In his Budget speech of 29 October, the Chancellor introduced his Budget as a budget for Britain's future. He made it clear that the range of measures he was announcing were intended to put the Government on a path to a full spending review next year which would set out the Government’s priorities for public spending. The Chancellor did recognise that Brexit negotiations with the EU were at a pivotal moment. A successful deal between the UK and the EU would deliver a boost through both the end of uncertainty and a boost from the release of the Government’s fiscal headroom that is being held in reserve. However, the Chancellor also made it clear that if economic circumstances were to change in the event of ‘no deal’ being reached then he would consider fiscal interventions and this might involve the upgrading of the Spring Statement to a full Budget.

The Chancellor argued that the UK has turned an important corner and that ‘austerity is coming to an end’. He put forward a range of measures to ensure the sustainability and fairness of the UK tax system in the future and boost investment in the UK. Those measures include the proposed 2% UK Digital Services Tax from April 2020 and the new rules on offshore receipts in respect of intangible property (previously the extension to the royalty withholding tax rules). There are also proposed changes to the intangible fixed asset regime and a new Structures and Building Allowance, which has immediate effect. The alignment of the off-payroll working (IR35) rules in the private sector with the public sector rules will be effective from April 2020 but some of the possible tax-raising changes rumoured before the Budget were not forthcoming. In a welcome boost for individual taxpayers, the personal allowance and higher rate threshold are to rise to the level promised in the Conservative manifesto one year early in 2019.
Business taxes

Digital Services Tax: UK measure announced

Building on position papers released in Autumn Budget 2017 and Spring Statement 2018, the Government has announced it will introduce a Digital Services Tax (DST) aimed at reforming the corporate tax system to capture value generated by certain digital business models from their UK user-base.

The UK measure is intended to be narrowly targeted at social media platforms, search engines and online marketplaces as these business models are considered to derive significant value from participation of their users. Revenues generated that are linked to UK users will be subject to the DST at 2%. For example, this will include revenues generated from targeting adverts at UK users or facilitating transactions between UK users. The DST will be an allowable expense against UK corporation tax.

The measure is not intended to apply to e-retailers, financial and payments services, the provision of online content, sales of software/hardware or television/broadcasting services.

Businesses with global revenues from in-scope activities below £500mn will be excluded and the first £25mn of UK revenues is also not taxable. A safe harbour mechanism for loss-making and very low profit margin businesses will be the subject of an up-coming consultation.

The Government reiterated its commitment to developing an international solution. The UK measure will be formally reviewed in 2025 and disapplied if a global solution is in place by then.

A consultation will be released in coming weeks to explore key design issues, which should be reviewed carefully by businesses potentially affected by the DST or a longer term global measure. The DST will be legislated for in Finance Bill 2019-20, and apply from April 2020.

Comment: The unilateral measure has been relatively narrowly targeted towards social media platforms, search engines and market places but may expand in scope over time as international discussions continue or as unilateral action is taken by more territories. The detailed provisions will need careful consideration to assess the impact on particular businesses and determine what action should be taken.

Offshore receipts in respect of intangible property (previously extension of royalty withholding tax): draft legislation released

The Government has published draft legislation to apply a UK income tax charge to amounts received by a foreign resident entity in respect of intangible property to the extent that those amounts are referable to the sale of goods or services in the UK. The measure will apply to the proportion of the foreign resident’s income that is derived from UK sales made directly by the foreign resident entity or related parties and, in some circumstances, unrelated parties and will be effective from 6 April 2019. The measure will only apply to entities that are resident in jurisdictions with whom the UK does not have a full tax treaty.

The draft legislation follows a consultation document that was published on 1 December 2017 to extend the royalty withholding tax rules. A response to the consultation has also been published. The draft legislation makes significant changes to the proposals set out in the consultation document including:

► Directly taxing the offshore entities that realise intangible property income in non-full tax treaty jurisdictions, rather than levying a withholding tax, and making related parties jointly and severally liable for the tax.

► Broadening the income in scope of the measure to include embedded royalties and income from the indirect exploitation of intangible property in the UK market through unrelated parties.
Introducing a de minimis UK sales threshold of £10 million, an exemption where tax paid in the territory of residence of the foreign entity is at least 50% of the UK income tax charge that would otherwise arise, and an exemption for entities that have not acquired their intangible property from related parties where substantially all of the relevant activity has at all times been undertaken in the territory of residence of the foreign entity.

Anti-avoidance rules that protect against arrangements designed to avoid the charge, where one of the main purposes is to obtain a tax advantage, apply from 29 October 2018.

Comment: The legislation will take effect from 6 April 2019, but anti-avoidance provisions will apply from 29 October 2018. Given the limited time before the rules enter force, businesses that hold intangible property in non-treaty jurisdictions should be looking at the provisions in detail and considering the impact in order to assess what actions might need to be taken in advance of the new rules coming into effect.

