UK BUDGET 2018

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In what was in many respects a give-away UK Budget, the Chancellor of the Exchequer, now universally known to all as "Fiscal Phil" Hammond yesterday announced; two important measures aggressively targeting large cross-border businesses:

- a UK digital services tax from April 2020 charged at 2% of revenues derived from advertising directed at UK users by social media platforms and search engines, and commissions earned by online marketplaces facilitating transactions between UK users; and
- a new extra-territorial UK income tax charge at 20% on gross IP revenues received by no or low taxed entities from 6 April 2019 that are directly or indirectly referable to sales of goods or services in the UK by related or unrelated parties, representing a significant extension of the UK Government's original withholding tax proposals announced by the Government in Autumn 2017.

Other significant large business tax measures included:

- the introduction of a new corporation tax relief for the cost of goodwill on the acquisition of certain IP rich businesses;
- changes to the UK's de-grouping charge rules to exempt gains in respect of intangible fixed assets on the sale of trading companies to third parties from 6 November 2018;
- a new structures and buildings allowance for commercial property providing a 2% capital allowance for new projects where all construction works contracts are entered into on or after 29 October 2018;
- new restrictions on the use of brought-forward capital losses, limiting the use of such losses to 50% of annual capital gains above £5m from 1 April 2020;
- anti-fragmentation rules expanding the scope of the UK permanent establishment definition, aligning UK domestic law with the OECD's BEPS Action 7 recommendations and the UK's MLI position; and
- VAT measures targeting the financial services sector, including tightening VAT grouping rules and so-called "VAT looping"; and
- important reforms to the UK diverted profits tax ("DPT") rules introduced in 2015 to make it clear that diverted profits may only be taxed once, either to corporation tax or DPT but not both, and allowing further time for taxpayers to amend their corporation tax returns to pay additional corporation tax to reduce a DPT charge during the first 12 months of the DPT review period, and extending the DPT review period overall to 15 months in total, with effect from 20 October 2018.

If you would like to discuss any of these developments, please don't hesitate to get in touch with your usual contacts at Baker McKenzie.

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DIGITAL ECONOMY

The UK will introduce a new digital services tax ("DST") with effect from April 2020. The Government considers that the measure is necessary to ensure that the UK tax paid by digital businesses reflects the value they derive from UK users. The rate of the new tax will be 2%, which is lower than the 3% in the European Commission's DST proposal. The new tax will apply to in-scope revenues above an annual threshold of £25 million. In-scope revenues will consist of revenues derived from advertising directed at UK users by social media and search engines, and revenues earned by online marketplaces facilitating transactions between UK users. The definition of in-scope revenues is significantly narrower than the European Commission's DST proposals, which are broadly drafted to include revenues generated from placing an advertisement on a digital interface, revenues from the provision of multi-sided digital interfaces and from selling user's online data. The measure is expected to yield approximately £1.5bn over 5 years.

The new tax will only be levied on businesses that generate at least £500 million in global revenues from in-scope activities. The measure will also include safe harbour provisions so that it does not apply to loss-making companies and so that the effective tax rate on businesses with low profit margins is reduced. No such safe harbours currently feature in the European Commission's proposals.

The provision of online content, sales of software and hardware and TV broadcasting will not be within scope of the DST. Financial and payment services will also be carved out.

The Government considers that the DST will not be within the scope of the UK's double tax treaties. The new tax will not be creditable against UK corporation tax, but it will be deductible as a business expense. The government will further consult on the specific details of the new tax, so its precise scope remains to be determined. Despite its announcement today, the Government remains committed to G20 and OECD discussions on reforms to the international corporate tax framework. As such, the government will only apply the new tax as an interim measure until those reforms are achieved, with provisions requiring a formal review in 2025 to ensure the tax is still required.

