



CREASEYS

# BUDGET ANNOUNCEMENT

## Creaseys Initial Views

12 March 2008



Alistair Darling's first Budget speech contained significant news (and backtracking) on the major tax changes applying to a very large number of taxpayers from April 2008. It is confirmed that the changes to capital gains tax, company tax rates and the taxation of non-domiciliaries and non-residents will still apply although there are some staggering changes to the initial proposals made for non-domiciliaries in many cases now the use of overseas trusts will be highly beneficial. Entrepreneurs' relief for CGT will help many small businesses and we have more fine print on the new allowances for capital expenditure for businesses. For many there are opportunities to forestall the effect of the changes by taking action this month. There was surprisingly good news for charities and the voluntary sector and a stay of execution for family businesses in terms of the payments of dividends and other remuneration to family members and other associates not demonstrably making a full economic contribution to the business.

Janet Paterson, Elizabeth Robertson, Tim Page and Richard Holme

## 1. Capital Gains Tax

The Chancellor has confirmed the introduction of a new capital gains tax relief, to be known as entrepreneurs' relief. We had first been told of this relief in January when the government was on the back foot over its plans to radically change capital gains tax from 6 April 2008. Draft legislation was released in February and we now have some further guidance, mainly in the form of worked examples.

Those radical changes to capital gains tax announced in October 2007 take effect on 6 April and will only be offset to a degree by the new entrepreneurs' relief. For a summary of the capital gains tax changes announced in October.

Entrepreneurs' relief is undoubtedly valuable and a useful concession offered up by the government after intense lobbying from British business. In effect, the relief allows an individual to pay capital gains tax at only 10% for certain gains made after 6 April 2008. Not all capital gains are eligible for entrepreneurs' relief and there is an overall limit of £1 million of relief per person that can be drawn down during one's lifetime. Trustees are also able to claim entrepreneurs' relief in certain cases, although this requires a joint claim with a beneficiary and will have the effect of depleting that beneficiary's £1 million limit.

Not all gains that would have attracted business assets taper relief are eligible for entrepreneurs' relief and some people will be concerned to find that they fall on the wrong side of the qualifying conditions for the new relief.

Broadly, disposals of the following assets may qualify for entrepreneurs' relief:

- All or part of a trading business (carried on alone or in partnership);
- Assets sold after a trading business has ceased;
- Shares in an individual's personal trading company; and
- Assets used by an individual's personal trading company.

There are further detailed rules to define what is meant by some of the terms. For example, there is to be a requirement for an individual claiming entrepreneurs' relief that he held at least 5% of the voting shares in the personal trading company for at least a year. It is also necessary to have an office or employment with the company.

Of particular interest is the ability to defer a gain now, maybe by the use of certain loan notes and claim entrepreneurs' relief in future. There may be some situations where a claim to entrepreneurs' relief is better than a claim for business assets taper relief under the current legislation. One such example would be where an individual has owned an asset for just over 12 months. In that example it may be possible to defer a gain that would have been taxed at an effective tax rate of 20% to a time when entrepreneurs' relief will produce an effective tax rate of 10%.

The worked examples also make it clear that the normal share for share exchange rules may be overridden where it would be beneficial to bring a gain into charge at a point that entrepreneurs' relief is due.

On a more routine but important note, the annual capital gains tax exemption for individuals will increase by £400 on 6 April 2008 to £9,600.

*If you would like further information on this please contact Tim Page at [tim.page@creaseys.co.uk](mailto:tim.page@creaseys.co.uk)*

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## **2. Excellent News for Charities**

A very welcome announcement means that for the 3 years to 5 April 2011 charities can continue to recover 28 pence in the pound for Gift Aid donations made by individual taxpayers. The cut in the basic rate of tax from 6 April 2008 would otherwise have meant they could only recover 25 pence. There is also discussion of streamlining Gift Aid claims and publicising the Gift Aid system. A hint also that auditing and independent examination requirements for charities may be relaxed, but this could be an allusion to changes already announced in Companies Act 2006.

