CLIFFORD
CHANCE

Briefing note March 2014

UK Budget 2014

It was billed as a Budget targeted at "Makers, Doers and Savers". Makers and Doers will welcome the doubling of the amount of the annual investment allowance. Savers will benefit from an increased ISA allowance. There are also major changes to the tax treatment of defined contribution pension schemes.

Anti-avoidance measures were also prominent. Those aimed at transfers of corporate profits appear to be potentially very wide-ranging in their scope. The Government has also set out its priorities for countering Base Erosion and Profit Shifting. Users of tax schemes which fall to be disclosed under the DOTAS regime or which are subject to counteraction under the General Anti-Abuse Rule will be required to pay their tax upfront.

A summary of the main business tax announcements is set out below.

Company Taxation

Rates

Previously announced changes in corporation tax rates are to be implemented, with no further changes announced. This means that the corporation tax rate will drop to 21% from April 2014 and to 20% from April 2015.

Annual investment allowance

Companies and businesses incurring expenditure on plant and machinery are entitled to a 100% upfront allowance on such expenditure up to a cap of £250,000 per annum. This allowance is temporary and was scheduled to expire on 31 December 2014 but is to be extended to 31 December 2015. From April 2014, the cap on the allowance will also be increased to £500,000 per annum.

Key new announcements:

- Package of measures to help savers – including an increase in the ISA allowance
- Doubling of the annual investment allowance
- Anti-avoidance measures – including a wide-ranging one aimed at transfers of corporate profits
- A major overhaul of the tax rules governing defined contribution pension schemes

Payable research and development credits for SMEs

SMEs which undertake qualifying R&D activities are entitled to enhanced tax relief for certain qualifying expenditure. If those SMEs are loss-making (and therefore not tax-paying), they are entitled to a cash credit which is currently calculated at a rate of 11%. For expenditure incurred after 1 April 2014 the rate is increasing to 14.5%.

Tax reliefs for creative industries

Following on from reliefs which have been introduced for the film, video games and television industries, the Government has announced that it intends to introduce a similar relief for theatrical productions and touring theatrical productions. A consultation will be launched on the design of the relief shortly.

Review of loan relationships and derivative contracts rules

HMRC has been consulting on a wide-ranging re-write of the loan relationships and derivative contracts rules. Originally, it had been planned to introduce significant changes to these rules in Finance Act 2014 but (with the exception of some limited technical changes) this has now been deferred until 2015. It remains likely that this review will have significant implications and corporation taxpayers will need to monitor the position carefully.

Capital Allowances

Enterprise Zones – Enhanced Capital Allowances

Enhanced capital allowances at the rate of 100% are available to companies investing in new qualifying plant and machinery on designated sites within "Enterprise Zones". These were originally introduced in 2012 for a five year period to 31 March 2017. The Government plans to legislate in Finance Act 2014 to extend the period in which 100% enhanced capital allowances are available in Enterprise Zones by three years until 31 March 2020, and to include a power to make future extensions to the duration of enhanced capital allowances schemes by Treasury Order.

A pilot Enterprise Zone will be established in Northern Ireland.

Enhanced Capital Allowances for energy-saving and environmentally beneficial (water efficient) technologies

The Government intends to implement secondary legislation to amend the list of technologies that qualify for the energy-saving and water efficient enhanced capital allowances schemes. These schemes allow 100% of the cost of an investment in qualifying plant and machinery to be written off against taxable profits of the period in which the investment is made (rather than the 18% main rate and the 8% special rate). Two new technologies will be included in the scheme: active chilled beams and desiccant air dryers with energy saving controls. In addition, the qualifying criteria for twelve current technologies will be revised and certain changes in technical standards will be implemented.

Mineral Extraction Allowance

Under current law, chapter 2 of Part 5 of the Capital Allowances Act 2001 provides for the relief of qualifying expenditure relating to mineral exploitation and access at the rate of 100% for the oil and gas industry. The Government intends to legislate in Finance Act 2014 to ensure that all costs incurred in obtaining planning permission for the purposes of a mineral extraction trade qualify for relief at this higher 100% rate.

