

## Budget Special 2009

# BUDGET 2009

### Corporate and Business budget update

The Chancellor announced a strategy to create a strong and fair society for all by building economic strength through targeted discretionary support during a difficult time. Our corporate and business tax update summarises the impact for companies and other businesses of what was a relatively short budget speech but one which produced 93 HMRC press releases.

#### *Corporation tax rates*

From 1 April 2010 the main rate of corporation tax and the small companies rate will remain at 28% and 21% respectively. The thresholds for large and small companies will remain the same. See our tax data card for further details.

It should be noted that if a business has tax to pay and its working capital is tight then there has been an extension to the "time to pay" initiative so far used by over 100,000 businesses.

#### *Extension of trading loss carry back for businesses*

The Trade loss carry back period will be extended from the current one year entitlement to a period of three years, with losses being carried back against later years first. The amount of trading losses that can be carried back to the preceding year remains

unlimited. After carrying back to the preceding year, a maximum of £50,000 of unused losses will be available for carry back to the earlier two years.

This comes into effect immediately for company accounting periods ending in the period 24 November 2008 to 23 November 2010 and for tax years 2008-09 and 2009-10 for unincorporated businesses.

The main beneficiaries of the change will be small businesses; larger businesses with large losses will have to wait to set off excess losses against future profits.

#### *Interest harmonisation*

Harmonisation of interest on over and underpayment of tax should be phased in by the introduction of the 2010 Finance Bill with the notable exception of interest on quarterly instalment payments. It is intended that the relationship between HMRC interest rates and the Bank of England's base rate will be formalised.

A welcome administrative change subject to understanding the link with the Bank of England's base rate.

#### *Capital allowances*

Legislation in Finance Bill 2009 will introduce a new temporary 40 per cent first-year allowance (FYA) for expenditure on general plant and machinery between April 2009 and

April 2010. That is expenditure on plant and machinery that would normally be allocated to the main capital allowance pool.

In addition to this the list of designated technologies that qualify for enhanced capital allowances at the rate of 100% is being amended. The revised list will be published later in 2009.

In most cases the actual cash benefit of this additional relief will not be felt for some time as many businesses are suffering losses at present, the lead time between making decisions to spend money on new assets and actually spending the money can in some cases be greater than a year and finally working capital requirements may limit a business's ability to fund capital expenditure.

#### *Trade debts between connected companies*

Legislation will be introduced so that, where the debt of a company's trade or property business is released, and the debtor company is connected with the creditor, no tax charge arises on the debt release. This was not always the position previously. It remains that if the creditor and debtor companies are not connected, the debtor is taxed (unless the release is part of a statutory insolvency arrangement) and the creditor gets relief, just as at present. The new rules apply to releases made after 22 April 2009.

A change had previously been made whereby bad debt relief was denied if the companies were connected but no change had been made to prevent a charge arising on the debtor. The welcome change will aid corporate reorganisations of UK and overseas property groups, particularly where there are loss making subsidiaries.

#### *Late payment of interest between connected companies*

The current rule allows a debtor company a deduction for interest payable to a connected creditor that is outside the loan relationships rules only on a 'paid basis', rather than on an 'accruals basis'. This 'late interest rule' will be amended where certain connections exist between the creditor and debtor companies. In such cases, the late interest rule will only apply if the creditor company is resident in a 'non-qualifying territory' (broadly, a tax haven).

Similar changes to late interest rules for the issue of deep discounted securities by connected and close companies will also be introduced.

#### *Groups - reallocation of chargeable gains*

Finance Bill 2009 will make it easier for groups to match gains and losses that arise on disposals of chargeable assets without the need to transfer ownership of assets within the group. The legislation will apply to losses or gains arising on or after the date that Finance Bill 2009 receives Royal Assent (likely to be early July this year). The current legislation allows an election in circumstances where there is a disposal outside the group preventing groups from obtaining relief on a disposal to an overseas group company.

This is a welcome simplification to the current rules, particularly for large groups of companies and will enable losses to be reallocated within

the group on disposals by UK group members to non-UK group members and in cases of deemed disposals, i.e. on an assets becoming of negligible value.

#### *Group relief – preference shares*

We are pleased to note that the Government has proposed legislation which will seek to protect the taxpayers' investment in various high profile financial institutions by ensuring that those institutions continue to benefit from the current group loss relief provisions where the group relationship might be broken as a result of external investment within the group.

This change will benefit groups where subsidiaries are funded in part by preference shares; these are likely to be financial institutions. It is unlikely that other groups of companies will benefit from this rule change.

#### *Corporate intangible fixed asset regime*

Legislation has been introduced to counter perceived abuse of the current regime in relation to deductions for amortisation of intangibles that are internally generated and not acquired from a third party. Many large groups have taken the view that internally created goodwill should be treated as created when first recognised in the accounts and therefore have entered into arrangements to "create" the goodwill accordingly.

The thrust of the legislation is to put beyond doubt the fact that no relief can be claimed on intangibles created internally prior to 1 April 2002. The change will take place from 22 April 2009 and will be deemed to have always been in place.

#### *Taxation of foreign profits*

After a long consultation period, provisions have been introduced as

expected in four specific areas as follows:

1. Dividends and other distributions from foreign companies:-

These will be largely exempt from corporation tax with effect from 1 July 2009. In addition to this favourable amendments have been made to double taxation relief on dividends receivable in accounting periods straddling 1 April 2008. This applies to all companies.

11. Finance expenses (interest in the main):-

For accounting periods commencing on or after 1 January 2010, these will be subject to a cap equal to the consolidated gross finance expense of the particular group. This will apply to large groups.