Today's announcement is the latest in a series of statements that began with the government's publication of a position paper last November. In that paper, the government described the need for changes to the international tax framework so as to recognise the value that digital businesses generate from user participation. In light of the difficulty of achieving the necessary international cooperation, the government also expressed support for the introduction of an interim revenue-based tax. In March this year, after a public consultation process, the Government published an update to its paper. That update provided more detail as to how long-term reform might be achieved and what the options might be for an interim measure. The Government has now given a specific date for the implementation of that interim measure, and has given details around the companies that will be affected by it.

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OFFSHORE IP INCOME

New legislation will be introduced in the Finance Bill 2019 to impose a new extra-territorial UK income tax charge at the rate of 20% on IP income received by non-treaty protected entities from 6 April 2019 that is referable to sales of goods or services in the UK by related or unrelated parties. The measure is expected to raise £475m in its first year, and more than £1bn over its first four years of operation. The stated policy objective of the measure is to "reduce the opportunities for large multinationals to gain an unfair competitive advantage by holding their IP in low tax offshore jurisdictions, levelling the playing field for businesses operating in the UK markets".

The new tax will be chargeable on entities resident in no or low tax jurisdictions, being those territories with whom the UK has not concluded a comprehensive double tax treaty containing a non-discrimination provision. The charge will be on the "gross income that is referable to the sale of goods or services in the UK" and realised from ownership or rights over "relevant IP". Relevant IP for these purposes will be broadly drafted to apply to all types of income, whether or not described as royalties, referable to IP, which will include goodwill. Significantly, HMT has stated that the measure will target "embedded royalties", but has not yet provided further detail on this. The proportion of income that will be subject to UK tax will be determined by apportionment by reference to the ratio of UK sales to total sales, unless another approach would be more just and reasonable in the circumstances.

The measure will apply irrespective of whether related or unrelated entities in the supply chain have a UK presence or not. HTM has expanded the measure to include sales by unrelated entities into the UK market to ensure that groups are not able to side-step the measure by selling into the UK market through external distributors, and recognises that groups can generate substantial IP income through the UK market without needing to make sales to UK persons directly.

A £10m de minimis threshold for UK sales will be introduced and a full exemption will apply to income arising to entities in low tax jurisdictions which did not acquire their IP from affiliates and where all, or substantially all, of the trading activities have been undertaken in the jurisdiction in question. A further exemption will be introduced where the tax paid in respect of the income is at least 50% of the UK income tax that would otherwise have arisen under the measure – effectively a 10% minimum tax on gross revenue.

A targeted anti-abuse rule will be introduced, effective as of 29 October 2018, which will apply where one of the main purposes of an arrangement entered into on or after that date is to avoid a charge under the new rules, specifically including arrangements which involve transferring the ownership of intangible property to treaty protected affiliate where the availability of treaty benefits would be contrary to the purpose of the treaty. Affiliated entities will be jointly and severally liable for the tax charge in the event of non-payment.

HMT notes that the legislation "could be seen to be drawn widely", and that this "reflects the diverse and complex nature of the different arrangements this measure could apply to, and the importance of ensuring that the legislation is robust against tax-motivated changes to groups' behaviour. Draft guidance will be published by HMRC by April 2019.

The announcement follows the consultation by HMT on the Chancellor's proposals for a new exterritorial withholding tax in his 2017 Budget Speech, which ran from 1 December 2017 to 23 February 2018. HMT's original proposals targeted royalties paid by related parties, excluding unrelated party transactions. Those proposals also targeted payments for the use or exploitation of IP, specifically including the right to distribute specified goods or services in the UK. Income in respect of services was to be outside of the scope of the proposed measure.

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Intangibles

The Chancellor announced in his Budget speech that the Government will introduce a targeted relief for the cost of acquiring IP-rich businesses. HMT later confirmed that tax relief will be available for the cost of goodwill in the acquisition of businesses with "eligible IP" from April 2019 and it will publish detailed proposals on how it intends to reinstate the relief on 7 November, which will be subject to a short consultation. The Government will also reform the de-grouping charge rules in the intangible fixed asset rules with effect from 7 November 2018 to bring them into line with the capital gains treatment of goodwill and IP created before 1 April 2002, so that no charge will apply where the substantial shareholding exemption applies. Both measures will appear in the Finance Bill 2019.