Enhanced capital allowances for zero emission goods vehicles

The Government plans to legislate in Finance Act 2015 to extend the enhanced capital allowances available for zero emission goods vehicles to March or April 2018 (although availability will be limited to businesses that do not claim the Government's "Plug-in Van Grant", in order to ensure compliance with the EU State Aid rules).

For further details on any of the above changes, please contact:

Jonathan Elman

David Harkness

Nicholas Mace

Bank Tax

Bank Levy

In addition to previously announced changes to the Code of Practice on Taxation for Banks and to the operation and rate of the bank levy, the Budget documents also announce an upcoming consultation on changes to the bank levy.

The bank levy is imposed by reference to the balance sheets of UK banks and building societies and non-resident banks operating in the UK through permanent establishments. The bank levy is currently levied by reference to chargeable equity and liabilities at rates of 0.156% (on short term liabilities) and 0.078% (on equity and long term liabilities), though no levy is payable where the relevant chargeable equity and liabilities do not exceed £20 billion. Anecdotal evidence suggests that the presence of this threshold has discouraged some banking groups from expanding their operations in the UK.

The Government announced today that a consultation document will be published on 27 March to consult on the merits of a new charging mechanism whereby banks are allocated into different bands according to their chargeable equity and liabilities and then charged an amount set for that band. The intention is for any such change to be revenue-neutral for HM Treasury. Any changes to the bank levy's design following the consultation are likely to be legislated for at the report stage of Finance Bill 2014 (typically late June/early July), to apply for chargeable periods commencing on or after 1 January 2015.

For further details on any of the above changes, please contact:

Jonathan Elman

David Harkness

Dan Neidle

Real Estate Tax

The commercial real estate market appears to have escaped relatively unscathed with no changes in Stamp Duty Land Tax (SDLT) rates/thresholds and no SDLT being levied on the sale of shares in land-rich companies. The CGT exemption for disposals by non-resident vehicles owning commercial property remains.

That said, the main Government announcements regarding real estate tax relate to:

- an immediate reduction in the threshold at which the 15% SDLT rate will apply to acquisitions of high value dwellings by certain non-natural persons;
- a reduction in the threshold at which the Annual Tax on Enveloped Dwellings (ATED) will apply, to be phased in over two years; and
- a corresponding application of CGT to the disposal by certain non-natural persons of property holdings subjected to the Annual Tax on Enveloped Dwellings by virtue of the reduction in the above thresholds.

The above three measures are all part of a package to discourage people owning their homes in corporate-type wrappers.

Separately, the Government confirmed it still wishes to introduce CGT for non-residents on sale of residential property post-2015 but the precise details are subject to a consultation which should commence shortly and which we intend to participate in. The existence of a consultation exercise gives hope that changes will be targeted on owner-occupiers rather than businesses as in the last round of consultations which brought in the three measures referred to above.

Finally, in an encouraging prospect for the future, the Government has announced that it will engage in a consultation regarding the SDLT treatment of the seeding of property authorised investment funds and the wider SDLT treatment of co-ownership authorised contractual schemes. There has been much lobbying from industry (particularly the British Property Federation) for exemptions in this area.

Stamp duty land tax

The top rate of SDLT of 4% for commercial property transactions remains unchanged.
The top rate of SDLT for natural persons purchasing residential property with a value over £2,000,000 remains unchanged at 7%.

There are no changes to the reliefs currently afforded to businesses.

In every case the relevant SDLT rate continues to apply to the entire purchase price in the usual way.

This means:

- the rate of 5% will apply to residential transactions where the consideration is more than £1,000,000 but equal to or less than £2,000,000, unless the punitive rate of 15% applies;
- the rate of 7% will apply to residential transactions where the consideration is over £2,000,000, unless the punitive rate of 15% applies; and
- the rate of 15% will apply to purchases by "non-natural persons" (see below) of single dwellings where the consideration is over £500,000.

