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International Tax

# United Kingdom Tax Alert

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## Autumn statement delivered


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The UK economy was at the heart of the Autumn Statement delivered on 5 December 2013, but it also included a number of tax and tax-related measures affecting companies and individuals. Some of these measures are new, while others previously have been announced or been the subject of consultation. Draft clauses for Finance Act 2014 will be issued on 10 December, together with a number of detailed responses and other documents.

### Business taxes

**Controlled foreign company (CFC) regime:** Two changes to the CFC finance company exemption provisions have been announced. The first change will stop UK companies that transfer profits from existing intragroup receivables to a CFC from benefiting from the CFC finance company exemption. This change applies to companies that transfer receivables out of the UK on or after 5 December 2013. Companies that have transferred receivables before that date should not be affected.

The second change extends an existing anti-avoidance provision to stop groups benefitting from the exemption if funds borrowed in the UK are used "wholly or mainly" to repay non-UK debt via an offshore CFC. This change replaces "wholly or mainly" with "used to any extent" and, hence, strengthens the anti-avoidance provision. This measure also applies from 5 December 2013; if this is part way through an accounting period, the period is split and profits apportioned between the two periods.

**Worldwide debt cap rules**: The definition of a group in the worldwide debt cap (WWDC) rules has been changed with effect from 5 December 2013. The changes:

- Ensure that a UK tax-resident company that does not have ordinary share capital (such as a company limited by guarantee) can be a relevant group company subject to the WWDC;
- Modify the definition of a 75% subsidiary for the WWDC rules so that indirect ownership of a company can be traced through intermediary entities without ordinary share capital; and
- Clarify that the ultimate parent of a worldwide group may be regarded as beneficially entitled to 75% of the profits or assets of a UK group company for the purposes of the WWDC grouping rules, notwithstanding any intermediary entities in the ownership chain that do not have ordinary share capital.

**Loss relief provisions:** Existing corporation tax provisions that apply to restrict loss relief when there is a change in ownership will be relaxed. The amendments will allow a holding company to be inserted at the top of a group of companies without triggering the provisions and will narrow the definition of a "significant increase in capital" for a company with an investment business.

**Double tax relief arrangements**: Measures have been introduced to extend anti-avoidance provisions in respect of double taxation arrangements. The measures reinforce the UK's current policy that relief for foreign tax should be available only where income actually has been doubly taxed in the UK and in another jurisdiction.

Legislation will be introduced in Finance Bill 2014 to make it clear that each loan relationship or fixed asset credit is to be treated separately for double tax relief purposes. In addition, the credit will be restricted where a repayment has been made by a foreign tax authority.

**Bank levy**: The full bank levy rate from 1 January 2014 will be 0.156%, with a commensurate increase in the half rate. A number of other changes will be made, including modifications, such that all derivative contracts will be treated as short-term.

## Personal taxes

**Capital gains tax on nonresidents**: As from 1 April 2015, capital gains tax will be chargeable on gains made by non-UK residents that sell UK residential property. A consultation on the process will be published in early 2014. It is expected that "rebasing" will be introduced to limit the taxable gain to that arising from April 2015. The interaction of the new rules with principal private residence relief will need to be carefully considered.

Since April 2013, companies and certain other entities have been subject to capital gains tax on sales of residential property for more than GBP 2 million. This will be extended to property of any value from April 2015.

**Partnership anti-avoidance**: Following the government's review of the taxation of partnerships, draft legislation was published on 5 December on two key changes that will apply to some "mixed" partnerships (i.e. where there are individual and non-individual partners, such as corporations) and to situations of perceived avoidance through the allocation of losses.

The mixed partnerships provisions will apply where excess profits are allocated to a non-individual partner in circumstances where an individual partner may benefit from those profits. The measures seek to reallocate excess profit allocations from non-individual partners to individual partners. Provisions are included aimed at preventing double taxation. The loss provisions will deny certain income tax and capital gains tax loss relief for losses allocated to individual partners where one of the main purposes of the allocation is to obtain relief.

The loss provisions will take effect from 6 April 2014 and the anti-avoidance rules concerning tax-motivated profit allocations will come into force as from 5 December 2013.