

Lexis®PSL Tax Analysis

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Autumn Statement 2015

A summary of the key business tax announcements made in the Chancellor's Autumn Statement on 25 November 2015.

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KEY BUSINESS TAX ANNOUNCEMENTS

Key announcements in Autumn Statement 2015 include:

- **large business tax compliance:** confirmation that the government is pressing ahead with proposals for voluntary compliance codes, the publication of large businesses' tax strategies and special measures for persistent offenders
- **offshore evaders:** confirmation of new penalties and offences, including a corporate criminal offence, for those who engage in, facilitate or fail to prevent offshore tax evasion
- **ATED and the 15% rate of SDLT:** proposals to introduce new reliefs for equity release, property development and staff accommodation, and
- **apprenticeship levy:** more detail has been published on the levy, which will be introduced in 2016 and will raise nearly £3bn in its first year

New measures that are coming into effect on 25 November 2015:

- **capital allowances and leasing**
- **related party rules: partnerships and transfers of intangible assets**
- **stamp taxes and deep in the money options**, and
- loans or advances made on or after 25 November 2015 by close companies to charity trustees for charitable purposes will not give rise to a tax charge (see: **AS 2015** (para 3.39) and **Corporation Tax: loans to participators, trustees of charitable trusts**)

For the key Private Client announcements, see: [Autumn Statement 2015—Lexis®PSL Private Client analysis](#)

BACKGROUND

The Chancellor of the Exchequer, George Osborne, delivered his first all-Conservative Autumn Statement (AS 2015) on Wednesday 25 November 2015. The key message of the Chancellor's speech was that the Conservatives will 'protect' and 'build'. Against a backdrop of slightly improved tax take figures and stable growth forecasts, the Chancellor felt able to cancel some swingeing cuts that had been widely predicted, such as to the police budgets and tax credits; and to make announcements of investments in infrastructure and new housing stock. However, it will probably be remembered most for the complete U-turn on tax credits and for the decision to use VAT raised on sanitary products to provide funding to charities supporting women in distress (the 'tampon tax' debacle).

From a tax perspective, the biggest surprise was the announcement of yet another measure targeting buy-to-let investors and second home buyers—imposing a surcharge on SDLT at 3% above the normal rates. However, the Chancellor appears to have, for once, done what he promised to do, and not treated the Autumn Statement as a mini-budget, as there were not a large number of tax announcements.

Since it is the beginning of a new parliament, AS 2015 was delivered alongside the Spending Review. HMRC's settlement includes high expectations of efficiency savings, amounting to a 21% reduction in baseline resource costs over the next five years. This is largely to be delivered through reduced workforce and the consolidation of offices from 170 to 13 regional centres that was announced earlier this month, and which has not been received well by taxpayer representative groups. There was, as expected, a continued focus on increasing the tax take through measures to tackle avoidance and evasion, including a renewed commitment to the £800m funding to support those efforts, which are expected to generate an additional £7.2bn in tax revenues over the next five years.

HMRC also expects to take large steps towards becoming 'one of the most digitally advanced tax administrations in the world', enabling taxpayers to view their tax affairs in real time online through their 'digital tax accounts' by 2016–17. This is also expected to reduce the number of calls to HMRC from 38 million in 2015–16 to 15 million in 2019–20, which is presumably expected to contribute significantly to the efficiency savings. Many taxpayers will hope that this reduces call waiting times.

Draft clauses, for inclusion in Finance Bill 2016 (FB 2016), are expected to be published on Wednesday, 9 December 2015.

BUSINESS AND ENTERPRISE

Company distributions

FB 2016 will include legislation to prevent the conversion of income into capital using company distributions. The new legislation will:

- amend the transaction in securities rules (see Practice Note: [Transactions in securities](#)), and
- introduce a new TAAR (see Practice Note: [Distribution exemption—targeted anti-avoidance](#) for the existing TAARs)

These measures are presumably being introduced because from April 2016 the tax rates on dividends for individuals will be higher and therefore the tax differential between an income and capital receipt will increase.