Punitive 15% SDLT rate threshold lowered

- The punitive 15% rate of SDLT was introduced under Finance Act 2012 for purchases of UK residential property with a value exceeding £2 million 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.
- The Government has announced that from 20 March 2014, purchases of UK residential property with a value exceeding £500,000 by such non-natural persons will be subject to the punitive 15% rate of SDLT.
- The Government has announced that transitional provisions will ensure that, in the great majority of cases, the previous >£2 million threshold will continue to apply in respect of contracts entered into before 20 March 2014 but completed on or after that date.
- The legislative revision announced by the Government is to the definition of "higher threshold interest", to be amended to be an interest (or interests) in a single dwelling for which chargeable consideration of more than £500,000 is given.
- It is anticipated that the rest of the legislative provisions relating to the punitive 15% rate of SDLT will remain unchanged.

Application of SDLT on certain authorised property funds

The Government has announced that it will engage in a consultation regarding the SDLT treatment of the seeding of property authorised investment funds and the wider SDLT treatment of co-ownership authorised contractual schemes.

SDLT charities relief

The Government has announced that it will legislate to make it clear that where a charity purchases property jointly with a non-charity, the charity will be able to claim relief from SDLT on the proportion of the purchase attributable to it. These changes will take effect from the date on which Finance Bill 2014 receives Royal Assent.

Annual Tax on Enveloped Dwellings

ATED threshold lowered

- Finance Act 2013 introduced an annual charge on certain "non-natural persons" (see above) owning UK residential property with a value exceeding £2 million.
- The Government has announced that the ATED charge will in future apply to non-natural persons owning UK residential property with a value exceeding £500,000.
- This threshold reduction is to be phased in over two years as follows:
  - From 1 April 2015 a new band will be introduced for properties valued at greater than £1 million but not greater than £2 million, with an annual charge of £7,000; and
  - From 1 April 2016 a further new band will be introduced for properties valued at greater than £500,000 but not greater than £1 million, with an annual charge of £3,500.
- Transitional rules will apply to the greater than £1 million but not greater than £2 million band, pursuant to which returns will need to be filed by 1 October 2015 and the tax paid by 31 October 2015.
- The Government has also announced that it will consult on possible simplifications to ATED administration to reduce compliance burdens for businesses.
- There are no changes to the reliefs currently afforded to businesses.

Capital gains tax (CGT) on ATED-related gains

- Under Finance Act 2013 the Government introduced a CGT charge on the disposal of residential property by a non-natural person within the ATED charge, to the extent that such gain relates to the period in which that non-natural person has been subject to the ATED.
- In line with its announcement regarding a reduction in the thresholds for ATED, the Government has also announced that:
  - those non-natural persons brought within the ATED charge by virtue of the introduction of a new band for residential properties valued at greater than £1 million but not greater than £2 million will, from 6 April 2015, be subject to a CGT charge at 28% on the disposal of such residential property. However, such CGT charge will only apply to the part of any such gain that has accrued on or after 6 April 2015;
  - those non-natural persons brought within the ATED charge by virtue of the introduction of the further new band for residential properties valued at greater than £500,000 but not greater than £1 million will, from 6 April 2016, be subject to a CGT charge at 28% on the disposal of such residential property. However, such capital gains charge will only apply to the part of any such gain that has accrued on or after 6 April 2016.
- There are no changes to the reliefs currently afforded to businesses.

Capital Gains Tax on non-residents

- In the Autumn Statement 2013, the Government announced it would introduce CGT on future gains made by non-residents disposing of UK residential property from April 2015.
- The Government has announced that it will shortly publish a consultation on the proposed charge.

For further details on any of the above changes, please contact:

David F Saleh

Funds

As announced in Budget 2013, legislation will be introduced in Finance Act 2014 to abolish the existing stamp duty reserve tax charge on the surrender of units in unit trusts and open-ended investment companies to trustees and managers (currently set out in Schedule 19 to Finance Act 1999) with effect from 30 March 2014.

