

# **Quarterly Update Autumn 2018**

**Presented by**

**Lakshmi Narain LLM MSc FAC CTA (Fellow)**

**Contents of Notes in Order of Presentation**

**Section 1: General Developments (slides 3 to 15)**

**Section 2: Tax Case Review (slides 16 to 29)**

**Section 3: Budget and Finance Bill 1 (slides 30 to 56)**

**Section 4: Budget and Finance Bill 2 (slides 57 to 83)**

## Section 1: General Developments (slides 3 to 15)

### Tax Devolution

- Devolution of taxes continue – from April 2019, the Welsh Rate of Income Tax (WRIT) comes into effect. HMRC will shortly be giving notices out to individuals who they think have Welsh taxpayer status. Currently the rates of income tax for Wales scheduled to apply from 6 April 2019 are the same as those that apply in England & Northern Ireland. However, in the future it will be important for individuals and (and employers) to identify whether the individual or employee has Welsh taxpayer status.
- There is HMRC guidance on Welsh taxpayer status [here](#).
- Individuals should check whether their addresses are correct in their personal tax accounts on the gov.uk website.
- A Draft Welsh Budget for 2019/20 was published. Pages 16 – 22 of the [Outline Budget Narrative](#) cover tax policy and tax rates. In summary the highlights are:
  - Welsh rates of income tax will not differ from those in the rest of England & Wales for the first year (so the basic rate will be 20%, higher rate 40% and additional rate 45%);
  - the current rates of land transaction tax will be maintained; and
  - landfill tax rates will increase in line with RPI and the new rates will be laid before the National Assembly for Wales this autumn for agreement in early 2019.
- The draft budget remains subject to confirmation by the National Assembly for Wales.
- A [Welsh Tax Policy Report](#) has also been issued. Links to further information on Welsh tax rates can be found [here](#).

### QIPs Very Large Companies

- Initially proposed in 2017 – deferred to 2019.
- Corporation tax (not bank levy or ring fence supplementary charge)
- 1<sup>st</sup> instalment - 2 months & 13 days after the start of the accounting period
- 2<sup>nd</sup> instalment - 5 months & 13 days after the start of the accounting period
- 3<sup>rd</sup> instalment - 8 months & 13 days after the start of the accounting period
- 4<sup>th</sup> instalment - 11 months & 13 days after the start of the accounting period
- Any final liability - 9 months after the end of the accounting period

### Meaning of ordinary share capital

- The Chartered Institute of Taxation (CIOT) has published, with permission from HMRC, some examples of when preference shares will and will not be considered by HMRC to be ordinary share capital for the purposes of the definitions at s989 ITA 2007 and s1119 CTA 2010. The examples are caveated such that each case would depend on its specific facts and circumstances and that HMRC reserves the right to alter its position.
- “Ordinary share capital”, in relation to a company, means all the company’s issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company’s profits. It is a definition of relevance to various parts of the tax legislation, including determining the members of a corporate group, eligibility for various tax-advantaged share schemes, assessing the availability of the substantial shareholdings exemption and, perhaps most commonly, in connection with entrepreneurs’ relief (which requires a taxpayer disposing of shares to have held at least 5% of the company’s ordinary share capital in order to qualify for the relief).
- The difficulty practitioners most often find is interpreting the phrase “a right to a dividend at a fixed rate”. HMRC’s guidance on this may be found at ETASSUM23160 which states that a share with a zero fixed coupon rate does not have a right to a dividend at a fixed rate. As such, shares carrying only a zero coupon should be treated as ordinary share capital. The note published by the CIOT confirms that HMRC continues to hold this opinion and sets out various other examples.
- A particularly important point illustrated by examples 4 and 5 is that HMRC would treat fixed rate preference shares as ordinary share capital if the fixed rate coupon is not cumulative (i.e. if a company has insufficient profits to pay the coupon in a particular year, the right to receive that coupon expires and is not rolled over to pay out in a year where there are sufficient distributable profits available). The rationale for this is that receipt of the coupon is dependent on the results of the business and is therefore not ‘fixed’ as such.
- Another important point illustrated by example 11 is that where a coupon compounds over time or interest is added to a coupon that gets paid out on a later date, this should not prevent the coupon from being treated as a dividend at a fixed rate. Hence, shares with such rights (and no other right to share in the company’s profits) are likely to be treated as

preference shares and not ordinary share capital, although HMRC admits that there could be arguments to the contrary.

