Spring Budget 2020—views from the market

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Tax analysis: Views from leading tax practitioners on the Spring Budget 2020.

The Lexis®PSL Tax Consulting Editorial Board (CEB) and other leading tax practitioners provide us with their views on the Budget delivered by the Chancellor on 11 March 2020.

For a summary and analysis of the key business tax announcements in the Spring Budget 2020, see: Spring Budget 2020—Tax analysis and for key private client announcements, see: Spring Budget 2020—Private Client analysis.

BUSINESS AND ENTERPRISE

Eloise Walker, Pinsent Masons LLP and CEB member—For a Budget meant to be bland as bland, there's a lot tucked away in the 180 pages of OOTLAR.

The finance and funds sector has been especially badly hit in this Budget. The near death of entrepreneurs' relief was expected. More worrying is the announced comprehensive review of the UK unregulated funds regime, aimed at private equity, debt, equity and property funds. It might look all welcoming at first glance (let's make the UK a better place to have your asset-holding vehicles, they say), but the questions asked will raise red flags for the cynical—Question 9 ('Do you consider that there is a case for the government to develop specific rules concerning the tax treatment of asset holding vehicles in alternative fund structures?') sounds like the prelude to new legislation that will bring unregulated funds to heel. They're going to have another look at the VAT treatment of fund manager fees too, which may not end well (though I hope they prove me wrong). Banks will be worried by the changes to the surcharge, on top of IR35 and the restriction on capital losses all going ahead as scheduled which are of particular concern to the finance sector.

Keith Gordon, Temple Tax Chambers and CEB member—These are strange times, even without mentioning the C-word that is currently dominating the world's headlines. We seem to have moved on from the B-word. Maybe next year will be brought to us by the letter D.

Changes to entrepreneurs' relief were widely expected. About the only positive thing that could be said for the relief was that it benefited the bedrock of Conservative Party support. Therefore, while all the economic arguments pointed to the repeal of the legislation, politics intervened and have redeemed the relief, albeit with a far more limited scope. Whereas the lifetime limit was £10m, the Budget has announced its reduction back to the £1m level which existed when the legislation was first introduced in 2008.

Hilary Barclay, Stephenson Harwood LLP and CEB member—From a corporate tax perspective, most of the Budget measures were predicted wholly or in part (eg keeping the 19% corporation tax rate, introducing the digital services tax, IR35 changes, increasing the R&D tax credit rate and the structures and buildings allowances rate). A number of others are really just tinkering around the edges.

The headline news was of course the material cut in the lifetime allowance for entrepreneurs' relief from £10m to £1m. It came with some anti-forestalling measures—which is not surprising or unreasonable in principle, though the content of the measures is worth a closer look. There were times during the Budget speech where the new Chancellor was pushing the mantra of 'getting it done' so hard he looked as though he were wielding an air sledgehammer—for me, reading the anti-forestalling measures conjured up a similar image. The formulation for the uncompleted contracts measure tears asunder the well-known formulation in targeted anti-avoidance rules of having a main purpose of obtaining a tax advantage. Instead, this rule could apply where there was any purpose of obtaining any advantage (and/or, where there are connected parties, if the transaction was not wholly for commercial reasons).

To save HMRC having to open burdensome enquiries, the legislation also challenges taxpayers to make a specific statement that they had no such purpose (and, where applicable, that the contract was entered into wholly for commercial reasons). This, of course, does not reflect real life decision-making which will reasonably and sensibly take into account all relevant circumstances, as noted in some of the leading tax avoidance cases—eg Lord Upjohn in *Brebner*, recently cited in the *Allam* case in the Upper Tribunal. It would be a brave taxpayer who dared to give such a statement, given the severe ramifications for making a formal statement to HMRC that is not completely accurate.

The share-for-share exchange provision was also surprising in its breadth, covering all such exchanges with commonality of control in the current tax year—when minority secondary investments are not unusual. Also, quite reasonably, a taxpayer may wait until the tax year has finished before doing their tax return and deciding whether to make an entrepreneurs' relief election. All of this is especially noteworthy in the context of HMRC's existing commentary on planning for changes of tax rates and law—the GAAR guidance, for example (at D.17) is pretty relaxed about taxpayers using similar planning to take advantage of a change in tax rates, particularly where a change has been announced in advance. Question: does this give us a glimmer of an insight into future policy-making?

Some welcome changes, reviews and consultations have also been announced. The potential for simplifying the tax rules on intangibles by enabling acquisitions of 'old' regime assets to fall within the intangible fixed assets rules, allowing relief for acquisition costs from July, is potentially helpful—as are transitional rules. The formation of a working group for VAT on financial services and a review of VAT on fund management fees will also be of interest to many.

Natasha Kaye, Cooley LLP and CEB member—The change to entrepreneurs' relief, reducing the lifetime limit to £1m (from £10m) is at least straightforward to apply but its benefit has been drastically reduced. Other than in relation to EMI options, there is likely to be much less focus on it in the future for advisors (and I for one will miss that!). As noted in the information and impact note, 'entrepreneurs' relief claimants tend to be older, male, of above-average means, and include individuals who are selling their business or their company's shares on retirement—the government clearly didn't heed their calls to retain the benefit of the relief.

What is interesting, and an indication of the tax world we live in now, are the anti-forestalling measures that are being introduced to prevent the benefit of pre-Budget entrepreneurs' relief planning, such as the entering into of an unconditional (rescindable) contract or inserting a new holding company. Such measures were not introduced in the past in respect of such planning that was entered into in connection with anticipated changes to taper relief. It is assumed that the anti-forestalling measures will also apply to pre-11 March transfers to family trusts, on the basis that parties to the contract will be connected and will not be able to demonstrate that the contract was entered into for wholly commercial reasons.

By contrast, the lifetime cap for investors' relief, which also reduces the CGT rate to 10%, has remained at £10m. However, it has a different focus (given it doesn't apply to employees or directors) and, as it has a three-year holding requirement and shares must have been issued on or after 17 March 2016 for it to apply at all, it presumably hasn't cost the Exchequer that much.