For further details on any of the above changes, please contact:

Anthony Stewart

Partnerships

As announced in Budget 2013 and following formal consultation, measures will be introduced in Finance Act 2014 to counter tax avoidance involving partnerships. The first of these measures is intended to counter the "disguising of employment relationships (and consequential reduction of employment taxes) in relation to salaried members of Limited Liability Partnerships (LLPs)". The second of these measures is intended to counter "tax-motivated allocations of business profits or losses in partnerships (not just LLPs) where the partners include both individuals and companies (mixed membership partnerships)". The third of these measures is intended to counter tax-motivated disposals of assets and income streams through partnerships.

The House of Lords Economic Affairs Committee recommended on 11 March 2014 that the Government delay the LLP salaried member changes until next year in its report on the draft Finance Bill 2014. However, the substantive partnership tax changes will take effect from April 2014, as originally planned.

For further details on any of the above changes, please contact:

Anthony Stewart

Insurance

Special tax regime for Solvency II compliant debt instruments

The Government will introduce a power in Finance Act 2014 allowing it to introduce regulations which provide certainty around the taxation of Solvency II compliant debt instruments. There was a previous announcement from the Government in December 2013 to similar effect. However the statements made today go further in confirming that the power will be used to ensure that such instruments are taxed as debt – notwithstanding the fact that these instruments may have many equity-like features. The expectation (although the details remain to be confirmed) is that various tax benefits will flow from this – notably that the return paid on such instruments is likely to be tax deductible for the issuer and the instruments are likely to be transferable free from stamp duty and stamp duty reserve tax. We expect a consultation on the new rules to take place over the summer, with the hope being that the changes will become effective by the end of this year.

Changes to the taxation of defined contribution pensions

A wide-ranging package of reforms to the taxation of defined contribution pension arrangements was announced (these are discussed in greater detail in the Pensions section below). Of particular significance for some insurers are the changes which remove the obligation on pension savers to purchase an annuity with the proceeds of their pension pot (although of course many will continue to purchase such a product voluntarily). The change will become effective in April 2015.

For further details on any of the above changes, please contact:

David Harkness

Oil and Gas

New allowance for ultra high pressure, high temperature oil and gas projects

The Government is to consult on a new allowance to support investment in ultra high pressure, high temperature oil and gas projects. The allowance would exempt a portion of a company's profits from the supplementary tax charge applicable to oil and gas companies. The exempt profit will be at least 62.5% of qualifying capital expenditure incurred. Legislation for this new allowance is expected to be introduced in Finance Act 2015.

Onshore oil and gas allowance

This was a measure announced in the Autumn Statement 2013. The intention is to introduce a new allowance to incentivise and support the early development of onshore oil and gas projects (eg shale gas) which are economic but not commercially viable at the current 62% tax rate applicable to oil and gas activities (made up of the "corporation tax charge" of 30% and the "supplementary charge" of 32%). The allowance will exempt a portion of a company's profits (equal to 75% of the capital expenditure incurred on the onshore site) from the supplementary charge.

General review of the oil and gas fiscal regime

The Government generally intends to review the fiscal regime for UK oil and gas. The objective is to incentivise economic recovery as UK oil and gas fields become increasingly mature. This is going to be looked at in conjunction with the new body that is to be formed to look after the stewardship of the UK's oil and gas resources. Conclusions on this are to be announced in this year's Autumn Statement.

For further details on any of the above changes, please contact:

Nicholas Mace

Anti-avoidance

Transfers of corporate profits

The Government introduced a targeted anti-avoidance measure at the end of last year to block tax avoidance schemes involving the use of total return swaps to shift profits from a UK company to an affiliate in a tax haven. It seems that these schemes have continued, but using arrangements other than total return swaps. It is not clear to us that these schemes are effective under current law; however the Government is bringing forward legislation to counter them.

