



BUDGET 2010

TAX MEMO 2009-2010

Newsletter Issue 2

March 2010

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Welcome to the second newsletter for the 2009/10 edition of *Tax Memo*. This pulls together all relevant announcements made by the Chancellor in the Budget on 24 March 2010 to provide a comprehensive analysis in one document. The relevant paragraphs in your Memo product will also be updated individually online.

The final Budget of the current Parliament was always expected to be more political than financial in nature, and the speech itself was. But the usual raft of Budget notices and documents contained some significant changes, particularly in relation to investment, be it in plant, property or new businesses, with increases in the annual investment allowance, a new relief on “green” vans and the extension of the SDLT 0% band for first-time buyers. The following pages contain details of these changes and the others announced.

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.

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CORPORATION TAX

Zero-emission goods vehicles

See TM ¶298, ¶327

For expenditure incurred on zero-emission goods vehicles on or after 1 April 2010 (6 April 2010 for income tax purposes), and for the following 5 years, a first year allowance is to be introduced. Where a business **purchases a new, unused vehicle** that is designed primarily for the carriage of goods and it cannot under any circumstances produce CO₂ emissions, it will be able to claim 100% capital allowances on the item in the period it is purchased. This expenditure will then be excluded from the annual investment allowance.

In order to comply with State Aid rules the following businesses will **not qualify**:

- » those that are considered to be in **difficulty**;
- » those who are **yet to repay State Aid** that has been deemed illegal;
- » those engaged in the **fisheries or aquaculture sectors**; and
- » those **managing waste** for others.

Further, there will be an **overall cap** on the amount of expenditure that a business (along with associated businesses) can claim over the life of the relief which will be set at €85 million.

Environmentally friendly assets

See TM ¶329, ¶332

The annual review of the **Energy and Water Technology Criteria** lists will result in the following changes after the passing of a Treasury Order which is due prior to Parliament's summer recess.

Energy Technology List

While the main technology of compact heat exchangers and a sub-technology (liquid pressure amplification) are removed, two new sub-technologies are to be added (permanent magnet synchronous motors and biomass fired warm air heaters).

Water technology list

No additions or removals are to be made but the criteria relating to taps and showers are to be tightened.

Annual investment allowance changes

See TM ¶369

The limit for the annual investment allowance is to be **increased** from its current £50,000 to £100,000 per annum for expenditure incurred on or after **1 April 2010** (6 April 2010 for those within the charge to income tax).

Where a business has a **period straddling** this date the total AIA it can claim will be calculated based on the length of the period falling into each financial year.

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Example

A Limited has a year ending 31 December 2010. Its total AIA will be calculated as follows:

3/12 x £50,000	£12,500
9/12 x £100,000	£75,000
Total AIA available	£87,500

The total that can be claimed on expenditure prior to the increase is limited to £50,000.

Example

Continuing the above, A Limited will be able to claim allowances up to £50,000 for the 3 months prior to 1 April 2010 but a total of £87,500 for the entire period.

A further change has also been introduced to restrict the use of losses in property businesses by individuals (see "Restriction of property losses" on Income Tax).

Share Incentive Plans

See *TM ¶786*

From 24 March 2010 the usual corporation tax deduction will not be allowed for payments to a SIP trust, which are part of a tax avoidance scheme where the main purpose or one of the main purposes of the company in making the payment is to obtain a corporation tax deduction.

Further changes to worldwide debt cap rules

See *TM ¶877*

A number of technical changes are being made to the recently introduced provisions on interest restrictions.

Firstly, in looking at the **assets and liabilities** in the net debt calculation, long-term arrangements that, while not being in the legal form of a loan, have similarities to a loan, including an interest-like return, will be included.

Secondly, the rules will be clarified to put beyond doubt that a **limited liability partnership** cannot be the ultimate parent of a group for these purposes.

Finally, **distributions** made by **industrial and provident societies** will not be included as finance expenses, even though they are normally treated as interest payments for tax purposes.





