Budget 2015—views from the market

In the aftermath of George Osborne's Budget on 18 March 2015, we sought the views of the Lexis®PSL Tax Consulting Editorial Board (CEB) and other leading tax practitioners on the key highlights of Budget 2015.

This analysis originally appeared in LexisPSL Tax, which you can find information on at the end of this document.

For the Lexis®PSL Tax summary and analysis of the key business tax announcements in Budget 2015, see: Budget 2015—Lexis®PSL Tax analysis.

The experts

- Eloise Walker, Pinsent Masons LLP and CEB member
- Gerald Montagu, Fasken Martineau LLP and CEB member
- James Bullock, Pinsent Masons LLP and CEB member
- Bradley Phillips, PwC and CEB member
- David Milne, Pump Court Tax Chambers and CEB member
- Anne Fairpo, Temple Tax Chambers and CEB member
- Keith M Gordon, Temple Tax Chambers and CEB member
- Ben Jones and Sarah Illidge, Eversheds
- Philip Harle, Hogan Lovells
- Heather Self, Pinsent Masons LLP
- Laura Charkin and Stephen Pevsner, King & Wood Mallesons
- Kassim Maghjeem, Mishcon de Reya
- Jeremy Glover and Dan Pipe, Jurit
- Ronan Lowney, Bond Dickinson
- Deepesh Upadhyay, Eversheds
- Karen Cooper, Osborne Clarke
- Tracey Wright, Osborne Clarke
- Robert Walker, PwC
- Kersten Muller, Grant Thornton UK LLP
- Professor Rita de la Feria, Durham University
- Stephen Coleclough, Mishcon de Reya
- Vimal Tilakapala, Allen & Overy
- Jason Collins, Pinsent Masons LLP
- David Pickstone, Stewarts Law LLP
- Lee Squires, Hogan Lovells

OVERALL VIEWS OF BUDGET 2015

Eloise Walker, Pinsent Masons LLP and CEB member

Most of the Budget was a bit of a non-event for corporate tax practitioners this time around, as you might expect from an election year. Of far more interest was watching the Chancellor cram as many voter-appealing measures into his speech as possible. That's not to say there weren't some nasty measures in there—hitting disguised fee income for investment managers, the latest round of capital allowance schemes, bank loss relief and enacting the *Crédit Lyonnais* VAT decision spring to mind—it's just that most of them had already been well trailed ahead of time.

In terms of surprises, everyone in private equity will be talking about the measures to restrict entrepreneurs' relief and anyone who didn't already suspect there was incoming and couldn't get their business sold ahead of 18 March 2015 will be disappointed that their 'Manco' structure (previously used by those with under 5% holdings who structure through a management vehicle to get them over the threshold) just died—some yesterday were still touting it as viable, which I doubt, but even if it does manage a miraculous zombie resurrection its days are definitely numbered now.

I can't say I was actually surprised to see the insanity that is the diverted profits legislation going ahead, but I will admit to disappointment that HMRC hasn't seen reason on this one. In a way, even more disappointing was the anti-avoidance measures directed at corporation tax loss refresh schemes. Not so much that HMRC was putting measures in place, so much as the shoddiness of the drafting. I can't see how HMRC are going to apply it—in particular, how on earth do you calculate the hypothetical 'it will be reasonable to assume' test of the economic benefit versus the tax value? Why not make it objective? So off we go again with yet another TAAR that may or may not be any use against the actual scheme it is trying to hit but is likely to splatter innocent arrangements with the compliance burden of having to check it doesn't apply no matter how much HMRC say 'normal' group tax planning won't be affected. Don't we have a GAAR for this sort of thing? It wins my personal prize for 'Most-Impenetrable-Draft-Legislation-in-a-Budget' for this year.

Gerald Montagu, Fasken Martineau LLP and CEB member

One of the striking things, which you would be forgiven for not guessing from the Chancellor's speech yesterday, was the extent that EU (and/or OECD) policy lay behind yesterday's Budget announcements. For example, the hand of Brussels was not terribly apparent, when the Chancellor said at the despatch box that he was making the tax system 'simpler and fairer' by changing the rules relating to the ability to reclaim input tax by excluding supplies made by foreign branches—while omitting to mention that the change was required because of the ECJ's judgement in *Crédit Lyonnais* (C-388/11). A similar comment could be made with respect to the changes to the rules governing venture capital schemes (which are being introduced to address concerns in relation to change to the state aid rules), country-by-country reporting, interest reporting using the common reporting standard (bringing with it, alas, the third set of regulations governing FATCA reporting obligations in as many years) as each of these reforms is driven by the EU/OECD.

James Bullock, Pinsent Masons LLP and CEB member

It was always going to be a highly political budget—and the 'raid' on Labour's policy on the pension cap was a good example of why the Chancellor made one of his longer Budget speeches—even though parliament has barely a week to run before it is prorogued. Another surprise is the sheer volume of legislation that will be introduced in the Finance Bill, with parliament having—at most—two days to consider it. True, most if not all of the legislation to be included has already been pre-published and consulted on. But if such substantive legislation as the diverted profits tax and anti-avoidance measures in relation to corporate tax losses are to be enacted with minimal parliamentary scrutiny, it rather begs the question as to why parliament goes to so much trouble for 'normal' Finance Bills? In short, these provisions should not be included in the forthcoming Bill, but should await the substantive Bill to be introduced at the start of the new parliament, allowing due time for full consideration and scrutiny.

Bradley Phillips, PwC and CEB member

As expected, more of a political than a technical Budget with very little new by way of tax announcements. On a personal note, I am very confused by the Budget—am I meant to spend or save more?

