

# COMMENTS TO TREASURY COMMITTEE ON BUDGET 2020

## Response by Association of Taxation Technicians

### 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have been invited to comment to the Treasury Committee on how the 2020 Spring Budget meets the Committee's tax policy principles, as expressed in its 2011 report *Principles of Tax Policy*<sup>1</sup>.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 The Committee's report recommends that tax policy should be measured by reference to the following principles. Tax policy should:
1. **be fair.** *We accept that not all commentators will agree on the detail of what constitutes a fair tax, but a tax system which is considered to be fundamentally unfair will ultimately fail to command consent.*
  2. **support growth and encourage competition.**
  3. **provide certainty.** *In virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs. **Certainty about tax requires***
    - i. **legal clarity:** *Tax legislation should be based on statute and subject to proper democratic scrutiny by Parliament.*
    - ii. **Simplicity:** *The tax rules should aim to be simple, understandable and clear in their objectives.*
    - iii. **Targeting:** *It should be clear to taxpayers whether or not they are liable for particular types of charges to tax. When anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system.*
  4. **provide stability.** *Changes to the underlying rules should be kept to a minimum and policy shocks should both be avoided. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.*
  5. *The Committee also considers that it is important that a person's tax liability should be easy to calculate and straightforward and cheap to collect. To this end, tax policy should be **practicable**.*
  6. *The tax system as a whole must be **coherent**. New provisions should complement the existing tax system, not conflict with it.*

<sup>1</sup> See <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/753/75302.htm>

- 1.4 In the short time available to submit comments, we have limited ourselves to what we consider to be some of the more important announcements in terms of their fiscal impact and degree of compliance with the Committee's principles and which are within the scope of our expertise. We have not included measures announced at a previous fiscal event, unless Spring Budget 2020 changed their scope or impact. We also do not normally comment upon changes to tax rates and allowances.
- 1.5 References after each proposal are to the Overview of Tax Legislation and Rates (OOTLAR).
- 1.6 In the table at the end, we have graded the proposals by reference to the principles outlined in section 1.3 above to the extent that they appear relevant to each proposal.
- 1.7 We would be happy to elaborate on any of the comments or ratings if requested to do so. Relevant contact details are included below.

## **2 Personal tax**

### **2.1 Tapered annual allowance for pensions (1.3)**

The proposed changes from 6 April 2020 will address what appears to have been an unforeseen behavioural response to the introduction from 6 April 2016 of the tapered annual allowance. That response became particularly evident in the case of higher-paid public sector employees because of the required inclusion of a complex calculation of the value of their pension funding in determining their adjusted income.

The broader question prompted by the proposed change is why the particular behavioural response to the 2016 measures was not anticipated. The mechanics of the tapering of the annual allowance for pensions were clearly set out in an HMRC [Policy Paper](#) of 8 July 2015. It was clear from this that the value of any pension contributions had to be taken into account. What was (in retrospect) notably absent from the policy paper was any recognition of the practical impact which tapering could have on public sector services. The behavioural responses identified in the policy paper included (i) individuals and employers reducing pension contributions which would be in excess of the annual allowance and (ii) individuals in the taper region (between £150,000 and £210,000) reducing their incomes in response to the taper. There was, however, no recognition in the subsection on *Impact on business including civil society organisations* of the practical implications for the NHS or other public sector employer of relevant employees reducing their income in precisely the manner identified.

To the extent that the proposals will assist certainty and practicality, they are welcome.

There are obviously resource constraints on how much research should support impact assessments relating to tax changes but the Committee may wish to consider whether the wider impacts of tax measures should be subject to external review as part of the scrutiny process.

### **2.2 Top Slicing Relief on life insurance policy gains (1.4)**

The purpose of the first part of this measure is to implement the outcome of a recent case<sup>2</sup> in the tax tribunal in which the taxpayer's method of calculation of tax on an insurance gain was largely upheld as the correct approach.

Arguably therefore, the law already achieves a fair method of calculation but the fact that this had to be taken to tribunal (and that HMRC subsequently appealed the case) indicates that clarification was needed on the treatment of the personal allowance when adding the insurance gain resulted in abatement. We welcome the proposals to provide certainty over the application of reliefs and allowances and to ensure that top slicing relief operates as intended.

