

**Chantrey Vellacott DFK LLP**

**Budget Booklet**

**April 2009**

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## Budget 2009

### 1. Introduction

The Chancellor was in an unenviable position when confronted with this year's Budget decisions. Starting from a position where, at some 44%, the UK government's net debt as a proportion of Gross Domestic Product (GDP) was the lowest of all G7 economies, all the main leading indicators of the health of the UK economy have turned negative:

- ◆ UK government borrowing for the last financial year was confirmed at £90bn - 15% more than forecast in November's pre-Budget Report and more than twice the level for 2007
- ◆ UK annual inflation measured by the Retail Prices Index (RPI) went negative in March for the first time since 1960, falling to a negative 0.4%,
- ◆ Total unemployment rose above 2m so that the unemployment rate was 6.7% for the three months to February

And these statistics are measured without taking account of the likely cost of the support of the banking system provided over the last few months, which has been officially estimated at £1,220bn

So in framing his Budget, the Chancellor starts from the position that our reserves, carefully built up over the last fifteen years will be spent in the short-term, unless the trend is deflected.

The measures he has proposed project a deficit of £175bn for the current financial year leading to an overall ratio of debt to GDP of 59%, rising over the subsequent five years to a height of 79%.

The position should be viewed in the context of the financial stability arrangements adopted by the Maastricht Treaty. These commit EU-member states to conduct their economies so that:

- ◆ The annual budget deficit does not exceed 3% of national GDP, and
- ◆ Total national debt does not exceed 60% of national GDP

On these figures, the UK's annual deficit will not approach agreed levels for at least five years and, based on the returns published today by the EU, only Belgium, Greece and Italy exceed the UK's projected deficit.

In this context, the Chancellor has trimmed his spending forecast modestly – to 0.7% from the 1.1% forecast last November and, apart from the headline-grabbing measures to increase the tax charge on those earning more than £100,000pa, has largely contented himself with a raft of detail.

## 2. Income Tax

### 2.1 Income Tax Rates and Allowances

For 2009/10 the Personal Allowance increases to £6,475. The Personal Allowance for those over 65 will be increased to £9,490 and for those aged 75 and over to £9,640

Full details of allowance rates and thresholds applicable in 2008/09 and 2009/10 are set out in Tables A and B.

The following changes will apply from 6 April 2010:

- ◆ A new higher rate of Income Tax of 50% on taxable income above £150,000. This replaces the 45% rate announced in November;
- ◆ Personal allowances for individuals with 'adjusted net incomes' (see below) above £100,000 will be reduced by £1 for every £2 above the income limit. This is instead of the two stage reduction announced in the Pre-Budget Report. This effectively creates a higher marginal tax rate of 60% on income between £100,000 and £112,950.
- ◆ Trust rates will similarly increase from 32.5% to 42.5% for dividends and from 40% to 50% for other income.

From 6 April 2010 there will be three rates of tax for dividends for individuals:

- ◆ Dividends otherwise taxed at 20% basic rate will continue to be taxed at 10%;
- ◆ Dividends otherwise taxed at 40% higher rate will continue to be taxed at 32.5%;
- ◆ Dividends otherwise taxed at the new 50% additional rate will be taxed at a new 42.5% dividend additional rate.

'Adjusted net income' is relevant to those aged between 65 and 74 and those 75 and over. An individual's 'adjusted net income' is the total their income subject to income tax less specified deductions:

1. Trading losses and payments made gross to pension schemes;
2. Grossed-up amounts of Gift Aid contributions;
3. Grossed-up amount of pension contributions which have received tax relief at source;

To the resulting total is added back any relief for payments to trade unions or police organisations deducted in arriving at the individual's net income.

From 6 April 2010, new powers will be introduced to vary income tax rates for the charges that apply to registered pension schemes. Charges applying to registered pension schemes are usually linked to the highest rate of income tax. Although there are existing powers to vary the rates for some charges by Statutory Instrument, this measure includes powers to vary the rates for the remaining charges, again through secondary legislation, to take account of the new additional higher rate of tax.

### 2.2 Financial Services Compensation Scheme (FSCS)

Compensation paid by the FSCS to the customers of defaulting institutions, such as banks, has included an amount representing accrued interest from the last date interest was paid to the customer by the defaulting institution to the date when the financial institute defaulted.

Income Tax payers will be charged to tax on the amount representing accrued interest.

This applies to payments made by the FSCS on or after 6 October 2008 and for income tax purposes only as the taxation of company deposits is within the loan relationship provisions of the Corporation Tax Act 2009.

Where the FSCS has calculated the amount representing accrued interest as if it were subject to deduction of tax, the taxable amount is the total of the amount representing the accrued interest grossed up at the basic rate. The amount of notional tax deducted can be reclaimed by non-taxpayers or treated as a basic rate tax credit in calculating any liability to higher rate tax on the accrued interest.

### **2.3 Increasing Individual Savings Accounts (ISA) Limits**

For 2009/10, the ISA limit available to people aged 50 and over will be increased to £10,200, of which £5,100 can be held in cash. The remainder can be invested in stocks and shares with the same or another provider. This limit will be raised with effect from 6 October 2009.

From 6 April 2010, these new limits will apply to all ISA investors.

### **2.4 Venture Capital Schemes**

It is proposed that the time limit within which money must be employed by companies receiving investment under the Enterprise Investment Scheme, the Corporate Venturing Scheme and by a Venture Capital Trust be extended to two years.

The changes will take effect for EIS and CVS investments made on or after 22 April 2009.

It is also proposed the carry back of relief for Enterprise Investment Scheme subscriptions be extended to all EIS shares issued in the year and allow for the full amount subscribed to be carried back, subject to the overriding £500,000 limit.

This carry back relief applies to the tax year 2009/10 and subsequent years.

### **2.5 Charities – Substantial Donors**

Following a detailed consultation with the Charity Sector, legislation will be introduced to increase the threshold of relievable gifts that a person can make before becoming a substantial donor to a charity. The threshold of £100,000 of relievable gifts in a six year period will be increased to £150,000 in total in a six year period. There is no change to the annual threshold of £25,000.

The substantial donor rules potentially apply to all charities carrying out transactions with their largest donors where they have other transactions with those donors. This could lead to a tax charge on the Charity.

The measure will have effect on or after 23 April 2009.

### **2.6 Financial Assistance Scheme**

The Financial Assistance Scheme (FAS) is a Government funded scheme that provides financial help to members of defined benefit occupational pension schemes who have lost their accrued rights following the wind up of their pension scheme due to insufficient assets.

It applies to schemes wound up between 1 January 1997 and 5 April 2005 when it was replaced by the Pension Protection Fund.

The FAS is being extended so that it will be responsible for making all of the payments due to

qualifying members, including lump sums.

Legislation will also be introduced in the Finance Bill 2009 to allow payments made by the FAS to be given the same tax treatment as if they had been made by the registered pension scheme.

## 2.7 Pension Savings

Legislation will be introduced to ensure that an individual will not be disadvantaged where a pension provider receives assistance from the Financial Services Compensation Scheme. The proposed measure will take effect on the date Finance Bill 2009 receives Royal Assent but may be backdated prior to this date where there is no increase in the individual's tax liability.