Changes to intangible fixed assets regime

As announced at Budget 2018, and following a consultation document published in February 2018, the Government has confirmed that it intends to make changes to the corporate intangible fixed assets regime. In particular, the Government has confirmed that it intends to:

- Partially reinstate relief for goodwill in the acquisition of businesses with eligible intellectual property from April 2019. Detailed proposals will be included in the Government’s response to the consultation to be published on 7 November 2018. Whilst provisions for this policy will not be included at the time of the introduction of Finance Bill 2018-19, after a brief consultation to ensure the policy design delivers the intended outcome, the Government will seek to legislate for the change in Finance Bill 2018-19 through Government amendment.

- Make changes to the regime’s de-grouping charge rules so that a charge will not arise where de-grouping is the result of a share disposal that qualifies for the Substantial Shareholding Exemption, so that the rules more closely align with the equivalent rules for chargeable gains. The Government intends to legislate for this change in Finance Bill 2018-19, but has confirmed that the changes will have effect in relation to de-groupings occurring on or after 7 November 2018.

Comment: Whilst we will have to wait for the detailed proposals to be published, the proposed changes could have a significant impact on groups and improve the international competitiveness of the UK as a location to hold and exploit intellectual property. There will be a brief consultation period on the proposed changes and once the detailed proposals have been published, potentially affected groups should carefully assess the possible impact of the changes and consider what action to take. Nothing was said about removing the pre/post 2002 distinction or revisiting the 4% fixed rate amortisation election, despite these being considered in the February consultation.

Capital allowances

Various amendments have been made to the capital allowances regime:

- **Structures and Buildings Allowance (SBA):** Tax relief is introduced for new non-residential buildings and structures (excluding land) at an annual rate of 2% on a straight-line basis. The new incentive is broader than the previous Industrial Building Allowances regime abolished from April 2011 and applies to contracts for construction works entered into on or after 29 October 2018. Relief will be limited to the original cost of construction or renovation, relieved across a fixed 50-year period regardless of ownership changes, and can be claimed from the time the building is brought into use.

- **Special rate pool:** In conjunction with the introduction of SBA, the writing down allowance rate for integral features and long life assets will be reduced with effect from April 2019 from 8% to 6% per annum on a reducing balance basis.
Annual investment allowance (AIA): This 100% first year allowance has been temporarily increased from £200,000 to £1mn for expenditure incurred between 1 January 2019 and 31 December 2020.

Meaning of ‘plant’: There is clarification that expenditure incurred on the alteration of land may only qualify for plant and machinery allowances where the assets being installed are plant or machinery (not buildings or structures) as a result of recent case law.

Enhanced capital allowances (ECAs): From 31 March 2020 (for companies) and 5 April 2020 (for unincorporated businesses), the scheme which currently provides a 100% first year deduction for certain energy-saving or environmentally beneficial plant and machinery (including the associated First Year Tax Credit) is to be abolished.

Electric charge-points: As previously announced, the 100% first-year allowance for such expenditure will be extended for a further 4 years until 31 March 2023 for corporation tax and 5 April 2023 for income tax.

Comment: After relatively minor changes to the capital allowances regime in recent years, the reforms announced this year are extensive and represent the most significant amendments to the capital allowances regime since 2008.

The Government has been swift to act on the Office for Tax Simplification’s recommendations following the consultation on capital allowances earlier this year, and the Government’s aim of improving the UK’s international competitiveness and encouraging investment is likely to be welcomed by UK businesses and investors at a time of increased uncertainty.

A fivefold increase in the AIA from £200k to £1mn, together with the introduction of tax relief for new non-residential buildings and structures, should help stimulate investment in the UK and will have a positive impact on all tax-paying businesses which invest in capital assets used for commercial activities. Businesses may wish to consider accelerating their future capital investment programmes in order to benefit from these measures.

However, the abolition of the 100% first year allowance (and credits) for energy-saving and environmentally beneficial plant is disappointing, given the First Year Tax Credit was extended in Finance Act 2018. In addition, the reduction in the annual rate of relief for special rate pool expenditure from 8% to 6% will have a negative cash flow impact on existing capital allowances claims.

Diverted Profits Tax: amendments

A number of amendments to the Diverted Profits Tax (DPT) legislation have been announced. The legislation will close a perceived tax planning opportunity (whereby corporation tax return amendments are made after the DPT review period) and makes clear that diverted profits that are subject to DPT will not also be subject to corporation tax. The DPT review period (where HMRC and taxpayers work together) is also extended to 15 months and taxpayers will be able to amend their corporation tax return during the first twelve months of the review period.

Comment: The clarification that DPT and corporation tax cannot both apply to profits is welcome, as is the extension of time limits for taxpayers to make appropriate adjustments to the tax return. The DPT legislation is complex and the potential for a double charge under the existing provisions was an area in which EY had asked for statutory confirmation.