These two changes follow the launch of a consultation by HMT in February 2018 which formed part of a comprehensive review to identify targeted reforms to support the international competitiveness of the UK. While few details are currently available, it seems that the HMT was not convinced of the economic case for a broader and more far-reaching reform of the rules, and adopted a very narrow and disappointing set of proposals.

CFC rules

As previously announced, Finance Bill 2018-2019 will make changes to the controlled foreign company (CFC) rules to ensure that they comply with the EU Anti-Tax Avoidance Directive (ATAD). The ATAD, which was adopted in 2016 and 2017, introduces minimum standards for rules on CFCs.

There are two changes required to the UK CFC rules. The first relates to the definition of control, which is being broadened so that any interests held by non-resident associated enterprises are also taken into account when assessing the control of a company. The second relates to the treatment of "non-trade finance profits" which have been generated by UK significant people functions and restricts the CFC exemptions that are available for such profits. These changes will take effect from 1 January 2019.

Capital losses

The Government announced a consultation into the ability of companies to use brought forward capital losses against capital gains. Under current law, brought forward capital losses can be used to entirely offset, and thus eliminate, capital gains arising to a company in an accounting period. The consultation has been undertaken with a view to bringing the capital loss utilisation rules into line with the rules for income losses, such that a company will only be able to use brought forward capital losses to offset up to 50% of capital gains arising in an accounting period.

The intended effective date of this change is 1 April 2020. The consultation document states that the £5 million allowance which is available to companies before the corporate income loss restriction applies will be extended to capital losses, and further notes that this means the proposed change of law will not affect over 99% of companies (i.e. only larger companies generating significant capital gains are likely to be impacted by the measure).

The consultation document details anti-avoidance, anti-forestalling and transitional measures, as well as some specific considerations relevant to certain insurance companies and companies operating in the oil and gas sector. The consultation period runs until 25 January 2019, and the Government envisages that draft legislation will be introduced in the summer of 2019 along with its response to the consultation.

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Permanent establishment: anti-fragmentation

The UK will introduce legislation to amend the domestic law definition of a permanent establishment to prevent non-residents from relying on the preparatory or auxiliary exemption in certain circumstances. The rule applies where a non-UK resident with a fixed place of business in the UK , or a related enterprise, carries on business activities at the same place or at another place in the UK and the overall activity resulting from the combination of the activities of the enterprises is not of a preparatory or auxiliary character. The forthcoming amendments should align UK domestic law with the provisions of the UK's double tax treaties when the changes made by the MLI take effect.

Disregarded permanent establishments

The Government will extend the UK anti-hybrid rules designed to counteract deduction / non-inclusion mismatch outcomes involving multinational companies to also cover situations where the UK is the headquarter territory and the UK company has a disregarded overseas permanent establishment in respect of which it is exempt from UK tax by virtue of the UK's foreign branch profits exemption. This change requires the UK company to override any foreign branch exemption election and bring any receipts in the disregarded non-UK permanent establishment into charge.

The provisions as drafted in July suggest that gross income would be brought into account, ignoring any expenditure incurred by the non-UK PE that would have been deductible in the UK if a branch exemption election had not been made by the UK company. We await the publication of the Finance Bill on 7 November 2018 to determine if the legislation has been updated in this respect.

The changes relating to disregarded permanent establishments will have effect from 1 January 2020.

Corporate interest restriction rule changes

Draft legislation making certain amendments to the corporate interest restriction rules was published for consultation in the Draft Finance Bill in July 2018. These changes include an extension to the notification deadline for appointing a reporting company to twelve months after the end of the relevant period of account (as compared to six months). Other changes relate to the clarification of the rules in certain areas including Real Estate Investment Trusts, public infrastructure companies and amendments intended to align amounts taken from the group accounts with amounts taken from the tax computations, either on a mandatory or elective basis. The Government has stated that following consultation the draft legislation has been updated.