Ben Jones and Sarah Illidge, Eversheds

This year's Budget is good for business in that it contains very little that has not already been announced in the Autumn Statement or otherwise in advance of the Budget. Surprise announcements and material changes to the tax system are unattractive to business and reflect badly on the UK as a stable business environment, so an uneventful Budget is a good budget for business.

Philip Harle, Hogan Lovells

The main surprises, such as the diverted profits tax, came in the Autumn Statement. It is disappointing that no revised legislation has been published and the commentary suggests that little will change from the widely-drawn draft legislation released in December. There is not much material for lawyers to digest at this stage. Much activity will be crammed into the remainder of this month as the first Finance Act of 2015, which is seemingly destined to include the diverted profits tax, will have to receive Royal Assent by the time parliament is dissolved on 30 March.

Heather Self, Pinsent Masons LLP

Many of the measures announced at the Budget were re-announcements from the Autumn Statement in December 2014, or measures (such as the increases to the personal allowance) which will not take effect until April 2016 or later. New measures included welcome reductions in the tax burden for oil and gas companies, extra taxes on banks and additional anti-avoidance measures.

What is surprising is how much detail is to be included in Finance Bill 2015, which will be published on 24 March, debated for a day on 25 March and enacted before parliament is dissolved on 30 March 2015. This means there will be no real parliamentary scrutiny of some complex measures, including the diverted profits tax and a new anti-avoidance measure on corporate tax losses, which applies to profits after today. Although draft Finance Bill clauses were published in December 2014 for most measures, it is highly unusual for them to be enacted in a pre-election period without proper debate.

BUSINESS AND ENTERPRISE

Entrepreneurs' relief

Gerald Montagu, Fasken Martineau LLP and CEB member

If as we are told 'Britain is walking tall' again, those Britons who are entrepreneurs may have rather less spring in their step this morning. In addition to the change announced in December denying entrepreneurs' relief on the disposal of goodwill to a close company which is a related party (and the change to the intangible rules denying relief to a company with respect to goodwill), a disposal of personal assets will not qualify for relief unless accompanied by a disposal of a substantial (5%) shareholding/share of partnership assets. Furthermore, it will no longer be possible to qualify for relief by accessing trading activity through a joint venture or partnership.

Entrepreneurs' relief (continued)

Ben Jones and Sarah Illidge, Eversheds

One surprise in this year's Budget for business was the targeted change to the entrepreneurs' relief joint venture and partnership rules. These target a specific type of structure designed to maximise the availability of entrepreneurs' relief (sometime known as 'manco' or 'management company' structures), but potentially have wider application to structures not specifically designed for the entrepreneurs' relief benefit. The manner in which the proposed change appears to operate will mean that manco structures established before the date of the Budget will be caught, giving the legislation a retrospective element and perhaps requiring the restructuring of existing manco arrangements.

Laura Charkin and Stephen Pevsner, King & Wood Mallesons

The introduction with immediate effect of restrictions on the availability of entrepreneurs' relief is certainly an unexpected development. The relief will now only be available to those holding a 5% stake directly in a real trading group. The changes are expected mainly to affect some joint venture and deal structures that were aimed at enabling a wider range of minority shareholders (such as management teams) to benefit from entrepreneurs' relief via indirect shareholdings than was within the spirit of the original rules. Also unexpected, although consistent with the aims of the original rules, is the broadening of the disguised fee income rules to apply to investment trust managers.

Kassim Meghjeem, Mishcon de Reya

For employees who have a stake in their business and were expecting to be able to obtain the enhanced capital gains tax treatment of 10% by claiming entrepreneurs' relief, there is a surprise change. The government has announced, with immediate effect, that employees who hold 5% or more in a company which in turn holds an interest in a trading company will cease to benefit from entrepreneurs' relief on the disposal of their shares unless the company in which the employee holds the shares also has a significant trade of its own. The policy had been to allow those who collectively owned 10% in the underlying trading company to benefit from entrepreneurs' relief provided other strict conditions were also satisfied, even though each individual effectively owned less than 5% of the underlying trading company. The reason for the change may perhaps be an increase in contrived structures designed to benefit from the original legitimate purpose of the policy. While this measure simplifies the law, it removes real benefits for owner managers—any perceived abuse should have been countered by the existing GAAR, which is already on the statute books.

Jeremy Glover and Dan Pipe, Jurit

An immediate amendment to entrepreneurs' relief requires an individual who is selling shares to hold a direct stake in a trading company. This will affect many arrangements where employee shareholders' interests have been pooled in a holding vehicle. Lawyers will want to revisit their clients' employee equity arrangements to ensure that entrepreneurs' relief is not prejudiced by the use of holding entities to pool employees' stakes.

R&D relief

Anne Fairpo, Temple Tax Chambers and CEB member

From 1 April 2015, the rates are going up (again) to:

- R&D expenditure credit: 11%
- SME relief: 230%

but repayment credit rate stays at 14.5% (all as announced at Autumn Statement, confirmed to be in the Finance Bill due to be published on 24 March 2015).

And also:

- HMRC are planning to provide (on request!) advance assurances (valid for three years) on whether R&D activities qualify, for smaller companies, giving certainty for those new to the regime
- it's just a pity we have to wait until Autumn 2015 for the assurances to be available
- HMRC are proposing to reduce the time taken to process claims from 2016 (but no detail on this provided)
- the planned new guidance for smaller companies also welcome, as is the plan for publicity campaign to raise awareness of the relief
- there's a 'roadmap' for 'further improvements over the next two years' to come, which could be interesting
- HMRC have confirmed that the restriction on prototypes and first in class etc announced in the Autumn Statement will be in the Finance Bill next week

The change will mean that the cost of consumables incorporated in products of R&D activity which are sold (not scrapped or given away) will be excluded from R&D tax credits. It's interesting that this change appears to be estimated to save half of the cost of increasing the rates.

