

Tax First

Keeping tax professionals up-to-date*

Issue No. 40
September 2009

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Welcome to the September issue of *Tax First*.

As the summer fades and our thoughts turn to autumn, there are plenty of developments afoot to add colour to a tax director's schedule. Finance Bill 2009 received Royal Assent on 21 July 2009, turning the prospective Bill into Finance Act 2009 and finalising several items of legislation that are of some interest to tax directors. Those parts of the Act concerned with the Senior Accounting Officer's responsibilities will be of particular note, as will measures around the debt cap, personal allowances and the 50% tax rate.

In this issue we provide a detailed overview of the final Act in our [Finance Act update](#) and highlight those areas which will be of specific interest. The [banking and capital markets](#) section looks at the recent reforms to the controlled foreign company (CFC) regime and, amongst other items, looks at HMRC's proposed code of practice for the taxation of banks. In the [finance and treasury](#) section we examine the foreign profits draft guidance and advise on the best ways to minimise the impact of the new debt cap regime using PwC's debt cap modelling service. There has been a significant change to European employment law in the past few weeks and in the [HR](#) section we outline how internationally mobile employees will now be treated for social security purposes, with a link to the recent [PwC webcast](#) on this topic. The VAT package is of concern to all companies operating across European Union borders and the [indirect tax](#) section provides a reminder that urgent action is needed if your business is affected by this change. HMRC has recently begun a 'new disclosure opportunity' (NDO) for UK tax payers with undeclared offshore bank accounts. The [risk](#) section offers an overview of the NDO process with details of PwC's helpline.

Finally, the International Corporate Tax Association events programme will be running again from this month, with a variety of PwC seminars on topics of interest to tax professionals. More details can be found on the website by [clicking here](#). I hope you find this issue both interesting and informative; if you have any thoughts or comments on any of the topics covered, then please do contact me.

David Prosser
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Finance Act 2009 – at a glance

- Senior Accounting Officers of large companies are required to certify annually that the accounting systems for tax are appropriate and will deliver accurate tax figures in meeting the company's responsibilities. The companies affected are those whose results in the preceding year, either alone or aggregated with other UK companies in the same group, exceeded either turnover of £200 million or gross balance sheet assets of £2 billion.
- The long awaited measures to modernise the taxation of foreign profits introduce an exemption for most dividends received by companies (including small companies) from 1 July 2009. Similarly effective from 1 July 2009 are provisions amending the acceptable distribution policy CFC rules and introducing new reporting rules instead of the general consent regime. Restrictions on interest deductions (the 'debt cap') will apply from 1 January 2010.
- Provisions targeting higher earners from April 2010 see a new 50% tax rate for those with incomes of £150,000 or more, with personal allowances for those with incomes of £100,000 or more being withdrawn in one single taper. This will have a significant impact on remuneration packages.
- Pensions tax relief will be restricted to basic rate for those with taxable incomes of £150,000 or more from April 2011. Anti-forestalling provisions also introduce a special annual allowance charge to restrict the tax relief for certain pension contributions to 20% rather than allowing relief at the top rate of 40% for 2009/10 or 50% for 2010/11.
- The cut in the standard rate of VAT announced in Pre-Budget Report 2008 (PBR) reverses as planned from 1 January 2010.
- The ability for businesses to carry back losses of up to £50,000 for up to three years announced in the PBR applies through to November 2010, not just to November 2009. A new rule prevents the artificial use of transfers of trade to obtain terminal loss relief.
- There is a first year allowance on plant and machinery investment, doubling the previous 20% rate to 40% for one year.
- The usual raft of anti-avoidance measures target both companies and individuals. These include, for example, provisions dealing with disguised interest, transfers of income streams, foreign currency matching.
- There is some relief, though, in relation to release of trade debts and loan relationships involving connected parties.
- Various measures consulted on through the review of HMRC's powers are being implemented, including penalties for late filing and late payment, together with a harmonised interest regime.
- Tax evaders will be 'named and shamed' on a public register.