See: [AS 2015](#) (para 3.85)

Voluntary compliance and special measures for high-risk businesses

Following a [consultation](#) on measures to improve large business tax compliance in July 2015, the government will include legislation in FB 2016 to introduce:

- a requirement for large businesses to publish their tax strategies in respect of UK taxation
- a special measures regime to tackle businesses that persistently engage in aggressive tax planning, and
- a framework for cooperative compliance—there is no specific reference in AS 2015 to the voluntary Code of Practice on Taxation for Large Business (initially proposed in the consultation) and it is not clear whether this framework is a separate proposal

See: [AS 2015](#) (para 3.91)

Apprenticeship levy

As announced at Summer Budget 2015, the government will introduce an apprenticeship levy to help increase the number of apprenticeships. Following consultation, the government has now announced further details, confirming that the levy will be introduced in April 2017, will be set at a rate of 0.5% of an employer's paybill and will be paid through PAYE. The measure of an employer's paybill is to be determined by reference to the total amount of earnings paid to employees and will not include benefits in kind. Employers will receive an allowance of £15,000 to offset against the levy which means that employers with a paybill less than £3m will not pay anything.

See: [AS 2015](#) (para 3.56) and [Consultation outcome: Apprenticeships levy: employer owned apprenticeships training](#)

Related party rules—partnerships and transfers of intangible assets

The government has published draft legislation to be included in FB 2016 that clarifies when intangible fixed assets (IFAs) held by partnerships come within the IFA rules. The IFA rules typically provide more opportunities for corporation tax relief than was previously the case (see [Overview: Intangible fixed assets](#)). The new measure, which has immediate effect, is intended to prevent arrangements that use bodies such as partnerships (including LLPs) in ways that aim to bring assets within the IFA rules without an effective change of ownership.

The measure will apply to all transactions involving IFAs that take place on or after 25 November 2015 and for transactions before 25 November 2015 in relation to accounting debits and credits accruing on or after that date.

See: [AS 2015](#) (para 3.89) and [TIIN: Corporation Tax: related party rules, partnerships and transfers of intangible assets](#)

Capital allowances and leasing

Two anti-avoidance measures relating to capital allowances and leasing are coming into effect immediately, ie for transactions taking place on or after 25 November 2015. The new rules counter schemes that have been disclosed to HMRC under the disclosure of tax avoidance rules (DOTAS). The relevant legislation will be in FB 2016.

The first measure is subject to a purpose test and builds on the existing capital allowances anti-avoidance rule in the Capital Allowances Act 2001 (CAA 2001), s 215.

CAA 2001, s 215 applies to sales or hire-purchases of plant or machinery where there is a tax motive related to capital allowances. As it stood previously, the effect of s 215 was to restrict capital allowances for the buyer's expenditure. The new provision broadens the scope of the rule to reverse the effect of arrangements that reduce the seller's disposal value for capital allowance purposes, as well as those that increase the buyer's qualifying expenditure. For more information on the rule as it stood prior to AS 2015, see Practice Note: [Capital allowances anti-avoidance provisions](#).

The second measure is intended to ensure that taxpayers who become entitled to tax deductions as a result of taking over another person's obligations under a lease will always be taxable on any consideration received. Rules already exist that apply to taxpayers taking over payment obligations under a lease, and these either restrict losses or tax capital payments as income. However, HMRC did not consider these rules to be wide enough to catch the disclosed schemes.

See: [AS 2015](#) (para 3.86), and [TIIN, draft legislation and draft explanatory notes: Corporation Tax and Income Tax: capital allowances and leasing – anti-avoidance](#)

Taxation of asset managers' performance-based rewards

Following a [consultation](#) launched at Summer Budget 2015, the government will introduce legislation in FB 2016 which will determine when performance awards received by asset managers will be taxed as income or capital gains. Broadly, an award will be subject to income tax, unless the underlying fund undertakes long-term investment activity. At the time of the consultation, private equity carried interest was expected to be taxed as a capital gain (depending on the investment strategy of the fund) but AS 2015 did not provide any more detail on carried interest in this context.

