

MARCH 2008 - ENEWS

As normal in the world of tax and business, March has been a busy month. Most notably Chancellor Alistair Darling presented his first Budget on Wednesday 12 March. The content of the Budget has been well reported elsewhere but we take the opportunity to highlight a few points for you in relation to Entrepreneurs' Relief, residence and domicile and the deferral of the 'income shifting' legislation.

We also include our usual round up of news. Please browse through this month's articles using the links below and contact us if any issues or questions arise.

- National Minimum Wage increases
- Entrepreneurs' Relief draft legislation
- Update on residence and domicile
- 'Income shifting' legislation delayed
- Online submission of employers forms
- Reduced rate for smoking cessation products
- Implementation date change for rights during maternity leave
- In year online filing of employer returns

National Minimum Wage increases

The National Minimum Wage will rise to £5.73 (£5.52) an hour in October 2008.

The hourly rate for 18 to 21 year olds will increase to £4.77 (£4.60) and for 16 and 17 year olds to £3.53 (£3.40) an hour.

HMRC are responsible for enforcing the NMW and have an ongoing programme of targeted enforcement. The current area subject to special attention is the hotel industry.

Internet links: [NMW rates](#) [BERR hotel guide](#)

Entrepreneurs' Relief draft legislation

In the Pre-Budget Report last October Chancellor Alistair Darling announced a series of changes to the capital gains tax (CGT) regime for individuals and trustees. These changes included the abolition of taper relief and indexation relief and the introduction of a single rate of CGT of 18%. The changes take effect from 6 April 2008.

On 24 January 2008, in response to pressure from the business community, the Chancellor announced a new 'Entrepreneurs' Relief'. The first £1m of gains qualifying for relief will be charged at an effective rate of 10%.

Gains in excess of £1m will be charged at 18%. An individual will be able to make more than one claim for relief, up to a lifetime total of £1m of gains.

The new relief is similar to Retirement Relief, which was phased out with the introduction of taper relief, but the new rules are designed to be simpler:

- there will be no minimum age limit
- relief will be available where the relevant conditions are met for a period of one year ending with the disposal / cessation.

The relief may be available to gains arising on the disposal of:

- the whole, or part, of a trading business that is carried on by the individual, either alone or in partnership
- assets used in a business which has ceased
- shares in a trading company, or holding company of a trading group, provided that broadly the individual owns at least 5% of the voting rights in the company and is an officer or employee of the company
- assets used in a partnership or by a company but owned by an individual if the assets disposed of are 'associated' with a disposal of shares or an interest in partnership assets. The individual must make the disposal as part of their withdrawal from participation in the partnership or the company
- certain disposals by trustees of business assets and company shares where a 'qualifying beneficiary' has a qualifying interest in the business / shares.

A trading business includes professions but only includes a property business if it is a 'furnished holiday lettings' business.

A trading company will have the same meaning as currently applies for taper relief.

HMRC have issued the draft legislation together with draft explanatory notes and frequently asked questions.

This is a complex area and if you have any queries or concerns please do get in touch.

Internet link: [HMRC guidance](#)

Update on residence and domicile

The government will implement a package of reforms announced in the 2007 Pre-Budget Report subject to certain changes. The measures will take effect from 6 April 2008.

The main proposal is that UK residents who are non-domiciled or not ordinarily resident, who wish to continue to be taxed on a 'remittance basis' rather than on their worldwide income and gains, will have to pay an annual tax charge of £30,000 on unremitted income and gains. Those with unremitted foreign income and gains of less than £2,000 will however be exempt from this charge.

The charge will apply if an individual has been resident in the UK for at least seven out of the previous ten tax years. Individuals will be able to decide each tax year whether to pay the charge and be taxed on the remittance basis or be assessed on their worldwide income and gains.

Key changes include:

- users of the remittance basis will lose their automatic entitlement to certain allowances, such as the personal allowance and the capital gains annual exemption (unless the £2,000 de minimis applies)
- children will not pay the £30,000 charge
- the £30,000 charge should be creditable against foreign tax
- art works brought into the UK for public display or for repair and restoration will face no new tax charges
- income and gains in offshore trusts will only be taxed when they are remitted to the UK, even if these come from UK assets
- changes will be made to the current rules on remittances to restrict the ability of individuals to sidestep UK tax on income and gains where HMRC believe it is due.