The change to extend the maximum review period from 12 to 15 months reflects our experience that given the scale and complexity of DPT enquiries, more time may be needed to reach an agreement, including in cases where both parties are working collaboratively.

New regime for taxation of hybrid capital instruments

The Government announced on Budget Day that it will legislate to introduce a new elective regime relating to the taxation of ‘hybrid capital instruments’. In introducing these rules, the Government seeks to provide certainty regarding the tax treatment of hybrid capital instruments that are, in essence, genuine debt instruments. These rules would apply to any UK-resident company which issues hybrid capital instruments, regardless
of sector, and the existing regulations which apply to certain capital instruments issued by banks or insurance companies will be repealed.

It is expected that new provisions will define a hybrid capital instrument as being a loan relationship on which the debtor is allowed to defer or cancel interest payments, and which has no significant equity features. The provisions are expected to provide that coupons on the instruments are potentially deductible under the loan relationship rules, even if recognised in equity rather than P&L. A number of other measures are expected, including a specific exemption from all stamp duties for instruments falling within the rules. The election for the rules to apply will be ineffective where there are arrangements, the main purpose, or one of the main purposes, of which is to obtain a tax deduction for any person.

The Government also intends to include provisions to eliminate mismatches in tax treatment which can arise where a company issues external debt, and then lends the funds raised to fellow group companies.

Corporate capital loss restriction

The Government will legislate in Finance Bill 2019-20 to restrict companies’ use of carried-forward capital losses to 50% of capital gains from 1 April 2020. The measure will include a single allowance that allows companies unrestricted use of up to £5m capital or income losses each year. Draft legislation is due to be published in summer 2019 and a consultation was published on 29 October 2018, which closes on 25 January 2019. The consultation aims to consider the method to be used to implement this restriction, specific exemptions from the restriction and to identify any unintended consequences.

An anti-forestalling measure to support this change will have effect from 29 October 2018.

Other business tax developments

Other measures announced in the Budget include:

► **Permanent Establishment (PE) - Anti fragmentation rule:** The Government plans to legislate in Finance Bill 2018-19 to give full effect to changes made to its tax treaties as a result of the OECD BEPS project. The proposed change will remove access to the current PE exemptions in UK law where the business activities have been fragmented within the UK, unless the overall activity carried on may be seen as preparatory or auxiliary.

► **A market value rule for stamp duty and stamp duty reserve tax (SDRT) on certain transfers:** This rule is to be introduced for transfers of listed securities to a connected company (or nominee). Where these provisions apply, the transfer will generally be chargeable on the higher of the consideration given and the market value of the listed securities. For stamp duty, these measures will apply in respect of transfer instruments executed on or after 29 October 2018. For SDRT, these measures will apply (a) where the agreement to transfer securities is conditional and the condition is satisfied on or after 29 October 2018 and (b) in any other case, the agreement is made on or after that date. In addition the Government will also consult on aligning the consideration rules for stamp duty and SDRT and introducing a general market value rule for transfers between connected persons.

► **Preventing abuse of R&D tax relief for loss making SMEs:** The Chancellor has announced a consultation on the reintroduction of a PAYE Cap on R&D relief for loss making SMEs for accounting periods commencing on or after 1 April 2020, limiting the payable tax credit to three times the total of a company’s PAYE and national insurance contributions (NIC) liabilities. The new rule will limit the payable R&D tax credit for loss making SMEs to the lesser of 14.5% of the surrenderable loss, or three times the company’s total PAYE and NIC liabilities for the period.
Developments still to come in the Finance Bill

We expect to see the following measures taken forward in next week’s Finance Bill 2018-19, though we are anticipating a number of changes to the draft clauses published on 6 July 2018:

► **Tax adjustments for lease accounting changes:** As previously announced, in Autumn Budget 2017, the Government intends to legislate, in Finance Bill 2018-19, with the intention of ensuring that the tax legislation, including the long funding lease and corporate interest restriction rules, continue to operate as intended following the introduction of the new accounting standard for leases, IFRS 16.

► **Corporate interest restriction rules:** Legislation is expected to correct and clarify particular areas of these rules (treatment of capitalised interest, REITs, unpaid employee remuneration and public infrastructure companies).

► **Minor changes to the reform of loss relief rules:** The changes include corrections to the rules where potential claims for loss relief might exceed the limits of what was intended.

► **Controlled Foreign Companies rules:** There are two proposed amendments to the UK CFC rules to ensure that the provisions of the EU Anti-tax Avoidance Directive (ATAD) are transposed into UK tax law. Both will be effective from 1 January 2019.

► **Anti-hybrid legislation:** There are also two proposed amendments to anti-hybrid legislation needed to comply with ATAD, both of which will be effective from 1 January 2020.