See: [AS 2015](#) (para 3.90)

Measures pre-announced

- **Venture capital schemes:** alongside reaffirming the changes announced on 26 October 2015 (see: [Report stage: House of Commons](#)) and included in F(No 2)A 2015, the government has confirmed that it will continue to explore options to increase flexibility for replacement capital within venture capital schemes. Replacement capital involves the purchase of shares from existing shareholders by other investors and is not currently allowed under venture capital schemes rules.

The government plans to provide increased flexibility when the amount invested in newly issued shares is at least equal to the amount invested in secondary shares and intends to introduce the change through secondary legislation, subject to state aid approval. See: [AS 2015](#) (paras 1.151 and 3.23) and [Committee Debate: 3rd sitting—13 October 2015](#).

Future developments

- **Intangible assets regime:** the government will consider a review of the intangible assets regime as part of the Business Tax Roadmap. See: [AS 2015](#) (para 3.89)
- **Entrepreneurs' relief:** the government will consider amending the changes made by FA 2015 to CGT entrepreneurs' relief, 'in order to support businesses by ensuring that the relief is available on certain genuine commercial transactions'. FA 2015 made a number of changes to entrepreneurs' relief, including removing relief for the value of goodwill realised on incorporation, and changes to the rules on associated disposals (see our News Analysis published on 17 April 2015: [Finance Act 2015—entrepreneurs' relief](#)). The AS 2015 announcement suggests that some of these changes may have caught transactions that were not their intended target. There are no further details at this stage. See: [AS 2015](#) (para 3.92)
- **Company distributions:** as previously announced at Summer Budget 2015, the government will consult on the rules for company distributions later this year. See: [AS 2015](#) (para 3.85)

FINANCE

Stamp taxes and deep in the money options (DITMOs)

To prevent stamp tax avoidance using deep in the money options (DITMOs), legislation will be included in FB 2016 to impose a 1.5% stamp duty/SDRT charge on a transfer of shares:

- to a clearance service or depositary receipt issuer
- as a result of the exercise on or after Budget 2016 of an option that was entered into on or after 25 November 2015, and
- where the 1.5% charge is based on the higher of the market value of the shares or the option strike price

For instance, this would mean that the exercise of a DITMO call option (where the strike price is significantly below the market value of the shares) will attract stamp tax at 1.5% of the market value of the shares provided they are transferred to a clearance service or depositary receipt issuer. Although the AS 2015 heading refers to DITMOs, the proposed stamp tax charge seems to extend to the physical exercise of any option over shares (provided the shares are transferred to a clearance service/ depositary receipt issuer), not just DITMOs.

See: [AS 2015](#) (paras 1.153, 3.59)

Taxation of corporate debt and derivative contracts

The government will legislate to update further the tax rules for company debt (loan relationships) and derivative contracts to ensure they interact correctly with the recent changes to UK

GAAP (including, in particular, the application of EU-endorsed IFRS, FRS 101 and FRS 102 with mandatory effect for accounting periods beginning on or after 1 January 2015) in three specific circumstances.

Although not entirely clear from the documents published with AS 2015, the three circumstances are likely to be the expected updates to the rules on the tax treatment of:

- FOREX hedging
- convertible instruments, and
- property-based derivatives

which were originally announced in AS 2014 but, for various reasons, not included in either FA 2015 or F(No 2)A 2015.

The new rules will be included in FB 2016 and should represent the concluding part of the three-year project to update, simplify and rationalise the regimes for the taxation of loan relationships and derivative contracts.

See: [AS 2015](#) (para 3.60)

For a discussion of the background to this announcement, see also: [Modernising the taxation of corporate debt and derivative contracts](#) (6 June 2013) and [Summer Budget 2015—Lexis®PSL Tax analysis \(Modernisation of the taxation of corporate debt and derivative contracts\)](#)

Rules for addressing hybrid mismatch arrangements

Following the conclusion of its [consultation](#) at the beginning of 2015, the government will introduce legislation to combat abusive hybrid mismatch arrangements. A summary of responses to the consultation has yet to be published.

Although the detailed legislation is awaited, the new UK rules will be closely aligned with the principles set out under Action 2 (Neutralising the effects of hybrid mismatch arrangements) of the G20/OECD base erosion and profit shifting (BEPS) Action Plan (for background on which, see [News Analysis: The end of the beginning—OECD release final BEPS package and OECD \(2015\): Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2—2015 Final Report](#)).

