

2011 AUTUMN STATEMENT

On Tuesday 29th November the Office for Budget Responsibility (OBR) published its updated forecast for the UK economy. Chancellor George Osborne responded to that forecast in a statement to the House of Commons later on that day.

In the period since the Budget in March a number of consultation papers and discussion documents have been published by HMRC. Draft legislation relating to many of these areas will be published on 6 December 2011. Some of these proposals are summarised here. We will provide an update for you if significant changes are announced on 6 December.

This summary also provides a reminder of other key developments which are to take place from April 2012.

The Chancellor's statement

The Chancellor emphasised that the OBR does not predict a recession in Britain but they have revised down their short term growth prospects for the country. He also made clear that the OBR central forecast assumes 'the euro finds a way through the current crisis'.

General measures

The Autumn Statement sets out the actions the Government will take in two main areas:

- protecting the economy and
- building a stronger economy for the future.

In order to maintain economic stability and meet its fiscal rules, the Government will, for example:

- set plans for public spending in 2015/16 and 2016/17 in line with the spending reductions over the Spending Review 2010 period
- raise the State Pension age to 67 between April 2026 and April 2028
- set public sector pay awards at an average of 1% for each of the two years after the current pay freeze comes to an end.

The growth plans include the publication of a National Infrastructure Plan 2011. The plan sets out a pipeline of over 500 infrastructure projects including:

- introducing a new approach to financing infrastructure, by obtaining £20 billion of private investment from pension funds
- investing over £1 billion to tackle areas of congestion and improve the national road network
- investing more than £1.4 billion in railway infrastructure and commuter links
- investing £100 million to create up to ten 'super-connected cities' across the UK, with 80-100 megabits per second broadband and city-wide high-speed mobile coverage.

Comment

The proposal to raise the state pension age is expected to save around £60 billion in today's prices between 2026/27 and 2035/36.

The aim of the National Infrastructure Plan is to kick start the economy by accelerating infrastructure projects with a view to job retention/creation. Time will tell how successful the new strategy is.

NON-TAX MEASURES FOR SMEs

Credit easing

In order to free up lending to business, the Government is launching a package of measures worth up to £21 billion to ease the flow of credit to businesses. This includes up to £20 billion for the National Loan Guarantee Scheme and £1 billion for the Business Finance Partnership.

Comment

The hope is that credit easing will encourage bank lending and enhance the demand for credit by reducing the price of loans for eligible businesses.

Small business rate relief holiday

The Government will extend the current small business rate relief holiday for a further six months from 1 October 2012 and also give businesses the opportunity to defer 60% of the increase in their 2012/13 business rate bills.

Employment regulations

In an attempt to make it easier to 'hire and fire', the Government intends to:

- look for ways to provide a quicker and cheaper alternative to a tribunal hearing in simple cases by introducing a 'Rapid Resolution' scheme
- complete a call for evidence on the impact of reducing the collective redundancy process for redundancies of 100 or more staff from the current 90 days to 60, 45 or 30 days.

The Government will begin a call for evidence on two proposals for reform of UK employment law. They will:

- seek views on the introduction of compensated no-fault dismissal for micro-businesses with fewer than 10 employees
- look at how it could move to a simpler, quicker and clearer dismissal process, potentially including working with ACAS to make changes to their code or by introducing supplementary guidance for small businesses.

Youth Contract

A number of measures under the heading of a 'Youth Contract' will be introduced, including Government funding of:

- wage incentives for 160,000 young people to make it easier for private sector employers to take them on
- at least 40,000 incentive payments for small firms to take on young apprentices.

Planning reform

The Government has announced a series of changes to the planning regime. Changes will include:

- introducing a 13-week maximum timescale for the majority of non-planning consents

- building more flexibility into the new major infrastructure planning process, particularly in the pre-application phase
- reviewing the planning appeals procedures to make them faster and more transparent
- consulting on proposals to allow existing agricultural buildings to be used for other business purposes such as offices, leisure and retail space.

Comment

These changes are designed to speed up building projects. 'Red tape' has been cited as a major reason for UK infrastructure development being more expensive than in other European countries.

Housing

In an attempt to increase house building, stabilise the housing market and enable more people to own their own home, the Government will:

- introduce a new build indemnity scheme under which home buyers will be able to purchase new build houses and flats with a 5% deposit, with house builders and the Government helping to provide security for the loan
- reinvigorate the 'Right to Buy' to help social tenants buy their home
- launch a new £400m 'Get Britain Building' investment fund, which will support firms in need of development finance
- support new development, which could include modern garden cities and urban and village extensions.