## 2.8 Pension Relief

The Government has announced its intention, to take effect from 6th April 2011, to restrict the tax relief available on pension contributions made by individuals with an annual income in excess of £150,000 per annum. The value of the pension tax relief will be tapered away after this earnings level so that the relief will be restricted to the basic rate of tax of 20% for individuals earning over £180,000.

In addition, anti-avoidance provisions will apply where individuals likely to be affected by the proposed changes seek to increase the level of their regular contributions after 22nd April 2009.

At present, individuals can receive tax relief at marginal tax rates on contributions made to approved pension schemes provided the contributions do not exceed 100% of the individual's earnings for a particular tax year or, if higher, the annual allowance (£245,000 for 2009/10 rising to £255,000 in 2010/11). This means that taxpayers whose income is subject to the higher rate of tax can currently obtain tax relief on their contributions at the rate of 40%.

Finance Bill 2009 will introduce "anti-forestalling" provisions that will create a new additional special annual allowance and associated tax charge. However, it should be noted that the new rules will not apply to:

- ◆ Individuals whose earnings are less than £150,000 for the year in question and the preceding two tax years (the relevant years), or
- ◆ Individuals with income of £150,000 or more in any of the relevant years, who either don't increase their regular ongoing contributions on or after Budget Day, or whose total contributions for the year do not exceed £20,000.
- ◆ Any normal, regular ongoing pension savings that were in place at 22 April 2009.

For qualifying individuals, the new special annual allowance will set an upper limit on the amount of additional pension savings over and above their existing regular pension savings that will benefit from higher rate tax relief. This will be achieved by applying a tax charge equal to the difference between the higher and basic rates (20% for 2009/10) on the "excess" total contributions or accrued benefits.

The special annual allowance will be set at £20,000 for those do not have "normal regular pension savings" (including employer contributions and accrued benefits under defined benefit schemes). For others this will be reduced by the level of their normal pension savings.

Therefore taxpayers earning £150,000 and making regular pension contributions totalling £20,000 a year will face a 20% tax charge on any additional pension contributions made in 2009/10, thus cancelling out the higher rate relief they would otherwise have claimed on these contributions in their Self Assessment Tax Return.

## 2.9 Company Car Benefit Tax

Employees who are provided with a company car available for their private use are charged to Income Tax based on a percentage applied to the list price of the car, based on the CO2 emissions.

The percentage rate applied currently ranges from 15% to 35% with most diesel cars attracting a 3% supplement. The 15% rate for petrol cars applies where CO2 emissions are at or below 135g/km and 130g/km for 2009/10 and 2010/2011 respectively.

Legislation introduced in the Finance Bill 2009 will set the rates of the company car tax charge for 2011/12. This will lower the CO2 emissions threshold for the 15% rate to 125g/km.

Legislation will also be introduced to remove the current £80,000 cap on the list price for calculating the benefit from 6 April 2011.

## 2.10 Benefits in Kind: Accommodation

Employees who live in accommodation provided to them by reason of their employment are liable to a tax charge based on the rent paid less any amount they contribute towards the rent. The payment of a lease premium can reduce the actual rental payments and so reduce the tax payable on the benefit.

From 22 April 2009 any lease premium (spread over the length of the lease) will also be subject to the benefit charge.

These rules will not apply to leases entered into for property that is used mainly for business purposes by the employer and partly for domestic use of an employee.

## 2.11 Child Trust Fund: Disabled Children

Disabled children born on or after 1 September 2002, and who are in receipt of Disability Living Allowance (DLA), will receive an increased number of government payments into their child trust fund accounts.

Starting from April 2010, for children who received DLA in 2009/10, the Government will contribute £100 every year into their accounts, with severely disabled children (those receiving the High Care element of the DLA) receiving £200 per year.

None of the additional payments will count towards the £1,200 per year contribution limit.

## 2.12 Taxation of Personal Foreign Dividends

From 22 April 2009, individuals in receipt of non-UK resident company dividends who have shareholdings of 10% or more will become entitled to a non-repayable tax credit of one ninth of the dividend received, subject to certain conditions.

Dividends received by individual shareholders are taxed at 10% for basic rate taxpayers and 32.5% for higher rate taxpayers. Because tax is charged on the gross dividend received, including any tax credit, this can lower the effective rate to 0% and 25% respectively. The benefit of the tax credit was extended to dividends from non-UK resident companies for individuals with a holding of less than 10% in the Finance Act 2008. Finance Bill 2009 will extend this benefit to all individuals.

The tax credit will only be available if the source country is a 'qualifying territory'. A territory is a 'qualifying territory' if there is a double taxation agreement with the UK with a non-discrimination article.

### **2.13 Taxation of Personal Dividend Distributions from Offshore Funds**

With effect from 22 April 2009, the restriction of tax credit for dividend distributions received from offshore funds has been withdrawn where the offshore funds are largely invested in equities. Where such funds are substantially invested in interest-bearing assets (where more than 60% of its assets in interest bearing - or economically similar - form), individuals receiving distributions from offshore funds will be treated for tax purposes as having received interest and not a dividend or other type of distribution.

These rules will apply irrespective of size of the individual's holding in the fund.

### **2.14 Tax Elected Funds**

With effect from 1 September 2009, new measures will be introduced that will affect Authorised Investment Funds (AIFs) and their investors by moving the point of taxation from the AIF to the investor. The investor will therefore be treated as though they had invested in the underlying assets directly.

Currently AIFs are normally chargeable to corporation tax on taxable income at a special rate of 20%, and these rules will remain. However, AIFs that meet certain conditions will be able to elect to be treated as a Tax Elected Fund (TEF). TEFs will be required to make two types of distribution of the income they receive, a dividend and a non dividend (interest) distribution. UK dividend income will remain non taxable in the fund and will be distributed as a dividend. All other income that is distributed as a non-dividend (interest) distribution, the fund will receive a tax deduction up to the same amount.

UK-resident investors will be treated as receiving UK dividend income and a payment of yearly interest.

### **2.15 Furnished Holiday Lettings in the EEA**

Owners of properties that fall within the Furnished Holiday Lettings regime qualify for many of the tax benefits available to traders. A property situated outside the UK does not fall within this regime. Where the property is located in a European Economic Area (EEA) state, this does not appear to comply with European law.

For 2009/10, properties which only fail to meet Furnished Holiday Lettings criteria because they are located in another EEA state, will benefit from the same tax treatment as a qualifying UK property.

However, it has now been announced that the Furnished Holiday Lettings rules are to be replaced from 2010/11 for all properties whether situated in the UK or elsewhere in the EEA.

### **2.16 Authorised Investment Funds**

Legislation will be introduced to give Authorised Investment Funds ("AIF") and UK Investors in equivalent offshore funds certainty that certain defined transactions will not be treated as trading transactions for tax purposes. The need for clarification arises because such funds do not generally pay capital gains tax but can invest in such a way that chargeable transactions could be seen as trading.

The legislation will set out a "white list" of transactions which when undertaken by an AIF or equivalent offshore funds will be treated as non-trading transactions. The aim is to provide certainty and will have effect on and after 1 September 2009 for AIFs and for equivalent offshore funds will have effect on and after 1 December 2009.

