Budget 2013
Lexis®PSL Tax Analysis

A summary of the key business tax announcements made in the Chancellor's Budget on 21st March 2013

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Budget 2013 analysis

Introduction

This summary of the key business tax announcements made in the Chancellor's Budget on 21st March 2013 has been put together by the LexisPSL Tax team, to provide a single source for all key business tax announcements. Alongside these announcements, the team provide analysis of what this means to your practice and your clients, and provide links to relevant external sources (including the HMRC website), and further practical guidance in LexisPSL Tax.

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After taking the brave step of joining twitter earlier in the day, the Chancellor of the Exchequer, George Osborne (@George_Osborne), delivered his fourth Budget on Wednesday 20 March 2013.

The economic climate facing the Chancellor continues to be challenging.

Despite:

- three years of austerity
- cutting the UK's level of borrowing by a little over one quarter (from approximately £167bn in 2009-10 to £121bn in 2012-13 and 2013-14)
- a general consensus that the economy is showing some signs of recovery, and
- growing confidence for the medium and longer term

the economy is showing little, if any, signs of growth. The result is that the overall deficit is actually widely expected to remain at its current level (or even rise) in 2012-13 meaning that predictions on the time it will take to clear now stretch into the next Parliament (ie post-2015).

Add to this the loss of the UK's Moody's 'AAA' credit rating in late February, Mr Osborne has been facing intense pressure to (among other things):

- move away from his austerity programme
- abandon cuts in the welfare budget
- temporarily cut the rate of VAT, and
- borrow more money

all in order to kick-start economic growth—in short, he has been urged to adopt a 'Plan B'.

Nonetheless, the Chancellor appears determined to stay the course he has set for himself. He has resisted the temptation to borrow more and continues to focus on reducing existing budgets. For example, in a measure expected to raise approximately £3bn per year from 2015-16, he is seeking additional cuts in governmental department budgets (other than the NHS and, interestingly, HM Revenue and Customs (HMRC)) in each of the next two years prior to the 2015 general election.

The money saved is set to be reinvested in large-scale infrastructure projects (including, for example, the HS2 high-speed rail link) in an effort to stimulate the economy—not quite Plan B perhaps, but maybe Plan A1.

Set against the economic challenges the government faces, the UK's tax system (and, indeed the international tax system as a whole) continues to find itself under sharp scrutiny.

In what follows, references to:

- OOTLAR means the Budget document called the Overview of Tax Legislation and Rates published on 20 March 2013
- FB 2013 means Finance Bill 2013, and
- TIIN means Tax Information and Impact Notes (which can be found in Annex A to the OOTLAR)

Our analysis falls under the following headings:

- Business and enterprise
- Real estate taxes
- Investment management
- Personal taxation
- Employment taxes
- Indirect taxes, and
- Tax avoidance and evasion

For a summary of the Budget 2013 announcements on environmental taxes, see: Budget 2013—environment and energy and pensions taxation, see: Budget 2013—Pensions Issues. For a complete summary of all of the announcements made in Budget 2013, see: Budget 2013: Tax Information and Impact Notes and related documents

A draft of the FB 2013 will be published on 28 March 2013.

Key announcements

The key announcements made today include:

- main rate of corporation tax reduced to 20% from 2015
- pre-tax rate of the above the line tax credit for research and development increased to 10%
- employer NICs yearly allowance of £2,000 from April 2014
- stamp duty on shares traded on growth markets including AIM abolished from 2014
- stamp duty reserve tax on surrenders/transfers of unit trust units and OEIC shares abolished from 2014
- six anti-avoidance measures relating to the use of corporate tax losses with immediate effect

Business & enterprise

Corporation tax rates and the bank levy				
	2012-13 Tax Year	2013-14 Tax Year	2014-15 Tax Year	2015-16 Tax Year
Corporation tax rate	24%	23%	21%	20%*

** In its bid to simplify the UK tax system, the Chancellor announced on Budget day that from 1 April 2015, there will only be one unified rate of corporation tax at 20%. There will be no separate small profits rate.*

The information in this table comes from paras 1.21, 2.19 and pages A49 and B12 of the OOTLAR.

According to the Chancellor, the banks should not benefit from the reductions in the corporation tax rate, so the bank levy will be increased to:

- 0.142% for short-term liabilities, and
- 0.071% for equity and long-term liabilities

This will take effect from 1 January 2014 (OOTLAR, para 1.22 and pages A52 and B13).

Above the line R&D tax credits

The pre-tax rate of the proposed 'above the line tax' (ATL) credit for large companies entitled to R&D relief (and any SMEs claiming under the large company scheme) has been increased from 9.1% to 10% (OOTLAR, para 1.23).

The ATL credit will be available for expenditure incurred on or after 1 April 2013 and is intended to improve:

- visibility of R&D relief (as the ATL credit can be more easily linked to the R&D department's budget)
- certainty over the timing and quantum of the benefit, and
- the position for loss-making companies (which do not currently benefit from large company R&D relief until they become profitable) that will be able to receive their credit in cash (net of tax and capped by reference to PAYE and NICs)

As the main rate of corporation tax has fallen in recent years, so has the value to companies of the existing additional deduction regime for R&D (see: Large company R&D relief). However the move to a credit based solely on a percentage of qualifying spend means that the level of benefit will no longer reduce (or increase) automatically in line with headline tax rates.

The ATL credit regime will be available to companies as an alternative to the additional deduction regime until 1 April 2016, when it is proposed that ATL credits will become mandatory. A consultation document was released on 27 March 2012 and draft legislation was released on 11 December 2012 for inclusion in FB 2013.

Corporation tax: deferring payment of exit charges

A company that ceases to be tax resident in the UK will be subject to corporation tax charges on certain unrealised profits and gains: this is known as the exit charge. The charge applies to assets that the company holds when it migrates, and includes latent capital gains, intangible fixed assets, derivative contracts, loan relationships and trading stock. Similar charges apply to non-UK companies with UK permanent establishments (PEs), if assets cease to be held for the purposes of the PE's UK trade.

The European Court of Justice (ECJ) has held that exit taxes can contravene the principle of freedom of establishment, and the European Commission has begun formal infringement proceedings against the UK requesting it to amend its exit tax legislation applying to the unrealised capital gains of companies.

