Finance Bill 2018
Following the first autumn Budget for 20 years, the main hope from businesses was that the Chancellor would keep the number of changes to the tax system to a minimum, after a year featuring two Finance Acts, changes in approach on making tax digital (MTD) and numerous consultations, a feat which he has largely managed with draft Finance Bill 2018.

The fact that relatively few tax changes were announced for business was well received. Large corporates were dismayed to see even more changes to the corporate interest restriction which is already complex and difficult to apply. The freezing of the indexation allowance from January 2018 also dealt a blow to companies.

The big news however was that Finance Bill 2019 will see the extension of CGT to all disposals of UK property by all non-resident companies and individuals - previously this had only applied to those disposing of UK residential property.

Whilst rebasing to April 2019 will be available, an anti-forestalling rule came into effect from 22 November counteracting arrangements undertaken to avoid the impact of the new rules by taking advantage of provisions within the UK’s treaty network.

In the Chancellor’s own words, in the run up to Brexit “if we are truly to build an economy that is fit for the future, then we have got to get all parts of the UK firing on all cylinders”. Overall, there is considerable support for the economy over the next three years designed to help support the economy post-Brexit, funded in part by the tax measures in this Finance Bill.

First time buyers have cause to celebrate with stamp duty land tax on purchases up to £300,000 being abolished and with relief on the first £300,000 of the purchase price of properties up to £500,000, although this relief may be less generous in its detail than it appears at first glance.

There is also a huge focus on innovation and skills to boost productivity. There was recognition of the importance of new tech businesses, a big growth area, with the announcement of over £500 million being spent on a range of initiatives from Artificial Intelligence, to 5G and full fibre broadband, as well as boosting investment in science education and skills. The Chancellor also announced the allocation of a further £2.3 billion for investment in research and development (R&D) and increasing the large company R&D tax credit to 12%.

Please read our update on the tax measures included in draft Finance Bill 2018, as well as those announced for Finance Bill 2019. If you have any queries about how these measures may affect you or your business, please speak to your usual PKF Francis Clark contact.

John Endacott
Head of Tax
**Business tax**

- Corporate tax rates
- Research & development expenditure credits
- Capital allowances and first year tax credits
- Corporate interest restriction
- Freezing indexation allowance from 1 January 2018
- Intangible fixed assets
- Depreciatory transactions
- Partnerships
- National minimum wage and living wage
- The Taylor review and the Good Work Plan

**International**

- Non-resident CGT extension
- Changes to double taxation relief
- Assets transfer to non-resident companies
- New withholding tax on royalties

**VAT**

- Rates and thresholds
- Extension of joint and several liability to online marketplaces

**Personal tax**

- Rates and allowances
- Carried interest removal of transitional relief
- Offshore trusts
- Venture capital schemes

**Stamp duty land tax**

- Relief for first time buyers
- Higher rate for additional dwellings - anti-avoidance
- Annual tax on enveloped dwellings - rates

**Anti-avoidance and tax administration**

- End of certificates of tax deposit
- Disguised remuneration
- Tackling offshore evasion
- Digital economy and corporate tax
- Making tax digital - proposed penalty regime
CORPORATE TAX RATES

Corporation tax (CT) will remain at 19% for financial years 2018 and 2019 – this is planned to decrease to 17% from 1 April 2020.

The majority of capital allowances remain unchanged for financial years 2018 and 2019, however the research & development expenditure credit will increase from 11% to 12% from 1 April 2018.

Disincorporation relief

The Government has announced that it will not be extending disincorporation relief beyond its 31 March 2018 expiry date. This date is already enacted, so no new legislation is required as a result of this announcement.

Up to March 2018, joint claims can be made by a company and its shareholders to allow goodwill or interests in land not held as trading stock to be transferred at a reduced value so that no CT will be payable by the company on the transfer. Relief is restricted to cases where the market value of the assets does not exceed £100,000.

Insurance premium tax

The standard rate of IPT increased to 12% from 1 June 2017 and will remain at 12% for 2018/19. The higher rate remains at 20%.

Aggregates levy

The levy will remain at £2 per tonne on commercially exploited taxable aggregate from 1 April 2018.

Landfill tax

In 2016 the Chancellor announced that both the standard and lower rates of landfill tax would increase in line with RPI, rounded to the nearest 5 pence, in both 2017 and 2018. The same will apply for financial year 2019.

<table>
<thead>
<tr>
<th>Waste sent to landfill</th>
<th>Rate from 1 April 2018</th>
<th>Rate from 1 April 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage</td>
<td>England &amp; Northern Ireland</td>
<td>England &amp; Northern Ireland</td>
</tr>
<tr>
<td>Standard rate (per tonne)</td>
<td>£88.95</td>
<td>£91.35</td>
</tr>
<tr>
<td>Lower rated (per tonne)</td>
<td>£2.80</td>
<td>£2.90</td>
</tr>
</tbody>
</table>

RESEARCH AND DEVELOPMENT EXPENDITURE CREDIT

The RDEC was introduced for companies undertaking qualifying activity and incurring qualifying expenditure from 1 April 2013. It was introduced as a standalone credit to be brought into account as a receipt in calculating profits. The general rate was set as 11% of qualifying R&D expenditure.

For profit making companies the credit discharges the CT liability that the company would have to pay. Companies with no CT liability will benefit from the RDEC either through a cash payment or a reduction of tax or other duties due. The rate of the R&D expenditure credit has been increased from 11% to 12% for expenditure incurred on or after 1 January 2018.

CAPITAL ALLOWANCES AND FIRST YEAR TAX CREDITS

This relief, which was due to expire on 31 March 2018, has been extended until 31 March 2023.

Loss making companies are currently able to surrender the losses attributable to enhanced capital allowances (100% first year allowances) on designated energy-saving or environmentally-beneficial plant and machinery in exchange for a cash payment, known as a first year tax credit, from the Government. A loss may not be surrendered as a first year tax credit if it could be set-off against the company’s own taxable profits in the loss making period or surrendered as group relief. Eligible losses are those from a trade, an ordinary property business, an overseas property business, a furnished holiday lettings business or from managing the investments of an investment business.
The first year tax credit is currently 19% of the loss surrendered subject to an upper limit which is the greater of:

- the total of the company’s PAYE and NIC liabilities for the period for which the loss is surrendered, or
- £250,000.

To balance the five year extension of the relief, the rate of eligible claims is to be reduced to two-thirds of the CT rate (or an average value where there is more than one rate in the same period). The two-thirds rate will also apply to ring-fence (oil and gas) profits, based on the CT rate applied to the most recent previous chargeable period in which the company made a profit in carrying on the qualifying activity, or if the company has never made a profit in carrying on the qualifying activity, two-thirds of the small ring fence profits rate for the chargeable period.