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ANTI-AVOIDANCE

Anti-fragmentation of business profits

Following announcement at Autumn Budget 2017 and a period of consultation in mid-2018, the Government has now confirmed that it will introduce new legislation to target tax avoidance arrangements which involve "fragmentation of business profits". The primary focus of the legislation is the alleged avoidance of UK tax on business-related profits generated by a UK tax resident individual traders or professionals (such as asset managers, entertainers or consultants), which are diverted to low-tax structures that typically involve offshore trusts and companies. The effect of the arrangement must be that a significantly lower tax is paid on the profits in the UK than would otherwise be the case if there was no such arrangement.

The current draft legislation is broadly drafted and can apply to offshore transferees that may not be connected to the UK individual (for example, an offshore trust where the UK individual is neither a beneficiary nor a settlor can be caught). Further, as in the case with the transfer of assets abroad legislation, the new measure provides that the UK individual must be able to enjoy the profits that have been diverted and must have arranged for the profits to be diverted to the offshore structure (which could be a diversion of income to the offshore structure, or payment of expenses to the offshore structure, subject to a few narrow exemptions for payments to charities and contributions to pension schemes). The value transferred must also be greater than the value which the offshore party would receive had there been no such arrangements.

The rules provide that the taxpayer will have to disclose any arrangements that may fall within the scope in their tax returns

Further, in the spirit of the UK diverted profits legislation, the government is also considering whether to grant HMRC powers to issue preliminary notices requiring payment of advance tax to remove the alleged cash-flow advantage that would otherwise arise from the above arrangements. This requirement, however, has not been introduced in the draft legislation yet. It is anticipated that the new measure will come into effect from April 2019 and apply to all profits diverted on or after that date.

DAC6

The European Union has introduced new rules (commonly referred to as "DAC6") requiring EU Member States to enact domestic legislation which will require intermediaries (such as tax advisers, accountants and lawyers) to report information (broadly, within 30 days) to national tax authorities on certain cross-border tax arrangements. The UK has indicated that it will introduce these rules irrespective of the arrangements for Brexit. In the Budget 2018, the Government has confirmed that it is giving HMT power to implement such rules.

Under DAC6 a "reportable cross-border arrangement" refers to any cross-border tax planning arrangement that bears one or more of the hallmarks listed in the rules and concerns at least one EU Member State. The hallmarks are broadly scoped and represent certain typical features of tax planning arrangements which, according to the rules, potentially indicate tax avoidance or abuse of direct taxes (e.g., income taxes). Certain arrangements (e.g., those that fall within the specific transfer pricing hallmark) will need to be reported even if they do not satisfy the "main benefit" (of obtaining a tax advantage) test. The tax authorities of EU Member States will have to exchange reports received with each other.

Although the new rules will not come into effect until 1 July 2020, they have retrospective effect in that they potentially apply to transactions entered into on or after 25 June 2018.

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VAT/INDIRECT

Implementing EU VAT law on vouchers

It has been confirmed that the EU "Vouchers Directive" will be implemented in the UK with effect from 1 January 2019. The Vouchers Directive is an effort to harmonise the rules for the VAT treatment of the issue, sale and redemption of vouchers across the EU. The key features of this measure is the upfront taxation of "single purpose" vouchers, whereas "multi purpose" vouchers will be taxed at redemption. This not expected to be major overhaul of the treatment that currently applies in the UK, although the Vouchers Directive will have a more significant impact in a number of EU countries.

VAT grouping

There will be new guidance on the operation of the UK VAT grouping rules, which appears to be a measure targeted mainly at the financial services industry. The guidance, to come into effect from 1 April 2019, may further reduce the ability of partly-exempt VAT groups to purchase services VAT free by using an overseas establishment. There are no further details on the content of the changes at this stage, other than there will be an amended definition of "bought-in services" and further guidance on when HMRC will use their "protection of the revenue" powers.

Separately, UK VAT law will be amended to allow certain non-corporate bodies to be eligible to join a UK VAT group.

