Deloitte.

Deloitte Tax LLP
Global Employer Services

# GES NewsFlash
# United Kingdom – 2011 Budget

**March 24, 2011**

In this issue:



## Summary

In his second budget, George Osborne focused on the government's key policy objectives of achieving sustainable and balanced growth, identifying areas for greater simplicity in the tax system, but with limited new employer developments. The detailed provisions for many areas, including pensions and disguised remuneration, will be confirmed in next week's Finance Bill.

The chancellor has set the scene for some fairly major consultation, working toward the alignment of income tax and National Insurance, changes to the nondomicile rules, and the introduction of a statutory residence test by April 6, 2012, which is likely to have a significant impact on expatriate employers.

As expected, the 50% tax rate is still with us, including a 100% tax for equalised employees, although reading the runes it looks more likely this will be moving down within this Parliament.

**Deloitte's View**
Overall no new surprises for employers, with some minor changes for company cars, the removal of some benefits such as late night taxi relief, and luncheon vouchers.

The aims to reduce the amount of legislation and to create simplification in Tax and National Insurance alignment should be applauded, but as ever, there will be significant work in bringing this to fruition.

The timetable for the introduction of a statutory residence test by April 6, 2012, looks ambitious.

## Disguised remuneration

The chancellor confirmed the introduction of legislation to counter 'disguised remuneration' — (employer reward provided by a third party, often in the form of a loan and in a way that minimised income tax). This follows publication of draft legislation on December 9, 2010, and the issue of Frequently Asked Questions (FAQs) by HMRC on February 21, 2011.

Both revised legislation, which will be introduced in the Finance Bill 2011, and additional FAQs are expected.

The government has announced that it will amend the legislation to exclude:
- Other group companies from being treated as a 'third party';
- Certain short-term loans (possibly in connection with share option exercises);
- Deferred remuneration arrangements;

- Certain employee car ownership arrangements; and
- Income and gains on investments held by third parties.

This legislation also applies to funded pension provision outside a registered pension plan and in effect moves to a taxing regime on the funding of nonregistered pension plans. Legacy pension arrangements will be protected and the ‘disguised remuneration’ legislation will not apply to payments chargeable to tax as pension income.

The rules come into full force from April 6, 2011, but antiforestalling legislation applies from December 9, 2010, for certain transactions, including the making of new loans.

Regulations will also be introduced shortly to apply National Insurance contributions (NICs) to amounts chargeable to tax.

**Deloitte’s view**
These rules are part of the government’s focus on countering tax avoidance and is further evidence of its commitment in this area. The changes announced will narrow the very broad scope of the draft rules announced in December 2010. It is unfortunate that a number of points which HMRC announced on February 21, 2011, have not been addressed in today’s announcement.

## Pensions

No new measures were announced in relation to UK-registered pension schemes and non-UK pension schemes where members are able to benefit from at least a measure of UK tax relief. However, the announcements made previously will go ahead as planned and will have a significant impact on employers and employees.

These include:
- The reduction in the annual allowance from £255,000 to £50,000 from 2011/12 and the lifetime allowance from £1.8M to £1.5M from 2012/13;
- The reduction in the National Insurance contracted out rebate applicable to the defined benefit pension scheme from 2012/13.

**Deloitte’s view**
The reduction in the annual allowance will have a significant impact on the amounts that can be saved tax effectively and will undoubtedly change the way higher earners save for their retirement.

The reduction in the National Insurance contracting out rebate will increase the cost to employers of operating defined benefit pension schemes and will do nothing to confirm their continuation.

Employees assigned to work in the UK who remain as members of their home country pension plan will face particular challenges in obtaining the information they need in order to determine whether or not they are subject to an annual allowance charge. Employers should review their policies to make sure that it is clear who will pay any additional UK tax that might be due.

## No domicile changes and a statutory residence test

The chancellor announced that no domiciled individuals more than the age of 18 who have been resident in the UK for 12 or more years from April 6, 2012, and who wish to retain access to the remittance basis of taxation must pay an increased annual charge of £50,000.

The current £30,000 annual charge will be retained for those who have been resident for at least seven of the past nine years but fewer than 12 years and wish to claim the remittance basis, unless their unremitted income and gains are less than £2,000 in the year.

No domiciled entrepreneurs who own UK businesses through tax-efficient offshore structures will be able to introduce investment funds from their offshore company or trusts into the UK without incurring a remittance tax charge. This partially restores the position before April 6, 2008, when capital gains could be remitted from offshore trusts without incurring a tax charge. To prevent avoidance, there will need to be clear rules spelling out what investments are eligible.