► **Exit charges:** Again to comply with ATAD, there will be changes to corporation tax exit charges, including the rules for deferred payment of exit charges on a transfer of assets or tax residence between the UK and an EEA state by companies resident in the UK or an EEA state. There are also changes to repeal existing provisions that provide for the postponement of exit charges. The changes will take effect from 1 January 2020.

► **Oil activities and PRT:** Legislation will be published to provide a mechanism by which a company may transfer a portion of its historic profits and the associated tax paid on those profits to another company, on the sale of an oil licence. The legislation will also enable participants in oil fields to obtain petroleum revenue tax (PRT) relief for decommissioning expenditure in certain situations. Both measures are intended to remove tax barriers to North Sea investment.
Property taxes

Capital Gains: Collective Investment Vehicles and REITs

The Government has confirmed that a special regime will apply to the taxation of gains on direct and indirect disposal of UK property by non-resident Collective Investment Vehicles (CIVs). These changes follow on from reforms announced in the Autumn Budget 2017 to the taxation of capital gains realised by non-UK residents on disposals of UK property and UK property rich entities with effect from 6 April 2019.

Draft legislation on the tax treatment of CIVs will be set out in Finance Bill 2018-19 on 7 November.

The UK Government has also announced that for UK REITs which are themselves UK property rich, the existing exemption from corporation tax under the REIT regime will be extended to gains on disposals of UK property rich entities.

Non-resident landlords brought within corporation tax charge from April 2020

The Government has released draft legislation to facilitate the entry of non-resident landlords into the UK corporation tax regime from 6 April 2020. Corporation tax will be payable on the profits of a UK property rental business of a non-resident company from that date, and the draft legislation confirms this will extend to loan relationships and derivatives entered into for the purposes of the non-resident’s UK property business. A number of other consequential amendments are included to cover the transition.

SDLT surcharge on overseas buyers of UK homes

The Government will publish a consultation in January 2019 concerning the potential introduction of a stamp duty land tax (SDLT) surcharge of 1% for non-residents buying residential property in England and Northern Ireland.

Extension of SDLT first-time buyers’ relief to initial purchases of shared ownership homes

The Government has announced that SDLT first-time buyers’ relief will now be extended to all first-time buyers of shared ownership properties in England and Northern Ireland. The relief will not apply to purchases of properties valued over £500,000.

The measure will also apply retrospectively to transactions with effective dates on or after 22 November 2017. The relief must be claimed in an SDLT return, or by amendment where a SDLT return has already been filed. The amendment window for those who completed their transaction before 29 October 2018 will be extended by a further 12 months until 28 October 2019.

Business rates

A number of measures were announced to help support the High Street, including changes to business rates.

For occupied retail properties with a rateable value below £51,000, business rates will be cut by one-third for the 2 years from April 2019. The Government announced that in total the relief amounts to a £900 million reduction in business rates over the period, and for affected businesses, represents a maximum potential saving of around £8,000 per property per year.

Additional measures aimed at the High Street include planning reforms, business rates relief for public lavatories, continuation of the local newspaper business rates discount, a High Streets Task Force to help local high streets adapt and thrive, and funding to improve community assets such as historic buildings.
Personal taxes

Rates and allowances

The personal tax allowances and capital gains tax annual exemption figures have been announced for the tax year 2019-20.

The Government will increase the income tax personal allowance to £12,500 from 6 April 2019, one year earlier than planned. The amount of income on which tax at the basic rate will be payable in 2019-20 will increase to £37,500, so individuals will begin paying higher rate tax on income above £50,000. These thresholds will be frozen for 2020/21 and will increase in line with inflation (CPI) in future years.

These thresholds will apply to all types of income for taxpayers in England and Northern Ireland. The Scottish Parliament currently sets income tax rates and thresholds on non-savings and non-dividend income for Scottish taxpayers. From April 2019, the Welsh Government will set a Welsh rate of income tax for Welsh taxpayers for non-savings and non-dividend income.

The starting rate for savings income is unchanged at 0% and the starting rate limit for savings will remain at its current level of £5,000 for 2019-20. The dividend allowance for 2019-20 will remain at its current level of £2,000. The dividend tax rates remain unchanged.

The capital gains tax annual exemption for individuals has increased to £12,000 for 2019-20. There are no changes to personal income tax, national insurance and capital gains tax rates for 2019-20.

The total amount that individuals can save each year into all ISAs from 6 April 2019 will remain at £20,000. The annual subscription limits for Junior ISAs and Child Trust Funds for the tax year 2019-20 have been increased in line with inflation (CPI) to £4,368.

The pension lifetime limit has increased in line with inflation (CPI) to £1,055,000. There are no changes to the pension annual allowance limit.

Comment: The decision to bring forward the increase in the level of income tax personal allowance and higher rate band will be welcome news for taxpayers and continue to take more people out of the UK income tax net.

