

Quarterly Update 4: Tax 2 Autumn 2018

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Section 1 **General Developments**

Section 2 **Case law**

Section 3 **Budget and Finance Bill 1**

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Section 1

General Developments



Topics

1. Tax Devolution
2. QIPs
3. Ordinary share capital
4. HMRC Guidance
5. MTD for VAT
6. Image rights
7. Brexit
8. Probate Fees

Devolving taxes

- Major policy discussions
- Next major change - WRIT from April 2019
 - Non-savings, non-dividend income
 - C code – C for Cymru
 - Guidance on who is a Welsh taxpayer
 - Check address in personal tax account – will receive a letter
 - No initial change in rates

QIPs Very large companies

- Scope - corporation tax (not bank levy or ring fence supplementary charge)
- APs commencing after 31 March 2019
- Profits in excess of £20m (up from £1.5m)
- Adjust for
 - APs less than 12 months and
 - Associated companies

QIPS Very large companies

- Advance by 4 months
- Period after start of AP
 - 1st instalment - 2 months & 13 days
 - 2nd instalment - 5 months & 13 days
 - 3rd instalment - 8 months & 13 days
 - 4th instalment - 11 months & 13 days
- After end of AP
 - Any final liability - 9 months

Meaning of ordinary share capital

- HMRC Guidance
- “a right to a dividend at a fixed rate”
 - [ETASSUM23160](#)
 - A share with a zero fixed coupon rate does not have a right to a dividend at a fixed rate
 - should be treated as ordinary share capital.

Ordinary share capital

- Shares

- With a right to “tiered” dividends e.g. 8% for year 1, 9% for year 2, 10% thereafter.
- which have a right to the greater of a specified sum or the dividend paid in respect of another class of shares,
- with no dividend rights

OTS - Guidance

Key recommendations

1. A three-tier system for guidance;
2. Consultation - circumstances in which guidance may be relied upon by taxpayers and the financial implications;
3. Improved feedback processes; and
4. An individual within HMRC to take responsibility, 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'.

- **Complex cases**

- Delay of six months, until 1 October 2019, in introducing mandatory MTD for a small group of businesses with more complex requirements.

Image rights

- Enquiry: 44 Football clubs, 171 players and 31 agents
- Up from 38, 90 and 13 respectively last year
- Overseas developments monitored
 - e.g. Gareth Bale
- See Budget 2018 material

Brexit

- HMRC published a [Partnership Pack](#) on GOV.UK
- To help businesses plan for the “unlikely possibility” of a ‘no deal’ EU Exit.

Brexit pack

- For organisations, intermediaries and infrastructure providers
 - use for their own contingency planning and
 - to share with those they represent, their clients and members.
- Tax elements

Probate fees

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

Section 2

Case law



Revisiting some cases

- Ardmore construction – situs of loan
- Prudential Assurance - Compound interest
- Zipvit – input tax on taxable supplies

Revisiting some anti-avoidance cases

- Project Blue – s75A and SDLT avoidance
- Newey (Ocean Finance) – Halifax principle
- Leekes – Loss relief on succession

PPR - Higgins

- Upper Tribunal considered that the FTT
- Mistakenly identified the purposes of the PRR provisions as being to
 - give full relief
 - ignoring the fact that special provision was made for relief to be restricted for periods of non-occupation, and
- Been wrong to disregard s. 28.

B Gilbert

- FTT : ignorance of new provisions on NRCGT was not a reasonable excuse
- **Not the case that ignorance of the law is not an excuse.**
- *Perrin* [2018] UKUT 156 – emphasises circumstances
- Here
 - 7 months late
 - Case of lack of knowledge and lack of enquiry

Hastings Insurance Services and HMRC v KPMG

- Access to appeal documents granted by FTT
- Key points:
 - Open justice
 - No express right of access
- Was there a legitimate interest?
- Yes - interest related to issues in the skeleton arguments

Professional Game Match Officials

- FTT held referees were not employees
- Complex structure
 - PGMOL company limited by guarantee
 - FA, FAPL and FLL (now EFL)
 - Funded by members on an annual basis

