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UNITED KINGDOM BUDGET 2009

22 APRIL 2009

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This special issue of our *UK Tax Bulletin* includes a summary of the main Budget proposals announced by the Chancellor of the Exchequer this afternoon.

HMRC and HM Treasury have issued a large number of press releases and other documents relating to the proposed Budget changes. Many of the matters considered are highly technical and further details are available on request from our London office.

2009/10

Allowances

Personal Allowance (to be reduced after 5 April 2010 for incomes over £100,000)	£6,475
Capital Gains Tax Exemption	£10,100
Trustees CGT Exemption (max)	£5,050
Inheritance Tax Threshold	£325,000
VAT Threshold from 1 May 2009	£68,000

Income Tax Rates

Up to £37,400	20%
Over £37,400	40%
Over £150,000 (from 6 April 2010)	50%

Trust Rates

Rate applicable to trusts (to be increased to 50 percent on 5 April 2010)	40%
Dividend Trust Rate (to be increased to 42.5 percent on 5 April 2010)	32.5%

Corporate Tax Rates

Up to £300,000	21%
Over £1.5 million	28%

Capital Gains Tax

Flat rate	18%

Value Added Tax

Flat rate (going up to 17.5 percent on 1 January 2010)	15%

Residence & Domicile

No reference was made in the Budget to residence or domicile and perhaps the revised guidance on these subjects issued on 31 March is enough to be getting on with for the moment.

There has been mercifully no change to the remittance basis or any of the rules introduced last year concerning the non-dom charge. There is a small clarification but that is all. There has been a substantial amount of explanatory material on these complex provisions in the last few months and more is to be expected.

Corporate Tax

Rates of Tax

The main rate of corporation tax stays at 28 percent where profits exceed £1.5million. Where profits are below £300,000, the small companies rates stays at 21 percent. The marginal rate for profits between these two figures stays at 29.75 percent. These bands are divided by the number of associated companies that are broadly companies under common control.

Taxation of Foreign Profits

There has been considerable discussion concerning the charge to tax on UK companies that receive dividends from foreign subsidiaries. Dividends from UK companies are not taxable but dividends from non-UK companies are, although credit is given for any foreign tax paid or for underlying foreign tax charged on the profits from which the dividends are paid.

From 1 July 2009 foreign dividends will be treated in the same way as UK dividends providing that the company paying the dividend is chargeable to corporation tax (or something similar) on profits in their country of residence.

These changes are accompanied by a restriction in the allowability of interest paid by UK group members, which is known as the worldwide debt cap. Draft legislation has been published but the details of the calculations are yet to be clarified.

Group Relief

The Budget materials confirm the announcement in December that a change is to be made to the definition of ordinary share capital for determining the existence of a 75-percent subsidiary for group relief purposes.

It is not unusual for preference shares to be issued without a fixed entitlement to dividend even though they have no votes or any rights of participation. This causes them to be regarded as ordinary shares and this interferes significantly with the determination of who should be entitled to group relief – or provides opportunities for group relief to be claimed in an unexpected manner.

For accounting periods commencing on or after 31 January 2008 (unless an election is made to retain the existing treatment), preference shares that would qualify as fixed rate preference shares if it were not for the existence of a right to pay a lower dividend (or no dividend) in certain defined circumstances will be treated as fixed rate preference shares for group relief purposes.

This change seems to relate only to group relief and the definitions within Schedule 18 Taxes Act 1988, and not to the capital gains tax provisions in Section 171 TCGA 1992, where assets transferred between members of a 75-percent group are treated as taking place on a no gain-no loss basis.

Groups: Chargeable Gains

Provisions are to be introduced with effect from Royal Assent to make it easier for groups to match gains and losses that arise on disposal without the need to transfer ownership of assets within the group.

Where a company elects under Section 171A TCGA 1992, the asset is deemed to have been transferred from one group company to another before an outside disposal is made. The requirements for the election cause unnecessary restrictions to this relief and Section 171A is to be changed so that instead of deeming the asset to be transferred from one group company to another, the gain or loss from the company making the disposal can be transferred instead.

