CLIFFORD CHANCE

Briefing note

March 2012

Budget 2012

The UK Budget delivered today focussed on headline tax rates. The corporation tax rate will be reduced from 26% to 24% in April 2012 and the 50% income tax rate will be reduced to 45% with effect from 6 April 2013. The majority of income tax payers will benefit from an increase in the personal allowance of over £1,000 to £9,205 from April 2013. These measures are to be paid for in part by a clampdown on tax avoidance with the Government announcing that it will introduce a general anti-abuse rule ("GAAR"), and also by an increase in the bank levy rates. Purchasers of expensive residential property were the big losers as the rate of stamp duty land tax has been increased to 7% on such purchases. The penal rate of 15% where such a property is sold into a corporate envelope combined with the threat of an annual charge and possible retrospective legislation is likely to make SDLT mitigation for such properties far more challenging in the future.

Corporation tax

Rate

One of the key announcements of this year's Budget was a further reduction in the main rate of corporation tax. The main rate will be reduced from 26% to 24% from 1 April 2012 - a reduction of 2% rather than the 1% reduction announced last year. In addition, the Government confirmed that the rate will still be reduced by a further 1% in each of the following two years, resulting in a 22% rate by April 2014.

Key new announcements

- Further reduction in the main rate of corporation tax.
- 50% income tax rate to be reduced to 45%.
- SDLT on sales of residential property worth more than £2m increased from 5% to 7%.
- Confirmation that a GAAR will be introduced.
- Bank Levy rates increased.

Controlled foreign companies full reform

As expected, it was confirmed in the Budget that full CFC reform will be implemented in Finance Act 2012 and will be effective for CFCs with accounting periods beginning on or after 1 January 2013. Several drafts of the proposed new legislation have already been published as part of an ongoing consultation process.

The key feature of the proposed rules is the introduction of a "Gateway" test designed to enable groups to easily determine whether the business profits of their foreign subsidiaries, which do not meet the conditions for an "entity level exemption", fall within the rules. Notable changes made to the Gateway test in the most recent draft aim to reduce the compliance burden by seeking to identify legitimate foreign subsidiaries which do not artificially divert profits from the UK without a need to undertake complex computations.

Special provisions will apply to non-trading finance profits of CFCs. Subject to detailed rules, finance profits from overseas intra group financing will qualify for a partial exemption. In general, the effective tax rate for intra group finance income will be reduced to one quarter of the main corporation tax rate. In more limited circumstances, a full exemption will apply.

The consultation on the draft rules is ongoing, and further changes may be made prior to publication of the Finance Bill 2012.

Innovation

The Government announced that it will introduce corporation tax reliefs for the production of certain British video games, television animation programmes and high end television productions. As previously announced, the Government also intends to introduce an "above the line" research and development tax credit to encourage research and development activity by larger companies. Both measures will be included in Finance Act 2013 (subject to relevant State Aid approval) and will be subject to consultation.

Legislation for the so-called "Patent Box" will be included in Finance Act 2012 to allow companies to elect to apply an effective 10% corporation tax rate to profits attributable to qualifying intellectual property ("IP"). Qualifying profits will include royalties from patents as well as "embedded" income included in the price of patented products.

Qualifying IP includes patents granted by the UK Intellectual Property Office and the European Patent Office. It is intended that the regime will also be extended to other EU Member States which have comparable patentability criteria to the UK. The regime will also apply to other qualifying IP rights such as regulatory data protection, supplementary protection certificates and plant variety rights. The Patent Box will apply to existing as well as new IP and to acquired IP provided that the group has further developed the IP or the product which incorporates it.

The regime will come into effect from 1 April 2013 however, the 10% effective corporation tax rate will be phased in over 5 years. 60% of the benefit will be available in 2013 and an additional 10% available each year until 2017 when the regime will apply in full.

Foreign currency assets and corporate chargeable gains

The Government will consult over the summer on whether to introduce a rule allowing companies with a non-sterling functional currency to compute their capital gains and losses in their functional currency. This is designed to provide simpler and fairer tax treatment and to reduce administrative burdens for the companies impacted. Legislation is expected to be included in Finance Act 2013.