Split payments

Following consultation on the radical proposal for a "split payments" collection system of VAT, it has been announced that the response to the consultation will be published and a new industry working group established to work through the key challenges identified by the consultation. The split payments systems seeks to impose the obligation to remit VAT for online sales on payment providers, marketplaces or other intermediaries, away from the suppliers themselves.

Offshore insurance structures

UK insurance intermediaries which supply their services to non-EU insurers will, from 1 March 2019, no longer be entitled to VAT recovery where the insurance policy is concluded with a UK consumer. This is a targeted anti-avoidance measure which was first proposed in July this year to cover most financial intermediaries but which has now been restricted to the insurance sector.

Prepayments and price adjustments

Where a business receives a prepayment for a supply of goods and services which a customer does not collect or receive, and for which no refund is given, from 1 March 2019 businesses will not be entitled to a refund of the VAT paid. This will affect "no-show" fees, amongst other items.

The ability to claim a VAT reduction in the event of a negative price adjustment will be conditional on the formal requirement to issue a VAT credit note.

Other VAT matters:

Despite rumours to the contrary, the UK VAT registration threshold remains unchanged for two years until April 2022 at £85,000.

There will be additional anti-fraud measures to deal with missing trader fraud in relation to supplies to non-VAT registered recipients

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BUSINESS INVESTMENT

Structures and buildings allowance

The Government will introduce a new Structures and Buildings Allowance, which will provide relief for qualifying capital expenditure on new non-residential structures and buildings. This measure is designed to address a perceived gap in the capital allowances system by relieving the costs of physically constructing new structures and buildings. Businesses that incur qualifying capital expenditure on structures or buildings used for qualifying activities will be able to claim a flat 2% writing down allowance over a 50 year period, although relief will not be available for the costs of land or dwellings.

Special writing down allowance rate reduction (from 8% to 6%)

The writing down allowance on the special rate pool of plant and machinery is to be reduced from 8% to 6%. The new rate will be effective from: (i) 1 April 2019, for businesses within the charge to corporation tax; and (ii) 6 April 2019, for businesses within the charge to income tax. For businesses whose chargeable period spans the above dates, a hybrid rate will have effect (based on the proportion of the period falling before and after the change). This measure does not change the writing down allowance on the main pool (18%) nor the special rate pool for ring fence trades (10%).

Annual investment allowance temporary increase

Following changes at Budget 2014 and Summer Budget 2015, the amount of the AIA is to be increased (temporarily) to GBP 1,000,000 from January 2019. This measure will have effect in relation to qualifying expenditure incurred from 1 January 2019. The increase will be effective for a period of two years (i.e. until 1 January 2021). Where a business has a chargeable period that spans either the date of the increase to GBP 1,000,000 (1 January 2019) or the reversion to GBP 200,000 (1 January 2021), apportionment provisions will apply.

Environmental enhanced capital allowances

The measure will update the lists of energy efficient and environmentally beneficial technologies and products which are eligible for first-year allowances (known as Enhanced Capital Allowances). The updates to the Energy Technology List (ETL) and Water Technology List (WTL) will come into effect on the date set by the statutory instrument.

The measure will also end the first year allowance for products on the ETL and the WTL, and the associated first year tax credit. Both schemes will end with effect from 1 April 2020 for companies and 6 April 2020 for unincorporated businesses.

Leasing

As previously announced, Finance Bill 2018-19 will contain provisions intended to ensure that tax legislation relevant to leases of plant and machinery will continue to operate as intended after the introduction of IFRS 16, the new accounting standard for leases. The government has made minor technical amendments to the draft legislation released in July 2018.

After a consultation on the general policy approach in 2016, the government decided that the tax rules for plant and machinery leasing transactions should continue to work as originally intended despite the introduction of IFRS 2016, which is mandatory for periods beginning on or after 1 January 2019. A further consultation was launched in December 2017 on the specific legislative changes required to achieve this and draft legislation was then published in July 2018.

