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# Weekly Tax Matters

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## Scottish Draft Budget

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### ***The Scottish Government set out their Draft Budget for 2016/17, including the proposed rate for the Scottish Rate of Income Tax, earlier this week***

As we have previously mentioned, from 6 April 2016 the main rates of UK income tax will cease to apply to the income (other than interest and dividend income) of 'Scottish taxpayers'.

This was the first time that the Scottish Government was required to set the Scottish Rate of Income Tax, and as had been widely anticipated, this was set to ensure that Scottish taxpayers pay the same rates of income tax as those in the rest of the UK for the 2016/17 tax year.

However, there was a clear indication that once additional income tax powers are devolved to the Scottish Government (potentially from 2017/18 under the Scotland Bill proposals currently going through the legislative process at Westminster) the Scottish Government will consider implementing different income tax rates and bands from the rest of the UK, to further its stated aim of introducing a more 'progressive' income tax system. Notwithstanding that the Scottish rates and the corresponding main UK rates will be the same for 2016/17, individuals with ties to Scotland will still need to consider whether or not they will be 'Scottish taxpayers'. See last week's article for more information.

The other major announcement in the Draft Budget was the introduction of a 3 percent increase in the Land and Building Transaction Tax rates on the purchase of additional residential properties (such as buy-to-let and holiday homes) with a value over £40,000. This follows the similar increase in stamp duty land tax (SDLT) rates for the rest of the UK announced by George Osborne in last month's Autumn Statement.

Two other points of note are that the Draft Budget:

- confirmed the previously announced rates for Scottish Landfill Tax (SLfT), and announced that the SLfT credit rate for contributions to the Scottish Landfill Communities Fund will be maintained at 5.6 percent. This contrasts with Westminster's decision to decrease the maximum percentage credit to 4.2 percent for operators in the rest of the UK who make contributions to the UK Landfill Communities Fund; and
- announced a review of the Non-Domestic Rates system in Scotland, and that there will be an increase in the Large Business Supplement on Non-Domestic Rates. We await further details on this measure so that the impact on businesses can be assessed.

More on the Draft Budget can be found in our [On a Page summary](#).

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## Making tax digital road map and future changes to tax payments

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### ***The Government's digital tax administration plan for businesses and individuals includes fundamental changes to timing of tax payments.***

HM Revenue and Customs (HMRC) have published the [Making tax digital roadmap](#) and a [Discussion paper on simpler payments](#).

The roadmap summarises the timetable for and outline details of the Government's transformation plan to make the UK "one of the most digitally advanced tax administrations in the world" which will bring to an end the need to file an annual tax return.

The discussion paper highlights fundamental changes to tax payments stating that the Government is consulting on options to 'simplify' the payment of taxes which includes collecting tax earlier in smaller but more frequent amounts, and aligning payment arrangements for various different taxes (e.g. PAYE, corporation tax (CT), VAT, NIC).

A considerable change in taxpayers' interaction with HMRC is at the heart of the plan. Some of the key themes are that:

- information will automatically be delivered to HMRC much more regularly and closer to 'real time', expanding on the current system for PAYE information;
- tax payments will become more regular and closer to the time when the income or gains are earned. For example it has already been announced that the tax due on gains arising on residential property will become payable within 30 days of completion;
- HMRC will make better use of the information it already receives from employers and banks and consult on information to be provided by other third parties (e.g. investment income); and
- HMRC expect to be able to bring a number of different tax heads together, e.g. income tax and VAT, and allow taxpayers to offset overpayments under one head against liabilities under another.

The tax payments consultation will not consider large companies with profits above £20 million as in the Summer Budget 2015 the Government announced reforms to the Quarterly Instalment Payment system. But this consultation will cover payment arrangements for the remainder of the CT population. The proposal is that by 2020 HMRC will expect businesses, the self-employed, partnerships, landlords and individual taxpayers with secondary incomes of £10,000 or more to keep their records up to date quarterly, and there will be facilities for other taxpayers to keep their tax affairs up to date.

