% | 48% |
| Income rise disregard | £5,000 | £2,500 |

Example

A family with two children and income of £20,000 will see the following change as a result.

| | 2015/16 | | 2016/17 | |
|---|---|---|---|---|
| Working tax credit | | 1,960 | | 1,960 |
| Couple | | 2,010 | | 2,010 |
| 30 hours | | 810 | | 810 |
| 2 children | | 5,560 | | 5,560 |
| Family element | | 545 | | 545 |
| | | 10,885 | | 10,885 |
| Taper based on £20,000 income | £13,580 @ 41% | (5,568) | £16,150 @ 48% | (7,752) |
| Net award | | £5,317 | | £3,133 |

From April 2017, the family element of tax credits (currently £545) will no longer be available, nor will child tax credit be paid in respect of third and subsequent children, apart from multiple births.

There were a number of other changes made to both tax credits and universal credit to bring down the overall cost of the welfare bill.

### 2.25 Tax credit claims by the self employed

From 6 April 2015, those claiming Working Tax Credit (WTC) on the basis of self-employment will be required to be undertaking an activity which is commercial and profitable or working towards profitability, otherwise they will not meet the qualifying conditions for “working”. They will also be required to register with HMRC as self-employed and provide a UTR from April 2017.

### 2.26 Bereavement support payment

This new payment is a state benefit which replaces three existing benefits paid in respect of bereavement. It will commence in April 2017 and will be exempt from income tax (Finance Act 2015, s 16).

## 2.27 Anti-avoidance measures

Income tax anti-avoidance measures in either Finance Act 2015 or the second Finance Bill include:

- Section 19 which deals with arrangements offering a choice of capital or income return (new s 396A ITTOIA 2005)
- Section 21 which brings "disguised investment management fees" into charge to income tax as the profits of a trade. (Inserts new Chapter 5E into ITA 2007 comprising ss 809EZA to 809EZH). This is further amended by Clause 41 of the second Finance Bill.
- Section 22 which deals with miscellaneous loss reliefs
- Clause 40 of the second Finance Bill amend the charging provisions for carried interest paid to investment fund managers with effect from 8 July 2015. They increase the tax charge by excluding deductions other than acquisition costs paid in money or amounts previously taxed as earnings.

## 3. SAVINGS AND INVESTMENT MEASURES

### 3.1 Personal savings allowance

A new allowance will be introduced from April 2016 which exempts some savings income from tax for most taxpayers. The allowance will be:

- £1,000 for basic rate taxpayers
- £500 for higher rate taxpayers, and
- Nil for additional rate taxpayers

The allowance will apply to savings income, but probably not dividend income. This will allow the Government to abolish the deduction at source mechanism. The Red Book indicates that HMRC will introduce automated coding out of taxable savings income from 2017/18, with pilots starting in the Autumn of 2015. Legislation is due for Finance Bill 2016.

### 3.2 Pensions lifetime allowance

Once again, in the desire to reduce the cost of pensions tax relief, the lifetime allowance is to be further reduced. The current limit of £1.25 million will reduce to £1 million in April 2016. The legislation will be included in the Finance Bill 2016.

The Chancellor further announced that the lifetime limit would be indexed by CPI from April 2018.

### 3.3 Pensions – annual allowance (Lecture P911 – 14.58 minutes)

The second Finance Bill intends to enact proposals to restrict the annual allowance for individuals with income (as defined) in excess of £150,000. The allowance will be tapered to a minimum of £10,000. In order to achieve this a number of changes are also necessary.

#### 3.3.1 Pension input periods (PIPs) changes

Legislation came into force on 8 July 2015 to align pension input periods (PIPs) for all contributors to tax approved scheme with the tax year. This is necessary to make the changes described above (restricting annual allowance for high earners) possible. The change is made by clause 23 and Part 1 of the proposed Schedule 4 of the second Finance Bill.

All PIPs came to an end on 8 July. New PIPs started for all contributors on 9 July and will run to 5 April 2016. All future PIPs will be aligned to the tax year, and there will be no possibility of electing for a change in PIP.

So contributors will have either two or three PIPs falling in the tax year 2015-16, depending on when their previous PIP end date was.

This is best illustrated by some examples. In all cases, unused relief brought forward is ignored.

Example 1

Lewis has a single pension arrangement with a PIP end date of 30 June. His contribution of £40,000 made in March 2015 is a pension input for the 2015/16 tax year as regards the annual allowance charge. Lewis would expect to be able to make a further contribution of £40,000 in March 2016, this falling into the 2016/17 year for annual allowance purposes. However, the PIP starting on 1 July was brought to an end on 8 July, and a new PIP started on 9 July, which will run until 5 April 2016. This means that Lewis' contribution in March 2016 will also fall into the 2015/16 year for annual allowance purposes. Lewis has three PIPs in the tax year 2015/16.

3.3.2 Annual allowance for 2015-16

To protect people in Lewis' position there will be an annual allowance of £80,000 for all pension savings made in PIPs ending in 2015/16. So Lewis will be able to save a further £40,000 in March 2016 without incurring an annual allowance charge.

Part 2 of the proposed Schedule 4 to the second Finance Bill 2015 sets out the rules as follows.

- The tax year 2015-16 is to be regarded as two separate tax years, the first beginning on 6 April 2015 and ending on 8 July 2015 (pre-alignment tax year), and the second running from 9 July 2015 to 5 April 2016 (post alignment tax year).
- Separate annual allowances charges cannot arise for 2015-16. Amounts calculated by reference to the two notional tax years will be aggregated and taxed as the annual allowance charge for the whole year.
- The annual allowance limit for the pre alignment tax year is £80,000
- The annual allowance limit for the post alignment tax year is nil, but the balance of allowances in the pre alignment tax year may be carried forward to the post alignment tax year (subject to a maximum of £40,000). This provision only applies to a person who was a member of a scheme in the pre alignment tax year. Otherwise the normal annual allowance of £40,000 applies.

This will allow Lewis to make his full £40,000 contribution in March 2016 and obtain full relief for it. His contribution of £40,000 in March 2015 falls into the pre-alignment tax year, and he has £40,000 to carry forward to the post alignment tax year.

3.3.3 Carry forward of unused allowance from 2015-16

For the purposes of the carry forward of unused relief provisions the annual allowance for the pre alignment tax year is deemed to be £40,000, and carry forward is only possible if this amount was unused in the post alignment tax year. The pre alignment surplus must be used up in the post alignment tax year before older brought forward amounts can be used.

Example 2

Lily's pension arrangement also has a PIP end date of 30 June. Lily contributed £40,000 to this arrangement in March 2015, and a further £20,000 on 4 July 2015 which would otherwise have been used within her 2016/17 annual allowance. Both are covered by her enhanced allowance of £80,000, of which there is £20,000 to carry forward. The periods ending 30 June and 8 July are known as the pre-alignment periods. Lily has a further allowance for the post alignment period – the period from 9 July to 5 April 2016. This is the balance of the £80,000 allowance unused (£20,000), subject to an overall maximum of £40,000. So Lily can contribute a further £20,000 by 5 April 2016.

Example 3

Luke also has a pension input end date of 30 June. He contributed £15,000 to his pension in March 2015. He has made no further contributions. His allowance of £80,000 is used in part by the £15,000 contributions, and he has £65,000 of it available to carry forward. However, the maximum he can carry forward is £40,000. This will give him £55,000 of contributions in the tax year for annual allowance purposes, but no annual allowance charge.

