



# PRE-BUDGET REPORT 2009

## TAX MEMO 2009-2010

Newsletter Issue 1

December 2009

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Welcome to the first newsletter for the 2009/10 edition of *Tax Memo*. This pulls together all relevant announcements made by the Chancellor in the Pre-Budget Report on 9 December 2009 to provide a comprehensive analysis in one document. The relevant paragraphs in your Memo product will also be updated individually online.

Along with the changes detailed in the following pages, other measures which have been the subject of much commentary have been brought in. From 9 December 2009, steps have now been taken to tax bonus payments to bankers and anyone whose work is regulated directly or indirectly by the Financial Services and Markets Act 2000; potentially this is a much larger group than may have been anticipated. In addition, a new landline duty will apply from 6 April 2010.

We believe that you will find this newsletter useful and informative in advising you about the changes and welcome any comments you may have as to how we can improve our service. We look forward to receiving your emails at [flm@flmemo.co.uk](mailto:flm@flmemo.co.uk).

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## CORPORATION TAX

### Countering leasing schemes

See TM ¶166, 501

**Rental rebates** Where a lessor refunds rental payments to a lessee under a **non-long funding lease** these are tax-deductible. However, from 9 December 2009 the deduction available will be limited to amounts that have been included as the lessor's income less any finance charge elements and payments for services and taxes. This is intended to counter a scheme enabling a tax loss to be generated where there is a commercial profit.

The **disallowed element** of a rebate will be considered to be a capital loss to the extent that the total rebate exceeds the cost of the asset. This loss can only be utilised against any gain arising on that asset.

**Restriction on capital allowances** A measure will be introduced, effective from 9 December 2009, to restrict the amount of **capital allowances that a lessor** can claim where it has entered into an arrangement that results in the expected economic value in the lease being less than the capital expenditure incurred at the time of purchase. This will include any residual value, adjusted for any rebates, where the lease is an operating lease. This measure is designed to ensure that no loss should be generated from such a transaction, as the maximum amount on which allowances can be claimed will be limited to the expected return on the asset, limited to the actual cost involved.

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### Restrictions on capital allowances on successions

See TM ¶252

Following changes announced in July 2009 further additions have been made to rules, effective from 9 December 2009, applying when ownership **of a company is transferred** (or where partners or consortium members change their respective interests) where the main, or one of the main, purposes of the transaction is to gain a tax advantage.

In essence the rules apply where a company:

- » has not **fully claimed available capital allowances** on plant and machinery and as such the tax written down value of the asset exceeds its net book value shown in the accounts; and
- » it is then **sold** from one group to another.

It may be that after this the plant is sold to a third party at its market value so securing a significant balancing allowance. The group could then use this to relieve other profits. Alternatively the resultant increased allowances are claimed, resulting in a loss that is intended to be surrendered within the group.

From 21 July 2009 losses secured in such a way via the balancing allowance were restricted for groups where the **target company was purchased from another group** so that the losses could only be used against the profits that would have arisen if the original transfer had not taken place.

From 9 December 2009 this will extend to the situation where an **unincorporated shareholder sells** a company to a group.

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### Allowances for electric vans

See TM ¶327

Pending receiving State Aid approval a new 100% first-year allowance will be introduced for businesses which incur expenditure on **new, unused, electric vans**. It is envisaged that this will apply to expenditure incurred on or after 1 April 2010 for companies and 6 April 2010 for those subject to income tax.

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### Changes to research and development criteria

See TM ¶798

Finance Bill 2010 will introduce legislation to remove the necessity for a **small or medium-sized enterprise** to own any intellectual property arising from its research in order to secure additional relief for qualifying expenditure. This will apply for expenditure incurred in an accounting period ending on or after 9 December 2009.

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### Changes to debt cap rules

See TM ¶877

As previously announced (see TN10/03 Item 1) there are several changes being made to the debt cap rules prior to the introduction of the regime on 1 January 2010. These will be introduced in Finance Bill 2010 but will still take effect from the commencement of the new regime.