Where a company’s accounting period straddles 1 April 2018, it will be necessary to split the accounting period into pre- and post- 1 April periods to calculate the applicable surrenderable loss.

In addition, the energy-saving technology list was amended by statutory instrument (in December 2017) to add new technologies and modify existing ones, to reflect technological advances and changes in standards, and the first year allowances regime for zero-emission goods vehicles and gas refuelling equipment is to be extended to 31 March 2021.

FREEZING INDEXATION ALLOWANCE FOR COMPANY GAINS

For individuals, indexation allowance was effectively frozen from 5 April 1998. The allowance was then withdrawn entirely for capital gains tax (CGT) purposes from 6 April 2008, however companies remained entitled to the allowance.

On 22 November 2017, the Chancellor announced that the indexation allowance that is given in calculating a company’s chargeable gains will be frozen at the value that would apply to the disposal of an asset in December 2017, for assets acquired on or before 1 January 2018. This raises the spectre of a complete removal of the allowance in future.

Assets acquired from 1 January 2018 onwards, or relevant expenditure on an existing asset incurred after that date, will not attract any indexation allowance on disposal. The changes have effect for disposals of assets on or after 1 January 2018.

However, sometimes a chargeable gain does not accrue at the time of the disposal of an asset, but is treated as accruing on a disposal at a later date. One common example is where a gain on the disposal of a qualifying business asset has been ‘rolled over’ against the acquisition of a replacement asset. Where the first disposal was before 1 January 2018, and the later date is after 1 January 2018, then the legislation will ensure that these changes do not affect the indexation allowance included in calculating the gain on disposal of the first asset.

INTANGIBLE FIXED ASSETS

In general terms, the legislation on the taxation of intangible fixed assets held by companies uses the amounts recognised in a company’s accounts to calculate the taxable profit or allowable loss.

When there is a disposal of an intangible fixed asset, the legislation requires that the profit or loss is calculated
by reference to the proceeds of realisation that is recognised for accounting purposes. If, however, the proceeds of realisation are not wholly cash, for example the intangible fixed asset is exchanged for shares, the accounts may report the cost of the new asset at the net book value of the asset disposed of rather than at the market value of the asset that has been acquired.

The Finance Bill 2018 change, which applies from 22 November 2017, puts beyond doubt that where the consideration includes something other than cash, the amount recognised as the proceeds of realisation is the market value in cash of whatever is received as consideration. This ensures that disposals for non-cash consideration are taxed consistently with disposals where the payment is wholly in cash.

A further change ensures that the market value rule will apply to licences of intangible fixed assets between related parties as it applies to transfers of intangible fixed assets.

DEPRECIATORY TRANSACTIONS

A loss accruing on the disposal of shares by a company may be increased by a prior ‘depreciatory transaction’ which takes value out of the shares. Examples of depreciatory transactions are the payment of a dividend, or the transfer of an asset for payment of less than market value, by the company whose shares are disposed of.

Rules were introduced in 1968 to counteract this increase in the loss, and apply - for the purposes of CT - to restrict the allowable loss by such an amount as is ‘just and reasonable’ to counter the effect of the depreciatory transaction.

Finance Act 2011 introduced a limit to when this restriction is made, which is now being reversed. For disposals on or after 19 July 2011, an adjustment is currently only required in respect of depreciatory transactions occurring within the six years prior to the date of disposal. From 22 November 2017, a new rule will ensure that the depreciatory transaction legislation cannot be prevented from applying by simply holding on to a company from which value has been stripped for six years before claiming loss relief in excess of any genuine economic loss to the group.

In addition, a potential gap in the legislation is being closed - where shares become of negligible value a claim can be made to treat the shares as disposed of and reacquired, giving rise to a capital loss. These claims can specify a date up to two years earlier when the shares were deemed to become of negligible value and the loss to accrue.

The new rules therefore also ensure that losses arising from negligible value claims made after 22 November 2017 cannot continue to benefit from the restricted six-year limit on depreciatory transactions by specifying a date before 22 November for the claim to take effect.

The availability of substantial shareholdings relief as an alternative means that the impact of these changes will largely only apply to investment companies.

PARTNERSHIPS

Proposed new rules effective from 6 April 2018 put beyond doubt that, where a beneficiary in a bare trust arrangement is entitled absolutely to any income of that bare trust but is not themselves a partner in the firm, they will be subject to the same rules for calculating profits and losses, reporting and tax administrative requirements as actual partners.

In addition, the concept of an ‘indirect partner’ will be added to the legislation to ensure that the basis period rules will be applied consistently to persons allocated trade profits or losses by a partnership, irrespective of whether they are allocated directly or whether the profits or losses are allocated to other intermediate partnerships first. This will apply from 2018/19 onwards.

Where a partnership has a partner which is itself a partnership, for 2018/19 onwards the amounts allocated to that other partnership must be calculated and shown on each of the following assumptions:

(a) That it is a UK resident individual
(b) That it is a non-UK resident individual
(c) That it is a UK resident company
(d) That it is a non-UK resident company
However, provided the partnership statement shows the name of every person who is an indirect partner in the reporting partnership and information about the nature and residence status of each of those persons for the applicable tax year or accounting period, then one or more of (a) to (d) above can be disregarded as long as the information provided makes it apparent that no direct or indirect partner in that partnership is a person of the type described by that assumption.

There will be a reduction in the administrative burden for certain investment partnerships that report to HMRC under the common reporting standard or the Foreign Account Tax Compliance Act (FATCA), so that they are no longer obliged to provide tax references for all their partners where:

- Those partners are not chargeable to income tax or CT in the return period, and
- The partnership does not carry on a trade, profession or UK property business at any time during the period, and
- The partnership has made a relevant return or returns containing information about those persons in respect of the whole of the return period, and
- The partnership return contains a statement confirming that the last of these conditions has been met.

The final change is probably the one that has caused the most concern. The new requirement is that the amounts allocated to partners as profits and losses in a partnership return will be considered final for tax purposes. There will also be a new mechanism for disputes over the reported allocations of partnership income and losses, which may be referred to the Tribunal.