HM Treasury releases CFC regime reform document

As expected, on 30 July 2009 HM Treasury (HMT) released a document outlining the policy principles that will frame the ongoing review of the controlled foreign company (CFC) regime – the policy principles document is key in setting the tone for the shape of the CFC reform as envisaged by HMT.

In summary, the highlights of the policy document are as follows:

- HMT has made it clear that the starting point is not whether CFCs should form part of a competitive tax regime, but rather the shape of the CFC regime going forward. It is disappointing that this fundamental question has been excluded from debate.
- HMT has again stressed that it is committed to making the UK regime competitive whilst protecting the UK tax base. HMT does not consider that the current transfer pricing rules or exit taxes provide the required level of protection. HMT also appears to consider that an 'anti-diversion' rule approach would be complex and difficult to administer.
- HMT intends the regime to be founded on territorial principles and focused on the commercial reality of transactions undertaken by modern business. This does not, however, mean that a foreign income exemption is guaranteed.
- HMT acknowledges the concern of business around the complexity and uncertainty of the current regime as well as the need for any CFC rules to be compliant with EU law.
- HMT proposes that retaining a system based on UK ownership and control, whilst moving towards a territorial approach, would appear to be the optimal solution. They suggest that this can be achieved by refocusing on artificial diversion of profits and moving away from the default assumption that all activities that could have been undertaken in the UK would have been carried on there but for tax advantages of the overseas location.

- Initial work in the next phase of the reform process will be focused on those offshore businesses whose level of profits is perceived to be disproportionate to their physical substance requirements (i.e. intellectual property and monetary assets).
- Encouragingly, the possibility of a treasury company exclusion has not been ruled out.

HMRC and Dixons settle UK transfer pricing case out of court

The case related to the transfer pricing arrangements between the UK's biggest electrical retailer (DSG) and the group's captive insurer in the Isle of Man. It was heard before the Special Commissioners (now the First Tier Tax Tribunal). The judgment was broadly in favour of HM Revenue & Customs (HMRC) but stopped short of a final determination of the tax liability and the case was adjourned to allow the parties to agree what the adjustment should be. The case has now been settled out of court, DSG has announced.

For taxpayers, the case is instructive in terms of how future transfer pricing cases are likely to be played out. It also encourages HMRC to continue to challenge a number of types of arrangements with increased vigour, and there is potential that it will become a reference case outside the UK in relation to insurance or re-insurance transactions.

Limitgood/Prizedome capital losses case final as House of Lords refuses to hear appeal

Following a decision by its Appeal Committee, the House of Lords will not hear an appeal against the Court of Appeal's 12 March 2009 judgment (for HMRC) in *Prizedome Limited, Limitgood Limited v HMRC*. This means that the decision, on the application of TCGA 1992 Schedule 7A (pre-entry losses – capital loss buying anti-avoidance), is now final. It

should be noted that this does not prevent other taxpayers from appealing in respect of the same point or a similar one.

New disclosure opportunity formally launched by HMRC

A new disclosure opportunity (NDO), allowing people with unpaid taxes linked to offshore accounts or assets to settle their tax liabilities at a favourable penalty rate, has been launched with an HMRC news release and additional information on the HMRC [website](#). The notification period begins on 1 September 2009 (paper) or 1 October 2009 (through a dedicated area of the HMRC website) and ends on 30 November 2009. Dave Hartnett, HMRC Permanent Secretary for Tax, described it as '*the last opportunity of its kind*'. Taxpayers can nominate an agent to notify and disclose on their behalf. Stephen Camm and Jessica McLellan provide a more detailed overview of the NDO process in the [Risk](#) section of this issue.