It seems likely that the UK will achieve this by adopting the OECD's recommended 'linking rules' approach. This seeks to align the tax treatment of an instrument or entity in one jurisdiction with the tax treatment of the same instrument or entity in a counterparty jurisdiction. The approach comprises:

- a 'primary rule' to deny a taxpayer a deduction for a payment to the extent that it is either:
 - not included in the taxable income of the recipient in the counterparty jurisdiction, or
 - also deductible in the counterparty jurisdiction, and
- a secondary, 'defensive rule' that the UK can invoke where the 'primary rule' is not applied in a counterparty jurisdiction, and which will either:
 - require the payment to be included in taxable income, or
 - deny a duplicate deduction

In contrast to the UK's current anti-hybrid legislation, the new

rules are unlikely to include a 'main purpose' (or 'motive') test. The domestic UK law changes are likely to be reinforced by various changes to the OECD's model tax convention.

Draft legislation is expected to be published on 9 December 2015 and will be subject to further consultation. The UK has, however, consistently and publicly stated its intention to be an early-adopter of, and to implement in full, the OECD's anti-BEPS recommendations. As a result, the new rules will be included in FB 2016 and will take effect from 1 January 2017.

See: [AS 2015](#) (para 3.88)

Measures pre-announced

- **UK bank levy:** as announced at Summer Budget 2015, the government will consult on restricting the scope of the bank levy to UK operations from 1 January 2021. See: [AS 2015](#) (para 3.62)

EMPLOYMENT TAXES AND SHARE INCENTIVES

Employee share schemes—simplification of the rules

The government is proposing to introduce a number of technical changes to streamline and simplify aspects of the tax rules for tax-advantaged and non-tax advantaged employee share schemes and provide increased consistency (see [Practice Note: The advantages and disadvantages of each share incentive arrangement](#)).

The changes will appear in FB 2016 and will, among other things, clarify the tax treatment of certain employment-related securities (ERS) and ERS options held by internationally mobile employees, so that any charge to tax will arise under the rules that deal with ERS options rather than earnings (see [Practice Notes: Internationally mobile employees with employment-related securities](#) and [Internationally mobile employees with securities options](#)).

See: [AS 2015](#) (para 3.24)

Disguised remuneration

The government intends to take action against those who have used or continue to use disguised remuneration schemes and who have not yet paid their fair share of tax. (See [Practice Notes: Disguised remuneration—structure of the regime and its implications in practice](#) and [Disguised remuneration—the tax charge and responsibility for paying tax](#).)

The government will also consider legislating in a future Finance Bill in order to close down any further new schemes intended to avoid tax on earned income and, where necessary, these measures will take effect retrospectively from 25 November 2015.

While there is currently little definitive detail in regard to this particular announcement, it has the potential to be far-reaching and, especially if it is retrospective, potentially significant.

Employment intermediaries and tax relief for travel and subsistence

At Summer Budget 2015 the government published a consultation on restricting the tax relief for travel and subsistence expenses for workers engaged through an employment intermediary (see: [Summer Budget 2015—Lexis®PSL Tax analysis](#)). The government has now confirmed that, from 6 April 2016, individuals whose relationship with their engager (eg a personal service company) is such that they look like and act as employees, cannot claim relief on the everyday cost of travelling to work when employed through an intermediary.

See: [AS 2015](#) (para 3.20)

Future developments

- **Salary sacrifice:** the government has reiterated its concern about the growth of salary sacrifice schemes (see Practice Note: [Salary sacrifice—basic principles](#)) and is gathering further evidence, including from employers, in order to inform its decision on whether to take any action in regard to salary sacrifice arrangements. See: [AS 2015](#) (para 3.25)
- **Review of employment status:** the government confirmed that it will take forward the majority of the Office of Tax Simplification's recommendations relating to employment status (without specifying when such changes might take effect). See: [AS 2015](#) (para 3.97)

REAL ESTATE TAXES

ATED and 15% rate of SDLT—scope of reliefs

The government will extend the reliefs available from ATED (see Practice Note: [ATED—reliefs and exemptions](#)) and the 15% rate of SDLT (see Practice Note: [15 per cent rate of SDLT for high-value residential property transactions](#)) to equity release schemes, property development activities and properties occupied by employees from 1 April 2016. The measures will be included in FB 2016.