### **2.17 Life Policy Schemes - Anti-Avoidance**

A number of schemes have sought to offer a tax reduction by claiming relief for a loss incurred on a policy of life insurance, normally offshore. An announcement on 1 April confirmed these schemes were to be blocked. Legislation to achieve this by ensuring that income tax loss relief from offshore insurance policies is not available where chargeable events occur on or after 6 April 2009 takes effect from 6 April 2009. Transitional provisions will apply to 2008/09 for transactions taking place on or after 1 April 2009.

The transitional provisions will also prevent income tax loss relief in 2009/10 and subsequent years regardless of when the chargeable event took place.

### **2.18 Employment Schemes – Anti-Avoidance**

Certain schemes which sought to offer a tax deduction derived from losses incurred in employment are to be blocked with effect from 12 January 2009. The Finance Bill will contain legislation to achieve this. The schemes seek to create liabilities and losses which HM Revenue & Customs (HMRC) consider artificial and derived from contrived employments.

The legislation will be amended to ensure that no deduction is available where the main purpose of any arrangement is the avoidance of tax.

Individuals who have already made a claim under such a scheme between 12 January and 1 April 2009 have the opportunity of avoiding penalties and surcharges if they pay any additional tax before 28 April 2009.

### **2.19 Interest Relief – Anti-Avoidance**

A targeted anti-avoidance rule is introduced to deny relief for interest for individuals if the interest is paid as part of an arrangement under which the investor is certain (ignoring insignificant risk) to exit the arrangement with more money than was originally invested. This result is guaranteed by virtue of the interest being eligible for tax relief against the individual's other income.

The measure has effect for interest payments made on or after 19 March 2009, as announced in the Written Statement made on that date.

### **2.20 Disclosure of Offshore Bank Accounts**

Following the much publicised “amnesty” which encouraged UK taxpayers to disclose that they had undeclared offshore bank accounts some two years ago, a follow-on exercise is now planned. Whilst on the last occasion, HMRC were keen to receive disclosures relating to any offshore account, they only had data from the major UK banks which they could use to cross-check details returned.

HMRC are now writing to some 200 other deposit-taking institutions based both in the UK and overseas requesting details of accounts held by UK residents. They are therefore encouraging further voluntary disclosures before they obtain information which they can follow up.

### **3. Capital Gains Tax**

#### **3.1 Capital Gains Tax Rates**

There are no changes to either the main capital gains rate of 18% or the Entrepreneurs' Relief rate of 10%.

However the annual exemption will be increased by £500 to £10,100 for individuals and £250 to £5,050 for most trustees from 6 April 2009.

#### **3.2 Gains on Interests in Certain Offshore Funds**

Investors in offshore funds that are transparent for the purposes of tax on income and gains will be able to obtain similar treatment to that given for investments in unit trusts and other types of offshore funds which are not companies, unit trusts or partnerships.

The effect of the change will be that an interest in a transparent offshore fund will be an asset for the purpose of calculating Capital Gains Tax on chargeable gains. The underlying assets will no longer be required to be considered for the calculation of chargeable gains.

The new treatment will apply to investments in contract-based funds on and after 1 December 2009. Elections into the new treatment can be made on and after 22 April 2009 and retrospectively applied back to 2003-04. Once made however, an election will be irrevocable and will apply for all years after the date of election.

There will be transitional rules covering the timing and other aspects of the effect of this measure for existing investments in contract-based funds.

## 4. Corporation and Business Tax

### 4.1 Corporation Tax Rates

The main rate of Corporation Tax will remain at the current rate of 28%. The Small Companies Rate will remain at 21% for 2009-10. The planned rise to 22% has been deferred to 1 April 2010, as announced in the 2008 Pre-Budget Report.

The thresholds for the Small Companies Rate and the Main Rate remain at £300,000 and £1,500,000 respectively.

The marginal rate of corporation tax applying to profits between £300,000 and £1,500,000 will continue to be 29.75%.

There are separate rules governing ring fence profits, which primarily relate to companies in the oil industry.

Full details of rates and thresholds applicable in 2008/09 and 2009/10 are set out in Table I.

### 4.2 Loss Carry Back

Businesses, including unincorporated businesses, will be able to carry back trading losses for offset against profits of earlier years and so obtain a repayment of tax.

The extension will apply to:

Company accounts ending in the period 24 November 2008 to 23 November 2010 and Tax Years 2008/09 and 2009/10 for unincorporated businesses. This extends the measures announced in the 2008 Pre-Budget Report by a further year.

The effect of the relief will be to extend the period for which trading losses can be carried back from the current one year to three years, with the carry back against later years first. However, the amount that can be carried back beyond the current one year will be restricted to £50,000.

### 4.3 Capital Allowances

A new temporary first-year allowance (FYA) of 40% is introduced for expenditure on general plant and machinery.

This expenditure will include expenditure on general plant and machinery that would normally be allocated to the main capital allowances pool qualifying for writing-down allowances at 20%.

The temporary FYA will apply to qualifying expenditure incurred in the 12 month period beginning on

- ◆ 1 April 2009 for businesses within the charge to corporation tax and
- ◆ 6 April 2009 for businesses within the charge to income tax.

Expenditure that previously would not qualify for FYA would continue to not qualify for the temporary FYA.

Businesses will continue to be able to claim the Annual Investment Allowance (AIA) on the first £50,000 spent on all types of qualifying capital expenditure.

#### 4.4 Tax Relief for Business Expenditure on Cars

Businesses get relief for expenditure incurred on cars in the form of writing down allowances (WDA) at 20%. This is restricted to £3,000 in the case of expensive cars costing more than £12,000. Expenditure on such cars is accounted separately with each car placed in a single asset pool.

The existing rules will be replaced for qualifying expenditure incurred on cars on or after

- ◆ 1 April 2009 for businesses within the charge to corporation tax and
- ◆ 6 April 2009 for businesses within the charge to income tax.

Expenditure on cars will be allocated to one of two general plant and machinery pools depending on whether or not their CO<sub>2</sub> emissions exceed 160g/km.

Expenditure on cars with CO<sub>2</sub> emissions of 160g/km or less will be added to the main rate pool and attract WDA at 20% and expenditure on cars with CO<sub>2</sub> emissions exceeding 160g/km will be dealt with in a special rate pool and attract WDA at 10%.

Cars that have an element of non-business use will continue to be dealt with in single asset pools to enable private use adjustments, but the rate of WDA will still depend on the CO<sub>2</sub> emissions.

Legislation will also be introduced to reform the special rules that restrict the amount of the car lease rental payments that can be deducted for tax purposes.

A flat rate disallowance of 15% of the relevant lease payments will apply only in respect of cars with CO<sub>2</sub> emissions exceeding 160g/km.

Transitional rules will apply to expenditure incurred on expensive cars and leased cars prior to 1 or 6 April 2009.

Anti-avoidance rules will be introduced to prevent abuse of these rules.

#### 4.5 Enhanced Capital Allowances

The Energy Saving and Water Efficient (environmentally beneficial) Enhanced Capital Allowance will allow businesses investing in designated technologies that reduce energy consumption, save water or improve water quality to write off 100 per cent of the cost against taxable profits of the period in which the investment is made.