In response to these developments, the draft FB 2013 clauses published in December 2012 included a proposal to amend the UK's exit charge rules. The amendment would permit companies that are incorporated in the UK or elsewhere in the EEA to defer paying exit charges when they become tax resident in another EU or EEA country. The company could either choose to pay the exit charge in six annual instalments, or to defer it until the relevant asset has been realised, subject to a 10 year long-stop date. Under the second option, after 10 years the exit charge would be payable whether the relevant asset had been disposed of or not. The tax would be calculated at the time of migration, and interest would be payable on the tax deferred.

The government has confirmed, as part of the Budget 2013 (OOTLAR, para 1.26), its intention to legislate this amendment in FB 2013. Changes announced on Budget day are:

- the ability to defer will be extended to UK PEs of non-resident companies incorporated elsewhere in the EU or EEA, where the exit charge arises as a result of the transfer of a whole or part of the PE's UK business to another EEA state, and
- the scope of the charges which can be deferred will include corporation tax attributable to the revaluation of trading stock

It remains to be seen whether these amendments will be sufficient to persuade the European Commission to drop the infringement proceedings. Commentators have suggested that the fact that tax will be due on unrealised capital gains at the end of 10 years, whether the asset has been realised or not, means that the amended legislation may still not be EU compliant. This criticism is not affected by the changes announced in the Budget.

This measure applies retrospectively to allow companies to opt for deferred payment for exit charges arising as a result of migrations from the UK taking place on or after 11 March 2012. The application must be made within nine months of the end of the company's final accounting period. This deadline is extended until 31 March 2013 if it would otherwise have passed, but some companies may need to get their applications in quickly, if they have not already done so.

Group relief for EEA companies with UK permanent establishments

The draft FB 2013 legislation published in December 2012 included a clause to amend the rules on EEA resident companies surrendering losses from their UK PEs as group relief in the UK. From 1 April 2013, these restrictions will be based on whether the losses have actually been used elsewhere, rather than on whether they could potentially be used elsewhere.

The Budget day announcements do not include details of any changes to this proposal, but the OOTLAR does state (at para 1.27) that a technical note will be published on 28 March 2013 to clarify how this measure will interact with existing group relief legislation. It remains to be seen whether this means more, or amended, legislation, or simply HMRC guidance.

Attribution of gains of non-resident companies

The rules under which the capital gains of certain non-UK resident companies are attributed to its UK-resident shareholders (both individuals and companies) will be amended (with retrospective effect to 6 April 2012), as follows:

- the threshold for attribution will be raised from 10% to 25%, and
- gains will be excluded where the assets have been used for economically significant activities and/or there is no avoidance purpose

It was announced at Budget 2013 that 'economically significant activity' does not need to be carried on wholly outside the UK through a non-UK business establishment (presumably meaning the deletion of the second half of proposed new TCGA 1992, s 13(5)(ca)) (see para 1.15 of the OOTLAR).

Controlled foreign companies

In addition to four minor changes announced in December 2012, three further changes were announced at Budget 2013, all to have effect from 1 January 2013 (ie from the start of the new regime). The new changes are that:

- the rules on finance company exemption for matched interest will be amended to include all leftover profits
- (following representations, including from LexisPSL Tax), the CFC group treasury company definition will be amended following the changes to the group treasury company rules under the worldwide debt cap, and
- the qualifying resources exemption rules will be relaxed to allow for daylight and bridging finance facilities

Foreign currency assets and corporate chargeable gains

FB 2013 will include provisions designed to simplify companies' computation of chargeable gains (or losses) on the disposal of assets that they have held (at any point during their ownership) using a functional currency other than sterling.

The assets affected are:

- shares
- interests in shares
- ships, and
- aircraft

Where the rules apply, companies will generally be required to calculate their chargeable gains (or losses) using either their:

- functional currency, or
- designated currency in the case of UK resident investment companies that have elected to report using a designated currency instead of sterling.

The changes effectively strip away the effect of foreign exchange (FOREX) movements on chargeable gains calculations involving these particular assets.

The stated aim is:

- to align the tax consequences of making a disposal with the economic outcome, and
- reduce the administrative burden for companies tracking (and hedging) the FOREX movements on their asset holdings and is likely to be broadly welcomed by those companies affected.

Entrepreneurs' relief for EMI shares

Capital gains tax (CGT) entrepreneurs' relief reduces the CGT rate to 10% when an individual disposes of shares, or other assets, that qualify for the relief (subject to a lifetime limit of £10 million of gains). Budget 2012 announced that the circumstances in which relief is available would be extended for disposals of shares that were acquired through the exercise of a qualifying EMI (enterprise management incentive) option.

For a disposal of normal (non-EMI) shares to qualify for entrepreneurs' relief, one of the conditions is that the taxpayer must have held a minimum 5% stake in the company for at least a year before the disposal. For EMI shares, the 5% requirement will be removed.

While the size of the stake will no longer matter for EMI shares, there will still be a minimum 12-month holding period, but this will include the period during which the option is held (before it is exercised). The inclusion of the period before the option is exercised was a change to the original (Budget 2012) proposal, and was published with the draft FB 2013 clauses in December 2012. Under the original proposal, taxpayers had to hold the EMI shares for at least 12 months after exercise. The government made this change after representations that most EMI options are exercised shortly before the sale of a company, so would not have qualified for the newly extended relief.

A new announcement for Budget day is that relief will also apply to the disposal of shares that replace EMI shares following a reorganisation of a company, and to certain shares following an exchange for shares in another company (OOTLAR, para 1.9). The legislation published in December 2012 expressly excluded such shares from the definition of EMI shares for entrepreneurs' relief purposes, so this will be a welcome change.

Overall the FB 2013 measures will increase the appeal of EMI for UK employers wanting to provide incentives to their staff.

This measure applies for disposals on or after 6 April 2013.