PERSONAL TAX

The personal allowance for 2012/13

For those aged under 65 the personal allowance will be increased by £630 to £8,105. This increase is greater than the minimum required and is part of the plan of the Coalition Government to ultimately raise the allowance to £10,000.

The personal allowance is reduced by £1 for every £2 of adjusted net income over £100,000. Next year the allowance ceases at adjusted net income in excess of £116,210.

Comment

Planning should be considered where adjusted net income is expected to exceed £100,000. This figure is calculated after giving a deduction against income for pension contributions and gift aid payments. Consider whether these could be made to protect some or all of the personal allowance.

Tax band and rates 2012/13

The basic rate of tax is currently 20%. The band of income taxable at this rate is being reduced to £34,370 so that the threshold at which the 40% band applies will remain at £42,475.

The 50% band currently applies where taxable income exceeds £150,000.

If dividend income is part of total income this is taxed at 10% where it falls within the basic rate band, 32.5% where liable at the higher rate of tax and 42.5% where liable to the additional rate of tax.

Tax credits

The child element of Child Tax Credit will rise by £135 per year in 2012/13 which is in line with the inflation increase but the additional increase above inflation of £110 which was planned has been dropped.

The disability elements of tax credits will be uprated by the increase in the Consumer Price Index of 5.2% but there is to be no uprating of the couple and lone parent elements of Working Tax Credit.

Integration of the operation of income tax and NIC

Following an invitation for people to express views on a proposed integration of the operation of income tax and NIC the Government has decided to continue with the review. The Government will establish a number of working groups with stakeholders to explore options for integration. Depending on the results of the working groups, further rounds of consultation will proceed after Budget 2012. It is unlikely that there will be any substantive change in reality before 2017.

Junior ISAs

Provisions to allow these accounts were introduced this tax year. At present there is not a wide availability of these accounts although some building societies have launched products. The key features of the accounts are:

- the accounts are available to any child who does not qualify for a Child Trust Fund
- all returns will be tax free
- funds placed in the account will be owned by the child and would be locked in until the child reaches adulthood although they can manage the account from the age of 16 years
- investments will be available in cash or stocks and shares
- annual contributions will be capped at £3,600
- there will be no Government contributions into the account.

Comment

These accounts provide a way of increasing the tax free income available to a family in addition to the use of adult ISAs for the parents.

Child Trust Funds

These ceased to be available for children born on or after 1 January 2011 although existing accounts remain in place and can be added to by parents and family members. The maximum annual contribution has been increased to £3,600 to keep in line with the Junior ISA. No further Government contributions will be made to any account.

Furnished holiday lettings

From 6 April 2012 the tests which determine whether a property can qualify for treatment as a furnished holiday let will change. The number of days for which the property is available for letting increases from 140 days to 210 days and the number of days actually let increases from 70 to 105 days.

If an individual can show there was a genuine intention to meet the letting conditions but has been unable to do so they will be able to make an election to continue to treat the property as a furnished holiday let. This will protect the special tax treatment that such properties receive.

Statutory Residence Test

There is currently no definition of 'residence' in UK tax law and yet the liability to income tax and capital gains tax (CGT) rests on knowing an individual's UK residence status for a tax year. Currently the determination of residence is based on old case law and, as a recent Supreme Court decision has shown, it can lead to significant uncertainty and large tax liabilities.

The Government published a consultation document in summer 2011 on the introduction of a Statutory Residence Test (SRT) which would come into effect in April 2012. The SRT is based on three parts and an individual would consider each part in turn. If a definite answer on their residence status is found on the first part then there is no need to proceed further. Similarly if the second part gives a definitive answer there is no need to move to the third part. That final test then provides a definitive answer.

The parts and the conditions are as follows:

- Part A – satisfy any one of three conditions and the individual is conclusively non-resident in the year:
 - an individual with no UK residence in the three previous tax years spends less than 45 days in the UK
 - an individual who has been UK resident in one of the three previous tax years spends less than ten days in the UK
 - an individual goes to work abroad in a full time employment or self-employment and spends less than 90 days in the UK and has less than 20 working days in the UK.
- If no definite answer under Part A then proceed to Part B
- Part B – satisfy any one of three conditions and the individual is conclusively resident for the year:
 - an individual spends 183 days or more in the UK
 - an individual has their only home in the UK or if they have more than one home all are in the UK
 - an individual works full time in the UK for a continuous period of at least nine months and not more than 25% of duties are outside the UK.
- If no definite answer under Part B then proceed to Part C
- Part C – here the rules combine the time spent in the UK and a number of connection factors which are deemed to link an individual to the UK. Five connection factors have been identified:
 - spouse and/or minor children are resident in the UK at any time in the year
 - the individual has accessible accommodation in the UK and uses it in the year
 - the individual spends at least 40 working days in the UK
 - in either of the two previous tax years the individual spent at least 90 days in the UK
 - the individual spent more time in the UK than in any other single country in the tax year.
- Part C then provides for a combination of factors and time which will make an individual resident in the UK.