Qualifying technologies are included on the Energy Technology Criteria List and the Water Technology Criteria List which have been reviewed and now include, for example, close control air conditioning systems.

#### 4.6 Goodwill

Legislation will be included in the Finance Bill 2009 to confirm that for the purposes of the corporate intangible regime, goodwill will include internally generated goodwill.

The legislation will also confirm that all goodwill is created in the course of carrying on the business in question and is subject to the rules determining whether goodwill is created before or after 1 April 2002 when the corporate intangible regime came into effect.

Goodwill is specifically excluded from the regime if a business commenced before 1 April 2002 as the goodwill is treated as created before 1 April 2002 unless or until the business is acquired by an unrelated party.

The legislation will have effect from 22 April 2009 and is to be treated as always having had effect.

For example, no relief will be available where a business, which commenced before 1 April 2002, has been acquired from a related party before 22 April 2009.

#### 4.7 Foreign Profits

The taxation of foreign profits has been the subject of a consultation process since 2006; a final draft of the legislation is now promised but not yet published.

The measures heralded will introduce fundamental changes to the UK tax system and we expect them to include:

- ◆ An exemption from UK tax for foreign dividends with effect from 1 July 2009,
- ◆ A debt cap for UK deductible interest expense with effect from 1 January 2010,
- ◆ Removal of superior and non-local holding company exemptions under the UK's Controlled Foreign Companies regime with effect from 1 July 2009 subject to transitional provisions available until 1 July 2011, and
- ◆ The repeal of the requirement to obtain formal approval from HM Treasury for certain transactions involving non-UK subsidiary companies with effect from 1 July 2009.

The dividend exemption will now apply to all companies. Small companies (not forming part of large groups) may escape the sanction of the debt cap.

#### 4.8 Loan Relationships

Changes are to be made to the rules on the release of trade debts between connected companies. For trade debts released on or after 22 April 2009 the loan relationship rules will apply to both the debtor and the creditor. This means that no tax charge to the debtor arises on the release of the debt and the creditor will continue to be denied a deduction for its bad debt.

For accounting periods beginning on or after 1 April 2009 the rules on the late payment of interest between connected companies are to be amended to give relief for interest on an accruals basis, rather than a paid basis, unless the creditor company is resident in a "non-qualifying territory", which will broadly be tax havens.

#### 4.9 Agreements to Forgo Tax Reliefs in Relation to Government Assistance

In the context of the "credit crunch", over the past several months, the Government has brought forward legislation whereby certain losses are effectively underwritten by the Government. For example, the objective of the Asset Protection Scheme is to protect financial institutions against exposure to exceptional future credit losses on certain portfolios of assets. The Scheme is designed to restore confidence to financial markets, supporting financial stability and the availability of credit to creditworthy borrowers in the economy.

Not surprisingly, where such agreements are entered into, it is the Government's view that losses should not be available for tax relief, to the extent that they are underwritten. Legislation will be included in the Finance Bill, with effect from 22 April 2009, to enable the relevant agreements to be effective for tax purposes.

#### **4.10 Group Gains**

Companies within the same group for tax purposes can elect for an asset that has been sold by one company to be deemed to have been sold by another company in the same group.

Previously, an election could only be made when the asset concerned had actually been sold. A change announced in this Budget enables a joint election to be made at any time, regardless of whether the asset has been sold or not.

Amendments will also be proposed to remove former restrictions on the type of asset that can come within an election and the circumstances under which the gain or loss arises.

This welcome change should enable assets to be moved for tax purposes to the most suitable company in the group prior to any actual disposal.

#### **4.11 Group Relief**

For accounting periods commencing on or after 1 January 2008 the definition of "equity holders" in ICTA 1988 Schedule 18 has been amended to exclude a wider range of preference shares from the definition. The current definition only excluded fixed-rate preference shares.

This means that groups – particularly banks – that issue preference shares in subsidiaries to external investors will be able to enter into arrangements to claim and surrender group relief without breaking their group structure or inadvertently triggering anti-avoidance provisions through the issue of a common commercial financing instrument.

#### **4.12 SAYE (Save As You Earn)**

Presently various institutions are authorised by HM Treasury to provide SAYE savings contracts for employees participating in SAYE share schemes operated by their employers. Following the Budget, HMRC will take over the function of specifying bonus rates and early leaver interest rates on SAYE savings contracts and authorising SAYE providers. Other administration matters will also be transferred to HMRC from HM Treasury.

#### **4.13 Double Tax Relief on Dividends**

UK companies that receive foreign dividends are chargeable to corporation tax on those dividends and are entitled to double tax relief for foreign tax suffered on those dividends.

The amount of relief available is limited to the corporation tax rate in force on the date on which a dividend is paid. Due to the reduction in the main rate of corporation tax from 30% to 28% on 1 April 2008, where a company's accounting period straddles this date, this could lead to the company being taxed on a foreign dividend at an effective rate above 28% but only receiving relief at 28%.

Legislation will be introduced in the Finance Bill 2009 to ensure that the reduction in the rate of corporation tax from 30% to 28% does not unjustly affect companies in this situation and will retrospectively apply from 1 April 2008.

#### **4.14 Foreign-Denominated Losses**

This is a technical change designed to achieve a measure of symmetry where UK corporate taxpayers are operating outside the UK and compute UK taxable profits and losses in a currency other than sterling before converting them to Sterling.

In calculating a UK tax liability, the overseas profits would normally be converted to Sterling at the

then ruling rate of exchange. Sterling losses from another period may then be used to shelter those profits either in total or in part. As the calculation of the profits and losses may be by reference to a different rate of exchange, the loss set-off will be either enhanced or reduced by a currency fluctuation.

This change is designed to eliminate the effect of such fluctuations and is to take effect for accounting periods commencing on or after 29 December 2007 unless an election is made to defer the commencement date to the first accounting period beginning on or after the date that Finance Bill 2009 receives Royal Assent.

#### **4.15 Foreign Exchange Losses**

Because of the UK taxing distinction between revenue items and capital items and the inclusive nature of the former and the exclusive nature of the latter, companies with operations, assets and/or liabilities in currencies other than sterling should manage their exposure to currency fluctuations and its tax treatment to avoid unexpected tax liabilities. There is a history of case law and legislation in this area, mostly addressing the mismatch between tax law and commercial reality but a number of anomalies remain - for example, a currency fluctuation on shares in an overseas company may not be taxable but the movement on the matching UK hedging instrument may be.

In spite of a wealth of complex legislation in this area, the Government has become aware of arrangements designed to generate a tax advantage in two specific areas.

Anti-avoidance legislation is being introduced to counter “one-way exchange effects”, where only a loss is brought into tax; the second situation arises where gains and losses on derivatives are computed other than by reference to spot rates. This legislation is to take effect to accounting periods beginning on or after 22 April 2009. For a period that straddles this date, the legislation will apply to that part of the period after this date.