Seed enterprise investment scheme (SEIS)

Legislation will be introduced in FB 2013:

- to extend the capital gains tax (CGT) holiday for gains reinvested in shares qualifying for SEIS relief for a further year but only in respect of half of the qualifying reinvested amount (OOTLAR, para 1.6). Subject to the existing cap of £100,000, half of gains accruing in 2013-14 and re-invested in 2013-14 (or 2014-15) will be exempt from CGT, and
- to ensure that, for shares issued on or after 6 April 2013, an SEIS company will not be inadvertently disqualified for failing the independence test simply because it was established by a company formation agent before sale to its ultimate owners

Other announcements (Future tax changes)

The government has also announced a number of amendments that it plans to make in the future, including:

- **Simplification of partnerships**—the Office of Tax Simplification is to investigate ways to simplify the taxation of partnerships. It will begin by identifying the areas taxpayers find most complex. Any legislation will be included in a future finance bill (OOTLAR para 2.6).

- No further details are given, presumably so as not to limit the potential scope of the review. The taxation of partnerships is a notoriously complicated area, with very little legislation applying directly to partnerships. Taxpayers have to place much reliance on extra-statutory guidance, such as HMRC's Statement of Practice D12 on capital gains tax for partnerships. Any genuine simplification would therefore be welcome, although as ever there is the risk of unintended consequences.
- **Code of Practice on Taxation for Banks**—the government intends to give HMRC the power to compile an annual report on the operation of the Code of Practice on Taxation for Banks from 2015 and to name and shame institutions that they deem are not complying with its terms. The proposal will be subject to consultation with legislation expected to be included in the FB 2014 (OOTLAR, para. 2.20).
- Review of loan relationships and derivative contracts—the government intends to consult on the modernisation of the loan relationships and derivative contracts regime during 2013. The stated aim is to introduce a simpler, clearer and fairer regime while reducing the opportunity for abuse. The review of these regimes is long overdue and, given the imminent changes to UK GAAP (including the implementation ofIFRS 7 and IFRS 9 and FRS 100, FRS 101 and FRS 102 with mandatory effect for accounting periods beginning on or after 1 January 2015) both necessary and inevitable. It is hoped legislation will be introduced in FB 2014 and FB 2015 (OOTLAR, para. 2.23).
- **Tax treatment of additional tier one capital instruments**—the government has announced that it will, following the conclusion of the Capital Requirements Directive IV, issue secondary legislation to confirm and ensure that such instruments already issued, or to be issued, by banks will be deductible for the purposes of the banks in computing their profits for corporation tax

Real estate taxes

High-value residential property

There were no major new announcements in Budget 2013 on the package of anti-avoidance measures applying to high-value UK residential property. The TIIN largely confirms what had previously been announced.

In brief, the measures are:

- 15% rate of SDLT (applicable since 21 March 2012) when a company, partnership with a corporate member or a collective investment scheme (a non-natural person) acquires a single dwelling for more than £2m (regardless whether the non-natural person is UK or non-UK resident)
- proposed annual residential property tax (ARPT) (which the TIIN refers to as the annual tax on enveloped dwellings (ATED)) ranging from £15,000 to £140,000 per year on a non-natural person (whether UK or non-UK resident) holding a single dwelling worth more than £2m (from 1 April 2013), and
- proposed extension of capital gains tax (CGT) at 28% to a non-natural person (whether UK or non-UK resident) disposing of a single dwelling worth more than £2m in respect of gains accruing on or after 6 April 2013

These measures are expressly intended to discourage individuals from holding single dwellings worth more than £2m indirectly via companies and other structures that enable such properties to be sold free from SDLT by selling shares (or other interests) in the property owning vehicle. Note however that many such structures were established not to avoid SDLT but to preserve the property owner's privacy or to protect against inheritance tax.

Bringing both UK and non-UK resident companies (and other non-natural persons) within the scope of CGT on disposal of such dwellings will inevitably create additional complexity, particularly for UK resident companies which until now have been taxed exclusively under the corporation tax regime.

Extensive representations were made to restrict the impact of these punitive measures on genuine property and other commercial businesses and prevent them from becoming a disincentive to entering the high-value residential property market. Fortunately, a much broader package of reliefs is now proposed providing for a reduction in the 15% rate of SDLT (subject to clawback provisions) and reduction in (or exemption from) the ARPT (or ATED) and CGT—including for property developers, property dealers and property rental businesses.

However, the extended package of reliefs does not assist in the short term since it will only apply from the date that FB 2013 receives Royal Assent. SDLT at 15% already applies on acquisition of a single dwelling by a non-natural person for more than £2m and, under current rules, relief is only available for property developers with a two-year trading history (FA 2003, Sch 4A, para 5). Therefore, start-up developers and other property businesses could potentially more than halve their SDLT bill if they can delay their acquisitions until the new reliefs take effect.

SDLT: changes to sub-sale relief or transfer of rights

As already announced in 2012, section 45 of the Finance Act 2003 on sub-sale relief (or the transfer of rights) will be amended, with effect from Royal Assent of Finance Act 2013, along the lines of draft legislation published on 11 December 2012 to stop it being used to avoid SDLT. The sub-sale relief rule applies so that in a situation where an original purchaser enters into a contract to on-sell the land to a third party, the third party (and not the original purchaser) must notify its liability to pay SDLT, as well as paying any SDLT due. It prevents a double charge to SDLT where the original purchaser is merely an intermediary. However, this relief has been used to avoid SDLT in cases where the original purchaser still took possession of the land, but had entered into a contract with a third party to on-sell the land at a date far in the future (such as 125 years) to that third party, often at a sum that fell below the threshold where SDLT applied, so that no SDLT was paid on the transaction.

Additionally, certain changes to FA 2003, s 45 will apply with retrospective effect to transfers of rights that took place on or after 21 March 2012 but before Royal Assent of the Finance Act 2013. These changes will put beyond doubt that certain sub-sale relief schemes that were entered into in order to avoid SDLT do not work.

On Budget day, the government published a guidance document to help those caught by these rules to comply with their SDLT obligations. Helpfully, those caught by the retrospective changes have until 30 September 2013 to notify HMRC of their SDLT liability by submitting a return or amending one. The answers to questions in the guidance also provide that no penalty will be imposed if a paper return or amended paper return is submitted late and that any penalty automatically imposed on late electronic filing will be removed provided the purchaser writes to the Birmingham Stamp Office requesting that it does so.