A day will count as being in the UK if the individual is physically present in the UK at midnight unless they satisfy specific rules for those in transit through the UK.

There are a number of issues which have been raised in the consultation process on which clarification has been sought and it is hoped that these will be clarified in the draft legislation. It is intended that the new rules will apply from 6 April 2012. From that point they will supersede all existing case law and practice. However residence status for years up to 2011/12 is determined using the present rules.

Comment

The proposed rules do seem to work to give a definitive answer to the question 'Am I resident in the UK?' The answer may not be the one that you want but it should then be possible to identify the factors which need to change in order to achieve the desired result.

Individuals planning a move into or out of the UK after 6 April 2012 should be taking the new rules into account in their planning. They should also note that they are going to need to keep comprehensive

records not just of their time in the UK but also, where relevant, their working days in the UK and the time they spend in each other country that they may visit.

Some individuals who are currently outside the UK, particularly those working abroad, will need to note that the new rules could change their residence status and they may wish to review plans for visits back to the UK and the impact of any potential connecting factors.

Changes for non-domiciled individuals

Following changes in 2008 all UK resident individuals are taxable on overseas income and gains overseas arising in the tax year. Individuals who are not domiciled in the UK or who are not ordinarily resident can make a claim to be taxed only on sums actually remitted to the UK in the year. These rules, known as the 'remittance basis rules' are complex but can mean a significant tax saving.

There are currently two downsides to making a remittance basis claim:

- the individual automatically loses their personal allowance for income tax and their annual exempt amount for CGT unless the remittances amount to almost all of the overseas income and gains arising
- an individual who has been resident in the UK for at least seven out of the preceding nine UK tax years must pay a remittance basis charge of £30,000 in addition to the tax actually due.

Two significant changes are planned in the remittance basis rules from 6 April 2012:

- the remittance basis charge will be increased to £50,000 where an individual has been resident in the UK for 12 out of the preceding 14 tax years
- if an individual remits funds to invest in a UK business then that remittance will be tax free if the remittance basis is claimed (although the remittance basis charge will still be payable). A consultation paper has proposed a wide definition of business and indicates that the business vehicle can be a company or an unincorporated business. When the investment is realised it will be necessary for the individual to either reinvest the funds immediately in another qualifying venture or remove the funds from the UK within 14 days otherwise they will be treated as a remittance for that year.

Some administrative changes in the remittance basis rules will also be introduced.

BUSINESS TAX

Corporation tax rates

In accordance with the plans announced in March the main rate of corporation tax will fall from 26% to 25% from 1 April 2012. The small company rate is 20% and there has been no announcement of the rate for next year.

Enterprise Investment Scheme (EIS)

Changes announced in the March Budget are due to come into effect on 6 April 2012. These are:

- the maximum amount that an individual can invest in total in a tax year rises from £500,000 to £1m.
- the maximum funds that a company can receive under EIS rises from £2m to £10m
- the size of a company that can benefit from EIS (subject to meeting all the qualifications) is increased to £15m gross assets and fewer than 250 employees.

A number of other changes were announced in the Autumn Statement:

- the rules which identify individuals who are deemed to be connected to the company are to be relaxed in some circumstances
- the £1m per company limit that currently applies for Venture Capital Trusts will be removed
- anti-avoidance rules will be introduced to exclude companies set up for the purpose of obtaining the relief, and to exclude the purchase of shares in another company
- investment in Feed-in-Tariffs will be excluded.

Seed Enterprise Investment Scheme (SEIS)

This is a new relief which will be introduced from 6 April 2012. It will provide income tax relief at 50% in respect of investment in a small company whose total assets before the investment are less than £200,000. The relief will be limited to investments of up to £150,000 in each company and a maximum of £100,000 investment for an individual. In addition an individual who makes a capital gain in 2012/13 and reinvests some or all of the gain in a SEIS company in the same year will obtain exemption from CGT for the sum invested.

Comment

This relief will encourage business angels or perhaps family members to invest in small enterprises and obtain a tax refund of half their investment. The details of the conditions which the recipient company will have to meet are not yet known.

Annual Investment Allowance (AIA)

The AIA is a capital allowance available for many businesses on most purchases of plant and machinery, long-life assets and integral features. Relief is given on the full cost up to a current maximum allowance of £100,000 for a full year. This allowance is to be reduced to £25,000 with effect from 1 April 2012 for companies and 6 April 2012 for unincorporated businesses.