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Personal tax

For tax year 2013/14 the additional rate of tax will reduce from 50% to 45%. The corresponding dividend additional rate will reduce from 42.5% to 37.5%. Income tax rates will be unchanged for tax year 2012/13: 20% basic rate, 40% higher rate and 50% additional rate. The basic rate and higher rate will remain unchanged in tax year 2013/14. The rates for both years will be legislated in Finance Act 2012.

The personal allowance is to be increased in each of the next two tax years and will be £9,205 by tax year 2013/14. The Government's stated aim is for the first £10,000 of income to be free from income tax. Also over the next two tax years there will be a lowering of the basic rate limit, designed so that most higher rate taxpayers will get one quarter of the benefit of the personal allowance that a typical basic rate taxpayer will receive. Legislation for this will be in Finance Act 2012 and Finance Act 2013.

A cap on income tax reliefs claimed by individuals will apply from 6 April 2013. The cap will apply only to reliefs which are currently unlimited. For anyone seeking to claim more than £50,000 in reliefs, a cap will be set at 25% of income (or £50,000, whichever is greater). Draft legislation will be published for consultation later this year. Legislation will be introduced in Finance Act 2013.

A statutory residence test is to take effect from 6 April 2013 and at the same time ordinary residence will be abolished for tax purposes (although overseas workday relief will be retained and placed on a statutory footing). Draft legislation will be published for consultation shortly. Legislation will be included in Finance Act 2013.

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Real estate tax

The stand-out announcements relate to a package of measures to target the 'super-rich' buying homes over £2m and avoiding Stamp Duty Land Tax and Capital Gains Tax particularly through the use of special purpose entities (often offshore). Although targeted at the 'super-rich', the measures will also affect commercial developers building such homes for future sale, developers of mixed commercial and residential buildings or (perhaps less obviously) commercial investors buying such mixed-use buildings or blocks of flats and banks financing those transactions. It is not clear if these wider ramifications have been thought through by the Government and were intended. We have some concerns over this as noted below.

Otherwise, the commercial real estate market appears to have escaped relatively unscathed with no SDLT being levied on the sale of shares in land-rich companies or CGT being levied on disposals by non-resident vehicles owning commercial property.

Stamp duty land tax ("SDLT")

The top rate of SDLT of 4% for commercial property transactions remains unchanged.

The top rate of SDLT for the purchase of residential property over £2,000,000 increases to 7% from 22 March 2012:

- The current top rate of 5% will continue to apply to residential transactions where the consideration is more than £1,000,000 but less than or equal to £2,000,000;

- Over £2m, the new 7% rate will apply unless the new punitive rate of 15% applies (the rate applies to the entire purchase price in the usual way);
- The new punitive 15% rate will apply to purchases of single dwellings over £2,000,000 by "non-natural persons" effective today 21 March 2012 (see below).

Transitional provisions will apply to ensure that the old rates will continue to apply to contracts entered into before respective start dates (22 March 2012 for the 7% rate, 21 March 2012 for the 15% rate) but completed on or after those dates. There are certain exceptions where the new rates will apply even where a contract was entered into before the relevant start dates (e.g. where the contract is varied, an option is exercised or there is an assignment or sub-sale after that date).

The 15% higher rate SDLT charge

A new higher rate of SDLT of 15% is being introduced from 21 March 2012 for purchases of UK residential property by certain types of "non-natural person":