John Endacott, PKF Francis Clark and CEB member—The Chancellor went for the simple and blunt approach of reducing the cost of entrepreneurs' relief by reducing the lifetime allowance. The lifetime allowance is now £1m—so back to where it started in April 2008 having increased to £2m in April 2010, £5m in June 2010 and £10m in April 2011. This is the first time the limit has reduced. However, the main capital gains tax rate is now 20% as opposed to 28%, so tax on a £10m gain is 19% now, which is the same as it was in July 2010 and is a reasonable tax rate—just £900,000 higher than it was on Tuesday.

The immediate effect and anti-forestalling rules were more of a surprise, especially as the anti-forestalling rules border on the vindictive. In particular, para 4 catches commercial planning arrangements dating back to 6 April 2019 where, reasonably, a client was contemplating making a TCGA 1992, s 169Q election. The drafting of para 4 isn't great and looks a little rushed. It is possible that it might be improved following lobbying by the professional bodies, but I'm not holding my breath. The expected tax raised in 2019–20 of £5m does seem at odds with how wide-ranging the measure is so possibly the government has gone further than they meant to. Any clients impacted may wish to consider a letter to their MP—especially if it is a Conservative MP.

Ben Jones, Eversheds Sutherland LLP—This was a generally positive Budget from a large business perspective, although mostly because there were no real surprises and, in particular, the government has broadly held off using large business as 'loot boxes' to fund 'levelling up' the UK economy.

One standout development is the consultation on investment fund asset holding companies. This is a really positive development for the financial services sector that could address vagaries of the UK tax code that otherwise impact the attractiveness of the UK for fund structuring—a perfect tonic for the financial services sector in a post-Brexit environment.

Another standout is confirmation that the government still intends to proceed with the introduction of the 2% digital services tax. This is surprising in the context of the recent dispute between France and the US regarding the French DST. However, with post-Brexit US/UK trade negotiations commencing, this could be a negotiation tactic and we may in due course see a relaxation, deferral or eventual repeal of this new tax before any tax actually becomes payable, either as the trade negotiations progress or the OECD closes in on an international solution to taxing the digital economy.

David Klass, Hunton Andrews Kurth—Full steam ahead with the digital services tax. There had been significant speculation that the government would drop the plan to introduce the DST, in view of the OECD's push toward a global solution and the thinly veiled displeasure expressed by the US government. But things can change quickly in politics, and in a climate dominated by the need to find funds to boost the economy in the light of the impact of coronavirus (COVID-19), the government has clearly decided that those two external pressures are outweighed by the prospect of material revenues from the DST.

Also of interest, the helpful relaxation of the rules around pre-2002 intangible assets—this will remove a complexity which may once have had a policy justification, but is much less obvious now.

David Wilson, Cooley LLP—Despite the Chancellor having repeatedly told us that 'this Budget gets it done', on tax, this Budget doesn't actually do very much. The non-reduction of the 19% corporation tax rate had been a virtual certainty since the time of the election. In limiting, rather than abolishing, entrepreneurs' relief, the Budget did not go as far as some had feared. However, with changes in this area having been so widely anticipated, the government (perhaps emboldened by the High Court's recent rejection of human rights arguments in relation to the loan charge) took the unusual step of introducing anti-forestalling measures with retroactive effect. EMI option-holders will generally not be troubled by the reduction in the entrepreneurs' relief lifetime allowance, and the review and potential extension of this important scheme will be welcomed.

Some of the other consultations, reviews and calls for evidence announced in the Budget may be less welcome. Proposals for a new 'economic crime levy', to be paid by firms subject to the money laundering regulations, will be especially unwelcome as firms bear the costs of DAC6 implementation. Do we really need more rules on notification of tax positions and promoters? On the more positive side, it is interesting to see that the government is looking again at the hybrid mismatch legislation; let's hope this leads to these rules being scaled back.

Darren Oswick, Simmons & Simmons LLP—Many predicted that this Budget would result in the abolition of entrepreneurs' relief in its entirety, but the Chancellor instead proposed a pragmatic compromise to the existing rules by reducing the lifetime limit to £1m for any qualifying disposals made on or after 11 March 2020. The government's stated intention in making this change is to shift the focus so as to encourage only 'genuine' risk-takers and entrepreneurs. Given that complete removal was expected, the continuing (albeit limited) commitment to maintaining the relief in a reduced form is welcome. However, the fact that relief claimed in relation to earlier qualifying gains needs to be taken into account for future claims will mean that many will no longer be able to claim the relief in practice.

Michael Ward, Simon Letherman, Sam Whitaker and Chrisangelina Lo, Shearman & Sterling LLP—The government rightly prioritised spending on containing the coronavirus outbreak with a package of measures worth £30bn and saved the fanfare for its 'levelling-up, getting it done' infrastructure spending, but there were some less heralded developments that still may be of wider interest to practitioners and clients alike.

As expected, the corporation tax rate was left unchanged at 19% (rather than reducing to 17% as had originally been legislated for). Less expected, following widely-trailed stories in the week leading up to the Budget, was the government's decision not to abolish entrepreneurs' relief but rather reduce the lifetime limit from £10m to £1m effective as of 11 March 2020, with anti-forestalling arrangements introduced in respect of existing but as yet uncompleted disposals.

Conspicuous by the lack of attention given to it was the decision to continue to push ahead with the digital services tax first proposed at Budget 2018. From 1 April 2020, the UK will impose a 2% charge on the revenue (mostly from advertising and commissions) of very large search engines, social media platforms and online marketplaces, to the extent that such revenue is derived from UK users (but financial and payment services are exempt). The decision to forge ahead is particularly interesting because France introduced a similar tax retroactive to 1 January 2019, but suspended collection of the tax until December 2020 following the threat by the US administration to impose retaliatory sanctions for what it considers the disproportionate targeting of its businesses. Whether the US will threaten similar tariffs against the UK and what the likely response will be of the UK, in full 'open for business' to the world mode, to such a threat remain to be seen.

Another Budget is expected in the Autumn.

Andrew Loan, Fieldfisher LLP—The new Chancellor had relatively little to say about tax in his first Budget speech. Those worried about potential changes to agricultural or business property relief, or a wider reform of inheritance tax, can relax for now. The changes to entrepreneurs' relief were more limited than expected, with a lower but still generous amount of £1m of capital gains taxed at 10% and any excess taxed at only 20%. Anyone who has done pre-Budget planning will need to pay close attention to the anti-forestalling rules. Among the more interesting developments is the review of the UK's tax and regulatory regime for investment funds, including the first pieces looking at the VAT treatment of fees for fund management, and the review of investment holding companies.