The technical amendments to the legislation relate to: the Long Funding Lease rules, the Corporate Interest Restriction (CIR) rules and other rules which make reference to finance leases (including tax rules for hire purchase contracts, oil activities, Real Estate Investment Trusts (REITs), and the sale of lessors rules). A change has also been made to the computational rules for the spreading of the transitional adjustment upon adoption of IFRS 16.

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FINANCIAL SERVICES

Regulatory capital

The Government's proposals replace the existing broad exclusion for regulatory capital with a power which will enable a new definition of exempt regulatory capital to be provided by Treasury in new regulations. The ATAD significantly restricts the ability to provide this exclusion as it provides for no exemption for insurer's regulatory capital and only allows an exemption for banks' regulatory capital until 31 December 2022. The content of any new regulations has yet to be confirmed but the regulatory power in relation to the treatment of regulatory capital will have effect from 1 January 2019, which is a change from the date of 1 January 2020 announced in July.

Hybrid Capital Instruments

The stated purpose of the Hybrid Capital Instrument rules is to update the treatment of regulatory capital securities (currently governed by regulations applicable to banks and insurance companies) to align it with new Bank of England requirements. However, at the same time the new rules will be broadened to apply to all corporate debt issuers and not just banks and insurance companies. We expect that this step probably reflects a concern that the existing rules could be vulnerable to a challenge on State Aid grounds. Benefits of the existing regulatory capital securities rules have included clarification that interest payments will be deductible even when they can be waived at the discretion of the borrower. It remains to be seen whether the new regime will be of any practical benefit to issuers of debt who are not subject to prudential regulation.

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REAL ESTATE

Taxing non-resident gains

Following a period of consultation, the Government has confirmed measures originally announced in the Autumn Budget 2017 that bring non-residents within the charge to UK tax on disposals of both direct and indirect interests of all forms of UK real estate. These rules will apply from 6 April 2019.

The rules are however, reasonably narrow in application, being targeted at passive investment activities. Trading activities should generally not be caught by the rules, with the rules containing a new trading exemption, in addition to the existing substantial shareholding exemption ("SSE"), to exempt gains otherwise arising. Investors should therefore be considering now whether any of these exemptions are available prior to any disposal of a real estate holding entity.

The rules are not intended to apply retrospectively, and thus the tax basis for real estate assets will be re-set at market value as at 6 April 2019 unless an election is made otherwise. Therefore any unrealised gain or loss existing at that date will not be brought within the scope of the new rules. In an acknowledgement that the application of the new rules to fiscally transparent entities is somewhat unclear, the Government has indicated that it intends to explore an elective system for transparent offshore funds to be treated as transparent or opaque entities from the perspective of the non-UK resident investor.

UK Property income of non-resident companies

First announced as long ago as the Autumn Statement 2016, the Government has confirmed that from 6 April 2020, non-UK resident companies that carry on a UK property business or have other UK property income will be subject to UK corporation tax, rather than income tax, as is the case under the current rules.

This is a significant change and means that non-resident companies will potentially be subject to corporation tax rules such as restrictions on carried forward losses, and the corporate interest limitation. Income tax losses that are unused at 5 April 2020 will however be able to be carried forward, without being subject to the 50% limit on carried forward losses above £5 million that applies generally for corporation tax purposes.

The Government estimates that this will affect approximately 22,000 non-resident owners of UK real estate, who will need to register with HMRC for corporation tax purposes and submit a corporation tax self-assessment return.

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OIL & GAS

There will be no change to headline tax rates in the oil and gas fiscal regime, which will be welcomed by the industry as it continues its recovery from the 2014 oil price crash. Creating an environment of fiscal stability was a key principle in the government's 2014 oil and gas tax strategy "Driving Investment" and ministers have recently restated the aim for the UK tax system to be "globally competitive, stable and predictable".