In addition, from 6 April 2008, when determining if an individual is resident in the UK, any day where the individual is present in the UK at midnight will be counted as a day of presence in the UK for residence test purposes. There will be an exemption for passengers who are temporarily in the UK whilst in transit between two places outside the UK.

Please do get in touch if you want any further advice in this area.

Internet link: [HMRC residence and domicile guidance](#)

'Income shifting' legislation delayed

The introduction of the proposed legislation on 'income shifting' has been delayed until April 2009.

You may well remember that HMRC proposed to legislate following their defeat in the Arctic Systems case. This involved a husband and wife who owned a company 50/50 and, broadly, took the profits out by way of dividends, again 50/50. HMRC attempted to tax the dividends solely on the husband, as he was performing most of the work which generated the profits of the company.

Following HMRC's defeat in this case, the government published draft legislation to prevent a tax advantage being gained through 'income shifting'. This legislation was expected to apply from 6 April 2008 to:

- company distributions, usually dividends; and
- profits from a partnership.

The proposed rules have been very widely drafted and would, in their current form, catch many owner-managed businesses involving husbands, wives and other family members, as well as businesses run by non-family members, leaving many with a substantially higher tax bill.

The government has reconsidered its position following a period of consultation and now believes that a further period of consultation will ensure that legislation in this area provides clarity and certainty for businesses and their advisers.

The government now intends to introduce legislation through Finance Bill 2009 and will not enact legislation effective from 6 April 2008.

We will, of course, keep you informed of developments. However, if you have any questions or concerns in the meantime, please do not hesitate to contact us.

Internet link: [Press notice](#)

Online submission of employers forms

The employers annual returns P35 and P14 (P60) are due for submission to HMRC by 19 May 2008. There is a tax free incentive payment due of £100 for small employers, those with less than 50 employees, who successfully file their returns electronically.

The final date for payment of PAYE, national insurance contributions, construction industry scheme deductions and student loan deductions is 19 April 2008 (22 April 2008 for cleared receipt of electronic payments into HMRC's bank account). The original guidance stated that the final date of payment was 18 April in error.

Internet links: [HMRC guidance](#) [HMRC revised guidance](#)

Reduced rate for smoking cessation products

A reduced 5% VAT rate for 'over the counter' sales of smoking cessation products was introduced from 1 July 2007 for a period of one year only. The government has announced that the 5% reduced rate will continue to apply.

Smoking cessation products dispensed on prescription continue to be zero rated.

Internet link: [HMRC Budget notice](#)

Implementation date change for rights during maternity leave

Following changes being made to the Sex Discrimination Act and, later this year, to the Maternity and Parental Leave Regulations, the law on contractual terms of employment during Additional Maternity Leave (AML) is due to change in respect of women whose babies are due on or after 5 October 2008. HMRC had previously advised that this change would be effective for babies due from 6 April 2008.

As detailed in the February 2008 Employers' Bulletin:

'The result of the legislative changes is likely to extend all the non-pay contractual terms and conditions of employment to which a woman is entitled during OML throughout her AML, including accrual of contractual annual leave. These rights would therefore apply to the full 52 weeks maternity leave entitlement as opposed to the first 26 weeks as now.'

Ordinary Maternity Leave (OML) is the first 26 weeks of maternity leave.

HMRC have advised that further details will be provided on the Department for Business Enterprise & Regulatory Reform (BERR) website and on HMRC's website.

We will keep you informed of developments in this area but please do get in touch if you have any queries in the meantime.

Internet links: [HMRC guidance](#) [Government Equalities Office](#)

In year online filing of employer returns

HMRC have issued some additional guidance on filing in year forms online. The guidance concerns online submission of forms P45 and P46.

HMRC have advised that they will be making changes to their systems which will mean that employers will be unable to submit these forms online between 2 and 8 of April 2008 and that it may take until 14 April before the system is operating at full capacity.

If you would like further advice concerning payroll matters please do get in touch.

Internet link: [HMRC online](#)