

# Budget 2009 Olswang Analysis

OLSWANG



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### Personal Taxes and Pensions

High earners will be hardest hit by today's budget. Such measures may result in the UK becoming a less attractive jurisdiction for internationally mobile employees, with the UK now having some of the highest income tax rates in Europe.

The increased gulf between income and capital gains tax rates will result in an increased focus on planning designed to achieve a capital return.

The surprise announcement of the day was that income tax rises will not only be higher than expected but will be brought in a year earlier. With effect from 6 April 2010, an additional income tax rate of 50% (as opposed to 45% announced in the Pre-Budget Report ("PBR")) will apply to income over £150,000, with a corresponding rate of 42.5% for dividends.

Personal allowances will be reduced for individuals with income exceeding £100,000. In effect, £1 of personal allowance will be lost for every £2 of income over the £100,000 limit, tapering down to zero.

As widely speculated, higher rate tax relief upon personal pensions will be restricted, from 6 April 2011, for individuals with income of £150,000 and over, tapering down to 20 per cent. Measures will be introduced, with immediate effect, to prevent acceleration of contributions to take advantage of the current, more favourable, rate of relief. For more details, please see our pensions update by [clicking here](#).

The NIC upper earnings' limit has increased to £43,875, aligning it with the higher rate income tax threshold.

To assist savers, the annual investment limit for Individual Savings Accounts (ISAs) will be increased to £10,200 (up to £5,100 of which can be saved in cash) with effect from 6 October 2009 for those aged 50 and over and from 6 April 2010 for all individuals.

# Corporate Taxes

## **Corporation tax rates**

The main corporation tax rate of 28% is unchanged. The small companies' rate, for companies with profits below £300,000, will remain at 21% and will not be increased to 22% (as originally proposed), at least until 2010.

## **Carry back of trading losses**

The temporary three-year relief first announced in the 2008 PBR, to allow loss-making companies and unincorporated business to carry back current losses against profits (of any description) has been extended to losses arising over a two-year rather than just a one-year period. The relief is subject to a £50,000 cap for each 12-month accounting period ending between 24 November 2008 and 23 November 2010 for companies and, for unincorporated businesses, for periods ending in the tax years 2008-2009 and 2009-2010. Losses must be set against profits of later years first. Such measures will assist businesses that are struggling in the current economic climate.

## **Personal accountability for senior officers of large companies**

HMRC will be entitled to levy personal penalties on senior accounting officers of large companies, as well as on the relevant company. This measure introduces entirely new statutory powers, including an obligation on companies to notify HMRC of the identity of their senior accounting officer. Such individuals must annually certify to HMRC that the company's systems are adequate, or, if not, the details of the inadequacies must be specified and reported to the company auditors.

HMRC say they will consult with interested parties. Some immediate questions arise:

- the press release talks about penalties chargeable personally. Will the individual be allowed to be reimbursed by the Company?;
- if the person is reimbursed will that be a taxable receipt, which will need to be grossed up;
- what rights will the individual have, for example, to take legal or accounting advice for his benefit but at the company's expense?

## **Debts and loan relationships between connected companies**

As announced in the PBR, the Finance Bill will contain two measures relating to debts between connected companies.

The first measure is designed to remove the current tax asymmetry which arises on the release of a trade debt or property business debt by a connected company whereby the creditor is denied a deduction for the loss on the debt but the connected debtor company may be taxed on its "profit". For such releases taking place on or after 22 April 2009, no tax charge will arise for the debtor company. The position will therefore be the same in relation to trade debts as it already is for loan relationships generally.

The second measure amends the rules relating to the late payment of interest between connected companies, whereby if interest is not paid within 12 months of the end of the accounting period in which it accrues a deduction is denied until it is paid unless the creditor is a UK corporate. This rule will be

modified so that it will only apply if the creditor company is resident in a "non-qualifying territory" (broadly, a tax haven). This change, designed to ensure that the UK law is EU compliant, should generally be favourable although the disapplication of the late interest rule may in some circumstances (for example, certain private equity structures) reduce flexibility for companies as to when relief for interest is given. This change will apply for accounting periods beginning on or after 1 April 2009 but companies may elect for the "paid basis" to continue for one further accounting period. Equivalent changes will also be made to the rules relating to deeply discounted securities issued by connected and close companies.

