

Chantrey Vellacott DFK LLP

Pre-budget Report

December 2009

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1. Introduction

“Make me virtuous, Lord - but not just yet”; the Chancellor’s approach to the UK’s economy is well encapsulated by St Augustine of Hippo’s approach in the fourth century. At its starkest, the forecast that net debt as a percentage of GDP will rise to 78% by 2014/15 suggests UK plc will be nearly as heavily geared as the banks the Chancellor has delighted in berating.

The economic outlook appears more optimistic than at the time of the March Budget. Unemployment has risen but not as fast as many feared, economic activity has been maintained, albeit at the expense of a ballooning deficit and a quantitative easing programme that many still believe must inevitably result in inflation.

As with so many Budgets, the apparent hole is plugged by optimistic forecasts of economic output in three to five years’ time. In our case, the Chancellor has held to his forecast of 3½%.

It is this self-righting feature that has enabled the Chancellor to commit to maintaining spending plans for the coming year, albeit coupled with public sector pay restraint and presenting a Statement that was more about politics than economics.

In fact, with the exception of a very few headline-grabbing moves, this Pre-Budget Report contained very little – except inexorable tax rises and political challenges to Her Majesty’s Loyal Opposition.

The decision to freeze rates and allowances has the effect of increasing every earner’s taxes and one can only admire the stealth with which an additional levy on the use of fixed line telephones was introduced.

The decision to reverse his predecessor’s commitment to raising the inheritance tax threshold in line with inflation attracts coverage, as does the tax on bankers’ bonuses. The true challenge is in the dates for that tax – it applies only to bonuses determined before the end of the tax year. Assuming the election is called before the Finance Bill has passed the House, will the Opposition agree to let the tax on bonuses stand as part of the Bill?

Perhaps even more remarkable were the omissions from the Statement. A number of anti-avoidance measures are brought forward, mainly targeted at lenders and asset-financiers. Rumours of a significant increase in capital gains tax proved ill-founded, as did thoughts that some of the myriad tax mitigation solutions available on the market would be explicitly stopped. For the moment, the authorities’ anti-avoidance resources are targeted on the offshore arena.

As tax rates rise, so will taxpayers’ willingness to seek ever more ingenious ways of avoiding the full effect of the charge. It will become ever more important to ensure that each taxpayer’s strategy is based on sound advice and never strays beyond legitimate planning.

2. Personal Tax

2.1 Rates and Allowances

Income Tax

- No changes to income tax rates or allowances for 2010/11. Next year's rates should be the same as this year's except for the introduction of the 50% income tax rate on taxable income over £150,000
- The personal allowance will therefore remain at £6,745 (though reducing for those with incomes over £100,000). The basic rate of tax at 20% will be levied on taxable income up to £37,400. The 40% higher rate tax will be levied on income between £37,401 and £150,000 and the new 50% additional rate of tax will apply to taxable income above that figure.

National Insurance Contributions (NIC)

- The starting point for employers', employees' and self employed NICs will be maintained at £110 per week. The upper earnings and profit limits for Class 1 and Class 4 NICs respectively will also be maintained at their current level of £844 per week. Similarly the Class 2 Self employed contributions will continue to be at £2.40 per week. Class 3 contributions will also remain at their current rate of £12.05.
- From 2011/12, all the main rates of NICs will increase by a further 0.5% in addition to the 0.5% increase previously announced. Class 1 NICs rise to 12% for employees and 13.8% for employers. The increased rate will also apply to Class 1A and 1B contributions. Class 4 NICs will also be increased by the same amount to 9%.
- The additional rate of Class 1 and 4 NICs payable on earnings above the upper earnings limit will also be increased by a further 0.5% to 2% from 2011/12.
- The primary threshold and lower profit limit will be increased by £570 for 2011/12 above previous announced amounts to compensate lower earners for the increase in Class 1 and 4 rates.

Capital Gains Tax

- No changes to the rate of tax on chargeable gains were announced. The annual exemption therefore remains at £10,100 and the rate applied to taxable gains remains 18%.

2.2 Higher Rate Relief for Pensions

Budget 2009 announced that from 6 April 2011 there would be a restriction on pension tax relief for people with incomes of £150,000 or over. Finance Act 2009 introduced anti-forestalling measures to immediately deny higher rate tax relief to individuals earning over £150,000 who:

- change their normal pattern of regular pension contributions, and
- make total pension savings in tax year in excess of £20,000 (or the lower of £30,000 and average contributions over the past three years if contributions are less regular than quarterly)

Finance Bill 2010 will introduce legislation, effective from 9 December 2009, to lower the income threshold for these anti-forestalling measures to £130,000.