Entrepreneurs’ relief

Two significant new announcements have been made in respect of entrepreneurs’ relief. The relief, which, when available, reduces the capital gains tax rate to 10% on a disposal of business assets, has a number of qualifying conditions that must be met and some amendments to these have been announced.

► **Minimum qualifying period:** From 6 April 2019, the minimum period throughout which the qualifying conditions must be met in order to qualify for entrepreneurs’ relief will be increased from 12 months to 24 months.

► **Definition of personal company:** In order for an individual to qualify for entrepreneurs’ relief on the disposal of company shares, the company must be the individual’s ‘personal company’. For disposals on or after 29 October 2018, an individual must have a 5% interest in both the distributable profits and the net assets of the company in addition to the existing requirements to be entitled to at least 5% of the ordinary share capital and voting rights.

► **Share dilution:** In addition to the new announcements, under a measure announced at Autumn Budget 2017, an individual will still qualify for entrepreneurs’ relief on a portion of their capital gain where their interests are diluted below the 5% threshold tests by virtue of a share issue that takes place from 6 April 2019.

Comment: Following speculation that the Government may abolish entrepreneurs’ relief altogether, these more minor amendments may come as a relief to many. However, the increase in the minimum holding period and changes to the qualification criteria will reduce the number of individuals able to qualify. The additional requirements for a 5% interest in the income and assets of the company may particularly impact shareholders in companies with more than one share class.
Private residence relief

The Government announced that from April 2020, changes will be introduced to restrict the availability of private residence relief for individuals who do not occupy their main residence for the entire period of ownership.

Subject to consultation, the Government proposes:

► A reduction in the ‘final period exemption’ from 18 months to 9 months. This period was reduced to 18 months from 36 months with effect from 6 April 2014.

► A change to the relief from capital gains tax for gains which accrue in a period where a main residence is let out such that gains will only qualify for relief where the owner of the property is in shared-occupancy with the tenant. Currently up to a maximum of £40,000 of gain can qualify for lettings relief where the property has also been used as a main residence.

Comment: These measures will adversely affect those who find it difficult to sell their home and need to move house for work or family reasons. They follow a number of measures in recent years which may reduce the attractiveness of holding property as an investment.

Venture capital schemes

Following responses to a consultation during 2018, the Government has announced it intends to take forward proposals in relation to EIS approved funds for knowledge intensive companies (KICs), introducing the following measures:

► Requiring approved funds to have a greater focus on investments in KICs

► Giving approved funds a longer period over which to invest their capital

► Allowing investors in approved funds to set their income tax relief against liabilities in the year before the fund closes as opposed to just in the year in which the fund closes

The new approved fund structure will be introduced from April 2020 and the current approved fund structure will be withdrawn.

Comment: These measures are intended to add additional flexibilities to respond to specific concerns about the HMRC approved fund structure in relation to KICs. This follows a number of measures introduced in 2018 to extend the rules for VCTs, EISs and SEISs in relation to capital and R&D intensive companies.

Profit fragmentation

In accordance with the announcement at the Autumn Budget 2017, targeted anti-avoidance legislation will be included in Finance Bill 2018-19 which is aimed at preventing businesses arranging for their UK taxable profits to accrue to non-UK resident entities where significantly less tax is paid.

Comment: Responses to the consultation document raised concerns that this new legislation added a further layer of complexity and highlighted that existing anti-avoidance provisions tackled this area. However, HMRC insist that there is a need for new legislation with a particular reference to profits arising to offshore companies owned by offshore trusts where current anti-avoidance legislation does not necessarily impose an immediate UK tax charge.
Other personal tax measures

► **The taxation of trusts:** A consultation on the taxation of trusts was announced in Budget 2017 and Budget 2018 suggests this is still something that we should expect. The stated aim of the consultation is to make the taxation of trusts simpler, fairer and more transparent. We will need to wait a little longer for any further detail.

► **Inheritance tax treatment of additions to existing trusts:** There is to be legislation introduced in Finance Bill 2019-20 to clarify HMRC’s established position on the inheritance tax treatment of additions to existing trusts. The changes will confirm that additions of assets by UK-domiciled or deemed domiciled individuals to trusts established when they were non-domiciled, is not excluded property for inheritance tax purposes. There will also be legislative changes to introduce additional excluded property tests for transfers between trusts which take place after Finance Bill 2018-19 receives Royal Assent.

► **Residence nil rate band:** There have been two technical changes to the way in which the residence nil rate band operates for the purposes of inheritance tax. They clarify the way in which the downsizing rules operate and aim to ensure the legislation works as originally intended.
Employment taxes

Off payroll working in the private sector (IR35)

The rules for the taxation of contractors engaged via intermediaries in the private sector will be brought into line with the public sector rules as follows:

- From 6 April 2020, PAYE/NIC deductions will be due at source if the nature of the work undertaken means that IR35 applies.
- The changes will apply only to large and medium sized businesses.
- For the 1.5mn smallest businesses, the existing IR35 rules will continue such that the contractors will be responsible for deciding whether IR35 applies and accounting for any PAYE/NIC due.