SDLT: leases simplification

As already announced in 2012, FB 2013 will introduce legislation to simplify the SDLT rules that apply to certain non-standard lease transactions and will take effect from Royal Assent of the Finance Act 2013. Draft legislation was published on 11 December 2012, but revisions to this draft legislation are expected on 28 March 2013.

Investment management

The government has published a document called, 'The UK investment management strategy' on budget day which sets out the government's strategy for achieving its objective of making the 'UK one of the most competitive places in the world for the investment management sector' and represents a major re-commitment to enhancing this area. The tax treatment of investment management sits at the core of this strategy and is reflected by the number of positive announcements made in this area.

Investment trust companies

Two changes to the tax treatment of investment trust companies (ITC) have been announced. Both are intended to remove the unintended consequences of changes made previously.

The ITC regime is only available to companies that are set up to for collective investment. An ITC is a closed-ended, corporate, form of collective investment fund and benefits from an advantageous tax regime intended to encourage investors' participation in UK funds.

Provided the company meets certain conditions, an ITC is exempt from corporation tax on chargeable gains. In effect, the regime is designed so that the gains realised on the disposal of assets held by the ITC flow (indirectly) through to shareholders in the ITC.

The first change, having retrospective effect to accounting periods of an ITC beginning on or after 1 January 2012, relaxes Condition A.

Condition A requires that an ITC invests in property 'with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds'—ie that the ITC is set up for collective investment purposes.

Condition A is to be relaxed so that it will be met provided all or substantially all of the business of the ITC is investing in property for the purposes of encouraging collective investment. As a result other, ancillary, activities that the company might happen to carry on will not prevent it from being an ITC.

The second change, which is subject to the outcome of a consultation over the next few months, relates to the ITC income distribution requirement.

An ITC must, generally, distribute at least 85% of its income arising in any accounting period within 12 months after the end of that accounting period. The basic distribution condition is, however, subject to a couple of exceptions—broadly, where making the distribution would be illegal or would be of a de minimis amount.

Subject to the consultation, a third exception will be introduced where the ITC has accumulated realised revenue losses which exceed its income in any accounting period—ie where complying with the income distribution requirement would mean the ITC having to access capital reserves.

Although the detail is awaited, it is hoped that the addition of this third exception will mean that:

- ITCs are better able to endure the impact of difficult investment conditions, and
- enhance the ability of an ITC to 'smooth' its dividend payments across accounting periods

If enacted, the additional exception to the income distribution requirement is expected to have effect for accounting periods of ITCs beginning on or after 1 July 2013.

Both changes represent relaxations and are likely to be broadly welcomed because they remove unnecessary obstacles to the wider use of the UK's ITC regime.

Offshore funds

The UK's offshore funds regime is, broadly, designed to prevent the rolling-up of income offshore in order to 'convert' an income return into a capital gain. Subject to exceptions for offshore funds that are 'reporting' funds, the regime works by treating the ultimate disposal of an interest in an offshore fund as an offshore income gain—the investor is charged to income tax instead of capital gains.

The regime was overhauled in 2009 and a revised definition of what constitutes an offshore fund was introduced based on a set of characteristics.

The offshore funds regime is set to be amended in two ways. The changes are technical and designed to ensure that the regime operates properly by making sure UK investors in offshore funds are taxed in the same way as investors in a UK fund:

- first, the offshore funds regulations will be amended to make it clear that an offshore income gain arising on the disposal of an interest in a reporting offshore fund will still accrue even where the interest was acquired pursuant to a reorganisation of the fund in which the interest is held (ie the fund was previously a non-reporting fund)—this change takes effect on and after 3pm on 20 March 2013, and
- second, subject to the release of an additional statutory instrument and a short period of consultation, various technical changes will be enacted to remove any mismatch between the total amount of the fund's reported income and the amounts that are reported to individual investors—the purpose of the changes is to ensure that investors in a reporting offshore fund are taxed on their correct proportionate share of the income being reported—this change is expected to take effect before 30 July 2013

Other developments

The government has announced two other interesting developments that will affect funds and collective investment.

- the 'White List'
    - The government has confirmed that it will be consulting on the possibility of expanding the scope of activities contained on the 'White List'.
    - The White List—broadly, a list of transactions that will be treated as an investment activity—represents a critically important part of:
- the investment management exemption (IME) rules
- the diversely owned fund rules within the authorised investment funds (AIF) regime
- the investment trust (ITC) regime, and
- the offshore reporting funds rules
- by providing the fund vehicle with certainty that certain, specified, transactions will not be treated as trading activities and removing the need to rely on general case law principles dealing with the hallmarks of trading transactions.
- In each of the above cases, the existence of trading activities can jeopardise the tax beneficial treatment afforded by each of the regimes. Any expansion of the White List will be welcomed and should encourage investment in the vehicles the regimes are designed to promote (OOTLAR, para. 1.31).

and

- authorised contractual funds
    - The government has reiterated its commitment to introducing an authorised tax regime for transparent (ie contractual) funds.
    - Although the expansion of the UK's AIF regime to incorporate a contractual 'vehicle' has been on the cards

for some time–the government consulted on the issue in January 2012–the implementation of regulations (due to be introduced to Parliament "shortly") is a welcome development. It completes a process that has seen the complete overhaul in the UK's authorised funds regime that started in 2006 and has seen, among other things, the development and introduction of the UK's:

  - regimes.
  - The continued commitment to, and apparently imminent introduction of, a contractual fund is likely to be widely welcome by the investment management industry (OOTLAR, para. 1.33).

- real estate investment trust (REIT)
- property authorised investment fund (Property AIF)
- tax elected fund (TEF), and
- funds investing in non-reporting offshore funds (FINROF)
- **UK management of offshore funds**—the government will issue a consultation on the tax rules surrounding the UK treatment of UK based management of offshore funds. The purpose of the consultation will be to consider the widening the existing rule that provides certainty that locating fund management activities of certain offshore UCITS (undertakings for collective investments in transferrable securities) funds in the UK will not lead to a risk of that fund being deemed to be tax resident so that it applies to certain non-UCITS funds. This will be welcomed by, and should encourage and support, the UK's important fund management industry (OOTLAR, para. 2.35).