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### NATIONAL LIVING WAGE AND NATIONAL MINIMUM WAGE

The national living wage will be increased to £7.83 per hour from April 2018. The following table shows the minimum wage rates for all age groups:

<table>
<thead>
<tr>
<th>Category</th>
<th>2017/2018 rate (per hour)</th>
<th>From 1 April 2018 (per hour)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers aged 25 and over</td>
<td>£7.50</td>
<td>£7.83</td>
</tr>
<tr>
<td>21-24 year olds</td>
<td>£7.05</td>
<td>£7.38</td>
</tr>
<tr>
<td>18-20 year olds</td>
<td>£5.60</td>
<td>£5.90</td>
</tr>
<tr>
<td>16-17 year olds</td>
<td>£4.05</td>
<td>£4.20</td>
</tr>
<tr>
<td>Apprentices</td>
<td>£3.50</td>
<td>£3.70</td>
</tr>
</tbody>
</table>

### THE TAYLOR REVIEW AND THE GOOD WORK PLAN

Proposals for reforming employment law to strengthen the rights of people working in the so-called gig economy were released on 7 February 2018.

The Government has responded to recommendations set out in political strategist Matthew Taylor’s review of modern employment practices by publishing four consultations setting out its proposals which will form part of its newly announced ‘good work’ plan. An employment status consultation looks at whether the options proposed, which include defining the categories of employee and worker, could achieve more certainty and clarity for businesses when determining employment status. As regards tax, this consultation considers the tests that define the boundary between those currently taxed as employees and those who are taxed on a self-employed basis.

The consultation on increasing transparency in the labour market examines whether employees and workers have all information they need to fully understand their employment contract and associated rights.

The consultation on the Taylor recommendations regarding agency workers looks at how to increase transparency of contractual arrangements for agency workers, and how umbrella companies or intermediaries could be brought within the scope of the Employment Agency Standards Inspectorate (EASI).
It also seeks to gather evidence on the level of abuse in this sector, with consideration of whether EASI’s remit should be extended to cover the enforcement of the agency workers regulations.

The fourth consultation, on the enforcement of employment rights recommendations, sets out the Government’s intention to enforce a wider range of basic employment rights on behalf of vulnerable workers. It seeks evidence on the extent of the problem faced by low paid workers in accessing sick pay and holiday pay to help target enforcement efforts. In addition, the consultation outlines plans to simplify the enforcement process for employment tribunal awards and introduce a ‘naming and shaming’ scheme for unpaid employment tribunal awards, and asks for the best ways to tackle issues with companies that are repeat offenders.

The Taylor review set out seven principles for ‘fair and decent’ work, including sectoral strategies engaging employers, employees and stakeholders to ensure that people are not stuck at the living wage minimum or facing insecurity.

The review, published in 2017, called for a new status for ‘gig economy’ workers. Taylor had said the new ‘dependent contractor’ status would help distinguish workers from those who are ‘legitimately self-employed’, as highlighted by the recent high profile Uber and Pimlico Plumbers cases. Uber has been told it must pursue its appeal against the Employment Appeal Tribunal’s workers’ rights decision through the Court of Appeal rather than directly to the Supreme Court. The Pimlico Plumbers case will however go straight to the Supreme Court.
international
NON-RESIDENT CGT TO BE EXTENDED TO UK COMMERCIAL PROPERTY

The Government has announced that from April 2019 tax will be charged on gains made by non-residents on the disposal of all types of UK immovable property, extending existing rules that apply only to residential property. A consultation is open until 16 February 2018, which will also consider the future of the rules applying to ATED-related gains.

CGT currently applies to ‘non-resident CGT’ (NRCGT) gains accruing on disposals of UK residential property interests by non-resident individuals, trustees, and personal representatives, and by certain closely-held companies. A close company is one where five or fewer of the participators control the company, or participators who are directors control the company.

This measure expands the scope of the UK’s tax base with regard to disposals of immovable property by non-residents in two key ways:

• All non-resident persons’ gains on disposals of interests in UK land will be chargeable
• Indirect disposals of UK land will be chargeable

Subject to transitional arrangements, any gain made by a non-resident on disposal of UK immovable property will be chargeable to UK tax. As far as possible the new rules will mirror the existing chargeable gains rules for UK residents.

The new rules will apply to gains on disposals occurring on or after 1 April 2019 (for companies) or 6 April 2019 (for other persons).

Direct disposals

The rate of tax will be the same as for an equivalent disposal by a UK resident. For corporate bodies this will be the UK CT rate, and for individuals, trusts, and personal representatives the same as the appropriate CGT rates and including any personal allowances. The existing NRCGT charge on residential property excludes disposals by non-resident companies that would, if they were UK resident, not be close companies. This measure will remove that exclusion. The Government intends that disposals of both residential and commercial property should be subject to a single regime that largely follows the existing rules for residential property disposals by non-residents.

Indirect disposals

The indirect charge will apply in situations where a non-resident:

• Disposes of an interest in a ‘property rich’ entity (the envelope)
• At the date of disposal, or at any point in the five years prior to that date, the non-resident holds, or has held, a 25% or greater interest in the envelope
• ‘Property rich’ will be defined as where an envelope derives 75% or more of its gross asset value from UK immovable property (residential or non-residential)
• Gross asset value in this context means the market value of the envelope’s assets at the time of disposal, not taking into account liabilities such as loan finance.

The new rules will be modelled on existing anti-avoidance legislation designed to catch traders in UK land or property, and will include any:

• Shareholding in a company deriving its value directly or indirectly from land
• Partnership interest deriving its value directly or indirectly from land
• Interest in settled property deriving its value directly or indirectly from land
• Option, consent or embargo affecting the disposition of land.

The rules will also charge disposals of an envelope that would not meet the property richness test looking only at its directly owned assets, but that meets the test by reference to indirect interests in gross assets held by any other body in which it has a stake.
The 25% ownership test will look at the proportion of interest a non-resident has in a property rich envelope at the point of disposal. The test will also be met, if looking back within a period of five years prior to the date of disposal, the 25% threshold was met at any point in that period.

Although the new charge will apply only to gains arising on disposals after 1 or 6 April 2019, the test will take into account ownership before that time to determine if the 25% test is met within the five year period prior to the disposal, however a provision allowing rebasing to April 2019 will be included.

In addition to looking at the non-resident’s own interests in a property rich envelope, the rules will also consider the interests of:

- Connected parties, and
- Those who are related to the non-resident under the ‘acting together’ rules (derived from the corporate interest restriction rules) to include situations where persons come together as a group with a common object in relation to the envelope entity.

This test will therefore be met if at any point in the five years up to and including the date of disposal the non-resident, alone or with related parties, has held a 25% or greater interest in the property rich entity being disposed of.