From 6 April 2011 the £150,000 threshold for a reduction in tax relief on pension will now include the value of employer pension contributions. However, tax relief will not be restricted

for people with incomes below £130,000 before the inclusion of employer pension contributions.

2.3 Payments from Pension Schemes

A tax charge, currently at 20% on the first £10,800 and 40% thereafter, is payable when a registered pension scheme repays tax-relieved pension contributions to a member who has completed less than two years service.

From 6 April 2010 these rates will increase to 20% on first £20,000 and 50% thereafter.

In addition a tax charge, currently at 40%, arises when an Employer-Financed Retirement Benefits Scheme (EFRBS) makes certain transfers to an entity which is not an individual. From 6 April 2010 this tax, payable by the recipient, will rise to 50%.

2.4 Employee Benefits

With effect from 6 April 2010, the notional figure used to calculate tax and employers' national insurance on the benefit where employees have a company car and receive free private fuel will increase by £1,100 to £18,000. An employee who is in the higher-rate tax bracket and who receives free private fuel throughout the year for use in a car with the lowest level of emissions will pay £1,080 in tax, or, if his car has the highest level of emissions, the charge will be £2,520 - an increase of 25% over 2 tax years.

The amount applying to vans will increase by £50 to £550.

Finance Bill 2010 will set the company car tax charges that will apply from 6 April 2012. The current table of company car tax bands is to be extended down to a new 10% band and all CO2 emissions thresholds moved down by 5g/km. From 6 April 2012 the 10% band will apply to company cars with CO2 emissions up to 99g/km.

Finance Bill 2010 will eliminate, for 5 years from 6 April 2010, what would otherwise be a taxable benefit where an employee is provided with a van propelled solely by electricity. The legislation will also include a definition of an electric van for this purpose.

Currently, there is no tax charge on the provision of meals to directors or employees in a canteen or on the employer's premises where the meal is on a reasonable scale and all employees are entitled to a free or subsidised meal. Some employers have been linking free or subsidised meals to employees agreeing to a salary sacrifice arrangement and exchanging a designated amount of gross salary for the provision of meals.

Finance Bill 2010 will include legislation, with effect from 6 April 2011, to restrict the exemption where employees are able to acquire free or subsidised meals at work involving salary sacrifice or flexible benefit arrangements.

2.5 Employee Shares

Options granted under the Enterprise Management Incentives ('EMI') are tax advantaged, flexible share options aimed at small to medium higher risk companies. The UK Government has been in negotiations with the European Commission in regard to the scheme to ensure that it meets the criteria for State Aid.

It has now been agreed that the scheme legislation needs to be amended so as to include companies other than those whose activities are 'wholly or mainly' carried on in the UK. The legislation is now to be amended so that companies are only required to have a 'permanent establishment' in the UK

2.6 Furnished Holiday Lettings

Finance Act 2009 extended the same privileged tax treatment for furnished holiday lets in the UK was extended to properties let in the European Economic Area (EEA). As indicated at that time, the privileged treatment is withdrawn from 6 April 2010 for individuals and 1 April 2010 for companies.

From April 2010, furnished holiday lets will be treated, for tax purposes, the same as any other property business. Income will no longer be relevant UK earnings for pension relief purposes and losses will no longer be available to be set off against other income but will instead be ring fenced to be used against future property profits.

As furnished holiday letting will not be treated as a trade from April 2010, from this date the availability of the following capital gains reliefs will also be withdrawn:

- business asset roll-over relief
- entrepreneurs relief
- relief for gifts of assets
- reliefs for loans to traders
- exemptions for disposals of shares by companies with substantial shareholdings

Wear and Tear allowance will be available to be used as will the various tax reliefs under the tax rules for property businesses.

2.7 Venture Capital Schemes

Amendments to Venture Capital Trusts ('VCT') and Enterprise Investment Scheme ('EIS') legislation are proposed to enable them to meet the European Commission's criteria for State Aid and to align the size of businesses that can benefit more closely with the European Commission's definition.