CORPORATION TAX cont...

Real Estate Investment Trusts

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See TM ¶985

▶ Corporation tax

The rules on the **distribution level** that a REIT must make in order to retain its status are to be changed in the first Finance Bill of the next Parliament. From the date the Bill receives Royal Assent a REIT will be able to count any **stock dividends** it makes towards the 90% requirement. The recipients of such dividends will still be taxed in the same way as if they had received a cash dividend from the REIT.

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See TM ¶1342, ¶9962

▶ Capital gains tax

The rate of tax applying to companies with **profits below the lower limit** has been set at 21% for the financial year commencing **1 April 2010**. This further postpones the original planned increase to 22%.

▶ Inheritance tax

The corporation tax rate for the financial year commencing **1 April 2011** has been frozen at 28% for companies with **profits over £1.5 million**.

▶ Trusts, settlements and estates

Gift aid and charities

See TM ¶1342, ¶4420

▶ Value added tax

A **statutory definition** for tax purposes is to be introduced. For gift aid purposes this will be effective from 6 April 2010 with other areas following throughout the tax year. In order to be considered a charity a body will have to be:

▶ Stamp taxes

- » established for charitable purposes only;
- » located in the EU or in any other country specified by Order (Iceland and Norway will be the first);
- » regulated by a body similar to the Charities Commission; and
- » supervised by "managers", being trustees, directors and similar, who are "fit and proper" persons.

Conditions 2 and 4 above will also be applied to **community amateur sports clubs**.

Consultation is to be entered into in relation to how the administration and recovery of tax will function with the extended territorial extent of the scheme.

Sale of lessor companies

See TM ¶1800+

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Following the draft legislation published in the Pre-Budget Report a number of technical changes have been made.

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Firstly, where a company had **concluded a contract prior** to the draft legislation, with payment being made afterwards, it may have been deprived of the allowances it expected. The legislation is amended to ensure it will retain its original right.

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Secondly, in the case of a lessor company **owned by a consortium**, the election to ring fence the leasing trade acquired will continue where only small changes are made in the proportionate interests of the consortium members. It will then remain in force until such time as all of the income calculated under the rules has been subjected to tax.





CORPORATION TAX cont...

Finally, a non-resident company that is deemed to be a **controlled foreign company**, carrying on a leasing business will come within these rules if it changes hands. Deeming provisions that would allow a CFC an advantage over a UK resident leasing company in this situation will be removed.

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Loans to participators

See TM ¶2115

Where a loan made to a participator (or their associate) is written off on or after 24 March 2010 the company will no longer be entitled to any **corporate tax deduction**. This in essence restores the previous position and closes an apparent loophole where the company could obtain a deduction when the write off is treated as a distribution in the recipient's hands.

Disclosure of tax avoidance schemes

See TM ¶2215

Legislation will be introduced to make these changes:

- » disclosure of **actively marketed schemes** will have to take place when a promoter first communicates a fully designed scheme to a third party for the purpose of obtaining clients of that scheme;
- » a person who **introduces** a client to a notifiable scheme will have to provide HMRC with the name and address of the promoter who provided the introducer with details of that scheme;
- » the **penalties** for failure to comply with a disclosure obligation will be increased; and
- » **promoters** will have to provide HMRC with periodic information about clients who implement a notifiable scheme.

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INCOME TAX

Guardians and kinship carers

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See TM ¶2408

An income tax exemption similar to that available to adopters is to be made available to special guardians and certain kinship carers. Exemption will apply from 6 April 2010.

▶ Corporation tax

▶ Income tax

Restriction of property losses

See TM ¶2775

▶ PAYE and NIC

At present an individual sustaining a **loss** in a property business can offset any capital allowances in that loss against general income. However, from 24 March 2010 this will be restricted so that no loss arising from the use of the **annual investment allowance** (TM ¶360+) will be available where “relevant tax avoidance arrangements” have been entered into.