HMRC consults on draft code of practice on taxation for banks

HMRC has issued a 24-page consultation document which includes a two-page draft *Code of Practice on Taxation for Banks*, fulfilling the Chancellor's promise on 16 March 'so that banks comply with not just the letter but the spirit of the law'. This sets out the behaviours the Government expects from banks in the management of their tax affairs and in their relationship with HMRC, including governance and tax planning. The consultation document explains why HMRC considers a code is needed and its scope, and explores administration, implementation and enforcement. Whereas tax avoidance disclosure keeps the Government in touch with new tax avoidance schemes, the proposed Code takes this one step further and seeks to change behaviours from the outset. HMRC invites comments by 25 September 2009.



Foreign profits draft guidance published on Finance Act 2009 changes

HMRC has recently published draft guidance in relation to the taxation of foreign profits package included in Finance Act 2009.

The following areas are covered in the draft guidance:

- specific aspects of the dividend exemption and, in separate guidance, various aspects of the tax treatment of distributions generally;
- changes to the controlled foreign companies (CFC) rules; and
- debt cap anti-avoidance rules.

[Click here](#) for the general distributions guidance and [here](#) for the remaining guidance.

PwC's debt cap modelling service – assessing and minimising the impact of the debt cap

Finance Act 2009 provides for a new UK debt cap regime, restricting UK tax deductions for finance costs to the level of a group's external finance expense. This will apply for accounting periods commencing on or after 1 January 2010. Any company that is subject to UK corporation tax and is a member of a group is potentially affected. Even groups that are entirely within the UK may be impacted.

Companies need to establish whether they fall within these very complex new rules – and, if so, what the potential impact might be – so that they can take action to optimise their position once the rules come into force.

PwC specialists have developed a modelling service to forecast the impact of the rules on UK group companies.

[Click here](#) for further information.

IASB publishes IFRS for Small and Medium-sized Entities accounting standard

The International Accounting Standards Board (IASB) has published its accounting standard for those companies not yet required to prepare accounts under full IFRS. The UK Accounting Standards Board (ASB) is expected to publish a paper setting out proposals dictating which companies may use the 'IFRS for SMEs' standard. More importantly, the ASB paper is expected to propose that all UK companies use either full IFRS or the SME standard from 2012, effectively ending the use of UK GAAP from that date.

[Click here](#) for further information and to view PwC's comments on the new standard.

New reporting requirement for international movements of capital effective from 1 July 2009

The new reporting requirement for international movements of capital – replacing the Treasury Consent regime – applies for transactions taking place on or after 1 July 2009.

It means that certain transactions involving non-resident bodies corporate, which are controlled by a UK resident body corporate, will have to be reported to HMRC if the market value of the transaction (or series of transactions) exceeds £100 million and the transaction is not an 'excluded transaction'. The reporting deadline is generally six months from the date of the transaction, but this is extended for transactions carried out before 1 October 2009 so that the deadline is 31 March 2010.

The body required to make the report will generally be the UK parent company of a UK-owned group, or the UK holding company for part of a foreign-owned group. Where a foreign

group has two or more sub-groups which each have UK holding companies, the UK holding companies may enter into group reporting arrangements and nominate one of them to carry out reporting responsibilities on behalf of them all.

The following categories of transactions are reportable:

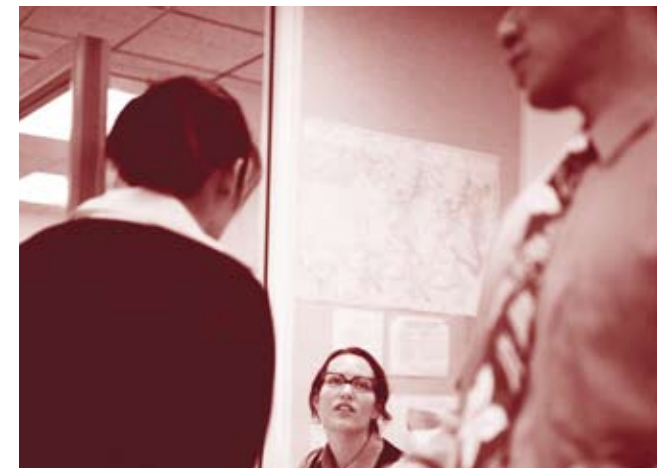
- an issue of shares or debentures by a foreign subsidiary;
- a transfer by the reporting body, or a transfer caused or permitted by the reporting body, of shares or debentures of a foreign subsidiary in which the reporting body has an interest; or
- any situation which results in a foreign subsidiary becoming or ceasing to be a controlling partner in a partnership.