***Some cheering news for the voluntary sector!***

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## **3. Residence and Domicile Review - some good news from the Budget**

Since the Pre-Budget statement of 9 October 2007, announcing what has been the biggest upset to the taxation of non-domiciliaries in a very long time, many clients have been concerned as to exactly how this change will impact on them and any offshore structures in which they have an interest. Initial draft legislation was released on 18 January 2008, which really only served to confirm a number of fears (see our Tax Journal articles earlier last month) However, many professional bodies including STEP in particular have lobbied hard to achieve some relaxation in the proposals as initially drafted. The 12 March 2008 Budget announcement therefore outlines a number of additional measures to relax the initial proposals. Although some aspects remain unclear and we do not have detailed revised draft legislation in all areas, this note attempts to summarise the position as it is now believed to stand in relation to the taxation rules on residence and domicile, applicable from 6 April 2008.

### **Non-residents and day counting**

Under the initial proposals, in counting the number of days that an individual is regarded as present in the UK any day in which an individual is present in the UK would count. This was contrary to the prior practice that the UK has had of ignoring days of arrival and departure when counting the number of days an individual is regarded as having spent here. The only exception would have been with regard to an individual in transit through the UK who stays in a Customs controlled zone (which in practice will of course actually have meant that if individuals came out of the Customs zone - even if they were stay in the same airport - they will be regarded as having spent a day here for residence purposes).

It is therefore most welcome that the revised proposal is now that, from 6 April 2008, the methodology for counting days spent in the UK will be based upon whether an individual is present in the UK at midnight. This would seem to be a much more practical approach and in line with the practice of many other jurisdictions. We are also told that there will be an additional exemption for passengers in transit between two places outside the UK, although this exemption will be wider than that initially proposed in that it would also cover people who have to change airports or terminals when transiting through the UK, as well as allowing people to switch between modes of transport. Such days spent in transit will therefore not be counted as days of presence in the UK, even if as a result an individual is present in the UK at midnight, unless the individual engages in activities in the UK that are regarded as being to a substantial extent unrelated to their passage through the UK (e.g. taking time out to attend a business meeting or visiting friends or relations).

## **Temporary non-residence**

No further announcements have been made as regards the provisions for temporary non-residence introduced in the 18 January 2008 legislation and so one assumes these will continue to stand. Broadly, under these provisions, unless an individual is non-resident for 5 tax years, income remitted to the UK during a non-resident year where there has not been a complete 5 year absence will be regarded as a taxable remittance in the year of return. This is similar to the CGT temporary non-residence legislation.

## **Claiming the remittance basis**

It will still be necessary to make a formal claim for the remittance basis of taxation to apply. However, the de minimis limit under which no claim is necessary has been increased from £1,000 to £2,000 of foreign income and gains a year. Where a non-domiciled individual has such foreign income and gains which is regarded as de minimis, that individual will be able to retain use of the personal income tax allowances and annual exemption for capital gains tax purposes (remembering that otherwise individuals claiming the remittance basis of taxation will not be allowed to use such allowances).

The claim for the remittance basis of taxation is something that an individual will need to make each year. However, if an individual claims the remittance basis in one year but not another, un-remitted income from the previous years which is then remitted in a year in which the non-domiciled individual is taxed on an arising basis will in fact still be taxed on a remittance basis. Accordingly, there does not seem to be any scope to manipulate the remittance basis claim for a better result in terms of the remittances one might make, although of course one might choose to make the claim in one year but not another if one is subject to the £30,000 charge and therefore wishes only to have to pay this charge in particular years when foreign income or gains will be substantial.

Historically, non-domiciled individuals could obtain no capital gains tax relief for losses arising offshore. However, legislation is to be introduced so that non-domiciled individuals that are taxed on an arising basis and who have not claimed the remittance basis for 2008/09 can in fact get relief for foreign losses. A new regime is to be provided such that an election could be made for 2008/09 and subsequently to enable relief for foreign losses to be made if the non-domiciliary makes an irrevocable election to be taxed on the arising basis.

## **The £30,000 charge**

There has been no climb down on the application of the £30,000 charge for long term residents initially proposed. Where an individual has been UK resident for 7 out of the 10 tax years immediately preceding a tax year in which a claim for the remittance basis of taxation is made, the £30,000 charge will apply (previous proposals were 7 out of the past 9 tax years).

