A NEW TAX ROADMAP
A REVIEW OF THE CHANCELLOR'S BUDGET
MARCH 2016
Billed as a Budget for the next generation, at the core of the Chancellor’s speech was a business tax road map designed to take the economy through to 2020 and beyond. However, with the potential pothole of an impending EU referendum and the prospect of turbulent markets producing slower than expected growth across the globe, this was not a budget designed for giving away more than it was seeking to collect through tax increases.

In an attempt to ensure that all businesses pay their fair share of tax, there were some significant changes for larger corporates. They will have both a restriction to the amount of interest they are able to claim when calculating their taxable profits and a restriction on the quantum of losses they are able to offset on an annual basis, albeit there may now be more flexibility in the use of such losses. The main VAT change also looked to be focussed towards larger online businesses. A further reduction in the rate of corporation tax will please smaller businesses.

Those who save and invest will also welcome a number of Budget announcements. The reduction in capital gains tax rates, the extension of Entrepreneurs’ Relief to long term investors and the introduction of the new flexible lifetime individual savings account, together with the increase in annual allowance for standard ISAs stand out as the most positive.

Property-related transactions continued to see a number of measures targeted towards them. These include some major changes in the treatment of developers of UK land as well as confirmation and clarification of previously announced tax restrictions. Some reduction in the amount of Stamp Duty Land Tax levied on lower value commercial property will be welcomed as will the long-awaited business rate reform but there will inevitably be a question as to whether this goes far enough.

To complete what was a Budget with its fair share of major announcements and minor detail there was the usual increase to the personal allowance and basic rate band, reducing or eliminating tax for the lower paid, a number of employment tax announcements and another increase in insurance premium tax, although the use of the revenue raised by the latter for flood defence should help soften the blow a little.

Finally, the long talked about ‘sugar levy’ was at last announced, with the projected tax take being allocated to a specific commitment in spending, this time funding sports and education for, you guessed it, the next generation.

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01 CORPORATE TAXES

BUSINESS TAX ROADMAP

This document sets out the Government’s general approach to taxation, and puts in context the various changes announced in the Budget. It describes the principles adopted and the work done since 2010 and sets out a timetable for future reform, covering the period 2016-2020. A number of the proposed changes included in the business tax roadmap are discussed in further detail in this document. Some other specific items included are:

• The Government proposes to consult on the modernisation of the legislation for the substantial shareholdings exemption which is now 14 years old. Budget documents suggest this will focus on ensuring the exemption supports a policy objective of simplicity, coherence and international competitiveness.

• The Government has decided to put back by two years the proposal to have very large companies (whose profits exceed £20m) pay their corporation tax bills earlier ie in the 3rd, 6th, 9th and 12th months of the year. It will now apply for accounting periods starting on or after 1 April 2019.

• Proposed administration changes within HMRC include an intention to recruit 800 new staff and open call centres seven days a week to reduce waiting times by 2017. In addition, for new small companies, there is to be a single registration service for Companies House and HMRC.

TAX DEDUCTION FOR INTEREST EXPENSE

Action 4 of the Organisation for Economic Cooperation and Development’s (OECD’s) Base Erosion and Profit Shifting (BEPS) project sought to prevent erosion of the tax base through the use of interest expenses.

Following consultation on how the OECD’s recommendations should be implemented, a restriction on the amount of interest companies can deduct for tax purposes will be introduced from 1 April 2017. The UK will be introducing a fixed ratio rule limiting interest tax deductions to 30% of UK Group’s EBITDA.

In recognition that some groups may have genuine commercial purposes for high gearing, a group ratio may be applied instead of the fixed rule. The group ratio would be based on net interest to EBITDA for the worldwide group.
The proposed rule includes a de minimis threshold of £2m net UK interest expense. This threshold will eliminate most small groups from compliance with the rules. An exemption for financing of public infrastructure will be available.

**How this may affect you**

The limitation will apply to external debt as well as internal debt. It is not yet known whether there will be any grandfathering provisions for existing debt. Groups with borrowings will want to urgently review the potential impact these provisions will have and consider refinancing their UK debt, for example by pushing more debt down into overseas subsidiaries or, perhaps, by increasing their tax base through changes to their trading models and transfer pricing arrangements.

### USE OF BROUGHT FORWARD TAX LOSSES

Two significant measures were announced by the Chancellor affecting the way companies can use brought forward tax losses.

First, tax losses arising after 1 April 2017 will be available for carryforward against profits from the company’s other income streams and profits of other group companies. Second, for profits arising after 1 April 2017, only 50% of group profit can be sheltered by carryforward losses (subject to a £5m profit de minimis).

The Government intends to consult on the design of the reforms during 2016 with a view to introducing legislation in Finance Bill 2017.

The additional flexibility in the way losses can be used is a welcome change. The requirement to stream tax losses has long been a frustration for those who consider that a company’s tax bill should align with its economic profit.

While there is no indication that the Government is thinking of moving to full group tax consolidation, the ability to offset a carryforward loss in one company against a profit of another company would be a welcome improvement to the existing group relief system. In the past, these frustrations have led groups to seek to refresh tax losses - something this Government has only recently clamped down on – but the proposed change will mean that such planning would in any event be redundant for losses arising after 1 April 2017.

A less favourable amendment is the restriction of loss setoff. However the use of a £5m profit de minimis means that the vast majority of businesses will not be adversely affected by this element of the package and the burden will fall only on ‘large groups’ (defined as those with annual profit in excess of £5m). From the Government’s perspective, the loss restrictions should help to counter public criticism of large corporations paying no tax despite high levels of reported profit.

**RESTRICTION ON BANKING LOSSES**

The 2014 Autumn Statement originally introduced draft legislation which restricted the proportion of a bank’s taxable profit that could be offset by certain carried forward reliefs to 50%. The restriction applied to losses accruing prior to 1 April 2015. Where accounting periods straddle the commencement date they are to be treated as two separate periods.

The Chancellor has now announced that he will further restrict the proportion of a banking company’s annual taxable profit that can be offset by pre-April 2015 carried-forward losses from 50% to 25% from 1 April 2016.

For smaller companies, the changes will bring significantly greater flexibility in the way excess losses can be used in future periods. For larger groups, however, the greater flexibility may be outweighed by a limitation requiring the group to pay tax on at least half their profit regardless of the level of historic tax losses.
WITHHOLDING TAX ON ROYALTY PAYMENTS

The Government has announced that it will extend the circumstances where withholding tax can be applied to royalty payments. The changes will have three aspects.

First, the UK’s withholding tax rights will apply to payments for the use of intangible assets such as trademarks and brand names. Where such payments are made to overseas persons, they will be subject to withholding tax unless the UK has expressly given up taxing rights in a double tax treaty or under the EU interest and royalties directive.

Second, a domestic law treaty abuse rule will be introduced to ensure that payments cannot be routed through holding companies in countries with which the UK has a double taxation agreement where that structure has been established for tax motivated and uncommercial reasons.

Finally, withholding tax will apply to royalty payments that are connected to the activities of UK permanent establishments of overseas companies.

How this may affect you

This represents a significant extension of taxing rights over royalty based payments. Companies making payments to overseas companies for the use of brand names or trademarks should review their structures to consider if they could be affected by these changes.

HYBRID MISMATCH ARRANGEMENTS

The Government had previously announced that it would introduce new rules in Finance Bill 2016 to prevent multinational enterprises avoiding tax through the use of certain cross-border finance structures. This was in response to the work that the OECD has undertaken as part of its BEPS project for addressing hybrid mismatch arrangements (BEPS Action Point 2).

Such structures can be used with UK/US financing and where an election has been made to change the way an entity is treated for US tax purposes.