There are certain exclusions.

For further information, please contact:

[Neil Edwards](#) on 020 721 32201

[Jeremy Rayner](#) on 0161 245 2220





It is the end for the E101: what does this mean for your internationally mobile employees?

The European Community is issuing the first major change in 38 years to the rules that determine how internationally mobile workers will be treated for social security purposes across the 27 countries of the European Union, Iceland, Lichtenstein and Norway, together comprising the European Economic Area (EEA), and Switzerland. The new rules will be effective from March 2010 and will affect employers deploying employees across the EU. The aim of the new rules is to reduce the complexity surrounding where an internationally mobile employee should pay social security costs. In practice, particularly for UK employers which operate in a relatively low cost social security environment compared to EU counterparts, costs could increase.

Nigel Duffey, Ben Wilkins and Samantha Huie from PwC's HR Services practice held a webcast on 13 August to discuss how companies can avoid the pitfalls. This covered:

- the hosting and posting rules;
- multi-state worker obligations including those with multiple employment contracts;
- employer obligations;
- interaction with UK taxation; and
- administrative changes for employers including transition and compliance under two sets of rules.

You can view a recording of the webcast by [clicking here](#).

For more information on the changes, please contact:

[Nigel Duffey](#) on 020 7213 4787

Pensions and reward in Finance Act 2009

Our 'at a glance' section on [Finance Act 2009](#) provides the main details of the Act, but below are some of the points that will be of greatest interest to HR and pensions professionals.

- From 6 April 2010, the basic personal allowance will gradually be reduced to nil for individuals with income exceeding £100,000. This will mean that individuals with income of £112,950 or more will not benefit from a tax-free personal allowance (this is based on the 2009/10 personal allowance).
- From 6 April 2011, employer's NIC will increase by 0.5% to 13.3% and, for employees, NIC will increase by 0.5% bringing the maximum for those above the upper earnings limit to 1.5%.
- Although it is not a change, it is worth noting that the capital gains tax rate has remained at 18%.
- Income tax relief for pension contributions made by high earners (or by their employers on their behalf) is to be reduced from 6 April 2011 to raise additional tax revenues.
- For defined benefit (DB) plans, we expect that for affected individuals the accruing benefit will effectively be taxed via Self Assessment by reference to the increase in the accrued pension over the year, multiplied by a factor of 10 (rather than by reference to the actual contributions paid).
- The details of how pensions relief will be restricted from 6 April 2011 have not yet been formulated and the process is subject to consultation, but the current proposal is to start tapering down the relief (from a maximum of 50%) for those with taxable incomes of £150,000 per annum (pa) to the basic rate (currently 20%) for those with taxable incomes of £180,000 pa and above.

- Taxable income for this purpose includes all income, including personal investment income and benefits and is not just restricted to salary.
- Special anti-forestalling measures have been introduced in respect of pension savings after 22 April 2009 to discourage certain individuals (those with taxable income of £150,000 pa or more) from making significant contributions (in excess of their normal 'regular' pension savings where regular is defined as at least quarterly) to registered pension plans before 6 April 2011. This is the only area where any major change on the pensions proposals has been made since the Budget on 22 April 2009.

For more information please contact:

[Carol Dempsey](#) on 020 7212 4641

Tax technical update for tax professionals

On 7 and 8 October 2009 we will be offering our second annual tax technical update for UK based in-house tax professionals. PwC specialists will provide expert insight into the latest tax developments at a residential, two-day event designed to guide busy tax professionals through current tax legislation and recent developments.

