



# tax | budget newsletter 2009

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**The Chancellor's 2009 Budget comes amidst the biggest economic downturn since the 1930s. The measures announced in the pre-budget report last December have not prevented government borrowing and the national debt from reaching unprecedented levels. This briefing summarises the key points announced on 22 April and also highlights changes that have already been announced which will shortly take effect.**

## personal tax

The personal allowance for 2009/10 is increased to £6,475 with the next £37,400 taxable at the basic rate and at 40% thereafter. Dividends remain taxed at 10% for the basic rate and 32.5% for higher rate taxpayers.

## income tax increases and reduced personal allowances

Commencing in April 2010 there will be a new 50% tax rate for income over £150,000. As a consequence of the new higher tax rate, the trust rate will also increase from 40% to 50% and the tax rate for dividends on income over £150,000 will be 42.5% rather than 32.5%.

The personal allowance will be withdrawn for taxpayers with income over £100,000. Its value will be reduced by £1 for every £2 of income, so anyone earning over approximately £113,000 will lose their personal allowance completely.

## National Insurance

As previously announced, the class 4 National Insurance threshold has been aligned at the higher level with the personal tax rates with effect from April 2009. The upper earnings level, below which NIC is charged at 8%, increases from £40,040 to £43,875. However the lower limit only increases from £5,435 to £5,715. From April 2010 there will be an increase of 0.5% to all National Insurance rates. This will mean higher tax bills for all employees, employers and the self-employed.

## pension contributions

The Chancellor announced limits on tax relief for pension contributions for individuals with income of £150,000 per annum or over. The new rules will apply from 6 April 2011. In anticipation of this change special rules will be introduced immediately to prevent individuals bringing forward their contributions and obtaining relief before it is withdrawn.

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You will only be affected by the new limits on pension tax relief if:

- your total annual income exceeds £150,000 in the relevant tax year or in either of the previous two tax years (i.e. for this year, since 2007/08) and
- you increase your regular contributions on or after 22 April 2009 and
- pay contributions over £20,000 gross for the tax year.

Normal regular pension contributions and normal increases (e.g. if contributions automatically rise with earnings) will be known as "protected pension inputs". The amount qualifying for higher rate tax relief will be limited to your protected pension inputs or £20,000 whichever is higher.

### **reform of penalties for late tax returns and late tax payments**

The penalties regime for the late filing of tax returns and the late payment of tax will be reformed. There will be a flat-rate penalty of £100 for a late tax return regardless of whether the tax has been paid. In addition daily penalties will be charged if the tax returns are not submitted within 3 months of the due date. These rules apply to individuals, partnerships and companies. HMRC already imposes a 5% penalty on any tax unpaid one month after the due date. 5% is also due on anything still outstanding after 6 months. There will now be a further 5% if the tax is still unpaid a year after the due date.

The late filing penalties will also apply to corporation tax returns. Therefore this appears to bring to an end the "7 day grace period" for corporation tax filing.

The implementation date for these new penalties has yet to be announced, but it appears that it will not be introduced before April 2010.

### **time to pay arrangements extended**

The new time to pay process which allows taxpayers to spread their tax payments over an agreed period will be extended. Penalties will not apply to late payments where the taxpayer has reached agreement with HMRC.

### **EIS carry back relief extended**

Until now the ability to carry back investment in an EIS company was restricted to investments made before 6 October and only applied to half the investment up to a maximum of £50,000. These restrictions will be removed and investors will be allowed to carry back the total amount invested and claim tax relief in the previous year, subject to the normal annual subscription of £500,000. This applies to any investment made on or after 6 April 2009.

### **ISA rate increases**

The amount that the over 50s can invest in an ISA will increase to £10,200 in 2009/10, although this only takes effect from 6 October 2009. The maximum that can be held in cash will be extended to £5,100. All other investors will benefit from the increased rate from 2010/11 onwards. With the new restrictions on pension contributions for individuals with income of £150,000 or over, where retirement income is likely to be taxed at rates higher than 20%, it is worth considering ISA investments to build up a fund which can generate a tax free income in retirement.