Personal taxation

Income tax rates and thresholds

Income tax rates and personal allowance						
	2012-13 Tax Year		2013-14 Tax Year		2014-15 Tax Year	
	Tax rate	Income bands	Tax rate	Income bands	Tax rate	Income bands
Personal allowance for those whose income does not exceed £100,000*	0%	£0–£8,105	0%	£0–£9,440	0%	£0–£10,000
Basic rate**	20%	Up to £34,370	20%	Up to £32,010	20%	Up to £31,865
Higher rate**	40%	£34,371–£150,000	40%	£32,011–£150,000	40%	£31,866–£150,000
Additional rate**	50%	Over £150,000	45%	Over £150,000	45%	Over £150,000

* This table only includes the personal allowance applicable to those aged 65 and under (for the 2012-13 tax year) and those born after 6 April 1948 (for the subsequent tax years).

** These figures ignore the effect of the personal allowance. The combined effect of:

- the amount of income that is subject to the basic rate of income tax being reduced in the 2013-14 and 2014-15 tax years, and
- the higher personal allowance

is that the higher rate tax threshold will be:

- £41,450 in the 2013-14 tax year (down by £1,025 from £42,475 in the 2012-13 tax year), and
- £41,865 in the 2014-15 tax year (up 1% (or £415) from £41,450 in the 2013-14 tax year, but still down by £610 from the higher rate threshold of £42,475 in the 2012-13 tax year)

Capital gains tax annual exempt amount

The annual exempt amount for capital gains tax for the 2013-14 tax year will be £10,900 and will increase by 1% for 2014-15 and 2015-16, reaching £11,100 by 2015-16.

Statutory residence test, abolition of ordinary residence and enactment of SP 1/09

No new announcements were made on Budget day relating to the:

- new statutory test for UK residence of individuals
- abolition of ordinary residence, and
- the enactment of statement of practice 1/09

which will apply from 6 April 2013 to income tax, capital gains tax, inheritance tax and corporation tax, but not to NICs or tax credits.

Transfers of assets abroad

The rules under which the income arising on assets outside the UK can be charged on a UK resident individual will be amended to widen the exemptions from the charge to include genuine transactions within the EU that serve the purpose of the EU treaty freedoms.

It was announced at Budget 2013 that:

- whilst the majority of the rules will have retrospective effect from 6 April 2012, certain 'clarification' changes will only have effect from 6 April 2013 (ie the provisions relating to double charging and double taxation agreements)
- HMRC will have the power to apportion income where part of a transaction is genuine and part is not, and
- the previously proposed changes to the 'matching' rules will be postponed until 2014 pending further consultation

Income tax rules on disguised interest

On Budget day, the government announced that the draft legislation on the disguised interest rule for income tax purposes that was published on 11 December 2012 has been changed to exclude certain types of shares from its application, subject to an anti-avoidance rule. It is expected that this revised legislation will be published on 28 March 2013.

The disguised interest rule will:

- for income tax purposes, extend the meaning and taxation of interest to interest-like returns not already taxed as interest, and
- take effect from 6 April 2013

Employment taxes

Employer's NICs reduction

Billed as a reduction in the tax on jobs, on Budget day the Chancellor announced that:

- from April 2014
- all businesses and charities
- will be eligible for a new £2,000 employment allowance against their employer NICs charge (para 1.19 of the OOTLAR and para 1.128 of the red book)

The allowance is intended to be easy to claim. An employer should only need to confirm its eligibility through its regular payroll process and the allowance should be deducted from its employer NICs bill over the course of each tax year, beginning in April 2014 (para 1.128 of the red book).

This allowance will enable an employer to hire one employee on a salary of £22,400 or four employees on the adult minimum wage, without paying any NICs (para 1.128 of the red book).

The government intends to consult on how to implement this relief and aims to publish draft legislation later in 2013.

Offshore employment intermediaries

As announced on 16 March 2013, the government intends to consult on and introduce legislation in FB 2014 to prevent the avoidance of PAYE and NICs by UK businesses using offshore employment intermediaries (OOTLAR, para 2.41).

While the detail of these proposals is not yet clear, they appear to be targeted at circumstances where an offshore corporate intermediary is interposed between a UK worker and a UK business (often without the worker's knowledge). By having no presence, residence or place of business in the UK, the offshore intermediary is not currently obliged to remit payroll taxes or pay NICs (including employer NICs).

It is envisaged that the new measures will come into force on 1 April 2014.

Employee shareholder status

In December 2012, the government announced the new employee shareholder (or employee owner) status whereby employees may receive between £2,000 to £50,000 worth of shares in the company they work for in exchange for giving up certain statutory employment rights (eg rights to compensation for unfair dismissal and redundancy and the right to request flexible working).

While the Chancellor announced further details of the tax treatment of employee shareholders in Budget 2013, the House of Lords voted the same day against the government's Growth and Infrastructure Bill, which contains the proposed employment law provisions about the rights of employees of companies who agree to be employee owners.

Legislation is proposed for inclusion in FB 2013 to exempt such employee shareholders from CGT on any gains when they eventually dispose of such shares worth up to £50,000 on acquisition. Following consultation, the government has announced (OOTLAR, para 1.8) that this legislation will be revised to:

- prevent an income tax charge arising on a distribution where a company buys back CGT-exempt shares, and
- strengthen the material interest anti-avoidance provision, which denies CGT exemption in certain circumstances

Further legislation will be introduced in FB 2013 that will deem employee shareholders to have paid £2,000 for their shares, ensuring that the first £2,000 worth of shares will not be subject to income tax and National Insurance contributions (NICs) (see: How employment income relating to shares or securities is taxed). If the shares are subject to restrictions (such as compulsory transfer provisions for good or bad leavers), the employer and employee may still need to enter into restricted securities elections on acquisition to prevent later income tax and NICs charges (see: Restricted securities—tax treatment and joint elections).

Consequential amendments will also be made so that businesses can, where appropriate, claim corporation tax relief against the acquisition of shares by employee shareholders (see: Corporation tax relief for employee share and share option acquisitions).

It is proposed that these tax changes will apply to shares received on or after 1 September 2013.