Comment: HMRC will consult in the coming months on the detailed operation of the changes with the intention of informing the draft Finance Bill legislation which is expected to be published in summer 2019. Whilst the implementation date of April 2020 should be welcomed, the planned further consultation on the operational details means that employers may not have certainty until late 2019. This may not allow enough time for changes to be made to systems if business await the outcome of these consultations before acting.

Changes to the apprenticeship levy

The Chancellor has announced that employers can transfer up to 25% of their apprenticeship levy funds (formerly 10%) to their supply chain. This measure applies to employers with a UK paybill of greater than £3mn. In addition, non-apprenticeship levy employers can share the cost of training and assessing their apprentices with the Government. The employer co-contribution rate is being halved from 10% to 5%. The Government will pay the balance of 95% (subject to caps).

Comment: The apprenticeship levy was introduced on 6 April 2017 and was intended to increase the number of apprentices available to UK businesses, producing a highly skilled workforce to boost the economy. Businesses should review how training is provided to staff and the associated supply chain in order to make the most of the apprenticeship levy scheme.

Short-term business visitors from non-UK branches

In response to the consultation on the tax and administrative treatment of short-term business visitors (STBVs) from branches of non-UK resident employers, HMRC has announced an expansion of the PAYE special arrangement (at PAYE 81950) for STBVs with 30 workdays or fewer, to 60 workdays or fewer, coupled with an alignment of the annual reporting and remittance deadlines from 19 April and 22 April to 31 May. These changes will take effect from the 2020-21 tax year.

HMRC had also consulted on introducing an exemption for STBVs from overseas branches but, whilst recognising the effect of the contrasting treatment of STBVs from overseas branches and overseas entities and the potential to make the UK a more attractive place to work, ultimately concluded that introduction of such an exemption would not be in the national interest given wider deficit reduction commitments.

Comment: The taxation of STBVs from overseas branches had been a source of long-standing frustration for business particularly in those sectors where branches or representative offices are commonplace. Some employers have commented that the costs of administering a payroll and its accompanying processes for STBVs, many of whom will not ultimately suffer income tax because of the availability of the personal allowance, was an excessive burden and created a negative impression of the UK as a place to do business.

Against this backdrop the extended tax deadlines should be a welcome reform. However, many will be disappointed that the Government has decided not to introduce an exemption for branch STBVs, meaning that the current asymmetric treatment of branch STBVs and those from separate legal entities remains. The Government has however committed to keep the area under review.
National insurance treatment of termination payments

The Government has suggested that the introduction of employer’s national insurance contributions (NICs) on termination payments over £30,000 will be delayed until April 2020. The Government originally intended for these reforms to take effect from April 2018, this being a measure remaining from the draft NICs Bill published on 5 December 2016. This was then delayed to April 2019 and appears now to have been further delayed.

Comment: The apparent delay in the introduction of this reform to April 2020 is unexpected. Employers are likely to welcome the additional year to prepare for the reforms and the possible benefit of a reduced NIC liability in 2019-20.

Increases in National Minimum and National Living Wages

From April 2019, employers will be required to pay their workers an increased rate for National Minimum Wage and National Living Wage. Following on from the recommendations from the Low Pay Commission, the Government has announced that National Living Wage will increase from £7.83 to £8.21 per hour from April 2019. National Minimum Wage rates will increase following the proposals as follows:

- Increases in the rate for 21 to 24 year olds from £7.38 to £7.70
- Increases in the rate for 18 to 20 year olds from £5.90 to £6.15
- Increases in the rate for 16 to 17 year olds from £4.20 to £4.35
- Increases in the rate for apprentices from £3.70 to £3.90

Other employment tax measures

- The Government is to target the Employment Allowance to support smaller businesses. From April 2020 the allowance will be restricted to employers with an employer’s NICs bill below £100,000 in the previous tax year.

- An amendment will be made to the legislation to clarify the availability of stamp duty and stamp duty reserve tax relief for approved share incentive plans. This is aligned with HMRC’s existing policy and corrects an oversight to the previous changes to the legislation when HMRC introduced self-certification for approved share plans.

- The taxable benefit where a van is made available to an employee for private use will increase from £3,350 to £3,430 in the 2019-20 tax year. The van fuel benefit will increase from £633 to £655 and the value of the multiplier for the car fuel benefit will increase from £23,400 to £24,100 in the 2019-20 tax year.
Indirect taxes

With the uncertainty around the outcome of the Brexit negotiations, it is perhaps not surprising that many of the indirect tax measures had previously been announced or else were fairly typical changes to rates and bands.

VAT registration threshold

The VAT registration threshold has been frozen at £85,000.