**Anti-forestalling rule**

An anti-forestalling rule will apply from 22 November 2017. The rule will apply to arrangements, entered into on or after 22 November 2017 where:

- The main purpose, or one of the main purposes, is to obtain a UK tax advantage for any person
- The tax advantage is in relation to tax to which that person would (apart from the arrangements) have become liable as a result of the charge to tax on gains accruing to non-residents that will come into force on 1 April 2019 (for companies) and 6 April 2019 (otherwise)
- That advantage arises by reason of any provisions of double taxation arrangements, but only in a case where the tax advantage is contrary to the object and purpose of those provisions

Where these conditions are met, the tax advantage will be counteracted. A UK tax advantage takes its normal meaning, and reflects a relief, reduction, etc., of the tax that would have been paid without the arrangement. The targeted arrangements will involve the abuse of double taxation arrangements to put the disposal out of charge.

**REDUCTION IN DOUBLE TAX RELIEF WHERE LOSSES RELIEVED SIDEWAYS**

The double taxation relief (DTR) rules provide for credit relief for foreign tax paid on a company’s qualifying income from a foreign PE against CT on the income.

The changes proposed by Finance Bill 2018, which apply from 22 November 2017, will amend the DTR rules where a foreign PE has made a loss that has been relieved for the purposes of the foreign tax rules against income other than that of the PE in the foreign territory.

It applies for an accounting period where a company has a PE situated in a foreign territory and condition A or B is met in that period, or an earlier accounting period beginning on or after 22 November 2011.

Both conditions A and B are concerned with the treatment under the tax rules of the foreign territory of a loss or other amount attributable to the PE. They ask whether such an amount has been relieved against amounts other than of the PE or of the company, such as profits or other income arising in other entities. If losses or other amounts have been so relieved, resulting in a decrease in foreign tax chargeable for a foreign taxable period ending in the (UK) accounting period in question, then condition A or B will be met for that accounting period.

This might occur, for instance, where the results of the PE are consolidated for the purposes of the foreign tax rules with the results of other entities through a fiscal consolidation or similar arrangement, or if the foreign territory allows losses of the PE to be relieved against income of another group company.

The new provisions will not apply where the hybrid and other mismatches rules apply a counteraction to a deduction or allowance which would otherwise be within these new rules.

The effect will be to restrict the amount of foreign tax that is treated as available for DTR for an accounting period to reflect the extent to which a loss of the PE has been relieved in the period and earlier
periods. This is to ensure that DTR is confined to circumstances where income of a PE has effectively suffered double taxation.

**Anti-avoidance**

Draft Finance Bill 2018 includes amendments to the double taxation relief targeted anti-avoidance rule (DTR TAAR).

The first change removes the requirement for HMRC to give a counteraction notice in order to apply the DTR TAAR and will have effect for returns with a filing date on or after 1 April 2018.

The second change will extend the scope of one of the categories to which the TAAR applies to include any reduction, not only in the UK tax payable by a person, but in the UK tax payable by any connected persons of that person. The second change will have effect for payments of foreign tax made on or after 22 November 2017.

**ASSETS TRANSFER TO NON-RESIDENT COMPANIES, REORGANISATIONS**

This change corrects an anomaly in the way companies are taxed on reorganisation. The substantial shareholding exemption (SSE) provisions treat any gain or loss on a disposal of shares as exempt from CT on chargeable gains where the relevant conditions are fulfilled.

However, the legislation treats certain exchanges of shares or securities made as part of a corporate reconstruction as not amounting to a disposal and acquisition of separate assets, but instead deems the new shares or securities to be the same asset as the old shares or securities. The interaction of these provisions can result in a postponed chargeable gain becoming chargeable on a further restructure of a UK company’s overseas business.

The draft Finance Bill 2018 amendments mean that a share for share exchange will not amount to a disposal of the original shares received following a transfer of the trade and assets of a foreign branch of the company, irrespective of whether the SSE also applies to the same share exchange.

**NEW WITHHOLDING TAX ON ROYALTIES**

Most countries’ tax systems ensure non-residents are taxable on certain types of income that arise in that country. Royalties are typically one such type of income and, to enforce their taxing right, countries will generally require the payer of the royalty to withhold tax from the payment and account for it to the tax authorities. This is subject to double taxation agreements (DTAs) that allocate taxing rights over such payments. Rules were introduced in Finance Act 2016 to reinforce this position by ensuring that all royalties arising in the UK will be subject to the deduction of income tax at source unless the UK has explicitly given up its taxing rights under an international agreement.

The Government has announced a further extension to these rules. This is intended to make sure that payments for the exploitation of certain property or rights in the UK that are made to connected parties in low or no tax jurisdictions will be subject to appropriate taxation. This does not represent a change in the UK’s general approach to the taxation of UK source payments, but is a targeted rule aimed at intra-group arrangements that achieve an artificially low effective rate that is considered to be distortive to competition in the markets in which they operate, including the UK.

The measure will also apply to payments for the use or exploitation of rights over intellectual property (IP) and other intangible assets in the UK. This will include, for example, the right to distribute specified goods or provide specified services in the UK. It will not include payments for services.

A liability will only arise where the payment is made to certain jurisdictions with whom the UK does not have a DTA, or with whom the UK does have a DTA, but that DTA does not contain a non-discrimination article.

For example, A and B are connected parties:
- A pays a royalty for exploitation of IP under a licence entered into with B
- This IP is exploited by A to make sales in the UK. The group does not have a taxable presence in the UK, for example through a PE or, in the context of diverted profits tax, an avoided PE of A
• The measure will apply regardless of which group company make sales into the UK, provided the royalty is paid for exploitation of IP in the UK.

Under existing legislation, the royalty payment would not have a source in the UK because the payment is not made by a UK resident entity, nor in connection with a PE (or avoided PE) in the UK. This is despite the fact the payment is made for exploitation of those rights in the UK.

In addition, the relevant licensing agreement may provide for a range of intellectual property rights, including some that are not included in the existing definition of an intellectual property right. The profits made in A may suffer limited taxation as A has a tax effective deduction for the royalty payment. The jurisdiction in which B is resident is a low or no tax jurisdiction and so the receipts are either lightly taxed, or not taxed at all. The combination of these factors means the use of intra-group payments achieves a low effective tax rate.

The new rule would apply to such arrangements by creating an income tax liability on the UK element of the payment (the royalty paid from A (non-UK) to B (non-UK)).

A would be required to report and return such liability in the UK. The consultation on this change runs from 1 December 2017 to 23 February 2018. The rule is expected to apply from April 2019.
VAT
VAT

VAT RATES AND THRESHOLDS

The main VAT rates remain unchanged at 20%, 5% and 0%. The VAT registration threshold will remain at £85,000 for the two years from 1 April 2018, and the deregistration threshold will remain at £83,000.