Example 4

Leonora has a PIP end date of 30 September, and usually makes a contribution to her PIP in August. She has not yet made a contribution in 2015. She can make a contribution of up to £40,000, which will fall into her PIP running from 9 July 2015 to 5 April 2016. However, as Leonora's income in 2015/16 is extremely high, she was planning to make a further contribution of £40,000 in March 2016 which would otherwise have been set against her 2016/17 annual allowance. This would give her tax relief on £80,000 in the tax year without breaching the annual allowance in either year.

However, her PIP now comes to an end on 5 April, and she only has the post alignment allowance of up to £40,000 to use, so her plan cannot be carried out unless she has available brought forward relief.

### 3.3.4 Calculation of pension inputs – defined benefit arrangements

Part 3 of proposed Schedule 4 to the second Finance Bill includes instructions for computing the defined benefit pension inputs for the 2015-16 tax year. This requires the calculation of a single increase in benefit value from 6 April 2015 to 5 April 2016, which is then time apportioned to the pre and post alignment periods. The uprating of the opening benefits is to be done at 2.5% rather than CPI. (New s 237ZA FA 2004 introduced by para 8 of the proposed Schedule).

## 3.4 Restriction of annual allowance for high income individuals

The pensions annual allowance will be restricted for high income individuals from April 2016. New s 228ZA in introduced into FA 2004.

### 3.4.1 High income individuals

An individual is a high income individual if

- The individual's adjusted income for the year is more than £150,000, and
- The individual's threshold income for the year is more than £150,000 minus the annual allowance amount before taper

Adjusted income is the net income at Step 2 in section 23 of ITA 2007, plus:

- Relief under s 193(4) or 194(1) FA 2004 deducted in arriving at Step 2 (relating to pension arrangements)
- Any deductions made from employment income for that year in respect of pension contributions made under net pay arrangements
- The total pension input amount for the tax year less any contributions made by the individual as a member of any scheme
- Taxable lump sums received under pension schemes

Threshold income is the Step 2 net income as before, plus

- Salary sacrifice amounts in relation to pension contributions where the agreement was entered into on or after 9 July 2015
- The amount of contribution paid in the year in respect of which the individual is entitled to be given relief under s 192 FA 2004 (relief at source), and
- Taxable lump sums as above.

The annual allowance of £40,000 will be tapered by £1 for every £2 that the adjusted income exceeds £150,000, up to a maximum of £30,000 taper, which will arise at income of £210,000, leaving the taxpayer with an annual allowance of £10,000.

There are anti avoidance measures associated with this measure in new s 228ZB which is part of para 10 of the proposed Schedule.

Example

Roger is the chief executive of the local authority, on a salary of £140,000 per annum. His employer also contributes to a 2/3 (40/60) final salary pension arrangement on his behalf (lump sum element ignored for simplicity).

His pension contribution for 2016/17 tax year is calculated as follows: (assuming that his salary is unchanged)

1/60 x £140,000 = £2,333 x valuation factor of 16 = £37,328

So Roger's income for the purpose of this change is £177,328, and his net income is over £110,000, so the restriction on his annual allowance applies. Note that Roger is not in fact an additional rate taxpayer.

Roger's annual allowance is £40,000 – (£177,328-£150,000)/2 = £26,336

So Roger is facing an annual allowance charge on his excess contributions of £10,992, which will be taxed at Roger's marginal rates. The tax charge is therefore (assuming that Roger has no other income) £4,446. Roger will be able to elect that his fund bears the additional tax charge.

### 3.5 Pensions – lump sum death benefit tax charge

Where a lump sum death benefit is payable under pension arrangements it is usually tax free when the death of the member occurs before his 75th birthday. In other cases the lump sum is taxed at 45%.

Clause 21 changes the rate of tax to the marginal rate of the recipient if they are a beneficiary. If the benefit is paid through a trust, individual recipients will be able to claim credit for the 45% paid by the scheme when the sum was paid into the trust. It will apply to lump sum death benefits paid out on or after 6 April 2016.

### 3.6 Pensions – certain lump sum death benefits

Clause 22 of the second Finance Bill complements clause 21 by changing the status of certain payments of death benefit lump sums.

Where the lump sum payment to an individual from a registered pension scheme is paid:

- Where the pensioner had reached the age of 75, or
- Where the pensioner died before 75 but the scheme administrator did not make the payment within two years of becoming aware of his death

then payment of the lump sum will be taxed as pension income and subject to PAYE if paid in the UK. A consequent change is needed to the temporary non-resident anti avoidance rules for income tax (Finance Act 2013) to prevent recipients going abroad for a short period to avoid the tax charge.

## 3.7 Further pension reform

The Government will also consider changing the structure of pensions savings completely so that no tax relief is given on contributions made and no tax is charged on the fund at maturity.

The consultation is a completely open review and includes retaining the current position.

However, the income tax cost of tax relief at higher rates on pension contributions is significant (the change to reduce annual allowance for high earners will save £1bn + at steady state) so a reduction in relief now (for the loss of tax revenues much later) might be seen as welcome by the Exchequer.

## 3.8 Sale of annuities

In a further move on liberalisation of the pensions market, those already in receipt of an annuity will be permitted to sell the annuity for a lump sum or an alternative retirement product.

The change is planned for April 2016.

## 3.9 Inherited annuities

Where a pension joint life or fixed term annuity is left in payment, or when an annuity is purchased with surplus funds when the pension scheme member dies, the annuity has been taxed on the surviving beneficiary (or nominated beneficiary).

From April 2015, if the member dies before the age of 75 this remaining annuity will be tax free to the beneficiary.

If the member died at age 75 or older the annuity will be subject to tax at the marginal rate of the beneficiary. (Finance Act 2015 s 34 and Sch 4 amending the relevant provisions in FA 2004 and ITEPA 2003).

## 3.10 Excluded activities for investment reliefs

The following changes affect EIS, SEIS, investments in VCTs and Social Investment Tax relief (SITR) for the purposes of defining appropriate investments.

Finance Act 2015, s 36 and Sch 6 set out the changes to qualifying activities rules for the purposes of a variety of investment reliefs mentioned above.

- Para 1 of the Schedule amends the SITR legislation to allow the qualifying activities to be amended by Treasury Order at any time. (New s 257MW inserted into ITA 2007)
- Paras 2 to 5 of the Schedule introduce new excluded activities for the purpose of the EIS and SEIS schemes. The new excluded activities are “generation of electricity involving Contracts for Difference” and “subsidised energy related activities: anaerobic digestion and hydroelectric power” (the second of which were previously exceptions to the excluded activity in relation to electricity or heat generation). Contracts for Difference is the new government subsidy which replaced the Renewable heat incentive (RHI) and Renewables Obligation Certificates (ROC). The changes apply to shares issued on or after 6 April 2015
- Paras 6 to 9 of the Schedule introduce similar changes for VCT investments, in relation to relevant holdings issued on or after 6 April 2015.
- Paras 10 to 12 also exclude community based activities in relation to electricity and heat generation (amending ss198A and 198B ITA 2007) to commence at some point by Treasury Order. Once State Aid approval has been gained these groups will become eligible for SITR and therefore benefit under the change in para 13, and
- Para 13 allows subsidised generation or export of electricity to qualify under SEIS, again from a future date. This will allow generation to which FIT payments apply to come within SEIS.