Jonathan Cooklin, Davis Polk & Wardwell LLP—The Budget announced some quite important corporation tax measures. Many pharma and tech companies will welcome the (rather unexpected) extension, from 1 July this year, of the IFA amortisation regime to the acquisition of pre-April 2002 assets. The government had previously rejected this measure due to cost (but, as with so much else in this Budget, cost is not the constraint it once was). Although an acutely political Budget, as expected, the digital services tax will kick in from next month—the US response will be interesting. The consultation on the hybrid mismatch rules which aims 'to ensure that the hybrid mismatch rules work proportionately and as intended' might conceivably provide some help to those of us who advise US multinationals, where hybrids are in the very DNA of the US tax regime. Previously announced measures to ensure EU compliance in respect of the tax neutrality of intra-group transfers and to clamp down on stamp duty 'swamping' are coming in as expected. Finally, with the announcement in the Budget of (historically) anaemic growth forecasts, even before the impact of Covid-19, it wouldn't be a huge surprise if tax rises are coming down the line.

Robert Langston, Saffery Champness—The headline of the Budget for advisers was the restriction of entrepreneurs' relief to £1m. This was widely expected and many individuals had accelerated transactions or undertaken other planning to 'lock in' the previous £10m limit. However, there are anti-forestalling measures which will render ineffective two of these planning strategies.

Contracts which unconditionally exchanged but were not completed (so called rescindable contracts, or resting on contract) until after 11 March will not be treated as effective on the date of exchange but rather the date of completion, and therefore subject to the new limit.

Elections under TCGA 1992, s 169Q (to disapply tax-free share exchange treatment under TCGA 1992, s 135) for transactions undertaken since 6 April 2019 will in certain cases only be effective from the date of the election rather than the date of the transaction—and therefore subject to the new limit. These cases include transactions where the shareholders remain the same after the share exchange, which is a transaction some individuals did in order to give themselves the option of tax-free share exchange (if entrepreneurs' relief was not restricted), or a TCGA 1992, s 169Q election (to benefit from the old limit if entrepreneurs' relief were restricted). There are further provisions which mean that if clearance was given for such a transaction, it is automatically treated as being tax-free, removing the possibility for an individual to argue that the transaction was not in fact undertaken for commercial reasons and therefore falls outside TCGA 1992, s 135.

I suspect that there will be representations made on the TCGA 1992, s 169Q election, as the anti-forestalling legislation will affect many transactions not undertaken solely to benefit entrepreneurs' relief purposes. As the election is made on the tax return, there was no opportunity to make the election for transactions which have been undertaken in the current tax year.

The Chancellor also applied the changes from 11 March (rather than from 12 March) so individuals hoping to rush through a transaction in the afternoon were not able to do so.

Timothy Jarvis and Emma Perez, Squire Patton Boggs LLP—The Chancellor of the Exchequer, Rishi Sunak, has announced in the Budget that, with effect from 11 March 2020, the lifetime limit on gains for entrepreneur's relief (ER) purposes has been reduced from £10m to £1m.

This change will not only capture disposals going forward, but may also include disposals where contracts have been exchanged before 11 March, but have not yet completed.

In addition, the draft legislation now published includes tough anti-forestalling rules that will require taxpayers who exchanged contracts before today, but who close the deal at a later date, to certify to HMRC that no purpose of entering into the contract was to secure ER (and if contracts were entered into between connected persons, it was done wholly for commercial reasons).

Furthermore, for taxpayers who may have entered into pre-Budget planning arrangements during the 2019–20 tax year to secure ER (for example, by exchanging their shares in the existing company for shares in a new holding company and then the taxpayer making an election to opt out of 'rollover' treatment to crystallise a capital gain now), the government has announced that where the reorganisation did not, broadly speaking, lead to a change in control, the reduced ER limit will still apply to any gains that arise as a consequence of a taxpayer making the 'opt-out' election.

The government has also confirmed that persons who have received advance clearance from HMRC in respect of a share-for-share exchange pre-Budget, during the 2019–20 tax year, will still be caught by the new ER limit.

However, it was not all doom and gloom for private equity-backed businesses. The Chancellor also announced that:

- the research and development (R&D) expenditure credit will be increased from 12% to 13% (a tax cut worth £2,400 on a typical R&D claim)
- the structures and buildings allowance will be increased from 2% to 3% (giving an extra £100,000 of relief if you are investing in a building worth £10m)

Private equity investors may, therefore, want to review their portfolios to ensure that all available reliefs are being claimed in full where possible.

Jon Stevens, DWF LLP—Changes to entrepreneurs' relief are not surprising but what is surprising is that it is applied retrospectively to uncompleted contracts. This is an extension to the use of retrospective tax legislation to tackle avoidance.

REAL ESTATE TAXES

Siobhan Mossop, Craig Leslie and Steve Horncastle, EY Stamp Taxes—On stamp taxes, there was not much unexpected in this year's Budget; the only 'new' measures being some reliefs from the annual tax on enveloped dwellings and the 15% rate of SDLT for qualifying housing co-operatives, expected to take effect from April 2021 and Autumn 2020 respectively.

After yo-yoing on the rate, the government has now confirmed that the SDLT surcharge for non-residents buying residential property in England & Northern Ireland will be 2%. The surcharge will be introduced from 1 April 2021, giving the government time to address some of the issues raised during last year's consultation process and time to draft what could be a complicated set of new SDLT provisions, potentially dealing with an entirely new residency test and measures to bring UK close companies controlled by non-residents within the surcharge. The expectation is that this surcharge will apply on top of the 3% surcharge on additional homes.

Jon Stevens, DWF LLP—The increase in structures and buildings allowance by 50% from 2% to 3% is a welcome measure for investors in new properties (those properties where the contracts for construction were entered into after October 2018) and significantly reduces the period over which they will be depreciated for tax purposes.