New CGT relief for employee ownership

The government proposes to introduce a new CGT relief in FB 2014 where a controlling interest of a business is sold into an employee ownership structure (OOTLAR, para 2.4). The government will also look at further incentives, including measures targeted at employees through indirect ownership models.

Increased exemption threshold for employer provided beneficial loans

Legislation will be introduced in FB 2014 to increase the exempt threshold for employment-related loans from £5,000 to £10,000 with effect from 6 April 2014 (OOTLAR, para 2.9), see: Loans provided to employees or directors—the annual charge.

Indirect taxes

Abolition of SDRT charge on surrenders of unit trust units and OEIC shares from 2014

On Budget day, the Chancellor announced that FB 2014 will include legislation to abolish the 0.5% stamp duty reserve tax (SDRT) charge:

- on surrenders or transfers of units in unit trust schemes to the trust manager or shares in open-ended investment companies to the authorised corporate director
- set out in Schedule 19 to the Finance Act 1999 (para 2.27 of the OOTLAR)

This abolition is intended to support the UK based asset management industry since the SDRT charge on the surrender/transfer of units or OEIC shares only applies to UK-based trusts or OEICs.

Abolition of stamp taxes on transfers of AIM listed shares

On Budget day, the Chancellor announced that FB 2014 will introduce legislation to abolish the 0.5% stamp duty applicable to instruments transferring shares listed on AIM or other growth markets, such as the ISDX Growth Market. A full list of the growth markets intended to be covered by this stamp duty abolition has not yet been made available.

Although the published information in para 2.28 of the OOTLAR refers only to abolishing stamp duty, given that many AIM listed shares are held in uncertificated form so that transfers take place electronically through a settlement system such as CREST (ie without a physical instrument of transfer capable of being stamped), it is thought that this abolition should extend to SDRT in order to remove the SDRT charge that would otherwise apply to an agreement to transfer those uncertificated shares within CREST.

VAT thresholds		
	From 1 April 2012	From 1 April 2013
VAT registration threshold	£77,000	£79,000
VAT deregistration threshold	£75,000	£77,000

The information in this table derives from the OOTLAR, para 1.57.

VAT place of supply rules: telecommunications, broadcasting and e-services

Since 1 January 2010, the VAT place of supply rules for services have been subject to a series of major changes, introduced in stages over a five year period. The changes are already incorporated in Council Directive 2006/112 (the VAT Directive) and are being implemented in UK legislation in phases.

The first changes, effective on 1 January 2010, applied to services supplied between businesses (B2B) and had the effect that from that date B2B supplies are (subject to some exceptions) treated as supplied where the customer belongs.

The final changes will be included in the FB 2014, to take effect from 1 January 2015, and will affect intra-EU business to consumer (B2C) supplies of telecommunications, broadcasting and e-services. Once the changes are in force, these services will be treated as supplied where the customer belongs, rather than where the supplier belongs.

Examples of services that are within this provision include:

- fixed and mobile telephone services
- internet access
- live broadcasts over the internet
- downloaded applications (apps)
- e-books, and
- anti-virus software

A 'mini one stop shop', or MOSS, will also be introduced from 1 January 2015, so businesses can register for VAT in the UK and account for VAT in other member states using a single return, rather than registering for VAT in many different jurisdictions (OOTLAR, para 2.37).

Despite this administrative simplification, businesses that are affected by these changes will need to review their pricing, accounting and IT systems to take account of different VAT rates in different countries. They will also need to establish whether their customers are businesses or consumers, and where they are established for VAT purposes.

Tax avoidance and evasion

Corporation tax loss loophole closures and targeted anti-avoidance rules on unrealised loss-buying

Six anti-avoidance measures relating to the use of losses were announced, with effect from 20 March 2013. Draft legislation for first three measures was published on 20 March 2013; draft legislation for the second three measures will be published on 28 March 2013.

1—Group relief and CFC profits

As further explained in: Priority between loss reliefs in loss making companies, qualifying charitable donations, UK property business losses, management expenses and non-trading intangible fixed asset losses can only be surrendered for group relief if, when aggregated, they exceed the 'gross profits' of the company that incurred the losses. With effect for group relief surrender periods ending on or after 20 March 2013, the 'gross profits' concept will be amended to include any

chargeable profits of CFCs apportioned to that company. This underlines the policy that such losses (in comparison with trading losses and non-trading loan relationship deficits which can be surrendered entirely at the surrendering company's choice) should be used in the loss-making company first before surrendering for group relief.

2—Loss-buying: change in ownership of shell companies

As further explained in: Restrictions on use of trading losses following company takeover, when there is a change in ownership of a company carried forward trade losses can only be carried forward against profits of the same trade. New provisions will be introduced in FB 2013 to restrict the carry forward of non-trading loan relationship deficits and non-trading intangible fixed asset losses when there is a change in ownership of a shell company (ie one not carrying on a trade, property or investment business).

3—Loss-buying: change in ownership followed by a reconstruction

This proposal closes a loophole in the legislation that allowed losses to be carried forward when a change in ownership was followed by an intra-group reconstruction, but not where the intra-group reconstruction came first. The rules will now restrict loss carry forwards in both circumstances.

4—Unrealised capital allowance buying

A new TAAR will extend the scope of the capital allowance buying rules (further explained in: Capital allowances anti-avoidance provisions – Capital allowance buying) so that:

- excess allowances over £50 million will be caught even if there is no unallowable purpose
- excess allowances over £2 million will be caught if the benefit of the allowances is 'not insignificant' (again even if there is no unallowable purpose), and
- excess allowances under £2 million will still only be caught if there is an unallowable purpose

It also extends the rules to allowances claimed against any qualifying activity, not just a trade.

This is an extension of the rules introduced in 2010 when the government confirmed that it would not catch commercial arrangements. This extension will be unwelcome for many since it may now apply to genuine commercial transactions.

5—Deduction transfer TAAR

Under this TAAR, a company C (or a company connected to C) cannot make a claim for any expense of a trade or property business; an expense of management, or a non-trading loan relationship or intangible fixed asset debit to be set off by way of group relief, or against its total profits if:

- there has been a qualifying change of ownership
- at the time of that change, it was 'highly likely' such an expense would be available for such a claim, and
- the arrangements connected with the change had a main purpose of obtaining such a deduction

The expenses are not restricted in any other way, eg they could still be carried forward under normal rules.