Finance Bill 2019 will include the "transferable tax history" mechanism, which was announced in the 2017 Budget and has been subject to detailed consultation during 2018. The mechanism, which is expected to apply for deals completing on or after 1 November 2018, will allow companies selling oil fields on the UK Continental Shelf to transfer tax payment history to the buyer, enabling the buyer to set the costs of decommissioning the fields against that tax history and thereby lower the buyer's cost of decommissioning. The Finance Bill will also contain legislation to amend Petroleum Revenue Tax rules on retained decommissioning costs. Both measures are intended to encourage new entrants and fresh investment in the UK's mature basin.

Recognising the opportunity for UK businesses to take a lead in the market for oil and gas decommissioning services, the Chancellor announced in his speech that the government will launch a call for evidence on how it can support the development of the UK as a global hub for decommissioning.

EMPLOYEE BENEFITS

As anticipated, the Government has cracked down on the use of personal services companies ('PSCs') for individuals providing services to large and medium-sized businesses. From April 2020, responsibility for operating the existing off-payroll working rules, and deducting any tax and NICs due, will move from individuals to the organisation, agency or other third party paying an individual's PSC. It will mean that large and medium-sized companies need to identify and deal with contracts caught by the amended rules.

The Chancellor has postponed the introduction of the new rules to April 2020, but companies should not be complacent in the meantime as HMRC already has an audit focus on this area. Further, companies should not under estimate the scale of the task necessary to identify and modify existing arrangements.

ENTREPRENEURS' RELIEF

There were some minor changes announced to Entrepreneurs' Relief in a bid to ensure it remains available only to those individuals who own and work in a qualifying personal company. As well as the existing tests that must be met for a company to qualify as a 'personal company' the claimant will also need to have at least a 5% interest in both the distributable profits and the net assets of the company. These new tests will take effect for disposals on or after 29 October 2018.

Additionally, the minimum qualifying period throughout which certain conditions must be met to qualify for Entrepreneurs’ Relief will be extended from one to two years. This change will be effective for disposals on or after 6 April 2019.

As announced within the Autumn Budget 2017, individuals whose shareholding is ‘diluted’ below the 5% qualifying threshold for Entrepreneurs’ Relief as a result of a new share issue will be entitled to claim relief for gains up to that time. The draft legislation for this has been changed to clarify and improve the computation and this measure will have effect for shares held at the time of fundraising events which take place on or after 6 April 2019.

The above further shows the intricacy of the conditions that must be met in order to claim entrepreneurs' relief and therefore it is vital to take advice prior to disposing a personal company. There are clear circumstances where a sale of a personal company may need to be completed prior to 5 April 2019 in order to ensure Entrepreneurs' Relief is available, and therefore please contact us if you require advice in this area.

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STAMP DUTY

Swamping

The Government has announced new deemed market value anti-avoidance rules in relation to stamp duty and stamp duty reserve tax (SDRT), effective from 29 October 2018, aimed at certain "contrived arrangements" where listed shares are transferred to connected companies to minimise the stamp duty or SDRT liability which could otherwise arise on the acquisition of high value share portfolios. Where the new rules apply, the stamp duty or SDRT payable will be based on the higher of the amount/value of the consideration paid or the market value of the securities transferred. HMRC have clearly become aware of the use of what they regard as unacceptable tax planning in this area and have acted to close down these avoidance transactions with immediate effect.

On a broader reform note, the Government has also announced that it will consult on aligning the stamp duty and SDRT rules in relation to consideration, and in particular on the introduction of a general connected party market value rule. The consultation document will be published on 7th November 2018, but the timing of any legislative changes in this regard is currently unclear.

ENVIRONMENTAL

Plastics Tax

The Government has committed £20million as part of the plastics and waste innovation funding - £10million of which to boost recycling and wider initiatives, as well as £10million towards research and development into recycling and reducing litter.

1. There will be a consultation on the following proposals:

2. To tackle the environmental effects of single-use plastics, the Government will introduce a tax on produced or imported plastic packaging that does not include at least 30% recycled content from April 2022.

The Government will further seek to reform the Packaging Producer Responsibility System, which incentivises designing packaging that is easier to recycle, as well as penalising the use of packaging that is difficult to recycle.

A levy on cups will not be introduced this year, although the Government recognises this as a problem.

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