### **furnished holiday lettings rules extended then repealed**

In a surprise move the Chancellor announced that the furnished holiday letting (FHL) rules will be repealed. The rules allow holiday properties which meet certain criteria to receive beneficial tax treatment, for example losses can be deducted against general income and gains qualify for CGT entrepreneurs' relief. From April 2010 FHLs will be treated the same as other rental properties. As a result they will no longer qualify for Inheritance Tax business property relief.

In the meantime until April 2010 furnished holiday lettings will now qualify if they are situated in the European Economic Area. Previously they had to be situated in the UK only. As a result of this change HMRC will require 2007 tax returns to be amended before 31 July 2009 to claim FHL status on qualifying properties situated in the EEA, even though the normal amendment period has closed. 2008 tax returns can still be amended in the normal way.

### **inheritance tax**

The nil rate band has increased to £325,000 from 6 April 2009.

Agricultural property relief and woodlands relief are being extended to cover properties across the European Economic Area (EEA) rather than just the UK, the Channel Islands and the Isle of Man.

## remittance basis changes

This applies to individuals who are residents but not domiciled or not ordinarily resident in the UK. The effect of the remittance basis means that tax is only paid in the UK on foreign income or gains brought into the UK. The new rules took effect from April 2008.

New changes introduced mean that an individual who has overseas employment income of less than £10,000 and offshore bank interest of £100 will not have to file a UK tax return providing those sources have also been taxed offshore.

Additionally the definition of relevant foreign income, for the purposes of determining property which can be brought into the UK free of tax, is extended to include assets purchased from foreign employment income and foreign gains.

## gift aid donations from non-domiciliaries

The new £30,000 remittance basis charge will be regarded as tax for the purposes of determining if an individual has paid sufficient tax to allow a charity to reclaim tax under the gift aid scheme.

## disclosure of offshore bank accounts – second amnesty

A new amnesty period will run from autumn 2009 until March 2010 to enable taxpayers with undisclosed offshore bank accounts another opportunity to notify HMRC voluntarily and pay the tax due. Interest and penalties will also be due on the unpaid tax and the rates will be announced once the scheme begins. Taxpayers will be “incentivised” by lower penalties than would be due if HMRC discovers undisclosed income after the scheme has concluded. HMRC will also be using its powers to require financial institutions to provide details of such accounts.

## foreign dividends

Dividends paid by overseas (i.e. non-UK resident) companies qualify for a non-repayable tax credit of 10% providing the shareholder owns less than 10% of the shares. This will be extended to cover all companies providing the country where the company is resident has a double taxation agreement with the UK.

## Child Trust funds

Disabled children born on or after 1 September 2002 who receive Disability Living Allowance will receive an additional £100 p.a. into their Child Trust Fund from the government in April 2010. Severely disabled children will receive £200 p.a.

## business tax

### corporation tax rates

As announced last year the main rate of corporation tax for companies earning annual profits in excess of £1.5m (as scaled down by the number of associated companies and accounting periods of less than 12 months) is to remain at 28% for the Financial Year commencing 1 April 2009. The rate of 28% will also remain in place for the Financial Year commencing 1 April 2010.

The small companies' rate will remain at 21% for the Financial Year commencing 1 April 2009. The small companies' rate applies to annual profits up to £300k (as scaled down by the number of associated companies and accounting periods of less than 12 months).

Companies earning profits within the marginal rate band (i.e. annual profits between £300k and £1.5m with no associates) will be subject to an effective rate of tax on those profits of 29.75%.

For the purposes of calculating the small companies rate of tax it is necessary to divide the “rate bands” by the number of associated companies (broadly all companies under common control).

### capital allowances

A temporary first year allowance of 40% is being introduced for expenditure incurred on general plant and machinery in the year commencing 1 April 2009 for corporation tax and 6 April 2009 for income tax.

Under measures introduced last year most businesses are able to claim an Annual Investment Allowance of 100% on qualifying expenditure up to £50,000 in any chargeable period with any expenditure in excess of £50,000 qualifying for writing down allowances at rates of 10% for long life assets and integral features and 20% for expenditure in the general plant and machinery pool. AIA will remain but now for one year the expenditure on plant and machinery which would have qualified for a WDA at 20% will now qualify for an FYA at 40%.