6—Profit transfer TAAR

Under this TAAR company C (or a company connected with C) will not be able to deduct any expense of a trade or property business; an expense of management, or a non-trading loan relationship or intangible fixed asset debit if:

- profits have been transferred to C (or a company connected to C)
- there has been a qualifying change in ownership of C (or a company connected to C), and
- at the time of that change, it was 'highly likely' such an expense would be available as a deduction in an accounting period ending at or after the change, and
- the arrangements connected with the transfer of profits had a main purpose of obtaining such a deduction

Unlike the deduction TAAR, deductions are completely denied under the profit transfer TAAR.

Partnerships

The Budget announced (OOTLAR, para 2.42) the government's intention to consult on measures to:

- remove the presumption of self-employment for members of limited liability partnerships (LLPs), 'to tackle the disguising of employment relationships through LLPs', and

- counter partnerships manipulating their profit or loss allocations by including a company, trust or similar vehicle—no specific examples are given

Members of LLPs are treated as being self-employed for national insurance (NICs) purposes, rather than as employees. This means they are liable to Class 2 and 4 NICs, which are generally at lower rates than Class 1 NICs. Some organisations have used this as a NICs planning opportunity, giving employees member status, and sharing the NICs saving between the parties.

The government regards this as a misuse of the partnership rules. The days of this particular planning opportunity may therefore be numbered.

A consultation document covering both these proposals will be published in 'the spring', to be legislated in FB 2014.

General anti-abuse rule (GAAR)

Draft legislation and guidance published on 11 December 2012 confirmed that the GAAR will apply to:

- counteract
- on a just and reasonable basis
- abusive tax arrangements in respect of income, corporation, capital gains, petroleum revenue and inheritance tax, as well as SDLT, the annual residential property tax and amounts treated as corporation tax
- entered into on or after Royal Assent of the FB 2013

The Budget did not make any changes to the draft legislation published on 11 December 2012, but a revised draft of the legislation and guidance is expected to be published on 28 March 2013. The revised draft legislation is not expected to change the fundamentals, such as that:

- the definition of 'tax arrangements' is broad, leaving it to the definition of 'abusive' to exclude certain tax arrangements from the application of the GAAR—in the existing draft legislation, tax arrangements are any arrangements where it would be reasonable to conclude that a main purpose of the arrangements is the obtaining of a tax advantage
- 'abusive' is defined by a double reasonableness test—in the existing draft legislation, tax arrangements are abusive if, having regard to all the circumstances, the entering into or carrying out of the arrangements cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, and
- the legislation includes various taxpayer safeguards—in the existing draft legislation, for instance:
    - certain procedural requirements must be followed for HMRC to be able to take action under the GAAR, including that counteraction must be notified by a designated HMRC officer and that HMRC must refer the arrangements to an independent GAAR advisory panel for its opinion
    - the counteracting adjustments must be just and reasonable
    - consequential adjustments can only be used to decrease a person's tax liability, not increase it
    - the fact that the panel's opinion (or opinions if the panel members cannot agree on one opinion) and the GAAR guidance approved by the panel must be taken into account by a tribunal or court in any case appealing HMRC's counteraction, and
    - that before a tribunal or a court, it is up to HMRC to show that:
- the tax arrangements are abusive (although if the GAAR panel's opinion sides with HMRC, this burden should be easy for HMRC to discharge), and
- the proposed counteraction is just and reasonable

Draft legislation to apply the GAAR to NICs will be introduced after the Royal Assent of the Finance Act 2013.

The government has confirmed again, this time in the Budget documents, that the GAAR will sit alongside existing anti-avoidance legislation (including over 300 targeted anti-avoidance provisions). In effect, there will be two types of avoidance, that caught by the GAAR and that which falls outside the GAAR, against which HMRC will use its existing arsenal of anti-avoidance legislation to challenge it.

HMRC information powers: data-gathering from card payment processors

The draft FB 2013 legislation published in December 2012 included a requirement for merchant acquirers (institutions that process payments made with credit or debit cards) to provide data to HMRC. This is to help HMRC identify businesses that are under-declaring their profits.

The government has announced in the Budget that the rules will be extended to cover all institutions that settle card payments to businesses (OOTLAR, para 1.68)

This measure, to be effective once FB 2013 comes into force, provides HMRC with another weapon in its campaign to clamp down on tax evasion.

Disclosure of tax avoidance schemes

In July 2012, the government published a consultation document entitled 'Lifting the Lid on Tax Avoidance Schemes', which discussed a number of possible options for strengthening the DOTAS (disclosure of tax avoidance schemes) rules.

HMRC announced in December that it would be implementing a number of measures to improve public information about tax avoidance schemes, such as by publishing the outcome of litigation. The Budget confirmed that HMRC is also intending to consult further, in 2013, on a package of penalty and information powers, specifically targeting behaviour that is characteristic of high-risk promoters. This could include 'naming and shaming' promoters of avoidance schemes. Legislation would be included in FB 2014.

There is nothing in the Budget about the proposed extensions to the DOTAS hallmarks. This is despite HMRC's view, expressed in December 2012, that 'revisions and extensions to the hallmarks are necessary to keep step with changes to the tax avoidance environment' and that it 'intends to implement these changes in 2013.' HMRC also stated, in December, that it would aim to refine its proposals through further discussions with those who responded to the consultation. It may be that these discussions have caused HMRC to pause for thought.

The Budget announces HMRC's intention to consult on a proposal to require taxpayers who have used avoidance schemes that are defeated in another party's litigation to either amend their tax return, or state that they stick to their original filing position. Penalties would apply for non-compliance. This measure would be in FB 2014.

Corporation tax deductions for employee share acquisitions

Anti-avoidance legislation will be introduced in FB 2013 to clarify that companies may only claim a corporation tax deduction in relation to the provision of employee shares or share options (or a connected matter) under CTA 2009, Part 12 (OOTLAR, para 1.62). For details of where this statutory relief for employee share acquisitions is available, see: Corporation tax relief for employee share and share option acquisitions.

The legislation will also clarify that no corporation tax deductions are available to a company in relation to employee share options (or connected matters) unless shares are acquired pursuant to that option.