However, it seems that the Government have changed the drafting of the exact basis on which this £30,000 charge will apply in that they are now making it a tax charge rather than an outright levy, with a view to then enabling those paying it to benefit from double taxation relief. Indeed, it does seem that the Government have been working hard to see if the US IRS will accept the £30,000 as being available for credit against US Federal taxes for individuals that are resident here but still taxed in the US due to their citizenship there, for example. Tentatively it would seem that credit relief will now be due in principle although of course the position of each individual taxpayer in the States would need to be considered.

The proposal for an increased charge after ten years has been dropped. There is, though, other good news in that should offshore monies be brought into the UK to pay the £30,000, that of itself will not be taxed as a remittance. Furthermore, the charge will only apply to adults, so that individuals under the age of 18 will not be required to pay it.

## **Definition of a remittance**

The draft legislation of 18 January 2008 provided a number of changes to the definition of a taxable remittance, broadly making the definition wider to include both money and other property brought to or received in the UK. Also the concept of remittance by a "relevant person" was introduced and in addition it appeared that the use of "offshore mortgages" would no longer be beneficial. Statutory rules for the attribution of remittances from mixed bank accounts were also proposed.

While the thrust of the majority of these changes to the definition of a remittance remain, there has been a significant softening in a number of important areas. The main changes can be summarised as follows:

i) **"Cease source rules"** - previously a remittance of income would only be regarded as taxable if the source of that income continued to exist. It therefore used to be a popular planning tool to cease the source of the income and then remit in a later year. We are told that the legislation will be amended so that income will continue to be taxed under the remittance basis even where the source of that income has ceased in a previous year.

ii) **Non-cash remittances** - historically for most categories of income (excluding employment income) it tended to only be cash remittances that would be able to be regarded as remittance (i.e. so if an asset were bought outside of the UK and then imported into the UK this would not be a remittance). As indicated in the 18 January 2008 draft legislation, the definition of a remittance will be extended to include non-cash remittances. However, there will now be an exemption for personal assets costing less than £1,000, brought into the UK for repair and restoration and for assets in the UK for less than a total of a 9 month period purchased out of relevant foreign income. There will also be a specific exemption for works of art brought into the UK for public display. As a further welcome relief, any asset purchased out of untaxed relevant foreign income or gains owned by an individual on 11 March 2008 will be exempt from being regarded as an asset chargeable if later remitted to the UK for so long as that individual owns it, even if the asset is later exported and then re-imported. Of course if the asset is sold whilst it is in the UK then this will continue to constitute a remittance.

iii) **Offshore mortgages** - until now, it has been possible to take a mortgage overseas, on a UK property, and pay the interest outside of the UK without this being regarded as taxable remittance. Going forward, payment of interest on a loan to purchase UK property will be regarded as taxable remittance. However, there will be a very welcome grandfathering provision inserted such that existing offshore mortgages secured on residential property (not commercial property) will continue to be able to have their interest paid offshore without this being regarded as taxable remittance, for the remaining period of the loan, or until 5 April 2028, whichever is the shorter. Note however that if the terms of the loan are varied, or any further advances are made after 12 March 2008, then the repayments will be treated as remittances from that point.

iv) **Gifts** previously one used to be able to make a gift outside of the UK to a friend or family member who would then be free to bring the funds into the UK without that being regarded as a taxable remittance by them. The 18 January 2008 draft legislation introduced the concept of a "relevant person", saying that where remittances are made by a relevant person then they can still count as taxable remittances of the person that has gifted the income or gain to them. We are now told that the definition of a relevant person will not stand in its current format but instead the definition will be restricted to an individual's "immediate family" (being spouses, civil partners, individuals living together as spouses/civil partners and their children or grandchildren under 18). We understand it is also to cover close companies, or overseas companies that would be close if in the UK, of which they are participators and also trusts of which any of them are settlors or beneficiaries.

v) **Mixed fund bank accounts** the 18 January 2008 draft legislation provided some rules on how one should attribute receipts from a mixed account for the purposes of the remittance basis of taxation. We are told that these rules are to be made more comprehensive although a revised draft of them is not yet available.