- For these purposes, "non-natural person" includes companies, collective investment schemes (including unit trusts) and partnerships in which one of the partners is a body corporate;
- Where two or more purchasers are acting jointly, the new higher rate applies where at least one of them is a "non-natural person";
- To fall within the new higher rate, the interest being acquired must be an "interest in a single dwelling". Such an interest is considered a "higher threshold interest" if consideration of £2,000,000 is attributable to it. It would appear that the same applies if a number of "single dwellings" are acquired. A building or part of a building which is in the process of being constructed or adapted for use as a dwelling is deemed to be a "dwelling" for these purposes;
- Where a transaction includes both a "higher threshold interest" and a non-higher threshold interest, there are deemed to be two separate transactions for SDLT purposes each charged at their own applicable rates;
- Where a transaction includes the acquisition of more than one linked chargeable interest in the same dwelling (at least one of which was acquired by a non-natural person) and the total consideration exceeds £2,000,000, each of the chargeable interests being acquired is treated as a "higher threshold interest". This rule is intended to prevent circumventing the higher rate by sub-dividing the acquisition of a dwelling worth over £2m into smaller parts each individually below the £2m threshold;
- The new higher rate catches transfers of partnership interests where chargeable interests have been transferred to the partnership and the purchasers include a body corporate;
- There are exclusions from the new higher rate for residential property developers and corporate trustees in certain circumstances. This includes cases where a company (or partnership) acquires land in the course of a bona fide residential property development business and for the sole purpose of developing and reselling the land, provided that the company (or partnership) has carried on that business for at least two years before the effective date of the transaction; and
- Transitional provisions will apply to transactions where the contract was completed and signed by all parties on or before 21 March 2012.

Although the new higher 15% rate has not at this stage been extended to transfers of shares or interests in "non-natural persons", the Government intends to introduce an annual charge payable on the ownership of residential property where the value is greater than £2,000,000 and the person owning the property is a non-natural person. A consultation will be launched over spring/summer with a view to legislating in Finance Act 2013. This is to act as an incentive for investors not to use such structures and potentially to dismantle existing

structures. Taken together with a further announcement that the Government will extend the Capital Gains Tax regime to gains on disposals by currently exempt offshore non-natural persons (e.g. offshore companies or JPUTs) of UK residential property and shares or interests in such property, this is a significant attack on typical structures used to hold residential property.

Typically, individuals use special purpose companies for privacy and/or UK inheritance tax planning as well as liability-blocking rather than SDLT avoidance (which it was thought was the original complaint of the Government). Indeed, many offshore investors pay SDLT on acquiring the property in a company for the first time. These changes are therefore likely to have profound implications on the structuring of such transactions. On the question of privacy, it is our preliminary view that a corporate bare trustee or nominee holding on bare trust for an individual would not be caught by the new 15% higher rate but this may need to be confirmed with HMRC.

More problematic is the fact that the legislation implementing the new 7% SDLT rate and the new 15% higher rate for certain transactions does not interface well with the existing SDLT distinction drawn between residential and commercial property, which could give rise to certain surprising results. In some cases, this is helpful: for example, residential accommodation for school pupils and students count as "residential" for the 7% rate but are not "residential" for the 15% rate.

On the other hand, currently, 6 or more dwellings are deemed to be "commercial" property subject to the commercial rates (top rate 4%). The 15% rate does not however appear to replicate this principle leaving open the possibility that a corporate investor purchasing a block of residential flats where each or all of the flats are worth more than £2m could face the punitive 15% SDLT rate on some or all of the purchase price (and in future, the 'annual charge' and CGT charge mentioned above). It is not clear that the Government's intention to "stop or reduce the number of properties that will enter such complex ownership structures" was meant to extend to commercial investors buying blocks of flats.

A similar problem arises on a company purchasing a mixed-use commercial/residential building. The legislation appears to levy the 15% charge on the residential element if the residential element is worth over £2m. Again it is not clear whether this was really intended and whether the Government are intending such investors (rather than owner-occupiers) to have to hold the residential element through individuals (which of course is entirely unrealistic).

SDLT avoidance schemes

The Government will introduce legislation, with effect from 21 March 2012, to counter a scheme utilising sub-sale relief with the grant or assignment of an option. This has been a particularly popular mass-marketed residential scheme although we have our doubts whether it works technically. The Government is changing the law to put it beyond doubt that the scheme is ineffective. We would expect HMRC to also be challenging through litigation anyone who has used such a scheme.

In addition, there will be a consultation on the wider approach to addressing SDLT avoidance using sub-sales – it is expected that the consultation document will be published over spring/summer.