The second Finance Bill adds a further category of excluded activity in Clause 27, that of farming carried on outside the UK. UK based farming is already an excluded activity. The change takes effect from Royal Assent.

### 3.11 EIS changes in Second Finance Bill 2015

Clause 25 and Schedule 5 make a wide range of changes to EIS which will mostly apply from Royal Assent. The fine detail of the changes will not be covered here, but in outline the following changes are to be made:

- An end date for EIS relief has been set as 5 April 2025, and relief will only be available on shares issued before 6 April 2025.
- Tightening up the requirement for the investor to be independent of the company he is investing in. If he holds any shares in the company before the investment they must either be founder shares or part of a risk finance investment (an investment in shares subscribed for under SEIS or SITR).

- There are amendments to the requirement that a company can raise a maximum of £5 million a year through state aided schemes (known as relevant investments), bringing in money raised through subsidiaries or transferred trades – where the trade was previously carried on by another company and the trade (but not the shares) has been transferred.
- There is a new limit to the total relevant investments that a company or a company and its subsidiaries can receive. This is £12 million, unless the company is a “knowledge intensive” company, in which case the limit is £20 million.
- There is an amended requirement in relation to the use of the funds raised. They must be used to promote the growth and development of the company or the group. They may not be used to fund a takeover or to buy out an existing trade or part of a trade.
- The introduction of an initial investing period, after which additional conditions must be met for EIS relief to apply. This is 10 years for knowledge intensive companies and 7 year in all other cases.
- Setting the number of employees in a knowledge intensive company at 500 (an increase from the limit of 250 for all other companies)
- Defining a knowledge intensive company for these purposes.
- Removing the requirement that 70% of Seed Enterprise Investment Scheme (SEIS) money must be spent before EIS funding can be raised for qualifying investments made on or after 6 April 2015.

### 3.12 VCT changes in Second Finance Bill 2015

The changes made by proposed Schedule 6 to the second Finance Bill largely follow the changes made by Schedule 5 which affect EIS and SEIS. No further detail is relevant here.

### 3.13 Social investment tax relief

Following the introduction of social investment tax relief in Finance Act 2014, the scheme will be considerably extended by Finance Bill 2015. A new annual limit of £5 million will be introduced with an overall limit of £15 million, and the limit applying to each organisation will be removed.

Community electricity generation (particularly through anaerobic digesters and hydro-electric power) will be included within SITR, and thus removed from other forms of tax advantaged investment such as EIS and VCT (described above).

### 3.14 Social Venture Capital Trusts (Social VCT’s)

Mirroring the development last year through the introduction of SITR, which is essentially a form of Social EIS, the Government plans to introduce a social enterprise form of VCT’s. The legislation would be included in a future Finance Bill, and would allow a 30% ingoing tax relief (as a tax reducer) for investors. Investors would pay no income tax on any dividends received, nor would sale of the shares attract capital gains tax.

### 3.15 Help to buy ISA

First time buyers will be able to save in a special ISA account which will benefit from a Government contribution when the house is purchased. Savers will be able to withdraw their money at any time without penalty.

The Government contribution will be £50 for each £200 saved, rising to a maximum of £3,000 when the saver has set aside £12,000 of his own money. The Government contributions will not be released until the house is purchased, and will only be available on homes in the UK costing up to £450,000 in London and £250,000 elsewhere.

Accounts will be available through banks and building societies from Autumn 2015, and savers will be able to save up to £200 per month, plus an initial deposit of up to £1,000. Help to buy ISA accounts will only be available for four years, but once the account is open, savers can use the funds as a deposit on their first home at any time.

### 3.16 Transfer of ISAs on death of spouse

For deaths on or after 3 December 2014 a surviving spouse or civil partner will be able to make a one-off contribution to an ISA of the value of their deceased spouse or partner's ISA in the estate. The legislation will take effect in 2015-16, and there is also a proposal to extend the tax exemption on the ISA to the period of administration.

### 3.17 ISA and JISA limits

From 6 April 2016 the limits for annual subscriptions will be:

- ISA limit £15,240
- Junior ISA £4,080 (limit also applies to Child Trust Funds)

### 3.18 The flexible ISA

From Autumn 2015 individuals will be able to withdraw money temporarily from their ISA and replace it in the same tax year without affecting their overall ISA investment limit for that year. The change will take place once HMRC has consulted with ISA providers. Legislation will be made by statutory instrument.

### 3.19 Premium Bond limit

The maximum investment in Premium Bonds will rise from £40,000 to £50,000 on 1 June 2015.(The limit was increased from £30,000 to £40,000 on 1 June 2014).

## 3.20 Relief for bad debts on peer-to-peer lending

Where a taxpayer incurs a bad debt on a peer-to-peer lending arrangement, Finance Bill 2016 will allow this to be deducted from the interest arising from the same types of arrangement in calculating the net taxable income. This will apply to loans made from 6 April 2015, but relief will not be available until 6 April 2016.

There will also be a consultation on whether withholding tax should apply to peer to peer loans.

# 4. CAPITAL AND PROPERTY TAXES

## 4.1 CGT annual exemption

The annual exempt amount has been increased by CPI from £11,000 to £11,100. The amount for most trustees is therefore £5,550

## 4.2 Capital gains tax – non-resident individuals (Lecture P914 – 9.44 minutes)

Non-residents are liable to Capital Gains Tax on the disposal of a UK residential property from 6 April 2015. The charge applies to gains from 6 April 2015, and apply to individuals, partners in partnerships, trustees of trusts and close companies (controlled by 5 or fewer persons). HMRC published an FAQ document alongside the Budget material. The legislation is in Finance Act 2015, s 37 and Sch 7. In total the new rules run to around 72 pages of legislation. The bulk of Sch 7 deals with amendments to TCGA 1992.

### 4.2.1 Basis of charge

Non-resident capital gains tax (NRCGT) applies to a disposal of UK residential property in a period when the disposer is not UK resident for tax purposes (including an overseas part of a year for those subject to split year treatment).

Where an individual is subject to the temporary non-resident CGT charge in Finance Act 2013 or its predecessor legislative provisions, the NRCGT imposed during the period of non-residence is excluded from the charge arising on return, so NRCGT takes precedence over the temporary non residence rules.

New s 14F allow diversely held companies (the opposite of closely held companies), unit trusts and open ended investment companies to be exempt from charge, based on a claim by the disposer.

### 4.2.2 Disposal of a UK residential property interest

New Sch B1 to TCGA sets out the necessary definitions to trigger and support the legislation. In simple terms a disposal of a UK residential property interest is a disposal of either :

- Land that has at any time in the relevant ownership period consisted of or included a dwelling, or the interest subsists for the benefit of land that at any time in the relevant period consisted of or included a dwelling, or
- A contract for an off-plan purchase

The relevant ownership period is the period from the later of the date of purchase and 6 April 2015 up to the day before the disposal. Grants of options over UK residential property are included in the definition.