The draft rules previously published to combat hybrid arrangements will now be strengthened to include mismatches involving an overseas permanent establishment. This extends the draft rules to branch structures by denying relief in the UK for the interest payment made by the UK payor company to the overseas branch.

How this may affect you

The new rules will be effective from 1 January 2017.

Companies with hybrid entities or hybrid instruments in their structures should review their financing structures. The known date of implementation for this action in the UK means that it will merit early attention for those groups affected.

CORPORATION TAX RATE

The current rate of 20% corporation tax applicable to UK companies (large or small) will fall to 19% from 1 April 2017 and was due to be further reduced to 18% from 1 April 2020. The Chancellor has now announced that the rate from 1 April 2020 will instead be 17%.

For banks, this will result in a corporate tax rate of 25% from 2020.

In addition, Budget documents indicate that for Northern Ireland there is now broad support for moving towards a devolved corporation tax rate of 12.5% from 2018.

Loans to participators

The rate of tax payable by a close company when it makes a loan to a participator on or after 6 April 2016 will rise from 25% to 32.5%. This is consistent with the previously announced 7.5% tax rate increase for dividends from the same date. It leaves the tax rate for loans aligned with the tax rate for dividends to higher rate taxpayers.

Close companies are broadly those which are owned or controlled by five or fewer persons (known as participators).

The company can recover this tax in the event that a loan is subsequently repaid or written off. Where loans were made prior to 6 April 2016, the tax recovery will continue to be at 25%.
This change primarily affects incorporated owner managed businesses. Funds extracted by way of dividends or loans should result in similar tax burdens for shareholders who are higher rate taxpayers. Additional rate taxpayers may still have a marginal preference for loans, whereas basic rate taxpayers may prefer dividends.

**OIL AND GAS COMPANIES - TAX RELIEF FOR DECOMMISSIONING EXPENDITURE**

HMRC has issued a technical note clarifying its view of the current legislation in relation to decommissioning liabilities retained after the disposal of a licence interest. In its view, relief is due where the decommissioning costs are directly incurred, and it is not sufficient for the claimant to have contributed to costs incurred by others. However, it has also clarified that it is not necessary for a licence interest to be retained for relief to be available, nor for a claimant to have been served with a Section 29 notice (Petroleum Act 1998). This will now provide additional certainty to companies in the sector, and should encourage the development of late life business models.

HMRC is also looking to build on the new decommissioning powers of the Oil and Gas Authority by undertaking further work with them and the industry to reduce overall decommissioning costs. If significant progress can be made, the Government will explore whether decommissioning tax relief could better encourage transfers of late life assets.

**REDUCTION IN PETROLEUM REVENUE TAX AND SUPPLEMENTARY CHARGE**

The Government reiterated its support for the UK oil and gas industry by announcing further tax rate cuts across the sector.

All companies with taxable profits within the ring fence will benefit from a further reduction in the supplementary charge for accounting periods starting on or after 1 January 2016. Building on the previous reductions, the supplementary charge has now been reduced from 20% to 10%, with the ring fence tax rate remaining at 30%.

The Petroleum Revenue Tax rate has also been permanently reduced from 35% to 0% for chargeable periods ending after 31 December 2015, effectively abolishing the additional tax on these fields.

**TRANSFER PRICING DOCUMENTATION**

Legislation will be introduced in Finance Bill 2016 to amend the definition of 'transfer pricing guidelines' within the current legislation to incorporate the revisions agreed to the OECD Guidelines by the joint OECD/G20 BEPS project. This will apply from 1 April 2016. Chapter V of the revised OECD guidelines requires the completion of a master file and local file transfer pricing documentation. To date, the UK’s position has been that it will continue with its existing ‘pragmatic’ approach to transfer pricing documentation requirements, albeit it recognises the Chapter V master file and local file approach to represent good practice. We, therefore, await the release of Finance Bill 2016 for details of the extent of any changes.

**TAXATION OF PROFITS FROM DEALING IN AND DEVELOPING UK LAND**

The UK tax system is to be changed so that trading profits arising from dealing in or developing UK land will always be chargeable to UK tax irrespective of the residence status of the landowner and regardless of whether this activity is conducted through a permanent establishment or not.

Currently, for trading profits arising to non-UK residents from dealing in or developing UK land to be chargeable to UK tax the activity would, in most cases, need to be attributable to a UK permanent establishment or represent UK source income. A number of double tax treaties between the UK and other jurisdictions have enabled developers resident in certain jurisdictions to escape a charge to UK tax on the profits of dealing in or developing UK land.

The Government proposes a change in the basis of taxation of UK land such that profits arising from disposals of land derived from a trade of dealing in or developing UK land will be chargeable to UK tax irrespective of the residence status of the landowner and regardless of whether or not the activity is conducted through a permanent establishment.

Protocols amending the double tax agreements with a number of jurisdictions have already been agreed with the relevant territories and take effect from 16 March 2016. The charge to tax will apply to all trading disposals of land by affected landowners which occur from the date that Finance Act 2016 passes the report stage in its passage through the House of Commons.
Anti-avoidance rules have been implemented with immediate effect from Budget day and which will operate to prevent affected landowners from seeking to mitigate the effects of the legislation. Any transfer of land to a related party prior to the legislation coming into force will be disregarded irrespective of motive, as will any other arrangements which are implemented for the purpose of preventing profits being subject to the new charge.

The legislation will also incorporate specific rules to prevent mitigation of the charge through other structuring arrangements including:

- Fragmentation of the profits of the trade through dividing the ownership of the land or the activities of the trade between related persons which will be countered by the application of the new charge to the profits of all relevant profits
- Enveloping of the profits of the trade through undertaking a development in a single purpose vehicle to facilitate a disposal by way of a sale of shares rather than the underlying property which will be countered by new rules which will enhance the effect of the existing transactions in land provisions.

How this may affect you

The proposals will significantly affect property dealers and developers based in jurisdictions where they have previously been able to claim the benefits of favourable tax treaties between the UK and their own jurisdiction. It will mean that the tax payable in respect of their UK activities will be equivalent to other developers based in the UK.

**STAMP DUTY LAND TAX ADDITIONAL RATE ON RESIDENTIAL PROPERTIES**

As announced in the 2015 Autumn Statement, an additional 3% Stamp Duty Land Tax (SDLT) charge will apply to purchases of most second homes and buy to let investment properties in England and Wales which complete on or after 1 April 2016. This charge has been confirmed and is to be extended to apply to all residential property purchasers, both individual and corporate, irrespective of the size of their property portfolio.

For purchases of residential properties with a market value of £40,000 or more in England and Wales and which complete on or after 1 April 2016, a premium of 3% above the normal rates of SDLT may be applicable to the transaction. In the case of individuals, this will apply where the property being acquired is not the individual’s first residential property unless it is being acquired in order to replace their main residence. In the case of companies, this will apply to all relevant acquisitions of residential property.

In order to address periods where there might be an overlap or a gap in the ownership of a main residence, a period of 36 months will be permitted to allow a claim for relief from the additional charge to be made.

When the proposals for the additional rate were announced in the 2015 Autumn Statement, it was envisaged that an exemption would apply to large scale investors with sizeable property portfolios. No exemption of this nature has been included in the final proposals and so the additional charge will apply to all residential property investors, dealers and developers irrespective of the number of residential properties acquired.

Special rules will operate to address specific circumstances relevant to spouses, civil partners, trusts and estates and those who hold interests in property as partners of a partnership.

How this may affect you

The additional charge will represent a significant increase in the SDLT payable on the acquisition of residential properties and second homes and could, therefore, potentially impact property prices and/or rents.

**STAMP DUTY LAND TAX REFORM OF CHARGING PROVISIONS FOR NON-RESIDENTIAL PROPERTY**

The ‘slab’ system for calculating the charge to SDLT on non-residential property transactions in England and Wales is to be changed to a banding system similar to that which applies for residential property such that tax is payable only on the amount of the purchase consideration falling within each band.