However, the clarification is only intended to apply to gains arising on or after 11 March 2020. It is essential that HMRC confirm that they will applying the same principles to calculations for earlier years to enable individuals to benefit from top slicing relief fully. We are aware of a number of members who have been uncertain whether to adopt the calculation method upheld by the tribunal for their clients, or accept the result produced by HMRC's self-assessment calculation. Certainty is definitely needed for earlier years so that all relevant taxpayers are treated in the same way.

### 2.3 **Capital Gains Tax (CGT) reduction in the Entrepreneurs' Relief lifetime limit (1.5)**

Entrepreneurs' Relief is a valuable relief to entrepreneurs but the extent to which it actually increases entrepreneurship rather than merely rewards it has been rightly questioned. Viewed against the widely mooted possibility of complete abolition of this relief, the reduction in the lifetime limit from £10 million to £1 million will have been greeted with sighs of relief by many entrepreneurs and their advisers. Retention of the relief recognises its support for growth and competition but the reduced lifetime limit introduces a realistic degree of proportionality between the element of incentive required and the likely growth and competition.

The availability of Entrepreneurs' Relief, like its predecessors (Retirement Relief and Business Asset Taper Relief), depends on very detailed legislation which can produce anomalous outcomes. That indicates a lack of certainty and could reasonably suggest that the opportunity should have been taken to consult publicly with a view to replacing Entrepreneurs' Relief with an altogether simpler relief. However, any such alternative would inevitably have its own complexities or be less fair (or both), so the retention of the existing relief with its known peculiarities but a reduced lifetime limit could possibly be seen as the least bad option.

Retention of the existing relief (albeit with a recalibrated lifetime limit) scores positively in terms of stability. However, such radical recalibration, even if likely to impact less than 20% of those who expected to have future eligible gains, must involve a policy shock – which undermines the principles of both certainty and stability. Introducing a major change to an established mainstream relief with immediate effect on Budget Day inevitably added to the policy shock effect.

## 3 **Capital Allowances**

### 3.1 **Rate of Structures and Buildings Allowance (SBA) (1.11)**

*“The increased rate of relief will further support business investment in constructing new non-residential structures and buildings including necessary preparatory costs, and the improvement of existing ones. The*

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<sup>2</sup> [Marina Silver v HMRC \(TC/2018/1743\)](#)

*increased allowance will improve the international competitiveness of the UK's capital allowances system."*  
[TIIN]

The qualifying eligibility conditions in relation to SBA are widely drawn. On that basis, an increase in the rate of relief is fair, especially as the enhanced rate will be available from 1/6 April 2020 even where the qualifying expenditure was incurred between 29 October 2018 and 31 March/5 April 2020. On the assumption that the availability of SBA does support investment in new construction/improvement of buildings, the increase in the rate of relief should better support growth and competition.

The change in rate of relief only 17 months since the introduction of SBA (and only nine months after the substantive legislation came into force) necessitates a one-off computational adjustment for any business which was entitled to SBA before April 2020 unless its accounting year coincided with the financial year. The arithmetical adjustment is not complex (and should be automated through software) but any change so early in the life of a new allowance does not serve the principles of certainty or stability particularly well. SBA is not particularly closely related to any other capital allowance so the increase in rate of relief does not impact coherence.

## 4 Corporate tax

### 4.1 Corporate capital loss restriction (1.14)

As announced at Budget 2018, the Government will legislate in Finance Bill 2020 to extend the existing corporate *income* loss restriction (CILR) to cover *capital* losses.

Our concerns on this measure are restricted to its practicability. As set out in our [response](#) to previous consultation, we are concerned that it will result in additional compliance requirements for companies that would otherwise be financially unaffected. The existing CILR rules require companies wishing to set off any amount of brought forward income losses against profits to include certain information in their return. This requirement applies regardless of the size of the company, and must be complied with even if the company will not suffer any restriction (for example because its brought forward losses are well below the £5m deduction allowance available to each company / group).

The extension of the CILR rules to cover capital losses will impose further reporting requirements on even the smallest companies where they wish to set off brought forward capital losses against capital gains arising in a period. The reporting requirement should be reviewed to ensure that companies which are not within the intended scope of this measure do not have unnecessary burdens placed on them.