Controlled Foreign Companies

The Budget materials contain proposed changes to the controlled foreign companies (CFC) regime that are said to have effect for accounting periods starting on or after 1 July 2009. However, it is unclear what effect these changes can have. The courts have effectively struck down the CFC legislation in the cases of *Cadbury Schweppes* and *Vodafone 2,* where they held that the legislation was contrary to EC law.

It had been understood that consultations were continuing about the future of the CFC legislation and no doubt we shall hear more about this in due course.

Foreign Dominated Losses

This point too has also previously been announced, which is that companies will be allowed to compute their profits or losses in the currency of the territory where they operate. Fluctuations in the exchange rates can mean that the requirement for companies to convert the profits of an accounting period into Sterling at the average rate can cause difficulty. For example, where a loss arises, it must be carried forward in Sterling and offset against future profits. However, foreign currency fluctuations could mean that the measure of foreign profits in the future could be different – and HMRC quaintly acknowledge that both the taxpayer and the Exchequer are exposed to the exchange risk.

Accordingly, any unused losses at the start of accounting periods beginning on or after 29 December 2007 will be converted into their functional currency at the start of the period and carried forward in that currency. It is possible for the company to elect to defer the commencement date to the first accounting period beginning on or after the date of Royal Assent.

Where a company changes its functional currency, losses carried forward or back into periods across the change will be converted at spot on the date of change.

Capital Allowances

The constant tinkering with rates of capital allowances on machinery and plant continues in this year's Budget. Small or medium-sized enterprises were able to claim first-year allowance at the rate of 40 percent for new acquisitions of plant or machinery from 1 July 1998 to 6 April 2008. This was withdrawn last year and replaced for all businesses by an annual investment allowance of £50,000; equipment purchases in each year up to this total value receive 100-percent relief, and thereafter the ordinary rate for capital allowances is 20 percent.

This year's Budget reintroduces first-year allowances at the rate of 40 percent – for all businesses. It applies to expenditure in excess of the amount qualifying for the 100-percent investment allowance and it operates for the year commencing in April 2009 for both income tax and corporation tax purposes.

The result is a plethora of rates for plant and machinery; 100 percent on the first £50,000 of new expenditure, thereafter 40 percent on new expenditure, 20 percent on the existing main pool and 10 percent on existing "special rate" expenditure (broadly integral features in buildings and other long-life asset expenditure).

There is also 100-percent relief available for investment in environmentally beneficial plant and machinery. The qualifying technologies are published on lists produced by two government departments: the Department for Environment, Food and Rural Affairs (DEFRA) and the Department of Environment and Climate Change (DECC). The lists are to be revised to include one new technology – uninterruptable power supplies – and two new sub-technologies – air-to-water heat pumps and close-control air conditioning systems. Some items on the existing list are to be removed: single-duct and packaged double-duct pumps, brine-to-air heat pumps and packaged heat pumps.

Carry Back of Trading Losses

Apart from losses made in the opening and closing years of a business, the ability to carry back trading losses for relief against previous profits has traditionally been limited to one year only. This is now to be extended to three years for a limited period.

For companies, the three-year carry back will apply to accounting periods ending in the period 24 November 2008 to 23 November 2010. For unincorporated businesses, it will apply to the tax years 2008/09 and 2009/10.

In relation to each company accounting period or, for unincorporated businesses, each fiscal year, the extended carry back is limited to an amount of £50,000.

Example

A company has current year trading losses of £130,000 and profits of £70,000, £40,000 and £40,000 the previous three years.

Current rules that allow £70,000 of the trading loss to be carried back one year remain unaffected. The proposed changes would allow the company to carry back £40,000 trading loss for two years and £10,000 of loss back three years. The remaining £10,000 of loss will be carried forward for relief against future profits.

For unincorporated businesses, losses can be carried back for two years against all types of income and not just trading profits.

Example

An individual trader's profits, losses and other income are:

2005/06	Trade Profit	£80,000	Employment Income	£5,000
2006/07	Trade Profit	£60,000	Employment Income	£5,000
2007/08	Trade Profit	£30,000	Employment Income	£5,000
2008/09	Trade Loss	£100,000	Employment Income	£5,000

The trader makes a claim to set the 2008/09 loss against general income of both the year of loss (£5,000) and the previous year 2007/08 (£35,000).