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## New corporate criminal offence

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### ***HMRC consultation response to proposed corporate offence of failure to prevent the facilitation of tax evasion published.***

New proposals to tackle offshore tax evasion were announced at the March 2015 Budget, followed by the publication of four consultation documents. Draft legislation on three of these areas was included with the draft clauses for Finance Bill 2016 published on 9 December. For the fourth, the new corporate criminal offence of failure to prevent the facilitation of tax evasion, a [response document](#) was also published that included draft legislation which will itself be subject to further consultation in early 2016. The intention is for the legislation to be in place prior to information exchange beginning under the Common Reporting Standard. The consultation document will seek stakeholder views on both the draft



legislation and draft guidance (yet to be published). Comments on the draft legislation can be submitted in the meantime but the draft is not yet final.

Some of the key points of note based on the response and legislation, as currently drafted, are:

- the offence will cover all taxes and duties;
- the offence will apply to both UK and non-UK entities;
- the offence will apply to both UK and non-UK taxes;
- there will be no requirement for there to have been a conviction of the taxpayer or the facilitator before a case can be brought; and
- the defence of having procedures designed to prevent facilitation of tax evasion must be “reasonable in all the circumstances” but there is a recognition that the reasonableness of procedures will need to be differentiated according to circumstances.

These proposals will have a significant impact for retail, private and commercial banks (but are also relevant for other corporates) and will require additional controls and procedures to be implemented, alongside existing money laundering requirements. It is clear that the Government’s view is that vicarious liability is the best way to incentivise the appropriate behaviours but there appears to be a willingness to listen to the views of stakeholders on the detail.

Please speak to your usual contact if you have any questions or comments on the proposals.

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# CORPORATE TAX



## Qualifying private placements – new exemption for withholding tax

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**A new exemption from the requirement to deduct tax from payments of interest on qualifying private placements is being introduced.**

Regulations have now been laid before Parliament providing for a new exemption from the obligation to withhold tax from interest payments on qualifying private placements - [The Qualifying Private Placement Regulations 2015](#) and [The Finance Act 2015, Section 23 \(Appointed Day\) Regulations 2015](#). The new exemption applies from 1 January 2016.

Changes from the previous draft of the regulations include the following:

- the investor must provide the borrower with a written statement (the 'creditor certificate') confirming certain matters. The final regulations make clear that a certificate must be held for each creditor and that the relevant debtor reasonably believes that it is not a connected person 'in respect of each creditor';
- the borrower must reasonably believe that the creditor is not a connected person, where connection between companies is determined using the wide close company test of control. In a helpful change, companies will not be connected simply because the investor holds a large proportion of the issuer's debt;
- the creditor certificate must confirm that the investor is resident in a qualifying territory, which means a territory with which the UK has a double tax treaty which includes a non-discrimination article. It is now provided that where the creditor is a State or any part of a State (including a local authority) of a qualifying territory, it is to be treated as a resident of the qualifying territory if it would not otherwise be so treated; and
- the requirement that the creditor certificate ceases to be effective if the creditor has notified the payer that the certificate is of no effect now takes effect from the date on which the notification is received.

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## Investment Allowance and Cluster Area Allowance – draft legislation published

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***The draft legislation will extend the definition of investment expenditure for these allowances.***

It was announced at the Summer Budget 2015 that the definition of investment expenditure for the purposes of Investment Allowance and Cluster Area Allowance would be extended. These allowances serve to reduce the adjusted ring fence profits of oil and gas companies that are subject to the supplementary charge.

HMRC have now published [draft legislation](#) and a [Tax Information and Impact Note](#) on the proposed changes, which extend the definition of investment expenditure to include certain discretionary non-capital expenditure and payments under long term leases.

Operational expenditure will be investment expenditure if it is incurred for a specified activity, is not routine repair and maintenance and:

- increases the rate or amount of oil that can be extracted from a field or cluster;
- increases the tariff income that can be earned; or
- extends the economic life of a field or facility used for oil extraction.

Lease payments will be investment expenditure if:

- the lease is for a term of five years or more;
- the asset that is leased is a mobile asset used for production or storage of oil; and
- the asset is to be used in relation to a field or a project for which approval was granted in a field development plan or field development plan (addendum) on or after 8 July 2015.