▶ Capital gains tax

Individual savings accounts

▶ Inheritance tax

See TM ¶2797

▶ Trusts, settlements and estates

As well as confirming that the **investment limit** for an ISA for the tax year **2010/11** will be £10,200 (with a limit that can be invested in cash of £5,200), the government has announced that **from 6 April 2011** for the course of the next Parliament the investment limit will be indexed in line with the retail prices index. This will be based on the RPI in September of the previous year and will be announced as quickly as possible, and in any event no less than 4 months before the start of the new year.

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If the RPI movement is **negative** no change will be made to the limit. The maximum cash element will remain at 50% of the total limit.

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Venture capital and enterprise investment scheme changes

See TM ¶2873, 2913

A number of changes are to be made to these schemes in order to continue to receive approval from the European Commission. These are to be introduced in the first Finance Bill of the next Parliament

VCTs only

The **requirement** that shares in the VCT have to be **listed** in the UK will now be **extended** so that the shares will qualify if they are listed on any EEA market.

The **minimum holding** of eligible shares that the VCT must hold will rise from 30% to 70% and at this time the **definition will be amended** to include shares that may carry certain preferential rights to dividends.

EIS and VCTs

Where it is reasonable to assume that the **company** raising the funds is in **difficulty** relief will be denied.

The **requirement** that the company must have a **trade** carried on in the UK will also be relaxed so that the company only requires a permanent establishment in the UK.

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INCOME TAX cont...

Employer-supported childcare

See TM ¶3219

For all supported childcare (as opposed to workplace provided care) the condition that the scheme should be **generally available** to all employees is to be relaxed. Legislation will be introduced in the next Parliament to allow the **exclusion** of those at or near the minimum wage level from being offered a salary sacrifice arrangement.

Zero-emission vehicles and low emission cars

See TM ¶3286, ¶3300, ¶3310

New rules are to be introduced in relation to cars and vans that have **no CO₂ emissions**. From 6 April 2010, for a period of 5 years, such a car or van will attract no benefit charge. This will also replace the current benefit charge on electrically propelled cars.

A new category of **ultra low emission** level cars will also be introduced for the same period. Where a car has an emission level of 75g/km or less the benefit charged will be 5% of the list price of the vehicle.

Company share option plans

See TM ¶3428

With effect from 24 March 2010 shares in a company which is under the control of a listed company are no longer shares to which an approved CSOP can apply. This is a reaction to tax avoidance activity.

Enterprise management incentives

See TM ¶3467

Legislation is to be introduced into the first Finance Bill of the next Parliament to widen the scope of companies that may use this incentive scheme. From Royal Assent the **requirement** that the company must carry on a **trade wholly or mainly in the UK** will be **removed** and replaced with the condition that it must have a **permanent establishment** in the UK.

Pension schemes

See TM ¶3768, ¶3788, ¶9972

As previously announced the **annual** and **lifetime allowances** have been set at £255,000 and £1.8 million respectively. These are to be **frozen** at this level up to and including tax year **2015/16**.

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INCOME TAX cont...

Transactions in securities

See TM ¶4040

The current rules, which seek to prevent taxpayers gaining a tax advantage from activities involving transactions in securities, are to be replaced with “clearer legislation targeted more effectively at arrangements involving tax avoidance”.

Life policies: deficiency relief

See TM ¶4098

With the introduction of the new **additional rate of tax**, and the additional dividend rate, from 6 April 2010, the rules on deficiency relief are to be amended to ensure that any relief due is to be given at the highest rate of tax an individual suffers in the year the policy comes to an end.

New steps will be added to the calculation to ensure that any deficiency is **first set against** dividends at the additional rate, then other income at the additional rate before continuing as it does now.

This will be subject to targeted anti-avoidance rules where the purpose of bringing the policy to an end is to **secure a tax advantage**. In this case the term “tax advantage” is defined as being where the amount of tax relief secured exceeds the amount of tax physically paid on that policy (being the total tax burden less the basic rate tax deemed to have been deducted). If this applies the relief is restricted to the amount of tax previously paid.