### **OTS report on HMRC Guidance**

#### **Key recommendations**

- A three-tier system for guidance, tailored to meet the needs of the majority of taxpayers, more sophisticated taxpayers and tax advisers respectively;
- Consultation by HMRC on the circumstances in which guidance may be relied upon by taxpayers and the financial implications (interest, penalties and the disputed tax) for taxpayers where guidance is incorrect;
- Improved feedback processes, with feedback links provided within the guidance, and publication of an update timetable for guidance; and
- An individual within HMRC should be appointed to take responsibility for the guidance, assisted by a panel who can support and provide context.

### **MTD for VAT**

- Pilot - Extended pilot to around half-a-million businesses whose affairs are 'up to date and straightforward'.
- Delay for complex cases - including: trusts, unincorporated 'not for profit' organisations; VAT divisions and groups; government departments and NHS trusts; local authorities; public corporations; traders based overseas; those required to make payments on account; and annual accounting scheme users. The delay is of six months, until 1 October 2019, in introducing mandatory MTD for a small group of businesses with more complex requirements.

### **Image rights**

- The score now stands at 171 probes into individual players at 44 Premier League and Football League clubs, with 31 football agents also under scrutiny.
- This compares with last year's total, when HMRC said it was making enquiries into 38 clubs, 90 players and 13 agents over claims that they had not paid the correct tax on the sale of image rights.
- The football investigation has now delivered £332m in extra tax by tackling non-compliance in the football industry.
- HMRC confirmed that it carefully scrutinises the individual image rights arrangements between football clubs and their players and are carrying out visits to every Premier League club and most football league clubs, along with their players.
- They have also indicated it is tracking developments overseas, after some managers and players in the English leagues were reported to have come under investigation in their home countries for possible tax offences (see e.g. Gareth Bale report below). HMRC reviews international investigations to consider any implications for UK tax, and regularly exchange information with other countries.

- Gareth Bale: the claims date from 2013, a period in which Bale was not considered a Spanish tax resident following his transfer from Tottenham Hotspur. Earnings from image rights were reportedly transferred to a UK company, Primesure Limited. However, the Spanish treasury claimed that commercial earnings during that time should have been subject to Spain's 19% tax and subsequently determined that Bale owed £176,000 in tax, interest of £33,000 and an £88,000 fine.

## Brexit

- HMRC published a Partnership Pack on GOV.UK to help businesses plan for the unlikely possibility of a 'no deal' EU Exit.
- The Pack is for organisations, intermediaries and infrastructure providers to use for their own contingency planning and to share with those they represent, their clients and members.

"It is designed so that you can take information from it and tailor it to suit your own channels and your audiences' needs. The pack focuses on how VAT, Customs and Excise could be affected and includes information split by topic, audience and flowcharts. Future editions of this pack will include information from other government departments responsible for policies that will impact trade at the border."

## Probate fees

The current flat rate system will be replaced with a banded pricing structure linked to the value of the estate (before inheritance tax (IHT)), and the same rate applies regardless of whether the applicant is a solicitor or an individual.

Value of estate (before inheritance tax)	Proposed fee
Up to £50,000 or exempt from requiring a grant of probate	£0
£50,000 - £300,000	£250
£300,000 - £500,000	£750
£500,000 - £1m	£2,500
£1m - £1.6m	£4,000
£1.6m - £2m	£5,000
Above £2m	£6,000

The fees will raise £145m per annum from 2019/20, rising to £185m in 2022/23, and will be ringfenced to fund the courts and tribunal service. In



2016/17, the courts service cost £1.6bn in running costs but recovered less than half of that in fees (£740m).

## Section 2: Tax Case Review (slides 16 to 29)

### 1. Revisiting some cases

- *Ardmore Construction – situs of loan*

Case related to connected person funding structured so as to provide relief for taxation. Court held that the loan had a UK situs and thus an obligation to withhold tax

- *Prudential assurance – interest: simple or compound*

Court held that developments in thinking had resulted in the view that it would be up to the local jurisdiction to determine what was appropriate recompense. In the UK this was considered to, generally, be simple interest.