Consortium group relief

David Milne, Pump Court Tax Chambers and CEB member

As announced in the Autumn Statement, the Government has, with effect from 10th December 2014, belatedly brought our consortium link company rules properly into line with the ECJ judgments in the *Philips Electronics* and *Felixstowe Docks* cases.

Capital gains

David Milne, Pump Court Tax Chambers and CEB member

In a rather unsporting move, the Government is going to reverse last year's Court decision in Lord Howard's case that an Old Master painting qualified for wasting asset exemption as 'plant' even when it wasn't used directly in any business of the owner, but was lent to the business which ran the associated stately home and "used" the painting to hang on the wall.

Anne Fairpo, Temple Tax Chambers and CEB member

Paintings as plant and machinery—this could be re-named HMRC's belated revenge on the Howard estate. Assets which have been lent to a business will not be able to be treated as plant and therefore a wasting asset unless the vendor has used it in their own business. This follows, unsurprisingly, from the case brought against HMRC by the estate of the late Lord Howard, which succeeded in having a 200 year old painting, previously displayed at Castle Howard, treated as a wasting asset and exempt from CGT on sale.

Oil and gas

Heather Self, Pinsent Masons LLP

Companies operating in the North Sea will be pleased at the confirmation of the investment allowance and cluster area allowance for ring fence trades, as well as the rate reduction in petroleum revenue tax (from 50% to 35%) and the supplementary charge (from 32% to 20%), with the latter being backdated to 1 January 2015.

Ronan Lowney, Bond Dickinson

The announcements in Budget 2015 will be very welcome to the oil and gas sector in the UK. Since the fall in oil prices began last summer, the long term viability of the sector operating in the UK continental shelf has been questioned. The government has taken on board the concerns about the need for an economic return for operators as well as investment in the North Sea (both for the sake of protecting the 380,000 jobs in the sector and UK energy security). The fiscal encouragement of the sector which started in the Autumn Statement in December continues with measures announced by the Chancellor in the Budget.

These measures include the reduction of petroleum revenue tax from 50% to 35%. This tax only applies to fields which were consented prior to the end of March 1993, but there are still a number of fields operating with this tax. By their nature, these would be the more mature/end of life fields where infrastructural investment would be more acutely required. A very welcome measure is the reduction of the supplementary charge from 30% to 20%—this follows the trend from the 2% reduction at the Autumn Statement, and is in line with industry hopes and expectations. In addition, £20m will be made available for a programme of seismic surveys over areas of the UK continental shelf which have been under-explored.

Altogether, the announcements today are expected to give rise to an investment stimulus of £4bn and an increase of 120m barrels of oil equivalent over the next five years. It also shows the commitment of the government to address the concerns of the sector, which have been building up for some time and will enable the UK to use its maturing resource in a competitive way for this very international sector.

FINANCE

Philip Harle, Hogan Lovells

After a bumper Autumn Statement which introduced the diverted profits tax, this was a relatively quiet Budget for the financial sector. Banks are likely to be disappointed but perhaps not surprised by another rise in the rate of the bank levy. The VAT changes relating to supplies by foreign branches are also likely to impact the financial services industry.

The withholding tax exemption for 'private placements' is being tweaked to remove the minimum term requirement. While that is a welcome tweak, it does not go as far as many in the financial sector have advocated. The relief remains littered with so many conditions that its practical impact seems unlikely to be huge.

Non-deductibility of compensation payments made by banks

David Milne, Pump Court Tax Chambers and CEB member

Apart from the populist bank-bashing moves, there is also a provision ensuring that 'customer compensation' paid by banks for sharp (or worse) practices like mis-selling PPI is not deductible for corporation tax purposes (although as confirmed by the Upper Tribunal last year in the MacLaren Racing case, fines for unacceptable business behaviour—there, industrial espionage of Ferrari's engine designs—are usually not deductible anyway).

Loan relationships and derivative contracts

David Milne, Pump Court Tax Chambers and CEB member

In the field of loan relationships and derivative contracts, a future Finance Bill promises 'a clearer and stronger link between commercial accounting profits and taxation, basing taxable amounts on items of accounting profit or loss'.

The government needs to be careful what it wishes for! Experience has already shown, with the proliferation of artificial tax avoidance schemes in this area in the last decade, that it is dangerous to allow accountancy rules to trump what would otherwise be tax law; much will depend on the efficacy of the GAAR, and the promised 'new rules to protect the regime against tax avoidance'—perhaps a newly strengthened version of the 'fairly represents' override.

Disguised investment management fees

Bradley Phillips, PwC and CEB member

I welcome the Budget announcement that the proposed disguised investment management fees (DIMF) rules have been revised, following consultation, to better reflect industry practice. PwC and others lobbied hard to make the rules more sensible. It is hoped that the rules will now be more targeted at the original perceived mischief, although there remains concern about their scope and the resultant impact on the UK asset management industry. We will see the revised rules when the Finance Bill is published and asset managers will need to consider them carefully to determine their likely impact.

Asset managers with UK and non-UK operations will also need to carefully review the final scope of the diverted profits tax (DPT) to see if their 'not google like' businesses are still potentially within the scope of the very widely drafted proposals.

As always, the devil is in the detail so we await Tuesday's revised Finance Bill—the most frustrating aspect is that the HMRC guidance on the DIMF and DPT measures will likely not be seen until after the proposals become law.