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### Power to amend loan relationship rules

See TM ¶880

As the taxation of loan relationship profits relies on the accounting treatment of them, any changes in these standards will likely alter the tax treatment. As the International Accounting Standards Board is currently consulting on the relevant standards, a new power will be introduced to allow the government to **make changes to the rules** by way of statutory instrument within specific boundaries. This will allow the government to react quickly to any changes, as opposed to any amendments having to be made in the annual Finance Bill cycle. When an instrument is made it will apply from the beginning of the calendar year in which it is passed.

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### Rates

See TM ¶1342, 9962

The rise in the **small companies rate** of corporation tax will be postponed for a further year, leaving the rate for FY2010 at 21%.

There will also be consultation on the introduction of a "Patent Box". Although detailed proposals have yet to be published this is expected to entail **income from patents** being identified and taxed separately at a proposed rate of 10%. It is intended that the legislation for this will be in Finance Bill 2011 but the regime will not commence until April 2013.

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## CORPORATION TAX cont...

### Sale of lessor companies – alternate treatment and consortia

See TM ¶1800+

Currently where a company carrying on a leasing business is sold there is a charge levied on an amount equal to the excess of the balance sheet value of the assets held over the tax written down value. This is to claw back capital allowances given in the original group where the economic reality supports it. However, the current economic climate has resulted in a number of purchasing groups being unable to utilise the corresponding deduction.

From 9 December 2009 (with the legislation being introduced in Finance Bill 2010) an **election**, to be made by the lessor company itself, will be possible that will **result in no charge being applied** prior to the change of ownership, in return for forgoing the corresponding deduction and ring-fencing the leasing trade in question. This will ensure that deferred profits are then taxed as they arise in future years.

Further anti-avoidance is also to be introduced to ensure that where **consortium members** hold their interests in the consortium company indirectly, the general consortium rules will apply to ensure the full recapture charge is made.

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### Trading income: Special trades

See TM ¶2608

HMRC have announced that a **new income tax relief** will be introduced with effect from 6 April 2010. This will be similar to foster care relief and will apply to individuals who:

- » provide accommodation, care and support for up to three individuals who have been placed with them under a local authority shared lives scheme; and
- » share their home and family life with such individuals.

The tax free allowances from the scheme will be available per household and will consist of £10,000 (a fixed amount) per tax year and a weekly allowance of £200 or £250 per placement for children aged under and over 11 years respectively.

### Income from land and property: Furnished holiday lettings

See TM ¶2777

HMRC have **confirmed** that legislation to withdraw the special tax treatment of furnished holiday lettings will be enacted in 2010. This will have the effect of treating income from a furnished holiday let in the same way as income arising from other investment property.

### Earnings: Regular payments

See TM ¶3032

HMRC have announced that a new bank payroll tax will apply from 9 December 2009 to 5 April 2010.

The tax will affect **all contractual and discretionary bonuses** paid during this period to the extent that they exceed £25,000 and will apply to any employee whose activities are subject to the financial services regulations. There is, however, an exception to any contractual entitlement where the entitlement was in place prior to 9 December 2009 and the payer has no discretion as to the amount of the bonus due to the contractual obligation.

The tax will be levied at the rate of 50% over the initial £25,000 and is due irrespective of the body or person who pays the bonus. Consequently, where a bonus is paid by a trust or another group company, bank payroll tax will still be due. In addition, the bank payroll tax will not be deductible for corporation tax purposes. Income tax and national insurance contributions, employer's and employee's will be due on the gross amount of the bonus. Tax due is payable by 31 August 2010.





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Example:

Gross bonus of £200,000 paid to employee

Bank payroll tax due:  $(200,000 - 25,000) \times 50\% = 87,500$

Income tax due on £200,000 (assuming payee is already subject to 40% income tax):  
£80,000

NIC due: Employee:  $1\% \times £200,000 = £2,000$

NIC due: Employer:  $12.8\% \times £200,000 = £25,600$

Employee receives:  $£200,000 - (80,000 + 2,000) = £118,000$

Employer's tax and NIC:  $£87,500 + £25,600 = £113,100$

Total tax due (PAYE, Bank payroll tax and NIC):  $£80,000 + £87,500 + £2,000 + £25,600 =$   
£195,100

The effective rate of tax is  $£195,100 / £313,100 = 62.3\%$

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### Provision of meals and canteen facilities

See TM ¶3206

HMRC have announced that, with effect from 6 April 2011, the provision of **subsidised or free canteen food** for workers will become a taxable benefit in circumstances where:

- » the availability of the canteen is linked to a salary sacrifice arrangement where the employee has given up their some of the gross salary in return for food and drink; or
- » there is a flexible benefits scheme in operation, so that the employee has chosen to give up some salary in return for food and drink.