## **Overseas trusts and companies**

For non-domiciled individuals who have interests in overseas trusts or companies, this is where some of the potentially most devastating changes in fact lay for them. In particular, it seemed that the remittance basis was going to be totally removed for trust beneficiaries in respect of Section 87 gains which, in conjunction with Section 87 also being made to apply to non-domiciliaries, would mean that if an offshore trust were to distribute foreign income to a non-domiciliary even outside of the UK in fact this would still be regarded as taxable income in the hands of the non-domiciled beneficiary. Fortunately, this position, as well as many other aspects of the initial draft legislation, have been significantly improved to the taxpayer's benefit. The summary of the changes can now be provided as follows:

i) **Offshore Trusts and Section 87** - Probably the best bit of good news is that although Section 87 will continue to apply to non-domiciled individuals as proposed in the draft legislation of 18 January 2008, a massive change from that draft legislation will be made in that the charge under Section 87 will remain subject to the remittance basis of taxation (assuming the non-UK domiciled beneficiary receiving a payment subject to Section 87 does indeed claim the remittance basis of taxation).

ii) **Matching** - some detailed guidance has now also been released as regards the exact workings of the Section 87 pool, now that Section 87 will apply to non-domiciliaries. In particular, it is confirmed that the tax position of non-domiciliaries who have received capital payments on or before 5 April 2008 will not change and furthermore that if capital payments are matched to trust gains realised prior to 6 April 2008 then these will not be taxed on a non-domiciled beneficiary.

iii) **Rebasing election** - in another very welcome change, an option will now be given to non-resident trustees to make a one time only, irrevocable election to rebase their trust assets to market value as at 6 April 2008. This rebasing will cover assets the trusts owns and also assets it owns through a company that would have been imputed up to it through Section 13, TCGA 1992. If this option is taken advantage of then it will mean that trust gains that have accrued but have not been realised as at 6 April 2008 will not be chargeable if matched to capital payments made on or after 6 April 2008 to non-UK domiciled beneficiaries. Note however that there are some transitional rules regarding payments made between 12 March 2008 and 5 April 2008 in that while generally these would not now be matched to the Pre-April 2008 gains, if a rebasing election is made by the trustees, the pre 6 April 2008 element of any gain treated as accruing to the beneficiary will in fact be matched with any surplus capital payments made between 12 March and 5 April 2008.

iv) **UK situs assets** - although it was somewhat of a passing comment in the announcements, it does seem that the remittance basis will apply for non-domiciled beneficiaries on gains in respect of both UK and non-UK situs assets. This is also a huge change from the original proposals which sought to apply capital gains tax to disposals of UK properties and was therefore making many non-domiciled investors in UK property rethink their arrangements. This change is accordingly very welcome. Note also that it would appear to apply both in the situation where a trust directly owns a property and in a situation where a trust owns UK property through an offshore company.

v) **Disclosure** - the Government do also seem to have backtracked on the proposed additional disclosure requirements, confirming that no additional notification requirements will be imposed on non-UK domiciled settlors of non-UK resident trusts. However, there is some indication that the price of the rebasing election will be that some additional disclosures may be required (the extent of these is not yet clear).

vi) **Stockpiled gains** - the supplemental charge for capital gains tax purposes on stock piled gains (Section 91 TCGA 1992) will be calculated based on the year in which the capital payment is made by the trustees, not the year in which it is remitted to the UK by the non-UK domiciled beneficiary. Also, a general matching rule is to be introduced so that trust gains are matched on a LIFO basis with the capital payments made on or after 6 April 2008.

vii) **Settlor charge** - Section 86 will now remain unchanged, so that in principle if a UK resident but non-domiciled individual settles an overseas trust, there is no automatic attribution of the trusts gains to that individual (the only tax change would then be potentially under Section 87, based on capital payments made to the settlor if he also a beneficiary). What seems like a small backtrack in the legislation is in fact a potentially huge planning opportunity for individuals that are otherwise looking at having to pay the £30,000 annual charge to continue to claim the remittance basis of taxation. It would now seem that it would be possible for a non-domiciled individual to settle assets into trust and allow the assets to grow in the trust without that individual actually having to claim the remittance basis of taxation, and there would be no attribution of the trust capital gains to him unless there is a payment made out by the trust to that individual. Note however that it is unclear as to whether this approach would be satisfactory for income as it will depend upon the exact wording of the anti avoidance legislation when it is redrafted, although there is some hope that this may be a potential planning solution.