### **capital allowances for cars**

The tax deduction available on expenditure on cars (both purchased and leased) is now dependent on the car's CO2 emissions. In summary, cars purchased that have CO2 emissions exceeding 160g/km will attract a writing down allowance of 10%. All other cars will attract allowances of 20% per annum except those with CO2 emissions of 110g/km or less which qualify for FYA of 100%. The written down allowance will continue to be restricted to an annual amount of £3,000. Expenditure incurred before April 2009 will continue to be subject to the old "expensive" car rules for a transitional period of around five years.

For leased cars that have CO2 emissions exceeding 160g/km there is a flat disallowance of 15% of the lease payments. Expenditure under leases that commenced prior to April 2009 will continue to be subject to the "old" rules until the end of the lease.

### **three year carry back of trading losses**

Companies and unincorporated businesses which make trading losses will be able to carry back these losses for up to three years and get a repayment of tax. For companies the losses which can be carried back will be those arising in accounting periods ending in the period 24 November 2008 to 23 November 2010 and for unincorporated businesses the tax years 2008-09 and 2009-10.

Losses will be carried back against the later year first and the amount of losses which can be carried back against this year will be unlimited. After carry back to the preceding year, a maximum of £50,000 of unused losses will be available for carry back to the earlier two years. The £50,000 limit applies separately to the losses of each 12 month period or tax year. For companies this means a cap of £50,000 on the extended carry back of losses incurred in accounting periods ending in the 12 months to 23 November 2009 and a separate £50,000 cap on the extended carry back of losses incurred in accounting periods ending in the 12 months to 23 November 2010. For businesses subject to income tax a separate £50,000 cap will apply to the extended carry-back of losses made in each of the tax years 2008-09 and 2009-10.

### **foreign profits**

Foreign dividends and other distributions received on or after 1 July 2009 should generally be exempt from corporation tax. Under current tax law that will continue to apply until 1 July 2009 foreign dividends and other distributions are currently chargeable to corporation tax with a credit given for any foreign tax withheld and underlying foreign tax (for shareholdings of 10 per cent or more).

A debt cap will apply to UK members of a group of companies on finance expenses payable in accounting periods beginning on or after 1 January 2010 whereby the tax deduction available is capped at the consolidated gross finance expense of the whole group. The full details of this new legislation remain uncertain as the proposals have been under consultation. A number of changes are proposed before this becomes law including the calculation of the gross finance expense.

Retrospective legislation effective from the 1 April 2008 is to be introduced to ensure that last year's reduction in the corporation tax rate to 28 per cent does not unjustly affect the amount of double tax relief available to companies. The new rules will ensure the double tax relief available on foreign dividends is not restricted by reference to the current corporation tax rate but by reference to the actual corporation tax rate suffered on the dividends

### **loan relationships – connected companies**

There are to be two changes affecting loan relationships between connected companies (companies are connected broadly where one company controls the other or both are under common control).

1. Previously where a trade debt between connected companies was formally released the borrower company could be taxed on the profit but with no deduction for the loss in the lending company. This is to be changed where the debt is released on or after 22 April 2009 so that no tax charge arises on the release of the debt.
2. The rules which only allow a tax deduction for interest payable on a paid basis rather than an accruals basis are to be amended for accounting periods beginning on or after 1 April 2009. Provided the connected company to whom interest is being paid is not located in a tax haven then relief will be given on an accruals basis. A company will be able to elect for the paid basis to continue for the first accounting period which begins on or after 1 April 2009.

### **personal accountability of senior accounting officers**

It is proposed that senior accounting officers of large companies or groups will have to certify annually that the accounting systems in operation are adequate for the purposes of accurate tax reporting or specify the nature of any inadequacies and confirm that these inadequacies have been notified to the company auditors. The company will have to notify HMRC of the identity of the senior accounting officer. Penalties will be chargeable on the officer personally and on the company for a careless or deliberate failure to comply with the obligations or for giving a carelessly or deliberately incorrect certificate. It is proposed that these rules will be introduced for accounting periods beginning on or after the date that Finance Bill 2009 receives Royal Assent.