The remaining part of the 2008/09 loss, up to a maximum of £50,000, is available to carry back to set against trading profits of 2006/07 and 2005/06 (in that order), leaving £10,000 available to carry forward to set against trade profits in future years.

Business Cars

Benefits in Kind

Minor changes are to be introduced with effect from 2011/12 to the benefit in kind provisions relating to company cars. They will have the broad effect of changing the focus of the legislation from the means by which the car achieves its emissions figures to the actual emissions figure itself. As a result, the reduction currently given to hybrid cars will be abolished. The current £80,000 price cap will also be abolished. The lower emissions threshold and the rates applicable to 2011/12 will also be included in the Finance Bill 2009.

Business Expenditure on Cars

From 6 April 2009 (1 April 2009 for companies), qualifying expenditure incurred by businesses on cars will be allocated to one of two general plant and machinery pools depending on the car's CO_2 emissions figure. As a result, the existing regime applying to cars costing more than £12,000 will be abolished. Cars with emissions exceeding 160g/km will be allocated to a special rate pool attracting a 10-percent writedown of allowances. Cars with emissions of that amount or less will be added to the ordinary pool for plant and machinery, which has the benefit of writing down allowances at 20 percent.

The £50,000 annual investment allowance does not apply to cars and this will continue to be the case.

Cars that have an element of private or nonbusiness use will continue to be allocated to single asset pools, but the writing down of allowances available will be as set out above.

At the same time, the restriction on car lease rental payments will be reformed to a flat rate disallowance of 15 percent of the relevant payments in the case of cars exceeding the 160g/km figure. There will be no disallowance for cars at or below that emissions rate.

The old rules will continue to apply to cars purchased before April 2009.

Living Accommodation

Where living accommodation is provided to an employee by reason of his or her employment, a tax charge arises on the benefit in kind. Where the property is let, the value of the benefit is calculated by reference of the actual rent paid less any amount made good by the employee. However, where the lease of a property is acquired at a premium, this gives rise to a very small payment of rent and the tax on the employee can be reduced.

Accordingly, new rules will provide that where a premium is paid for a lease of up to 10 years, the same tax treatment will follow as if the lease premium were actual rent paid spread over the period of the lease. Interestingly, the new rules that are to come into force in respect of leases entered into or extended on or after Budget day will not apply to properties used mainly for business purposes by the employer and only partly for the domestic use of an employee.

Personal Allowances for Non Residents

At the moment, individuals who are not resident in the United Kingdom but are Commonwealth citizens are entitled to UK personal allowances to set against any UK taxable income. Apparently this entitlement is contrary to the Human Rights Act and the entitlement for non resident individuals to claim personal allowances solely by virtue of being a Commonwealth citizen will be withdrawn on 6 April 2010.

There are still a lot of people who will be able to claim personal allowances despite being non resident – for example, EEA nationals, residents of the Channel Islands or the Isle of Man and Crown servants – and sometimes under a double taxation agreement.

Tax Accountability of Directors

There is a statutory requirement for companies to make accurate tax returns and this obviously means that their accounting systems must be adequate for this purpose.

To encourage companies to ensure their systems are up to the job, the senior accounting officers will be obliged to take reasonable steps to establish and monitor accounting systems so that they do satisfy this

requirement. They will be required to certify annually that the accounting systems are adequate for the purposes of accurate tax reporting or to confirm any inadequacies to the company's auditors.

The penalties for failing to comply with these obligations will fall both on the senior accounting officer personally and on the company and will apply for accounting periods beginning on or after the date of Royal Assent.

Offshore Funds

The controversial tax regime applicable to investment in offshore funds is finally to be reformed. There have been significant amendments to the regime over the years to eliminate some of the harsh effects of the rules, but the fundamental distinction between distributor funds and nondistributor funds has been maintained throughout the period.

A new regime is now to be introduced. The change had already been published, but some further details have now been included. The existing definition, based on collective investment schemes, is to be abolished and there will be a new definition that uses a characteristics-based approach, although some closed funds will remain outside the definition. In place of distributor and nondistributor funds, there will "Reporting Funds". These are funds that are required to calculate "reportable income" including all profits from trading transactions but not capital gains or losses. This income must be notified to all UK investors in the fund and will be treated as their foreign income for UK tax purposes. There will be no requirement for the Reporting Fund to distribute its income. The tax treatment of nonreporting funds will broadly follow that of existing nondistributor offshore funds.