Most significantly, the Government has announced it will take action to close down future SDLT avoidance schemes, with effect from 21 March 2012 where appropriate. The intended legal effect of this announcement is to give the Government the legal authority to introduce 'retrospective' legislation to defeat future SDLT avoidance schemes. The Government has had some recent success in court with this approach although one

wonders why it also felt it necessary today to announce that it will extend the new GAAR to SDLT when the Government says it will retrospectively change the law to defeat SDLT avoidance in any event.

Finally, there will be two changes to the SDLT Disclosure of Tax Avoidance Schemes ("DOTAS") rules which will remove the 'grandfathering' provision for certain avoidance schemes involving subsales and remove the thresholds for notification under DOTAS. This is intended to ensure HMRC can identify the users of these subsale schemes and no doubt challenge them.

Other SDLT changes

There will be an informal consultation on simplifying the SDLT rules that apply to lease arrangements involving an abnormal rent increase, the substantial performance of an agreement for lease or a lease that continues after a fixed term. The consultation will commence in April. There were also some other esoteric changes which are not dealt with in this briefing.

Capital gains tax on offshore companies

As mentioned above, the Government intends to extend the UK Capital Gains Tax net to catch gains on disposals of UK residential property, and shares or interests in such property, by non-UK resident "non-natural persons" from April 2013. It intends to consult on the details of the rules. Once again there is a question as to what definition of "residential property" will be taken for these purposes and whether a distinction will be made between a company owning blocks of flats from one owning a single dwelling?

REITs

The REIT rules, as originally enacted in Finance Act 2006, focussed on the need for a REIT to be a listed entity with a broad investor base. This was reflected in the detailed conditions (including, in particular, the "non-close company" condition) that must be met for a company to qualify as a REIT for UK tax purposes. This meant in practice that initial take-up was generally limited to existing listed property investment groups, for which conversion was a relatively straightforward exercise, with only modest growth in the REITs sector since then. Over the last few years the property industry has been lobbying to seek relaxation of some of the more prescriptive REIT conditions to enable new entrants to join the regime and to encourage growth in the UK real estate sector, both in commercial and residential property, with a view to facilitating so-called "private REITs".

In last year's Budget the Government announced an informal consultation on the REIT rules. Following publication of the results of the consultation in October 2011, the Government published draft legislation in December 2011, the main purpose of which was to "address barriers to entry and investment in the regime" and "reduce the costs of complying with the requirements of the regime".

Finance Act 2012 will include the following amendments in relation to "barriers to entry", with effect for companies that join the regime on or after the date of Royal Assent (which means that two parallel REIT regimes will exist as the old rules will continue to apply for companies that are already within the REIT regime):

- Relaxing the requirement for a UK-REIT to be listed on a recognised stock exchange so that REITs can be listed on trading platforms such as AIM, Plus and their foreign equivalents. However, it remains to be seen whether there will be any relaxation of the requirement that such shares in fact be traded during each accounting period which is impossible for a REIT to control;
- Introducing a fixed grace period (up to 3 years after joining the regime) for new REITs to meet the "non-close company" condition in order to provide start-up UK-REITs with an opportunity to attract investors over time as they build their reputation;

- Facilitating the setting up of REITs by institutional investors (who would maintain a "seed" interest) by introducing a diverse ownership rule for such investors to allow the "non-close company" condition to be met (this would apply to trustees/managers of an authorised unit trust scheme or a pension scheme, an open-ended investment company, an insurance company or a sovereign investor); and
- Abolishing the (2%) conversion charge for companies joining the REIT regime.