The luncheon voucher scheme is **unaffected** by these changes, as are arrangements where the employer provides a general subsidy for canteen food, to offer food at lower prices to all employees.

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### Company cars

See TM ¶3298

Changes to the company car tax rates which **take effect** from 6 April 2012 have been announced. The new rates will reduce the level at which car benefit is graduated, increasing the tax liability for company car benefit purposes. The 10% band will apply to company cars with CO<sub>2</sub> emissions up to 99g/km.

See TM ¶3300

With effect from 6 April 2010 the benefit charge applicable to electric cars provided as a benefit will be reduced to 0%. The reduced rate will apply for 5 years.

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### Car fuel benefit

See TM ¶3304

HMRC have announced that the figure on which the car fuel benefit is calculated will be **increased** from £16,900 to £18,000 with effect from 6 April 2010.

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### Company vans

See TM ¶3318

With effect from 6 April 2010 if an electric van is provided to an employee for his use, the amount of the taxable benefit is reduced to nil (from £3,000). A **new definition of an electric van** will be given in amended legislation, but it is anticipated that the definition will mean that the vehicle can only be propelled by electricity. The reduced rate will apply for 5 years.

Van fuel benefit will rise to £550 from 6 April 2010.

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## INCOME TAX cont...

### State benefits: Child tax credits

See TM ¶3710

The following rates apply to child tax credits from 6 April 2010:

Element of CTC	2010/11 Maximum £
Family element	545
Family element, baby addition	545
Child element	2,300
Disabled child element	2,715
Severely disabled child element	1,095

### Working tax credits

See TM ¶3720

The following rates apply to working tax credits from 6 April 2010:

Element of WTC	2010/11 Maximum £
Basic element	1,920
Couple and lone parent element	1,890
30 hour element	790
Disabled worker element	2,570
Severe disability element	1,095
50 plus return to work payment : 16 to 29 hours	1,320
50 plus return to work payment : 30 hours or more	1,965
Childcare maximum eligible cost for one child	175 per week
Childcare maximum eligible cost for any number of children	300 per week
Percentage of eligible costs covered	80%

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### State benefits and pensions: Retirement provision - high earners

See TM ¶3777

HMRC have announced changes to the tax treatment of pension contributions. The threshold for restriction of tax relief is reduced to £130,000 (from £150,000). The reduction applies from 9 December 2009 for contributions in the tax year or for the two preceding tax years. Where the contribution exceed £20,000, the tax relief will be clawed back, however, the special annual allowance (£20,000) tax charge will only apply to additional pension savings over and above the individual's normal regular pension saving and made after 9 December 2009.

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### Pensions: Unregistered schemes

See TM ¶3900

From 6 April 2010 where a **lump sum, gratuity or other benefit** is paid by an employer financed retirement benefit scheme, the recipient will be liable to tax at 50%. This is an increase from the current 40% rate applicable to such payments.

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### Overseas issues: Seafarers

See TM ¶4268

From 6 April 2011, the deduction available for UK seafarers will be **extended to** EU and European Economic Area residents who pay UK tax on their earnings as seafarers.

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### Computation: Allowances

See TM ¶4390

HMRC have announced that the **tax allowances for 2010/11** will be the same as those for 2009/10. This is due to a negative retail price index and it has previously been announced that in such circumstances, allowances are frozen.

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### Computation: Rates of tax

See TM ¶4408

HMRC have announced that the **income tax bands for 2010/11** will be the same as those for 2009/10. This is due to a negative retail price index and it has previously been announced that in such circumstances, bands and allowances are frozen.