The term dwelling is defined at length in para 4 of the new Schedule, which excludes purpose built student accommodation with at least 15 bedrooms and relevant residential property as defined for VAT purposes.
Dwellings that are unsuitable for use as such for a period of 90 consecutive days as a result of accidental damage or other damage outside the control of the owner can be disregarded for the period for which they were unsuitable (up to 90 days) provided this came to an end before the date of disposal. Damage arising from works to alter the building that would have made it unsuitable for use as a dwelling for 30 days or more is excluded. An apportionment in days is prescribed by para 6 of new Sch 4ZZB, which sets out the computation rules in full.

4.2.3 Computation

The calculation of the gain can be done in one of three ways. The default position is for the value at 6 April 2015 to form the cost of the property for the purposes of the gain calculation. There are, however, two alternative elections available:

- An election to be taxed on a proportion of the entire gain apportioned on a straight line basis between the period before 6 April 2015 and that after that date, or
- An election to be taxed on the gain or loss over the entire period of ownership of the asset (rather than the time apportioned element). This is only likely to be of benefit if the property is sold at a loss.

The elections are irrevocable, and must be made either on the relevant tax return or on the NRCGT return relating to that disposal.

Where the property has not been suitable as a dwelling for the entire period after 6 April 2015, the relevant gain is time apportioned in days.

4.2.4 Losses

Losses on residential property owned by non-residents can only be set against gains on the same type of property. However, as non-residents are not subject to CGT on any other assets while they remain non-resident, this is not, in essence a restriction.

The only losses that can be set against NRCGT gains are losses on UK residential property, but new s 14D allows losses incurred in any previous years back to 1965-66 to be deducted, to the extent that they have not already been relieved for capital gains tax purposes.

If a person with NRCGT losses carried forward subsequently becomes UK resident then any losses are then available to set against gains on disposals of any assets.

NRCGT losses incurred by an individual in the year of death can be carried back up to three years (as for normal capital losses) but are restricted to set off against NRCGT gains. (amended s 62).

#### 4.2.5 Business reliefs

Rollover relief (s 152) is amended to allow rollover relief where NRCGT gains are reinvested in UK dwellings used in the trade – most probably when letting furnished holiday accommodation. Section 165 – relief for gifts of business assets is extended to permit the relief to be claimed on the gift of a UK residential property to a non-resident. (New s 167A); there is a parallel in s 260 relief (gifts chargeable to IHT). Where the donee becomes non-resident, a deemed disposal occurs, with the resultant held over gain being available for holdover relief. When it resurfaces it will be a NRCGT gain. (new s168A).

#### 4.2.6 Groups of companies

New sections 188A onwards cover the position for groups of companies, although notes that only "closely held companies" are liable to the charge. The legislation sets out the requirements for a NRCGT group and various other measures, allowing for tax free transfers between members of a NRCGT group of companies.

#### 4.2.7 Administration

The gain must be reported on a new NRCGT return and the tax paid within 30 days of the disposal, which does present some practical problems, particularly if the taxpayer wishes to confirm an April 2015 valuation using CG34. TMA 1970 s 7 (requirement to notify chargeability) does not apply where the NRCGT return including (where required) an advance self-assessment has been submitted by the due date. The tax so calculated is based on assumption that no further disposals will take place in the tax year, and uses any available losses or other reliefs. A reasonable estimate is required of the individual's taxable income to arrive at the appropriate tax charge; provided the estimate is reasonable, no penalty can arise under Sch 24 FA 2007 (penalties for inaccuracies).

Those non-residents already within self-assessment need not include an advance self-assessment in their NRCGT return, and can pay their tax with their self-assessment liability, but MUST report the sale within 30 days of completion on NRCGT. Note also that the NRCGT process must be used to report a disposal even if there is no tax to pay, or there is a loss on the disposal. The reporting process will be electronic.

#### 4.2.8 Rate of tax

Tax is due by individuals at 18% and 28% depending on their UK taxable income, but the CGT annual exempt amount will also be available. Trusts and personal representatives of deceased persons will be liable at 28% with the trust annual exempt amount being available, or the full AE for personal representatives in the year of death or subsequent 2 years.

Companies within the scope of this tax will be liable at 20% with an allowance for indexation. Companies bearing ATED related CGT face a complex series of computations to determine how much of the gain is ATED related and chargeable at 28% and how much is NRCGT taxable at 20%. You are referred to Part 4 of new Sch 4ZZB.

### 4.3 PPR claims – non residents (Lecture P914 – 9.44 minutes)

In order to limit the application of private residence relief to disposals by non-residents, from 6 April 2015, an individual will only be able to claim private residence relief on a property situated in a territory in which they are not resident if they (or their spouse or civil partner from whom they are not separated) have spent at least 90 days (midnights) in the property during the tax year concerned. This change is known as the occupancy test, and will affect UK residents who claim PPR against a foreign property, as well as non-residents disposing of UK residential property. The occupancy test will not apply to any year in which the disposer's spouse or civil partner is UK resident, and the normal rules will apply. The legislation is in Finance Act 2015, s 39 and Sch 8, which introduces new ss 222A to 222C into TCGA 1992.

Where a property which is the subject of a NRCGT disposal has been previously notified as the main residence of the owner, notices given regarding main residence cannot retrospectively vary any notice previously given in respect of a property already disposed of. The notice of main residence election is given on the NRCGT return and therefore cannot subsequently be varied. Notices affecting married couples and civil partners are binding on both, so if the spouse or civil partner is also subject to NRCGT they must make an identical election for the period they were living together, and if not must send a letter agreeing with the notice.

If the property qualifies as PPR then letting relief, absence and job-related accommodation reliefs would also apply. However, when considering the periods of absence, time spent in the property as the owner's main home is to be ignored in "franking" an absence, unless an election is made on the NRCGT return. Where the property has previously been PPR for the individual living in the UK before moving abroad, it will remain tax exempt provided disposed of (exchange) by 5 October 2016, as the last 18 months ownership will be available. Note that as the disposer is non-resident the property only came into charge to CGT on 6 April 2015, so periods of absence before that date will be irrelevant.

4.3.1 Example

Steven and Susan moved to Canada in 2012. They let their home on departure (1 May 2012) and are expecting to remain in Canada for the medium term, although return in early 2017 (January) is a possibility. Outline the appropriate CGT advice for them. The anticipated gain on the whole period of ownership (15 years to January 2017) is £150,000, and the gain based on 2015 market value is estimated at £25,000 to January 2017. Assume the prices do not vary in the six months up to January 2017.

***Option 1 – sell as non-resident before return***

Sale at any time before the couple return to the UK comes under the NRCGT rules. A sale by 5 October 2016 would be fully exempt under the 18 month rule. Retaining the property beyond that date would bring a gain into charge, but given the size of the potential gain, this would be covered by letting relief available to the couple.

Note that if the property was to be disposed of at the values shown, and no letting relief was available, the couple would probably opt for a time apportioned gain (based on a gain of £10,000 per annum) rather than the market value gain of £25,000. Whether this would hold for longer periods would depend on movements on value subsequent to the periods shown.

One aspect to reassure the couple on is that once a NRCGT return has been made (within 30 days of the completion of the sale) the gain could not be affected by their subsequent return to the UK within 5 years of departure as the temporary non residence rules exclude gains taxed under NRCGT.