Where a business has an accounting period that straddles the date of change the allowances have to be apportioned on a time basis. For example a company with an accounting period ending on 30 September 2012 will have an allowance of £62,500 ($£100,000 \times \frac{1}{2} + £25,000 \times \frac{1}{2}$). However it should be noted that for expenditure incurred after the 1/6 April, the maximum allowance that can be attributed to that expenditure is a fraction of £25,000. The fraction will be the amount of the £25,000 that is included in the calculation of the overall AIA for the accounting period.

Comment

Planning the timing of purchases of significant items of plant becomes very important over the next year to ensure that the maximum available AIA can be secured.

Suppose the company with the 30 September year end wishes to buy new plant costing £35,000. If they buy it in February 2012 they will be able to claim an AIA on the full £35,000 but if they buy it in June 2012 they will only be able to claim an AIA of £12,500. They would actually then be better off if they waited until October when they would have a full £25,000 available.

Writing down allowances

Writing down allowances are to be reduced from April next year. The normal rate of 20% will be reduced to 18% and the lower rate of 10% which applies to integral features and long-life assets will reduce to 8%. It will be necessary to calculate hybrid rates where the accounting period straddles 1/6 April which will give a rate between 20% and 18% (or between 10% and 8%) for that period.

Capital allowances in Enterprise Zones

Over the past year the Government has designated a number of very specific areas as Enterprise Zones. Businesses in these areas enjoy certain reliefs, for example, a relief from business rates. The Chancellor has announced that 100% capital allowances will now be available for the Zones in the Black Country, Humber, Liverpool, North East, Sheffield, and the Tees Valley.

Compulsory pooling

The Government is considering whether to introduce a requirement that businesses should pool their expenditure on fixtures within a short period after acquisition in order to qualify for capital allowances.

Research and development expenditure (R&D)

There are currently a number of restrictions which effectively limit the scope of this relief and it is planned to remove these for expenditure incurred on or after 1 April 2012. The proposals include:

- removing the rule limiting a company's payable R&D credit to the amount of PAYE and NIC it pays
- removing the £10,000 minimum expenditure condition
- changing the rules governing the provision of relief for work done by subcontractors under the large company scheme
- increasing the additional deduction for R&D expenditure by SMEs by a further 25% making the total deduction 225% of actual expenditure.

The Chancellor has announced a consultation next year on the introduction of an 'above the line' tax credit in 2013 for larger companies.

Controlled Foreign Companies (CFCs)

The CFC regime can apply to a UK company which has a subsidiary operating in a country with a low rate of corporation tax. The rules have been in place for 25 years but are seen as complex and in some cases disadvantageous to business. Some interim changes were made in 2011 but a major overhaul is planned for 2012. The aims of the new rules will be:

- to target and impose a CFC charge on artificially diverted UK profits, so that UK activity and profits are taxed fairly
- to exempt foreign profits where there is no artificial diversion of UK profits
- to not tax profits arising from genuine economic activities undertaken offshore.

General Anti-avoidance Rule (GAAR)

The Government commissioned an independent report from a leading tax lawyer on whether or not it would be appropriate to introduce a GAAR into the UK tax system. This is a route that has been used in a number of other countries.

The reviewer has just presented his report to the Government and recommends that a moderate rule targeted at abusive arrangements would be beneficial to the UK tax system. Such a GAAR would apply for income tax, CGT, corporation tax and NIC. It would not apply to 'responsible tax planning'.

It is now likely that the Government will undertake a consultation process in this matter but legislation is not likely until 2013 at the earliest.

High risk tax avoidance schemes

Certain types of tax avoidance schemes are currently subject to a disclosure regime which requires the scheme promoter to disclose details of the scheme to HMRC and for the users of the scheme to indicate their involvement on their tax return. Such schemes are usually challenged by HMRC but this procedure can take many years with Tribunal and Court hearings being required. If the scheme is blocked the scheme users have to pay the tax due but HMRC is concerned that the delay can still give them a significant cash-flow advantage.

HMRC is currently consulting on a proposal to introduce an additional charge on scheme users where the scheme fails. A user will be able to prevent this charge by paying the disputed tax to HMRC ahead of the challenge.

Tax treatment of asset-backed pension contributions

Rules are to be introduced from 29 November 2011 to limit tax relief for employers who enter into arrangements to make asset-backed contributions into their pension schemes. The new rules will ensure that the tax relief obtained more accurately reflects the actual costs to the employer.