Laura Charkin and Stephen Pevsner, King & Wood Mallesons

Also of significance to fund managers and advisers are the disguised fee income rules—the announcement that these have been revised to better reflect industry practice and to address concerns as to their application to non-UK resident executives will be very welcome news for many. As ever, the final impact of these revised rules will only become clear once we see the wording in the Finance Bill, due to be published on 24 March 2015.

Peer-to-peer lending

Deepesh Upadhyay, Eversheds

This Budget reaffirms the government's commitment to increasing the competition and choice of lending options for borrowers, in particular those in the SME sector.

In line with their announcement in the Autumn Statement, the Government has confirmed that it will allow individuals to claim bad debt relief in respect of their peer-to-peer (P2P) loan investments with effect from April 2016. This means such investors can offset any losses from loans which go bad against income received from other P2P loans. This is helpful in reducing an individual's overall exposure to the P2P loan market.

The government has also confirmed that it will respond to an earlier consultation on how best to extend ISA eligibility to include P2P loans as well as start a new consultation on further extending the list to include crowd funded debt securities. In practical terms, this means it is unlikely for P2P loans to fall within a tax-free ISA wrapper any time before 2016.

Peer-to-peer lending (continued)

The government announced in the Budget a new tax-free Personal Savings Allowance which we expect to also be available for P2P investors. The personal savings allowance takes effect from April 2016 and means that the first £1,000 of interest earned by basic rate tax payers is tax free and the first £500 is tax free for higher rate payers. The relief does not extend to additional rate tax payers (ie, those earning over £150,000 in taxable income). In conjunction with the possibility of P2P loans forming an eligible investment for ISA purposes, this opportunity for investors to take home more tax-free returns, could encourage further growth in the P2P loan market with more individuals being incentivised to invest in loans made to SME borrowers.

Lawyers will need to keep track of a number of proposed consultations which affect the P2P loan market including one on a new withholding tax regime which would apply to all P2P lending platforms. Those involved in this market need to input into these consultations to ensure the proposals work practically and efficiently and help shape the P2P loan market to see that it offers a better-utilised alternative for borrowers and lenders alike.

EMPLOYMENT TAXES

Benefits and expenses

Karen Cooper, Osborne Clarke

Unsurprisingly, the Chancellor had bigger political points to make which focussed on employees' pay (such as the increase to personal allowances and the national minimum wage) rather than benefits. Simplification of the administration of employee benefits and expenses is therefore unlikely to be the issue which hits the headlines for Budget 2015.

Many of the measures were previously announced in the Autumn Statement 2014, in particular:

- the Budget confirmed that a statutory exemption for trivial benefits in kind costing £50 or less will be introduced from 6 April 2015. The government has indicated that, following technical consultation, an annual cap of £300 will be introduced for office holders of close companies and employees who are family members of those office holders
- the £8,500 threshold below which employees do not pay income tax on certain benefits in kind is to be removed and replaced with new exemptions for carers and for ministers of religion, from April 2016
- the statutory framework for voluntary payrolling will also be a helpful reform for employers

Although not a surprise as such, the abolition of class 2 national insurance contributions for the self-employed in the next parliament may happen earlier than we perhaps thought. The government is to consult on the detail and timing of this reform this year.

The government took the opportunity at Budget 2015 to welcome the Office of Tax Simplification's recent report on the thorny issue of employment status—it will be interesting to see how the recommendations are to be taken forward in the next parliament.

Employment intermediaries: travel and subsistence

Tracey Wright, Osborne Clarke

As expected, the government has announced that it is going to press ahead with measures to attack the way that employment intermediaries take advantage of the travel and subsistence expenses regime. The government has stated that it will change the rules to restrict travel and subsistence relief for workers engaged through an employment intermediary (such as an umbrella company or a personal service company (PSC)) and under the supervision, direction and control of the end-user. These measures are outside of any general reform of the travel and subsistence rules coming out of the Office of Tax Simplification review. It is interesting to note that PSCs have been specifically mentioned in the travel and subsistence proposals when they are often left outside of reform.

At present we have no legislation, just a commitment to a detailed consultation later this year with legislation being enacted in April 2016. The commitment to make the changes has been made so we would expect the consultation to be a technical one and solely around the drafting of the legislation.

Employment intermediaries: travel and subsistence (continued)

The devil will be in the detail of the consultation on the legislation and how HMRC proposes to draft the rules to capture only employment intermediaries. We presume it will formulate any new drafting around that already in Income Tax (Earnings and Pensions) Act 2003, s 44. A change in the rules in this way will have a significant impact on so called 'umbrella companies' as this change will affect their business models and margins. Therefore, lawyers with umbrella company clients will need to ensure that their clients are aware of the changes on the horizon.

INCENTIVISED INVESTMENT

EIS, SEIS and VCTs

Anne Fairpo, Temple Tax Chambers and CEB member

Changes to Enterprise Investment Scheme (EIS), Venture Capital Trust (VCT) and Seed EIS (SEIS) reliefs include:

- the employee threshold to qualify for these investment reliefs is being doubled for 'knowledge-intensive' companies; although there is no detail yet. This is in line with R&D relief, although the financial thresholds are not apparently being increased, and
- the total investment cap for VCT expended at £15m, or £20m for a 'knowledge-intensive' company, but the company must now be more than 12 years old unless there is investment for a substantial change in that company's activity. It seems odd to restrict investment relief in companies that are trying to continue to grow; there's no magic about passing your first decade in business that means suddenly that investment is only needed for substantial changes.