The SDLT chargeable on residential property transactions in England and Wales was recently changed to a banding system whereby only the purchase consideration falling within each band is subjected to the tax rate applicable to that band.
This system is being extended to apply to non-residential property transactions in England and Wales which complete on or after 17 March 2016. Where contracts have been exchanged before 17 March 2016 but the transaction completes subsequently, transitional rules will apply in most cases to allow the purchaser to choose whether to apply the new or old rates of SDLT.

The new bands for non-residential transactions from 17 March 2016 will be:

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<th>Consideration/Net present value</th>
<th>Freeholds / Lease premiums</th>
<th>Lease Rentals</th>
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<tr>
<td>£0 - £150,000</td>
<td>0%</td>
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<td>£150,001 - £250,000</td>
<td>2%</td>
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<tr>
<td>£250,001 - £5m</td>
<td>5%</td>
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<tr>
<td>Over £5m</td>
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Under the new bandings, any freehold or lease premium transactions for consideration of over £1.05m or for the grant of leases with a net present value of rentals over £5m will pay more SDLT. However, for most leases where there is both a premium and rentals, the nil rate band will now be available to both elements.

**How this may affect you**

Additional SDLT will be payable in respect of freehold or lease premium transactions for consideration of over £1.05m or for the grant of leases with a net present value of rentals over £5m. Where contracts have been exchanged but transactions have not completed before 17 March 2016 purchasers will have a choice of whether the old or new structure and rates apply.

**REPEAL OF RENEWALS ALLOWANCE**

The renewals basis for the replacement of loose plant by residential landlords is being withdrawn from 1 April 2016 (for corporation tax) or 6 April 2016 (for income tax).

Historically, there were two alternative methods for obtaining tax relief in respect of the cost of replacing items of plant by residential landlords: either wear and tear allowance at a flat rate of 10% of rents or the renewals basis where a deduction was claimed for the actual expenditure incurred on the replacement of relevant items.

It has previously been announced that the wear and tear allowance is to be replaced with a new relief for the cost of replacing domestic items by residential landlords and which will apply from April 2016. The renewals basis is, therefore, to be withdrawn so that there is a harmonised basis of relief for all landlords in the future.

From April 2016, landlords will be able to claim tax relief for the cost of replacement items but only to the extent that the replacement does not represent an improvement on what is being replaced.

It will also affect businesses acquiring capital items for the purposes of a trade and which have been claiming the renewals basis instead of capital allowances.

**CAPITAL ALLOWANCES IN ENTERPRISE ZONES**

A 100% enhanced capital allowance is available for qualifying expenditure by companies in qualifying enterprise zones. The Government has announced a number of new qualifying enterprise zones which will also benefit from this relief.

Since 2012, and subject to a number of conditions, a 100% enhanced capital allowance has been given for expenditure incurred by companies on qualifying plant and machinery in qualifying enterprise zones allowing them to write off qualifying expenditure more quickly for tax purposes. This relief is due to expire on 31 March 2020 in relation to the qualifying enterprise zones announced in 2012.

There are to be new qualifying zones at Coleraine in Northern Ireland, Port Talbot in Wales, Brierley Hill in the West Midlands, Loughborough, Leicester and for a Marine Hub in Cornwall, together with an extension of the existing zone covering the Sheffield City region. These qualifying zones, along with any additional qualifying zones announced in the future, will also benefit from the 100% enhanced capital allowance for a period of eight years from the date they are announced.
CHANGES TO THE VENTURE CAPITAL SCHEMES
- ENTERPRISE INVESTMENT SCHEME, SEED EIS AND VENTURE CAPITAL TRUSTS

After major changes last year, there are few changes to the venture capital schemes this year.

The main change is the complete exclusion of the remaining energy generation activities from the schemes, for investments made after 6 April 2016. This will not be welcomed by companies in this sector, but was announced late last year, so it is no surprise.

There are some technical changes to the legislation which took effect in November 2015, dealing with the calculation of a company’s five year average turnover and operating costs for knowledge-intensive companies, and non-qualifying investments for VCTs, which simply clarify what was originally intended.

Companies receiving any form of state aid, including EIS and VCT investment, of over €500,000 will be required to report this to HMRC for checking and publication, with effect from 1 July 2016. This is an EU initiative which has been in the pipeline for some time.

While there are changes that we would like to see, including relaxation of the rules around replacement capital, these appear to be low on the Treasury’s priority list at the moment, and the absence of substantial changes this year does give some stability in this area.

INSURANCE-LINKED SECURITIES

At the 2014 Autumn Statement, the Government announced that it was looking to ensure the UK’s regulatory and tax regime was as competitive as possible with respect to attracting reinsurance business into the UK. In March 2015, it also announced that it would focus on developing a new tax structure for allowing insurance linked securities (ILS) vehicles to be UK domiciled. A consultation document was published on 1 March 2016.

ILS are an alternative form of risk mitigation for insurance and reinsurance firms. Risk is transferred to a special purpose vehicle which issues securities to investors to raise sufficient capital to cover the insurance risk taken on. The consultation document is widely drawn, with HM Treasury seeking responses by 29 April 2016.

SECURITISATION AND ANNUAL PAYMENTS

Finance Bill 2016 will include legislation to allow HM Treasury to amend regulations to clarify the tax treatment of ‘residual payments’ made by securitisation companies. Residual payments arise where the securitisation vehicle distributes excess profit typically as deferred consideration for the acquisition of its financial assets. Under existing law, there is uncertainty as to whether these payments should be classified as annual payments and, therefore, whether they should be subject to UK withholding tax.

The Government will eliminate the uncertainty under revised securitisation tax regulations that provide that these payments will not be treated as annual payments. It has also announced that the regulations will be developed as part of wider ongoing consultation with industry to update and modernise the tax regime for UK securitisation companies.

STATE AID MODERNISATION

This measure empowers HMRC to collect information on certain types of state aid and to share that with the European Commission via a gateway. It is likely that legislation will contain requirements for the beneficiary to provide information to HMRC as a condition of entitlement to the relief.

The objective of state aid policy is to ensure that tax reliefs are properly targeted to address market failures whilst avoiding unfair competition. This measure will facilitate additional monitoring of the use of state aid while reducing the need for detailed examination by the European Commission before a particular state aid is introduced.

State aid in the tax arena includes the enterprise investment scheme, venture capital relief, film tax reliefs, research and development credits, musical and theatrical reliefs, climate change agreements, enhanced capital allowances, business premises renovation allowances and vaccine research reliefs.

It is relevant to businesses that benefit from certain tax reliefs and will apply from 1 July 2016.
**R&D TAX RELIEFS**

The SME R&D scheme is a notified state aid and no one company can receive aid in excess of €7.5 million for any one project. When calculating whether they have exceeded this €7.5 million cap, companies can ignore any aid which represents a notional amount which could be claimed under the large company scheme (that scheme is not a state aid).

The measure announced will ensure that, despite the fact that the large company scheme is being replaced by the R&D expenditure credit, SMEs continue to get the same benefit from the calculation as they currently do.

**TRADING AND PROPERTY INCOME RECEIVED IN NON-MONETARY FORM**

For transactions occurring on or after 16 March 2016, legislation will be introduced to ensure that trading income (including that of a property business) received in non-monetary form is nonetheless taxed at the appropriate value – defined as ‘money’s worth’.

This measure is relevant to sole traders, partnerships and corporates who are paid in non-monetary consideration. However it merely confirms HMRC’s current interpretation of existing law.