- *Zipvit – input tax on taxable supplies*

The taxpayer had been supplied with services that had been treated as exempt but which should have been standard rated. However, as no VAT invoice was held and there was no evidence that the supplier had accounted for VAT, there was no right to reclaim input tax.

### 2. Revisiting some anti-avoidance cases

- *Project Blue – s75A*

A significant case confirming that legislation that was clearly an anti-avoidance provision did not require HMRC to show that there was an avoidance intention. All that was needed was for more tax to be due if an alternative transaction could be identified with more tax due.

- *Newey (Ocean Finance) – Halifax*

A shift in approach allowing the court to recharacterize the transactions rather than merely disapplying specific elements of the VAT framework

- *Leekes – losses on successions*

Court confirmed that streaming of losses was necessary, albeit there would be some complexity and detailed record keeping otherwise such taxpayers would be better off than if there was no succession.

### 3. PPR - Higgins

Date of acquisition and occupation as a main residence – taxpayer had acquired a property off plan, then occupied it for a period before then selling it. UT held it was necessary to consider the entire period of ownership, even the period when occupation was not possible, as the structure of the legislation was to limit relief to actual period of occupation (subject to some deemed periods of occupation).

### 4. B Gilbert



Ignorance of law may be a reasonable excuse – one of a number of cases looking at reasonable excuse where legislation changes.

**5. Hastings Insurance Services and HMRC**

Scope of open justice – an interesting case for litigators, providing an opportunity to get more information on HMRC's approach to technical issues.

**6. Professional Games Match Officials**

Nature of contractual relationship – control and mutual obligations. A very interesting case highlighting the complexity of organisational structures.

**7. W Reeves**

Gift relief and the restriction in respect of connected persons to prevent enveloping. A useful case looking at the scope of extended terms.

**8. Teeside Power Limited**

Scope of GAAP and tax – fairly represent over-ride

**9. AN Checking Heating and Service Engineers Ltd**

Availability of reduced rate and legislative failing to enable apportionment

**10. Ryanair**

Availability of entitlement to claim input tax on aborted takeover costs

## **Section 3: Budget and Finance (No.3) Bill 2018 (slides 30 to 56)**

### **3.1 In the Autumn Update 2017 we noted the following which are worth a reminder:**

1. Benefits and expenses
  - Electric vehicles- no charge on recharges from 6 April 2018
  - Simplifying business expense admin-
    - self-funded training- consultation
    - subsistence benchmark scales - from April 2019
    - HMRC to improve guidance for employers and employees
2. IR35 and off-payroll working
  - Off-payroll working in the private sector
  - Proposed consultation following “early indications” of improvements in compliance in the public sector
  - Employment status discussion
  - Exploring reform following the Taylor Review
3. Making Tax Digital
  - No specific announcements
  - Deferral to 2020 already announced
  - Will apply initially only to VAT-registrable businesses
  - Freezing VAT threshold means more businesses will be within MTD
4. Disguised employment
  - HMRC sponsored report
  - 450,000 earn most of their income from PSCs
  - 90,000 extra on payroll from public sector off payroll “IR35” changes in 3 months to June
  - Further consultation on a possible extension
5. OTS VAT Report
  - VAT registration at £85,000 is four times the EU average
  - The OTS analysis, reducing VAT threshold to £43,000 would impact between 400,000 and 600,000 businesses.
  - HMRC estimate annual VAT compliance cost for a small business to be around £675 per year (ignoring Making Tax Digital obligations)
6. VAT Registration study
  - Over 2,000 companies.
  - 20% of unregistered borderline businesses admit to having taken some action to remain under the threshold.
  - Most common approach - closing the business or stopping advertising (47% of those restricting turnover admitted this),
  - refusing or turning down work (21%),
  - asking customers to purchase materials (16%),
  - reducing prices of products

- splitting the business - operating as a separate legal entity or artificially separating the business by product or service (both 10%)
- Note the potential impact of the Criminal Finance Act 2017 as well as the PCRT

Following review, response is to:

- Freeze registration for next 2 years (to April 2020)
- After MTD and Brexit
- Welcome other recommendations and look for further progress through engagement with HMRC

#### 7. NIC Contributions

- Originally announced in 2015
- Class 2 abolition – deferral to 2019
  - The lowest-earning self-employed workers will either have to pay extra a year (Class 3 Voluntary payments – about £588), or lose their entitlement to a state pension.
- Certain other NIC charges deferred to 2019

#### 8. Business rates

- Number of proposals
  - Reduce the increase of business rates by bringing forward CPI link (rather than RPI) to 2018-2019.
  - More regular reviews (3 yearly, rather than 5)
  - Extend small business relief for pubs to 2018/19
  - Will deal with “stair tax” scenario
- However, no action on appeals

#### 9. Partnerships

- OTS
- Finance Bill
  - Partnership share allocation – per return
  - Reporting members shares
  - Partnerships with non-resident companies
- Provides clarity:
  - rules where a partnership has partners who are bare trustees for another person or that are partnerships
  - allocation and calculation of partnership profit for tax purposes
  - Resolution of disputes

#### 10. Patient capital review

- Objective to unlock £20bn of capital
- Double limit for Knowledge Intensive Companies (KICs) by individuals to £2m
- New test to be introduced impacting all of these tax-aided venture capital schemes - EIS, VCTs and Seed EIS - to bar any “tax motivated investments
- Intention to increase capital risk to be taken by investors

#### 11. Patient capital Investment Vehicle

- The PCIV would
  - enable the aggregation and deployment of capital for UK scale-up businesses and capital-intensive R&D-based businesses
  - Thus increasing the supply of patient capital into the UK market.
- UK government to be responsible for
  - defining the mandate of the Vehicle,
  - providing board representation,
  - providing cornerstone investment with the Vehicle, and
  - setting up its regulatory regime.

In addition, introducing a requirement to provide an “opt-in” option on all new payments into DC pension schemes would raise significant retail capital, and require secondary legislation

#### 12 Patient capital Investment company

- The PCIC
  - Would improve the returns profile of UK venture investments and
  - catalyse the development of the UK venture community.
- Programme to be set up by Government as an initiative to be operated by the British Business Bank
- Would need to be designed so that it passes a Market Economy Operator (MEO) Test by the European Commission.

#### 13. Extending investment limits

- Proposed amendments would enable follow on investment from EIS / VCT investors,
- thereby easing *the* transition away from tax-incentivised funding.
- Government’s responsibility to investigate how these initiatives could be implemented (due to state aid restrictions)

#### 14. Stamp Duty

- OTS: A way forward to reform, digitise and simplify
- History
  - SD dates back to 1694
  - Digital agenda – dematerialisation of transactions led to SDRT in 1986
  - Continued with SDLT in 2003 – anticipating e-conveyancing
- Finding - 103,000 documents a year still need to be stamped
  - HMRC aims to process
  - straightforward stock transfer forms within 5 working days
  - more complex applications (for example claims for reliefs) within 15 working days.

#### 15 Stamp Duty – OTS findings

- digitising the process, providing taxpayers with a unique transaction reference confirming that the transaction has been notified to HMRC

- amending the company registrars' legal obligations so that they can write up a company's books on sight of such a transaction reference or confirmation of notification
  - making stamp duty an assessable tax, ending the sense in which it is 'voluntary' at present
  - aligning the scope of stamp duty with SDRT to reflect its current application in practice (for example in relation to transactions in non-UK shares)
- 16 Stamp Taxes changes
- Ensure that Stamp Duty, Stamp Duty Reserve Tax (SDRT) and Stamp Duty Land Tax (SDLT) are not chargeable twice on exercise of resolution powers under the UK special resolution regime for managing failing financial institutions.
  - *Exemption limited to the temporary transfer of shares or land to a bridge entity and the transfer of shares in exchange for temporary certificates issued to creditors that identify their entitlement to the shares.*
  - Have effect on and after Royal Assent of Finance Bill 2018 to 2019
- 17 Stamp Taxes changes
- Continue to not apply the Stamp Duty and Stamp Duty Reserve Tax (SDRT) 1.5% charge on the issue of shares (and transfers integral to capital raising) into overseas clearance services and depositary receipt issuers following the UK's exit from the European Union.
- 18 CGT and non-residents
- Consultation on taxing gains of non-resident holders of UK non-residential property from April 2019. All UK immovable property held by non-residents within scope
  - Indirect disposal rules will apply where:
  - Entity's gross assets 75% or more represented by UK immovable property and
  - Person holds or has held within 5 yrs prior to disposal at least 25%
  - Imposition of reporting requirements on certain third party advisers.
  - Exclusion from the NRCGT charge for widely held non-res Cos will be removed
  - Anti-forestalling rules for arrangements entered into on or after 22 Nov 2017
  - Only gains arising from April 2019 for properties newly within charge (direct disposers will be able to opt for original cost).
  - The NRCGT proportionate gain option for post commencement gains will not be available for commercial property disposals
- 19 CT and non-resident landlords
- Corporate non-resident landlords will be subject to corporation tax on their UK rental income from 6 April 2020.