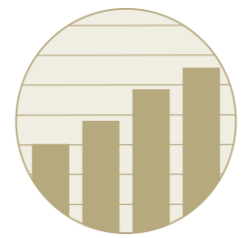
The draft legislation is open for consultation until 27 January 2016.

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## CRS: Potential new fields in the Common Reporting Schema in 2019

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***The OECD has confirmed that no updates to the information to be exchanged between countries will be required until 2019 at the earliest.***

As part of the OECD initiative on Automatic Exchange of Information, Financial Institutions (e.g. banks and certain trusts, etc.) are to report information on non-resident tax payers that hold financial accounts with them.

The European Commission, having implemented this initiative via an EU Directive, has been pushing for more information to be reported. This additional information, it argues, should assist Competent Authorities, e.g. HM Revenue & Customs (HMRC) to monitor the compliance with the obligations imposed on Financial Institutions by the legislation. The additional information to be reported could include:

- account treatment, i.e. is the account a New or Pre-existing account;
- self-certification, was this obtained from the account holder;
- account type, e.g. depository account or a cash value insurance contract; and
- 'Unknown' type of Controlling Person of a Passive non-financial entity (NFE).

This information is currently not required to be reported under either the amended EU Directive on Administrative Cooperation that implements the OECD Automatic Exchange of Information framework or under any domestic legislation.

The OECD working party [has confirmed](#) that before it decides whether this additional information should be requested, it wishes to receive feedback on the experience of the first exchanges under the Foreign Account Tax Compliance Act (FATCA) (i.e. information exchanged with the US) and under its Common Reporting Standard (CRS). This feedback should be received by the end of 2017 to allow consideration during 2018.

The [EU Commission has adopted](#) the CRS Schema as proposed by the OECD and has also committed to the same timeline for potential improvements. This confirmation that the EU Schema and the OECD Schema will be aligned so that there is one standard set of information that will be exchanged is good news for Financial Institutions.

The announcement from the OECD is silent on the implications for Financial Institutions capturing this information on their systems to facilitate reporting retrospectively.

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## ***Fiscale Eenheid X (C-595/13) CJEU Judgment***

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***The CJEU has released its Judgment in this reference concerning the liability of supplies to certain investment companies which are comprised of immoveable property.***

These investment companies involved the pooling of capital by several investors to purchase, own and sell immoveable property. Profit from renting and selling properties was distributed in the form of a dividend. Contracts were entered into for the management of the investment companies and the properties. The value of these supplies was based on 8 percent of the theoretical annual rental income. The supplier treated these as exempt. The tax authorities considered the majority of services were taxable and assessed the taxpayer. The case concerns whether the services are exempt under Article 13B(d), point 6 of the Sixth Directive, now Article 135(1)(g), which exempts the management of special investment funds as defined by Member States. The Court of Justice of the European Union (CJEU) considered two issues:

*Were the investment companies special investment funds?* The CJEU noted a number of established principles. The CJEU noted that the companies in the current case cannot fall within the UCITS Directive. However, if they display identical characteristics to, carry out the same transactions as, or, at least, display features that are sufficiently comparable to other funds, so as to be in competition with them, then they must also be special investment funds within the meaning of that provision. The CJEU emphasised the importance of the requirement for Member States to provide for specific State supervision for the exemption to apply. The CJEU therefore concluded that such companies may be considered to be regarded as 'special investment funds'.

*The scope of 'management'* - In terms of the activities which fall within the management of special investment funds, the CJEU noted that the transactions covered by the exemption of management of special investment funds are those which are specific to the business of undertakings for collective investment. Applying this to the current case, the CJEU suggested this would include activities relating to the selection, purchase and sale of immovable property investments, plus related administration and accounting tasks. However, the term 'management', which appears in that provision, does not cover the actual management of the immovable property of a special investment fund.

To access the judgment click [here](#).