A number of other measures will also be introduced in Finance Act 2012. These will have effect for all (existing and new) REITs in the regime on or after the date of Royal Assent and include:

- Relaxing the timing requirement that the REIT distribute 90% of its profits from its property rental business to investors from 15 months to 18 months after the relevant accounting period in certain circumstances (i.e. where a stock dividend has been issued and a market value of the stock dividend is required);
- Relaxing the balance of business test (under which at least 75% of the assets of the REIT must relate to the property rental business) so that cash can be taken into account for the purposes of the test (currently cash is only taken into account if it represents proceeds from the sale of property used in the REIT's property business for the two year period following the disposal);
- Amending the rule under which the amount of borrowing undertaken by a REIT in respect of its property rental business is restricted (by charging to tax the amount by which its financing costs exceed the relevant limit) so that financing costs only include interest on loans and do not include the cost of arranging loan finance and other accounting costs. The amount of tax paid when financing costs exceed the relevant limit will also be restricted to 20% of the property profits; and
- Disapplying the rule in respect of the tax treatment of an asset of the property rental business that is disposed of by way of trade (i.e. which does not benefit from the exemption from tax) in respect of disposals made to another member of the REIT.

The Government has also announced that it will start an informal consultation on the role REITs can play in supporting the social housing sector and whether to change the treatment of income received by a REIT when it invests in another REIT. Any legislation in respect of these two points will be in Finance Act 2013.

Enterprise zones

100% capital allowances will be offered to encourage investment in plant and machinery in the London Royal Docks Enterprise Zone and certain enterprise zones in Scotland and Wales.

Disclosure of tax avoidance schemes

A formal consultation will be launched in summer 2012 on proposals to extend the DOTAS "hallmark" (the descriptions of schemes required to be disclosed for income tax, capital gains tax or corporation tax) so as to capture certain avoidance schemes.

Corporation taxes and real estate

The reduction in the rate of corporation tax from 26% to 24% from April 2012 (and future reductions to 22% from April 2014), whilst obviously welcome, will not affect non-UK investors who structure their UK real estate investments through non-UK companies and are therefore only liable to income tax (subject of course now to the threatened change in 2013 for residential property mentioned above).

Other areas for future change

Lease premium relief

The Government will commence a consultation on amending lease premium relief as it applies to long leases treated as short leases.

Income tax

The Government will consult on changes to the income tax rules on the taxation of interest and interest-like returns, and the rules on the deduction of tax at source from such amounts. The scope of this is unclear but it could conceivably have implications in the real estate sector.

Other real estate anti-avoidance

The Government will introduce legislation to counter two specific areas of tax avoidance. The anti-avoidance provisions of the capital allowances legislation will be widened to protect against a loss of tax revenue as a result of transactions to acquire plant or machinery which are part of a scheme or arrangement involving tax avoidance. With effect from 13 March 2012, the Government will also introduce legislation to target avoidance involving losses from a property business being set against general income.

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Bank tax

Bank levy: 2013 rate change

The Government has announced that the main rate of the Bank Levy which applies to short-term chargeable liabilities will be increased from 1 January 2013 to 0.105% from 0.088%. The half rate which applies to chargeable equity and long-term chargeable liabilities will be increased from 1 January 2013 to 0.0525% from 0.044%.

Income tax rules on interest

The Government has announced that it will commence a consultation on changes to the rules dealing with income tax on the taxation of interest and interest-like returns and also the rules concerning deduction of tax at source from such amounts. Any legislation brought forward as a result of the consultation will be included in Finance Act 2013. It is not clear what the precise scope of this consultation is.

Information powers – FATCA

The Government has previously announced that it will co-operate with the governments of France, Germany, Italy and Spain to facilitate information exchange for the purposes of the US Foreign Account Tax Compliance Act ("FATCA") between financial institutions and the US Internal Revenue Service. HMRC will launch a consultation on how this can be done with a view to legislating in Finance Act 2013. For further detail on this click here for our briefing on FATCA.

Basel III / CRD IV compliant bank regulatory capital instruments

The Budget announcements confirm that a power is to be included in the Finance Act to make regulations for the tax treatment of regulatory capital instruments issued by banks which comply with the new Basel III / CRD IV criteria. The announcements also confirm that regulations are to be made pursuant to that power with effect from the commencement of CRD IV (expected 1 January 2013). This follows on from a consultation which HMRC undertook last summer. It remains to be seen whether the regulations will address all the potential tax issues that arise in connection with these instruments, which can potentially include non-deductibility of coupons, gains in connection with potential write-downs or conversions of the instruments, tax de-grouping, and stamp duty. Banks are keen for clarity on these issues and will be awaiting the draft regulations and guidance.