***Option 2 - retain and sell after returning to the UK***

On their return the couple would return to normal CGT treatment. Under these conditions the normal periods of absence rules can be applied (the period before they left the UK being the “pre absence” occupation) provided they re-occupy the property as their main residence. Letting relief and last 18 months ownership would also be available, but all of this would be based on the entire gain during the period of ownership - £150,000. Return and re-occupation in 2017 would still be tax free based on these figures, but a longer absence might take the couple into taxable gains as the exempt portion of the gain would decrease, potentially limiting the letting relief – although two allocations are available – one for each spouse.

If the couple do not return to the property as their main home, no reliefs other than letting and last 18 months ownership would be available to them. A return in early 2017 would be fully covered by the reliefs.

***Option 3 – long term retention (continuing to live abroad)***

As there is available relief in the form of letting relief, the couple may see the medium term as continuing to live in Canada, and retaining ownership of the property to continue to have a foot in the UK property market should they ever choose to return. Selling and purchasing another property would not be tax efficient as a new purchase could not attract letting relief. If the couple decided to go for this option they might review their tax position on a regular basis – say once every two to three years – to consider whether this remains the best option for them.

## 4.4 Entrepreneurs' relief restriction – goodwill (Lecture P913 – 6.22 minutes)

Entrepreneurs' relief is no longer available on disposals of goodwill into a close company related to the disposer. This, together with the denial of tax relief for amortisation of the goodwill makes incorporation a much less attractive option for businesses, and removes a major incentive to incorporate. The change applies to disposals on or after 3 December 2014 and is made by Finance Act 2015, s 42, which introduces new s 169LA into TCGA 1992. A small amendment to this change was announced on Budget day to allow those members of a partnership which is incorporating at the point that they leave the business to benefit from ER on their disposal (new s 169LA (3)).

## 4.5 Entrepreneurs' relief - other changes (Lecture P913 – 6.22 minutes)

### 4.5.1 Academics

The Government will review the position of academics selling shares in their spin out companies who do not otherwise qualify for relief. The relief could potentially apply to individuals who contributed to the IP owned by the company. No date has been set for new legislation.

### 4.5.2 Companies which are not trading companies

This change affects joint venture companies. In future ER will be restricted to the disposal of shares in a company which is a trading company in its own right and to holding companies of trading companies. The change takes immediate effect from the date of announcement (18 March 2015) so there is no mitigating action owners of JV companies can take. (Finance Act 2015, s 43 amending s 169S of TCGA 1992).

### 4.5.3 Associated disposals

These disposals attract ER when they are linked to a material disposal of a business asset (shares or an interest in a partnership) which has used the asset which is the subject of the associated disposal. However, there is no restriction on the minimum amount of the material disposal.

For example an individual owning 60% of a trading company could sell 0.5% of the company (1/120$^{th}$ of his interest) and still gain relief on an associated disposal provided the other conditions are met.

With effect in relation to disposals on or after 18 March 2015, the material disposal must comprise at least 5% of the shares in the company or 5% of the partnership assets for relief to be available on an associated disposal. (Finance Act 2015, s 41 amending s 169K TCGA 1992)

#### 4.5.4 ER on deferred gains

When a gain which attracts Entrepreneurs' relief is deferred by the purchase of an EIS or SITR investment, the ER would be lost as the qualifying asset is no longer owned. For qualifying gains arising on or after 3 December 2014, where these are reinvested in either EIS or SITR, the gain will remain liable to ER on subsequent disposal of the shares invested in. (Finance Act 2015, s 44, introducing new ss 169T – 169V into TCGA 1992)

### 4.6 CGT on wasting assets

The wasting asset exemption for assets used in a business and on which no capital allowances have been claimed is now restricted to assets used in the business of the disposer (Finance Act 2015, s 40 amending s 45 TCGA 1992). Note that the Lord Howard case related to a painting loaned to another business, and wasting asset relief was successfully claimed. The change applies from 6 April 2015 for CGT and 1 April 2015 for gains liable to corporation tax.

### 4.7 IHT nil rate band

The IHT nil rate band has been frozen through to April 2021 (second Finance Bill, clause 10).

### 4.8 Inheritance tax – nil rate band addition

One of the surprise announcements in the July budget was the additional IHT nil rate band to be made available when the deceased's home is left to their direct descendants.

The legislation is in the second Finance Bill at clause 9, which sets out the mechanism and the detailed definitions for the purpose of the new allowance, which will be called the "residential enhancement". The legislation inserts new ss 8D to 8M into IHTA 1984.

The new allowance will commence on 6 April 2017 and will increase over the four years to 2020 as follows:

| Tax Year | Amount |
|---|---|
| 2017 - 18 | £100,000 |
| 2018 - 19 | £125,000 |
| 2019 - 20 | £150,000 |
| 2020 - 21 | £175,000 |

After 2020-21 the amount will be indexed by reference to the Consumer Price Index in the previous September, the amount to be announced by Treasury Order.

The extra allowance is transferable exactly as the current nil rate band is now, and for a surviving spouse / civil partner who has been widowed before 6 April 2017, there is an allowance of £100,000 available if the survivor dies on or after that date. Claims must normally be made within 2 years of the subsequent death.

The allowance is available against the value of the home (the qualifying residential interest) which is “closely inherited”. This covers both natural children on the deceased, step children, adopted children and foster children (new s 8K). It will also include where the “parent” has been appointed by the court as guardian or special guardian (ss 5 and 14A Children Act 1989) to someone when the latter was aged under 18. It also includes remoter lineal descendants using the same terms.

Provisions will be included in the Finance Bill 2016 to allow the additional allowance to apply to other assets if the deceased had previously “downsized”.

### 4.8.1 Qualifying residential interest

A qualifying residential interest in its simplest form is the (only) home of the deceased which is included in the estate. Where the deceased had more than one home, the personal representatives can nominate which of them is to be regarded as the qualifying residential interest. The value covers the house and any grounds, with the exception of woodland subject to a s 125 IHTA election. The relief will also apply where the estate includes a home but the deceased lived in job-related accommodation, but was intending to live in the home subsequently.

### 4.8.2 Taper of residential enhancement

If the value of the deceased’s estate is more than £2 million, (the taper threshold), the residential enhancement is tapered back to nil, as follows:

$$\frac{\text{Value of estate - £2 million}}{2}$$

So where the estate exceeds £2.2 million in 2017-18 or £2.35 million in 2020-21 there will be no residential enhancement.

### 4.9 Inheritance tax – deeds of variation (Lecture P915 – 10.29 minutes)

Among the many Consultative documents issued by HMRC following the Summer Budget on 8 July was a call for evidence as part of a review of the operation of Deeds of Variation. The exercise is not a full consultation but more of a fact finding mission, requesting evidence as to the circumstances in which DOVs are used for tax purposes and the frequency of use. It also requests comments on how the current provisions are operating and whether changes should be made to the current rules.

Rather worryingly, among the reasons given for the review is the wish to examine whether the operation of DOVs is being abused .The wish to stamp out perceived abuse of tax rules has been a precursor to overarching anti avoidance legislation in recent years

The purpose of a post death variation allows a beneficiary to rearrange or redirect all or part of the interest that originally came to him from the deceased's estate, and this may be done for a number of reasons, including:

- Reducing an IHT liability by redirecting assets from, say, a son or daughter, to a spouse and so thereby a converting a chargeable legacy into a non chargeable legacy

- Making a variation from a parent to a child where the child himself is perhaps wealthy and now elderly or infirm or possibly both. 'Generation skipping' in this manner in favour of the grandchild or grandchildren of the deceased will ensure that these assets diverted will not fall into the child's estate, and so subject to IHT, on death within a few years

- Taking into account someone omitted from a will, or (typically in a family situation among siblings) perhaps provide equalisation among legatees where the estate was left in unequal shares.