#### **4.16 Life Insurance Companies**

The taxation of companies and Friendly Societies carrying on life insurance business will be clarified. The legislation will:

- ◆ Amounts introduced by shareholders into the long term insurance fund of a life insurance company will not be taxable receipts. Currently the tax treatment of such additions is governed by a combination of case law and an unpublished concession. The change, which is designed to prevent an artificial Case 1 loss arising, will have effect for accounting periods ending on or after 22 April 2009 in respect of additions made on or after that date.
- ◆ Restrict the Case I deduction for amounts allocated to certain exceptional circumstances. This restriction will have effect for accounting periods ending on or after 22 April 2009 in respect of allocations made on or after 22 April 2009.
- ◆ Amend the rules governing the calculation of the “floor” for gross roll-up business investment return to ensure consistent treatment of foreign business assets. This will have effect for accounting periods beginning on or after 1 January 2009 and ending on or after 22 April 2009.
- ◆ Change the anti-avoidance rules relating to value shifting to ensure that they will not apply when a reduction in value arises as a result of a transfer of long-term insurance business between companies in the same group. This change will apply to disposals of assets taking place on or after 22 April 2009.

#### **4.17 Lloyds Dividends**

Corporate members of the Lloyd's insurance market will no longer be subject to corporation tax on dividends and other distributions which are received on or after 1 July 2009.

#### **4.18 Transfers of Business Between Mutual Societies**

Legislation will be introduced in the Finance Bill 2009 to deal with the tax consequences of amalgamating mutual businesses or arising on the transfer of parts of mutual societies taking place after Budget Day. Existing legislation can produce different results depending upon the type of business being transferred or where transfers are made to companies rather than mutual societies. The aim is to ensure that the tax treatment is the same for equivalent businesses.

#### **4.19 Disguised Interest**

Existing piecemeal legislation will be replaced by a comprehensive rule ensuring, subject to limited exceptions, that any return equivalent to interest is charged to Corporation Tax in all circumstances where it would not currently be taxed as income.

The legislation will generally apply to arrangements to which a company becomes party to on or after 22 April 2009. However, it will also apply to certain arrangements in place before that date that are within the scope of the existing piecemeal legislation which is to be repealed.

#### **4.20 Manufactured Interest**

Legislation has been introduced to prevent the High Court decision in DCC Holdings (UK) Limited from affecting the tax treatment of real payments of manufactured interest. The tax treatment is intended to follow the treatment of payments in the company accounts prepared in accordance with Generally Accepted Accounting Practice.

This will apply to large companies who make "deemed payments" on or after 27 January 2009.

#### **4.21 Transfer of Income Streams**

New rules will introduce a comprehensive principles-based code to ensure that where companies or individuals dispose of rights to receive future income streams without disposing of any underlying asset the sale of the income streams will be taxed as income for both corporation tax and income tax purposes rather than as a chargeable gain.

The legislation will have effect for transfers of income taking place on or after 22 April 2009.

#### **4.22 Convertibles**

Large companies have been avoiding corporation tax through the use of intra-group convertible loans and the derecognition of income from derivative contracts. Legislation is to be enacted to prevent such avoidance.

Two schemes are being targeted:

- ◆ Intra-group finance through the use of bonds that are likely to convert into shares of the issuing company. The debtor company then accrues for a finance cost that is greater than the return the creditor company recognises in its accounts.

- ◆ Companies “derecognise” in their accounts derivative contracts carried at fair value so that profits on the contracts fall out of account for tax purposes.

These schemes will be tackled by:

- ◆ The intra-group finance scheme will require the creditor company to recognise additional credits to match the debtor’s debits in appropriate circumstances
- ◆ The derivatives scheme will require full recognition for tax purposes of derivative contract profit and losses even if not recognised in the company’s accounts.

#### 4.23 Leasing Avoidance

As announced in the pre-Budget Report, there are a number of detailed technical changes to the tax treatment of leased plant and machinery, all of which are effective from 13 November 2008.

As announced in November, some changes potentially apply to all businesses that lease machinery but, in practice, are only likely to apply to businesses leasing items of major equipment:

- ◆ A typical refinancing strategy for a business is to sell an asset it already owns in order to lease it back. Where this happens, the vendor business suffers a recapture of capital allowances already claimed but, if the lease is a “long-funding lease”, the vendor in its capacity as lessee, will usually be entitled to capital allowances on the leased-back asset. It had been possible to structure these arrangements so that the allowances the lessee claimed were greater than the amount brought into account as the disposal value on the sale to the lessor. This will be prevented, as will a similar arrangement where the leaseback is transacted at an artificially depressed price.
- ◆ At the end of a “long funding lease”, a disposal value is brought into account by the lessee to allow any residue of expenditure or recapture any excess amount that has been allowed. It has been found that the rules do not always work as intended, particularly where there is a guaranteed disposal value at the end of the lease. A new rule will overcome this difficulty.

Another change is likely to apply only to leasing companies. Generally, where a leasing company is sold, the accelerated capital allowances it has been able to claim are taxed but are then available for a fresh claim by the company in the hands of its new owners. Thus the tax benefit of the accelerated allowances accrues to the owner of the leasing company, not the person who owned it at the time the leases were written.

A way of avoiding this allowance recapture was to arrange for the leasing company itself to sell and lease back its plant so that it no longer had title to the equipment, then the allowance recapture could not arise. This also will now be prevented.

Following the initial publication of the changes, further changes are now proposed with effect from 22 April 2009. These are:

- ◆ The two definitions of sale and leaseback will be amended to ensure that they cover all the ways in which the transactions can be structured.
- ◆ Amendments will be made to ensure that initial payments under a lease do not escape taxation and to ensure consistency with capital gains tax treatment.

#### 4.24 Sale of Lessor Companies - Anti-Avoidance

Changes are proposed to ensure that groups cannot obtain a tax timing advantage from a claim to capital allowances through complex transactions involving leasing businesses carried on by consortia or by companies in partnership.

Existing anti-avoidance legislation is designed to prevent a loss of tax when a lessor company changes ownership, by ensuring that the selling group attracts a charge equal to the tax timing advantage with the buying group benefiting from a similar relief.

The changes apply to transactions taking place on or after 22 April 2009 and for losses incurred in accounting periods ending on or after 22 April 2009.

The legislation is triggered whenever there is a change in the ownership of the lessor company or a change in the profit-sharing arrangements of a partnership carrying on a leasing business. They will primarily affect companies carrying on leasing businesses in partnership and are designed to prevent a loss of tax when the partnership shares change or the partnership ceases.

#### **4.25 Hedging Exchange Risks**

Where a company has entered into a currency derivative contract on or after 1 January 2009 with the intention of hedging an exchange risk on the value of future proceeds from an issue of shares, any exchange gain or loss on the contract is not brought into account for tax purposes. If any of the gain is subsequently distributed to shareholders then that amount of the gain is taxed in the year of the distribution.

If the hedge is entered into before 10 March 2009 the new rules only apply if it was still current on 10 March in which case any exchange loss in the period up to 9 March will be allowable for tax purposes provided there is a loss when the contract is closed out. The amount of the loss is restricted to the smaller of the loss at 9 March and the date of closing.

#### **4.26 REIT Restructuring**

New legislation will be introduced to prevent, with effect from 22 April 2009, artificial restructuring within groups of companies that enables companies or groups to meet the entry requirements for joining the REIT (Real Estate Investment Trusts) regime.