Certain offshore funds are transparent for tax purposes and from 1 December 2009, the capital gains tax treatment of these funds will change. Investors will not need to return disposals of underlying assets within the fund for capital gains tax purposes but, instead, the investment in the fund itself will be treated as the relevant asset for capital gains tax purposes. This change will principally be of importance to investors in overseas investment vehicles that are not recognised companies, unit trusts or partnerships for UK tax purposes.

Onshore and Offshore Unit Trusts and Funds

A matter that has been of great concern to all unit trust and collective investment schemes has been identifying the boundary between investment and trading. At what point do repeated sales and purchases of any particular investment constitute a trading activity, with the profits liable to corporation tax, instead of an investment activity exempt from tax because the fund itself is not liable for tax on capital gains? In future, there will be a statutory "white list" that will define those transactions not to be treated as trading transactions.

Authorised Funds

Some authorised investment funds will be able to elect into a new regime by which distributions from the funds are split between underlying dividends and underlying interest received. This will split the distribution into the two categories for the purposes of tax liability on the investor, with the effect that the interest distribution will pass through the fund free of corporation tax liability.

Enterprise Investments and Venture Capital

There are further changes to the EIS and the VCT rules. The change that is likely to be of greatest interest concerns the carry back of relief under the EIS scheme. At the moment, half of any subscription made before 6 October in any fiscal year can be carried back to the previous fiscal year, subject to an overall limit of £50,000. These restrictions are to be removed, leaving in place only the overriding limit available for income tax relief for any particular year of £500,000.

There will also be an amendment to the way in which the company reorganisation rules (share-for-share exchanges) apply to EIS investments. These rules can operate so that the share-for-share exchange counts as a capital gains tax disposal, and there is a recapture of deferral relief previously given. Under the proposed amendment, there will still be a recapture of past relief, but the paper-for-paper rules will be able to eliminate any other capital gains tax charge.

For EIS companies and VCT schemes, there will be a change to the time limit for investment of the funds raised by subscriptions under the schemes. In future, the requirement will be that all monies made must be wholly employed within two years or, if later, two years of the commencement of the qualifying activity. In

addition, money raised by an issue of non-EIS shares on the same day as an EIS subscription will no longer be required to be invested within the EIS time limits.

Real Estate Investment Trusts

Real estate investment trusts (REITs) were introduced with effect from 1 January 2007, broadly as a means of facilitating collective investment schemes in property assets, thus avoiding the implicit double charge for tax on capital gains with ordinary property companies – once in the company itself and secondly on the shares. The REIT industry has, however, been lobbying for some amendments to the detailed tax provisions, especially in relation to the requirement that the trust must distribute at least 90 percent of the profits of its rental business each year. Whilst the representations on that point do not appear to have been accepted, there are to be other detailed amendments to the rules:

- A REIT will be able to raise funds by issuing convertible preference shares;
- There will be an amendment to the test that requires a REIT to have 75 percent of its assets in property rentals; and
- There will be other minor changes to the legislation.

The use of REITs for what are perceived to be unacceptable purposes will also be eliminated. For example, property rental groups could elect to join the REIT regime while restructuring so that properties are let from one group member to another. To prevent this, legislation will be introduced to permit regulations that prevent the use of artificial structures making improper use of the REIT legislation. This includes ensuring that owner-occupied properties cannot represent tax exempt business within the REIT.

Pension Tax Relief

Major changes are announced. There is a permanent change to take effect from 6 April 2011 and a set of anti-forestalling measures that comes into effect immediately to discourage any planning in advance of 2011. The latter measures could result in an immediate reduction in tax relief for the current year for individuals who make nonregular pension contributions in excess of £20,000 annually. Single contributions already made between 6 April 2009 and 22 April 2009 are not themselves caught, but will count towards the

£20,000 "special annual allowance" (see next page). Extensive guidance, running to 98 pages, is provided by HMRC and additional worked examples are available on the HMRC website.