The changes represent relaxations that may well improve the appeal of such schemes. The changes are detailed and include:

- the proportion of the VCT's qualifying holdings that must be in equities is increased from 30% to 70%. This change will apply to shares issued after 6 April 2010 that are not acquired using protected money. Protected money relates to money raised by the issue of shares before 6 April 2010 or using money derived from such investment
- VCT shares need only be admitted to trading on an EU regulated market for accounting periods ended on or after 6 April 2010
- the issuing company under either scheme need only have a permanent establishment in the UK rather than carrying on its business wholly or mainly within the UK
- the issuing company must not be in difficulty at the time that the investment is made under either scheme
- the company invested in must be a 'small enterprise' rather than meet a gross assets test

HMRC have also issued a technical note revising their view of how existing legislation applies to companies claiming EIS treatment where a relevant trade is carried on in partnership or by a limited liability partnership.

They now consider that a company will not qualify for EIS relief where the relevant activities are carried on by the company in partnership or by a limited liability partnership of which the company is a member. This is because they consider the activities are not being carried on by the issuing company or a qualifying 90% subsidiary.

Investors will still be able to obtain relief where the shares have been issued and the certificate of compliance authorised on or before 9 December.

Investors will not be entitled to relief, where:

- the shares have not been issued by 9 December 2009, even if advance assurance has been given
- the shares have been issued before 9 December 2009 but the certificate of compliance has not been authorised by their date

HMRC recognise that the change of view may have adverse implications for those intending to carry out a trade in partnership and will be consulting on how to ensure that the EIS scheme is targeted appropriately at small businesses.

2.8 Private Residence Relief for Carers

Finance Bill 2010 will introduce legislation to ensure that individuals who have set aside part of their home exclusively for the purposes of their business as a carer under the local authority adult placement scheme will not have their entitlement to principal private residence relief restricted as a result. This applies to disposals on or after 9 December 2009.

2.9 Inheritance Tax

In Finance Act 2007, Inheritance Tax (IHT) nil rate bands limit were set for all tax years up to and including 2010/11.

The Finance Bill 2010 will reverse the planned increase for next year and freeze the nil rate band at the 2009/10 level of £325,000 for chargeable IHT events occurring on or after 6 April 2010.

Specific anti-avoidance measures will be introduced into Finance Bill 2010 to counter two schemes seeking to avoid Inheritance Tax (IHT).

When a trust is settled during the settlor's lifetime, there is an immediate IHT charge of 20% on the value of the transfer that exceeds the nil rate band. Schemes have been devised which reduce or eliminate that charge. In one scheme, the settlor purchases an interest in a previously established trust; in another, the settlor retains a future 'reversionary' interest in the trust.

The anti-avoidance measures will ensure that a purchased interest in possession will be treated as part of the settlor's IHT estate; if the interest terminates before death, it will trigger an immediate IHT charge.

Where the settlor has retained a reversionary interest, the measures provide for an IHT charge to arise when that interest comes to an end – either naturally by the settlor receiving the trust assets or by that future interest being given away.

These measures will have effect for transfers into trust or purchases made on or after 9 December 2009.

3. Corporation and Business Tax

3.1 Corporation Tax Rates

The planned small companies' rate increase to 22% is deferred to 2011/12. Therefore, for 2010/11, the full and small companies' rates remain at 28% and 21% respectively.

3.2 Payroll Tax on Financial Businesses

A brand new tax has been introduced called Bank Payroll Tax affecting banks and other financial institutions. It is intended to be of short term effect initially but could be extended.

The new tax has been set at a fixed rate of 50% charged on bonuses paid or made available to 'Relevant Banking Employees' but only to the extent that they individually exceed £25,000. The new tax will be payable by the banks and financial institutions paying the bonuses. It will NOT affect the employees receiving the bonuses, who will only be subject to personal Income Tax in the usual manner.

Any bonus in excess of £25,000 that is awarded between 9 December 2009 and 5 April 2010 is covered except where the payer has no discretion as to the amount of the bonus because of a contractual obligation existing at the time of the announcement on 9 December. The Chancellor said he will consider extending the period of the charge until the provisions of the Financial Services Bill come into force.

The proposals will affect 'Taxable Companies' which will include banks (including UK branches of foreign banks), building societies and UK investment companies (or their UK branches) or UK resident financial trading companies in a banking or building society group. The proposals may also be amended to include employees of a partnership.

Those individuals affected are 'Relevant Banking Employees' - anyone who is employed by a Taxable Company and engaged wholly or mainly either directly or indirectly in activities that are 'Relevant Regulated Activities'.