Recent example: the actress Patsy Byrne bequeathed £20,000 each to 4 stepchildren, and the residue to the fifth. She subsequently died leaving nearly £1m after charitable legacies and IHT with the fifth child therefore entitled to £900,000. A straightforward DOV equalised the estate among the siblings and no doubt avoided a tricky family situation.

Some 40% of adults in the country have not made a will and where there is a sudden death the intestacy rules would take effect. It's useful to note that DOVs under section 142 can apply under both a will and in the case of intestacy.

Some of the conditions that apply to in order to effect a valid DOV:

- All beneficiaries affected must agree in writing

- The variation may of course create or increase an IHT liability, in which case the personal representatives must agree to it - and they may decline if no, or insufficient, assets are held by them

- Under rules introduced in FA 2002, the personal representatives must, within six months of the variation, deliver a copy of it to HMRC and notify them of the amount of the additional tax payable.

- DOV must be executed within two years of death, and s142 (6) allows legatees to make a variation even after the administration has been completed and assets advanced to the beneficiary in accordance with the original dispositions- provided of course they comply with the 2 year rule.

Here are three planning points when considering DOVs for IHT, all of which are routinely used and which until now have been considered as non-controversial and non-abusive tax avoidance mechanisms

1. Variation from a non-exempt beneficiary (e.g. child of the deceased) to a spouse may reduce IHT payable.

2. Allocating property qualifying for BPR or APR to non-exempt beneficiaries

3. Allocating appreciating assets to younger individuals and depreciating assets to older individuals.

The ability to make variations to correct poor drafting or unintended consequences for the beneficiaries has proved to be a sensible piece of legislation. People make mistakes, circumstances change, and the elderly often refuse to update wills for no reason other than it is their prerogative.

Equity is the usual motivation for DOVs, but often the tax consequences of undertaking the changes can have a positive impact on bequests, possibly this is what HMRC object to.

HMRC does not know how much use is made of DOVs as those made on or after 1 August 2002 are only delivered to HMRC if there is an increase in the amount of tax due as a result of the variation. HMRC consequently has no data on the actual volume of deeds executed and their effect. So, will there be some form of curtailment of DOVs as a result of the review? In my view yes there will be, although what form this might take is not clear at this stage. Perhaps only those DOVs that produce an unchanged or increased IHT yield will be allowed for estates in the case of deaths taking place on or after a particular future date

The Tax Lock in force until 2020 makes it likely that the government will seek to raise taxes from the withdrawal or curtailment of existing reliefs – and DOVs are a good example of this. Remember also that the Tax Lock specifically excludes IHT making this tax a prime target for increased yield in the current parliament.

One indirect result of any changes is that clients' wills will be likely to require more regular review to ensure that they are correctly structured at all times – it may prove more difficult if not impossible to make a tax favourable variation after death in future so the importance of advising the client on an ongoing basis would increase. Do check to ensure that this is covered by a Letter of Engagement

Last thoughts relate to the proposed increase in the IHT nil rate band from 2017 to be made available when the deceased's home is left to their direct descendants. This area might prove fertile ground for a post death variation in favour of the deceased's children –subject of course to any curtailments of reliefs following the general review.

**4.10 Inheritance tax – exemptions for medals**

The current exemption from IHT for medals that are awarded for valour or gallantry has been extended to include all decorations and medals awarded to the armed services and emergency services personnel and to awards made by the Crown for achievements and service in public life. The change takes effect from 3 Dec 2014 and is implemented by Finance Act 2015, s 74.

**4.11 Inheritance tax – exempt estates**

The exemption of the entire estate for those whose death is caused or hastened by injury while on active service has been extended to members of the emergency services and humanitarian aid workers responding to emergency circumstances. The individuals are collectively defined as emergency responders, and include employees and others engaged in connection with the provision of:

- Fire services or fire and rescue services
- Search or search and rescue services
- Medical, ambulance or paramedic services
- Police services
- Services for the transportation of blood, organs, medical equipment or medical personnel
- Humanitarian assistance by the government of a state or territory, or other international organisation or charity.

This exemption has effect for deaths on or after 19 March 2014. (Finance Act 2015, s 75). The exemption also applies to members of the armed services and police constables who are targeted as a result of the current or previous service.

### 4.12 Inheritance tax – IHT rate on settled property

Where trusts are not related but dispositions are made on the same day into unrelated trusts, the value in the trusts will be aggregated for the purpose of calculating the IHT charge. This change is made by clause 11 and proposed Schedule 1 of the second Finance Bill. The change applies from Royal Assent in relation to trusts created on or after 10 December 2014, but there are transitional and forestalling arrangements affecting trusts created before 10 December 2014. There are some other changes to the calculation of the ten yearly and exit charge on relevant property trusts.

### 4.13 IHT – ten yearly charge and heritage property

Current legislation requires trustees to claim the conditional heritage property exemption form the ten yearly charge, and have the property so designated before the ten year charge applies. Clause 12 of the second Finance Bill allows this to be done within two years of the ten year charge arising, mirroring other similar IHT provisions.

### 4.14 IHT – interest in possession trusts

Clause 13 of the second Finance Bill makes a change to the tax treatment of interest in possession trusts created before March 2006. Where the interest in possession is succeeded to by the spouse or civil partner of the life tenant other than on the latter's death, the property has been "in limbo" previously and not subject to IHT.

This clause treats the transfer of the life interest as converting the interest to relevant property, making it subject to the various tax changes associated with such.

### 4.15 IHT – distributions from property settled by will

Clause 14 of the second Finance Bill allows the appointment within three months of the date of death of property settled by will to be "read back" into the will, allowing the normal spouse etc. exemptions to apply.

### 4.16 IHT and interest on liabilities

Clause 15 of the second Finance Bill includes enabling legislation in relation to the setting of interest rates on IHT liabilities, and clarifies the date from which interest is calculated. It is needed to smooth the path for digital IHT which will commence later in 2015.

### 4.17 Stamp duty land tax – reform

As announced at the Autumn statement, SDLT on residential property has been reformed so that it applies in progressive rates rather than the "slab" system. Each rate now applies to the value within the charge band, and not to the whole selling price. The Stamp Duty Land Tax Act 2015, which received Royal Assent on 12 February 2015 gives effect to the change from 3 December 2014.

The new rates and thresholds are:

| Property value band | Rate |
|---|---|
| £0 - £125,000 | 0% |
| £125,001 - £250,000 | 2% |
| £250,001 - £925,000 | 5% |
| £925,001 - £1,500,000 | 10% |
| £1,500,001+ | 12% |

### 4.18 SDLT – multiple dwellings relief

Finance Act 2015, s 69 extends multiple dwellings relief to shared ownership properties subject to a sale and leaseback arrangement by qualifying bodies ( see FA 2003, Sch 9).