**TAXATION OF FINANCIAL INSTRUMENTS: LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS**

The Government has confirmed as promised in the Autumn Statement that it will legislate in the Finance Bill to amend the existing loan relationship and derivative contract rules in three situations where unintended or unfair outcomes may arise as a result of their current interaction with accounting rules or other parts of the tax code. The changes will have effect for accounting periods beginning on or after 1 April 2016. The situations are:

- Deductions for notional finance costs on interest-free or non-market rate loans. Where accounting rules require a debtor company to recognise an interest-free or a non-market rate loan at less than the loan principal, a notional interest cost is created in the borrower’s accounts; however, whereas the notional interest cost would be tax deductible, the credit recognised on the discount element at inception would not be taxable. This could create tax asymmetry depending on the identity of the lender. The changes to the loan relationship rules will deny tax relief for the relevant part of the discount to the extent that the lender is an individual or resident or effectively managed in a tax haven or a jurisdiction that does not have a double tax treaty with the UK containing a non-discrimination provision.

- Reversal of transfer pricing adjustments on non-arm’s length loans: tax deductions under loan relationships and derivative contracts may be denied as a result of transfer pricing adjustments. As a result of changes to UK accounting standards, there are an increased number of situations where the debit in the company’s accounts (which was restricted for transfer pricing purposes) may be reversed; however, current tax rules do not prevent the reversal being taxed. The rules will be changed to protect the taxpayer from the charge to tax on the reversal of the debits.

- Matching exchange gains and losses on non-arm’s length hedging arrangements: forex gains or losses on a loan relationship or derivative contract that is matched with another loan relationship or derivative contract intended to eliminate or substantially reduce a currency risk, may be subject to an adjustment for transfer pricing purposes if the loan relationship or derivative contract is on non-market terms. Under current tax rules the transfer pricing adjusted forex gain or loss is ignored for tax purposes. This can create tax asymmetry where none exists commercially or for accounting purposes. The rules will be changed to limit the disregard to any unmatched amounts.
WITHHOLDING TAX ON INTEREST

The Government has announced that measures will be included in the Finance Bill 2017 to exempt from the obligation to withhold income tax on interest payments made by open-ended investment companies, authorised unit trusts, investment trust companies and under peer to peer loans. In the case of peer to peer loans, this follows HMRC’s announcement on 8 January 2016 as an interim measure that UK withholding tax is not required to be deducted from payments of interest made to or by a UK peer to peer platform that is authorised by the FCA.

BANKING COMPANIES: EXCLUDED ENTITIES

The Government is proposing to introduce legislation in the Finance Bill 2016 to amend the so-called excluded entities test which forms part of the definition of a bank used in tax legislation. Where an entity meets this test then it does not fall within specific banking legislation including: the bank loss restriction; the banking surcharge; the Code of Practice on taxation of banks; and the bank compensation restriction.

The proposed amendment will enable banks currently meeting the test to carry out a second activity without being caught by the above legislation. The entity undertaking one of the specified regulated activities within the excluded entities test must demonstrate that the second activity when considered by itself (ie treated as hypothetically occurring without the excluded regulated activity) would not require the firm to be both an IFPRU 730k investment firm and a full scope IFPRU investment firm.

BUSINESS RATES

Following the conclusion of its business rates review, the Government has announced cuts to business rates as part of its wider reform in this area.

From 1 April 2017, the rateable value threshold for full relief will increase from £6,000 to £12,000. It is hoped that this will take 600,000 small businesses out of the regime. The full relief, previously introduced as a temporary measure, will be made permanent. Where a business has a property with a rateable value between £12,000 and £15,000 the relief will be tapered.

In addition, the threshold for the standard business rates multiplier will be increased from £18,000 to £51,000, taking an estimated 250,000 properties out of the higher rate.

From April 2020, the indexation of business rates will be calculated using CPI instead of RPI to be consistent with the main measure of inflation. This should represent a cut in the business rates payable from this date.

The Government will also modernise the way that business rates are administered, introducing more frequent revaluations (at least every three years), and updating the method of billing and collection.
INCOME TAX: PERSONAL ALLOWANCE AND BASIC RATE LIMIT FOR 2017 TO 2018

As part of the Government’s commitment to increase the level at which an individual starts to pay tax to £12,500 by 2020, the Chancellor announced that the personal allowance for 2017/18 will be £11,500 (2016/17 - £11,000).

The Government has committed to raising the level at which an individual pays tax at 40% to £50,000 by 2020. Working towards this aim, the basic rate band will be increased to £33,500 for 2017/18 (2016/17 - £32,000). This will result in an individual being able to earn up to £45,000 in 2017/18 before having to pay tax at 40%.

The personal allowance and basic rate band for 2017/18 had previously been set in the Summer Finance Bill 2015 at £11,200 and £32,400 respectively. Therefore, the above rises represent a larger increase than originally planned. The level at which an individual starts to pay tax at the additional rate of 45% remains unchanged at £150,000.

CHANGES TO CAPITAL GAINS TAX RATES

Capital gains tax (CGT) is payable on gains realised on the disposal of chargeable assets. Most individuals will have a CGT annual exemption (£11,100 for 2015/16) and only gains above this amount are subject to CGT.

The current rates of CGT are 18% for a basic rate taxpayer and 28% for a higher or additional rate payer; the lower rate applying only to the extent that an individual’s income has not fully utilised their basic rate band (currently £31,785). Trustees will usually pay tax on all their gains, above the trustee’s annual exemption, at 28%.

The Chancellor has announced that from 6 April 2016 the 18% and 28% rates of CGT will be reduced to 10% and 20% respectively.

The effective rate applicable to gains qualifying for entrepreneurs relief (ER) will remain unchanged at 10%. Gains realised on the sale of UK residential properties under the Annual Tax on Enveloped Dwellings and non-resident capital gains tax, as it applies to companies, will continue to be taxed at 28% and 20% respectively.

This will be a welcome reduction in the rate of capital gains tax for those individuals considering the sale of assets (other than residential property) in the near future; it may also give rise to a number of transactions being delayed until after 5 April. Given the recent changes to the taxation of residential property, it is no surprise that the Chancellor chose not to extend the reduced rate to disposals of buy-to-let properties.

The new reduced rates of CGT will also not apply to the receipt of carried interest.

The Government states that its policy objective here is to provide an incentive to invest in companies ahead of property.
EXECUTIVE SUMMARY

CAPITAL GAINS TAX: ENTREPRENEURS’ RELIEF – EXTENSION TO LONG-TERM INVESTORS

ER will be extended to external investors in unlisted trading companies. Previously, individuals had to be employees or officers of the company in order to benefit from ER so this represents a significant and welcome change.

The changes will affect individuals investing in unlisted trading companies, other than employees or directors of these companies, for whom investments will be more attractive due to the availability of ER. It will also affect unlisted trading companies that wish to raise external capital to fund growth of the business.

Legislation will be introduced to extend ER to individuals acquiring newly issued ordinary shares in unlisted trading companies on or after 17 March 2016. The individual will need to hold the shares for a continuous period of three years in order to claim ER and other qualifying requirements will apply; full details are expected when an updated draft of Finance Bill 2016 is published. Each investor will have a lifetime limit of £10m of qualifying gains.

CAPITAL GAINS TAX: ENTREPRENEURS’ RELIEF – CHANGES TO EXTEND AVAILABILITY OF ENTREPRENEURS’ RELIEF ON GOODWILL ON INCORPORATION

Finance Act 2015 introduced rule changes to counter the perceived abuse of ER through disposals of unincorporated businesses to companies owned by the proprietor(s).

Unfortunately, those rule changes also resulted in ER being unavailable on genuine commercial disposals where the proprietor, or members of their family, held any interest in the acquiring company after the sale, no matter how small. Changes are being made to rectify this.

Individuals who are sole traders or partners will be affected if they are selling their business to a third party company and will acquire a minor interest in the acquiring company.