Through a series of plenary sessions and workshops, attendees will be given the opportunity to earn continued professional development for ICAEW, ICAS, ACCA and CIOT purposes. The event will also provide plenty of opportunity to network with other tax professionals and specialists.

There are still some places available. To find out more, or to register your interest for this event [click here](#).



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VAT changes — will your business be ready?

The VAT package

From 1 January 2010 the EU VAT rules on liability and reporting for supplies of services will change. For businesses which provide or receive services to or from EU entities the VAT package represents some of the most significant changes in recent years to the way in which VAT operates across Europe. Businesses need to undertake a full impact assessment of the changes to identify the transactions, processes and controls affected by the new rules, and assess whether their billings, accounting and ERP systems are able to cope with the changes. Failure to properly identify the transactions, processes and controls which will be affected by the new rules could lead to unnecessary costs for your business.

Also, on 1 January 2010 the VAT rate should return to 17.5%. The Treasury has estimated that the administrative cost of first cutting, then raising VAT will total at least £300 million for businesses. Others say that this estimate 'considerably' underestimates the true cost to businesses – by at least £50 million – because it fails to take into account the fact that the change will take place at an exceptionally busy time for the retail and hospitality sector.

For more information on the VAT package [click here](#).

Should you need any assistance assessing whether your business will be ready for the VAT changes please contact your usual VAT advisor or:

[Michael Bailey](#) on 020 7804 3254

VAT Forum

On 28 September 2009 we are hosting our next VAT Forum in Manchester. There will be workshops covering the VAT package, SAO, compound interest, environmental taxes

and excise duty. We also have two guest speakers from HMRC's anti-avoidance division: Charles Raymond and Sarah Woodhall. There will be the usual case law update and we will conclude with drinks and canapés. For further details on the event and registration please contact:

[Lisa Burbidge](#) on 020 7804 6756

Senior Accounting Officer sign off

As highlighted in the June and July issues of *Tax First*, Finance Act 2009 includes the introduction of legislation requiring the Senior Accounting Officer (SAO) of large companies and groups to report to HM Revenue & Customs (HMRC) regarding the adequacy of their accounting systems for the production of accurate tax returns. The identity of the SAO must be notified to HMRC and will be required to:

- take reasonable steps to establish, and then monitor, accounting systems that are adequate for the purposes of accurate tax reporting to HMRC;
- certify annually the adequacy of the group's systems, one certificate covering all taxes reported to HMRC; or
- specify the nature of any inadequacies and confirm that they have been notified to the company auditors.

Penalties for careless or deliberate failure will be chargeable on the SAO personally and the company.

PwC's upcoming series of ICTA tax seminars includes a session on 15 September 2009 providing an overview of the SAO legislation. For more details, visit the ICTA website by [clicking here](#).





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NDO: as easy as ABC?

HMRC has announced a 'new disclosure opportunity' (NDO) for taxpayers with offshore assets, as the Special Commissioner forces banks to provide further offshore account information.

Stephen Camm and Jessica McLellan explain who should be considering a disclosure and the process for doing so.

HMRC has recently announced the new disclosure opportunity to encourage taxpayers to tell HMRC about UK tax liabilities arising from offshore assets. This follows on from the success of their offshore disclosure facility in 2007-2008, which brought in approximately 40,000 cases, and in turn gave rise to £400m of additional revenue. This news comes as HMRC pushes for further decisions from the Special Commissioner to compel banks and other financial institutions to provide information about those UK resident customers who hold offshore bank accounts – and, therefore, potentially undisclosed tax liabilities. There is no doubt that this remains an area to which HMRC is dedicating investigative resource and will inevitably lead to intrusive enquires and potential prosecutions for those who do not come clean.