TAX ADMINISTRATION AND AVOIDANCE

David Milne QC, Pump Court Tax Chambers and CEB member—The Chancellor's measure on limited liability partnerships (LLPs) particularly catches a lawyer's eye because it relates to, or perhaps tries to pre-empt, an appeal that is still ongoing in the courts. This 'retrospective and prospective' measure deals with the case of LLPs (which can only by definition be registered as such if they are carrying on business 'with a view to profit') which are held on appeal not to have been 'with a view to profit'. The FTT decided in *Inverclyde* [2019] UKFTT 408 that this caused all sorts of assessment problems for HMRC. HMRC is appealing *Inverclyde*, but this measure will cover HMRC in case it loses.

There is also the keenly-awaited 2% digital services tax (DST), aimed at large multinational digital companies that have generated so much turnover in the UK, yet (legitimately) paid so little tax under the existing law. The government is committed to dis-applying the DST once an appropriate international solution (perhaps through the OECD or G20) is in place, but since most of the multinationals concerned are US based, the US is likely to resist any change!

Eloise Walker, Pinsent Masons LLP and CEB member—Tax advisers (and especially lawyers) will be worried to see two proposals aimed specifically at them—a new anti-promoter strategy for tackling tax avoidance schemes, and a campaign to improve the quality and reliability of tax advice. All very noble, and I'll applaud any effort that drives some of the dodgy consultancies out of the market, especially those punting bad advice to consultants who are really employees under IR35, but in their efforts to tackle the bad advisers HMRC may throw their net wide, if previous attempts are any indication, and I would not be surprised if advisers get pulled into it who are genuinely advising their clients on a disputed point of law. Confidentiality and privilege exist for a reason, and I feel a conflict with the Law Society and SRA coming on.

Add to this further DAC 6/DOTAS style obligations, widening the application of tax conditionality (where you kiss your government grant goodbye unless you can demonstrate good tax compliance), and the ominous 'large business notification scheme' requiring large business to notify HMRC if they take a position which HMRC are likely to challenge, and you have a worrying pattern emerging. It's been a trend in recent years for HMRC across the tax regime to put their investigative obligations onto large business taxpayers (IR35 being a case in point), and given HMRC's lack of personnel resources you can see the reason why. But piling compliance on top of compliance starts to make the UK tax system look ridiculous: if HMRC care that much about tax certainty, perhaps they should re-purpose the personnel looking at the output of all that compliance into putting a proper pre-clearance procedure in place so large taxpayers can get certainty, and get on with running their business and making money for the economy.

Keith Gordon, Temple Tax Chambers and CEB member—For several years, tribunal cases have raised the problem that certain statutory functions are to be carried out by 'an officer of HMRC', yet HMRC has chosen to automate some of these processes. The recent case of *Rogers & Shaw* has shown that the issue of notices to file tax returns (while generally automated) has sufficient level of officer oversight to satisfy the statutory rules. However, the FTT case of *Bosher* shows that the old TMA 1970, s 100 penalty processes are almost exclusively automated with no human involvement at all. In *Khan Properties*, the tribunal struck out the penalty notices for this reason. The Budget has confirmed that legislation will be introduced so that all notices (which are supposed to have been issued by an HMRC officer) will be treated as validly issued. As I wrote in *Taxation* (Tuning in on trust Taxation, 5 December 2019, 8) when this was first mooted, the measure amounts to getting Parliament to revise the paperwork on a transaction long after the event. If any taxpayer had sought to do that, it would amount to fraud.

Hilary Barclay, Stephenson Harwood LLP and CEB member—Other changes are afoot in the context of tax avoidance; the Budget's OOTLAR announces further measures to prevent promotion of tax avoidance schemes and for more stringent regulation of tax advisers. One key question is whether these rules will actually stop those who promote aggressive schemes or merely serve to add another layer of administration to those who are already regulated and comply with existing disclosure measures.

Gideon Sanitt, Macfarlanes LLP—With the focus of the Budget on more obviously pressing concerns, in terms of tax measures, there was a lot that felt like more of the same. The usual check on the amount of tax recovered, since 2010, in tackling non-compliance has grown to £200bn (from £185bn in the 2018 Budget).

More resources have been promised to HMRC with a view to bringing in £4.4bn of additional revenue. That is to be welcomed if it eases the strain on HMRC. Most taxpayers want prompt (and helpful) engagement from HMRC. However, there is little detail as to what will actually be invested in HMRC and how it will be used.

The Budget continues with the approach that has been followed for many Budgets now in targeting the 'supply chain' of marketed tax avoidance. The Budget announced that HMRC would be publishing 'a new ambitious strategy for tackling the promoters of tax avoidance schemes' as well as a call for evidence on raising standards for tax advice. There are legitimate concerns about some who market aggressive tax avoidance structures, but the concern with these types of measures (and we have seen a number focused on enablers, promoters and facilitators in recent years) is the collateral damage: the additional compliance, the chilling effect on those who provide genuine advice or the targeting of advice that HMRC simply decides it does not like.

As part of this theme of addressing avoidance through administration rather than legislation, businesses will see no let-up in compliance. From 2021, large businesses will be required to notify HMRC when they 'take a position which HMRC is likely to challenge'. Recent accounting guidance has concerned the reporting of uncertain tax treatments and the Budget suggests that these rules will draw on those accounting standards, which may also mean increased scrutiny over how these standards operate.

On the subject of retrospective legislation, there is also an announcement of legislation that will ensure LLPs are treated as partnerships even if they are found to be operating without 'a view to profit'. For many, this is remedying a problem that they did not know existed. HMRC is currently challenging a number of supposed tax avoidance arrangements involving LLPs, on the basis that they are not carrying on a business with a view to profit and so are not transparent for tax purposes. The problem that HMRC faces is that, if it succeeds, the LLPs should be treated as corporates, with the result that HMRC may have been following the wrong procedure in order actually to recover any tax from the members of the LLP. HMRC has not shown a great deal of concern when (vigorously) pursuing this issue and this may be why: the plan has been to fix the issue retrospectively. The change raises the prospect of yet another challenge on the basis that such retrospective legislation is unfair. The Budget firmly maintains that this is simply a clarificatory change and HMRC will depend on the Courts allowing it to fix what it says is just a deficiency in the rules. Affected taxpayers may well disagree.