Increased penalties

See TM ¶4532, ¶9780

A new override will be applied to tax-geared penalty levels for tax periods commencing on or after 1 April 2011. This will apply a multiplier to the penalty, **depending on the jurisdiction** in relation to which the non-compliance occurs.

- » Where the jurisdiction has provision to exchange information on savings income **automatically** with the UK, the penalty percentages will be unaffected.
- » Where the jurisdiction has agreed to exchange information with the UK but does **not automatically** share that information, the penalty percentages will be increased by a factor of 1.5.
- » Where the jurisdiction has **not agreed to exchange information** with the UK, penalties will be doubled.

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PAYE and NIC

Security for PAYE

See *TM* ¶4684+

The Finance Bill 2010 will contain legislation allowing Revenue and Customs to require a financial security from employers who have a history of **serious non-compliance** in terms of **late or non-payment of PAYE**.

This will be coupled with a new criminal offence where there is a **failure** to provide a requested security, which will carry a penalty of up to £5,000.

The details of these measures will be implemented by regulation and it is expected these will come into force on 6 April 2011.

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CAPITAL GAINS TAX

Entrepreneurs' relief

See *TM ¶6035*

From 6 April 2010 the **limit** that entrepreneurs' relief will apply to is to be doubled from £1 million to £2 million. Where an individual has **previously made gains in excess** of £1 million prior to this date, no further relief will be due in relation to those years. However, if they make **further qualifying gains** the remaining £1 million will be available for use.

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INHERITANCE TAX

Nil rate band

See *TM* ¶6512, ¶9981

Following the Pre-Budget Report announcement that the nil rate band was to be frozen for **2010/11** at £325,000, this will be extended so that the same threshold will apply up to and including tax year **2014/15**.

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TRUSTS, SETTLEMENTS AND ESTATES

Repayment of tax to settlor

See TM ¶7348

Where a settlor receives a repayment of tax due to an allowance or relief made available to him, he must refund any tax repayment he received from the trust back to it. From 6 April 2010 this will be **extended** so that **any repayment received** in relation to trust income taxed on the settlor will have to be returned to the trust.

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New Edition

OUT IN APRIL



Be on top of the latest changes with VAT Memo 2010-2011

VAT Memo 2010-2011, to be published in April, has been fully revised and updated for the Budget 2010 announcements, and will include commentary on the following:

- restitution of the VAT rate to 17.5% (effective January 2010)
- new place of supply rules for cross-border services (effective January 2010)
- TOMS changes ((effective January 2010)
- new tribunal and appeals system (effective April 2009).

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VALUE ADDED TAX

Registration and deregistration thresholds

See TM ¶7775, ¶7777, ¶9987, ¶9988

	Existing threshold (£)	New threshold from 1 April 2010 (£)
Registration	68,000	70,000
Deregistration	66,000	68,000
EU Acquisitions	68,000	70,000

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Fuel scale charge

See TM ¶7893

CO ₂ band	Annual return		Quarterly return		Monthly return	
	Charge (gross) £	VAT included £	Charge (gross) £	VAT included £	Charge (gross) £	VAT included £
120 or less	570.00	84.89	141.00	21.00	47.00	7.00
125	850.00	126.60	212.00	31.57	70.00	10.43
130	850.00	126.60	212.00	31.57	70.00	10.43
135	910.00	135.53	227.00	33.81	75.00	11.17
140	965.00	143.72	241.00	35.89	80.00	11.91
145	1,020.00	151.91	255.00	37.98	85.00	12.66
150	1,080.00	160.85	269.00	40.06	89.00	13.26
155	1,135.00	169.04	283.00	42.15	94.00	14.00
160	1,190.00	177.23	297.00	44.23	99.00	14.74
165	1,250.00	186.17	312.00	46.47	104.00	15.49
170	1,305.00	194.36	326.00	48.55	108.00	16.09
175	1,360.00	202.55	340.00	50.64	113.00	16.83
180	1,420.00	211.49	354.00	52.72	118.00	17.57
185	1,475.00	219.68	368.00	54.81	122.00	18.17