See: [AS 2015](#) (para 3.73)

Rates of SDLT for additional residential properties

The government will introduce, from 1 April 2016, rates of SDLT that will be 3% higher than the standard rates (for which, see Practice Note: [Rates of SDLT](#)) for purchases of certain additional residential properties in England and Wales, such as buy-to-let properties and second homes.

The government will consult on the detail of this new policy, but has announced that the new higher rates will not apply:

- where the value of the property is £40,000 or lower
- to purchases of caravans, mobile homes or houseboats, or
- to corporate bodies or funds making significant investments in residential property, as these bodies are considered already to be supporting the government's housing agenda (whether owning more than 15 residential properties constitutes a

'significant investment' for the purposes of this exemption will be a question included in the consultation)

The extra revenue raised from this measure will be used for communities in England where the impact of second homes is particularly acute (Cornwall was mentioned in the Chancellor's speech as an example).

See: [AS 2015](#) (para 3.70)

SDLT—application to certain authorised property funds

After several years of lobbying, and as originally announced in [AS 2014](#) (see para 2.123 and News Analysis: [Should SDLT rules for property investment funds be reviewed?](#)), the government has confirmed that an SDLT seeding relief will be introduced, with effect from the date FB 2016 receives Royal Assent, for both Property Authorised Investment Funds (PAIF) and Co-ownership Authorised Contractual Schemes (CoACS).

The detailed rules are expected to be published on 9 December 2015 as part of the draft FB 2016 but they will be based around the following core principles:

- a defined seeding period of 18 months
- a three-year clawback mechanism, and
- a '£100m portfolio test' comprising either (a) 100 residential properties, or (b) 10 non-residential properties

Transactions in units in CoACSs investing in property are expected to be exempt from SDLT.

These measures will remove the two main obstacles faced by funds that invest in real estate and wish to adopt PAIF or CoACS status.

See: [AS 2015](#) (para 3.71)

Capital gains tax for non-UK residents disposing of residential property

From 6 April 2015, the CGT regime extends to non-UK residents disposing of UK residential property (see Practice Note: [CGT charge on disposals of UK residential property by non-residents](#)).

The government has announced that FB 2016 will amend the CGT computations required when calculating the non-resident CGT charge to remove a double charge that occurs in some circumstances. The amendment will have retrospective effect from 6 April 2015. In addition, HMRC will be given powers to prescribe circumstances when a CGT return is not required by non-residents, and will add CGT to the list of taxes that the government may collect on a provisional basis.

See: [AS 2015](#) (para 3.75)

CGT payment window

The government announced that it intends, from April 2019, to reduce the payment window for CGT where the chargeable asset is a residential property to within 30 days of completion of the disposal. It is proposed that this new measure will not apply where the gain is not chargeable due to principal private residence relief.

Draft legislation introducing this measure will be published for consultation during the course of 2016 to be included in FB 2017.

See: [AS 2015](#) (para 3.76)

VAT reduced rate for energy saving materials

The government will consult on legislation for FB 2016 on the VAT reduced rate for energy saving materials. This is in the context of the CJEU's ruling ([Case C-161/14](#)) that the UK's reduced rate for the supply and installation of energy saving materials fails to comply with the VAT Directive. The UK's existing legislation applies the reduced rate to supply and installation in all residential accommodation, rather than (as stipulated in the Directive) being limited to social housing.

See: [AS 2015](#) (para 3.64)

Future developments

- **SDLT: changes to the filing and payment process:** the government will consult in 2016 on changes to the SDLT filing and payment process, including a reduction in the filing and payment window from 30 days to 14 days. These changes will be included in FB 2017 and will come into effect in 2017–2018. See: [AS 2015](#) (para 3.72)

TAX AVOIDANCE AND EVASION

Offences and penalties for offshore evaders and their enablers

On 16 July 2015, the government published a consultation on a new package of measures to counter offshore tax evasion. See consultation document: [Tackling offshore evasion](#) and News Analysis: [HMRC gets strict on evasion](#). The consultation closed on 8 October 2015.