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Insurance companies

Changes to the taxation of life business post Solvency II: transitional rules

In April 2011, the Government published a Consultation Document intended to focus discussions on implementing changes to the taxation of life assurance business in connection with the advent of Solvency II.

Following publication of that document, there has been further detailed consultation with the insurance industry with draft legislation being made available for comment at the time of the Pre-Budget Report in December 2011.

In today's Budget, HMRC have confirmed that the new tax regime will take effect from 1 January 2013 (notwithstanding that insurance companies will not be required to comply with Solvency II until 1 January 2014); but they have also shown that they have listened to concerns expressed by the insurance industry on the draft legislation. In particular, the nature of the changes to the taxation of life assurance business are such that detailed transitional rules are required to enable the move from "old" to "new". HMRC concerns that these transitional rules may be arbitraged for advantage by insurance businesses meant that the draft legislation included an anti-avoidance provision that would apply if an insurance company entered into arrangements in connection with the application of the transitional rules for a tax avoidance purpose, with a clearance procedure available. After substantial comment from industry participants, this anti-avoidance rule has been revised. Further, as it will take effect from 21 March 2012 (even though it will not be enacted until Royal Assent), HMRC have indicated that they will be willing to discuss its operation with insurance companies in advance of the statutory clearance process becoming law, to assist in removing uncertainties for insurance businesses as a result of the operation of this provision.

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Oil and gas taxation

For companies with ring fence trades, losses resulting from decommissioning costs can be carried back three years (as opposed to the normal position where losses can only be carried back one year). Today's Budget confirms the Government's commitment to preserve how tax relief for decommissioning costs operates so as to provide the oil sector with the necessary assurance to attract more investment (particularly in the more mature fields) in the North Sea.

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Anti-avoidance

GAAR

The Government accepted the recommendation of the report by Graham Aaronson QC (published on 11 November 2011) that a GAAR targeted at artificial and abusive tax avoidance schemes should be introduced into the UK tax system. The Government intends to consult on (i) new draft legislation which will be based on the recommendations of the Aaronson report, (ii) the establishment of the advisory panel (which the Aaronson report recommends should have a majority of non-HMRC members to advise whether HMRC would be justified in seeking counteraction under the GAAR in a particular case) and (iii) the development of explanatory guidance (which the Government promises will be practical both for taxpayers and for HMRC). The Government also intends to extend the GAAR to SDLT even though the Aaronson report suggested that that should only be considered at a later stage. The consultation document will be issued in summer 2012 with a view to bringing forward legislation in Finance Act 2013.

Disclosure of tax avoidance schemes

In relation to the disclosure of tax avoidance schemes regime ("DOTAS"), the Government will be consulting over the summer on extending the "hallmarks" (the descriptions of schemes required to be disclosed) so as to capture avoidance schemes that do not currently have to be disclosed, with a view to publishing draft regulations later in the year.

Targeted anti-avoidance

The Government also announced a number of new specific anti-avoidance measures which have effect from Budget day and which will be enacted in Finance Act 2012 along with certain other previously announced anti-avoidance measures. The new measures include rules relating to (i) an SDLT avoidance scheme that is based on the SDLT sub-sales rules, (ii) further changes to the "sale of lessor companies" rules in the Capital Allowances Act and (iii) countering arrangements where lessees under long funding leases seek to avoid including amounts received connected to the lease as disposal value for capital allowances purposes. The previously announced measures relate to debt buy-back structures (which includes a retrospective element) and schemes involving authorised investment funds.

In the sphere of anti-avoidance it was notable that the Chancellor issued a stern warning with regard to any future attempts to engage in SDLT avoidance, threatening to use retrospective legislation in that area.