Comment: In the run up to the Budget, there had been speculation that the VAT registration threshold would be decreased but the Government has confirmed that it will remain at £85,000 until 31 March 2022. The Government will look at introducing a smoothing mechanism once the terms of a Brexit deal are clear, with the ultimate intention of reducing the ‘cliff edge’ impact of the registration threshold.

Insurance anti-avoidance measure

The Budget includes a measure to counter tax avoidance arrangements involving so-called ‘offshore looping’ whereby insurance groups set up an insurer in a non-EU VAT jurisdiction which gives them a competitive advantage over UK based insurers. The measure will have effect on and after 29 March 2019.

Comment: HMRC appears to have taken on board concerns raised that draft legislation released in the summer was too blunt an instrument and impacted the financial services sector as a whole. The Budget’s announcement that the draft legislation has been refined to target these specific structures is a positive step.

VAT grouping

HMRC will release guidance relating to the operation of VAT grouping. This will cover eligibility requirements for branches, the charge to VAT on bought-in services provided between group members as well as HMRC’s ‘protection of the revenue’ powers. These powers allow HMRC to remove taxpayers from VAT groups where it considers there is an undue loss of tax. As previously announced, HMRC will also enact legislation to allow non-corporate bodies to join groups.

Comment: In addition to responding to external factors such as litigation, these changes reflect how HMRC is continuing to review and amend how VAT groups work.

Alternative method of VAT collection: split payment method

Following earlier consultation, the Government will publish a response document on 7 November 2018 covering the proposed split payment method (the purpose of which is to reduce online VAT fraud) for online retailers.

Comment: HMRC will establish an industry working group which will explore next steps and the implementation of the proposals.

Adjustments under Regulation 38

New VAT rules will be introduced in situations where there has been a retrospective reduction in the price of goods and services which will specifically address when VAT returns have to be adjusted and credit notes issued. These changes will take effect from September 2019.

Comment: These new rules are in response to recent litigation.

VAT on higher education fees

Education providers registered with the Office for Students (OfS) in the Approved (fee cap) category will be eligible for the same VAT exemptions as currently apply to traditional universities and providers eligible for public funding from the OfS. Further guidance will be introduced before the 2019-20 academic year.

Comment: This change will be welcome news for education providers impacted by the change, as well as students who will feel the benefit through not paying an additional 20% VAT on tuition fees.
Remote gaming duty rate to increase

With effect from 1 October 2019, the rate of remote gaming duty (RGD) will increase from 15% to 21%. On the same date, the stake limit for fixed odds betting terminals (FOBTs) will be reduced to £2 per play.

Comment: The increase in RGD brings the rate closer to the duty rates for FOBTs, which are currently dutiable at a higher rate of 25%. The increase will also help to plug some of the revenue gap caused by the reduction in FOBT stakes to £2.

Plastics Levy

To reduce the problem of excessive and environmentally harmful plastic packaging, and incentivise manufacturers to use recycled plastic, the Government intends to introduce a tax on the production and import of plastic packaging from April 2022. Subject to consultation, this tax will apply to plastic packaging which does not contain at least 30% recycled plastic as an incentive for manufacturers to produce more sustainable packaging.

Comment: Following an unprecedented response to the call for evidence earlier this year, the report identified a number of single use plastic items where urgent action would be taken to ban or restrict their use. The taxation of single use plastic items will remain under review.

Other VAT and duty developments

Other indirect tax announcements and material published alongside the Budget include:

► Domestic reverse charge on construction services: this will take effect from 1 October 2019.

► Unfulfilled supplies/prepayments: With effect from 1 March 2019, where a supply has been paid for but not received, it will be within the scope of VAT.

► Electronic sales suppression: A call for evidence was published.

► Vouchers: There was confirmation of the implementation of the EU voucher rules into UK legislation in Finance Bill 2018-19.

There were also a number of typical changes to rates including:

► Climate change levy, carbon price support rates, aggregates levy, landfill tax and landfill communities fund.

► Air passenger duty.

► Alcohol, tobacco, fuel and vehicle excise duty.
Tax Administration and disclosure

Insolvency and protection of taxes

The Government will legislate with effect from 6 April 2020 to give HMRC greater priority to recover taxes collected and held by a business on behalf of other taxpayers, including VAT, PAYE Income Tax, employee NICs and Construction Industry Scheme deductions, in the event of insolvency of the business. The current rules, which have been in place since HMRC’s preferential creditor status was removed in 2003, will remain unchanged for taxes owed by the business itself, such as corporation tax and employer NICs.

In addition, following Royal Assent of Finance Bill 2019-20, directors and other persons involved in tax avoidance, evasion or phoenixism (the practice of carrying on the same business or trade successively through a series of companies where each becomes insolvent) will be jointly and severally liable for company tax liabilities, where there is a risk that the company may deliberately enter insolvency.