The legislation is extremely wide-ranging and applies whenever two companies in a group are party to arrangements which result, in substance, in a payment from one to the other of all or a significant part of the profits of its business. The arrangements can take any legal form, and guidance published by HMRC today gives examples as wide-ranging as interest payments, royalties, and deferred consideration in securitisations – it seems to us that this will catch a wide range of ordinary commercial transactions.

There is, in addition, a purpose test – the rule will only apply where the main purpose or one of the main purposes of the arrangements is to secure a tax advantage for any person involving the profit transfer. Accordingly the guidance suggests that ordinary commercial transactions will not be caught, and that those seeking certainty will be able to obtain clearances from HMRC.

The consequence of the rule applying is (broadly) that the transferor company is taxed as if the transfer had not taken place. There is, intentionally, no adjustment for the transferee company – accordingly in some cases the result would be double taxation.

Given the expensive consequences of the provision applying, taxpayers engaged in large commercial transactions may feel the need to obtain clearance from HMRC, with obvious time and cost consequences for taxpayers and HMRC. It seems to us unfortunate that an obscure and likely ineffective tax avoidance scheme is being countered with a provision that is so wide in application.

BEPS Project

The Budget documents include a paper entitled "Tackling aggressive tax planning in the global economy", which sets out the UK's priorities for the G20-OECD project for countering Base Erosion and Profit Shifting (BEPS Project). The UK has rejected suggestions that the basic principles of international tax should be fundamentally changed and has also rejected proposals to introduce new taxing rules targeted at the digital economy. Rather, it is supporting a series of measures closing perceived loopholes and weaknesses in the current international tax framework. The two most significant are creating an override to the usual transfer pricing arm's length test to counter "aggressive tax planning", and changing the tax treaty "permanent establishment" concept to make it more difficult to do business in a jurisdiction without being subject to tax on the overall profits of that business. The UK also supports the creation of a mechanism facilitating implementation of the outcome of the BEPS Project without individual amendment to each double tax treaty (the UK alone has around 120).

High-risk promoters

The Government announced in Budget 2013 that it would legislate in the Finance Act 2014 to provide for further information requirements for the Disclosure of Tax Avoidance Schemes (DOTAS) regime as well as new information powers and penalties for tackling the behaviour of what the Government perceives as "high-risk" promoters of tax avoidance schemes. Following a consultation on tax avoidance in autumn 2013 (in which we were involved), which considered the criteria to be used to designate a promoter as high-risk, a promoter who triggers an objective threshold condition will first be issued with a conduct notice setting out the expected behaviours from the promoter. Only if the promoter continues the high-risk behaviour and fails to comply with the conduct notice will it be designated as high-risk by the issue of a “monitoring notice”, and subject to the new information powers, penalties and "naming and shaming" powers. Clients of designated promoters will also be subject to certain obligations (which have a penalty for non-compliance) and extended time limits for assessments.

Accelerated payments of tax in tax disputes

The Government announced in Budget 2013 that it would grant HMRC the power to give notice to a taxpayer to the effect that a previously decided case determines that taxpayer's dispute and therefore should be settled by the taxpayer. Under Finance Act 2014, HMRC will accordingly be able to issue a "Follower Notice" to any taxpayer for whom there is an open enquiry or appeal and who has used a tax avoidance scheme that a court has found to fail in another party's litigation. The Follower Notice will inform the taxpayer that they should amend their return or settle their dispute with HMRC in line with the court's decision. As subsequently announced by the Government in the Autumn Statement 2013, legislation will also be introduced in Finance Act 2014 to give HMRC the power to issue a "Notice to Pay" to such a taxpayer. This will require the taxpayer to pay the disputed amount to HMRC within 90 days (with an additional 30 days where the taxpayer requests HMRC to reconsider). Penalties will apply for late payment.