'Relevant Regulated Activities' include activities regulated under the Financial Services Act 2000:

- accepting deposits for retail customers (e.g. retail banking or building society activities)
- dealing in investments as principal (i.e. trading on own account)
- dealing in investments as agent (e.g. as broker on behalf of clients)
- arranging deals in investments
- safeguarding and administering investments on behalf of clients (e.g. custodial services)
- regulated mortgage contracts for retail customers (e.g. engaged in retail mortgage lending)

If this is the definition that passes into law, then this new tax will target bonuses paid to employees engaged in a wider range of activities than was initially conveyed in the Chancellor's speech.

Bank Payroll Tax will apply to bonuses comprising money benefits and loans. The tax will also apply where arrangements for future payments are made during the chargeable period or where payments are routed through employee benefit trusts or other similar intermediary vehicles.

Bank Payroll Tax does NOT apply to:

- regular salary, wages or benefits
- some amounts paid under pre-existing contractual entitlements
- share related awards under an approved share incentive plan
- share options granted under an SAYE option scheme

3.3 Research & Development Tax Relief

Research & Development ('R&D') Tax Relief enables companies to achieve a super-enhancement for certain qualifying expenditure when calculating their corporation tax liabilities. The super-enhancement is currently 75% for Small or Medium Size Enterprises (SMEs) and 30% for larger companies. Further, loss-making SMEs can surrender tax losses for a cash credit.

The condition requiring SMEs to own the intellectual property to the projects that they are working on has been abolished. This means that qualification for the 75% enhancement rate has been simplified as companies will no longer have to prove this ownership. The change will have effect for any R&D expenditure incurred by a SME company in an accounting period ending on or after 9 December 2009.

Types of companies that will benefit are those where intellectual property is owned by one company in a 'group structure' and R&D work is carried out by a different company in the same group. Alternatively, the intellectual property may be owned individually by a shareholder or a director or by a different company.

Other changes announced today include the final guidance on what is meant by 'production'. This reinterpretation is not as onerous as had initially been feared such that, broadly speaking, all pre-production research and development work should still qualify for the relief.

3.4 Fair Value Accounting for Financial Instruments

The UK tax treatment of financial instruments follows their accounts treatment wherever possible. International Accounting Standard 39 and Financial Reporting Standard 26 are due to be changed so Finance Bill 2010 will introduce corresponding amendments to respond to these changes. The Bill will also include a power permitting further future changes to be made through secondary legislation.

The legislation will have effect on or after the calendar year in which it is made but there will, additionally, be powers to ensure that if companies adopt the accounting modifications retrospectively, the tax changes will be similarly applied.

The likely scope of the changes is not yet clear but tax issues currently under discussion include:

- the way in which convertible and share-linked securities are taxed if companies do not separately account for any embedded derivative features in the instruments
- the tax treatment for adjustments relating to assets Available for Sale following the abolition of that category
- the tax effect of companies measuring more of their liabilities at fair value
- how repos will be affected when the timing of an asset's derecognition from the balance sheet is altered
- the methodology for computing impairment losses on financial assets

3.5 Multinationals' Finance Costs

Finance Act 2009 introduced worldwide debt cap legislation which limits the UK tax relief a multinational group can claim for financing costs by reference to the global debt of the group concerned. Technical amendments are now to be introduced to overcome anomalies that have been identified in the original provisions.

These corrections include the following:

- a common accounting definition of liability; as used in the group consolidated accounts
- preference shares are to be excluded from the definition of relevant liabilities
- the definition of financial instruments is to be broadened so as to broaden the exclusion for those dealing in financial instruments
- an ability for a group to exclude a company from a debt cap, for instance to protect a credit rating. Dual resident investing companies will automatically be excluded companies
- elective rules excluding certain financing expenses and income so that the aggregation of the activities of all treasury companies across a group does not prevent an election being made where a company undertakes only some treasury activities
- the inclusion of the receipt of some intra-group guarantee fees
- the attribution to a corporate partner of financing costs incurred by the partnership, regardless of how the investment is accounted for in the accounts of the company
- the widening of the definition of Collective Investment Scheme to include entities that may fail the definition in section 235 Financial Services and Markets Act 2000 merely because they are a body corporate

These and other technical amendments are to take effect from periods of account for the worldwide group beginning on or after 1 January 2010.

Legislation is to be introduced in Finance Bill 2010 aimed at restricting tax relief for imperfectly hedged loan relationships or imperfectly hedged derivatives where the tax legislation has been used to generate a tax loss bigger than the overall group commercial loss. The legislation will be effective for accounting periods beginning on or after 1 April 2010. Periods straddling this date will be deemed to be two separate periods: before and after. The new legislation will ensure that any losses from these arrangements will be ring-fenced such that they can only be relieved against profits from the same overhedging or underhedging arrangement.