EMPLOYMENT TAX

Employer-provided cars

From 6 April 2012 the CO₂ emissions bands used to work out the taxable benefit for an employee who has use of an employer-provided car will be shifted downwards by 5gm/km. This will have the effect of increasing the charge for each vehicle.

In addition, the current graduated table of employer-provided car bands will extend down to a 10% band and will apply to cars with CO₂ emissions between 76 and 99gm/km. As a result 'qualifying low emission cars' will no longer exist as a separate category.

In summary the new rules from 6 April 2012 will be:

- no emissions 0%
- 75gm/km or less 5%
- 99gm/km or less 10%
- 100gm/km 11%
- graduated increases of 1% per 5gm/km up to a maximum, including diesel supplement, of 35%

Real Time Information (RTI)

HMRC have produced draft legislation to introduce probably the most significant change in the PAYE system since its introduction in 1944. Under the RTI scheme, employers will electronically provide monthly information to HMRC related to wages and salaries paid to employees. Once the scheme is 'bedded in' employers will no longer have to complete year end returns such as the P35 and P14. The new system will also see the end of the use of the P45 when an employee leaves an employment.

Volunteer employers are to pilot the new scheme from 6 April 2012. The intention is that it will apply to employers on a phased basis from 6 April 2013 so that all employers are operating the system by October 2013.

Comment

This really is a major change but the success or otherwise of the scheme will depend on the ability of the HMRC computer system to cope. History suggests that this could be the problem.

CAPITAL TAXES

CGT rates

The current rates of CGT are 18% to the extent that any income tax basic rate band is available and 28% thereafter. The rate for disposals qualifying for Entrepreneurs' Relief (ER) is 10% with a lifetime limit of £10m for each individual.

No announcement has been made of the rates for next year.

Comment

The ER limit is very generous and owners of businesses should ensure that they meet all the conditions necessary to secure the relief throughout the twelve months up to the date of a disposal.

CGT annual exemption

The CGT annual exemption has been frozen at £10,600 for 2012/13.

Inheritance tax (IHT) nil rate band

The IHT nil rate band remains frozen at £325,000 until 6 April 2015.

Reduced rate of IHT for the charitable

The Government will introduce a reduced rate of IHT for an estate where a minimum level of legacy has been left by the deceased to charity. The actual legacy to charity remains exempt from IHT and it is the rate of tax on the balance of the estate that would be reduced to 36% from 40%.

The intention is that the reduced rate will apply where charitable bequests satisfy a 10% test. A comparison will be made between:

- the total value of charitable legacies for IHT purposes and
- the value of the net estate as reduced by:
 - any available nil rate band
 - the value of assets passing to the surviving spouse or civil partner and
 - other IHT reliefs and exemptions for example Business Property Relief.

If the first figure is at least 10% of the second then the balance of the estate will qualify for the reduced IHT rate of 36%.

The changes will apply to estates where the individual dies on or after 6 April 2012.

Comment

Because the benefit of the reduced IHT rate will be dependent on whether or not the amount of the charitable legacy is sufficient for the estate to pass the 10% test there will be a 'cliff edge' effect.

Where the amount of the charitable legacy is close to the critical 10% point, a small difference to the amount of the legacy could have a much larger impact on the estate's IHT liability. There are no plans to apply any taper or other mechanism to mitigate this.

OTHER TAXES

VAT - Low value consignment relief (LVCR)

LVCR is an administrative simplification to reduce the costs for businesses, Royal Mail and other carriers and consumers all of whom would otherwise be involved in the collection and/or payment of small amounts of VAT on large numbers of low value packages coming into the UK from outside the EU. It is the main reason that suppliers of DVDs and CDs often use a base in the Channel Islands from which to ship their products.

The amount at which LVCR was to apply was reduced from £18 to £15 from 1 November 2011.

The Government recently announced that the relief is to be abolished from 1 April 2012 for goods imported as part of a distance selling transaction from the Channel Islands.

VAT cost sharing exemption

The Government is to introduce an EU VAT exemption for organisations that wish to share costs between themselves on a non-profit basis. The exemption can be used, amongst others, by organisations such as charities, universities and higher education colleges and housing associations wanting to make efficiency savings by working together to achieve economies of scale.

Under current UK legislation a VAT cost can arise creating a barrier to the sharing of services. The exemption once implemented would also, in certain circumstances, remove this VAT barrier.

Stamp Duty Land Tax (SDLT) holiday for first time buyers

Currently first-time buyers do not have to pay SDLT on house purchases where the cost is no more than £250,000. This relief is due to expire at midnight on 24th March 2012.

Air Passenger Duty (APD)

The Government intends to proceed with the introduction of APD to flights taken aboard business jets from 1 April 2013.

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