## reallocation of chargeable gains

Under existing rules companies in a group can make an election so that an asset is deemed to have been transferred from one group company to another group company before a disposal outside the group. These rules allow a group of companies to match capital gains and losses and so minimise tax. The rules have required there to be a third party sale which has meant that certain gains and losses have not been able to benefit. This position is to be rectified once Royal Assent has been granted.

## employment tax

### lease premiums and living accommodation provided by employer

The budget contains proposals to close a loophole for employees who occupy living accommodation provided by reason of their employment on short term leases where a lease premium is paid.

Employees who are provided with accommodation suffer a tax charge on the benefit of that accommodation. The tax charge is calculated on the higher of the annual value or the actual rent paid for the property (less any amount paid by the employee). The loophole exists because lease premiums are ignored for benefit calculation purposes. This has been exploited by having an artificially high lease premium, and artificially low rent, resulting in a lower benefit in kind charge for the employee.

The Finance Bill 2009 will introduce legislation to prevent the avoidance of tax on the benefit of living accommodation and will apply to leases of ten years or less, entered into or extended on or after 22 April 2009. The new rules will not apply to leases entered into in relation to a property used mainly for a business purpose by the employer and partly for the domestic use of an employee. The benefit in kind value in any tax year will be the amount of the lease premium spread over the duration of the lease plus the amount of any rent paid by the person at whose cost the accommodation is provided less any amount made good by the employee.

### changes to company car tax from 2011/12

Employees who have company cars pay tax on the benefit of the car that has been provided for their private use by their employer. Employers pay Class 1A NIC on the value of the benefit so will also be affected by these changes.

From 2011-12:

- the lower threshold CO2 emissions figure (130g/km for 2010-11) will be reduced by 5g/km to 125g/km
- the £80,000 price cap that currently applies when calculating the cash equivalent of the car benefit will be abolished.

The "appropriate percentage" applicable to electrically propelled cars first registered from 1998 onwards will be reduced from 15 per cent to 9 per cent. This is a simplification measure: the rate is currently 9 per cent but this is achieved through a reduction of 6 per cent given to such cars. Also, the provisions relating to electrically powered cars first registered before 1998 will be removed as there are no cars to which they can apply.

The reductions currently given for electric/petrol hybrid cars and cars propelled by bio-fuels, road fuel gas and bio-ethanol will be abolished. The discount given for Euro IV standard diesel cars registered before 1 January 2006 will also be abolished. This will change the focus of the legislation from the means by which the car achieves its CO2 emissions figure to the CO2 emissions figure itself.

### Construction Industry Scheme and PAYE penalties

New penalties will be introduced for late filing of returns under the Construction Industry Scheme. £100 will be payable if the due date is missed with an additional £200 penalty if the return is more than 3 months late.

Late payments under employers' PAYE schemes will also come under the new penalties regime. Defaults will be assessed over a rolling 12 months period – there will be no penalty for the first late payment, but the second and subsequent late payments will attract penalties ranging from 2% to 5% of the unpaid tax. The new rules are not expected to start until April 2010.

### HMRC powers to collect small debts

HMRC have been developing new ways of helping taxpayers pay their tax. The Finance Bill 2009 will introduce measures to allow HMRC to collect small debts owed to them by taxpayers via the PAYE system. This will not begin until 2012 and HMRC will ensure businesses are given sufficient notice before it is introduced.

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## VAT

### VAT registration limits and rate changes

The VAT registration and de-registration thresholds have increased, with the registration limit increasing from £67,000 to £68,000 with effect from 1 May 2009. The de-registration limit increases to £66,000.

The cut in VAT from 17.5% to 15% is being reversed as previously announced with effect from 1 January 2010.

Measures have been introduced to prevent organisations from avoiding the effect of the increase back to 17.5%. These measures only affect situations where the customer cannot recover all of the VAT they incur, and one of the following conditions is met:

- The supplier and customer are connected parties
- The supplier funds the purchase of the goods and services; or
- A VAT invoice is issued by the supplier when payment is not due for at least 6 months.