### 4.2 Intangible fixed assets: relief for pre-Finance Act 2002 assets (1.15)

From 1 July 2020, companies that acquire pre-Finance Act 2002 intangible fixed assets from related parties will be able to claim corporation tax relief under the intangible fixed asset (IFA) regime.

This change follows a consultation on reform of the IFA regime which was undertaken in early 2018. Several other changes arising from that consultation were announced at Budget 2018 and subsequently enacted in Finance Act 2019 with effect from April 2019. It is unclear why the Government have waited until now to enact this further change, having previously stated that they would not be making any changes to the treatment of pre-Finance Acts 2002 assets.

It is also unclear why this change is being restricted to purchases from related parties which take place from 1 July 2020, as opposed to all pre-Finance Act 2002 assets. This could encourage artificial transfers of assets within groups merely to access corporation tax deductions. This eventuality may be addressed in the draft Finance Bill 2020 legislation, which we have not yet seen.

#### 4.3 **Research and Development Expenditure Credit (RDEC) rate (1.17)**

The rate of tax relief available under the Research and Development Expenditure Credit (RDEC) scheme will increase from 12 per cent to 13 per cent from 1 April 2020. However, there will be no increase in relief for the corresponding regime for small and medium sized businesses (SMEs).

Although some SMEs are able to claim relief under the RDEC scheme, the majority claim under the SME specific regime. This announcement therefore provides extra support to the largest businesses in the country, but nothing for the majority of SMEs which undertake research and development. Given the continuing political uncertainty surrounding Brexit and the potential impact of COVID-19 on the economy, these SMEs are likely to be more in need of relief than ever. In addition, although the two schemes operate in very different ways (the SME scheme providing for a 'super-deduction' whereas RDEC provides a taxable 'above the line' credit), increasing the relief available under RDEC only could be seen as demoting the significance of the SME scheme.

#### 4.4 **Preventing abuse of the R&D tax relief for small and medium enterprises (SME) (2.17)**

The introduction of a cap on the tax credit payable by HMRC to loss-making businesses under the SME R&D scheme, which was scheduled to come into effect from 1 April 2020, will be delayed by one year until April 2021.

In our [response](#) to the HMRC consultation on this measure we raised concern that the proposed cap was something of a blunt instrument, and could affect many genuine businesses - in particular start-ups and those that use employee share schemes to incentivise their staff.

We therefore welcome this delay, and would urge HMRC to use this time to ensure that the final design of the cap not only acts to prevent abuse, but also ensures that those companies who need support the most do not lose out.

## 5 **Indirect Tax**

### 5.1 **VAT: applying a zero rate to e-publications (2.21)**

From 1 December 2020 the zero rate of VAT will apply to e-publications so that they receive the same VAT treatment as their physical counterparts. This measure will help make the VAT treatment of newspapers, books and other publications more coherent - there does not seem to be any compelling reason why the VAT treatment of a publication should differ based on the medium in which it is delivered.

However, we are unsure as to why this change is being delayed until December 2020. EU law allows member states to lower the VAT rate on e-publications provided that it does not result in them being subject to a lower rate than physical publications. There is therefore no restriction which would prevent the UK from introducing this measure during the transition period of Brexit. Delaying the introduction of this changes is likely to cause confusion as to how businesses should treat supplies made to date and in the run

up to 1 December 2020, especially as HMRC noted in their [policy paper](#) published on 19 February that they had not changed their approach following the decision in News Corp UK and Ireland Ltd (UT/2018/0065).

## 5.2 Postponed VAT accounting (2.29)

From 1 January 2021 postponed accounting for VAT will apply to all imports of goods, both from the EU and outside the EU.

This is a welcome measure which will simplify importation of goods and provide a significant cash-flow benefit to importers. Extending the use of postponed accounting to both EU and non-EU imports also adds some cohesion to the VAT treatment of imports. However, we would encourage HMRC to ensure they make clear communications to affected businesses well in advance of the change so that they are able to clearly understand what the administrative requirements will be under postponed accounting.

## 6 Avoidance, evasion & non-compliance

### 6.1 Loan charge review (1.31)

The terms of reference<sup>3</sup> of the Loan Charge Review asked Sir Amyas Morse (the Reviewer) to consider:

- whether the Loan Charge, as it applies to individuals who have directly entered into disguised remuneration schemes, is an appropriate response to the tax avoidance behaviour in question and
- whether changes announced by the Government in advance of, and since, the Loan Charge came into effect address any legitimate concerns that have been raised about the impact on individuals, including affordability for those affected.