From 6 April 2011 tax relief will be restricted for pension contributions for people with income of £150,000 or more, either in the year in question or in either of the two previous years. The restriction will be applied so that higher rate relief on pension contributions is tapered away within a band of annual income from £150,000 to £180,000. At £180,000 relief will be worth 20 percent, the same as for a basic rate taxpayer. Since the clawback of tax relief can obviously be calculated only after the end of the year, when the annual income is known, those affected will have to calculate and account for the additional tax charge through their annual self-assessment return. For those who may be interested where to look on the tax return, it will doubtless be described as the "special annual allowance tax charge due in respect of nonprotected pension input amounts".

Since the rules are intended only to remove the advantage to individuals of increasing their pension contributions in excess of an existing normal pattern, some rather complex disregards have been inserted in order not to penalise those with existing pension commitments.

The restriction will not apply to regular contribution arrangements that are already in place on Budget day. Individuals who merely carry on as normal with an existing regular commitment (at whatever level) will not be affected, even if their annual income exceeds £150,000. Existing commitments are classed as "protected pension inputs" (PPI). Recognising that regular and continuing commitments come in many forms, HMRC give examples of situations where pension contributions will qualify as a PPI including:

- Where contributions into a money purchase scheme in respect of an employment are made by reference to an agreed percentage of annual salary, the provisions will not bite on those contributions made after April 2011, provided that there has not been an increase in the agreed rate contributed at any time after 22 April 2009. An increase in pension contributions purely as a result of normal salary increases is similarly protected. If however the contribution rate itself is increased, the excess is a "nonprotected pension input" (NPPI). Where the individual moves to a new employer (or the existing employer changes pension provider), contributions at the same level or (in the case of a new employment, contributions at the same level available to others in the scheme) are protected.
- Where an employer funded final salary scheme is in existence at 22 April 2009, the regular accrual rate of pension benefits is protected, regardless of future increases in salary. If, however, the rate of

accrual increases, e.g., from 1/60th of salary per year of service to, say, 1/40th, the additional capital value generated must be converted to an annual value and that figure treated as an NPPI. Individuals joining a new employer's final salary scheme after 22 April 2009 will enjoy protection for benefits accruing on the same basis as others in the scheme.

- Where contributions are paid into an individual's personal pension scheme, the level of regular contributions established as at 22 April 2009 is protected going forward. This includes the situation where regular contributions are index-linked. Additional single premiums paid into regular contribution policies, together with all premiums paid into policies into which contributions have been paid annually or irregularly in the past, will not be protected and will be treated as an NPPI.

Where, after April 2011, an NPPI arises, and the £150,000 taxable income limit is exceeded, a clawback of tax relief will be made. The only exception is where the aggregate of PPI and NPPI (in other words, the total gross pension contributions) for that year is less than £20,000.

The £150,000 taxable income threshold is calculated as the gross taxable income of the year from all sources, before deduction of personal allowances and other reliefs and deductions, but after deducting relief on trading losses, gift aid donations and up to £20,000 of pension contributions. In order to eliminate manipulation of earnings to circumvent the measures, any employment income foregone by salary sacrifice entered into on or after 22 April 2009 in return for enhanced pension contributions is to be added back in the calculation.

The £150,000 taxable income threshold is calculated as the gross taxable income of the year from all sources, before deduction of personal allowances and other reliefs and deductions, but after deducting relief on trading losses, gift aid donations and up to £20,000 of pension contributions. In order to eliminate manipulation of earnings to circumvent the measures, any employment income foregone by salary sacrifice entered into on or after 22 April 2009 in return for enhanced pension contributions is to be added back in the calculation.