### 4.19 ATED – increased rates and administrative changes (Lecture B914 – 8.39 minutes)

The rates of ATED on properties valued at more than £2 million have been further increased for 2015-16. Although previous legislation stated that the charges would be keeping pace with CPI inflation, the increases for 2015-16 are very substantial indeed, a 51.7% increase.

The changes were made by Finance Act 2015, s 70. The following rates will apply in 2015-16:

| Property value range £ million | 2014-15 ATED charge | 2015-16 ATED charge |
|---|---|---|
| > 1.0 – 2.0 | N/A | £7,000* |
| > 2.0 – 5.0 | £15,400 | £23,350 |
| > 5.0 – 10.0 | £35,900 | £54,450 |
| > 10.0 – 20.0 | £71,850 | £109,050 |
| > 20.0 | £143,750 | £218,200 |

* - unchanged from announcement in March 2014.

There are also changes to implement ATED related CGT on the properties now coming within the ATED regime, rebasing £1 million properties at April 2015 and £500,000 properties at April 2016. The changes are made by Finance Act 2015, s 38 and Sch 8.

### 4.20 ATED – properties subject to relief (Lecture B914 – 8.39 minutes)

Finance Act 2015 introduces a new type of ATED return called a relief declaration return (s 73, inserting new s 159A into FA 2013). This permits the owner of a number of properties which are subject to relief (such as a corporate landlord) to submit a single return claiming relief on all of the properties, rather than a return for each property. The single return must only be used for a single category of relief, so owners with more than one type of relief available will have to submit a relief declaration return for each category of relief.

The legislation lists the types of relief which may be claimed together.

| Provision | FA 2013 | Type of relief |
|---|---|---|
| Property rental business | Ss 133 or 134 | 1 |
| Dwelling open to the public | S 137 | 2 |
| Property developers | Ss 138 or 139 | 3 |
| Property traders | S 141 | 4 |
| Financial institutions | S 143 | 5 |
| Dwelling occupied by employees of a trade | S 145 | 6 |
| Farmhouses | S 148 | 7 |
| Providers of social housing | S150 | 8 |

Having made the return, the declaration will also cover any further properties acquired in the year which are subject to the same relief, as the properties will not be specified in the relief declaration. This represents a considerable administrative saving for affected companies. Where a return is late, any penalty chargeable is calculated by reference to a single relief declaration if this applies, rather than individual returns for each property.

### 4.21 ATED - Valuation dates

The next revaluation of all property subject to ATED is due on 1 April 2017, at which all enveloped properties should be revalued to check whether they now come within the rules, and which valuation band applies to them.

Finance Act 2015, s 71 changes to rules to make 1 April 2017 a valuation date only for periods from 1 April 2018 – otherwise there would have been practical difficulties in making returns by 30 April 2017 with a new valuation. The same change applies to each subsequent 5 year valuation date.

# 5. VAT

## 5.1 VAT refunds to certain charities

Finance Act 2015, s 66 inserts new ss 33C and 33D into VATA 1994 which provides for refunds of VAT to certain charities, relieving them of input tax that would otherwise be blocked. The relief applies to UK VAT borne, acquisition VAT and any import VAT borne by qualifying charities (as defined in new s 33D) other than for the purpose of s business – so in relation to their charitable activity.

### 5.1.1 Qualifying charities

Each type of charity is defined in new s 33D, but in outline the charities that will benefit from the new relief are :

- Palliative care charities
- Air ambulance charities
- Search and rescue charities
- Medical courier charities

## 5.2 VAT registration thresholds

These were changed by statutory instrument in time to come into force on 1 April 2015. The new registration threshold is £82,000 and the voluntary deregistration threshold is £80,000.

## 5.3 VAT lock

The second Finance Bill includes the VAT lock element of the triple tax lock promised by the incoming government, which runs until the date of the next general election. Under the lock:

- The standard rate of VAT will not exceed 20%
- The reduced rate of VAT will not exceed 5%
- No supply subject to the reduced rate can be removed from that rate, and
- No supply subject to the zero rate can be removed from that rate.

# 6. TAX ADMINISTRATION

## 6.1 Disclosure of tax avoidance schemes (DOTAS)

Several changes to the DOTAS regime have been made by Finance Act 2015 s 117 and Sch 17. References below are to Sch 17 Finance Act 2015 unless otherwise stated.

- Promoters of previously notified schemes which are subsequently amended are required to notify HMRC of the changes within 30 days. The changes specified are the name by which the arrangements are known and names of new promoters of the scheme. (Para 1 inserting new s 310C in FA 2004)
- HMRC now have 90 days rather than 30 days to allocate a reference number to notified arrangements. (Para 4 amending s 311 FA 2004).
- There is a new requirement that when the client is an employer using a scheme in relation to employment taxes, they must notify the employees affected by the scheme of the scheme number. (Para 5 amending s 312A FA 2004)
- Where the client is an employer and the employees might gain a benefit from the relevant arrangements, the client must also notify HMRC of the names of the affected employees. (Para 9 inserting new s313ZC into FA 2004).
- There is an additional requirement that scheme introducers provide to HMRC (on request) a list of people with whom marketing contact has been made in relation to the proposed arrangements, or who have provided information to the introducer in relation to the proposed arrangements.
- There is a new right for HMRC to publish quite a wide range of information about schemes which have a reference number or other notifiable arrangements. This might include the number of users of the scheme, the promoters of the scheme and any court decisions. (Para 17 introducing new s 316C into FA 2004). Having done so HMRC **must** publish subsequent judicial rulings in relation to the scheme or arrangements which are final rulings. (New s 316D)
- The maximum penalties for failure to comply with the requirement to notify HMRC of the scheme numbers a taxpayer is party to have been increased as follows: (Para 18 amending s 98C TMA 1970)

| Flat penalty of | Increased to a maximum penalty of |
|---|---|
| £100 | £5,000 |
| £500 | £7,500 |
| £1,000 | £10,000 |

## 6.2 Accelerated payment notices (APNs)

Finance Act 2015 s 118 and Sch 18 provide details about the interaction of APNs and group relief, amending the legislation in Finance Act 2014. This is not considered in any detail in these notes; the changes are intended to prevent relevant tax advantages being passed away through group relief.

## 6.3 Promoters of tax avoidance schemes

The substantial requirements on promoters of tax avoidance schemes (POTAS) introduced in FA 2014 have been slightly modified by FA 2015, s 119 and Schedule 19. The changes ensure that the legislation works as intended.

## 6.4 Penalties associated with offshore matters

The current penalty regime which imposes penalties in relation to offshore matters of up to 200% of the tax has been enhanced in Finance Act 2015 s 120 and Sch 20 by introducing a "Category 0" penalty of 30%, 70% and 100% in relation to domestic matters and offshore territories in category 0. Category 1 penalties then become 37.5%, 87.5% and 125% (up from 30%, 70% and 100%). The remaining penalties are unchanged. The effect of disclosure on the new rates of penalty are:

| Category of inaccuracy | No disclosure | Prompted disclosure | Unprompted disclosure |
|---|---|---|---|
| Careless | 37.5% | 18.75% | 0% |
| Deliberate | 87.5% | 43.75% | 25% |
| Deliberate & concealed | 125% | 62.5% | 40% |

However the penalty legislation now refers not only to income tax and capital gains tax but also inheritance tax, and also refers to offshore transfers in addition to inaccuracies on returns. Similar changes are made to the failure to notify and extended failure to make a return penalties, and there are provisions determining what rate of penalty applies to transfer of assets for each tax affected.