This ties in with the Government’s ‘making tax digital’ initiative: VAT registered businesses with turnovers above £85,000 will need to make their VAT returns – and keep their VAT records - digitally from 1 April 2019, but the Government has already promised that this will not extend to other taxes until at least April 2020. Any reduction in the VAT registration limit at this point would look very much like the Chancellor was reneging on a promise. Mr Hammond has however responded positively to the recent Office of Tax Simplification (OTS) review of VAT, one of the recommendations of which was a reduction in the VAT registration limit to bring the UK more into line with Europe, and to remove perceived disincentives to growth, so future changes look likely.

ONLINE MARKETPLACES - JOINT AND SEVERAL LIABILITY

The Government has in recent years introduced anti-avoidance provisions which result in both parties having joint and several liability for a debt where:

• A taxable person receives a taxable supply of ‘relevant goods and services’
• At the time of the supply the person receiving the supply knew, or had ‘reasonable grounds to suspect’, that some or all of the VAT payable on that supply, or on any previous or subsequent supply of those goods or services would not be paid to HMRC
• HMRC has served on that person a notice of liability under these provisions

That person, and the person otherwise liable for the amount specified in the notice, are jointly and severally liable to HMRC for the ‘net VAT unpaid’ on those goods or services.

These rules are now to be extended in scope to include online marketplaces. An operator of an online marketplace will be held jointly and severally liable for VAT payable by any person (UK or overseas) selling goods through its site who fails to comply with any requirement imposed by the VAT Act. The site operator will be able to avoid being held jointly and severally liable if it removes the business from its marketplace within a specified period.

If the online marketplace operator allows an unregistered non-UK business to continue to sell goods through its marketplace 60 days after it knows or should know that the non-UK business is required to be registered for VAT, it will be held jointly and severally liable for the unpaid VAT. However, the liability will cease from the point that the non-UK business complies with its obligation to register.

In addition, online marketplace operators must display valid VAT numbers on their online marketplaces. A penalty will be levied for any breaches. The operator of the online marketplace will be required to check the validity of all the VAT registration numbers provided to it and display valid VAT registration numbers on its website within ten days of being provided with them. It will also be required to ensure that all the VAT registration numbers displayed on its website are valid and take steps to remove any invalid ones that it becomes aware of within ten days of becoming so aware.

The new provisions are intended to encourage non-compliant UK and non-UK businesses that sell goods through online marketplaces to register for VAT, comply with their obligations and pay the VAT due on sales made in the UK. In common with a number of initiatives in recent years, the Government is passing the administrative and fiscal consequences of a policy decision onto businesses that deal with non-compliant traders, instead of assuming this centrally.
Your details Please use capitals

National Insurance number
This is very important for getting your tax and benefits right.

Name
Title - enter MR, MRS, MISS, MS or other title
Surname or family name
Any name(s)
PERSONAL TAX RATES AND ALLOWANCES

Income tax
The current personal tax rates of 20%, 40% and 45% and 7.5%, 32.5% and 38.1% for dividend income will continue to apply for 2018/19. The personal allowance will increase to £11,850 and the level at which an individual comes within the charge to higher rate tax increases to £46,350. The married couples’ allowance, transferable marriage allowance and blind person’s allowance are all increased for inflation only. The threshold for the withdrawal of the personal allowance remains the same at £100,000 and the additional rate tax threshold will remain at £150,000.

The £5,000 threshold for the 0% starting rate for savings will remain at its current level for 2018/19 and will not increase to take account of inflation this year. The personal savings allowance remains at £1,000 for a basic rate taxpayer and £500 for a higher rate taxpayer and the previously announced reduction in the dividend allowance from £5,000 to £2,000 will take effect on 6 April 2018 as planned.

Tax rates for trustees remain unchanged.

From 29 November 2017, an individual whose spouse or civil partner is deceased will be able to make an application for marriage allowance (the transfer of 10% of the personal allowance to or from a spouse or civil partner where the transferee is a basic rate taxpayer), and for the claim to be backdated for up to four years where the entitlement conditions are met. Previously, the legislation did not allow for this.

Capital gains tax
The CGT rates remain unchanged at 10% (where entrepreneurs’ relief applies) and 20%, and 18% and 28% respectively for disposals of residential property and carried interests. The annual exempt amount will increase by £400 to £11,700.

Tax free savings accounts
The overall ISA subscription limit remains at £20,000, of which £4,000 can be saved into a lifetime ISA. The junior ISA (and child trust fund) limits increase to £4,260 for 2018/19.

Pensions tax relief
The lifetime allowance will increase to £1.03 million for 2018/19, but the annual allowance and money purchase annual allowance remain at £40,000 and £4,000 respectively.

Employee benefits
From April 2018, there will be no benefit-in-kind charge on electricity provided by employers at workplace charging points for charging employees’ electric (or hybrid) cars.

As part of an effort to protect the environment, the diesel supplement for company car benefits in kind will increase by 1% (from 3% to 4%), with effect from 6 April 2018. However, the maximum level of the appropriate percentage for cars including the diesel supplement will remain at 37%. From 6 April 2018, the flat rate van benefit charge will increase to £3,350 from its current rate of £3,230. The flat rate van fuel benefit charge will increase to £633 from £610.

Mileage rates for unincorporated property businesses
HMRC will allow landlords the choice to use fixed rates per business mile to calculate their allowable deductions for motoring expenses, instead of deducting actual running costs and claiming capital allowances. It will not be available to landlords who are companies or in mixed partnerships.

This makes the tax computations of these businesses more consistent with trading businesses who already have this choice - the mileage rates will be the same as for trading businesses and employees using the same vehicles.
CARRIED INTEREST

Carried interests are a form of performance related reward for investment managers. The tax treatment of such interests changed from 8 July 2015, but transitional rules excluded amounts of carried interest which had been subject to delays in payment for genuine commercial reasons and which were in relation to disposals of partnerships assets before 8 July 2015, or (in some circumstances) before 22 October 2015.

Draft Finance Bill 2018 removes this transitional protection, creating a single, consistent treatment for amounts of carried interest arising on or after 22 November 2017 irrespective of the timing of connected disposals of partnership assets.