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### Administration: Penalties

See TM ¶4544

If HMRC issue a determination after a taxpayer has failed to file a self-assessment return, the determination can only be replaced by the taxpayer filing a return within the time limits. Where no such return is filed, by concession in certain circumstances HMRC only collect the sum that would have been due for the relevant period **had the taxpayer filed his or her return** on time. This is known as "equitable liability" and is to be formalised by legislation.

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## PAYE and NIC

### NIC rates

See TM ¶5004, ¶5056, ¶5064, ¶5093, ¶9976

A minor change will be made to next year's NIC thresholds but more **significant increases** will be encountered the year after that.

#### 2010/11

The lower earnings limit, above which employees earn entitlement to benefits, will increase by £2 to £97 per week, effective from 6 April 2010. The earnings threshold, above which contributions become due, will remain unchanged at £110 per week.

#### 2011/12

From 6 April 2011 the rates of Class 1, 1A, 1B and 4 NIC will all increase by 1% (a ½% increase was announced in last year's PBR and a further ½% increase this year). This will take Class 1 employer's NIC to 13.8%, and Class 1 employee's NIC to 12% for earnings up to the upper earnings limit and 2% above it. The self-employed will suffer Class 4 NIC at 9% up to the upper profits limit and 2% above it.

The earnings threshold will be increased by £570 to compensate the lowest earners for the rate increases noted above. This is in addition to the increase announced at PBR last year to "broadly align" the threshold with the income tax personal allowance.

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## CAPITAL GAINS TAX

### Adult placement carers

See TM ¶6170

On the disposal of a taxpayer's **principal private residence** (PPR) any area set aside exclusively for the purposes of a trade or similar will not attract PPR relief, leaving part of any gain made left to charge. Under a government scheme, Shared Lives, carers may be required to set aside a room for an adult to stay with them. Where this is the case, for disposals after 9 December 2009 the relief will not be restricted for that room.

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## INHERITANCE TAX

### Inheritance tax: Calculation

See *TM ¶6512*

HMRC have announced that the **nil rate band** for 2010/11 will remain at £325,000. This is a reduction to the previously announced nil rate band of £350,000.

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### Chargeable lifetime transfers

See *TM ¶6530*

HMRC have announced that, with effect from 9 December 2009, where an individual purchases an interest in a trust, that interest will form **part of the individual's estate** for IHT purposes. Where the interest comes to an end in the purchaser's lifetime, there may be an immediate charge to IHT.

HMRC have also announced that, with effect from 9 December 2009, where an individual **settles property on trust**, but they or their spouse retain a future interest in it, that interest will form part of the individual's estate on death. In addition, if the interest comes to an end during the purchaser's lifetime, there may be an immediate charge to IHT.

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## TRUSTS, SETTLEMENTS AND ESTATES

### Inheritance tax and trusts: Chargeable trusts

See *TM 1117440*

HMRC have announced that with effect from 9 December 2009 where an individual purchases an interest in a trust, that interest will form **part of the individual's estate** for IHT purposes. Where the interest comes to an end in the purchaser's lifetime, there may be an immediate charge to IHT.

HMRC have also announced that with effect from 9 December 2009 where an individual **settles property on trust**, but they or their spouse retain a future interest in it, that interest will form part of the individual's estate on death. In addition, if the interest comes to an end during the purchaser's lifetime, there may be an immediate charge to IHT.

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## VALUE ADDED TAX

### Rate increase and the flat rate scheme

See TM ¶18620, ¶18636

As expected, the **standard rate of VAT will revert to 17.5%** on 1 January 2010. One effect of this will be to increase the percentages used under the flat rate scheme. HMRC have taken the opportunity to amend some of these rates slightly to reflect up-to-date business data. The rates from 1 January 2010 are shown below.