Changes are being made to reinstate ER where the individual will hold less than a 5% interest in the acquiring company.

Relief will also be due where the individual holds more than a 5% interest in an ‘intermediate company’ as part of an arrangement for the business to be sold to a third party company, in which the individual will hold less than a 5% interest. This is helpful for sole traders or partnership businesses that wish to incorporate their business prior to the third party sale.

The changes will apply retrospectively to disposals made on or after 3 December 2014.

How this may affect you

If you have sold your business and previously been denied relief as a result of the earlier changes, you should now revisit your tax calculations and ascertain whether these new rules mean you can reduce your tax liability.

CAPITAL GAINS TAX: ENTREPRENEURS’ RELIEF – CHANGES TO THE TREATMENT OF JOINT VENTURES AND PARTNERSHIPS

Finance Act 2015 introduced rule changes to counter the perceived abuse of ER through joint venture arrangements, commonly known as ‘Manco’ structures, whereby individuals holding less than 5% of the economic value of a trading company were able to claim ER. Unfortunately, those rule changes also resulted in relief being denied to investors participating in genuine commercial structures.

The Government accepts that the rules went further than intended and are contrary to its policy of supporting entrepreneurship. Changes are being made to allow individuals in genuine commercial structures involving joint ventures and/or partnerships to benefit from ER.

The new changes will affect individuals disposing of shares in companies that hold investments in partnerships or joint ventures. The changes are being backdated to 18 March 2015, and anyone who has made a disposal on or after that date will benefit.

New definitions of ‘trading company’ and ‘trading group’ are being introduced. In considering whether the company in which the shares are being disposed of is a trading company or the holding company of a trading group, the company will be treated as carrying on a proportion of the activities of any joint venture or partnership in which it has a direct or indirect interest.
For example, where individual X holds 20% of the shares in Company A, and Company A holds a 40% interest in Company B, which is a trading JV, 40% of Company B’s activities will be taken into account in determining whether X’s disposal of shares in Company A qualifies for ER. If Company A carries on no other activities, X will be able to claim ER if the usual conditions are met.

However, the trading activities of a joint venture or partnership can only be attributed to the company if the individual concerned holds at least a 5% interest in that JV or partnership. In X’s case, he holds 8% (20% x 40%) of Company B, so this is possible. However, individual Y, who holds only 10% of the shares in Company A, will not be eligible for ER as he holds only 4% of Company B, meaning its trading activities cannot be attributed to Company A.

How this may affect you

Although the changes are welcome, the example above highlights the complexity of the new rules. Individuals seeking to claim ER will not only need to consider the size of their shareholding in the company held directly, but also the size of their interests in any underlying joint ventures or partnerships. A company or group may be ‘trading’ for one person but not for another.

If you have disposed of shares in your company since 18 March 2015, are planning to do so in the future or simply wish to ensure that you will qualify for ER if and when you decide to exit the business, you will need to understand the impact of these new rules.

CAPITAL GAINS TAX: CHANGES TO EXTEND AVAILABILITY OF ENTREPRENEURS’ RELIEF ON ASSOCIATED DISPOSALS

Finance Act 2015 introduced rule changes to prevent the perceived abuse of the ER ‘associated disposal’ rules whereby individuals were able to benefit from ER on the sale of personal assets by using the assets in the business for one year prior to the sale.

Unfortunately, the changes also resulted in relief not being due when a business was sold to the claimant’s family members under normal succession arrangements.

The Government has accepted that normal family succession of a proprietor’s business should not be discouraged. Consequently, changes are being made to reinstate ER for associated disposals in such cases.

The changes will affect individuals disposing of privately owned assets used in their business as part of their retirement or reduction in participation from the business for one year prior to the sale.

The definitions of share purchase arrangements and partnership purchase arrangements will be amended to exclude such arrangements.

Furthermore, the requirement that the material disposal of business assets is of 5% or more of the claimant’s share in a partnership or holding in a company does not apply where the claimant disposes of the whole of his interest and has previously held a larger stake.

Our understanding is that this will allow ER to be claimed on an associated disposal where the individual no longer holds a 5% interest, but previously did, and is now disposing of their entire remaining interest. However, this interpretation will need to be confirmed when Finance Bill 2016 is issued.

NON-DOMICILE TAXATION

As announced in Summer Budget 2015, from 6 April 2017 non-UK domiciled individuals (non-doms) will be deemed UK domiciled for all tax purposes after they have been UK resident for 15 of the past 20 tax years, bringing such individuals within the scope of world-wide taxation. Additionally, individuals who were born in the UK and who have a UK domicile of origin will revert to their UK domiciled status for tax purposes while resident in the UK.

The full breadth of the changes will be introduced in Finance Bill 2017, although the Treasury is expected to publish its response to the September 2015 consultation document in spring 2016, with draft legislation to be issued later this year. The Chancellor confirmed, however, that non-doms who establish a non-UK resident trust before becoming deemed-domiciled in the UK under the new rules will not be taxed on foreign income and gains (including UK gains) retained in the trust. This follows the proposal for such trusts to have so-called ‘grandfathered’ protected status, as promised by the Conservatives in the build-up to the 2015 General Election.
In a surprise announcement, it was confirmed that non-doms who become deemed-domiciled in April 2017 can treat the cost of their non-UK based assets as being the market value of that asset on 6 April 2017. Furthermore, a transitional provision with regard to offshore mixed funds will be announced to provide certainty on how amounts remitted to the UK will be taxed.

The Government will also legislate to charge inheritance tax on all UK residential property indirectly held through an offshore structure from 6 April 2017, although no further announcements have been made at this stage.

How this may affect you
Non-doms should welcome these announcements, particularly because there will be limited opportunity to plan ahead of the introduction of the new rules being introduced from 6 April 2017 following the issue of Finance Bill 2017. However, it is noted that the automatic ‘uplift’ for CGT purposes for non-UK assets is only proposed for individuals who will be treated as deemed-domiciled from April 2017, and non-doms who have been resident in the UK for less time will need to retain original acquisition details and review their position carefully ahead of them becoming deemed domiciled.

THE NEW LIFETIME ISA AND AN INCREASE IN THE ISA ALLOWANCE
A new lifetime individual savings account (ISA) has been introduced with a view to encouraging people under the age of 40 to save. Such accounts are sheltered from tax and will be available from April 2017.

A lifetime ISA can be opened by anyone between the ages of 18 and 40, with any savings paid into the ISA by the age of 50 receiving a 25% bonus from the Government. The maximum that can be paid into an account each year is £4,000 (meaning a £1,000 bonus would be received).

Individuals can use the money in a lifetime ISA to buy their first home, up to the value of £450,000, or to save until reaching the age of 60. If the money is withdrawn and not used for one of these purposes, any bonuses received (including any growth and interest thereon) will have to be repaid to the Government, along with a 5% charge.

An individual can only have one account; however, two first-time buyers can both use their lifetime ISA when buying together. Individuals who have already taken out a help to buy ISA can continue saving into this account but only one ISA (either a lifetime ISA or a help to buy ISA) can be used to purchase their first property. An existing help to buy ISA can be transferred into a lifetime ISA.

The combined annual amount that an individual may invest into all their ISAs (including the new lifetime ISA) will be increased from £15,240 to £20,000 from 6 April 2017.

CLARIFICATION TO FINANCE COSTS RESTRICTION FOR LANDLORDS
As announced at Summer Budget 2015, from 6 April 2017, the Government will implement the first stage of its plan to restrict the deductions available for landlords on their finance costs (including mortgage interest) in respect of their residential rental businesses. The restriction works by disallowing all finance costs as a deduction against rental income and instead giving a tax reducer which will be tapered down to 20% by 2020/21.

In Budget 2016 it was clarified that this tax reducer will be available to individual beneficiaries of deceased persons’ estates.