OFFSHORE TRUSTS – FURTHER ANTI-AVOIDANCE MEASURES

Currently, income arising, and gains accruing, to the trustees of an offshore trust are, broadly, treated as arising or accruing as follows:

- Gains accruing to the trustees of a settlor-interested offshore trust are treated as accruing to a UK resident settlor who is also domiciled or (from 6 April 2017) deemed domiciled in the UK
- Otherwise, the gains are attributed to beneficiaries to the extent that they receive a capital payment that is matched to the gain
- Income arising to the trustees of a settlor-interested offshore trust is treated as arising to the settlor (irrespective of whether the settlor enjoys the income)
- Capital sums (such as loans) paid to such settlers in excess of the trustees’ undistributed income are also treated as income arising to the settlor. Where the remittance basis applies to the settlor, foreign source income is taxed in the year in which it is remitted.

Where a person transfers assets as a result of which income becomes payable to a person abroad, such as to the trustees of an offshore trust, income is deemed to arise to the transferor where that person is UK resident and has power to enjoy the income that arises to the trustees, receives a capital sum from the person abroad, or receives a benefit provided out of the transferred assets that is matched to the income. There are rules to prevent double taxation. Where the remittance basis applies to the transferor, foreign source income is taxed in the year in which it is remitted.

Income treated as arising, and gains treated as accruing, as above, may not be immediately liable to UK tax where the person is not UK tax resident or is a UK resident non-UK domiciled remittance basis user.

In addition to the comprehensive 2017 changes for offshore trusts, new legislation in Finance Bill 2018 is due to come into effect from 6 April 2018 as follows:

- Capital distributions made to non-resident beneficiaries or remittance basis users will no longer deplete the stockpiled gains pool of the offshore trust
- Capital payments and distributions provided to the settlor’s close family (spouse, civil partner or minor child) will be taxed on the UK resident settlor if the recipient is either non-UK resident or a remittance basis user
- Onward gift provisions are to be introduced if distributions or benefits are made available to a non-resident beneficiary with the intention to pass it on to a UK resident recipient directly or indirectly. The legislation will essentially treat the distribution to the UK recipient as being made from the offshore trust. UK recipients receiving an onward gift after 5 April 2018 will need to consider the legislation.

These rules are complex, and the new ‘requirement to correct’ (RTC) rules included in Finance Act (No.2) 2017 mean that any non-disclosure of an offshore interest in tax years up to and including 2015/16 is potentially exposed to penalties of 200% (in some cases up to 300% and 10% of asset values) if not advised to HMRC by 30 September 2018. The harsh penalties mean it is absolutely essential that anyone with an offshore interest ensures that they have been fully compliant and brings any tax irregularities up to date as soon as possible. Even innocent mistakes are potentially liable to these harsh penalties so if there is any doubt whatsoever, individuals and non-resident trustees are recommended to review the tax position as soon as possible.

In addition, in spring 2018, HMRC intends to consult on extending the assessment time limits for non-deliberate offshore tax non-compliance so that HMRC can always assess at least 12 years of back taxes without needing to establish deliberate non-compliance.
ENTERPRISE INVESTMENT SCHEMES AND VENTURE CAPITAL TRUSTS

The Government always intended the venture capital schemes (EIS, SEIS and VCT) to be focused on support for companies with high growth potential. Recently it has noted that a number of companies have been geared more towards protecting capital invested than growth, which runs counter to the policy objective for these investment reliefs.

The new overarching ‘risk to capital’ condition is meant to take a principled approach to reduce opportunities to use the schemes for tax motivated investment. It will enable the Government to avoid excluding further specific types of activity, which would risk excluding genuine entrepreneurial businesses.

A new condition will be added to the EIS, SEIS and VCT rules to exclude tax-motivated investments, where the tax relief provides most of the return for an investor with limited risk to the original investment. The condition depends on taking a ‘reasonable’ view as to whether an investment has been structured to provide a low risk return for investors.

The condition has two parts: whether the company has objectives to grow and develop over the long-term (which broadly mirrors an existing test within the schemes); and whether there is a significant risk that there could be a loss of capital to the investor of an amount greater than the net return. The condition requires all relevant factors about the investment to be considered in the round.

Relevant investments

The definition of a ‘relevant investment’ will be amended to ensure that all investments, including all risk finance investments made before 2012, are counted towards the lifetime funding limit for companies receiving investment under the tax advantaged venture capital schemes. The limit is £12 million for most companies and £20 million for knowledge-intensive companies.

Artificial inflation of share prices

The Government has said it will continue to monitor whether EIS and VCT funds are causing artificial inflation of share prices and the use of structures involving liquidity preferences, taking action against behaviours against the spirit of the schemes if necessary.

Venture capital trusts

To ensure that tax-advantaged VCTs continue to focus on long-term investment in higher risk companies that intend to grow and develop:

- From 6 April 2018 certain ‘grandfathering’ provisions will no longer apply to new investments;
- 30% of funds raised in an accounting period will be required to be invested in qualifying holdings within 12 months after the end of the accounting period;
- Qualifying loans will be required to be unsecured and to ensure that returns on loan capital above 10% represent no more than a commercial return on the principal;
- From 6 April 2019, the time VCTs have to reinvest gains from investments will double from six to 12 months; and
- The proportion of VCT funds that must be held in qualifying holdings will increase from 70% to 80%.

An anti-avoidance rule currently restricts income tax relief where a VCT buys back shares from an investor and the investor subscribes for new shares in the same VCT within a six month period, a form of ‘bed and breakfasting’. It also restricts income tax relief for investors who sell shares in a VCT and subscribe for new shares in another VCT within a six month period, where those VCTs merge.

A new measure will ensure that income tax relief will no longer be withdrawn where the relevant VCTs merge more than two years after the latest subscription for shares, or do so where it is not one of the main purposes of the merger to obtain a tax advantage. It will take effect for VCT subscriptions made on or after 6 April 2014.

Knowledge intensive companies

For EIS shares issued on or after 6 April 2018, the annual limit for individuals investing in knowledge-intensive companies under EIS will be increased to £2 million, provided that anything above £1 million is invested in knowledge-intensive companies. The annual VCT and EIS limit on the amount of tax-advantaged investments a knowledge-intensive company may receive will be increased to £10 million from 1 April and 6 April 2018, respectively.

In addition, the ‘permitted maximum age’ rules will be amended to allow a knowledge-intensive company to use the date from which its annual turnover exceeded £200,000, instead of the date of its first commercial sale, when determining the date from which the end of the initial investing period is calculated. The Government will also consult during 2018 on a new knowledge-intensive EIS fund structure with further incentives that would enable the use of capital over a long period (as part of the Government’s response to the patient capital review).
STAMP DUTY LAND TAX RELIEF FOR FIRST TIME BUYERS

Where certain conditions are met, there will be no SDLT on the first £300,000 of the purchase price for purchases of wholly residential properties with an effective date (usually completion) on or after 22 November 2017.