Professional Game Match Officials

- Considered
 - Constitution and accounts
 - PGMOL did not have payment processing capacity
 - Code of practice and code of conduct
 - Individual match appointments
 - Lack of control: – referees decision final.
- Conclusion – the referees being considered (60) were
 - self employed and
 - there was no contract

W Reeves

- Upper Tribunal reversed FTT finding
- Holdover relief by non-resident transferor
 - Gift of LLP to a UK company – s 165 relieving s10 and s 17
 - LLP emigrated to Guernsey – possible charge under s 25

W Reeves

- Issue - interpretation of s 167(2) – connected person: clarity of scope
- Question - see Inco Europe [2013] – was it abundantly sure of Parliament's intention so as to repair the defect.
- Answer – no.

Teeside Power Limited (TPL)

- Court of Appeal found:
- ‘The alternative treatment, **based solely on the GAAP-compliant treatment** of the transactions in the books of TPL, would not "fairly represent" the profit or gain arising to TPL because **it would lead to the value received by TPL in return for the claims falling out of any charge to tax at all** in the hands of either TPL or (by virtue of its non-UK tax resident status) TRAIL.

AN Checker Heating & Service Engineers

- Upper Tribunal – reduced rate of VAT and composite supplies
- Main supply was of Boiler installation

AN Checker Heating & Service Engineers

- Principles of EU law
 - single supply, single rate of VAT
 - derogation for lower rate to a subset of a defined class
- UK had not exercised its right to legislate: “any supply that is...”
- Also note - no provision for apportionment of consideration, was a clear indication of intention

Ryanair v HMRC

- CJEU – VAT on partially aborted takeover costs
- Holding company was to provide taxable management services to new subsidiary
- Issues
 - Holding of shares
 - Economic activity – several consecutive transactions
 - Objective elements
 - Preparatory acts
 - Principle of neutrality - first investment expenditure
 - Direct and immediate link and general costs

Section 3

Budget and Finance Bill 2018-2019



Budget speech and ...

- Update on proposals previously outlined in Autumn Budget 2017 and Spring Statement 2018
- Detailed proposals
 - Numerous points of detail
 - Lack of policy focus
 - Various commencement dates
- OOTLAR – 281 pages
- Finance Bill – 324 pages 92 clauses, 19 Schedules

Some specifics

- Personal tax rates and allowances
- Rent a room
- Employment Allowance - NIC
- Off - payroll working
- CT losses
- Leases
- Avoidance
 - Offshore royalties
 - Digital Services Tax
 - PE
- VAT
- Administration
- Entrepreneurs Relief

Personal

	2018-19 (£)	2019-20 (£)
Personal allowance	11,850	12,500
Basic rate	£1 - £34,500	£1 - £37,500
Higher rate	£34,501 - £150,000	£37,501 - £150,000
Additional rate	Over £150,000	Over £150,000

Rent a room

- Shared occupancy test rejected
- Objective to retain simplicity of arrangement

Employment Allowance

- Restrict access to NICs employment allowance
- Employer NICs liability below £100,000
 - Connected employers aggregated
 - Take effect from 2020

Off-payroll working in the private sector

- As expected but not to be introduced until April 2020
- Responsibility switches to entity paying the individual's service company
- Brings it in line in with public sector
- Not intended to apply to small businesses
 - Yet to be defined
 - Large and medium (Companies Act?)

CT Losses

- Detailed changes to the complex rules introduced in 2017
- Proposed extension of 50% restriction to capital losses
- From 1 April 2020 the £5m deduction allowance will cover both capital and income profits
- HMRC guidance on computation process

CT Losses continued

- No need to provide for group relief for capital losses as it is possible to manage where gains are recognised within a group.
- Relief for carried forward capital losses will only be against capital gains (not total profits).
- 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

Leases

Periods of account beginning on or after 1 Jan 2019

- 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)

Income tax on 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.