Being committed to ensuring that the UK remains an attractive location for innovation, a Patent Box regime will be introduced from April 2013 whereby income from patents granted after the legislation is passed will be subject to a lower level of UK corporation tax. The proposal is that enabling legislation will be included in Finance Bill 2011.

3.6 Anti-avoidance on Plant Leasing

Substantial anti-avoidance legislation to tackle perceived tax avoidance through the transfer of entitlement to benefit from capital allowances on plant or machinery was announced on the 21 July 2009 and effective from then. Further proposals will only affect transactions entered into on or after 9 December 2009.

The proposals will apply to transfers involving the sale of companies where the tax written down value of plant and machinery exceeds its balance sheet value and to transfers involving consortia and partnerships, but it will only apply when the transfers are tax-motivated.

The new proposals make three further changes to the steps announced on 21 July 2009:

- the proposals are extended to cover sales by an unincorporated shareholder of a company with an excess of allowances to a group in a tax-motivated transaction
- in quantifying the amount of the excess allowances, it will be necessary to compare the tax written down value of the plant or machinery with its balance sheet value
- excess postponed first-year or writing-down allowances in respect of qualifying expenditure on ships will be treated in the same way as any other capital allowances

Anti-avoidance legislation is to be introduced with effect from 9 December to tackle a perceived abuse of the capital allowances system in relation to plant and machinery leasing.

Two similar types of activity are covered, both involving the lessor company in selling its right to rental income. One involves the:

- lessor company retaining the right to capital allowances and paying any rebates due to the lessee, so the lessor generates a tax loss ; under the other
- the lessor company ceases to be within the charge to tax following the sale of the right to income

Legislation will be introduced in the Finance Bill 2010 to prevent companies from exploiting existing legislation which allow a group to sell a lessor company in stages without suffering the full effect of the charge to tax by relying on the provisions that apply when a lessor company becomes owned by a consortium.

The measure will have effect on or after 9 December 2009.

Legislation will be introduced in the Finance Bill 2010 to offer a lessor company an option to elect for an alternative treatment when sold after 9 December. This will remove the need to calculate an immediate charge at the time of sale.

Where a lessor company changes hands, a tax charge and matching relief is calculated to recoup the tax timing benefit enjoyed by the selling group and return it to the buying group. This measure offers the opportunity to a lessor company to elect for an alternative treatment which recoups the tax timing benefit. This will be done by isolating the profits of the business following the sale of the company rather than through the imposition of an immediate charge.

3.7 Film Production

Legislation will be introduced in Finance Bill 2010 to correct an unintended anomaly affecting the amount of tax credit claimable where films are produced over more than one accounting period. The following measure will have effect for accounting periods ending on or after 9 December 2009.

The proposed revision will adjust the way the amount surrenderable for tax credit is calculated. The calculation will become the lesser of:

- the available qualifying expenditure; and
- the loss for the period, plus and unsurrendered loss brought forward

This will overcome a quirk in the legislation that restricts the available tax credit in an unintended way.

3.8 Anti-avoidance on Government Bonds

Legislation will be introduced in Finance Bill 2010 to counter avoidance using indexed-linked gilt-edged securities.

There is a tax exemption for the inflationary return as measured by changes in the Retail Price Index on such securities. From 9 December 2009 where companies or groups enter into transactions which involve such securities they will no longer be able to benefit from the tax exemption, to the extent that they have entered into arrangements so that they are not economically exposed to the inflationary aspect of holding the indexed linked security, often through hedging.

3.9 Life Insurance

As a result of perceived abuse, legislation is to be introduced in Finance Bill 2010 to change the apportionment rules used to determine taxable profits for non-profit funds where there is more than one type of insurance business in a single company. The legislation will have effect for periods beginning on or after 9 December 2009.

4. Stamp Duties

4.1 Rates and Allowances

The Stamp Duty Land Tax holiday for residential properties up to the value of £175,000 will end as planned on 31 December 2009.

4.2 Disclosure of Schemes

Regulations are to be introduced to extend the Disclosure of Tax Avoidance Schemes to include Stamp Duty Land Tax ('SDLT') avoidance schemes that relate to residential property with a value of at least £1 million. Users of all SDLT avoidance schemes, for both commercial and residential property, will be required to report their use to HMRC.

Regulations will be introduced and become effective no later than 1 April 2010.