The new disclosure opportunity will be open to taxpayers who hold, or have held, offshore assets (including bank accounts) that have produced taxable income/profits, but have not been disclosed to HMRC, either deliberately or accidentally. Although the introduction of the European Savings Tax Directive in 2005 may mean that bank account interest in recent years has been accounted for, HMRC is interested in undisclosed liabilities potentially going back as far as 1989 and certainly back to 2003.

Despite being targeted at offshore assets, any disclosure must also include undeclared UK tax liabilities. HMRC is

offering a low penalty rate of 10% for those who were not aware of the original offshore disclosure facility and a 20% penalty for those who received letters from HMRC as part of the first disclosure facility, but chose not to come forward. There is a minimum level of tax due of £1,000, below which a penalty will not be charged.

HMRC is offering a three-month window from 1 September to 30 November 2009 for people to register their intention to disclose and obtain a unique reference number. Once this notification has been given, actual disclosures can be submitted on paper between September 2009 and January 2010, or online between 1 October 2009 and 12 March 2010. Tax agents can notify and make disclosures on their clients' behalf.

In order to be submitted, a disclosure needs to be accompanied by payment for the full amount of tax, interest and penalties, as well as a signed certificate confirming that the disclosure is correct and complete. Thereafter, HMRC will risk assess the disclosures by matching the information provided with the data HMRC hold and continue to gather. HMRC will undoubtedly challenge disclosures where contradictory evidence is found.

What should taxpayers do?

It can take some time to gather the information required to support a disclosure; obtaining bank statements and information from offshore institutions can be a slow process. Early action is recommended to those taxpayers who have something to tell HMRC. Determining the right liabilities, interest and penalties is a job for experts, particularly if there are complex issues such as domicile and residency involved. There are no prizes for

overpaying as a result of miscalculating liabilities in the rush to disclose.

For more information relating to the new disclosure opportunity, please call the PricewaterhouseCoopers NDO helpline on 0800 3288215 or [click here](#).





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- 01/09 First chance to notify HMRC on paper under 'new disclosure opportunity'
- 10/09 ICTA seminar: *Private banking and wealth management – the current tax issues*; Hilton London Tower Bridge
- 11/09 Final date for completing questionnaire on CFC reform
- 14/09 Deadline for comments on the IASB's ED on accounting for financial instruments
- 15/09 ICTA seminar: *Senior Accounting Officer requirements – what should companies be doing now?*; Charing Cross Hotel, London
- 21/09 Latest date to respond to the proposals for legislating SP1/09: the 'mixed fund' remittances rule
- 23/09 Closing date for comments on the 2010 non-domestic rating revaluation in England
- 24/09 ICTA seminar: *50% tax rate and pensions*; Charing Cross Hotel, London
- 25/09 Deadline for comments on the code of practice on taxation for banks
- 28/09 VAT Forum; PwC's Manchester office
- 30/09 Consultation closes on the review of the simplification of capital gains rules for groups

October

- 01/10 Comments due on the Walker Review of corporate governance in the UK banking industry
- Deadline for comments on the consultation on HMRC's bulk and specialist information powers
- Deadline for comments on the consultation on the modernisation of excise duties
- Last tranche of CA 2006 changes come into effect
- First chance to notify HMRC electronically under 'new disclosure opportunity'
- 07/10 ICTA seminar: *HR and personal tax planning (financial services)*; Hilton London Tower Bridge
- Tax technical update, Beaumont House, Old Windor, Berkshire
- 08/10 Sixth anniversary of the grant of the FII GLO and recommended latest date for joining
- Tax technical update, Beaumont House, Old Windor, Berkshire
- 12/10 Deadline for comments re consultation on false self-employment in construction
- 14/10 ICTA seminar: *Tax dispute resolution – the changing landscape*; Charing Cross Hotel, London
- 21/10 ICTA seminar: *VAT and improved cash flow*; Charing Cross Hotel, London



- 30/10 Consultation deadline re transactions in securities and unallowable purposes tests generally

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