SLAUGHTER AND MAY/

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AUTUMN 2024 HR BUDGET SPEEDREAD

QUICK LINKS

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Pensions

"Carried interest"

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The Chancellor today announced significant changes to the ways in which businesses and individuals will be taxed in her first Budget. An increase in employer's National Insurance Contributions and a change to the treatment of "carried interest" had been widely trailed in the media beforehand, but there were new announcements on capital gains tax, pensions and the abolition of a taxpayer's "tax domicile". In this HR Budget speedread, we explain and explore the key implications of the Chancellor's statement to Parliament for employers and their staff.

NATIONAL INSURANCE CONTRIBUTIONS (NICS)

The most significant tax change for many employers will be the increase in employer's NICs by 1.2% to 15% from April 2025, which will constitute an incremental cost for companies on most forms of remuneration paid to employees. The threshold at which this increased level of employer's NICs will become payable on an employee's pay is also being reduced from £9,100 to £5,000 per year.

That said, certain forms of employee pay will remain exempt from the NICs regime. This includes the gains made by employees under HMRC-approved share incentive arrangements, such as Sharesave (or SAYE) Plans, Share Incentive Plans (SIPs) and Company Share Option Plans. The increase in employer's NICs will therefore increase the tax efficiency of these arrangements.

It is also worth remembering that, under existing legislation, companies can (with the employee's agreement) transfer the employer's NICs liability to the employee, where the cost of the company satisfying the employer's NICs liability would be commercially prohibitive. As a matter of practice, few UK-listed companies do in fact transfer the employer's NICs liability to employees and we anticipate that, where transfers do take place, these will be implemented by smaller, high-growth companies.

Conversely, the Chancellor was at pains to emphasise that the Budget would not increase the tax burden on employees directly. Accordingly, there will not be any increase in the rates of income tax or employee's NICs and the Government will not extend the freeze in income tax and NICs thresholds implemented by the previous administration. From April 2028, these personal tax thresholds will be uprated in line with inflation.

CAPITAL GAINS TAX (CGT)

Given the Government's manifesto commitment not to increase the income tax, NICs or VAT obligations of "working people", there had been widespread speculation that a prime target for the Chancellor raising additional revenue would be through CGT. CGT rates will rise, albeit not to the levels that some were predicting. With immediate effect, the CGT rates that will apply to the sale of shares will rise from 10% to 18% for basic rate taxpayers and from 20% to 24% for higher and additional rate taxpayers.

The Chancellor also announced changes to the CGT rates applicable to gains made where the taxpayer is claiming "business asset disposal relief" (BADR) - the successor to the "entrepreneur's relief" and "taper relief" regimes. BADR essentially offers a preferential rate

of CGT, principally to entrepreneurs, when the taxpayer holds at least a 5% stake in the company whose shares are being sold. With effect from April 2025, the effective CGT rate payable by individuals claiming BADR will rise from 10% to 14%, with a further increase to 18% coming into force in April 2026. We await to see if these announced increases in CGT will lead to an increase in the number of disposals occurring before the new rates take effect (as occurred in early 2008, when the abolition of the "taper relief" regime heralded a similar rise in the effective rate of CGT payable).

PENSIONS

Although at first glance, the Budget did not deliver the radical changes to pensions tax relief that had been speculated about in preceding weeks, closer analysis reveals that it does make some fairly fundamental changes.

Unused funds and death benefits: The Budget said that from 6 April 2027, "*inherited pensions [will be brought] into inheritance tax*" and that this was intended to "*restore the principle that pensions should not be a vehicle for the accumulation of capital sums for the purposes of inheritance, as was the case prior to the 2015 [pension freedoms]*".

A detailed consultation issued by HMRC shows that the proposal goes much further than was expected and on its face, appears to bring almost all lump sum death benefits, as well as unused DC assets and dependants' annuities, into the ambit of inheritance tax (**IHT**). Even discretionary lump sum death benefits will be taxable in the future. However, it should be noted that the scope of the new tax charge is far from clear. The HMRC paper says: "*All life policy products purchased with pension funds or alongside them as part of a pension package offered by an employer are not in scope of the changes in this consultation document*" – on one reading, this would suggest that where a scheme has insured lump sum benefits those benefits will not be chargeable to tax, but self-insured benefits will be.

The obligation to pay the new IHT liability will fall on scheme administrators. A deceased member's personal representatives will put information about the estate into a new online calculator and then send the scheme administrator a statement providing the information they will need to calculate how much IHT is due on the unused pension or death benefits that are payable.