The new measures will take effect in relation to accounting periods ending on or after 20 March 2013 except that corporation tax deductions will not be denied in an accounting period spanning 20 March 2013 where shares are acquired prior to that date or an option to acquire shares lapsed before that date.

Close company loans to participators

Anti-avoidance legislation (OOTLAR, para 1.63) taking effect from 20 March 2013 will be introduced in FB 2013 to:

- ensure close companies (see: What is a close company?) are within the 25% corporation tax charge on loans they make via intermediaries to their participators (for details of the existing rules, see: Tax charge on loans to participators)
- charge close companies on other payments (known as transfers of value) they make via intermediaries to their participators, and
- tighten the repayment rules so that relief is only given for genuine repayments (and not 'bed and breakfasting' transactions whereby a loan is repaid and a new loan made shortly thereafter)

The government will also consult on the structure and operation of the tax charge on loans from close companies to their participators more generally later in 2013 and will, if necessary, introduce new legislation in FB 2014 (OOTLAR, para 2.44).

Trade and property business deductions

With effect from 21 December 2012, a new TAAR will ensure that a rule that prohibits a deduction is prioritised over one that allows a deduction in relation to expenses incurred in consequence of or connection with avoidance arrangements. No further announcements were made at Budget 2013.

International agreements to improve tax compliance

There are two main developments in this area:

- Implementation of the UK-US Agreement to implement FATCA
    - Following consultation on the issue, the government has confirmed that the FB 2013 contains provisions

that will enable it to introduce regulations to implement the UK's obligations under the Intergovernmental Agreement (IGA) entered into with the United States (US) on 12 September 2012. The IGA effectively provides the framework for how UK financial institutions will comply with the US's Foreign Account Tax Compliance Act (FATCA) rules.

  - The government has also said that the detailed regulations for the implementation of FATCA in the UK are due to be published shortly and will be accompanied by an updated TIIN (OOTLAR, para. 1.67).

- Offshore evasion strategy 2013 and beyond
  - The government has set out its future strategy for combating offshore tax evasion.
  - The new strategy, building broadly on the principles set out in the UK's agreement with the US in relation to FATCA, centres on entering into international agreements that provide for the enhanced automatic exchange of tax information.
  - UK 'FATCA' type agreements (or rather Memorandum of Understanding (MOU)) have already been agreed with:
- the Isle of Man
- Guernsey, and
- Jersey

In all three cases, individuals are given a period of time (approximately three years) to disclose taxable income 'hidden' offshore. Once the time period expires, HMRC will use information exchange powers to uncover UK taxpayers who failed to make a disclosure and impose severe penalties (including possibly seeking to impose criminal sanctions)

The new agreements will be supported by:

- new initiative to reduce the opportunities for offshore tax evasion—by enhancing cross-border compliance and developing multilateral action (including at the G8, which the UK will be President of during 2013)
- the data gathered under such international agreements—increasing the likelihood that evaders will be caught
- the establishment of a new expert offshore evasion strategy team, and
- strengthening the severity of penalties on, undertaking criminal investigations into, and naming and shaming the most serious evaders

Tax and procurement

The government has confirmed that it will go ahead with its plans to encourage tax compliance through its procurement process but has made a number of significant changes to the proposal:

- occasion of non-compliance (ie the items that must be notified) will:
  - not include TAARs, but
  - include any tax return found to be incorrect under:
  - the GAAR
  - the Halifax abuse principles, or
  - a scheme that has been or should have been notified under DOTAS, and
  - include a criminal conviction for tax related offences or a penalty for civil fraud or evasion
- the look-back period for occasions of non-compliance will:
  - be a maximum of 6 years (not 10), and
  - only apply to occasions of non-compliance that occurs on or after 1 April 2013 (or in respect of tax returns submitted on or after 1 October 2012)
- the person making the certification is the 'economic operator' (a term borrowed from existing procurement rules), and
- the obligation will only apply to contracts for consideration in excess of £5 million

Finance Bill 2013 measures that have not changed since December 2012

Various draft FB 2013 clauses were published for consultation on 11 December 2012. Some of these have not changed as a result of the consultation and so will be unchanged (or will only have minor technical changes) in the FB 2013 that is published on 28 March 2013. These include:

- income tax basic rate limit and personal allowance for 2013-14
- cap on unlimited income tax reliefs
- personal service companies and IR35—extending the income tax rules so that they apply to 'office holders' as well as employees
- corporation tax reliefs for the creative sector (the animation, high-end television and video games industries)
- increase in the annual investment allowance for capital allowance purposes, to £250,000
- disincorporation relief—allowing small companies to transfer business assets to one or more shareholders without an immediate corporation tax charge
- bank regulatory capital—interest paid by banks on their Tier-2 regulatory capital will be tax deductible
- debt cap—amendments to the group treasury election rules
- removing an inadvertent restriction on corporate tax group loss relief—to ensure certain commercial arrangements with public bodies do not constitute 'arrangements' to leave a group for group relief purposes
- real estate investment trusts—allowing the income from UK REITs investing in other UK REITs to be treated as income of the investing REIT's tax exempt property rental business
- lease premium relief—limiting the availability of lease premium relief (against income) where leases are of more than 50 years duration but are deemed to be short-term leases
- changes to the income tax rules on interest, which will widen the withholding tax obligation for interest payments by extending it to the interest element of any compensation payment, broaden the definition of UK source so that the location of any agreement or deed evidencing the debt is irrelevant to determining whether or not the payment of interest has a UK source, and which will determine the value of interest paid in kind and require the payer of such interest to provide a tax certificate (stating, among other things, the amount of tax deducted) to the recipient
- manufactured payments—simplification and anti-avoidance
- review of the taxation of unauthorised unit trusts—revision and anti-abuse measures
- disclosure of tax avoidance schemes (DOTAS)—improving the information available to HMRC through 'client lists' (the periodic information that promoters of tax avoidance schemes have to provide to HMRC about their clients)
- abolition of income tax relief for payments of patent royalties
- group mismatch schemes—targeted anti-avoidance on asymmetric treatment of loans and derivatives
- anti-avoidance on schemes using property total return swaps

Last updated on 20 March 2013