**Deloitte's view**

Minor changes to the taxation of no domiciled individuals were anticipated and the government has also confirmed that there will be no further substantive changes to these rules for the remainder of this Parliament, which is welcome news. The government hopes that these measures will address the concerns of an overly generous regime for non domiciliaries, while ensuring that the UK remains an attractive place for them to live and do business.

The increased charge will only affect a limited number of non domiciliaries, i.e., those remaining resident in the UK for 12 years, but there will be a number of high net worth individuals who are affected. These individuals will welcome the certainty provided by this announcement together with the absence of any time limit for continuing to claim the remittance basis or prohibition on its use by British Citizens.

*Statutory residency test*

The government has announced that it will formally consult on the introduction of a statutory definition of residency to provide greater certainty for taxpayers. A consultation document will be published in June 2011 with the intent that any statutory test will be introduced with effect from April 6, 2012.

**Deloitte's view**

The current rules that determine tax residence for individuals are based predominately on case law. These rules are complex and create significant uncertainty in determining a taxpayer's tax residency. A clear and objective test which can remove such uncertainty for taxpayers would be welcome. Although consultation has already taken place with certain interested bodies, there is likely to be some challenge in introducing this by April 6, 2012.

## Tax and National Insurance (NI) alignment

The government will consult later this year on consolidating the operation of income tax and NI contributions. However, it has committed to maintain the contributory principle and not to extend NICs to individuals above state pension age or to other forms of income such as pensions, savings, and dividends.

**Deloitte's view**

There has been long-standing pressure to rationalise income tax and NICs but the devil will be in the detail, which is presumably why no solutions have been found to date. However, the commitment to undertake a review is to be welcomed.

The government appears to have rejected the recommendation of the Office of Tax Simplification (OTS) for a full merger of income tax and NIC, but may be prepared to adopt a common measure of earnings (including on the treatment of benefits in kind). It may also harmonise earnings periods and the attribution of earnings. However, any changes that might significantly redistribute the tax/NIC burden appear to be off the agenda.

Whatever the scope, we expect a significant amount of consultation on this subject over the coming months and years.

## Employee benefit changes

Following recommendations from the OTS, the government announced the abolition of 43 different tax reliefs. Three reliefs to be abolished that may be of interest to employers are late night taxis, luncheon vouchers, and meals for 'cycle to work' days. The three reliefs will be abolished following a period of consultation in the course of 2011/12.

The number of employees affected by the abolition of the reliefs for luncheon vouchers and the meals for 'cycle to work' days is likely to be small and the tax savings lost are probably negligible and outweighed by the cost and administration associated with providing the benefits. The loss of the late night taxi relief will affect a much larger group of employees, mainly professionals in London and other cities who are unlikely to drive to work, but occasionally work after 9 p.m.

**Deloitte's view**
It is no surprise that the relief for late night taxis is to be abolished. The net has been closing in on this relief over recent years, with HMRC tightening the conditions to be met by employers for the relief to apply. As highlighted by the OTS, the relief is not available to employees who regularly work late such as shift workers. Given HMRC's perception that the relief is being abused by city firms, it was only a matter of time before it would be abolished.

*Company cars and cash allowances*
While there were not any structural changes that should cause a significant impact to the manner in which employer's structure and operate company car and cash allowance policies, there were a number of changes which should, nonetheless, be taken into account. These can be summarised as:

- An increase to the company car benefit in kind percentage by 1 percentage point from April 2013 for vehicles with $CO_2$ emissions in the range 95–219 g/km (petrol) or 95–204 g/km (diesel). There is no change for electric vehicles (at zero percent) or petrol/diesel cars with emissions outside of the stated ranges according to fuel type;
- An increase to the private fuel benefit multiplier from £18,000 to £18,800 with effect from April 6, 2011; and
- An increase to the Approved Mileage Allowance Payment (AMAP) rate (being the amount that can be paid free of income tax and National Insurance to employees using their private car for business use). For income tax, this will increase from 40p to 45p per mile for the first 10,000 business miles per annum and continue at 25p per mile above that level.

**Deloitte's view**
Employers should reflect the tax and NIC cost to both employer and employees over the full retention period of company cars in the design of their scheme policy and vehicle selection methodology, which should be on a "whole life cost" basis. Employers should also fully communicate any increase to the benefit in kind cost to an employee over the retention period of his/her company car.

Employers that provide company car drivers with free private fuel should review whether the recipients are paying more in income tax on the fuel than the cost of purchasing the fuel itself and consider buying out fuel benefits where appropriate.

Employers should review the opportunity to restructure car allowances to take advantage of the income tax and NI efficiencies available from the payment of increased AMAP rates.