- A consultation on the draft legislation will be published in summer 2018
  - This may mean NRL's will be subject to a lower tax rate on their income, but they will be subject to the complexities of corporation tax, including corporate interest restrictions etc.
- 20 Non-deliberate off shore non-compliance
- Consultation Spring 2018
  - Assessment time limits – 12 years?
  - No proof needed by HMRC
- Joint and several liability for online market places
    - Call for evidence in Spring 2018 on how digital platforms can play a wider role in ensuring their users comply with tax rules

### **3.2 Following the initial round of consultation document, further papers have been issued / proposed on the following:**

- Intangible Fixed Assets
- Taxation of self-funded work-related training
- Corporate tax and the digital economy (position paper)
- Cash and digital payments in the new economy
- Online platforms' role in ensuring tax compliance by their users
- Allowing entrepreneurs' relief on gains made before dilution
- Financing growth in innovative firms: enterprise investment scheme knowledge-intensive fund consultation
- Extension of security deposit legislation
- Business rates: delivering more frequent revaluations (consultation outcome)
- VAT related
  - VAT registration threshold: call for evidence
  - Alternative method of VAT collection – split payment
  - VAT, air passenger duty and tourism in Northern Ireland
- Other
  - Tax treatment of heated tobacco products (consultation outcome)
  - Tackling the plastic problem

### **3.3 Consultation tracker**

- The government has published a [consultation tracker](#), designed to help tax professionals follow consultations and resulting legislation through their lifecycles.
- Presented as a spreadsheet, the tracker shows when a policy was first announced, the consultation timetable, and which Act is expected to contain the legislation

### **3.4 Further consultations which have now resulted in proposed legislative changes**

- Off-payroll working – how to tackle non-compliance in the private sector, drawing on the experience of the public sector reform.
- Tackling corporate insolvency and phoenixism risks – a discussion document.
- Tackling construction sector supply chain fraud – draft legislation for a VAT reverse charge, to help eliminate missing trader fraud in construction industry supply chains.
- Profit fragmentation – how to prevent UK traders or professionals from avoiding UK tax by arranging for UK trading income to be transferred to unrelated foreign entities.
- To take effect from April 2019
- Basic Target
  - UK resident traders (individuals, partnerships or individuals acting as an employee or director) switching profits overseas
- Examples – use of offshore structure
  - Alienated receipts: UK / Offshore
  - Excess expenses
- Solution
  - TAAR – 4 conditions
  - Notification and payment of tax

### 3.5 Further consultations continued

- Short term business visitors – how to simplify the tax treatment of short-term business visitors from the foreign branch of a UK company
- Capital gains tax payment window – new rule for CGT on a disposal of residential property to be paid within 30 days of completion. A number of issues potentially arise
  - Date of exchange / completion may result in practical problems
  - 30 Days – is very short for determining the potential tax liability
  - What rate is to be applicable – 18%, 28%
  - What reliefs will be available – PPR, Deferral reliefs?
  - Link with ATED and NRCGT
  - Double Tax Relief may be an issue given the timing of the payment.
- Taxation of trusts – a consultation on how to make the taxation of trusts simpler, fairer and more transparent.