## Offshore Companies

As regards non-domiciled individuals who are participators in non-resident companies, we are told that there will only be minor changes to the draft 18 January legislation in relation to such offshore companies. Thus, non-domiciliaries using an offshore company they personally own, to hold UK situs property will be taxed on any gain on a sale of such a property, under Section 13. However, in fact given the above detailed changes to the legislation for offshore trusts, when one considers the flow through impact of the proposed changes to offshore companies, this means that where one has a structure of an offshore trust owning an offshore company, the position is much more beneficial.

## Conclusions

When compared to how the position was looking for non-domiciliaries after the 18 January 2008 legislation was published, the changes announced in this Budget are very much a sigh of relief. We are also given assurance by the Chancellor that there will be no further changes of any substance to this legislation for this and the next parliament. Non-domiciliaries with offshore trusts will now need to sit down and discuss with their trustees whether it is going to be appropriate for the rebasing election to be made, plus there will still be time to look at making appropriate remittances in this current tax year before the change in legislation, although at least for now the regime going forward does seem to be somewhat less hostile. As ever, however, the devil is always in the detail and we await the revised legislation with interest.

*If you would like more information on this subject, please contact Janet Paterson at [janet.paterson@creaseys.co.uk](mailto:janet.paterson@creaseys.co.uk)*

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## 4. Green Cars

100% tax relief (First Year Allowance) is available to businesses which purchase or lease a car with a low carbon dioxide emission. The relief was due to expire on 31st March 2008 but the Chancellor has announced an extension until 31st March 2013. However, effective from April 2008 the car will need to have a CO2 emission not exceeding 110g/km, whereas beforehand, the amount was 120g/km.

*Had the deadline not been extended, businesses would only have been able to claim Capital Allowances at a rate of only 20% on a reducing balance basis. The extension is therefore welcomed but the reduction to 110g/km restricts the number of cars which would qualify. The Chancellor is therefore continuing with his predecessor's policy of encouraging businesses to invest environmentally wisely, with tax incentives. Visit [www.vcacarfueldata.org.uk](http://www.vcacarfueldata.org.uk) to see which cars qualify.*

There are also some changes to the company car benefit rules for employees. The rates applied when calculating the amount of the benefit have ranged from 15% to 35% but from 6th April 2008 the rate falls to 10% for cars which have a CO2 emission of 120g/km or less. Cars with an emission between 120g/km and 135g/km will have a rate of 15%, whereas for the last three years a car with an emission of 140g/km or less would have a rate of 15%. There has been no announcement regarding any changes to the way car fuel benefit is calculated, other than the use of the same rates, as mentioned above.

*These company car benefit rules have been with us since April 2002 but most years the goal posts are moved so that a car with a lower emission is needed to qualify for the lower rates. Might this be in response to car manufacturers designing more efficient cars and the Government not wanting to lose too much as a consequence?*

*If you would like further information on this please contact Tony Harvey at [tony.harvey@creaseys.co.uk](mailto:tony.harvey@creaseys.co.uk).*

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## 5. Companies and Businesses - good and bad news

Two measures have been announced, designed to support new and growing businesses. The annual limit for investors in EIS companies is increased from £400,000 to £500,000 in any tax year, with effect from 6 April 2008, subject to EU State Aid approval. Such investors enjoy tax-free gains and income tax relief of 20% on the initial investment. For employees, also with effect from 6 April 2008, there is an increase in the value of share options that can be held under the Enterprise Management Incentive (EMI) scheme from £100,000 to £120,000, the benefit of future growth in value being subject to 18% capital gains tax when realised, rather than income tax and NIC of up to 41%. Companies able to grant EMI's will though be limited to those with fewer than 250 full-time employees.

*These measures will benefit investors, employees and qualifying companies who take advantage of these tax effective schemes. The consultation on the Enterprise Investment Scheme is also welcome as the current complex rules act as a disincentive to many who would otherwise participate.*

As previously announced, the main rate of corporation tax for companies with taxable profits of more than £1.5 million is reduced from 1 April 2008 from 30% to 28% whilst the small companies' rate for profits less than £300,000 is increased from 20% to 21% (and to 22% from 1 April 2009). These small companies profit limits are divided by the number of associated companies, the rules for which have been amended to clarify the position in respect of business partners such that their interests will only be included where there are "relevant tax planning arrangements" in place.