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## ***Brief 22 (2015): Changes to VAT regulations following Judgment in the case of Credit Lyonnais (C-388/11)***

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***HMRC have released a Brief which sets out the revisions to the UK partial exemption regulations following the CJEU decision in Credit Lyonnais (C-388/11).***

HMRC have released Brief [22/15](#) which sets out the revisions to the UK partial exemption regulations following the CJEU decision in *Credit Lyonnais* (C-388/11). Originally the amendments should have taken effect from 1 August 2015 but implementation was deferred as a result of consultation responses. The scope of the changes was narrowed as a result of concerns expressed that the proposals went too far. A revised version was released for a further limited and short consultation in October and as a result of comments received the draft regulations were amended again.

The Regulation changes can be accessed [here](#). Essentially, the changes in their final form are that:

- 1) Businesses using the standard method cannot take account of supplies made from non-UK establishments when calculating their residual recovery rate. (Amendment to Regulation 101).
- 2) Each sector of a sectorised special method must reflect the use to which VAT-bearing costs are put in the business and in that sector, the structure of the business and the type of activity undertaken by that sector. (Amendment to Regulation 102). A requirement for each sector to keep separate business accounts has now gone following the responses to the October consultation. This is a welcome change as that proposed condition had given rise to concern especially as it was not clear what HMRC meant by that phrase in this context.
- 3) The value of supplies made from non-UK establishments can only be taken account of in a sectorised method. Credit Lyonnais confirmed that sector cannot simply be based on a geographic location.
- 4) Regulation 103 will also be amended to mirror the changes to Regulation 102.

These changes have effect in relation to:

- any standard method longer period beginning on or after 1 January 2016, (Regulation 101);
- any special method approved or directed on or after 1 January 2016 (Regulation 102); and
- any VAT period beginning on or after 1 January 2016 (Regulation 103).

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## Brief 23 (2015): VAT group rules and the *Skandia Judgment*

### ***HMRC have published a further Brief following additional information on VAT grouping in the Netherlands and Spain***

This [Brief](#) has been published following additional information about VAT grouping in the Netherlands and Spain. This brief provides an updated view on how the UK expects Member States to operate VAT grouping following *Skandia*. The Brief therefore provides an updated table which remains a guide for businesses. Responsibility remains with businesses to confirm the situation with the relevant Member State tax authority. In terms of the position in this Brief compared to Brief [18/15](#) :

Member State	Was (as per Brief 18/15)	Now (as per current Brief)
Netherlands	Uncertain	HMRC does not expect this Member State to apply 'establishment only' VAT grouping to create intra-establishment supplies
Spain (advanced method)	HMRC expects this Member State to apply 'establishment only' VAT grouping to create intra-establishment supplies	Uncertain

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# PENSIONS



## Government response to 'secondary annuity market' consultation

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***The Government is pressing ahead with its plans to extend the new pension freedoms to those who have already purchased an annuity.***

The 'secondary annuity market' is the Government's proposed way of extending the new pension freedoms that took effect from April 2015 to those who have already purchased an annuity. The idea is that an annuity holder is able to pass their income stream to a third party in return for a lump sum.

In its response to the call for evidence, the Government has confirmed that the only annuities in scope will be those in the name of the individual – i.e. those that are general pension scheme assets will not. There will be no restrictions on type of annuity, or on date purchased.

One of the key issues is consumer protection. The Government intends to extend the scope of Pension Wise to cover all those who hold annuities, and those with annuities over a certain value (as yet unconfirmed) will be required to take financial advice before selling their annuity income. The threshold may also take into account the individual's wider circumstances. The Financial Conduct Authority (FCA) will consult during 2016 on other measures to protect consumers (including risk warnings) and to promote competition in the market.

Only corporate entities will be able to purchase annuity incomes; retail investment in the secondary market will be prohibited due to the complexity of the product. Annuity providers will be able to buy back their own annuities, though this will be a new regulated activity. The secondary annuity market will be regulated by the FCA.

The Government will consult further in spring 2016 on a range of tax issues. Tax treatment of annuity income in the hands of the purchaser is also subject to further consultation.

The Government will continue to explore ways to ensure that annuity providers are informed of the annuitant's death.

The proposed implementation date remains 6 April 2017.