It was further announced in the Budget today that Finance Act 2014 will also apply the "Notice to Pay" measure to users of schemes falling to be disclosed under the DOTAS regime or subject to counteraction under the GAAR for whom there is an open enquiry or appeal. The purpose of this new power is to remove the cash flow advantage for the taxpayer of holding onto the disputed tax during an avoidance dispute. According to the Budget Report, the taxpayer will be reimbursed with interest if they subsequently win their case in the courts.

This legislation will affect individuals (potentially 33,000 individual taxpayers concerning £5.1 billion of tax) and corporates (potentially 10,000 corporate taxpayers concerning £2.1 billion of tax). HMRC acknowledge that the measures are likely to result in a range of different legal challenges, including judicial review proceedings.

For further details on any of the above changes, please contact:

Chris Davies

Jonathan Elman

Liesl Fichardt

David Harkness

Nicholas Mace

Dan Neidle

Personal Taxation

A package of measures was announced to help savers. These include merging the regimes for cash and stocks & shares ISAs, allowing savers the option to save their whole allowance in cash, stocks and shares, or any combination of the two, and increasing the annual ISA limit to £15,000 from 1 July 2014. In addition, as announced at Budget 2013, the starting rate of tax for savings income will be reduced from 10% to nil from 6 April 2015 and the maximum amount of taxable savings income eligible for this starting rate will be increased from £2,880 in 2014/15 to £5,000 in 2015/16.

It was announced that from 6 April 2015 the main personal allowance will be increased to £10,500. The Government also announced its intention to consult on restricting the personal allowance to UK residents and those living overseas who have strong economic connections in the UK.

Artificial use of dual contracts by non-domiciles

As announced in the Autumn Statement, legislation will be introduced to prevent non-domiciled individuals from avoiding tax through the artificial use of dual employment contracts. Where a UK resident, non-UK domiciled employee works partly in the UK and partly abroad and has two separate employment contracts, the employee may currently benefit from the remittance basis of taxation in relation to his or her overseas earnings. The intention of the legislation is that overseas employment income will be taxed on the arising basis where tax is not payable on the overseas earnings at a rate broadly comparable to UK tax rates. It was announced that, following consultation, certain changes will be made to the legislation to prevent charges arising on dual contracts which are not motivated by tax avoidance.

For further details on any of the above changes, please contact:

Anthony Stewart

Tax Administration

Removal of Extended Time Limit Restriction for EU Cases

The Limitation Act 1980 provides extended limitation periods for actions based on mistake. The limitation period runs from the time when the claimant becomes aware of the mistake. Finance Act 2004 removed this extended limitation period for claims relating to tax if the claim was made on or after 8 September 2003. Subsequently, section 107 Finance Act 2007 retroactively removed the extended time limit for claims brought before 8 September 2003. In *Franked Investment Income Group Litigation v CIR*, the Supreme Court held that section 107 was incompatible with EU law and could not apply to actions to recover tax paid contrary to EU law. HMRC announced on 28 February 2014 that section 107 is to be amended so that the restriction does not apply to actions to recover tax paid contrary to EU law. This will take effect from the date that Finance Act 2014 is enacted and will be fully retrospective.

For further details on any of the above changes, please contact:

Liesl Fichardt

VAT

The Government announced that legislation will be introduced to counter missing trader intra-community (MTIC) fraud in the wholesale gas and electricity markets through a reverse charge (under which VAT will be accounted for by the recipient of the supply rather than the supplier).

It was also confirmed that no changes have been made to draft legislation previously published in relation to new rules for intra-EU supplies of telecommunications, broadcasting and e-services to non-business customers which apply from 1 January 2015. The effect of these changes will (broadly) be that VAT on such supplies will be due in the Member State where the non-business customer belongs (and not where the supplier belongs as is currently the case).

For further details on any of the above changes, please contact:

Etienne Wong

Simon Corzberg

Pensions

Tax treatment of defined contribution (DC) pension schemes

A major overhaul of the tax rules governing DC pension schemes has been announced, with some of the changes coming into effect as early as next week.