## 6.5 Offshore transfers – additional penalties

Finance Act 2015 s 121 and Schedule 21 provide for a follow up penalty when a penalty has already been imposed under Sch 24 FA 2007 (penalties for inaccuracies), Sch 41 FA 2008 (failure to notify chargeability) or Sch 55 FA 2009 (failure to make a return – delay exceeding 12 months) in relation to a deliberate inaccuracy or deliberate failure, and after the relevant date funds are moved offshore or the taxpayer moves offshore in an attempt to delay or prevent HMRC from discovering the amount of tax at stake (the potential lost revenue) in relation to the initial penalty.

The offshore move is after the relevant date if it occurs after the start of the tax year concerned for inaccuracy penalties or the start of the tax year in which the obligation arose for the other penalties. The movement is from a specified territory ("good") to an unspecified territory ("bad"). Regulations will set out in due course the territories in each category.

HMRC can then assess an additional penalty of 50% of the amount of the initial penalty. The taxpayer has the usual rights of appeal, and the tax is otherwise payable within 30 days. The provision takes effect from Royal Assent (26 March 2015) in relation to initial penalties chargeable on or after that date.

## 6.6 Common Reporting Standard

In 2017 countries around the world will commence cross border reporting of income, to a common data standard. This much fuller exchange of information between tax authorities means that, for example, HMRC will have details about income paid to UK taxpayers by a wide variety of countries.

Clause 46 of the second Finance Bill amends existing legislation in FA 2013, s 222 which sets out enabling powers for HMRC to require financial organisations to supply various information to support the US FATCA regime. Clause 46 extends this to require financial intermediaries and tax advisers to notify their clients about the Common Reporting Standard, penalties for tax evasion and the opportunities to disclose offshore tax evasion to HMRC. Regulations specifying the details will follow in due course.

## 6.7 Direct Recovery of Debts

The legislation to implement the direct recovery of debts rules is in Clause 47 and proposed Schedule 8 of the second Finance Bill. There will also be secondary legislation with more detail on some of the aspects (not yet released).

### 6.7.1 Debts to which the power applies

The debt must be at least £1,000 and must be an established debt – this means one for which there is no right of appeal in existence (ignoring power to accept out of time appeals), or is an amount due under an accelerated payment notice (APN). The third condition is that HMRC is satisfied that the person is aware that the sum is due and payable by them.

### 6.7.2 Notice to the bank

HMRC can give notice (an information notice) to a deposit taker holding an account with the debtor requiring the provision of information about the account holder, the account (including whether it is a joint account). This power can only be exercised if HMRC is intending to issue a hold notice on the accounts. The bank must comply within 10 days, and there is a penalty (para 13 of Sch 8) for failure to comply, which must be explained in the information notice.

### 6.7.3 Hold notice

HMRC can then issue a hold notice to the bank. This specifies an amount to be subject to “hold”, which cannot duplicate other hold notices for the relevant debt, so that a maximum hold for all deposit takers would be the amount of the debt. The notice must provide a range of specified information, and also specify a “safeguarded amount” such that the hold cannot extend to the safeguarded sum. The minimum safeguarded amount is £5,000, unless HMRC determines that there are other accounts not denominated in sterling which cover this sum. Where multiple hold notices are issued to more than one deposit taker in respect of the same debt, only one safeguarded amount is needed, the remainder can be zero.

The deposit taker must, within 5 days ensure that the account holder does not reduce the account so that the hold notice is not covered, and may transfer the amount into a suspense account if considered appropriate. This must remain in place until the hold notice ceases to be in force, which will happen if either HMRC cancels the notice, or issue a deduction notice for the sum. The legislation specifies how the bank will hold sums as requested, particularly when there are multiple accounts with the debtor. There is also a priority order for holding sums from various accounts, and a methodology for determining in which accounts the safeguarded amount will remain. Joint accounts are regarded as equally split between all holders for this purpose.

Once the bank has given effect to the hold notice they must, within 5 working days, give notice to HMRC of the amounts on hold in each account, or a notice stating that there are no available funds to put a hold on. The account holder(s) may also be notified by the bank of the hold notice and the effect.

HMRC must then also contact the debtor and any other account holders setting out the details of the amounts unpaid and the amounts which are on hold against the debt.

Subsequently, HMRC can vary or cancel the hold notice.

#### 6.7.4 Objections

The debtor can raise objections to the hold notice. The available grounds of objection are :

- The debts to which the notice applies have been paid
- There is no relevant sum (tax debt)
- The debtor does not hold any account with the deposit taker
- The hold notice is causing or will cause exceptional hardship
- There is a third party with an interest in the accounts

The objection must be made within 30 days of being sent a copy of the hold notice by HMRC, unless specified conditions apply which permit a late objection notice to be given with HMRC's agreement.

HMRC must consider the objection and can either cancel or vary the hold notice, or dismiss the objection. The deposit taker must act on any cancellation or variation within 5 working days of being informed of the change.

#### 6.7.5 Appeal

If HMRC either uphold the notice in full or in part, the debtor has a right of appeal based on the same grounds as the objection. The appeal must be notified within 30 days. The court must then either cancel or vary the hold notice. The deposit taker must act within 5 working days on any notice from the court.

6.7.6 Deduction notice

Once rights of objection and appeal have been exhausted and the amount in question still remains unpaid, HMRC may issue deduction notices in respect of held amounts. A copy of the deduction notice must be supplied to the debtor and any other account holder(s).

6.7.7 Regulations

Various aspects of detail will be dealt with by Regulations, but the legislation is quite prescriptive about what regulations can cover and how they will be implemented. This provides some reassurance to critics that they main details of the legislation, and in particular taxpayer rights cannot easily be altered. Draft Regulations have already been issued for comment.

The TIIN indicates that the power is expected to apply to around 11,000 cases a year and will bring in around £100 million per annum.

## 6.8 DWP fraud and error teams

The Red Book included an announcement that the DWP would make increased use of RTI information in the detection and prevention of fraud and error in Pension Credit and Housing benefit. One issue for advisers is that where DWP wishes to query the RTI submissions they intend phoning the employer. When the payroll work is outsourced to a firm, this represents a challenge.

## 6.9 Anti-avoidance – future measures

There are suggestions of further anti-avoidance powers to come, such as the naming and shaming of repeat users of aggressive avoidance schemes. There will also be tax geared penalties for schemes which fall foul of the GAAR. These measures are proposed for the Finance Bill 2016.

## 6.10 "Last chance" disclosure opportunity

In connection with avoidance and international fund movements, it was announced in the Red Book that both the Liechtenstein Disclosure Facility (LDF) and the Crown Dependencies Disclosure Facilities will all close earlier than previously announced. These facilities will come to an end at the end of 2015, rather than April and September 2016 respectively.

They will be replaced by a last chance disclosure facility running from 2016 to mid 2017, in advance of full data being made available by the Common Reporting Standard applying to international data exchange agreements. This facility will be on less generous terms that anything offered before.

It was further announced by the Financial Secretary on 19 March, the Government intends to press ahead with the strict liability principle applying not only to offshore bank accounts but also to other assets. Proposals unveiled will seek to impose penalties based on the value of the asset rather than the tax at stake.