The legislation will be designed to stop artificial rental arrangements between connected companies that then brought the companies within the REIT regime.

#### **4.27 REIT Qualifications**

A number of measures will be introduced that, with effect from 22 April 2009, will change some of the conditions that have to be met by a qualifying REIT (Real Estate Investment Trust).

These will include measures to:

- ◆ Allow REITs to be able to raise funds by issuing convertible preference shares
- ◆ Simplify certain definitions within the legislation
- ◆ Clarify how funds are apportioned for rental and non-rental purposes
- ◆ Reduce the conditions to be met when a REIT elects to join the regime.

#### **4.28 Double Tax Relief - Anti-Avoidance**

Two specific measures are being introduced aimed at arrangements designed to generate relief capable of reducing UK tax in respect of income taxed overseas.

Under the UK regime for taxing foreign income relief is given for some overseas taxes borne on the same income. These two provisions are aimed at banks and banking groups. The first relates to manufactured overseas dividends and the second extends the credit restrictions on trade receipts of banks to those non-banks within its groups.

A third provision relates to companies in general and addresses circumstances where credit has been taken by one company for foreign taxes suffered but those foreign taxes are then repaid, at least in part, to another company in the same group following the payment of a dividend.

These provisions will take effect on or after 22 April 2009.

#### **4.3 Charity Concession Withdrawal**

Extra statutory concession D47 is being withdrawn from 1 April 2010,

It is a concession which concerns land given for charitable purposes which subsequently reverts to the original donor. This creates a capital gains tax and income tax charge which may fall on the trustees unless the original donor places the land in a charitable trust within 6 years.

The concession is considered obsolete as HMRC believes that it has only been used twice in the last 10 years.

## **5. Indirect Taxes**

### **5.1 Rate**

With effect from 1 January 2010 the standard rate of VAT will revert from 15% to 17.5%.

### **5.2 Registration Limit**

The VAT registration threshold will rise by £1,000 to £68,000 from 1 May 2009. The de-registration limit rises similarly to £66,000.

The registration and de-registration limits for acquisitions from other European Union member states will also be increased from £67,000 to £68,000.

### **5.3 Fuel Scale Charges**

Whenever a business funds private motoring by subsidising fuel, it must account for VAT fuel scale charges, that is, output tax.

The revised scale charges are based on the level of CO<sub>2</sub> emissions, and range from a quarterly charge of £126 (VAT inclusive) on a car with CO<sub>2</sub> emissions of 120gms/km or below to £441 (VAT inclusive) for a car with emissions of 235gms/km or above.

HMRC have published tables showing the revised scale charges for a 12 month, three month and one month accounting period.

Businesses must use the new scales from the start of their first accounting period beginning on or after 1 May 2009.

### **5.4 Option to Tax Changes**

On May 1st changes are being made to the Automatic Permission Condition (APC) which determines when taxpayers can opt to tax a property without contacting HMRC. Along with these changes HMRC will be removing and modifying concessions which allow VAT recovery on costs relating to property incurred before an option was made. Details of these changes will be published shortly.

### **5.5 Children's Car Seats**

With effect from 1 July 2009 the 5 per cent reduced rate of VAT for children's car seats will be extended to include bases for such seats.

### **5.6 Gaming**

With effect from 27 April 2009 VAT will be removed from participation fees for playing bingo and other games of chance.

Bingo duty will be increased to 22 per cent for any accounting period beginning on or after 27 April 2009.

### **5.7 Place of Supply Changes**

As previously announced the place of supply rules for services will change in stages starting on 1 Jan 2010. Services which are currently covered by the basic rule and treated as supplied where the supplier belongs will be treated as supplied where received. This means that in some cases supplies previously subject to VAT will be free of VAT. It also means that VAT will need to be accounted for on some supplies purchased from abroad under the reverse charge rules.

### **5.8 Time of Supply**

With effect from 1 January 2010 the time of supply rules will change in respect of cross-border supplies of services. This will affect businesses which are required to self-account for VAT on cross-border services received. This is known as the reverse charge mechanism.

Under the new rules the time of supply will primarily be governed by the date on which the service is performed, but with a distinction being made between single and continuous supplies.

### **5.9 New EU Sales List**

All businesses supplying services to other member states within the EU will have to complete a quarterly European Sales List from 1 Jan 2010.

### **5.10 New Refund Rules for VAT Incurred in the EU**

As previously announced the current 8th directive refund rules that allow recovery of VAT incurred in other EU countries are being amended from 1 Jan 2010. The existing paper system is being replaced by an electronic return made to the UK VAT authorities. Claims may now be made up to 9 months from the end of the calendar year in which the VAT was incurred.

### **5.11 Gaming Machines**

Legislation will be introduced in Finance Bill 2009 to increase the amount of amusement machine licence duty (AMLDD) for all categories of gaming machines.

With effect from 1 June 2009 certain additional classes of gaming machines will become exempt from AMLDD, the stake and prize levels for Category C machines will increase, and changes will be made to 'special licences' and 'seasonal licences'.

### **5.12 Warehousing**

The warehousing for export (WFE) drawback scheme for alcoholic liquors is to be withdrawn. As a result, alcoholic liquors warehoused for export on or after 1 June 2009 will not be eligible for repayment of excise duty.

### **5.13 Tobacco**

From 6pm on 22 April 2009, the rates of duty on tobacco products imported into, or manufactured in, the United Kingdom will be increased. The changes will represent an increase of 2 per cent on the current duty levels.

This equates to an increase of about 7p on a packet of 20 cigarettes.

#### **5.14 Alcohol**

From 23 April 2009 all duty rates for alcohol will rise by 2 per cent from their current levels.

This equates to an increase of 1p on a pint of beer and 4p on a 75cl bottle of wine.

#### **5.15 Customs Powers**

Legislation will be introduced in Finance Bill 2009 to clarify when HMRC officers and, following Royal Assent of the Borders Citizenship and Immigration Bill, officers of the UK Border Agency can use their powers to check EU travellers and to verify whether travellers are arriving from the EU.

#### **5.16 VAT – Concession Withdrawal**

With effect from 1 April 2010 the concessionary arrangement which allows dealers in second-hand vehicles to account for VAT on either the purchase price, or half the selling price, of a vehicle for which they do not hold all the necessary margin scheme records will be withdrawn.

In future, where dealers in second-hand motor vehicles fail to retain evidence of both the purchase and selling price of a particular vehicle, VAT will be due on the full selling price.

## **6. Stamp Duties**

### **6.1 Stamp Duty Land Tax**

In September 2008, the Chancellor announced that no Stamp Duty Land Tax (SDLT) would be payable on residential property purchases where the purchase price did not exceed £175,000 and the transaction was completed between 3rd September 2008 and 2nd September 2009.

Legislation will be introduced in Finance Act 2009 and will ensure that that no SDLT will be payable on residential property purchases of up to £175,000 for a further period. This legislation will affect all residential property purchases of up to £175,000 transacted in the period 22nd April 2009 to 31st December 2009. After this date the threshold at which SDLT will become payable on such purchases will be reduced from £175,000 to £125,000.