### **Foreign denominated losses**

For companies with a functional currency other than sterling, the Finance Bill will contain legislation to ensure the exchange rate for conversion of unused losses into sterling will be the same rate as that used for conversion of taxable profits against which such losses may be offset. The changes will apply to accounting periods commencing on or after 29 December 2007 and seek to prevent the devaluation of such companies' tax assets (as compared with taxable profits) as a result of weakening sterling values.

## Foreign Profits

As reported in our analysis of the PBR, the government is following extensive consultation with business, proceeding with reforms to the tax treatment of the foreign profits of companies with the aim of enhancing the UK's attractiveness as a location for doing business. These will apply to:

- dividends received;
- interest deductions for UK members of multi-national groups (the "worldwide debt cap");
- controlled foreign companies; and
- movements of foreign capital (treasury consents).

Most of the reforms will come into effect from 1 July 2009, but with the new debt cap regime applying for accounting periods beginning on or after 1 January 2010. For more detail, [click here](#).

# Real Estate Taxes

## Stamp Duty Land Tax ("SDLT")

### Thresholds – residential property

The temporary increase in the exempt threshold to £175,000 is extended to 31 December 2009.

### Alternative finance

Land asset based securities which involve the transfer of land to the bond issuer are targeted by new reliefs designed to "ignore" the transactions in question. The general intent is to ensure that alternative finance (or Sharia law) arrangements are not rendered economically unviable by reason of SDLT.

### Disclosure of tax avoidance schemes ("DOTAS")

A consultation is announced on DOTAS in the context of SDLT. It is proposed to:

- extend the reporting regime to residential property worth at least £1 million, and
- introduce arrangements for HMRC to identify users of disclosed schemes.

The consultation document makes it clear that HMRC remain concerned about avoidance in the context of residential housing. We doubt that there is material avoidance. Also, anecdotal stories suggest that the majority of the schemes in question are likely to fail.

Unlike DOTAS for direct taxes, SDLT scheme users are not identified. This is proposed to change, allowing HMRC to identify users. So we expect more targeted and co-ordinated enquiries into tax returns.

Subject to the consultation, amending regulations are proposed to be introduced towards the end of 2009.

### Shared ownership

Relief from SDLT is to be extended in certain circumstances in the context of shared ownership schemes and acquisitions by Registered Providers of Social Housing. Simplifications are proposed in the context of "Rent to HomeBuy" schemes.

### Leasehold enfranchisement

For land transactions on or after 22 April 2009 relief for leasehold enfranchisement will be available for leaseholders acquiring freehold interests under a statutory right of leasehold enfranchisement, otherwise than by way of a Right to Enfranchise Company. This technical change simply reflects the fact that no statutory provision for "RTE" companies has ever been made.

### Construction - tax avoidance

The Government plans to target the construction industry to address what it perceives as the false treatment of many construction workers as self-employed - legislation will be introduced following consultation to ensure that such persons and those that they work for are taxed appropriately.

## REITS

Anti-avoidance legislation with immediate effect is to be introduced to prevent certain groups of non-qualifying companies meeting the REIT conditions following the restructuring of their activities.

A second measure is aimed at blocking owner occupier businesses from taking advantage of the regime.

On a more positive note:

- The "tied premises" obstacle is to be removed, which will open up opportunities for new entrants.
- Restrictions on the type of shares that a REIT can issue are to be relaxed, convertible preference shares will be allowed.

In addition some minor changes are proposed to clarify certain aspects of the regime, which are welcomed. But overall there must be disappointment that the government has not looked at relaxing the interest cover test, or distribution requirements (for example, to allow scrip dividends). All changes will have effect from today.