Michael Ward, Simon Letherman, Sam Whitaker and Chrisangelina Lo, Shearman & Sterling LLP—The government showed a sharp edge when trailing the forthcoming publication of a new ambitious strategy for tackling promoters of aggressive tax avoidance schemes and declaring its intention to legislate for tougher penalties for promoters and increase the powers available to HMRC. The legislative measures are part of a broader recent trend towards a tougher stance on aggressive tax avoidance and are in addition to plans to amend the general anti-abuse rule to allow it to tackle tax avoidance resulting from the use of partnership structures.

Robert Langston, Saffery Champness—There were some interesting things buried in the Budget Report itself. We were expecting an update on the introduction of Making Tax Digital for Income Tax (currently due to be introduced from April 2021, with a widespread expectation that this will be deferred). However, the only reference to this was in the Budget Report which promised 'an evaluation of the introduction of Making Tax Digital for VAT, along with related research'.

Another footnote was the requirement for large businesses to notify HMRC when they take a tax position which HMRC is likely to challenge. Although such businesses are likely to be in the Senior Accounting Officer (SAO) regime, and therefore in regular dialogue with HMRC anyway, this is likely to significantly increase the work required when preparing a tax return, with a consequent increase in professional costs.

Ben Jones, Eversheds Sutherland LLP—A point to note for the tax industry itself is the announcement of a call for evidence on raising standards for tax advice. While the objective of ensuring high standards of tax advice for taxpayers is positive, the exact scope and purpose of this review is not clear and it is hoped that the end result is not more widely-cast compliance and disclosure obligations on advisers in the manner of the EU-wide DAC6 implementation.

Siobhan Mossop, Craig Leslie and Steve Horncastle, EY Stamp Taxes—On the equities side, the well-publicised market value rule for stamp duty and stamp duty reserve tax is to be introduced for transfers of unlisted securities to a connected company (or nominee). The rule will be effective from Royal Assent to the Finance Act 2020, which we expect to be before summer recess. The expectation remains that the rule will only apply where the consideration for the connected party transfer includes an issue of shares.

Also due for Royal Assent to Finance Act 2020 is the introduction of measures aimed at removing the double charge to stamp duty which can currently arise on certain company reorganisations, particularly capital reduction partition demergers. This is the government recognising, and seeking to solve, one of the problems created by the introduction of the stamp duty anti-avoidance provision section 77A of the Finance Act 1986.

Ali Kazimi, Hansuke—The government has announced the introduction of a levy to be paid by firms subject to the Money Laundering Regulations. The levy, which will be used for new technology for law enforcement and hiring more financial investigators, will help enact measures in the latest economic crime plan unveiled by the National Crime Agency (NCA) in July 2019. There are, however, no details on the intended scope and scale of the new levy, which will be the subject of a consultation later this spring. It is rumoured that the annual levy is expected to raise £100m, which will be in addition to the current NCA budget of £478m.

At a time where regulators across the sector are indicating their intention to increase scrutiny of firms' compliance with ever burgeoning regulations, this will be seen as an unwelcome development, particularly for the smaller financial firms.

FUNDS

Natasha Kaye, Cooley LLP and CEB member—The consultation on the tax treatment of asset holding companies in alternative fund structures indicates that, in certain areas, the government is prepared to listen and potentially to make changes to the corporation tax regime to ensure that, in a competitive market, the UK is an attractive jurisdiction for business. This consultation will no doubt have wide participation and focus. As part of this, the government is reviewing the withholding tax on interest rules, which it has done a number of times before without this leading to significant changes. It is welcomed that both through this and other announced measures, the impact of the hybrid mismatch rules will be considered.

Catherine Sear, Proskauer Rose LLP and CEB member—The Chancellor's focus on short-term Covid-19 related measures, as well as longer-term investment plans, meant we had a Budget which was light on tax developments. In the investment funds world, aside from the expected entrepreneurs' relief changes, the interesting new announcements came in the form of the proposed review of the UK funds regime and the proposed consultation on aspects of the hybrid mismatch rules.

The UK funds regime review kicks off with a consultation, published alongside the Budget, on changes which could make the UK a more attractive location for investment holding companies for private investment funds (credit, real estate or private equity funds). This opportunity for the industry to explain the specific tax related improvements for holding companies owned by funds is to be welcomed. The consultation paper already touches on some of the current potential stumbling blocks (eg hybrid mismatch rules, withholding tax administrative burdens, difficulties repatriating proceeds to the funds). While the consultation is no guarantee that these matters will eventually be addressed (and the government is keen to stress that in the paper), it may be a step in the right direction.

The UK funds regime review will also include a review of VAT and fund management fees, and may cover other areas of direct and indirect tax as well as regulatory matters. Care will be needed that any eventual changes in approach on VAT and management fees do not disrupt VAT arrangements for existing private investment fund structures. The overall message from the government on the UK funds regime review is that it is looking for areas which merit change where targeted measures can be introduced to do that. We wait to see what this will mean in practice.

The proposed consultation on the hybrid rules (which will be looking at ensuring that the 'rules work proportionately and as intended') is not yet published but sounds like positive news. It is acknowledged that this will have some overlap with the hybrid rules aspects of the holding company consultation for the UK funds regime review. Anything that can improve the hybrids rules position in a funds context would be welcome.

Bradley Phillips, Asset Management Tax Team, PricewaterhouseCoopers LLP and CEB member—Unless you are a successful entrepreneur, the Budget was rather uneventful as regards any immediate tax changes with the focus rightly being on making sure the UK is best equipped financially to deal with the effect of coronavirus.

However, looking forward to a post-virus, post-Brexit world, it was good to see the government's announcement of its intention to undertake a review of the UK's funds regime, with its goal being to understand the current level of attractiveness of the UK as a location for the intermediate asset holding companies through which alternative funds hold fund assets and what reform is needed to increase the UK's competitiveness in this area. A consultation paper was issued seeking responses by 20 May 2020.

There has been prior industry lobbying for a new tax-efficient UK professional fund vehicle and although the consultation does not propose this, many of the benefits could be achieved through the creation of a tax-efficient UK asset holding company.

The key focus for the government includes wanting to get a better understanding of the role of intermediate entities within fund structures and the commercial and tax drivers behind their location and what barriers could be removed through tax reform. Refreshingly, the consultation document shows that HM Treasury does already have a decent understanding of the issues and some of the tax nuances applying to credit funds, real estate funds and private equity funds.