It was also announced that legislation will be introduced in Finance Bill 2016 to correct certain computational anomalies of the new restriction.
MICRO-ENTREPRENEURS

Recognising the increase in the popularity of the digital economy, the Chancellor announced two new tax-free allowances to apply to individuals with trading and/or property income.

From April 2017 individuals with £1,000 or less of trading or property income will have this income exempted from tax and there will be no need to report this income to HMRC.

Those with incomes above £1,000 from these sources may still be able to benefit from the allowance by deducting the allowance from their income as an alternative to calculating their exact expenditure.

Exact details are awaited. However, it is likely to benefit those individuals generating small amounts of income trading via auction and trading sites such as eBay or listing their property for short terms lets via internet platforms such as Airbnb.

ESTATE DUTY AND INHERITANCE TAX: OBJECTS GRANTED EXEMPTION FROM ESTATE DUTY

Deferral of Estate Duty charges could be claimed on certain items considered of national importance and where certain conditions (such as having the items open for public viewing) were met. If such items are sold, or the conditions breached, tax becomes payable. Where such a chargeable event arises after 16 March 2016, HMRC will have the power to choose whether the charge arises under Estate Duty or IHT.

Where such items are lost and the loss was preventable, there will be an Estate Duty charge, effective from the date of Royal Assent to Finance Act 2016.

Certain public galleries or museums which were formerly under local authority control benefited from the provisions regarding gifts for national purposes. This ceased to apply when they became independent charitable institutions, but the position is to be restored by bringing them back within the scope of IHT from the date of Royal Assent.

TRANSACTIONS IN SECURITIES ANTI-AVOIDANCE

It was announced in Autumn Statement 2015 that the transactions in securities legislation would be amended and a new targeted anti-avoidance rule would be introduced with effect from 6 April 2016. This announcement was to counter conversion of income to capital by the liquidation of companies where a tax advantage is gained due to ‘moneyboxing’ or ‘phoenixism’.

Unsurprisingly, there has been a rush to complete members’ voluntary liquidations by 5 April 2016. It has now been announced that the Government will respond to the consultation later in March, and presumably legislation will be included in Finance Bill 2016, but further details are awaited.
INSURANCE PREMIUM TAX RATE TO RISE AGAIN

From 1 October 2016, the standard rate of insurance premium tax (IPT) will increase by 0.5% from 9.5% to 10% - an increase of more than 65% in 12 months.

This means that for the second time in a year, underwriters and brokers will need to adjust their sales platforms, systems and documentation – not only to ensure that they can process the new rate, but also so that they process the ‘blended’ rate which can result from mid-term adjustments.

In terms of timing, where the cash accounting scheme is in use, all premiums received on or after 1 October 2016 will be subject to IPT at 10%.

Where the special accounting scheme is in use, premiums received may not be subject to the 10% rate of IPT until 1 February 2017, where the premium relates to risks covered by the terms of a contract entered into before 1 October 2016.

Brokers and underwriters (where there is no broker), will now need to make a commercial decision on the extent to which, if at all, they will be able pass on this increased IPT cost to the insured.

Although the 0.5% IPT rate increase may appear modest, it is expected to generate at least an additional £200m per year from 2017/18 onwards, which ostensibly is to be used to help fund flood defences, etc. Given that 10% is still a relatively low rate of IPT compared to many other territories, the concern is that the rate will continue to rise, and fairly quickly.

SUGAR LEVY

A new sugar levy will be introduced with effect from April 2018 to try and address the problem of childhood obesity.

The levy will apply to producers and importers of soft drinks which have had sugar added. Producers of fruit juices and milk will be excluded from the levy. There will be two rates of the levy: a main rate for producers of drinks with more than 5g of sugar per 100 ml, and a higher rate for drinks with more than 8g per 100 ml.

The levy will apply to the producer of the drinks and not to the drinks themselves so as not to breach EU legislation which prohibits member states from implementing additional taxes that are similar to VAT.

The levy is designed to encourage producers of soft drinks to reduce the sugar content of their drinks with the aim of reducing obesity, and it is accepted that the take from the levy will fall in future years.
The money raised from the levy will go towards supporting sport in primary schools, running breakfast clubs and allowing secondary schools to open for longer periods of the day. The planned rates for the levy have not been announced and they will be part of a consultation that will take place this summer.

**OVERSEAS SUPPLIERS AND ONLINE MARKETPLACE**

HMRC is being given greater powers to deal with non-UK entities selling goods in the UK without declaring VAT on these sales. Two specific measures have been announced, and there will also be a consultation on a registration scheme for fulfilment houses.

Going forward, HMRC will have enhanced powers to require the appointment of a tax representative who is jointly and severally liable with the overseas supplier for the payment of the VAT due; this tax representative will also in the future have to be based in the UK. HMRC will also make greater use of the requirement to provide financial security as a condition of being VAT registered.

The second measure relates to sales of goods made via a digital platform. Legislation will be introduced in Finance Act 2016 to allow HMRC to make the online platform that advertises the goods, jointly and severally liable with the offshore supplier for the VAT due on the goods.

A consultation has been announced on the standards to which fulfilment houses supplying goods in the UK on behalf of overseas suppliers will need to adhere. There will also be provisions that apply to businesses which import goods on behalf of overseas suppliers or transport goods to fulfilment houses. It is planned that the fulfilment houses will need to register with HMRC and will need to retain records of the checks that they have made to ensure that the overseas suppliers are complying with UK tax obligations.

These planned measures are to deal with the specific issue of overseas suppliers of goods not accounting for VAT on UK sales. The measures will help ensure that UK businesses are able to compete fairly with offshore suppliers who until now, may not have been complying with their VAT obligations. There will be increased compliance costs for UK platforms and fulfilment houses as a result of these measures, but it is hoped that the increased compliance costs will not be great.

**UPDATED VAT REGISTRATION AND DEREGRESSION THRESHOLDS**

From 1 April 2016, the VAT registration threshold will be increased from £82,000 to £83,000 and the deregistration threshold from £80,000 to £81,000.

**ACADEMIES**

All schools in England will be required to convert to academies by 2020, or at least have plans in place for such conversion.

Local authority schools currently recover VAT on their non-business supplies of education via the local authority’s VAT return. Once the school converts to an academy this is no longer possible, and so there is a specific VAT refund scheme that applies to academies. This scheme allows academies to recover VAT on their non-business supplies of education in a similar way to how the VAT was recovered while they were part of the local authority.

Although the refund scheme for academies aims to put an academy in the same position as when it was a local authority school, there will be compliance costs involved, as each academy will now need to make a separate claim to HMRC for the refund of the VAT incurred.

**NEW PENALTY FOR PARTICIPATING IN VAT FRAUD**

The Government will consult in spring 2016 on proposals for a new penalty for participating in VAT fraud, with the intention of legislating in Finance Bill 2017. No further details have been yet been published.

HMRC already has extensive powers to issue heavy penalties to businesses that make ‘deliberate and concealed’ errors in their VAT declarations, alongside personal dishonesty penalties for company directors. The new penalty may look beyond the business which makes the false declaration and be targeted at other parties who might be involved in the fraud.
FURTHER CONSULTATION ON MODERNISING THE VAT DISCLOSURE REGIME

In Summer 2016, the Government will consult again on reform of the VAT disclosure regime, which it wants to align more closely with the DOTAS regime applicable to direct taxes. This is expected to follow up the VAT findings of the cross tax consultation ‘Strengthening the Tax Avoidance Disclosure Regimes’ undertaken by HMRC in 2014. The VAT Disclosure regime has remained largely unchanged since its introduction in 2004, and HMRC has since made little effort to update the individual VAT schemes listed. Today’s announcement implies that VAT will retain its own disclosure regime rather than being wholly subsumed into DOTAS. If so, this is to be welcomed, as the transactional nature of VAT creates different disclosure issues, and would not be suited to a ‘one size fits all’ approach alongside direct taxes.