*The clarification of the associated companies rules is welcomed as this ensures that members of partnerships who have other business interests are not inadvertently caught.*

Companies that claim relief under the Research & Development (R & D) schemes will welcome the increases in the rate of relief announced last year (to take effect once EU State Aid approval is received) to 175% (from 150%) for SME's and to 130% (from 125%) for large companies. Certain restrictions on relief are to be put in place to ensure EU State Aid approval, including a cap of € 7.5m per R & D project.

Further consultation is to take place to look at simplifying Corporation Tax calculations and returns for smaller companies.

Following the Revenue's defeat in the House of Lords in the Arctic Systems case, the Government predictably announced that it intended to legislate against business owners who arrange their affairs in such a way that they gain a tax advantage by shifting income to another person (e.g. spouse) who is subject to a lower rate of tax. Having consulted on this, it has now been announced that the legislation will be effective from 6 April 2009 and not 6 April 2008 as previously indicated and in the interim, there will be further consultation.

*This proposed legislation would have had a significant effect on many family business and we are pleased that the Government has taken note of the considerable concerns raised by the professional bodies and is going to consult further to try to achieve a more workable and fairer solution. In the meantime dividends etc to non-working spouses may seemingly be readily paid for another year...make hay while the sun shines!*

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## **6. Tax Relief on capital expenditure**

Budget 2007 announced major reforms to the Capital Allowances system and draft legislation has since been released to give effect to these changes.

There will be a phased withdrawal of Writing Down Allowances (WDA's) for industrial and agricultural buildings with effect for chargeable periods ending on or after 1 April 2008 for companies and 6 April 2008 for businesses. Enterprise Zone Allowances will also be withdrawn from April 2011. Balancing charges and allowances, which would have arisen on the sale of a building subject to ABA's and IBA's, were abolished with effect from 21 March 2007.

For investment in most types of plant and machinery (the main exception being cars), there is a new Annual Investment Allowance (AIA) of £50,000, effectively giving 100% tax relief in the year of purchase. This will take effect for expenditure incurred from 1 April 2008 for companies and 6 April 2008 for businesses and replaces first year allowances, which were available for small and medium enterprises. Any excess expenditure will still qualify for WDA's (see below). The AIA is proportionately increased or reduced for periods of more or less than twelve months and will be apportioned for periods that span 1 April or 6 April 2008. Groups of companies will receive a single £50,000 allowance.

The rate of WDA's on the pool of general plant and machinery is reduced from 25% to 20% per annum with effect from 1 April 2008 for companies and 6 April 2008 for businesses.

A new special rate pool with a WDA of 10% is also introduced from the same date for long-life assets, thermal insulation and integral fixtures. For long-life assets, this increases the rate of WDA from 6% to 10% and for certain types of integral fixtures such as cold water and electrical systems, allowances are available where there were none previously. The rate of allowance is reduced however for other assets such as thermal insulation, which previously qualified for the 25% WDA.

Where the balance on the general pool or special rate pool falls to £1,000 or less, the remaining balance can be claimed as a WDA.

Enhanced Capital Allowances (ECA's) of 100% continue to be available for businesses investing in energy efficient and water-saving technologies that benefit the environment. Loss-making companies will be able to claim a tax credit in respect of these. 100% FYA's for low CO2 emission cars are introduced from 1 April 2008.

Anti-avoidance legislation is being introduced to counter schemes that avoid corporation tax by crystallising a balancing allowance as a trade is transferred from one company to another.

*This substantial reform of the tax relief on capital expenditure affects all businesses and companies. The AIA will be useful to SME's although have little impact on larger groups; the changes to WDA's will be of benefit for some types of expenditure but detrimental to others. Care needs to be taken in the transition to maximise the available allowances by the careful timing of planned capital expenditure.*

*If you would like further information on this please contact Elizabeth Robertson at [elizabeth.robertson@creaseys.co.uk](mailto:elizabeth.robertson@creaseys.co.uk)*

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## 7. VAT

The Chancellor of course announced the usual increase in the turnover thresholds for registration and de-registration (to £67,000 and £65,000 respectively) as well as updates to the fuel scale charges, which are now based on band of CO2 emissions. There are also some minor amendments to the legislation in relation to the option to tax over land and buildings.