It would be a great step forward for the UK funds industry if relevant changes could be made to the UK withholding tax, distribution, substantial shareholding and hybrid mismatch rules so that the UK could be used as an alternative to the existing typical Luxembourg or Irish holding structures. There is also reference to extending the UK REIT regime.

While the government seems open to making changes, it is concerned that any changes are carefully targeted and don't have unintended or undesirable consequences more generally for the UK corporation tax system. However, if the government is genuinely committed to this, I am sure a solution can be found which if implemented will more likely raise UK tax revenues overall, having regard to the indirect benefits of more supporting infrastructure being located in the UK (a point the consultation document acknowledges). Interestingly, the government states that it has reservations about modifying the UK securitisation regime which would be one way of achieving an appropriately targeted approach.

The consultation also extends to the way in which VAT rules apply to funds and holding entities, to consider how VAT is applicable to fund management fees. As VAT can present a significant cost for UK funds and holding vehicles, considering how the VAT rules should apply going forward will be an important component of the overall consideration of the competitiveness of UK funds and intermediate entities.

As well as the measures outlined above to improve the tax regime for investment funds, the government has also announced a consultation into a proposed overseas funds regime (OFR), the aim of which is to introduce a more streamlined regime for overseas funds wishing to access the UK market after the end of the transition period and the expiry of the temporary permissions regime. The proposed OFR will introduce one regime for retail investment funds, and another for money market funds, both based on the principle of equivalence. These proposals seem sensible but, of course, the bigger issue post the Brexit transitional period is the status of UK funds in the EU and whether they will be given equivalence.

Gerald Montagu, Gide Loyrette Nouel LLP and CEB member—With all the recent debate about pension tax relief, stamp duty land tax, IHT—and the change of tack to face whatever coronavirus may bring to the UK—what was perhaps not quite so widely expected was a package to 'get it done' for funds.

Three measures, in particular, stood out in this regard:

- there is to be a review of the 'competitiveness and sustainability' of the UK funds regime covering both direct and indirect tax. Specific mention is made of the VAT treatment of fund management fees. Might Brexit, perhaps, in addition to ending the tampon tax, pave the way for the UK to take a different path, from that taken last month by the Dutch Tax Authority in response to the European Court of Justice's ruling in *Fiscale Eenheid* (C-595/13), by treating fund management as an exempt supply for VAT purposes?

- a specific consultation has been published on whether the UK could be made a more attractive regime for asset holding companies, with an eye in particular on real estate, credit and private equity investments held through non-CIV funds, and
- the UK's hybrid mismatch rules are to be reviewed to ensure they work ‘proportionately and as intended’ (by implication this looks like an admission that, currently, they do not)

Time alone will tell what emerges from these consultations, but the tone suggests that government is genuinely trying to listen. Which, before getting anything done, is usually a good thing and should be warmly welcomed.

Stephen Pevsner, Proskauer Rose LLP—The interesting aspects of the Budget for the private funds industry was not so much what was announced as what is promised to come in consultation. The reduction in entrepreneurs’ relief lifetime allowance and confirmation that the new private sector IR35 rules will go ahead on 6 April took the headlines, and the new IR35 rules in particular are likely to result in considerable administrative burden for clients and uncertainty for individuals providing their services through intermediaries. In that regard it is to be hoped that the government makes good on its promise to ensure a ‘smooth and successful’ implementation of the changes.

Hilary Barclay, Stephenson Harwood LLP and CEB member—The consultation on the UK funds regime is particularly welcome. It comes partly as a response to industry representations and does appear to recognise tax and company law issues that can prove a barrier to establishing funds in the UK. Proposals to consider further the withholding, hybrids and securitisation rules for credit funds, the substantial shareholdings exemption (SSE) and REIT rules for real estate funds and SSE and returns to shareholders for private equity funds hits a lot of the right notes; those in the industry should consider reviewing the consultation document and sending in comments.

Graham Chase, CMS LLP—Notwithstanding that the UK asset management sector is the largest in Europe, funds are often established offshore, typically for tax and/or regulatory reasons, notwithstanding that UK situs would often be preferred from a commercial perspective.

It looks as if Brexit is the catalyst for the Treasury’s consultation titled ‘Tax treatment of asset holding companies in alternative fund structures’. The consultation is focused on alternative funds, typically closed-ended funds not subject to investor-protection rules (ie non-retail funds) aimed at sophisticated investors, including pension funds, insurers and sovereign wealth funds. The document specifically refers to credit funds, real-estate funds and private equity. So the relevant target pool for change is wide.

The consultation envisages changes to corporation tax rules where they act as barriers to UK fund and holding structures. It is not the government’s intent to lose any significant amounts of tax, or to create the risk of doing so. Instead, specific rules providing for relaxations of existing rules might be made available for taxpayers that fall within defined investment structures.

This is a very encouraging development. It is disappointing that funds are driven offshore because of tax—seeking to address this looks sensible. While not perfect, the UK is a favourable location for companies, having regard to the substantial shareholdings exemption and the foreign branch exemption, as well as the absence of withholding tax on distributions. If a similar approach could be taken in the context of funds, this could be a real game-changer. To be successful, any targeted regime needs to avoid unnecessary complications and restrictions. In practice, this may be hard to achieve but full engagement by interested parties during the consultation period should provide the best chance of securing an attractive and workable regime.

Emily Clark, Travers Smith LLP—From an asset management perspective, the review announced of UK funds looks extremely promising. The industry has been lobbying for some time for various changes, all designed to increase the UK’s competitiveness as a jurisdiction both for fund domicile and asset management, especially in the light of Brexit, and it appears that the government is prepared to listen. In this regard, it is exciting to see that the consultation on asset holding companies in alternative fund structures identifies many of the issues we come across in practice when implementing investment holding structures and contains several interesting ideas for addressing them such as expanding the substantial shareholdings exemption and REIT regimes. Similarly, although the scope of the announced consultation on the hybrids regime is not entirely clear, it appears that HMRC is preparing to address several issues with the rules which have been giving rise to real issues for asset management structures, and this too is very welcome.