The **anti-forestalling measure,** announced with immediate effect, operates in much the same way as above, targeting changes in the level of pension contributions made after 22 April 2009. It has effect for 2009/10 onwards, becoming part of the permanent scheme for 2011/12 onwards. It operates through a "special annual allowance" mechanism, introduced to run alongside the existing annual pension allowance (currently set at £245,000 and rising to £255,000 in 2010/11). The special allowance operates as an additional lower threshold against which NPPI is measured and taxed. For 2009/10, where no regular

contribution plan was in operation at 22 April 2009 (or if one is in operation, and there occurs an unprotected increase in contributions to that plan), the value of any irregular pension contributions made after 22 April 2009, and/or the unprotected excess regular contributions, is tested against the £20,000 limit. Where both protected (PPI) and unprotected (NPPI) contributions are made in the year, the protected contributions are set first against the £20,000 special allowance and only the remainder (if any) of the special allowance is then available to cover the unprotected contributions. Where the special allowance is exceeded and the individual's income exceeds the £150,000 threshold, (bearing in mind that the test applies to any of the three years ending with the year in question), higher rate tax relief will be restricted and additional tax collected through the "special annual allowance charge". This applies with immediate effect for 2009/10 and 2010/11.

Transitional relieving provisions apply where an application to set up a regular contribution plan was in the pipeline, but not yet established on 22 April 2009.

High-income individuals affected by these provisions will have the option to request a refund of part or all of pension contributions paid that are found subsequently to have exceeded the special allowance. Where contributions are repaid, the tax relief on that contribution will be cancelled.

Inheritance Tax: Agricultural Property and Woodlands Relief

HMRC has responded positively to a recent request by the European Commission that the inheritance reliefs for agricultural property and woodlands should be extended to all such property in the European Economic Area. It has long been thought that the restriction of these reliefs to land and woodlands in the United Kingdom does not comply with European law, but this view was not readily accepted by the government. However, it is pleasing that this request has produced a positive result, rather than a restriction of the UK relief as some had feared.

It gets better. The extended relief has effect from 22 April 2009, but there is also backdated relief for inheritance tax due or paid on or after 23 April 2003 in relation to property that would now be covered by the extended reliefs. There will also be an extension to the normal time limits for claims and for deaths before 22 April 2009. The earliest deadline for claiming overpayments will be 21 April 2010.

Business asset holdover relief for capital gains tax purposes also extends to all property that qualifies for inheritance tax agricultural property relief, whether at the 100-percent rate or 50-percent rate. This holdover relief is now to be extended to agricultural property throughout the European Economic Area. The time limit for claiming holdover is five years from 31 January following the tax year to which the claim relates and, therefore, claims for relief can now be made in respect of the tax year 2003/04 onwards.

It was, perhaps, too much to hope that the inheritance tax relief for gifts to charities would be extended at the same time. At present, the relief is confined to UK charities, but a decision of the European Court of Justice on 22 January 2009 made it clear that a restriction on the relief based solely on the fact that a charity is located elsewhere within the European Union is contrary to EU law. We have yet to see any response from HMRC on this matter, and it is to be hoped that it will not take another appeal to the European Court before the law is changed.

Avoidance Schemes

HMRC are proposing to publish a “Spotlight” on tax avoidance with details of a number of avoidance schemes that are thought to be ineffective, the idea being to discourage potential users. That is fair enough, but let us hope that when, sometimes, their arguments are shown by the courts to be mistaken, they have the grace to acknowledge the position and not to assert that the courts were obviously wrong.

Offshore Disclosure

Further reference is made to the offshore account disclosure rules sometimes referred to as the amnesty. HMRC prefer to call it an offshore disclosure facility. A new disclosure opportunity will be made available to holders of offshore accounts that will run until March 2010. This will enable defaulters to disclose any unreported income and suffer a mitigated penalty. It is extraordinary that, having threatened those who failed to disclose under the original amnesty that they would be subject to investigations that would be intrusive and thorough, HMRC are now undermining that stance by providing another opportunity to come clean. The Red Book says “HMRC will pursue those who do not disclose”. This must surely be counterproductive – but you never know, there may be an imaginative solution when the full details are published.

HMRC Penalties

A new penalty regime is being introduced this year to replace the current variety of penalties that presently exist.

The £100 late return penalty will be payable whether the tax has been paid or not, with daily penalties for tax returns that are more than three months late and a further penalty of 5 percent of the tax due for returns that are more than six months and 12 months late.

Employers will be subject to a cascade of penalties for failure to pay over tax and National Insurance Contributions (NIC) under Pay As You Earn (PAYE).