The Government intends to legislate to confer greater flexibility for pensioners (aged 55 and over) to access as much or as little of their DC pension savings as they want. Currently, they are subject to a punitive tax rate of 55% if they want to make full withdrawals of their DC pot, however from April 2015, they will only be charged at their marginal rate of income tax, 20% for basic rate taxpayers. The facility to take a 25% tax-free pension lump sum remains available. It is understood that the reduction of the withdrawal tax rate from 55% to an individual's marginal income tax rate will increase tax income by £1.2 billion a year by 2019.

Although annuity purchase will no longer be compulsory, the option to do so will, in principle, continue to be available for those who wish to have the security of a fixed income whilst those individuals who want greater control over their finances will have the option to withdraw their savings at anytime via drawdown and other means. It is, of course, possible that the changes will have a detrimental effect on the annuity market.

In order for individuals to make an informed decision that best meets their needs, the Government will ensure that they will be offered free and impartial "face to face" guidance on retirement, and will make available up to £20 million in the next two years to develop this initiative. From April 2015, pension providers and trust-based schemes must offer each of their DC customers the so-called "guidance guarantee" at the point of retirement.

The more immediate "flexible" changes coming into effect on 27 March 2014 are as follows:-

- a reduction in the amount of guaranteed pension income people need in retirement in order to access unrestricted drawdown, from £20,000 to £12,000;
- an increase to the capped drawdown limit from 120% to 150%;
- an increase in the size of a single pension pot that can be taken as a lump sum, from £2,000 to £10,000;
- an increase in the number of pension pots valued at under £10,000 that can be taken as a lump sum, from two to three; and
- an increase in the overall size of pension savings that can be taken as a lump sum, from £18,000 to £30,000.

It is estimated that around 400,000 more people will benefit from this increased flexibility to access their savings in the financial year 2014-2015.

Although not directly affected by the above changes, defined benefit (DB) pension schemes are likely to be impacted as the government has recognised that the increased flexibility afforded to DC schemes could lead to DB scheme members transferring their benefits to DC schemes. For public service DB schemes, this could prove costly to the taxpayer as these schemes are largely unfunded. As a result, the Government has stated that it will consult on legislation to remove the option to transfer for those in public sector schemes, except in very limited circumstances, and has also indicated that it will consider doing the same for private sector DB schemes.

Public Service Pensions

The Government will introduce new employer contribution rates for the Principal Civil Service Pension Scheme, the NHS Pension Scheme, the Police Pension Scheme applying from 1 April 2015 and for the Teachers Pension Scheme applying from September 2015.

Voluntary National Insurance contributions (VNICs) Class 3a

A new National Insurance contribution class has been created for those people due to retire before the introduction of the new single-tier state pension in April 2016. The scheme, which will be open for 18 months from October 2015, will enable them to buy extra state pension up to a maximum additional amount of £25 a week. It is understood that the Department for Work and Pensions will be publishing further details shortly.

Individual protection

The Government has confirmed the introduction of an individual protection regime (IP14) in Finance Act 2014, following the reduction of the lifetime allowance to £1.25 million from 6 April 2014. Individuals with IP14 will have a lifetime allowance of the value of their pension savings on 5 April 2014 subject to an overall maximum of £1.5 million.

The abolition of the age 75 rule

The Government will explore with interested parties whether those tax rules that prevent individuals aged 75 and over from claiming tax relief on their pension contributions should be amended or abolished.

Dependants' Pension Scheme

The Government will consult on options to simplify the Dependants' pension scheme rules.

Qualifying non-UK Pension Schemes

The Government intends consulting on ways to give equivalent treatment to Qualifying non-UK Pension Schemes (QNUPS) and to UK-registered pension schemes. Legislation will be introduced in Finance Act 2015.

Pensions liberation

Pension liberation, also known as "pension loans" and "pension scams", is a transfer of a scheme member's pension savings to an arrangement that will allow them to access their funds before age 55. The process can be illegal where members are misled about key consequences of entering into one of these arrangements either because they have not been advised about the potentially adverse tax consequences and fees involved or how the remainder of their pension savings are invested. In extreme cases, pension liberation can result in tax charges and penalties of more than half the value of a member's pension savings.