In addition, under the current regime, income tax at the recipient's marginal rate is payable on lump sums where the member was over 75 at the date of death or if the lump sum is distributed more than 2 years after the member's death. It is not clear how these taxes will interact within the new regime, but one of HMRC's case studies suggests that both income tax and IHT could be payable in relation to the same lump sum.

Finally, as the changes are stated to apply to registered pension schemes, it would appear that lump sums payable from excepted group life arrangements will not be within the scope of the new IHT regime, though again, no express confirmation has been given by HMRC on this point as yet.

Scheme administrators and employers should watch out for more detail from HMRC, as the paper issued to date is difficult to follow in places and short of information.

Overseas transfers: Under the current regime, if an individual wants to transfer benefits from a registered pension scheme to an overseas pension scheme, there will be a tax charge of 25% on the amount transferred (the overseas transfer charge). This tax charge does not arise if one of a number of conditions is satisfied, including that the member is resident in the same country as the receiving scheme or that the receiving scheme is established in Gibraltar or a country within the EEA and the member is UK resident or resident in a country within the EEA.

The exemption for schemes established in the EEA or Gibraltar will be removed with effect from 30 October 2024. In addition, the criteria for schemes within the EEA or Gibraltar to be an acceptable receiving scheme will be brought into line with those that apply to schemes in the rest of the world with effect from 6 April 2025. More detail on these changes is set out in an HMRC Policy Paper.

Scheme administrators: For tax purposes, the scheme administrator is the entity responsible for complying with various obligations under the Finance Act 2004. In an occupational pension scheme, this role is usually filled by the trustees. Currently, the Finance Act allows scheme administrators to be resident in the UK or an EU or EEA member state. From 6 April 2026, all scheme administrators will need to be UK resident.

This change means that where a scheme currently has any trustees outside of the UK, thought will need to be given to whether they can remain a trustee after April 2026 (or alternatively, whether the scheme needs to alter the details of who acts as its scheme administrator for Finance Act purposes).

"CARRIED INTEREST"

Key investment personnel are frequently granted "carried interest", which is essentially a share of the profits realised from the investment fund's investments. Historically, the amounts delivered under carried interest arrangements have been subject to the (favourable) CGT regime. The Government intends to deliver on its manifesto proposal to increase the "tax take" from carried interest. As an interim measure, carried interest will be subject to CGT at a special rate of 32% from April 2025, and then from 2026, "*carried interest will be taxed fully within the Income Tax framework, with bespoke rules to reflect its unique characteristics*". Further legislation will be required to deliver this specific regime and give the detail on exactly how this income tax will be applied.

NATIONAL MINIMUM WAGE

Moving outside the sphere of tax, the Government has accepted the recommendation from the Low Pay Commission to increase the national living wage, which is payable to those employees who are 21 years and older by 6.7% from £11.44 to £12.21 from April 2025. The national minimum wage, which is payable to those aged 18 to 20, will also increase by 16.3% from £8.60 to £10.00 from April 2025. The higher increase for the national minimum wage is to equalise it with the national living wage over time, in line with Labour's manifesto commitment to abolish age banding for minimum pay rates.

OTHER TAX MEASURES

As part of one of the longest Budget speeches of recent times, the Chancellor also announced a range of other tax measures:

"Tax domicile": The "non-dom" tax regime (under which individuals not domiciled for tax purposes in the UK do not pay UK tax on their non-UK income) will be abolished and the concept of "domicile" for tax purposes more broadly will be replaced with a new residence-based test to determine whether an individual is within the scope of UK tax.

Enforcement measures: The Chancellor promised additional funding for HMRC to counter "tax avoidance" arrangements and to enforce tax obligations which remain unpaid. We await to see whether this additional funding will lead to a more assertive approach by HMRC in the future.

EOTs: Where a business is sold to an "employee ownership trust" (EOT) – under which the business is then held for the benefit of its employees, the selling shareholders are entitled to certain reliefs from CGT on the sale. The Government proposes to bring forward legislation to place additional requirements for sellers to claim this relief, including that the EOT trustee is tax resident in the UK, that the sale takes place at "market value" and that the sellers no longer control the underlying business following the sale. This legislation is yet to be published but will apply to all sales to EOTs taking place on or after today (30 October 2024). Companies currently considering such a sale should therefore proceed with caution and obtain appropriate advice when finalising these transactions as this legislation works its way through Parliament.

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