REAL ESTATE

Robert Walker, PwC

In response to the Chancellor's Budget statement on new initiatives to help address the housing shortage in the capital and beyond: 'The Chancellor's announcements of new Help to Buy ISAs and housing investment show he wasn't joking about 'fixing the roof' as the sun starts to shine. More detail is needed behind the creation of the 20 new housing zones and investment to tackle the housing shortage in the capital. But the new Help to Buy ISAs for first-time buyers is a welcome bonus for prospective home-owners—assuming house prices don't rise in anticipation of their ability to pay more. Some of the questions around changes to Capital Gains Tax for non-UK residents remain to be answered. We're hoping for more clarity from the Chancellor next week in the Finance Bill. Overall this looks like a Budget to help lay the foundations for major house-building—not just in the capital but in the regions too.'

Kersten Muller, Grant Thornton UK LLP

The Chancellor delivered his last Budget before the general election in a few weeks' time. Initially there seemed to be little for the real estate industry although a welcome review of business rates was announced. Then the interesting announcement of boosting the savings culture in the UK, comprising the fully flexible ISA, the Help-2-Buy ISA and the changes to annuities. The Help-2-Buy ISA effectively provides a 25% top-up for first time buyers, and is undoubtedly welcome news to aspiring homeowners. The top-up is capped at £3,000 (for those saving £12,000) but the measure does not deal with the current housing shortage or the lack of supply of suitable housing. Our concern is therefore that the boost provided though the tax system could result in higher demand and ultimately lead to higher house prices.

TAX AVOIDANCE

Professor Rita de la Feria, Durham University

New measures to tackle tax avoidance and tax evasion are, of course, the big headline. There are two points that seem to warrant special mention.

Firstly, new legislation on diverted profits tax that comes out next week and is due to be applied from next month onwards. While not unexpected, this is a very significant development—the tax has been subject to a lot of controversy, and its compatibility with EU law is dubious at best, so to rush through legislation so quickly may yet prove ill-advised.

Secondly, there will be penalties for those who aid and assist fraud. Again, this is not an unexpected development in the wake of the HSBC scandal, but the devil will be in the detail. How, for example, will assist and aid be defined? Criteria or some sort of test will need to be established, but this will certainly not be easy.

Stephen Coleclough, Mishcon de Reya

There has never been a clearer message to evaders and avoiders. The message to evaders is to use the existing disclosure facilities that will end this year, earlier than previously announced. There will be a last chance facility with 30% penalties and no protection from prosecution in 2016 to mid 2017. After this, and with global disclosure between tax authorities, there will be no hiding pace for untaxed wealth.

The message to avoiders is that if you insist on using schemes without technical or commercial merit then you will pay the price, both through paying tax upfront or through higher penalties and perhaps other sanctions.

There will also be a general anti-abuse rule penalty for anyone falling foul of that, and previously announced rules on promoters who persist in promoting schemes will be implemented.

Diverted profits tax

Heather Self, Pinsent Masons LLP

When the new diverted profits tax was announced in December 2014, I said that it was 'probably not needed, will be hard to apply and will raise little money'. My main concern was that it is highly complex legislation, being enacted in a hurry, and with significant concerns about whether it will operate as intended. However, the Budget has confirmed that it will be in force from 1 April 2015, with very little time available for proper scrutiny of the final provisions.

It is entirely reasonable for the UK government to want to tax the 'economic profit' that arises in the UK, but this is a difficult concept to define. The DPT focuses on the 'artificial avoidance' of a permanent establishment, and arrangements which 'lack economic substance'. Those affected by the legislation are likely to prefer to amend their operations in order to pay some additional corporation tax (at 20% rather than 25% DPT), but if they are assessed for significant sums they may well challenge the legislation under European law or the UK's Treaty provisions.

Some changes to the legislation are expected, particularly to narrow the notification requirement. According to the Budget document 'there have also been changes to clarify rules for giving credit for tax paid, the operation of the conditions under which a charge can arise, specific exclusions and the application of DPT to companies subject to the oil and gas regime'. However, the revised draft legislation has not yet been published, less than two weeks before the new rules will apply. It is disappointing that this legislation, along with many other detailed measures, is being rushed through before parliament is dissolved on 30 March 2015.

Vimal Tilakapala, Allen & Overy

The so-called 'Google tax' is still coming in from 1 April 2015. There was hope that it would be deferred to enable some important aspects of the proposals to be clarified. We are being told that amendments have been made—which is good news. However, we may see these amendments only on publication of the Finance Bill. Given the election timing and the limited time for debate there will not be much time (if any) for issues to be addressed if the changes to the draft legislation are insufficient. This is a concern.

Diverted profits tax (continued)

Ben Jones and Sarah Illidge, Eversheds

It is the revised Finance Bill to be released on Tuesday that will be of greater interest for lawyers. This will include the detailed provisions on important issues such as the diverted profits tax (DPT) and the disguised fee income rules, where it is hoped that the issues raised with these measures through consultation over the last couple of months will be addressed. The signs are positive, with the Budget Report indicating that the revised DPT rules will narrow the notification requirements and address issues with the charging conditions, exclusions and credit for tax paid. Recognition that the original notification provisions were cast too wide is particularly encouraging, although lawyers and their clients will need to review the detail of the revised legislation to assess whether the concerns raised have been properly addressed. What was clear from the Chancellor's speech is that the DPT will be introduced in April and therefore whatever form the revised DPT legislation actually takes, taxpayers are likely to have to live with it (at least for a while). Since parliament dissolves on 30 March, the Finance Bill will effectively be the Finance Act. On the plus side, this will give lawyers and their clients certainty (as opposed to an extended period of parliamentary debate), but on the down side the abbreviated legislative process has meant that proper consultation with business has not been possible and it would be surprising if all of the concerns and issues raised in initial consultation have been addressed in the revised legislation.