As proposed, the government has confirmed it will introduce the following:

- a new criminal offence for tax evasion that removes the need to prove intent for the most serious cases of failing to declare offshore income and gains (to be included in FB 2016)
- new civil penalties for tax evaders. These include an increase in the civil penalties for deliberate offshore tax evasion (see Practice Note: [Offshore penalties](#)), a new penalty linked to the value of the asset on which tax was evaded and increased public naming of tax evaders (to be included in FB 2016)
- new civil penalties for those who enable offshore evasion, including public naming of those who have enabled the evasion (to be included in FB 2016), and

- a new criminal offence for corporates failing to prevent tax evasion. This will cover corporates that fail to prevent their agents from criminally facilitating tax evasion by an individual or entity

In addition, the government will consult on an additional requirement for individuals to correct any past offshore non-compliance, with new penalties for failure to do so.

See: [AS 2015](#) (paras 3.77–3.81)

Measures pre-announced

- **Serial avoiders:** as announced in the Summer Budget, FB 2016 will include new sanctions for serial users of tax avoidance schemes, including a surcharge, naming and shaming, additional reporting requirements and restricted access to tax reliefs. There will also be a new threshold condition for the promoters of tax avoidance schemes (POTAS) rules, to catch promoters who repeatedly market schemes that are found by the tribunals and courts to fail. This follows consultations on these proposals in [January 2015](#) and [July 2015](#). See: [AS 2015](#) (para 3.83)
- **GAAR penalties:** as announced at Summer Budget 2015 (and outlined in Practice Note: [The general anti-abuse rule— Future of the GAAR](#)), FB 2016 will include a new penalty of 60% of the tax counteracted under the GAAR and make changes to strengthen the impact of the GAAR in tackling marketed avoidance schemes. See: [AS 2015](#) (paras 1.152, 3.84)

DEVOLUTION

Wales

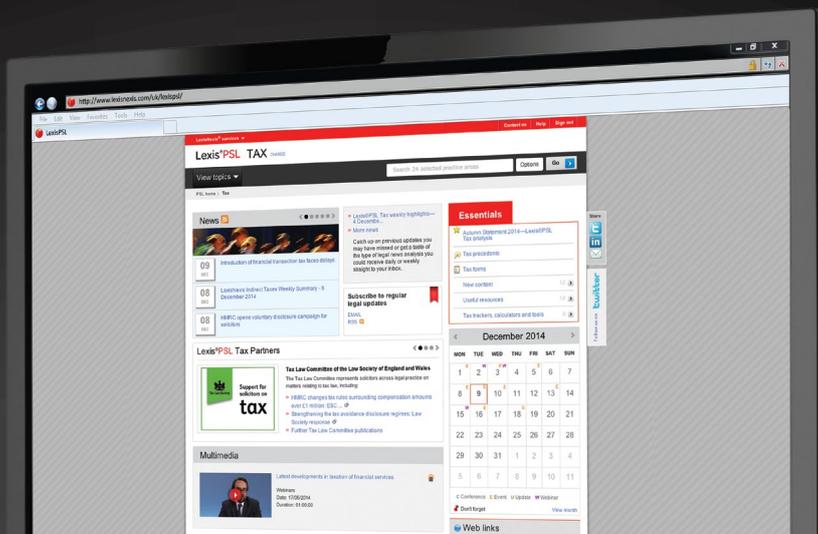
The government has committed to removing the requirement for a referendum in Wales before the Welsh Assembly can introduce the Welsh rates of income tax (see: [Lexis®PSL Tax—devolution tracker](#) for background).

See: [AS 2015](#) (para 2.141)

Northern Ireland

The government has indicated that the Northern Ireland parties are keen to pursue the introduction of a NI Corporation Tax rate of 12.5% from April 2018. The government's commitment to the devolution of corporation tax in Northern Ireland is subject to the finances of the NI executive being put on a sustainable footing.

See: [AS 2015](#) (para 2.142)



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