An additional measure deals with the situation where a prepayment in excess of £100,000 is made prior to the increase in the rate, except where the prepayment is made in accordance with normal commercial practice. This measure has effect from 31 March 2009, whilst the ones above have effect from 25 November 2008.

### land and property

Changes are being made to the rules regarding the option to tax. At present a business wanting to opt to tax land or property in respect of which it had made exempt supplies needed permission from HMRC unless it qualified for automatic permission. A new automatic permission condition is being introduced to replace one of the existing ones with effect from 1 May 2009. Two related informal extra statutory concessions (ESCs) will be withdrawn.

The ESCs will remain until 30 April 2010 at which point one will remain in part but on a statutory footing whilst the remainder will be withdrawn. The removal of the concessions will reduce the amount of VAT that can be reclaimed. More information on this is to be published shortly.

### cross border changes

A number of changes are being made for organisations that are involved in buying or selling both goods and services to countries outside of the UK. The details are complex and worth looking at carefully for any business trading overseas. Essentially, from 1 January 2010 the default rule is that B2B supplies will be regarded as being supplied where the customer belongs. So a supplier of goods or services with a customer overseas will not charge UK VAT in that case, whilst a UK purchaser would be required to account for UK VAT as if he had bought the goods or services from a UK supplier (the so called reverse charge). B2C supplies remain unaffected. There are a large number of exceptions to this "default rule" and advice should be sought before taking further action. A more detailed analysis is available on our website.

Aligned with these changes will be rules which determine when a service purchased from abroad is supplied and thus when the reverse charge arises.

For single supplies the tax point will be the earlier of the date of payment or the date the service is completed. For continuous supplies the tax point will be the earlier of the date of payment or the end of each billing or payment period. Where there is no billing period, the tax point will be 31 December, except where a payment is made earlier.

In addition to these changes is the introduction of a requirement to submit sales listings (ECSLs) where a business supplies goods and services to business customers in other EU countries with effect from 1 January 2010. These will have to be submitted for each calendar quarter where the customer has to account for VAT using a reverse charge.

This is new for businesses supplying services which have not had such an obligation before, and the requirement to submit on a calendar quarter basis which may not be co-terminous with their VAT return stagger could cause problems. ECSLs will have to show their customer's VAT registration number and the value of the supply and must be submitted within 14 days of the end of the quarter if submitted by paper and 21 days if submitted electronically.

Where goods are involved, monthly ECSLs will be required where the value exceeds £70,000 per quarter.

One helpful change arises in respect of VAT incurred in other EU countries. With effect from 1 January 2010 such businesses will submit electronic claims for this VAT to HMRC, instead of, at present, to the country where the VAT was incurred.

Claims can be made up to nine months from the end of the calendar year. Tax authorities will have four months to make the payment, though this can be extended if further information is required to eight months.

## miscellaneous

### HMRC powers

HMRC will now be able to require third party companies and businesses to supply contact details for people who are in debt to HMRC.

Harmonised provisions are being introduced concerning the payment of interest to and from HMRC. They refer to a single rate of "simple" interest being payable on overpayments to HMRC which seems likely to be an attempt to resist some of the claims for compound interest that are being lodged in certain VAT cases, at least for the future.

### tax avoidance schemes

A whole raft of measures was introduced to combat tax avoidance, including for example new rules to combat sale and leaseback agreements, the sale of income streams and the restriction of interest relief where arrangements guaranteed the borrower a profit based on the availability of the tax relief.

## about haysmacintyre

haysmacintyre, Chartered Accountants and tax advisers, comprises 24 partners and 160 staff based in Holborn, London. It provides high quality auditing and assurance, business and personal taxation, corporate finance, financial planning and other business support services.

Around 50% of the firm's business is within the corporate sector – small and medium sized enterprises many of which are within the property, media and entertainment, sports, motor trade and manufacturing sectors, 35% is for charitable and not for profit organisations and the remainder is for professional practices and private individuals. haysmacintyre currently acts for nine listed companies and assists many new companies achieve initial funds and listings on the capital markets.



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