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
- Note EU proposal

Definition of 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

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

VAT miscellaneous 1

- VAT registration threshold will remain at £85,000 **until April 2022**
- VAT exemption for education to be extended to certain higher education providers expected to apply **from 1 August 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 1 March 2019**

VAT miscellaneous 2

- New rules for retrospective price reductions - time limits for adjusting VAT returns and sending credit notes to customers **from September 2019.**
- Guidance for overseas 'bought in services' broadening the definition of those subject to UK VAT (**from 1 April 2019**)

VAT Grouping

VAT grouping

- 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 reverse charge

From 1 Oct 2019, reverse charge in the construction sector:

- 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
- Covers construction, repair, alteration, extension, demolition, installation of utilities, painting & decorating

Administration – powers and penalties

- Following consultation a number of changes
 - Profit fragmentation
 - Security deposit
 - Extended Time limits
 - Points based penalty system
 - Preferred creditor
 - Miscellaneous

Powers and penalties 1

- 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.
 - July 2018 Draft legislation was not only targeted at avoidance arrangements and included a notification requirement (non-EU compliant).
 - Oct 29 announcement that notification to be removed and further technical changes

Powers and penalties 2

- 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

Powers and penalties 3

- 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.

Powers and penalties 4

- 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.

Entrepreneurs relief

- Despite much speculation – ER survives but
- New 2 year qualifying period
- New definition of personal company
- Relief for share dilution

ER – qualifying period

Extend qualifying period conditions from one to two years:

- Period of carrying on unincorporated business (where business or asset used in it disposed of)
- Disposal of shares in trading company
- Asset sold in an associated disposal used in the individual's business

Disposals on or after 6 April 2019, but not where business ceased before 29 October 2018

ER – personal company

Two new additional tests for disposals on or after 29 October 2018:

- 5% of company's distributable profits
- 5% of net assets available to equity holders

Also applies to:

- Associated disposals re material disposal of shares

ER - share dilution

The solution- two irrevocable elections:

Effect	Legislation	Time limit
Deemed gain at time of dilution based on MV of holder's shares in company	S169SC	31 January from end of tax year in which deemed gain arises
Defer deemed gain until actual disposal of some or all of those shares	S169CD	4 years from end of tax year in which deemed gain arises

Applies to dilutions occurring on or after 6 April 2019

Section 4

Budget and Finance Bill 2018-2019



More specifics

- Capital Allowance
- Stamp Taxes
- Knowledge Intensive Companies
- Reform of Intangible Fixed assets regime
- R&D Tax Credits for SMEs
- CGT
 - General
 - PPR
 - Non-residents
 - CGT returns and deadlines
- Non UK companies with UK property businesses

Structures and Buildings Allowance (SBA)

- Construction of new non-residential structures and buildings
 - in UK or outwith
 - Including demolition and land alteration necessary to bring asset into existence
- Business must be with charge to UK tax
- New improvements or conversion of existing structures
- Annual 2% writing down allowance, regardless of ownership changes