ENVIRONMENTAL TAXES

It has been confirmed that all air passenger duty (APD) rates will increase in line with inflation on 1 April 2016 and again on 1 April 2017. Meanwhile, the Scottish Government has launched a consultation which proposes to reduce and eventually abolish APD in Scotland, should the tax be devolved to the Scottish Parliament. The consultation reveals plans to replace it with a new tax on the carriage of passengers from airports in Scotland, which is likely to be an adapted version of APD.

The aggregates levy rate will remain at £2 per tonne – the Government says this has been frozen to support the construction sector.

The standard and lower rates of landfill tax will increase in line with the retail price index in 2017 and 2018, and a consultation will be launched later this year to seek stakeholders’ views on clarifying the definition of a taxable landfill disposal.

Rates of climate change levy will be increased from 1 April 2019 to cover the cost of abolishing the carbon reduction commitment energy scheme.

GAMBLING TAXES

The gross gaming yield bands for gaming duty will be increased in line with inflation on 1 April 2016.
EMPLOYMENT TAXES

EMPLOYEE REWARD

For employees and management teams who receive share-based incentives, the Budget contained an extremely mixed bag of measures. The headline-grabbing reduction in the rate of CGT to 20% (10% for basic rate taxpayers) will benefit those who acquire shares under employee ownership schemes.

Employee shareholder status

However, the Chancellor also introduced a major curb on his own tax relief. Employee Shareholder Status (ESS) was introduced in 2013 and provides an exemption from CGT on the disposal of shares where there had been a surrender of certain statutory employment rights. The policy was intended to reduce the regulatory burden on business and promote growth. The Government states that ESS provides ‘vital flexibility’ for ‘early stage’ firms, but now caps the gains that qualify for relief at £100,000. This is a lifetime limit, so will prevent employees from benefiting if they change employment.

The change will affect gains on shares acquired under ESS agreements entered into from 17 March 2016 onwards.

How this may affect you

While this is expected to raise modest revenue for the Exchequer, it also claims to cap ‘excessive’ relief that has been available under this regime. This seems to be designed to avoid situations where the relief is enjoyed predominantly by senior executives, but this may undermine the stated aim of supporting entrepreneurial activity. If this relief is aimed at ‘early stage’ firms, the values of these businesses are typically low but highly volatile. If such a company is successful, the £100,000 cap may apply far more widely than simply to the senior executives, and it will have a negative impact on the take-up of this more flexible regime.

It is also disappointing that owner-managers seem to have been deliberately excluded from the alternative regime for entrepreneurs’ relief applying to long term investments. The tax regime for shareholders who work in a business is now more restrictive in many respects than that relating to outside investors who are typically able to diversify their portfolio of investments.

Employee share schemes simplification

Minor technical changes published on 9 December 2015 will be included in Finance Bill 2016. There will be an additional change to the identification rules for rights issues in relation to shares acquired under EMI options.

Disguised remuneration

There are further changes to the anti-avoidance rules applying to employee benefit trusts. Many are minor technical changes aimed at preventing the continued use of such arrangements where these ‘sidestep’ the rules. The Government will also broaden HMRC’s powers to impose a PAYE liability on an individual employee if the tax cannot be collected from the employer (for example, because the employer has been established offshore).
More controversial changes in the Finance Bill will impose a new charge that will tax certain historical loans as earnings if they have either not been taxed or not been repaid by 5 April 2019. This seems to be part of HMRC's long-running campaign to resolve what it views as outstanding cases where taxpayers have not chosen to settle with HMRC. How this will be applied in the context of historical cases where decisions in the courts have not supported HMRC's view is unclear. The Supreme Court is yet to hear the taxpayer's appeal in the 'Murray Holdings' (Rangers Football Club) case. However, it is clear that HMRC will continue to closely monitor the use of such arrangements, and arrangements using unfunded employer financed retirement benefit schemes were specifically mentioned as being under review.

### Carried interest for asset managers

An exception from the reduction in the rate of capital gains tax has been made in the case of returns made on carried interest. This forms a major part of the remuneration of asset managers (including those in private equity). Where carried interest is subject to capital gains tax it will be taxed with an additional 8% 'surcharge', resulting in a rate of 28% (ie the pre-existing rate of tax).

The Government confirmed that the wider proposals for the taxation of performance-linked rewards for asset managers will be included in Finance Bill 2016. The intention is that this will bring some returns on carried interest within the scope of income tax (as opposed to capital gains tax) where the 'investment horizons' are less than three years.

### OFF-PAYROLL WORKING IN THE PUBLIC SECTOR – REFORM OF INTERMEDIARIES LEGISLATION

A change in the way public sector bodies engage workers that operate via a personal service company (PSC) will take effect from 6 April 2017. This measure may also impact workers who operate PSCs, and agencies or intermediaries that supply workers to public sector bodies.

At present an engager may pay a PSC registered in the UK gross, and it is the responsibility of the PSC to consider whether the worker it has supplied is operating on an employed or self-employed basis. If the worker is operating on an employed basis, broadly, the income the PSC has received is liable to PAYE and NIC which it, and not the body engaging the PSC, must pay.

Under the proposed rules, public sector bodies will become responsible for making an assessment of the worker’s employment status and deducting PAYE and NIC when it considers the worker is operating on an employed basis. This extends their existing requirement to carry out this type of assessment when they engage directly with a worker who does not operate via a PSC.

If, however, the public sector body engages with an agency or other form of intermediary the responsibility for carrying out the employment status assessment and deducting PAYE and NIC will pass to the agency or intermediary. The public sector body will still be required to ensure the agency or intermediary is abiding by the rules. HMRC has stated it will introduce online tools to help with the employment status assessment.

How this may affect you

This will place a wider compliance burden on public sector bodies, and also potentially on those agencies and intermediaries that supply workers to them. This may also have a fiscal impact as, at present, if an employer’s NIC liability arises, it will be an issue for the PSC. However, from April 2017, it is unclear whether this liability effectively remains with the PSC if the engager deducts NIC from its payment to the PSC or, conversely, if this will be an additional cost it will have to bear.

The measure will also bring into a sharper focus how employment status is interpreted, and while some online tools will be available to assist, employment status is a very complex tax and legal matter. It remains to be seen how engagers in the public sector will deal with this issue, and what policy changes it may drive regarding the engagement of off-payroll workers. HMRC has indicated that there will be consultation on the implementation of this measure before summer 2017.

This proposal reflects much of the thinking in HMRC’s IR35 discussion document published in 2015. It will be interesting if the Government is perhaps trialling the idea in the public sector before extending the measures to the private sector.
EXECUTIVE SUMMARY

A NEW TAX ROADMAP

TERMINATION PAYMENTS
From 6 April 2018, while we will still do not have full alignment between the tax and NIC treatment of qualifying termination payments over £30,000, the Government has announced its intention to partially address this issue by charging the employer (not employee) Class 1 NIC on amounts paid over £30,000.
Termination payments are a complex area and this is a step closer to tax and NIC simplification, albeit one which will significantly increase costs for employers. The positive news is that this proposition is simpler and fairer for taxpayers and employers alike when compared to the proposals in HMRC’s original consultation on simplifying tax and NIC on termination payments.
It will be interesting to follow this issue going forward to see if any other amendments are made before 2018. It may also impact employers’ decisions regarding the timing of workforce restructuring as we approach the 2018/19 tax year.