### 3.6 Budget announcements detailed documents in the OOTLAR -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753605/Budget\\_2018\\_overview\\_of\\_tax\\_legislation\\_and\\_rates\\_OOTLAR\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753605/Budget_2018_overview_of_tax_legislation_and_rates_OOTLAR_.pdf)

Specific measures to note

1. Rent a room – shared occupancy test, criticised extensively as being impractical and requiring unreasonable record keeping, has been rejected

2. Allowances and rates – personal allowance raised to £12,500 and higher rate threshold to £50,000
3. Employment Allowance availability is restricted
  - Restrict access to NICs employment allowance
  - Employer NICs liability below £100,000
  - Connected employers aggregated
  - Take effect from 2020
4. Off payroll working in private sector
  - Responsibility switches to entity paying the individual's service company
  - Brings it in line in with public sector
  - Does not apply to small businesses
  - not yet defined
  - To be introduced from April 2020
5. CT Losses
  - Detailed changes to complex rules
  - Proposed extension to Capital losses
    - a. No need to provide for group relief for capital losses as it is possible to manage where gains are recognised within a group.
    - b. The relief for carried forward capital losses will only be against capital gains (not total profits).
    - c. Capital losses to be brought within the 50% restriction for use of carried losses against profits from 1 April 2020.
    - d. From 1 April 2020 the £5m deduction allowance will cover both capital and income profits.
    - e. Anti-forestalling from 29 October 2018
      - Delaying realisation of a capital loss until after the rules commence
      - Converting a CF capital loss into an in-yr loss
      - Contriving for gain to be realised before the rules come into effect
6. Leases
  - Periods of account beginning on or after 1 Jan 2019
  - FA 2011 s53 withdrawn. Amounts taken to equity on accounting change are spread over the remaining life of existing leases



- Capital allowance long funding lease rules amended to preserve the status quo as far as a lessee's leases are reclassified as 'right of use assets'
- A short term lease can be one that extends to 7 yrs in length (up from 5 yrs)

#### 7. Offshore royalty payments

- From 6 April 2019:
- Income tax on gross revenues from UK sales made by entities in low tax (50% of UK rate or less) jurisdictions
- De minimis UK sales threshold of £10m
- Will apply unless entity is UK resident or is in a jurisdiction with a UK treaty with a non-discrimination article
- Joint & several liability for group entities in the UK
- Anti-forestalling from 29 October 2018
- Offshore entities generating UK sales need to consider whether they are caught.

#### 8. Digital services tax

- From April 2020:
- 2% tax on revenues generated from UK users
- Only businesses with global revenues in excess of £500m
- There will be a £25m 'annual allowance'
- Consultation to come

#### 9. Definition of a PE

- From 1 January 2019:
- A non-UK company will not be able to avoid UK PE status:
- either alone or with related entities carried on a cohesive business in the UK (from one or many locations)
- If at least one party has a PE carrying on complementary functions
- The activities together would constitute a PE if carried out by a single company

#### 10. Diverted profits tax

- From 29 October 2019:
- Closes a planning opportunity to make changes to a CT return after DPT time limit expired
- Clarify that if charged to DPT, there will be no further charge to CT
- Extend review period from 12m to 15m
- Enable Co to amend return within 15m period - to convert Diverted profits into profits chargeable to CT

- Make clear the Cos diverted profits can be reduced by amending the CT return within 1st 12m of review period

## 11. VAT

- VAT registration threshold will remain at £85,000 until April 2022
- VAT exemption for education to be extended to higher education providers registered with the OfS in the Approved (fee cap) category – expected to apply from 1 August 2019
- From 1 March 2019 – where customers prepay for goods/services but fail to collect what they've paid for and not received a refund – the supplier will be required to account for output VAT
- From September 2019 there will be new rules for retrospective price reductions. Set time limits for adjusting VAT returns and sending credit notes to customers.
  - i. Guidance to be clarified for overseas 'bought in services' broadening the definition of those subject to UK VAT (from 1 April 2019)
- VAT grouping
  - i. From a date to be set by regulation, non-corporates will be able to join a VAT group (must control all body corporate subsidiaries)
- VAT and vouchers
  - ii. From 1 Jan 2019, Voucher rules reformed:
  - iii. Single purpose voucher (goods/services in a single VAT category) – VAT due on issue
  - iv. Multi purpose voucher (not an SPV) – VAT due on redemption
  - v. Changes to the way voucher intermediaries account for VAT
- b. Reverse charge in construction sector
  - i. From 1 Oct 2019, reverse charge in the construction sector:
  - ii. VAT registered subcontractors supplying to a VAT registered contractor will be required to issue invoices with no VAT, while the contractors will account for VAT under the reverse charge basis
  - iii. Covers construction, repair, alteration, extension, demolition, installation of utilities, painting & decorating
  - iv. Requires careful review of VAT processes through the supply chain.