Corporation tax loss refresh prevention

Gerald Montagu, Fasken Martineau LLP and CEB member

A slightly more insidious theme, which did not break the surface of the pre-election rhetoric, is the emergence of what seems to be HMRC's latest whizzy legislative gadget the 'reasonable to assume' test. We had already been told that this test, which seems to be a variant of the 'reasonable to draw the conclusion' test introduced to the transfer of assets abroad rules in 2005, would feature in the new corporate rescue exemption that is being introduced to the loan relationship rules and in the context of the diverted profits tax. A 'reasonable to assume' test also now appears in the new rules introduced yesterday to prevent carried forward losses being refreshed (notwithstanding that such arrangements passed muster only last year before the GAAR Advisory Panel). The somewhat protracted discussions relating to the draft guidance on the corporate rescue exemption may serve as a straw in the wind as to the difficulty associated with deciding quite what it is (and is not) reasonable to assume... If the UK tax system is to move further away from a focus on the actual facts, towards a focus on 'reasonable assumption', this is not a good omen either for taxpayers seeking certainty or for a 'United Kingdom' seeking to present itself as open for business. As the Institute of Fiscal Studies warned last week when it looked back on the Coalition's record in relation to tax during this parliament, decreases in the headline corporation tax rate, should not serve to mask a less competitive tax base.

Heather Self, Pinsent Masons LLP

The corporate loss measure is yet another specific anti-avoidance measure, intended to prevent losses being 'refreshed' and used more generally against current year profits. Although it is only intended to apply to 'contrived arrangements', it will apply to any profits arising after 18 March 2015, and there will be concerns that it will apply more widely than intended.

Philip Harle, Hogan Lovells

The crackdown on 'loss refreshing' requires clarification as accessing trapped losses in certain circumstances has previously been expressly permitted. It is not clear whether today's announcement represents a shift in policy or a targeted measure for aggressive schemes. The Budget literature says the new rules are 'not intended to affect normal tax planning around mainly commercial transactions'. As such there is perhaps some hope that it is the latter.

Criminal offences

James Bullock, Pinsent Masons LLP and CEB member

Details of the proposed new criminal offences are still awaited at the time of writing, although it appears from comments made by the Chancellor subsequent to the Budget that there will be more than one—and that the strict liability offence will be introduced as part of the package. But again the more interesting question will be what appetite the next Government has to increase the actual number of criminal prosecutions above the minimally low number that have been pursued (as a matter of policy) since 1923. A possible clue lies in the 'New Disclosure Facility' (NDF) that will be introduced to succeed the Liechtenstein and Crown Dependency Facilities (both of which will be brought to a premature end in December this year). The NDF, as well as carrying much heavier penalties, will not bring with it immunity from prosecution as a matter of course. Does this mean that HMRC is gearing up to prosecute more people? Almost certainly yes. The questions are—how many more—and (in relation to the likely effectiveness of the facility) will this prevent errant taxpayers coming forward under it?

Disclosure facilities, FATCA and CRS

Jason Collins, Pinsent Masons LLP

The surprise announcement was to bring forward the closing date of the Liechtenstein disclosure facility (LDF) from 6 April 2016 to 31 December 2015. The Crown dependency facility has also been brought forward, from 30 September 2016, to the same date.

This means that no facility will be open when the first set of bulk data under 'UK Foreign Account Tax Compliance Act' is sent to the UK by the Crown dependencies and overseas territories on 30 September 2016. By then, the plan is that a new 'last-chance' facility will be in place, running until mid-2017. The terms will be less generous—the fixed penalty will increase from 10% to 30% and the express guarantee of immunity from prosecution will no longer be available.

By the time of the first exchange under the Common Reporting Standard (CRS) on 30 September 2017, no disclosure facilities will be available at all. In the run up to the first CRS exchange, financial intermediaries will be required to warn that it is about to happen and promote the existence of disclosure facilities. It is unclear if these laws are intended to apply to the offshore world or just UK intermediaries. Well-advised intermediaries should be pushing the disclosure facilities anyway.

By closing the LDF early, the burning platform just had petrol doused on it. If anyone is in any doubt about whether they have fully paid past taxes they need to act quickly—professional advisers should be making clients aware of the 'burning platform', leading up to the start of automatic data exchange. That said, it might be that taking away the guarantee of immunity from prosecution for those who come forward after the LDF has closed could be counter-productive. How many people will think twice about disclosing if they could end up just writing their own prosecution case? Professional advisers will need to ensure that their clients understand the risks, and the upside, of coming forward.

Philip Harle, Hogan Lovells

There have been two attempts to implement Foreign Account Tax Compliance Act (FATCA) as a matter of UK law already, so it is perhaps surprising that a third (which will also cover the EU and OECD versions of FATCA) is announced to be arriving this month. Hopefully this marks the convergence of these different regimes and their associated administrative burdens for financial institutions. For multinational banks, getting clarity on what needs to be reported by which entities in the UK is only part of the battle, as each jurisdiction imposes its own interpretation of these complex rules.