*Employer-supported child care*

Although no new changes were announced in Budget 2011 in relation to employer provided child care, the government confirmed the previously announced changes that are due to come into effect. The two key changes are as follows:

- The government will introduce legislation in Finance Bill 2011 to restrict the level of tax relief available for higher and additional rate taxpayers who join employer-supported child care schemes after April 6, 2011. The measure will confirm that tax relief for these taxpayers will only be given at basic rate.
- Employees who join their employer-supported child care scheme before April 6, 2011, will, however, be unaffected and will still be eligible for tax relief at their marginal rate.

They will also relax the requirement for employer-supported child care schemes to be “available to all employees.” Currently, the employer’s support must be available to all employees in order to attract income tax and National Insurance exemptions. However, schemes often work through a salary sacrifice arrangement so participation could take some low-paid employees below the national minimum wage thresholds.

In practice, employers would typically preclude such low-paid employees from participating so as not to breach the NMW legislation. The side effect, however, was that, strictly, tax relief should have ceased to be available in respect of the employer-supported child care.

This measure will relax the requirement for child care to be available to all by allowing employers to exclude employees at or near the national minimum wage.

**Deloitte’s view**

Although first announced in December 2009, it is still disappointing that HMRC will restrict tax relief for higher and additional rate taxpayers who join an employer-supported child care scheme on or after April 6, 2011. The change will increase the tax burden for both employees and employers. It will also increase the administrative burden for employers — as they will be required to carry out an earnings assessment for employees each year to determine the amount on which tax relief should be given. This burden will grow as more employees join a scheme after April 6, 2011.

Employers operating child care schemes should encourage higher-paid employees to sign up to the scheme before April 6, 2011, so that tax relief can be obtained on the full £55 per week. Child care vouchers do not have to be used in the period they are received.

The removal of the requirement for employer provided child care to be available to all is a welcome relaxation dealing with a practical problem that would otherwise affect many employers offering child care benefits.

## Further antiavoidance issues

*Tackling tax avoidance*

HMRC’s most recent estimate of the tax gap is calculated to be £42 billion (2008/09). To deal with this problem, the government has published its strategy document ‘Tackling Tax Avoidance.’ This involves three key elements:

- Tightening new and existing legislation;
- Reviewing areas of the tax system deemed to be under sustained attack to determine where and whether major overhaul is required; and
- Looking at using generic defences against tax avoidance that move beyond closing identified loopholes, e.g., compulsory disclosure, a possible General Anti-Avoidance Rule (GAAR).

As part of this focus, two specific measures were announced for consultation. The first looks at creating a statutory listing of known ineffective tax avoidance schemes with the introduction of new statutory late payment charges to prevent any cash flow benefit. The second measure looks to prevent the provisions of a double taxation treaty being used as part of any arrangement to avoid UK taxation.

**Deloitte's view**
In a time of austerity, measures designed to limit tax avoidance will have widespread support. A renewed focus on preventing tax avoidance can be seen as the 'quid pro quo' for other measures in the budget, which were generally favourable to companies and individuals. The government has confirmed that it is still considering a GAAR and it is to be hoped that the uncertainty such a rule would create will deter them.

*IR35 to be retained but improvements to be made*
The government has decided that it will retain IR35, the tax and NIC rules for individuals who provide services via an intermediary company, after having asked the OTS to review the rules and consider alternatives. However, to achieve simplification, improvements will be made to its administration. The improvements include:

- A dedicated helpline to provide greater pretransaction certainty;
- The publication of guidance on those types of cases HMRC views as outside the scope of IR35;
- Restricting reviews to high-risk cases carried out only by specialist teams; and
- An IR35 forum to monitor HMRC's new approach.

**Deloitte's view**
The government's decision not to proceed with a full merger of income tax and NIC made it all but inevitable that IR35 would be retained, given the risk to tax revenues if contractors are to use personal service companies to pay dividends instead of salary. Improved guidance is welcome, but it is not clear how compliance will be enforced, given that the current risk of investigation is minimal.

## People to contact

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals as follows:


**Matthew Ellis**
Tel: + 020 7007 6519

**Andrew Buckle**
Tel: + 020 7007 8346

**Robert Hodkinson**
Tel: + 020 7007 1832

**Carl King**
Tel: + 44 118 322 2387


This NewsFlash information is also included in our biweekly GES newsletter, *Global InSight*, which you will receive directly if you are on the central distribution list.

If you are not on the central distribution list and received this communication by some other means, you can follow these few simple steps to be added to the central distribution list:

- Go to the Deloitte Subscriptions Page on Deloitte.com
- Make sure that under Email Newsletters you select “Global InSight” which is under the Tax heading
- Then fill out your contact information and click “Save Profile”

**Back to Top**

---



---