Hatice Ismail, Simmons & Simmons LLP—The brave new post-Brexit world will require a rewriting of the rule book for the marketing of EU-domiciled funds into the UK. As part of Budget 2020, a consultation has been announced on how the more than 8,000 UCITS that are currently passported into the UK (together with certain other funds) can continue to access the UK market from the end of the transition period, when passporting ceases, under the proposed overseas fund regime (OFR). Although it focuses on the regulatory aspects, the consultation also acknowledges the impact that the OFR will have on relevant areas of tax legislation, including qualification for inclusion in wrappers such as ISAs. Maintenance of a stable UK financial services sector despite the current headwinds is key, given the significant contribution made to the UK economy and no doubt the government hopes that the proposed OFR will be reciprocated by EU Member States.

Nick Skerrett, Simmons & Simmons LLP—Budget 2020 announced a review of VAT on fund management fees alongside the establishment of an industry working group to review how financial services are treated for VAT purposes. This is a tacit acknowledgement that the UK VAT treatment of financial services, and in particular the scope of relevant exemptions, has failed to keep pace with developments in this innovative and agile sector. The VAT exemptions for financial services have developed in piecemeal fashion, largely in response to judgments from the Court of Justice of the EU, which has a limited understanding of the sector.

After the transition period, the UK will no longer be limited by EU law, and therefore has the opportunity to adopt changes that not only remove some of the inequities of the current rules, but reduce operational complexities and enhance the UK's competitive position as a financial services centre. Financial services businesses should watch closely what emerges.

Laura Charkin, Goodwin—The consultation on the UK as a location for intermediate entities through which funds hold their assets is a really positive move from the Treasury and will be of huge interest to the funds industry. It makes for interesting reading—you can hear the different voices of the Treasury and HMRC voices in the text—so it does not sound as though the ideas floated are a 'done deal' as yet.

The European tax system has always struggled with enabling tax exempt investors to invest through these types of funds into Europe on a tax-neutral basis and in the last 12 months developments coming out of the implementation of the OECD's BEPS initiative across Europe and the recent Danish cases on beneficial ownership for the purposes of EU Directives have threatened to create yet more obstacles to doing so. As such, this consultation is likely to be welcomed by European fund managers and industry groups, as the emergence of the UK as a viable holding company location of fund investments is a goal well worth fighting for. Of course, the key points being addressed in the consultation are, as you would expect, questions such as the application of the substantial shareholdings exemption and UK withholding tax on interest, but there is also reference made to the UK's anti-hybrid rules and the importance of these rules, particularly as they apply facing a tax exempt investor base, should not be underestimated. Interesting in this regard that the Budget materials also contain separate reference to a forthcoming consultation on the anti-hybrid rules in general.

INDIRECT TAXES

David Milne QC, Pump Court Tax Chambers and CEB member—The Chancellor's zero-rating, from 1 December 2020, of digital publications of books, newspapers and magazines particularly catches a lawyer's eye because it relates to, or perhaps tries to pre-empt, an appeal that is still ongoing in the courts. In *News Corp UK v HMRC* [2019] UKUT 404 (TCC), released on 24 December 2019, a very experienced Upper Tribunal (Mr Justice Zacaroli and Judge Greg Sinfield) decided that such digital publications were already zero-rated, since although traditional books etc were 'goods', and digital publications were 'services', nevertheless applying the 'always speaking' doctrine, one had to hold that although digital publications didn't exist when books etc were originally zero-rated in 1972, nevertheless books must now be interpreted to include digital publications. This of course means that all publishers are in line for the recovery of four years of overpaid VAT. HMRC announced as recently as 19 February 2020 that it is appealing to the Court of Appeal and has not changed its policy. Presumably, four or five years of back-VAT is worth HMRC continuing to fight over.

David Klass, Hunton Andrews Kurth—The VAT zero-rating of certain products is a reminder that we are now in an era where the government has carte blanche (as they might say across the Channel) so far as the UK VAT regime is concerned. A significant moment, whatever one's views on Brexit. This is evidently only the beginning, as the establishment of the working group around VAT on financial services, and other VAT-related measures and proposals set out in the Budget, show.

Jo Crookshank, Simmons & Simmons LLP—The government's decision to apply a zero-rate of VAT to e-publications from 1 December 2020, meaning that e-books, e-newspapers, e-magazines and academic e-journals are entitled to the same VAT treatment as their physical counterparts, is very welcome and comes after years of lobbying. However, the Upper Tribunal in *News Corp UK & Ireland Limited v HMRC* recently ruled that VAT should not have been applied to electronic newspapers retrospectively, as they are in essence the same as a physical publication. The government's Budget announcement is, of course, only prospective, but this decision offers an opportunity for affected businesses to retrospectively reclaim overpaid VAT, perhaps on a wider range of e-publications than simply e-newspapers.

John Fuszard, Sagars Accountants Ltd—As expected, there were relatively few significant announcements in relation to VAT. The big changes will come when the UK leaves the EU and UK businesses will have to deal with VAT and duty compliance as a non-Member State.

Some technical changes were confirmed in respect of the VAT treatment of call-off stock. Also from 1 January 2021, importers will be able to pay import VAT through their VAT return, rather than at the point of import as at present. Both these changes were announced in advance of the Budget.

Following successful litigation by News Corp in the Upper Tribunal, a consultation exercise was announced on the removal of VAT from digital books and newspapers, giving them the same VAT treatment as hard copy editions. If passed on to the consumer, this would reduce the cost of digital media but heap further pressure on the newspaper print industry. The measure was suggested in the Cairncross review but as recently as 19 February, HMRC issued a Business Brief advising that it would be maintaining the present VAT treatment and appealing the decision in *News Corp* to the Court of Appeal! Any change will be implemented from 1 December 2020.

The Chancellor also confirmed the abolition of VAT on sanitary products (the so-called 'tampon tax'). Again, this measure had been announced before the Budget.

Michael Ward, Simon Letherman, Sam Whitaker and Chrisangelina Lo, Shearman & Sterling LLP—The government was notably active in the field of VAT, reflecting the fact that the UK will soon not be constrained by the provisions of the EU VAT Directive. As well as announcing the proposed creation of an industry working group to discuss the application of VAT to financial services, the government went for the easy wins by swiftly taking the chance to remove VAT on women's sanitary products (from 1 January 2021), and zero-rating e-publications (from 1 December 2020).