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CO ₂ band	Annual return		Quarterly return		Monthly return	
	Charge (gross) £	VAT included £	Charge (gross) £	VAT included £	Charge (gross) £	VAT included £
190	1,530.00	227.87	383.00	57.04	127.00	18.91
195	1,590.00	236.81	397.00	59.13	132.00	19.66
200	1,645.00	245.00	411.00	61.21	137.00	20.40
205	1,705.00	253.94	425.00	63.30	141.00	21.00
210	1,760.00	262.13	439.00	65.38	146.00	21.74
215	1,815.00	270.32	454.00	67.62	151.00	22.49
220	1,875.00	279.26	468.00	69.70	156.00	23.23
225	1,930.00	287.45	482.00	71.79	160.00	23.83
230 or more	1,985.00	295.64	496.00	73.87	165.00	24.57

Postal services exemption

See TM ¶8042

From 31 January 2011 the **exemption** for postal services will be restricted to supplies of **public postal services** (and incidental goods) by the universal service provider (currently Royal Mail). Postal services supplied on **terms which are individually negotiated**, and services not subject to price or regulatory control, will become **standard-rated** from that date.

Emissions allowances: reverse charge

See TM ¶8052, ¶8187

From 1 November 2010 the reverse charge will apply to emissions allowances. This is an attempt to **prevent missing trader fraud** and follows the application of the zero rate to emissions allowances from 31 July 2009. **Zero-rating will cease** from 1 November 2010. The legislation will be amended to allow the reverse charge to be applied to services generally, as specified in secondary legislation.

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Zero-rating of aircraft

See TM ¶8052

For zero-rating purposes, a **qualifying aircraft** will no longer be determined by its weight or commercial design. From 1 September 2010 zero-rating will depend on the recipient of the supply being an airline operating for reward **chiefly on international routes**.





VALUE ADDED TAX cont...

Lennartz mechanism

See TM ¶8142, ¶8145

The Lennartz mechanism is to be made **unavailable** in respect of purchases of **land, property, boats and aircraft**. The Lennartz mechanism applies where an asset is purchased for both business and private purposes. Under this mechanism full input tax recovery is permitted on purchase and output tax is accounted for in respect of private use over the asset's economic life. From 1 January 2011 full input tax recovery will not be available on purchase; instead **input tax** will be **restricted to the business use proportion**. The Capital Goods Scheme will be amended to take account of this change.

HMRC has also recently announced an amended policy under which Lennartz is not available unless non-business use is private use (as opposed to, for example, use by a charity for non-commercial purposes). Legislation will be introduced to ensure that those affected by this change of policy do not gain an advantage by, for example, ceasing to account for output tax on non-business use.

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STAMP TAXES

New top SDLT rate and 2-year increased exemption

See TM ¶9376, ¶9992

The top rate of SDLT will be increased to 5% for residential transactions with a **value in excess of £1 million**. This will apply where the effective date (normally the completion date) is on or after 6 April 2011.

From 25 March 2010, until 24 March 2012, **first-time buyers** who intend to live in the property as their only or main home will pay no SDLT on purchases with a value up to £250,000.

SDLT, partnerships and anti-avoidance

See TM ¶9380

Subject to transitional provisions, from 24 March 2010 where anti-avoidance rules charge SDLT on a 'notional land transaction' in the context of a series of transactions resulting in a reduced SDLT charge, the **preferential rules** enjoyed by partnerships will no longer apply.

Overpayments of SDLT

See TM ¶9463

Overpaid SDLT can currently be reclaimed where there has been an excessive assessment caused by a mistake in a land transaction return. Legislation effective from 1 April 2011 will **remove the requirement** that the overpayment was caused by a mistake in a return and that it must have been subject to an assessment. The new rules will also confirm that HMRC is not liable to repay any amount except as provided for in legislation. Current restrictions on rights of appeal are also to be removed.

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