## 12. Administration – powers and penalties

- Profit fragmentation (from 1 or 6 April 2019) where there's a transfer of profits from a UK trader to an offshore entity and other conditions are met.
  - a. July 2018 Draft legislation was not only targeted at avoidance arrangements and included a notification requirement (non-EU compliant).
  - b. Oct 29 announcement that notification to be removed and further technical changes
- Extension of security deposit legislation from 6 April 2019 for those making CIS deductions and meeting certain other criteria
- Extension of time limits for assessing non-deliberate offshore non-compliance to 12 yrs (IT, CGT and IHT) – for tax assessments from 6 April 2019
- A points based system will be introduced for failure to pay tax (for VAT, CT and ITSA initially) (from a date to be set by regulation)
- Penalties for failure to make returns and deliberately withholding information will also be subject to a points based penalty system – from a date to be set by regulation.
- New power to make minor changes to legislation to ensure tax law operates as intended if the UK leaves the EU without a deal.
- From 6 April 2020 HMRC will become a preferred creditor in insolvency for taxes collected on trust (e.g. VAT, PAYE & employee NIC, and CIS)
- Procedural changes to the GAAR for FB 2019/20 (effective from date of Royal Assent)
- Information powers – response document to earlier consultation to come.

### 13. Entrepreneurs relief

- a. Qualifying period
  - i. Extend qualifying period conditions from one to two years:
  - ii. Period of carrying on unincorporated business (where business or asset used in it disposed of)
  - iii. Disposal of shares in trading company
  - iv. Asset sold in an associated disposal used in the individual's business
  - v. Disposals on or after 6 April 2019, but not where business ceased before 29 October 18
- b. Personal company
  - Two new additional tests for disposals on or after 29 October 2018:
    - 1. 5% of company's distributable profits
    - 2. 5% of net assets available to equity holders



- Also applies to:
  1. Associated disposals re material disposal of shares
- c. Share dilution

## **Section 4: Budget and Finance (No.3) Bill 2018 (slides 57 to 83)**

### **4.1 Budget and Finance Bill Changes continued**

#### **14. Structure and Buildings Allowance – SBA**

- Contracts for works on or after 29 October
- No relief for cost of land or obtaining planning permission
- No balancing adjustment on disposal
- Integral features & fittings get P&M allowances
- Includes offices, factories, tunnels, walls etc

#### **15. Annual Investment Allowance**

- Increase from £200,000 to £1m
- For two years from 1 January 2019

#### **16. Special rate pool**

- Rate reduces from 8% to 6%
- Applies from 1 or 6 April 2019
- Hybrid rate for periods spanning April 2019
- Long life assets
- Integral features
- Cars > 110 g/km

#### **17. End of Enhanced Capital Allowances**

- 100% first year allowances for energy efficient and water-saving technologies
- Repealed from April 2020
- Revenue saved used to fund the Industrial Energy Transformation Fund

## 18. SD and SDRT

- New market value rule
- Prevent “swamping”

## 19. SDLT measures

- a. First Time buyers relief
- b. 1% surcharge for foreign buyers
- c. Return filing deadlines
- d. Filing deadline – special circumstances

## 20. Knowledge intensive companies

Following a policy consultation carried out during spring 2018, the government will legislate in Finance Bill 2019-20 to reform the Enterprise Investment Scheme (EIS) rules for approved funds. The rules will be amended to require approved funds to focus on investments in knowledge-intensive companies, give funds a longer period over which to invest fund capital; and allow investors in approved funds to set their income tax relief against liabilities in the year before the fund closes.