### **6.2 Stamp Duty Land Tax - Alternative Finance**

Legislation will be introduced in Finance Bill 2009 to provide relief from Stamp Duty Land Tax (SDLT) and Capital Gains Tax (CGT) where land is used as a means of security in an alternative finance arrangement.

Currently, SDLT charges arise not only on the transfer of the land to the bond issuer but are also levied on the eventual return of the asset to the person who was seeking the finance in the first instance.

There are also numerous occasions on which a charge to CGT might arise, for example on the initial transfer of the land to the bond issuer and also the subsequent grant of a lease in favour of the borrower.

It is proposed that the above tax charges will be avoided where land assets are issued as securities provided the land transactions take place on or after the date on which Finance Bill 2009 receives Royal Assent.

Further changes are proposed in relation to the capital allowances legislation so that the borrower's entitlement to relief is not affected by the bond issuer holding title to the land.

### **6.3 Stamp Duty Land Tax – Shared Ownership**

Legislation will be introduced in Finance Bill 2009 to extend the favourable Stamp Duty Land Tax (SDLT) treatment to residential purchases under certain shared ownership schemes and to certain purchases made by providers of social housing.

The new provisions are intended to apply where the scheme is assisted by public subsidy. The proposed changes will affect property transactions where the effective date for SDLT purposes falls on or after the date on which Finance Bill 2009 receives Royal Assent.

### **6.4 Stamp Duty/Stamp Duty Reserve Tax**

Legislation will be introduced in Finance Act 2009 providing relief from Stamp Duty and Stamp Duty Reserve Tax (SDRT) charges where Securities Dealers and Financial institutions enter into stock lending and repurchase arrangements.

Currently, transactions involving stock lending and return, or sale and repurchase, of securities are ignored for the purposes of Stamp Duty and SDRT provided the securities are returned to the lender or seller under the terms of the agreement. If for any reason whatsoever, the securities are not returned to the lender or seller; SDRT charges arise on the initial loan/sale.

Under the proposed changes, no charge to SDRT will arise on the initial loan/sale if the securities are not returned to the lender/seller by virtue of the borrower/purchaser becoming insolvent on or after 1st September 2008.

The exemption from Stamp Duty and SDRT will also apply where the lender has been required to acquire securities to replace those not returned as a result of a borrower's insolvency.

Changes will also be introduced so that no capital gain or loss accrues where the lender uses collateral provided by the borrower to acquire replacement securities. This is subject to the proviso that the non return of the original stock is attributable to a borrower's insolvency.

### **6.5 Stamp Duty on Leases**

Legislation will be introduced amending the rules for claiming relief from Stamp Duty Land Tax (SDLT) where leaseholders exercise statutory rights of leasehold enfranchisement.

With effect from 22nd April 2009, the SDLT exemption will be extended and shall be available to any nominee or appointee acting on behalf of the freeholders of a block of flats who are exercising such rights.

Previously, Stamp Duty Land Tax (SDLT) was chargeable where leaseholders acquired the freehold of a block of flats unless a specialist vehicle was used for this purpose i.e. a "Right to Enfranchise" company.

## 7. Domicile and Residence

### 7.1 Non-Doms – Allowances

With effect from 6 April 2010 individuals who are not resident in the UK but claim UK personal tax allowances and reliefs as Commonwealth citizens will no longer be entitled to personal tax allowances and reliefs solely as Commonwealth citizens. They may still be entitled to claim them under a Double Tax Treaty.

### 7.2 The Remittance Basis

Individuals who are resident, but not domiciled, or not ordinarily resident, in the UK have the option of using the remittance basis of taxation and only being taxed in the UK on foreign income when it is brought into the UK. Since 6 April 2008, the retention of this remittance basis<sup>1</sup> has generally only been available to those who have been UK resident for 7 out of the preceding 10 years on payment of an annual £30,000 charge, though there are de minimis exemptions

A number of changes are now brought forward to correct deficiencies in the original legislation. Minor changes which apply to individuals with small amounts of overseas employment income, individuals with less than £2,000 of unremitted foreign income and gains for a tax year, individuals with no UK tax liability and no remittances in a tax year, exempt property and Gift Aid donations will have effect on and after 6 April 2008.

The remaining changes will have effect on and after 22 April 2009.

- ◆ Employed individuals with overseas income of less than £10,000 and overseas bank interest of less than £100 in a tax year, all of which is subject to foreign tax will not be required to file a UK tax return.
- ◆ The exemptions which allow an individual using the remittance basis to bring property into the UK which has been purchased from, broadly speaking, income from overseas investments and savings without triggering a liability to UK tax will be extended to include property purchased out of foreign employment income and foreign chargeable gains as well.
- ◆ It is clarified that individuals with less than £2,000pa of foreign income and gains will be treated as having used the remittance basis unless they notify HMRC that they wish to be taxed under the arising basis.
- ◆ The remittance regime includes transitional provisions that prevent certain income arising before 6 April 2008 from being taxed as a remittance if it is brought to the UK on or after that date. The provisions are to be extended to ensure that they operate as intended to individuals who are taxed under the settlements legislation.
- ◆ Legislation will also be introduced to clarify the interaction between the remittance basis regime and the tax rules which apply to settlements which are settlor-interested. These will come into force on 22 April 2009.
- ◆ It is confirmed that the £30,000 Remittance Basis Charge is tax so that tax relief is available for the purposes of Gift Aid where the £30,000 payment has been made.
- ◆ There are anti-avoidance provisions applying from 22 April 2009 where property is purchased out of overseas income and gains and forms part of a larger set, such as a series of linked artworks or a stamp collection, and only individual items are brought into the UK.

## **8. Miscellaneous**

### **8.1 Inheritance Tax: Extension of Agricultural Property Relief and Woodlands Relief to Land in the EEA**

With effect from 22 April 2009, as well as for certain earlier events described below, Agricultural Property Relief (APR) and Woodlands Relief (WR) will be extended such that land in the European Economic Area will also qualify for the reliefs if it meets the relevant criteria.

Qualifying property above will also benefit from the Capital Gains Tax hold over relief applicable to business assets, even where that land is farmed by someone other than the owner.

IHT due or paid on or after 23 April 2003 in relation to agricultural property and qualifying woodlands in an EEA state at the time of the chargeable event will become eligible for relief, and the earliest deadline for reclaiming repayment of the IHT is 21 April 2010. Normal time limits apply thereafter.

### **8.2 Investment Trusts**

A new elective framework will be introduced to allow Investment Trust Companies to invest in interest bearing assets in a tax efficient manner. The rules move the point of taxation from the investment trust to the shareholder, with the result that shareholders will face broadly the same tax treatment as they would have had had they owned the interest bearing asset directly. If the investment trust opts for these new tax rules, it will effectively remove any corporation tax liability that would otherwise have arisen on distributed interest type income

The measure will have effect for any interest distributions made on or after 1 September 2009.

### **8.3 Personal Liability of Accountant**

An important proposal is to require senior accounting officers of large companies some measure of personal responsibility for corporate tax returns.

Such senior officers, nominated by the company concerned, will be required to take reasonable steps to establish and monitor accounting systems that are adequate for the purposes of accurate tax reporting, and to either certify annually that this is the case or specify the nature of any inadequacies and confirm that those inadequacies have been notified to the company auditors.