Legislation will be introduced in Finance Act 2014 to give HMRC "broader" powers to combat pension liberation in relation to the registration and de-registration of pension schemes. These include a requirement that the scheme administrator must be a "fit and proper" person, and a provision that surrendering rights in favour of an employer is subject to tax as an unauthorised payment. Finance Act 2014 will also create a new financial penalty of up to £3000 for providing false information when registering schemes with HMRC.

Further legislation in Finance Act 2014 will ensure that regulatory redress in the form of transfers of sums and assets to registered pension schemes under certain court orders are taxed and relieved appropriately, and independent trustees appointed at the instigation of the Pensions Regulator will no longer be liable for tax that arose before they were appointed.

The proposed changes will take effect from 20 March 2014, except in relation to those changes relating to the fit and proper person test and regulatory interventions, which will have effect from 1 September 2014.

For further details on any of the above changes, please contact:

Imogen Clark

Clare Hoxey

Hywel Robinson

Employee Benefits

The Government has confirmed that it is introducing changes which it has previously described as representing "the most significant package of reform to the tax rules for employee share schemes for many years". The changes will be implemented from 6 April 2014 and have been subject to consultation. Although the relevant legislation (which will be included in Finance Act 2014) has not yet been published, there is some indication in the Budget announcements that the proposals have been refined as a result of the consultation process. The reforms include the abolition of the current HMRC approvals process for company share option plans, Sharesave and SIP. This is to be replaced by a "self-certification" regime from 6 April 2014. "Self-certification" means a company will be required to provide a declaration to HMRC that the plan complies with the relevant provisions of the tax legislation. This new self-certification regime will extend to existing approved plans, although there is some indication that the declaration requirements for existing approved plans have been refined as

a result of the consultation process. As expected, a new mandatory online filing regime for year-end returns for all share plans (ie both approved and unapproved) is being introduced and will apply from the 2014/2015 tax year.

In addition to the reforms referred to above, the Government has confirmed that it is making a number of simplification changes to the legislation governing the taxation of unapproved share plans. In particular, the Government is proposing to revise the basis on which internationally mobile employees (IMEs) are subject to UK tax in relation to share options and awards. However, implementation of these changes for IMEs is to be delayed until April 2015 (the consultation proposed introducing the changes from September 2014).

The Government has also confirmed that it will be consulting on further changes to the tax regime in relation to unapproved share plans, including introducing the concept of a "marketable security" into the rules for the taxation of employment-related securities and on a proposal to introduce an "employee shareholding vehicle". These proposals relate to recommendations previously made by the Office of Tax Simplification. It is not yet clear what their scope will be or when any resulting measures might be implemented.

For further details on any of the above changes, please contact:

Sonia Gilbert

Kevin Thompson

Authors

Chris Davies
Global Head of Tax

T: +44 20 7006 8942
E: chris.davies
@cliffordchance.com

Jonathan Elman
Partner

T: +44 20 7006 8935
E: jonathan.elman
@cliffordchance.com

Liesl Fichardt
Partner

T: +44 20 7006 2044
E: liesl.fichardt
@cliffordchance.com

David Harkness
Partner

T: +44 20 7006 8949
E: david.harkness
@cliffordchance.com

Nicholas Mace
Partner

T: +44 20 7006 4679
E: nicholas.mace
@cliffordchance.com

Dan Neidle
Partner

T: +44 20 7006 8811
E: dan.neidle
@cliffordchance.com

David F Saleh
Partner

T: +44 20 7006 8632
E: david.saleh
@cliffordchance.com

Anthony Stewart
Partner

T: +44 20 7006 8183
E: anthony.stewart
@cliffordchance.com

Etienne Wong
Partner

T: +44 20 7006 8825
E: etienne.wong
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2014

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.