The relief applies to individual purchasers only (not companies). Where there is more than one purchaser, each purchaser must meet all the conditions.

Broadly, the relief applies to first time buyers who intend to occupy the dwelling as their only or main residence, although immediate occupation is not required.

A first time buyer will be someone who has never owned an interest in a residential property anywhere in the world. Therefore, (in the case of joint purchasers) if one of the purchasers currently has, or has previously had, an interest in a UK property, no relief will apply to any part of the transaction – there is no apportionment for the purchasers that do qualify for the relief.

For the relief to apply, the purchase must be of a major interest in a single dwelling, i.e. a freehold or leasehold interest with a term of more than 21 years and the ‘relevant consideration’ must be £500,000 or less.

It’s therefore important to establish how many ‘dwellings’ the purchased property incorporates as relief will not be available if there is a purchase of more than one dwelling in a single transaction. The number of dwellings will be a question of fact i.e. is there independent access and domestic facilities?

Where there are any linked transactions, rules may be applied retrospectively to withdraw relief on the first purchase in a ‘linked transaction’ where a later transaction renders the earlier one ineligible for relief (i.e. by taking the total consideration over £500,000). In these circumstances, not only must tax be paid on the earlier transaction, but a new SDLT return may be required.

If the ‘relevant consideration’ is in excess of £500,000 then the relief will not be available and the normal rates will apply. If the consideration is between £300,000 and £500,000, SDLT will be payable at 0% up to £300,000 and 5% on the excess over £300,000. Relief is not automatic and must be claimed on a land transaction return.

STAMP DUTY LAND TAX ADDITIONAL RATE AMENDMENTS

Various changes to the higher rate of SDLT were announced at the autumn Budget. One of these relates to the ‘replacement main residence relief’.

To re-cap, with effect from 1 April 2016, a higher rate of SDLT now applies to purchases of additional residential properties. However, there is an exception to the additional rates if the purchased dwelling is a replacement of the purchaser’s only or main residence.

For this exception to apply, there has to be a disposal of a major interest in the purchaser’s (or the purchaser’s spouse’s or civil partner’s) former main residence and the dwelling acquired must be intended to be occupied as that individual’s only or main residence.

The legislation had not specified what proportion of the property needed to be disposed of, therefore it was possible to dispose of only a small share of the existing residence whilst still retaining the benefit of the exception.

In order to prevent this, an announcement was made introducing amendments to the legislation which will require the purchaser to dispose of the whole of their former main residence and to dispose of it to someone who is not their spouse or civil partner. This essentially prevents the main residence relief being available on a new property where the seller or their spouse or civil partner retains an interest in the old main residence.
Other minor amendments will ensure that the legislation works more fairly when someone:

- Gets divorced, by deeming the party leaving the house not to have held a major interest in it
- Exchanges property with a spouse – the legislation now makes it clear that such exchanges are not subject to the higher rate
- Adds to an existing interest in their main residence, or
- Is a child whose affairs are subject to the Court of Protection etc. exempting their trustees from charge where the trustees purchases, sells or holds a property in the exercise of their powers for the benefit of the minor child.

**ANNUAL TAX ON ENVELOPED DWELLINGS**

The annual tax on enveloped dwellings (ATED) was introduced on 1 April 2013 as an annual charge for certain high value residential properties owned by non-natural persons such as companies, collective investment schemes, or partnerships with a company member. The ATED legislation applies to both non-UK and UK resident entities.

If the dwelling is held for part of a year or moves in or out of the ATED charge, the ATED will be calculated on a proportionate basis.

Valuations are required every five years, the first valuation date was 1 April 2012 which covers the chargeable periods up to 31 March 2018. The next valuation date was 1 April 2017, covering the next five chargeable periods from 1 April 2018 to 31 March 2023. There are some exemptions and reliefs available providing certain conditions are met.

The annual ATED charge (based on the property value) is increased each year in line with the consumer price index. The rates for 2017/18 and 2018/19 are as follows:

<table>
<thead>
<tr>
<th>Property value</th>
<th>2017/18 annual charge</th>
<th>2018/19 annual charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than £0.5m but less than £1m</td>
<td>£3,500</td>
<td>£3,600</td>
</tr>
<tr>
<td>More than £1m but less than £2m</td>
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<td>£23,550</td>
<td>£24,250</td>
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<td>£113,400</td>
</tr>
<tr>
<td>More than £20m</td>
<td>£220,350</td>
<td>£226,950</td>
</tr>
</tbody>
</table>
Anti-avoidance and tax administration
CERTIFICATE OF TAX DEPOSIT SCHEME
The certificate of tax deposit scheme, which many people used to ‘bank’ money against disputed tax liabilities to stop interest running, allowed tax payers to deposit money with HMRC and use it later to pay certain tax liabilities. Deposits held under the scheme earnt daily interest for up to six years.

It will no longer be possible to purchase new certificates from 23 November 2017 although existing certificates will continue to be honoured until 23 November 2023. Any certificates remaining after this date should be promptly submitted to HMRC for a refund and, thereafter, HMRC will seek to repay the balance of any certificate which remains unpaid and unclaimed. If HMRC is unable to repay the balance of any certificate which remains unpaid and unclaimed (for example, because it is unable to contact the current certificate holder after reasonable effort) it will regard the balance as forfeited.

DISGUISED REMUNERATION
The Government has committed to tackling existing - and preventing the future use of - disguised remuneration avoidance schemes.

New draft legislation limits the ‘close companies’ gateway’ charge to recipients who hold, or at any time in the previous 12 months held, a material interest. The amended rule will apply to relevant steps taken after 6 April 2018. The original proposals applied where, among other conditions, the recipient of the loan or benefit held a material interest in the close company at any time.

New main purpose test
The rules will only apply if a main purpose of the arrangement is the avoidance of income tax, national insurance contributions, CT or a ‘loan to participator’ charge. In addition, the new rules will only apply where the transaction between the close company and the third party relates to the same money or asset as the transaction between the third party and the employee.

Overlap with charge on loans to participators
It is possible for the same transaction to be caught by both the disguised remuneration rules and the rules governing loans to participants. This might happen where there is an indirect loan, such as where the close company lends money to a third party who lends it on to a participator. The original draft included a provision giving the loans to participants rules precedence. The updated draft makes clear that where there is an overlap, the loans to participants charge will take precedence over the disguised remuneration charge, provided the company does one of the following:

- Follows the rules for close company loans by making the appropriate entries in its CT return and accounting for tax by the due date, or
- Obtains HMRC’s agreement that disguised remuneration charges should not apply to the transaction (this condition only applies if the company has reported the charge in its CT return but has failed to make the payment).