## Capital Allowances

In a bid to encourage investment by UK businesses the Chancellor has introduced a new temporary 40% first-year allowance for expenditure on qualifying plant and machinery incurred in the period 1 April 2009 to 31 March 2010 for corporation tax purposes and 6 April 2009 and 5 April 2010 for income tax purposes. With lower levels of mezzanine finance available and a corresponding reduction in interest relief, the increased capital allowances will be welcomed by real estate and other companies.

Businesses are currently able to claim an Annual Investment Allowance on the first £50,000 spent on plant or machinery and any additional expenditure is allocated to the "main pool" or "special rate pool".

Under the new temporary scheme any expenditure in excess of the Annual Investment Allowance which would qualify for "main pool" 20% writing down allowances will now qualify for a 40% first year allowance.

# VAT

## VAT rate

The standard rate of VAT, which has been 15% since 1 December 2008, will return to 17.5% from 1 January next year. The Finance Bill 2009 will contain measures to prevent taxpayers from avoiding the increased VAT rate by artificially bringing forward the date on which supplies are treated as being made for VAT purposes, e.g. by issuing an invoice dated in 2008 but for which payment is not due until late 2009.

## Place of supply of services rules

The UK's place of supply of services rules will be amended to bring them in line with new European rules. The new basic rule for business to business transactions will be that VAT will be due where the business customer (as opposed to the supplier) is established. The existing basic rule for business to non-business customers will not change (that is, VAT will in those cases generally continue to be due in the country in which the supplier is established).

The changes to the place of supply rules will be phased in – they take effect for many services on 1 January 2010 and on 1 January 2011 and 1 January 2013 for others. A new regime for electronically supplied services will come into effect on 1 January 2015.

There will continue to be exceptions to the basic rules set out above. Notably:

- VAT will be due on supplies of restaurant and catering services where such services are physically performed;
- supplies of certain intangible services to non-business customers outside the EU will continue to be supplied where customer belongs;
- under the new rules, from 1 January 2011, where supplied to business customers, VAT will be due on most supplies of cultural, artistic, sporting, scientific, educational, and entertainment services in the country in which the customer is established. VAT will continue to be due on admission fees to such events, however, in the country where the event takes place.

***The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking or refraining from taking any action.***

# About Olswang

Olswang is a leading business law firm with a distinctive approach. Our pioneering and problem-solving ethos has established a commanding reputation in the technology, media and real estate sectors, as well as a wide range of other industries.

Founded in 1981, our Firm has grown to a team of over 650, including over 100 partners, across four European offices. In addition, Olswang has a formal alliance with a major US firm Greenberg Traurig LLP and a long-established best friends network of leading independent law firms throughout the world.

Our Firm continues to be acknowledged as a leading practice in many of our core areas: Olswang was voted TMT Team of the Year 2009 for the second year running at the annual Legal Business Awards; Olswang's Corporate Group won M&A Law Firm of the Year at the M&A Awards 2008 in conjunction with M&A Magazine, and was named Corporate Team of the Year – Mid markets at The Lawyer Awards 2008.

Resourceful drive and a climate of shared knowledge and empowerment are the hallmarks of our meritocratic, unstuffy culture. For the last four years Olswang has been ranked in The Sunday Times 100 Best Companies to Work For and our strong management team is dedicated to the personal and professional development of our people.

We are committed to encouraging every member of staff to engage in lasting and meaningful pro bono and volunteering activities, both legal and non legal. The time invested by our people through the Firm's HELP Programme to assist those in need is a positive contribution to the community which is reflected in the values and culture of Olswang.

We recruit personalities with a genuine fascination and notable reputation in the sectors they focus on, which is reflected in the quality of our advice. We also understand the importance of achieving our clients' goals and ensure that our advice is, above all else, practical.

From world-class businesses to entrepreneurial startups, the rich diversity of our client base ensures a broader perspective and, as a result, deeper commercial insight. Transactional work is the most obvious feature of the role we perform. However, ongoing non-transactional support is an integral part of our business, and we focus on creating long-term relationships with our clients. We employ a range of proactive initiatives such as client care programmes, secondments, client training and feedback sessions to ensure our client relationships are strong.

At Olswang the passion of our lawyers, the confidence of our approach and the commercial edge to our advice provide a unique and compelling service.

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