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VAT

VAT cost sharing exemption

It was confirmed today that only technical changes will be made to the draft provisions to be included in Finance Act 2012 to implement the VAT cost sharing exemption in the UK. It has taken a long time for this exemption to be introduced into domestic law. Broadly, the exemption applies to services supplied by a "cost sharing group" formed by businesses and other organisations which are unable to recover all the VAT they incur. Examples of such businesses/organisations include banks, insurance companies, universities, care homes, housing associations and charities. Where the exemption applies, no VAT is payable on the services supplied by the "cost sharing group" to its members.

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Pensions

Pensions tax relief – no change

Contrary to widespread expectation that the Government would be tackling higher rate pensions tax relief, the Chancellor has confirmed that there would be no significant change to pensions tax relief in this Budget, implying therefore that this issue may well be revisited in the future.

Changes

Notable changes in the pensions context include (i) the introduction of a single-tier pension above the level of means testing at an estimated £140 a week; (ii) an automatic review of the state pension age to ensure that it rises in line with increases in longevity and (iii) the simplification of age-related allowances for pensioners commencing in April 2013 with a view to creating a single personal allowance for all. A detailed consultation will also be launched next month on the proposed integration of income tax and National insurance contributions.

Employer asset-backed pension contributions

The Government has also limited the circumstances in which employers can benefit from unintended excess tax relief arising from asset-backed pension contribution arrangements. The aim is to ensure that the tax relief given to employers using such arrangements accurately reflects the total amount of payments made to a registered pension scheme directly or through a special purpose vehicle. Draft legislation, to be included in Finance Act 2012, was introduced on 29 November 2011, and then again on 22 February 2012, with effect from

those respective dates. Further clarifying changes to the previously published legislation have been announced with effect from 21 March 2012 and will be included in Finance Act 2012.

Employers using asset-backed pension contribution arrangements will need to ensure that their arrangements comply with the new rules particularly as they are complex and have been introduced in stages and will have transitional effect depending on when the contributions have been made.

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Employee benefits

Employee share plans

Following the publication of the Office of Tax Simplification's ("OTS") review of UK tax approved share plans earlier this month, the Government has (as expected) confirmed that it will consider the OTS recommendations and consult shortly on how to take a number of those recommendations forward. The timing of implementation of any changes is unclear, as the Budget announcements suggest that any legislation will be in "future finance bills". It had previously been expected that any (and all) changes would be included in Finance Act 2013.

In a surprise announcement, the Government has also confirmed that it will be seeking to make a number of changes to the Enterprise Management Incentive Scheme ("EMI"), (the tax-advantaged employee share option plan for small and medium sized companies). These proposed changes, which are subject to receiving State Aid approval, include increasing the individual grant limit under EMI from £120,000 to £250,000 and revising the rules so that shares acquired on exercise of EMI options on or after 6 April 2012 will be eligible for capital gains tax entrepreneurs' relief. These changes, if enacted, will be welcomed by many companies that qualify for EMI.

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Other measures

Machine games duty

As announced in the 2011 Budget and following consultation, Finance Act 2012 will introduce a machine games duty ("MGD") with effect from 1 February 2013. MGD will replace Amusement Machine Licence Duty and supplies from dutiable machines will become exempt from VAT. These measures have in part been introduced because the VAT treatment of gaming machines has been successfully challenged in the Courts. By introducing MGD and exempting dutiable machine games from VAT, the Government hopes that tax revenues will be protected going forward.

MGD will be charged on the net takings from playing dutiable machine games. These are games played on a machine where customers hope to win a cash prize. There will be two duty rates (i) a 5% rate will apply to machines where both the maximum cost to play the game is 10p and the maximum prize is £8 and (ii) a 20% rate will apply to all other games.

Remote gambling

The current taxation regime for remote gambling has allowed operators to avoid paying UK gambling duties by basing/moving their operations abroad. Following a review of remote gambling announced in July 2011, the Government will introduce a place of consumption based taxation regime for remote gambling to broaden the tax base and provide a fairer basis for competition between UK and overseas remote gambling operators. The new regime will ensure that operators anywhere in the world pay gambling duties on gross profits generated from customers based in the UK. This is in line with actions taken by several other European countries. Legislation will be introduced in a future Finance Bill, with an intention for implementation in December 2014.

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