Current disclosure rules already apply to certain commercial property schemes, but the new regulations will cover non-residential property with an aggregate value of at least £5 million and residential property with a value of at least £1 million.

4.3 UK Shares in EU Markets

Following rulings in the European Court of Justice, HMRC are not seeking stamp duty at 1.5% when new shares are first issued to an EU clearance service. There are also currently exemptions from the 1.5% charge for subsequent transfers from such clearance services. The exemptions prevent what would otherwise be a double charge but they provide an opportunity to avoid the tax completely.

On 1 October 2009, HMRC announced that the 2010 Finance Bill would remove the exemptions with effect from 1 October in respect of transfers where companies and depositary receipt issuers arrange a scheme to avoid the payment of the 1.5% duty.

5. Climate-friendly Measures

5.1 Climate Change Levy

Certain facilities are currently able to claim a 20% reduced rate of Climate Change Levy. Finance Bill 2010 will amend this reduced rate to 35% from 1 April 2011.

The Pre Budget Report announced a series of initiatives to support additional public and private investment in the low carbon and energy sectors over the next three years.

These include the following:

- additional support for offshore wind projects
- doubling the commitment to fund carbon capture and storage demonstration projects
- introduction of an old boiler replacement scheme offering £400 for up to 125,000 households and providing extra resources for household heating and insulation
- allowing income received by those who generate small scale renewable electricity to be tax free
- exempting electric cars from company car tax from 2010 and introducing 100% first-year allowances for electric vans

5.2 Telephone Landlines

As set out in The Digital Britain White Paper there is a commitment to introduce a new Landline Duty in the financial year 2010/11. The duty will be 50p per month for each landline and will be used to help fund the roll-out of superfast broadband – Next Generation Access – to 90% of the country by 2017.

6. Miscellaneous

6.1 Value Added Tax

The standard rate will revert to 17.5% on 1 January 2010 as originally announced.

6.2 Offshore Disclosure

There has been a great deal of publicity over the New Disclosure Opportunity, whose time limit has been extended to 4 January, and the Liechtenstein Disclosure Opportunity.

Drawing on their recent experience, HMRC have issued a consultation document which sets out to modernise HMRC's powers to tackle offshore tax evasion. The consultation seeks to explore options to tackle evasion of tax through assets held offshore more effectively. The options include increased sanctions on offshore evasion and notification requirements for offshore bank accounts. Additionally views are sought regarding information that HMRC receives on non-resident trusts.

HMRC's experience from various voluntary disclosure opportunities have thrown some light on the scale of offshore tax evasion and how it is characterised.

6.3 North Sea Oil Production

Finance Act 2009 introduced measures to provide fiscal support for investment in the UK or the UK Continental Shelf ('UKCS'). Further measures are to be introduced in Finance Bill 2010 to support investment.

- the scope of the chargeable gains exemption for gains on the swap of UK/UKCS licences is to be extended
- the scope of the chargeable gains rollover relief where disposal proceeds are reinvested in new oil trade assets is to be extended to include the reinvestment of proceeds in exploration and development expenditure, including drilling costs
- the field allowance introduced to provide an incentive to invest in new fields will be extended to include investment in fields that have previously been decommissioned
- field allowance thresholds for qualification as ultra high pressure/high temperature fields will be reduced

These changes will be introduced with effect on or after 1 April 2010.

6.4 Anti-avoidance on Insurance Premium Tax

Anti-avoidance legislation will be introduced in Finance Bill 2010 to close an avoidance scheme involving an 'administrative fee' charged under a separate contract to avoid Insurance Premium Tax (IPT). The legislation will have effect for payments made on or after 9 December 2009.

IPT is paid by an insurer on the gross premium charged under a taxable insurance contract, which includes any commissions or fees unless they are charged to the insured under a separate contract.

6.5 Equitable Liability

The principle of equitable liability has been in place for many years and allows backdated corrections to tax assessments and determinations made in the absence of tax returns or other reliable data. It operated as a safety valve to ensure that excessive tax demands that had been issued could be reduced to the amount properly due when that was finally quantified.

HMRC originally operated their policy as an extra-statutory concession. Last year, it was questioned whether this was an insufficient position at law with the implication that HMRC had no power to remit taxes without primary legislation.

Following representations by various professional bodies, the Government have agreed not to abolish the principle but to confirm it in legislation.

As a consequence the principle will be converted from a guidance note to a strict set of rules with conditions such as the degree of backdating which is to be set at a maximum of three years from 2010 onwards.