If the company does not fall within one of these two exceptions, the arrangement will be taxed under the disguised remuneration rules.

New information provisions for 2019 loan charge
A new charge will apply disguised remuneration rules to certain loans outstanding on 5 April 2019. This legislation is included in Finance Act (No.2) 2017.

The recipient of a loan which falls within the 2019 loan charge (or their personal representatives, if the borrower has died) must report the loan to HMRC before 1 October 2019. The report must include specified information regarding the company, the borrower and the loan balance, including any scheme reference number allocated to the arrangement under the disclosure of tax avoidance schemes rules and any other reference number allocated to the taxpayer or arrangement by HMRC.

Failure to provide the information will result in a £300 fixed penalty and a further daily penalty of up to £60 for each day (up to 90 days) for which
the information remains outstanding. If inaccurate information is provided carelessly or deliberately, a penalty of up to £3,000 may be imposed.

HMRC is developing an online tool for borrowers to report the information.

The information required under this provision and the information required to be provided to the employer by the employee and third party will be harmonised. The requirement for the third party and the employee to contact HMRC directly if they do not provide information to the employer will be removed.

Legislation to ensure that PAYE and NIC arising under the disguised remuneration rules can be recovered from employees will be published later this year.

Most of the amendments made to the close companies gateway rules will be welcomed by companies as they clearly limit the scope of the gateway. HMRC has released a technical note which explains how the rules are intended to operate and will also add detailed guidance to the Employment Income Manual.

The overlap rules may prove to be problematic for smaller companies, many of which will not recognise that the loans to participants rules apply until it is too late to comply with them. In practice, loans via third parties are likely to be rare and the disguised remuneration rules may not apply in many cases, because there will often not be a main purpose of tax avoidance. If the arrangement does come within the close companies gateway, the disguised remuneration liability will be due through PAYE (and NIC will also be payable). If this is discovered more than 90 days after the end of the relevant tax year, an additional tax charge will be due on the amount of tax not made good by the employee.

TACKLING OFFSHORE EVASION – REQUIREMENT TO NOTIFY HMRC OF OFFSHORE STRUCTURES

The Government’s No Safe Havens strategy defined offshore tax evasion as “using another jurisdiction’s systems with the objective of evading UK tax”, including “the use of complex offshore structures to hide the beneficial ownership of assets, income or gains”. In the past, it was difficult for HMRC to detect offshore tax evasion or other forms of offshore non-compliance. However, following the Government’s work with its international partners, the common reporting standard is already providing greater levels of transparency through annual automatic exchange of information from financial institutions amongst jurisdictions including the UK.

In addition, the Government is considering requiring businesses that have created certain defined types of offshore arrangements to notify HMRC of the details of the arrangement, including details of the clients who use it. Since the consultation on this began, both the OECD and EU have undertaken work on similar measures. The Government therefore intends to work with its international partners on the development of appropriate multi-national rules, taking into account the responses it has already received.

DIGITAL ECONOMY AND CORPORATE TAX

The Government has published a position paper on corporate tax and the digital economy. This explores how the international tax framework currently works, the challenges to the current position (including the continued risk of base erosion and profit shifting) and whether it is flexible enough to deal with how digital businesses operate and generate value.

The paper starts from the position that a multinational group’s profits should be taxed in the countries in which it generates value. It recognises that many digital businesses that operate in markets through an online platform rely on their users (who may or may not be the business’s consumers) to generate revenue and create value for the business through their active participation in the platform. Examples given include users of a free social media platform that generates revenue from advertising directed at UK users and online marketplaces that generate revenue from matching suppliers and purchasers. This ‘user generated value’ is not captured under the existing international tax framework and the paper suggests that it should be given more weight when allocating profits between countries for tax purposes.

The Government intends to work to reform the international tax framework and meanwhile, it will
explore interim options to raise revenue from digital businesses that generate value from UK users. It believes that the interim report of the OECD task force on the digital economy (due to be presented next year) should consider these points and outline a multilateral process to resolve them. In the meantime, it suggests exploring a tax on revenues that businesses generate from the provision of digital services to the UK market.

As an apparent corollary to the Government's MTD programme, the Chancellor indicated an expectation that digital platforms should and will play a wider role in ensuring their users are compliant with UK tax rules.

The Government has announced that it will work with digital platforms to assess how their business operating models work and what opportunities there are to promote better tax compliance by their users. No specific details have been given, but there will be a call for evidence in spring 2018 on what digital platforms could do to prevent non-compliance among their users.

**MAKING TAX DIGITAL - PROPOSED PENALTY REGIME**

The Government has confirmed that it will be taking forward a new points-based model for sanctions for late submission and late payment under MTD.

Earlier this year HMRC ran a consultation on three potential penalties models: points-based, regular review of compliance and suspension of penalties. In its report HMRC stated that a large majority of respondents favoured the points-based model due to its comparative simplicity, which was of chief importance.

The revised points-based penalty model addresses many of the concerns that PKF Francis Clark put forward in its consultation response.

**Points-based penalties**

Under this model, taxpayers would receive a point every time they fail to submit on time. A penalty (at a level to be decided) will be charged at a certain threshold, which will be dependent on the frequency of their submission obligations. After the threshold has been reached, a penalty will be charged for every subsequent submission failure.

The penalty thresholds put forward are: two points for annual submissions, four points for quarterly submissions and five points for monthly submissions. Penalty points will have a shelf-life and would expire after a period of good compliance. Periods of good compliance are outlined by HMRC as: two submissions for annual submissions, four for quarterly, and six for monthly.

HMRC has also agreed that a separate points total per tax is preferable, rather than one points total relating to all obligations. This is because it is simpler and better reflects business structure, where different departments may be responsible for different taxes.

To incentivise individuals for good behaviour, HMRC has said it will make both penalty points and actual penalties appealable, and give taxpayers the option to claim a reasonable excuse for failing to meet a filing obligation.

Draft legislation is expected in summer 2018, and we anticipate that the model will first be implemented for VAT in 2020, to give taxpayers a year to become familiar with the system following the first MTD intake (for VAT reporting purposes) in April 2019.

The Government plans to carry out a technical consultation on the draft legislation in summer 2018. The Government has also published a consultation on simplified interest and late payment penalties and will take forward both elements as a coherent package.

We hope this summary has been useful. If you have any questions about how the Finance Bill 2018 changes will affect you, or your business, please speak to your usual PKF Francis Clark contact.