TAX ADMINISTRATION

Annual tax returns

James Bullock, Pinsent Masons LLP and CEB member

From the point of view of enforcement and compliance the big surprise was the announcement of the end of Self-Assessment returns for individuals and small businesses. The detail on this will come in due course, but it does raise serious concerns about safeguards in relation to the provision of information and enquiries. It also opens up a host of opportunities for future governments to chip away at the cashflow advantage for self-employed small businesses. It would be very easy to 'replicate' PAYE for the self-employed by requiring them to make a monthly payment on account by direct debit. 'Making taxes easier' is the strapline—the question is for who? The detail of the Consultation on this (expected once the new Government is in place) will make for very interesting reading.

David Pickstone, Stewarts Law LLP

The biggest change is that the annual tax return is to be no more. On the face of it, a purely administrative measure, however, since the tax return is the starting point for HMRC's assessing powers, including time limits for opening enquiries and restrictions on assessing previously closed years— this development could have extremely far reaching consequences that could go far beyond the 'simplification of tax collection'.

VAT

Lee Squires, Hogan Lovells

The only significant announcement on VAT was the proposed change to the deduction of VAT for businesses with foreign branches. These changes will mean that supplies made by foreign branches can no longer be taken into account when calculating how much VAT incurred on overhead costs can be deducted by partly-exempt businesses in the UK. This implements the CJEU judgment in *Crédit Lyonnais* ((C-388/11) [2013] All ER (D) 150 (Nov)) in 2013 and so is overdue. The changes are likely to have a significant impact on the financial services and insurance industries, coming soon after the recent changes to the treatment of VAT groups containing entities with branches introduced following the *Skandia* ((C-7/13) [2014] All ER (D) 125 (Sep)) case. In some cases the changes could lead to a significant reduction in input VAT recovery. Now is a good time for businesses to review their branch arrangements following the announced changes in the Budget and HMRC's recent guidance following *Skandia*.

Professor Rita de la Feria, Durham University

Tightening the deductibility of VAT on overhead costs for VAT groups may also warrant some attention. While this is something that will not make the headlines, and we do not know the details yet of what is being proposed, it is likely to impact on some groups—particularly financial groups, insurance groups, healthcare providers, etc.

PRIVATE CLIENT

Deeds of variation

Keith M Gordon, Temple Tax Chambers and CEB member

It is always better to consult rather than announce a change which proves to be unpopular or otherwise inappropriate. So I should be grateful for small mercies. However, this particular announcement exemplifies all that is wrong with the current 'avoidance' debate. The official text of the speech is quite anodyne on this point: 'I can also tell the House that we will conduct a review on the avoidance of inheritance tax through the use of deeds of variation. It will report by the autumn.'

However, the Chancellor actually continued by poking fun at the leader of the Opposition who has himself been criticised for entering into a deed of variation in relation to his late father's estate. And that might be the real reason why this announcement was made.

How have we come to the situation whereby doing no more than following a statutory relief, people are now being tarred with the epithet of 'tax avoider'? Yes, of course, they are doing something that avoids a tax—so is refraining from smoking (or at least refraining from purchasing cigarettes from a bona fide vendor in the UK) or ticking the Gift Aid box when giving a charitable donation. But, we are all supposed to know that tax avoidance is bad and surely one is still not obliged to arrange one's affairs so as to maximise the amount that we hand over to HMRC.

Nevertheless, we are in an age where the spin doctor chooses the debate and there is now a real risk that a valuable and sensible relief will be abolished or curtailed just because it makes good short-term political capital. I would like to think that the consultation exercise will subsequently confirm that the relief achieves a good social purpose (and ensures that many hardworking families are not exposed to an inheritance tax liability simply because someone failed to draft the appropriate will or because circumstances (despite the best planning in advance) turned out in an unexpected way).

But there is a wider and more important issue. Can we seriously have expected this relief to have been put under the spotlight if it were not for the (at least in this regard) completely sensible and unimpeachable conduct of the Miliband family? Indeed, back in 1997 when New Labour was elected, there was always the concern that this relief might be abolished. However, even if it was ever considered as a candidate for purge, common sense prevailed and the relief remained intact.

In the meantime, I now expect a rush of work for private client lawyers with people further revising their wills or ensuring that deeds of variation are put into place before time runs out.

David Milne, Pump Court Tax Chambers and CEB member

I hope that the threat to 'review the use of deeds of variation for tax purposes' turns out to be no more than an amusing joke at Ed Miliband's expense. Deeds of variation have throughout living memory been an essential family tool, relieving testators of worrying about whether their wills have kept up with the latest tax advice (and incurring repeat legal fees in the process!), secure in the knowledge that their families can get it right after death.

I found it disappointing to see no mention of a hinted-at measure to introduce an IHT exemption for the family home, along the lines of the principal private residence exemption (house and one acre) for CGT. Perhaps the Chancellor was put off by what I personally thought was a very odd statement attributed (wrongly?) to the IFS that they 'couldn't see why the family home should be treated any differently from any other form of investment'; or perhaps the Tories are saving it for their election manifesto—forcing the family home to be sold to pay IHT must be just about the most unpopular provision hitting Middle England.