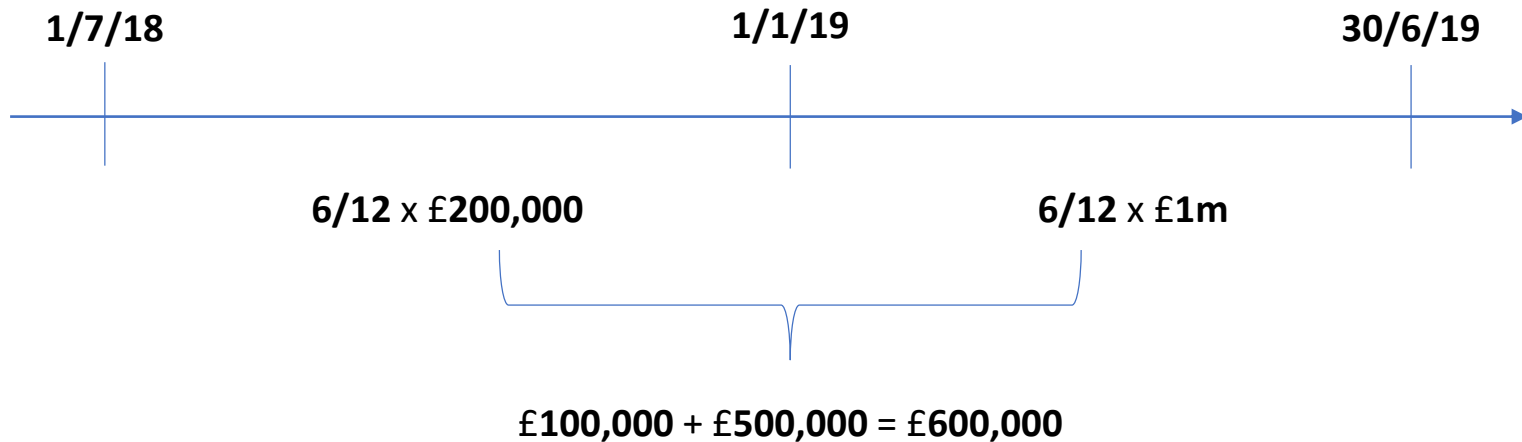
SBA scope

- All contracts for works on or after 29 October
- No relief for cost of land or obtaining planning permission
- No balancing adjustment on disposal – purchaser continues to claim allowance
- Integral features & fittings continue to get P&M allowances (at reduced rate)
- Includes offices, factories, tunnels, walls etc

Increase in Annual Investment Allowance

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

Transitional periods (again!)



Max before 1/1/19 = £200,000

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 with carbon emissions greater than 110 g/km

The end of some Enhanced Capital Allowances

- 100% first year allowances for energy efficient and water-saving technologies
- **Repealed from April 2020**

SD and SDRT

- New market value rule
- Prevent “swamping”

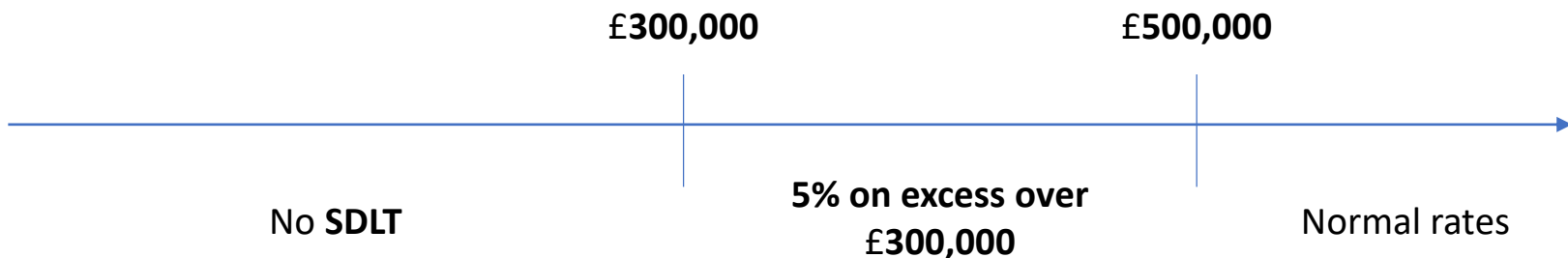
SDLT measures

First-time buyers relief extended:

- Shared-equity dwellings
 - Purchase of first share
 - Where don't elect to pay SDLT on MV of whole property
 - Properties worth up to £500,000
- Backdated to 22 November 2017

SDLT measures

- Purchase of first share



Amend SDLT returns by 28 October 2019 if transaction completed before 29 October 2018

SDLT measures

- To consult in 2019 on a surcharge of 1%
- Non-residents buying residential property in England and Northern Ireland
- Reaction of Scotland and Wales is awaited

SDLT return filing deadlines

- Deadline reduced from 30 to 14 days after effective date of transaction
- Payment of tax also required by this date
- For transactions where either:
 - the effective date (usually date of completion); or
 - the date the transaction first becomes notifiableis on or after 1 March 2019

SDLT return filing deadlines

- Various situations where transaction previously notified but further return now needed
- Deadline for such further returns remains 30 days
 - Return for earlier transaction following subsequent linked transaction
 - Return for lease continuing after fixed term
 - Return for rent ceasing to be uncertain in first five years of lease

Knowledge Intensive Companies (KICs)

- New EIS fund structure for KICs
- Proposal to encourage longer term 'patient capital'
- Investors set income tax relief against liabilities in year fund closes
- Consultation in Summer 2019 and to be introduced from 6 April 2020

Reform of intangible fixed asset regime

Two specific measures in Finance Bill:

- Partial reinstatement of relief for acquired goodwill that was removed in 2015
- No de-grouping charge where SSE applies