In formulating its recommendations, the Review was required to take account of both the impact on wider taxpayer fairness and HMRC's ability to tackle tax avoidance effectively in the future.

The Government's acceptance of all but one of the Review's recommendations implicitly recognises that aspects of the original loan charge legislation were not an appropriate response to the tax avoidance behaviour in question. The changes to be introduced by Finance Act 2020 should at least make the loan charge provisions more fair, certain and practicable than they were as they apply to individuals. It is outside the scope of this response to provide more detailed commentary on the various proposed changes.

The recognition that elements of the loan charge require significant revision must prompt consideration of whether the original provisions were subjected to sufficient scrutiny. The Committee's *Principles of tax policy* state (in paragraph 76) that responsibility for the better scrutiny of tax policy and legislation lies with Parliament together with the Government and tax profession. In relation to anti-avoidance provisions, it is essential to avoid the temptation that any less scrutiny is required either because of their targeting of the social harm of tax avoidance or because of their complexity.

Fairness, as the Review's terms of reference note, requires consideration both of wider taxpayer fairness and fairness to individual taxpayers. The changes made as a result of the review attempt to find a way through which takes both of these into account. It results in a set of outcomes which is broadly fairer than previously, though some areas still lack clarity. In particular it still appears uncertain whether those who

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<sup>3</sup> [Terms of reference](#) of the Loan Charge Review  
ATT/ATTSG/Submissions/2020

reached settlements with HMRC might in some cases lose out compared to those who were in similar situations but failed to act. If this were to be the case it would be unfair.

## **7 Tax Administration**

### **7.1 HMRC Automation (1.34)**

The Government will legislate in Finance Bill 2020 to make it clear that certain functions attributed to a HMRC officer may be carried out using an automated computer process or other means.

We recognise the need to protect revenue and bring certainty in relation to HMRC's use of automated processes. However, we have concerns over the retrospective nature of this measure.

It was initially announced in a Written Ministerial Statement (WMS) of 31 October 2019, which stated that it will apply retrospectively from that date. The only proposed exception to this retrospective treatment in the WMS was where a taxpayer had received a 'settled judgement' by 31 October 2019. To provide clarity and fairness, we believe that this exception should be extended to those taxpayers who had made an appeal to HMRC (whether settled or not) on the grounds of use of automated processes on or before 31 October 2019.

## **8**

### **The Association of Taxation Technicians**

#### **Note**

The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.

Ref - OOTLAR	Ref – Red Book	Nature of measure	Be fair	Support growth and encourage competition	Provide certainty	Provide stability	Be practicable	Be coherent	Overall
<b>Personal tax</b>									
1.3	2.183	Tapered annual allowance for pensions			G		G		G
1.4	2.181	Top Slicing Relief on life insurance policy gains	G	A	A	G	G	G	G
1.5	2.199	Capital Gains Tax (CGT) reduction in the Entrepreneurs' Relief lifetime limit	G	G	G	A	G	A	G
1.10	2.178	Review of changes to the off-payroll working rules (commonly known as IR35)	A	A	A	A	R	A	A
<b>Capital Allowances</b>									
1.11	2.198	Rate of Structures and Buildings Allowance	G	G	A	A	G	G	G
<b>Corporate tax</b>									
1.14	2.207	Corporate capital loss restriction			A		R		A
1.15	2.206	Intangible fixed assets: relief for pre-Finance Act 2002 assets	G	G	G	A	G	A	G
1.17	2.201	Research and Development Expenditure Credit (RDEC) rate	R	G	G	G	G	A	G
2.17	2.203	Preventing abuse of the R&D tax relief for small and medium enterprises (SME)	A	A	R	A	A	A	A
<b>Indirect Tax</b>									
2.21	2.233	VAT: applying a zero rate to e-publications	G	G	A	G	G	G	G
2.29	2.234	Postponed VAT accounting	G	G	G	G	G	G	G
<b>Avoidance, evasion &amp; non-compliance</b>									
1.31	2.255	Response to the Independent Loan Charge Review	A		G		G		G
<b>Tax administration</b>									
1.34	2.263	HMRC automation	R	G	R	A	A	A	A