The government plans to publish draft legislation for consultation in summer 2019. The changes will have effect from 6 April 2020.

## 21. Tax Abuse and insolvency

- HMRC debts often not enforceable until after company becomes insolvent
- Allows business owners to mis-use insolvency proceedings
- Two new measures to deal with this:
- Directors jointly & severally liable for tax liabilities where avoidance, evasion and phoenixism
- HMRC is preferred creditor for taxes collected by company on behalf of other taxpayers

Some small company owners have been mis-using insolvency proceedings to allow their companies to escape liabilities arising from tax avoidance or evasion

Where directors and other persons have been engaged in tax avoidance, evasion or phoenixism, those persons will be jointly and severally liable for the company's tax liabilities, where there is a risk that the company may deliberately enter insolvency. This will apply from Royal Assent of FB 2019-20. From 6 April 2020, when a business enters insolvency, HMRC will become a statutory creditor in respect of the taxes collected and held by the company on behalf of other taxpayers (VAT, PAYE Income Tax, employee NICs, and Construction Industry Scheme deductions). The rules will remain unchanged

for taxes owed by businesses themselves, such as Corporation Tax and employer NICs.

## 22. Reform of intangible Fixed assets

- Two specific positive measures:
  - a. Partial reinstatement of relief for acquired goodwill
  - b. No de-grouping charge where SSE applies

## 23. R&D Tax Credits

- Maximum payable tax credit now 3 times PAYE and NICs
- Aps beginning on or after 1 April 2020
- Consultation to follow

## 24. CGT

- Annual exemption £12,000
- Trusts generally £6,000
- CGT rates
  - a. Standard 10%
  - b. Higher 20%
  - c. Trustees and PRs 20%
  - d. Residential property 18% and 28%
  - e. Carried interest 18% and 28%
  - f. Entrepreneurs relief 10%

## 25. Main residence relief

- Final period exemption reduced from 18 months to 9 months
- 36 months for those moving into care home to remain
- Lettings relief only where owner in “shared-occupancy” with tenant
- Government to consult on these measures
- To be introduced from April 2020

## 26. Non-resident CGT

- a. Scope
  - Extends to all UK immovable property disposed of on or after 6 April 2019
  - Also includes disposals of interests in companies deriving 75% or more of value from UK land
  - Non-resident companies subject to CT
  - ATED-related gains regime abolished
- b. Computation
- c. Compare asset values (exclude certain creditor loan balances)

- d. Exception where UK land used in course of a trade ongoing in previous 12 months
- e. Special rules for:
- f. Certain linked transactions
- g. Collective Investment Schemes (CIVs)
- h. REITs
- i. 75% plus interests
  - Only applies where vendor had:
  - 25% interest in the company
  - at any point in previous 2 years
  - Rights of connected parties attributed
  - Proposals to exclude for CIVs
- j. Anti-avoidance
  - Specific anti-avoidance rule applies from 22 November 2017
  - Use of DTAs to escape charge
  - Also, charge UK resident companies in same group as non-UK resident failing to pay the tax due

#### 27. CGT returns and deadlines

- Return due 30 days after date of disposal
- Not if self-assessment due before then
- Payment on account due by same date
- Refunds sometimes due e.g. losses

#### 28. Non-UK companies with UK property business

- Currently subject to UK Income Tax
- Brings all UK property business profits into CT net from 6 April 2020
- Including associated loan relationship and derivative contract profits
- Don't notify chargeability to CT if fully covered by tax withheld at source from rents
  - a. Consequential
    - No deemed disposals on transition under capital allowances rules – continue to write down as usual
    - UK CT property business losses under post 2020 regime may be surrendered as group relief
    - Companies will fall into worldwide groups for corporate interest restriction purposes
  - b. Commencement issues re losses

From the date that property business losses begin to be realised within the corporation tax regime, non-resident companies will be able to surrender those losses to fellow group companies. The quid pro quo to this is that the corporate interest restriction rules will apply to those companies, such that their interest and related expenses will be aggregated with other such UK-related expenses





in the group. This may mean additional restricted deductions if, for example, the worldwide group's net interest expense was just below £2m but now falls above it.