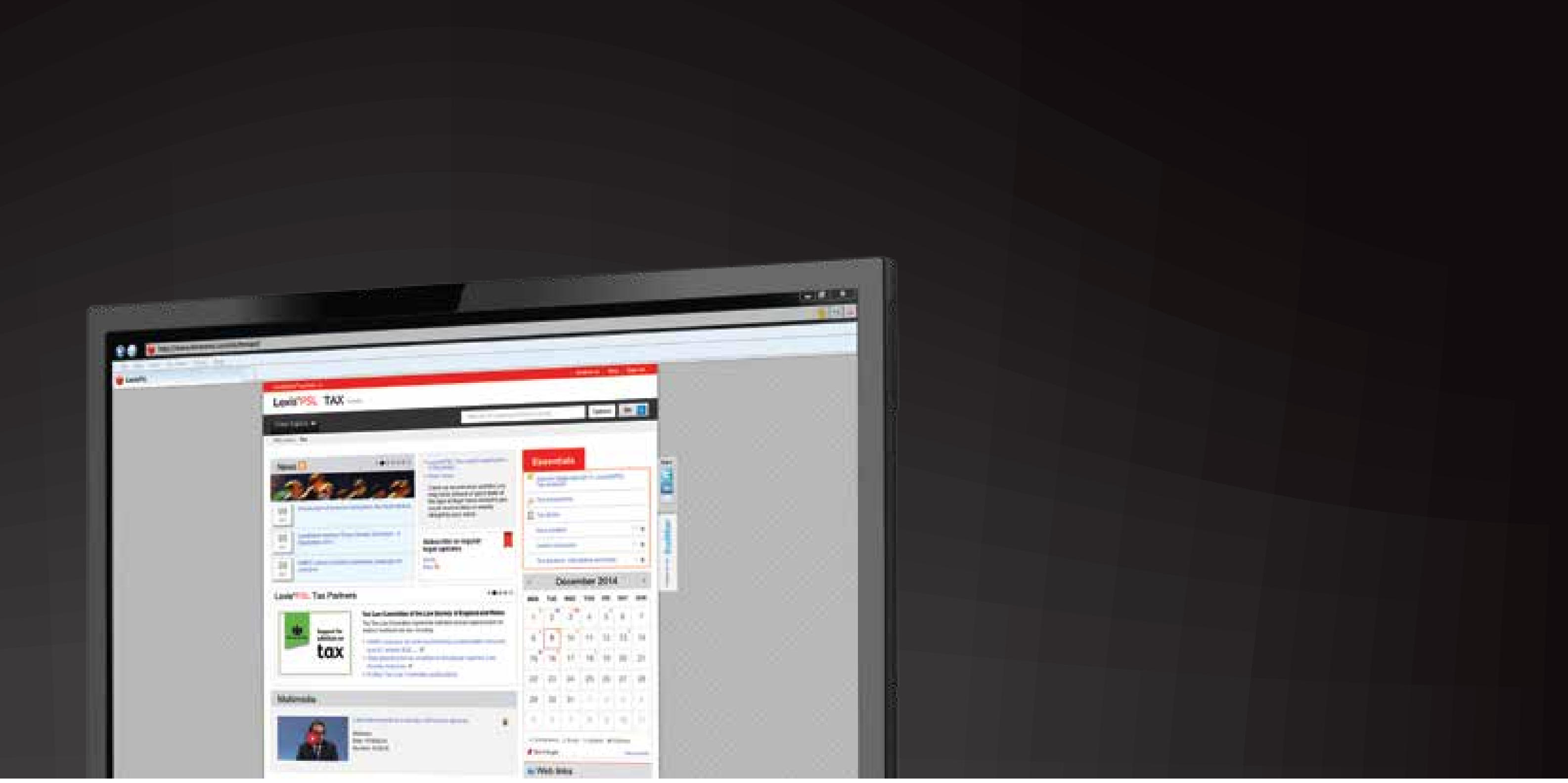
Pensions

David Milne, Pump Court Tax Chambers and CEB member

Whilst the Budget was bad news for those still saving for their pension (lifetime allowance reduced from £1.25m to £1m), it's more interesting for those who are further down the road.

Those who've retired and under the previous regime were forced to be ripped off by buying an annuity at abysmal rates from an annuity provider are now to be given the chance to be ripped off again by selling their annuities at an abysmally low price to another third party (but not apparently back to the same annuity provider).

On the other hand, those who are lucky enough NOT to have taken their annuity before 6th April 2015 have an extraordinarily favourable regime. Not only is the pension pot entirely outside the scope of inheritance tax on death (whether it is left to a surviving spouse or anyone else), but if the pensioner can manage to die under the age of 75, then his or her beneficiaries will apparently be able to draw down any annuity (if one has by then been bought) or all or any part of the pension pot entirely free of income tax. If, however, the pensioner dies after the age of 75, then his or her beneficiaries must pay income tax on any money (whether annuity or lump sum) drawn down at their marginal rate. If this is right (it does seem bizarre), pensioners approaching the age of 75 should watch their food closely!



LexisPSL Tax

Clear, no-nonsense practice notes take you through what you need to know—with direct links straight to the right part of the trusted tax bibles: Tolley's Yellow and Orange Tax Handbooks, Simon's Tax Cases and HMRC's Manuals. And when you need to delve deeper, direct links to trusted authority, including Simon's Taxes, Sergeant and Sims on Stamp Taxes, De Voil Indirect Taxes, Tolley's Tax Annuals, plus articles from Tax Journal and Taxation, in Lexis®Library.

Benefits

- Stay on top of the latest developments and find the answers you need fast.
- Our succinct practice notes and layered approach give you more control over accessing the level of information you need.
- LexisPSL Tax contains a range of precedents with detailed drafting notes, and direct links through to cases, legislation and relevant commentary.
- Receive legal and market news in your inbox, with 'so what' analysis.
- Our Lexis®Smart Forms are available in PDF format, allowing them to be easily edited electronically, saved, printed and emailed.
- Access time saving tools such as checklists and flow charts and trackers: a series of regularly updated tracking tools to provide you with the latest developments.
- With direct links to LexisLibrary, you can access the UK's most authoritative and comprehensive collection of consolidated legislation, cases, forms, precedents and commentary.

For a free trial of LexisPSL Tax visit **lexisnexis.co.uk/taxtrial**