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# INTERNATIONAL STORIES

## International round up

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***This week: Mexican tax provisions for 2016; dividend taxation considerations for Canadian taxpayers; Chilean tax simplification legislation; new sales tax withholding mechanisms in Panama; Japanese tax reform proposals for 2016; Vietnam issues guidance on 'special consumption tax'; new rules on tax authority communications in India; EU recommendations on combating aggressive corporate tax planning and evasion; details on a draft EU directive on anti-BEPS issues; update on Swiss corporate tax reform; CJEU judgment on Dutch VAT exemption for funds; Austrian tax developments update; accounting law changes in Croatia; transfer pricing proposals in Japan's 2016 tax reform proposals; Indian transfer pricing case on corporate guarantees; related party transaction reporting requirements in Jamaica; and FATCA update.***

Every week, KPMG member firms around the world publish updates on developments in their country. In *Weekly Tax Matters* we'll highlight a selection that may be of interest to our readers. The complete collection of TaxNewsFlash can be found [here](#).

### Americas

**Mexico** – Various **tax provisions** have been [published](#) in the official journal and will take effect in 2016.

**Canada** - Taxpayers may wish to [consider](#) any potential impact on their dividend receipts of the **recently announced increase to the highest individual income tax rate** effective 1 January 2016.

**Chile** – **Tax simplification legislation** has been [introduced](#).

**Panama** – New **sales tax withholding mechanisms** are [effective](#) from 1 January 2016.

### Asia Pacific

**Japan** - Details of **proposed tax reform for 2016** have been [published in draft](#).

**Vietnam** – Guidance has been [issued](#) on the new '**special consumption tax**'.

**India** – New rules on **communications with the tax authorities** have been [released](#).

### Europe

**EU** – The European Parliament has issued [recommendations](#) to combat **aggressive corporate tax planning and evasion**.

**EU** - The Council of the European Union [has released](#) details of a possible draft EU directive addressing certain **anti-base erosion and profit shifting (BEPS) issues**.

**Switzerland** – KPMG in Switzerland have prepared an [update](#) on **Swiss corporate tax reform**.

**Netherlands** – The Court of Justice of the European Union (CJEU) has [released](#) a judgment on the **VAT exemption for regulated funds and real estate funds**.

**Austria** – KPMG in Austria have prepared a [report](#) of **recent tax developments** concerning court cases, tax regulations, and tax benefits.

**Croatia** – **Accounting law changes** will have [effect](#) from 2016.

### ***Transfer pricing***

**Japan** – The 2016 tax reform proposals include [proposals](#) for **transfer pricing documentation rules** based on Action 13 (Transfer pricing and country-by-country reporting) of the OECD's BEPS project.

**India** – A recent transfer pricing case [rejected](#) an **adjustment made in respect of a corporate guarantee made for a subsidiary**.

**Jamaica** - Transfer pricing rules introduced this year [require](#) **reporting of related-party transactions** for 2015.

### ***FATCA update***

Luxembourg has passed [legislation](#) implementing the Common Reporting Standard. The Turks and Caicos Islands have also issued [FATCA guidance notes](#).



# OTHER NEWS IN BRIEF



## A round up of other news this week

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***This week: HMRC's Employer Bulletin; International tax compliance financial account information directions published; update to KPMG in the UK's Financial Transaction Tax blog; December's edition of the Weekly Tax Matters consultation tracker; and the Fintech 100 list.***

The latest [Employer Bulletin](#) from HMRC has been published.

HMRC have published the [International tax compliance financial account information directions](#). These directions cover the form and manner of the electronic return system by which an electronic return is made.

KPMG in the UK's Financial Transaction Tax (FTT) team have updated their [blog](#) to cover the recent ECOFIN discussions on implementing an FTT.

The December edition of the *Weekly Tax Matters* consultation tracker can be found [here](#).

Fintech Innovators, a collaboration between fintech investment firm H2 Ventures and KPMG Fintech, have published their [Fintech 100 list](#), comprising the world's leading fintech innovators.

And finally... *Weekly Tax Matters* will be taking our usual break over the Christmas period. We'll be back on 8 January 2016.

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