R&D Tax Credits for SMEs

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

CGT

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

Main residence relief changes

- 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

Non-resident CGT

- Extends to all UK **immovable property** disposed of on or after 6 April 2019
- Individuals, trusts and companies
- Also includes disposals of interests in companies deriving 75% or more of value from UK land
- ATED-related gains regime abolished

Non-resident CGT

- Rebasing from 6 April 2019
- Option to use original cost, rather than 5 April 2019 value - cannot create a loss
- No longer need an exit charge re UK land on company becoming non-UK resident from 6 April 2019

75% or more interests

- Only applies where vendor had:
 - 25% interest in the company
 - at any point in previous 2 years
- Compare asset values (exclude certain creditor loan balances)
- Exception where UK land used in course of an ongoing trade
- Special rules for:
 - Certain linked transactions
 - Collective Investment Schemes
 - REITs

Anti-Avoidance

- Specific anti-avoidance rule applies from 22 November 2017
- Aim to counter:
 - Use of DTAs to escape charge
 - Also, will charge UK resident companies in same group as non-UK resident that fails to pay the tax due

CGT returns and deadlines

- Return due 30 days after date of each disposal
 - One return if multiple completions on same date in the tax year
 - Payment on account due by same date
 - Take into account all previous disposals
 - Take into account eligible losses
- Note refunds may sometimes be due in respect of the final return

Non-UK companies with UK property business

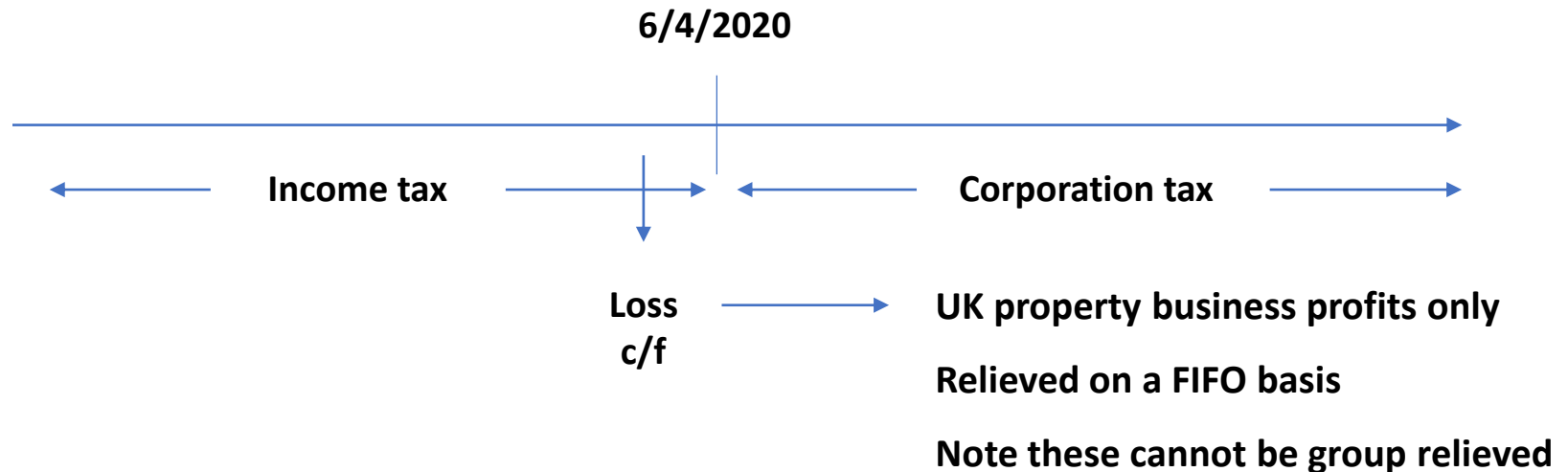
- As proposed - all UK property business profits come into CT net from 6 April 2020
 - Including associated loan relationship and derivative contract profits
- No need to notify chargeability to CT if liability is fully covered by tax withheld at source from rents

Consequential

- No deemed disposals of assets on transition under capital allowances rules
- UK CT property business losses may be surrendered as group relief
- Companies will fall into worldwide groups for corporate interest restriction purposes

Commencement rules

Profits of straddling period to be apportioned on basis of profits earned



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