The biggest change, however, and one in respect of which we look forward to being of assistance to our clients in taking advantage of, is a revised transitional period for VAT claims. Just over 10 years ago, a 3 year cap was introduced to limit the time within which a claim can be made against Customs for previously overpaid, or under claimed VAT. However, thanks to some recent leading cases in the House of Lords, the introduction of this 3 year cap has been heavily criticized as not allowing a sufficient transitional period for claims to be made. The upshot is that it can now be possible for claims to be made right back from the inception of VAT on 1 April 1973, to the time approximately 10 years ago when this cap was introduced. However, taxpayers will now have only until 31 March 2009 within which to make such claims, after which point the 3 year cap will be fully enforceable. All parties involved with VAT will therefore be well advised to see if there is any scope for them to make relevant claims and enjoy their fair share of this legislative opening. We will be very happy to assist clients in this process.

The other change of wide application to any VAT registered clients is to note that the arrangements for correcting small errors (less than £2,000) on one's VAT return are due to change for VAT accounting periods commencing on or after 1 July 2008. Under the new provisions, the de minimis £2,000 limit will be increased to the greater of £10,000, or 1% of turnover for the return period, subject to an upper limit of £50,000. This will be very useful for clients who need to adjust for errors without having to go to the additional paperwork of submitting form VAT 652.

Last but not least for anyone involved in the fund management business it will be relevant to note that the VAT exemption for fund management is to be extended effective from 1 October 2008 to include a wider class of fund.

*Should you have any VAT related queries then please contact Janet Paterson, partner in charge of VAT, at [janet.paterson@creaseys.co.uk](mailto:janet.paterson@creaseys.co.uk) or David Page, our VAT manager, at [david.page@creaseys.co.uk](mailto:david.page@creaseys.co.uk)*

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## 8. Inheritance Tax and trusts

Good news on capital taxes has been rare in recent years. A rare positive was the announcement in the Pre-Budget report that any unused inheritance tax nil rate band could be passed from one spouse to another. This was a welcome step, although practical difficulties about record keeping have surfaced since the original announcement. In response, HMRC have recently given guidance on the records that should be supplied when making a claim to pass any unused nil rate band to a surviving spouse. This should help going forward, although there will inevitably be instances where the existing records are not sufficient to claim the new relief.

The Budget has addressed a potential anomaly between valuations of assets used for both capital gains tax and inheritance tax purposes. Now, because the nil rate band may be passed on to a surviving spouse, there will be situations where an asset is not immediately valued for inheritance tax purposes on death but that valuation takes place several years later (when the surviving spouse dies and the unused nil rate band to be claimed is calculated). In this situation the normal rule that forces the capital gains tax value of an asset to be consistent with the inheritance tax value has been set aside.

A concession has been granted to life interest trusts that were in existence at March 2006. Trustees of such trusts had a window of opportunity to reorganise the interests in the trust and create what was termed a Transitional Serial Interest (TSI). Broadly this enabled the trust to carry on being outside of inheritance tax charges for the assets held before the new regime was announced in March 2006. Many trustees sought to create a TSI, but were thwarted by uncertainty about what did and did not qualify as a TSI. The government have now issued further legislation to try and resolve this muddle and also helpfully extended the transitional period by which any reorganisations needed to have been completed. Now the transitional period will run to 5 October 2008 rather than 5 April 2008.

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*We would like to offer our thanks to Peter Cropper and Karen Maunder for their assistance in producing this document.*

*If you consider that any of these items might apply to you please contact us to discuss the matter in the context of your individual circumstances. While every effort is made to ensure the accuracy of articles appearing in this newsletter, they are not a statement of law to which reference should always be made and indeed are based on a preliminary assessment of the Budget Statement and initial press releases issued. Furthermore, amendments may be made as the Finance Bill goes through its Parliamentary stages. For this reason no responsibility for loss occasioned to any person acting or refraining from action as a result of material in this newsletter can be accepted by the partners and staff of Creaseys.*

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