111. Controlled Foreign Companies ("CFC" legislation):-

Superior and non-local holding company exemptions and Acceptable Distribution policy exemptions will be removed. The new rules will be phased in for accounting periods starting on or after 1 July 2009 with transitional provisions for periods which straddle this date.

1111. Treasury consents:-

There will be no requirement for advance Treasury clearance for transactions undertaken. This will be replaced by a post-transaction information-reporting requirement which will take effect from 1 July 2009.

*Corporate transparency - large companies*

Although there is a statutory requirement for companies to make accurate returns in relation to tax and other duties, there is currently no requirement to ensure that internal accounting systems are adequate to ensure that this can be done. The 2009 Finance Bill brings in a number of statutory obligations around this for large companies (as defined by the Companies Act 2006) as follows:

- senior accounting officers of such companies to take reasonable steps to establish and monitor accounting systems within their companies that are adequate for the purposes of accurate tax reporting;
- senior accounting officers of such companies to:
  - i. certify annually that the accounting systems in operation are adequate for the purposes of accurate tax reporting; or
  - ii. specify the nature of any inadequacies and confirm that those inadequacies have been notified to the company auditors; and
  - iii. such companies to notify HM Revenue & Customs (HMRC) of the identity of the senior accounting officer.

Most importantly these new obligations will be supported by penalties chargeable respectively on the senior accounting officer personally and on the company for a careless or deliberate failure to comply with the obligations set out above, and for the giving of a carelessly or deliberately incorrect certificate or notification.

It is disappointing that HMRC did not perceive a need for prior consultation on these changes, particularly as significant consultation has taken place as part of HMRC's Review of

Powers, Deterrents and Safeguards. It is unclear what will be regarded as reasonable and what reviews will be required and we expect HMRC to issue further guidance on these matters prior to Royal Assent. Clearly, there are areas where many companies will find it difficult to confirm satisfactory compliance such as transfer pricing and indeed some PAYE compliance, particularly benefits and expenses.

We anticipate that companies will instigate comprehensive reviews of their tax accounting abilities and controls and those reviews will become we fear an additional annual burden and cost for most.

In addition to this, the Finance Bill 2009 also introduces powers that enable HMRC to publish the names of taxpayers, including businesses and companies, who deliberately understate their tax liabilities to the tune of £25,000 or more.

HMRC have promised criteria for publication of names will be tightly defined and such publication will not take place until all appeals have been determined. This provision will encourage many affected taxpayers to take advantage of the New Disclosure Opportunity announced on Budget Day and planned to run from the Autumn 2009 to March 2010.

*Company Cars – tax deductions*

The Finance Bill brings in changes to the way in which businesses obtain tax deductions for expenditure on cars. From 1 April 2009, the capital allowance rate applicable to purchased cars and the deductions available for leased car payments will be linked to CO2 emissions. Cars with CO2 emissions in excess of 160g/km will attract writing down allowances (WDA) at 10%. Those with emissions under 160g/km will qualify for the standard WDA rate of 20%. The 160g/km threshold is also relevant to

leased car payments. Payments for cars with emissions under that threshold will be deductible in full. 15% of payments for cars above that will be disallowed.

These rules have been subject to a long consultation period and fit within the Government's green agenda achieving some of the aims but car usage is not taken into account; something for the future maybe?

Businesses incurring capital expenditure on cars may wish to review whether to buy or lease.

*Company Cars – taxable benefits*

From 2011-12:

- the £80,000 price cap that currently applies when calculating the cash equivalent of the car benefit will be abolished;
- the lower threshold CO2 emissions figure (130g/km for 2010-11) will be reduced by 5g/km to 125g/km;
- Further tax breaks will be introduced for electrically propelled cars.
- the reductions currently given for hybrid vehicles and those powered by 'alternative' fuels will be abolished. The calculation of the benefit will fall in line with petrol and diesel cars and therefore link exclusively to CO2 emissions.

These changes affect all employees who are provided with a car for their private use. HMRC have simplified the approach by using CO2 emissions only rather than a combination of CO2 and fuel types. With the lifting of the £80,000 price cap there is now no upper limit so a minority of company car users will now suffer as will their employers.

**VAT**

The standard rate of VAT will return to 17.5% from 1 January 2010. Anti-forestalling legislation has been introduced to counter attempts to bring forward transactions to benefit from the current lower rate of 15%.

The turnover thresholds for registration increase from £67,000 to £68,000 from 1 May 2009.

*Cross border transactions*

A package of changes has been introduced to simplify and modernise VAT systems in relation to cross-border trading within the EU with effect from 1 January 2010. The package includes:

- New time and place of supply rules for services – the emphasis of the new provisions is that VAT will be charged in the jurisdiction in which the services are consumed rather than where the supplier is based, as might be the position currently.
- European Sales List (ESL) reporting for supplies of cross-border services and changes to ESLs for goods; and
- A new electronic refund procedure for VAT incurred in other EU Member States.

A new refund procedure in respect of VAT incurred in other EU Member States is being introduced from 1 January 2010. Claims will now be

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submitted to HMRC rather than the tax authority in the relevant Member State on a standardised form. Various other beneficial changes introduced will strengthen the position of those making reclaims under these provisions.

Generally these changes are to be welcomed and will reduce the administrative burden for many businesses operating cross-border in the EU but for some businesses, particularly in the financial services sector there may be an increase in costs as supplies previously not subject to VAT will now need to be reverse charged.

*Land and Buildings – Opting to Tax*

Changes are to be made to simplify the procedure to opt to tax on supplies of land and buildings. The circumstances in which consent is given automatically will be widened from 1 May 2009. Certain concessions which HMRC have applied in the past will continue until 30 April 2010 when they will be removed and replaced in part by the new legislation.

**23 April 2009**

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