Category of business	Appropriate percentage
Accountancy or book-keeping	13
Advertising	10
Agricultural services	10
Any other activity not listed elsewhere	10.5
Architect, civil and structural engineer or surveyor	13
Boarding or care of animals	10.5
Business services that are not listed elsewhere	10.5
Catering services including restaurants and takeaways	11
Computer and IT consultancy or data processing	13
Computer repair services	9.5
Dealing in waste or scrap	9.5

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Category of business	Appropriate percentage
Entertainment or journalism	11
Estate agency or property management services	10.5
Farming or agriculture that is not listed elsewhere	6
Film, radio, television or video production	11.5
Financial services	12
Forestry or fishing	9.5
General building or construction services <sup>1</sup>	8.5
Hairdressing or other beauty treatment services	11.5
Hiring or renting goods	8.5
Hotel or accommodation	9.5
Investigation or security	10.5
Labour-only building or construction services <sup>1</sup>	13
Laundry or dry-cleaning services	10.5
Lawyer or legal services	13
Library, archive, museum or other cultural activity	8.5
Management consultancy	12.5
Manufacturing fabricated metal products	9.5
Manufacturing food	8
Manufacturing that is not listed elsewhere	8.5
Manufacturing yarn, textiles or clothing	8
Membership organisation	7





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Category of business	Appropriate percentage
Mining or quarrying	9
Packaging	8
Photography	10
Post offices	4.5
Printing	7.5
Publishing	10
Pubs	6
Real estate activity not listed elsewhere	12.5
Repairing personal or household goods	9
Repairing vehicles	7.5
Retailing food, confectionary, tobacco, newspapers or children's clothing	3.5
Retailing pharmaceuticals, medical goods, cosmetics or toiletries	7
Retailing that is not listed elsewhere	6.5
Retailing vehicles or fuel	6
Secretarial services	11.5
Social work	10
Sport or recreation	7.5
Transport or storage, including couriers, freight, removals and taxis	9
Travel agency	9.5
Veterinary medicine	10





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Category of business	Appropriate percentage
Wholesaling agricultural products	7
Wholesaling food	6.5
Wholesaling that is not listed elsewhere	7.5
1. "Labour-only building or construction services" means building or construction services where the value of materials supplied is less than 10 per cent of relevant turnover from such services; any other building or construction services are "general building or construction services".	

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### Stamp duty land tax

See TM ¶9422

The disclosure of tax avoidance scheme rules will be **extended to** arrangements concerning residential property with a value of at least £1 million, from a date to be announced but no later than 1 April 2010. Schemes made available before the implementation date will not have to be disclosed after that date.

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### Stamp duty reserve tax

See TM ¶9668

The European Court of Justice ruled in October 2009 that the UK is not entitled to apply a 1.5% stamp duty or stamp duty reserve tax charge when new shares are first issued to an EU clearance service or depositary receipt system. There are various exemptions in place to prevent double taxation but since the UK has accepted the ECJ's decision these are no longer necessary. Legislation taking effect from 1 October 2009 will therefore **remove the exemptions** for transfers where companies and issuers of depositary receipts arrange for shares to be issued to an EU clearance service or depositary receipt system (free of stamp duty or stamp duty reserve tax) and the shares are subsequently transferred to a depositary receipt system or clearance service outside the EU.

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### Rates of tax

See TM ¶9966

HMRC have announced that the income tax bands for 2010/11 will be the same as those for 2009/10. This is due to a negative retail price index and it has previously been announced that in such circumstances, bands and allowances are frozen.

### Allowances

See TM ¶9967

HMRC have announced that the tax allowances for 2010/11 will be the same as those for 2009/10. This is due to a negative retail price index and it has previously been announced that in such circumstances, allowances are frozen.

### Child tax credits

See TM ¶9971

The following rates apply to child tax credits from 6 April 2010:

Element of CTC	2010/11 Maximum £
Family element	545
Family element, baby addition	545
Child element	2,300
Disabled child element	2,715
Severely disabled child element	1,095

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## APPENDIX cont...

### Working tax credits

See TM ¶9971

The following rates apply to working tax credits from 6 April 2010:

Element of WTC	2010/11 Maximum £
Basic element	1,920
Couple and lone parent element	1,890
30 hour element	790
Disabled worker element	2,570
Serve disability element	1,095
50 plus return to work payment : 16 to 29 hours	1,320
50 plus return to work payment : 30 hours or more	1,965
Childcare maximum eligible cost for one child	175 per week
Childcare maximum eligible cost for any number of children	300 per week
Percentage of eligible costs covered	80%

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### Inheritance tax rates

See TM ¶9981

HMRC have announced that the nil rate band for 2010/11 will remain at £325,000. This is a reduction to the previously announced nil rate band of £350,000.

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