‘FAIR BARGAIN’ AND BENEFITS IN KIND
Legislation will be introduced in Finance Bill 2016 to clarify in law that the concept of ‘fair bargain’ applies only to general taxable benefits where the taxable amount is based on the cost to the employer of providing the benefit.
The aim is that the tax law more clearly reflects the policy intention that the principle of ‘fair bargain’ does not apply to benefits which have specific charging rules and that any payments made by the employee are deducted from that charge. This includes living accommodation, loans, cars, vans and related benefits.
However, it is intended that the legislation will specifically exclude the employees of businesses which trade in the provision of hire cars to the public, provided that the employee hires the vehicle on the same terms and conditions as are available to any member of the public.
This measure is a technical change to ensure that the tax legislation is clearly aligned with policy and will have the effect of preventing taxpayer challenges to HMRC.

PAYROLLING OF BENEFITS IN KIND
The introduction, from 6 April 2016, of voluntary payrolling for certain benefits in kind (PBIK) originally excluded non-cash vouchers and credit tokens, living accommodation and beneficial loans. It has now been announced that non-cash vouchers and credit tokens (which are already subject to class 1 NIC via the payroll) can be voluntarily payrolled by registered employers from 6 April 2017 if they wish. This is a positive step to ensure that the income tax and Class 1 NIC collection methodology on these benefits is aligned.
Many employers considering payrolling benefits may not have completed registration with HMRC in time to formally operate PBIK for 2016/17 (the deadline is 6 April 2016) but this easement may make the use of payrolling a more attractive proposition from 6 April 2017.
OTHER EMPLOYMENT TAXES MEASURES

Benefits in kind
As previously announced, the Government will introduce a statutory exemption from income tax for qualifying trivial benefits in kind costing £50 or less. The exemption will remove the charge to income tax or Class 1A NIC from 6 April 2016. A corresponding disregard for Class 1 NIC will take effect later in the year.

Company car tax and van benefits
Increases have been announced to the company car tax rates for the three years to 2019/20: the appropriate percentage rates will increase by 3% up to a maximum of 37%. However, in a bid to encourage cleaner technology and less polluting vehicles, the Chancellor has announced that the benefit in kind for zero emission vans will not be increased for 2016/17 or 2017/18 as previously announced, but will instead be held at 20% of the standard van benefit charge (although the benefit will increase in later years). Vans that have private use restricted to insignificant use and ordinary commuting will remain exempt.

Income from sporting testimonials
The Government has confirmed previously published measures, to charge all income arising in relation to sporting testimonials and benefit matches for an employed sportsperson, to PAYE and NIC. This is subject to a one-off exemption from 6 April 2017 of £100,000, which (where the testimonial was awarded on/after 25 November 2015) will apply to all income arising in a 12 month period.

Travel and subsistence expense rules
Following the consultation aimed at modernising the tax rules for travel and subsistence, the Government has concluded that, although complex in parts, the current rules are generally well understood and that there will not be any further changes to them at the current time. However, previously announced measures to restrict tax relief for home to work travel and subsistence for workers engaged through an employment intermediary will be included in Finance Bill 2016. This will bring the rules in line with those that apply to employees.

Further Office of Tax Simplification reviews on NIC
The Government has asked the Office of Tax Simplification (OTS) to review the impacts of moving employee NIC to an annual, cumulative and aggregated basis and moving employer NIC to a payroll basis.

No change on salary sacrifice
As with preceding Budgets, the Government has stated that it will continue to monitor developments in the use of salary sacrifice by employers. The Budget included reference to the increase in clearance applications for salary sacrifice arrangements to HMRC, and the Government is considering limiting the range of benefits that attract income tax and NIC advantages when provided as part of a salary sacrifice arrangement.

The Government has, however, stated that pension, childcare and health-related benefits (in which cycle to work is included) would not be impacted. This will be comforting news to employers who already offer these salary sacrifice arrangements.

No doubt we will see further reference to this topic in due course, although it is also possible that any future reviews may be overtaken by wider measures being considered by the OTS such as the closer alignment of PAYE and NICs.
Executive Summary

A New Tax Roadmap

OFFSHORE EVASION

HMRC is taking an increasingly tough stance on offshore non-compliance and a number of measures will be included in Finance Bill 2016. A new requirement to correct offshore non-compliance will also be introduced to encourage voluntary disclosure ahead of the global exchange of financial information under the Common Reporting Standard.

Finance Bill 2016 will include:
- A new criminal offence removing the need for HMRC to prove intent in cases of offshore evasion.
- Increased civil penalties and changes to the public naming provisions for deliberate offshore evasion.
- A new penalty based on the value of the asset on which tax was evaded. Broadly the penalty will apply where a taxpayer is subject to a deliberate offshore penalty and the loss of tax associated with the offshore asset exceeds £25,000 in a tax year. The penalty will be up to 10% of the value of the offshore asset, capped at ten times the undisclosed income or gains. There will be protection from multiple penalties on the same asset.
- Civil penalties for those who enable others to commit offshore tax evasion, including the ability to publically name those ‘enablers’.

Finance Bill 2017 will introduce a requirement to correct offshore non-compliance within a defined timescale. We understand this will be from April 2017 to September 2018 and include all tax years open to assessment up to April 2016. Non-compliance detected after this date will be subject to a ‘failure to correct’ penalty. This will effectively have a retrospective impact as the new penalty will replace existing penalties that would apply in affected years.

Anyone who knows or suspects that they have undisclosed liabilities in relation to offshore assets should act now to make a voluntary disclosure before these new rules take effect.
TAX AVOIDANCE

Finance Bill 2016 will include legislation enabling HMRC to impose sanctions on those who persistently enter into tax avoidance arrangements that HMRC subsequently defeats. In addition, HMRC is considering clarifying when penalties will be charged on failed arrangements and extending the disclosure of tax avoidance schemes regime for VAT.

These changes are intended to deter taxpayers from entering into new tax avoidance arrangements and encourage those who are in such arrangements to exit.

New legislation commencing on 6 April 2017 will:
• Empower HMRC to issue a notice when a tax avoidance arrangement is defeated which starts a five year warning period
• Force taxpayers to notify HMRC annually within the five year period whether they used further tax avoidance arrangements
• Enable HMRC to publish the names and other details of taxpayers who use three avoidance arrangements within the warning period
• Introduce additional penalties of 20% - 60% of the tax saved by using one or more avoidance arrangements (which are subsequently defeated), in the five year period
• Curtail taxpayers’ access to tax reliefs if they use at least three avoidance arrangements (which are subsequently defeated) in the warning period, that use reliefs in a way that Parliament did not intend.

For these purposes, schemes are defeated when the courts decide an arrangement fails or where the taxpayer’s position is concluded in another way to remove the anticipated tax saving, eg via a follower notice, assessment or contract settlement.

In addition, HMRC is considering whether to increase the expectation of what it expects taxpayers to do before it will agree that they took ‘reasonable care’ to submit correct returns (such that no penalties are due when an arrangement fails).

THE HIDDEN ECONOMY

The Government will consult on measures to tackle businesses that operate in the hidden economy. The consultation will cover:
• Making access to licences and business services conditional on the business registering for tax. The consultation will consider the licences and services that would become ‘conditional’ and how to minimize the burden on businesses.
• The introduction of tougher sanctions for those who repeatedly and deliberately participate in the hidden economy. This would include tougher penalties and increased monitoring for those who continue to engage in deliberate evasion.
• New powers to allow HMRC to gather data from money service businesses for tax compliance purposes.

Finance Bill 2016 will also extend HMRC’s powers to obtain information from online intermediaries, electronic payment providers and operators of digital wallets in order to enable it to identify potential businesses and individuals who appear not to be declaring and paying the tax they owe.

The measures are aimed at those who deliberately and repeatedly operate in the hidden economy. However, compliant businesses that need access to the same licences and services may see an increase in their administrative burden. Money service businesses and online intermediaries will also feel the impact of complying with requests for data from HMRC.
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