An, as yet unspecified, regime of penalties is proposed on both the senior accounting officer personally and on the company for careless or deliberate failure to discharge the obligations set out above, and for the giving of a carelessly or deliberately incorrect certificate or notification.

This measure will apply to returns for accounting periods beginning on or after the date that the Finance Bill 2009 receives Royal Assent and consultation is promised on the implementation of these proposals.

### **8.4 Publicity**

HMRC propose to publish the names and details of individuals, businesses and companies who are penalised for deliberate defaults leading to a loss of tax of more than £25,000.

Those who make a full unprompted disclosure or a full prompted disclosure within the required time (to be specified by HMRC) will not be affected. There will be a right of appeal to an independent tribunal. Details will be published (when all appeal avenues are exhausted or expired) on quarterly lists on HMRC's website within one year of the penalty becoming final and will be removed from the website one year later.

The provisions will be brought into effect at an, as yet unspecified, future date by Treasury Order.

### 8.5 Overpayments

The various existing mechanisms for taxpayers to reclaim overpaid tax are to be replaced by a comprehensive statutory code after April 2010, replacing the current mix of statutory and non-statutory claims. The error and mistake relief rules are to be amended; removing the requirement that the overpayment must be the result of a mistake in a return and that it must be made under an assessment.

The measures will enable claimants to determine the amount to be repaid, and the rules regarding when and on what grounds a claim can be made will be set out in the new legislation.

Importantly, after 1 April 2010 repayments will have to be claimed within four years from the end of the period for which the return was made.

The measure will have effect for claims made on or after 1 April 2010.

### 8.6 Payments of Tax

The Finance Bill 2009 introduces three separate changes to the current system for collecting tax;

- ◆ The introduction of managed payment plans, allowing individuals and companies to spread their income tax or corporation tax over a number of instalments before and after the due date, without incurring the normal interest and penalties consequent on paying late. Although the legislation will have effect from the date the Finance Bill receives Royal Assent, because changes will be necessary to HMRC systems, this welcome flexibility is unlikely to be available before April 2011.
- ◆ HMRC will be able to collect small tax debts through the PAYE system. This is expected to begin from April 2012.
- ◆ HMRC will have the power to require companies and businesses to supply them with the address and contact details of tax debtors with whom HMRC have lost contact. This power will have effect from the date the Finance Bill receives Royal Assent.

### 8.7 HMRC Powers & Time Limits – Other Taxes

Legislation affecting individuals and businesses who are involved with environmental taxes, insurance premium tax (IPT), stamp duty land tax (SDLT), stamp duty reserve tax (SDRT), petroleum revenue tax (PRT) and inheritance tax (IHT) will be introduced in Finance Bill 2009.

The legislation will cover the following elements:

#### Record keeping

The new requirement will extend to the above taxes legislation introduced in Finance Act 2008 aligning rules between taxes, creating a common framework. These will be brought into effect by Treasury Orders from dates to be specified in each Order, but expected to be 1 April 2010.

#### Information and inspection powers

The new powers will align and modernise the way in which HMRC checks records and information to ensure that the right tax is being paid or returned.

Very broadly, the new framework will consist of

- ◆ Powers to inspect statutory records,
- ◆ Powers to require supplementary information from the taxpayer and third parties
- ◆ Powers to visit business premises,
- ◆ A modernised valuation power,
- ◆ Appeal rights against penalties and information notices, and
- ◆ Penalties for failure to allow an inspection and failing to comply with an information notice.

These will be brought into effect by Treasury Orders from dates to be specified in each Order, but expected to be 1 April 2010.

#### Aligned time limits for making tax assessments and claims

At present, time limits for changing the amount of tax due by assessment vary across the taxes. Proposed aligned time limits are as follows:

- ◆ For claims and mistakes, four years for all taxes listed above.
- ◆ For carelessly providing inaccurate information, four years for environmental taxes and insurance premium tax and six years for the other taxes.
- ◆ For deliberately providing inaccurate information, twenty years for all taxes listed above. The time limits for making assessments and claims need a transitional period and are not expected to become fully operative until 1 April 2011.

A Treasury Order will bring the changes into effect and specify the operative date.

#### Repeals

Approximately 40 specialist information powers that are no longer required will be repealed by secondary legislation. The intention is that the relevant order will be laid once Finance Bill 2009 receives Royal Assent.

### **8.8 Late Filing**

Harmonisation of the interest and penalty regimes for late filing of tax returns and late payment of tax is now proposed.

Initially, it is proposed this will cover

- ◆ Income tax,
- ◆ Corporation tax,
- ◆ PAYE,
- ◆ National Insurance Contributions (NICs),
- ◆ Construction Industry Scheme (CIS),
- ◆ Stamp Duty Land Tax,
- ◆ Stamp Duty Reserve Tax,
- ◆ Inheritance Tax,
- ◆ Pension schemes and
- ◆ Petroleum Revenue Tax

It is intended to extend coverage to VAT, excise duty, climate change levy, aggregates levy, landfill tax, air passenger duty and insurance premium tax at a later date.

The new regimes will replace the current variety of penalties. Late payment and late filed returns will be treated separately. The regimes will be broadly aligned across taxes, but are modified for PAYE and CIS.

Very broadly, the proposed new regime will comprise:

For late filing of a return

- ◆ £100 after the filing deadline
- ◆ Daily penalties for returns over 3 months late
- ◆ 5% of the tax due after 6 months and again after 12 months
- ◆ 70% of the tax due after 12 months or where information has been deliberately withheld.

For late payment

- ◆ 5% of the tax due after 1 month (by the due date for corporation and inheritance taxes) and again after 12 months
- ◆ A further 5% of the tax due after 6 months and again after 12 months
- ◆ Suspension of penalties where a payment arrangement is agreed with HMRC

Although the measure provides for removing late payment penalties where taxpayers have agreed a time to pay arrangement with HMRC and for a right of appeal against all penalties using a common formulation of reasonable excuse, it is quite probable that these supplements will in time represent a substantial additional income stream for the Exchequer..

Implementation of the new penalties is to be staged over a number of years, starting with penalties for late payment of current PAYE from April 2010. The new provisions will be brought into effect by Treasury Orders which will specify the dates from which they have effect.

### **8.9 Interest on Late Tax**

HMRC have operated an extensive and somewhat confusing range of interest regimes for different taxes where a taxpayer has underpaid or overpaid tax.

Legislation will be introduced to harmonise these different interest regimes so that one interest regime will apply to all taxes administered by HM Revenue & Customs, except for Corporation Tax and Petroleum Revenue Tax.

The new harmonised interest regime, which will have effect shortly after the Finance Bill 2009 receives Royal Assent, will be linked to the Bank of England base rate.

The Government are expected to implement legislation in Finance Bill 2010 to bring Corporation Tax and Petroleum Revenue Tax within the one harmonised interest regime.

### **8.10 HMRC Charter**

Legislation will be introduced in the Finance Bill requiring HMRC to prepare and maintain a Charter.

The Charter, which must be in place by 31 December 2009, will set out standards of behaviour and values to which HMRC will aspire in dealing with taxpayers and other parties.

HMRC will be required to report annually on how well they are doing in terms of meeting the standards set in the Charter.