On a more administrative but no less important note, the government confirmed that from 1 January 2021, UK VAT-registered businesses that import goods from the EU or elsewhere can account for the relevant VAT on their periodic VAT returns, effectively delaying the VAT charge from the time of import (which is currently the case with imports from outside the EU) to a business's normal VAT payment window. The move is being introduced in order to ease Brexit-related cashflow issues, which could otherwise see the VAT liability on goods imported from the EU following the end of the Brexit transitional period being brought forward by up to three months. Conversely, from 2021 the change will delay the current VAT charge for goods imported from the rest of the world by up to three months.

EMPLOYMENT TAXES AND SHARE INCENTIVES

Keith Gordon, Temple Tax Chambers and CEB member—The partial climbdown in respect of the loan charge was announced shortly before Christmas, following the publication of the Morse Report. That report concluded that the loan charge as previously enacted needed to be reformed because its retrospective nature (going back 20 years) went 'too far in undermining or overriding taxpayer protections'. Given the continued opposition in Parliament (over 200 MPs of all political hues) to the now more limited retrospection of the loan charge, it is perhaps surprising (or at least bold) for the government to announce yet further retrospective measures (actually, I would say, retroactive—such changes in my view being even less justifiable than merely retrospective ones) seeking Parliamentary support for changes to the law to address situations where HMRC has simply not got their own paperwork right.

In addition, the effect of the erosion of the annual allowances in relation to pension contributions hit the headlines when it became clear that many NHS doctors were refusing to carry out overtime because of the adverse impact of the pension taxation rules. The government's response has been to raise the earnings threshold at which relief would be tapered away (from £110,000 to £200,000) but, for the highest earners, to reduce the maximum annual contributions from £10,000 to £4,000. As the HMRC policy announcement conceded: 'However for those with very high incomes, being affected by the reduced minimum annual allowance may make them consider retiring earlier or reducing hours.'

It appears that we have a Conservative government which is supporting the notion of the highest earners working less hard (or retiring altogether). I just hope that the proposals will take all doctors out of the net for tapered allowances because the other main news story of the day suggests the country is rather dependent on them at the moment.

Gideon Sanitt, Macfarlanes LLP—The Budget might be regarded less as part of an on-going strategy and more as 'if at first you don't succeed, try, try again'. The measure that will be of interest to many is the response to Sir Amyas Morse's review of the loan charge, which has resulted in changes to the loan charge and has promised refunds of certain amounts that were paid to HMRC in order to prevent the loan charge from arising. These changes are unlikely to placate many who consider the loan charge to be fundamentally unfair retrospective legislation and any refunds as insufficient compensation (if such refunds are even payable). It is interesting that, if anyone thought that the attempts of many years to deal with disguised remuneration had ended with the loan charge, the Budget announces a call for evidence on yet further action to deal with avoidance in this area.

Caroline Colliston, DWF LLP—The government has confirmed that it shall legislate to implement the changes to the off-payroll working rules (also known as IR35) from 6 April 2020. This will occur against a backdrop of concerns raised by business, representative bodies and professional advisers about the impact on business, the labour supply chain and the confusion and lack of clarity around the terms and operation of the legislation as well as an extensive House of Lords Select Committee review to which I presented evidence on behalf of the Law Society of Scotland last week.

Business has been promised a soft landing for the new rules but it remains to be seen how valuable this will be or how this will operate. All businesses should take action quickly to check whether they are within the ambit of the new rules and if so, ensure that they are taking steps to comply with the new rules. Suggested steps include identifying their contingent workforce, ensuring the burden of operating PAYE is shifted down their contractual labour supply chain, reviewing the terms of contracts in their labour supply chain, adopting robust internal procedures and audits to ensure status determination statements are provided and liability is limited as well as considering establishing an employment status disagreement process.

Stephen Pevsner, Proskauer Rose LLP—Of significant interest is the promise for consultations on, among other things, whether EMI option schemes should be open to a broader range of companies, possible changes to the anti-hybrid mismatch rules to ensure that they are proportionate and work as intended and what, if anything, could be done to make UK holding companies a more attractive option for private fund investment structures. These are all areas in which interested parties have lobbied HMRC and the Treasury over a number of years and, whether or not huge changes result from the consultations, their inclusion shows that the government might now be more open to making reasonable changes to support the UK's private funds and investment funds industry.

Jon Stevens, DWF LLP—The changes to the annual allowance taper for pensions that mean that higher earners will be able to contribute more to their pensions for the 2020-21 tax year onwards is surprising given much of the talk before the Budget was around cutting or abolishing pension tax relief for high earners. The hidden detail is that the very highest earners will have the amount they can contribute to a pension each year reduced from £10,000 to £4,000.

James Cashman, DWF LLP—It is positive to see that the government is looking at extending the companies that could access enterprise management incentive (EMI) schemes. This is a very valuable share incentive scheme and it will be welcome news for employees and employers if the EMI scheme is made available to more companies. It is also interesting to see that the government is considering moving forward with its views that it should not be beholden to the restrictions of State aid, if only in relation to this specific share incentive. We look forward to seeing the consultation and whether in time this may lead to extensions to other share incentive plans.

John Endacott, PKF Francis Clark and CEB member—Higher earners among the self-employed did get some good news in the more generous annual allowance pension contribution levels announced yesterday. It appears that the taper rate remains unchanged and so those with taxable incomes between £150,000 and £300,000 do benefit. A quick comparison for the self-employed (in other words no employer pension contributions) is set out in the following table:

Taxable income of self-employed individual	**Old allowance**	**New allowance**
£150,000	£40,000	£40,000
£160,000	£35,000	£40,000
£170,000	£30,000	£40,000
£180,000	£25,000	£40,000
£190,000	£20,000	£40,000
£200,000	£15,000	£40,000
£210,000	£10,000	£40,000
£220,000	£10,000	£40,000
£230,000	£10,000	£40,000
£240,000	£10,000	£40,000
£250,000	£10,000	£35,000
£260,000	£10,000	£30,000
£270,000	£10,000	£25,000
£280,000	£10,000	£20,000
£290,000	£10,000	£15,000
£300,000	£10,000	£10,000
£310,000	£10,000	£5,000
£312,000	£10,000	£4,000
£320,000	£10,000	£4,000

The only difficulty is that earnings for the self-employed may well be much lower in 2020–21 than they were expecting a month or two ago and it's not clear how long the current pension contribution rules will remain in place for. We live in uncertain times.