Comment: In combination with HMRC’s existing enforcement action powers, including the direct recovery of debts from individuals, this will further strengthen HMRC’s ability to collect taxes due.

Voluntary tax returns

Retrospective legislation is to be introduced in Finance Bill 2018-19 seeking to put HMRC’s practice of accepting voluntary tax returns onto a statutory basis.

Comment: HMRC has had a long-standing practice of accepting voluntary (i.e. unsolicited) tax returns and treating these in the same way as returns filed in response to formal notice to file a return.

However in a case decided by the First-Tier tax tribunal in 2016 it was held in favour of the taxpayer that a return submitted voluntarily should not be treated as valid, and as a result additional tax HMRC was seeking following an enquiry into that return was not due. This decision has prompted further taxpayer challenges as to whether certain tax returns (and enquiries into those returns) are valid.

The proposed retrospective legislation will seek to prevent those challenges from succeeding, while also clarifying the status of voluntary returns for the future.

Other developments

Other measures announced include:

► Ensuring compliance through online platforms: In Spring Statement 2018, the Government launched a call for evidence on the role of online platforms, such as those which facilitate the sharing economy and the gig economy, or which connect buyers with individuals or businesses offering services or goods for sale. In particular, the Government wished to understand how these platforms interact with their users, and wanted to gather views on how they might create opportunities for individuals or businesses to avoid paying tax, and how platforms might work together with HMRC to help users meet their tax obligations. On Budget Day, the Government announced that, in its response to this call for evidence, it will set out its intention to improve guidance for people and businesses earning money through online platforms, and to explore how greater use of data can further support sustainable compliance with the tax rules.

► Brexit power to amend tax legislation: Finance Bill 2018-19 will include a power allowing the Government to make ‘minor’ amendments to tax legislation if the UK exits the EU without entering into a withdrawal agreement with the EU (a ‘no-deal’ Brexit).

The power will allow the Government to make minor amendments to preserve the effect of existing tax legislation and allow the Government to bring international tax agreements into effect in UK law. Finally it removes references to EU legislation to ensure that whether (and by how much) a taxpayer is unjustly enriched only refers to sums of tax wrongly paid because of a mistake of UK legislation (and not of EU legislation). This will apply to Insurance Premium Tax, Landfill Tax and Excise Duty.
► **Tackling tax avoidance and evasion in the hidden economy:** Following the consultation on “Tackling the hidden economy: public sector licensing”, which was published in December 2017, the Government announced on Budget Day that it may include legislation in Finance Bill 2018-19 which would seek to make it more difficult to operate in the hidden economy. The legislation would introduce a tax registration check linked to licence renewal processes for some public sector licences. Applicants would need to provide proof they are correctly registered for tax in order to be granted licences.

► **Offshore compliance strategy:** The Government has said it will publish an updated offshore tax compliance strategy to tackle offshore tax evasion and non-compliance. The previous strategy was published in 2014.

► **Updates to GAAR:** The Government has also said minor procedural and technical changes will be made to the General Anti-abuse Rule in Finance Bill 2019-20. No details are given.

► **New statutory remedy for ACT claims:** The Government has announced it will introduce a new statutory remedy in relation to advance corporation tax (ACT) in Finance Bill 2018-19 to address uncertainty that has arisen as a result of the Supreme Court’s decision in Prudential Assurance Company Ltd (the Dividend GLO).

► **New model for late payment and late submission penalties postponed:** The Government has postponed the introduction of a new model for late submission and late payment penalties until a future Finance Bill to allow for further consideration of the proposals.

Developments still to come in the Finance Bill

We expect to see the following changes taken forward in next week’s Finance Bill, draft clauses for which were published on 6 July 2018:

► **Extension of time limit for offshore non-compliance:** Following consultation, the draft legislation to increase the assessment time limit for offshore tax non-compliance to 12 years for income tax, capital gains tax and inheritance has been amended to clarify that the extended time limits will apply unless HMRC already have the information needed to assess the tax due (from international exchange agreements).

► **Interest harmonisation and sanctions for late payment:** The Government has confirmed that the Finance Bill 2018-19 will contain measures making changes to certain existing interest rate-setting provisions for interest on unpaid tax or penalties, and repayment interest. It has also announced that the measures will include the charging of interest on unpaid and late paid penalties for PAYE.

► **Security deposits for corporation tax and construction industry scheme deductions:** Legislation will extend the existing security deposit legislation to corporation tax and the construction industry scheme (CIS).
What is next?
The Finance Bill 2018-19 is due to be published on 7 November, formally as the Finance (No.3) Bill. It will be published while the Commons is in recess with the expectation that clauses in the Bill chosen for debate before the Committee of the whole House will be debated soon after the House returns on 12 November.

The Finance Bill is due to be enacted by March 2019, before the end of the current tax year.

Further information
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