HMRC will require those who have incurred a penalty for deliberate understatement of over £5,000 of tax to provide more information about their tax affairs for up to five years to ensure they have proper systems to be able to make correct tax returns. This is no doubt to supplement their normal powers, which may have run out of time during the course of the investigation in respect of earlier years.

Interest on Tax

A harmonised interest regime is proposed for all taxes and duties administered by HMRC except corporation tax and will come into effect shortly after Royal Assent.

Whilst this sounds as if the rate of interest on overdue tax and on overpaid tax will be the same, it will probably not will be the case. At least it will be simpler.

Publication of Tax Defaulters

HMRC are proposing to publish the names of the people who are subject to a civil penalty for deliberate tax defaults where the tax involved is more than £25,000. No indication is given about when this provision will be introduced.

Only those who are penalised for deliberate defaults or concealment will have their names published – not those who are penalised for failing to take reasonable care. Those who make an unprompted disclosure or a

full prompted disclosure within the required time limit will not be affected. There will be a right of appeal (hopefully prior to publication) to an independent tribunal.

Details will be published quarterly and will be on the HMRC website for one year.

HMRC Charter

It has been announced that the new HMRC charter must be in place by 31 December 2009, and it is intended for it to be launched by autumn 2009. The published information is scant and represents little more than bullet points. Further details on the proposals were set out in our *Tax Bulletin* for February 2009, and further details will be published by HMRC when the consultation presently in force closes on 12 May.

Stamp Duty Land Tax

Temporary Increase in Threshold

The starting threshold for Stamp Duty Land Tax on residential property was raised from £125,000 to £175,000 on 3 September 2008 and this increased threshold will continue until 31 December 2009. After that date, it will revert to the previous figure of £125,000. For Stamp Duty Land Tax, the effective date is normally the date of completion, not the date of exchange of contract. However, the effective date may be earlier if the contract is substantially performed before completion, for example where the purchaser takes possession or pays the purchase price in advance.

Affordable Housing and Shared Ownership

There are to be some changes to the detailed provisions giving relief from Stamp Duty Land Tax for those who have assistance from housing associations and other government schemes towards getting on the housing ladder. These commonly operate as a shared ownership arrangement so that the occupier is part tenant and part owner.

Leasehold Enfranchisement

With effect from 22 April 2009, all cases of leasehold enfranchisement, by which the leaseholders of a block of flats collectively purchase the freehold, will be eligible for relief from Stamp Duty Land Tax. It had previously been proposed that there would be relief only where the freehold was purchased by a specially formed company. With effect from Budget Day, the relief will be available whether purchase is by any nominee or appointee.

Value Added Tax

The standard rate of VAT will revert to 17.5 percent from 1 January 2010. There will be anti-forestalling legislation applicable to supplies to businesses that are partly exempt. Normally, the issue of a tax invoice or the making of a payment in respect of future supplies fixes the date of the supply for VAT purposes and the rate applicable is therefore that effective on that date. To prevent partly exempt businesses from adopting this procedure in order to gain the benefit of the 15-percent rate in respect of future supply, there will be a supplementary charge to VAT of 2.5 percent in certain circumstances. This will apply to forestalling operations where the supplier and the customer are connected parties, or where the supplier funds the purchase of the goods or services, or where the VAT invoice is issued with delayed payment for at least six months.

The supplementary charge will also apply where a prepayment is made of an amount in excess of £100,000 before the rate rise in respect of a supply to be made after 1 January 2010. There will, however, be exceptions to this where the prepayment is in accordance with normal commercial practice.

Cross-Border Suppliers of Services

For cross-border supplies within the EU, the basic rule is that VAT is due where the supplier is located. This applies to supplies to both business and nonbusiness customers. The rule is to be substantially reformed throughout the EU with effect from 1 January 2010. The basic place of supply rule for business-to-business supplies will be that VAT is due under the reverse charge procedure, payable by the customer. There will, however, be no change to the rule relating to supplies to nonbusiness customers, so that in these cases VAT will be payable by the supplier in the normal way. There will be a number of exceptions; in particular, services related to land will continue to have a place of supply where the land is situated.

Also, from 1 January 2010 the time of supply rules relating to cross-border supplies to businesses will be altered so that liability will be governed primarily by the time at which a service is performed.

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