THE LAST ROLL OF THE DICE?

NOVEMBER 2023

AUTUMN STATEMENT

Jeremy Hunt, the fifth Chancellor of the current parliament, gave his Autumn Statement speech today flanked by Rishi Sunak, the fifth Conservative Prime Minister since 2016. Over-shadowing the event was the spectre of the ruling Conservative Government trailing badly in the opinion polls, but needing to call a General Election no later than January 2025. Mr Hunt's Autumn Statement was therefore a dice-rolling exercise of pre-Election tax giveaways, while glossing over the tax rises and fiscal difficulties of the recent past.

So while the Chancellor announced eye-catching 2% and 1% cuts in the rates of National Insurance Contributions (NICs) for employees and the self-employed respectively, there was no mention of previously announced stealth tax rises such as the freezing of the personal income tax allowance and the higher income tax rate threshold until 2028. Today's announcements will therefore mean that most employees (from January 2024) and self-employed individuals (from April 2024) will pay lower NICs rates on portions of their income. However, the effects of inflation and the frozen allowances will push many of those same individuals into higher income tax bands over time, causing them to pay higher rates on other portions of their income. Overall they may therefore be no better off.

There was a similar picture for companies: Mr Hunt announced that the full expensing relief system, which enables companies to write off the entire value of new plant and machinery against profits, would be permanently extended from its current end date of March 2026. But he failed to mention that the corporation tax rate for large companies had increased this year from 19% to 25%. So while the extension of the full expensing scheme represents a large tax cut in two and a half years' time for capital intensive companies (which the next Government will need to fund), it will do very little for the non-capital intensive companies in the services sector that are now suffering the burden of much higher corporation tax bills.

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There were other announcements affecting registered pensions (consequent on the abolition of the Lifetime Allowance), the State pension, the R&D regime and some measures affecting businesses (including the expansion of the cash basis of computing business profits). These and other changes are summarised in this publication.

Finally, were today's tax cuts Mr Hunt's final attempt to impress voters, or does he plan one last roll of the dice before the General Election? Speculation had been rampant in the press that he would announce inheritance tax cuts today, but in the event there was no mention of it, nor of capital gains tax, stamp duty land tax, VAT nor of income tax rates.

A curious feature of today's speech was that Mr Hunt focused his personal tax cuts on rates of NICs rather than the traditional pre-Election giveaway of income tax cuts. This may however be explained by Mr Hunt's immediate predecessor, Kwasi Kwarteng, announcing a 1% cut in the basic rate of income tax to 19% during his disastrous 38 day stint as Chancellor last year, before this measure was quickly abandoned by Mr Hunt himself after debt markets had reacted badly. Income tax cuts may therefore be off the agenda at present. It nonetheless felt like Mr Hunt was holding back a significant pre-Election tax cut announcement, most likely on inheritance tax, for the Budget in March 2024.

Cuts to the main rate of National Insurance Contributions

The main announcement made today by the Government relating to personal taxes was a cut to the main rate of National Insurance Contributions ("NICs") for both employed and self-employed workers. After a period of instability caused by Covid-19 and the war in Ukraine, the Government said it has now had a chance to provide a tax break aimed at working taxpayers.

The rate cuts build on the increase in the thresholds at which individuals start to pay NICs which were introduced over the last few years.

Employees

Class 1 (Primary) NICs are payable by employees earning in excess of £12,570 per annum. For the 2023/24 tax year, the rate of Class 1 (Primary) NICs on earnings between £12,570 and £50,270 per annum is 12%, with earnings in excess of £50,270 per annum being assessable at 2%.

Today's announcement has reduced the main rate by 2% from 12% to 10%. This is estimated to impact 27 million employees, with tax savings of up to £750 for those earning in excess of £50,270 a year. The value of this benefit needs to be seen in the context of the opposite effects of frozen personal allowance and higher income tax rate threshold until 2028 at a time of significant inflation. Nevertheless, the measure means that the personal taxes for those on average salaries will be the lowest of all G7 countries and is the lowest combined basic income tax and NIC rate (30%) in the UK since the 1980s.

This is projected to cost the Government £8.715 billion in 2024/25 alone. This is a substantial amount, of around 5% of the expected NICs receipts in 2023/24 of £172 billion. These changes will take effect from 6 January 2024 so will therefore require an update to employers' payroll software to process the change correctly.

It is notable that there is no change to the higher rate of Class 1 (Primary) NICs payable by employees, which will be more noticeable as salaries rise with inflation, given that the current bandings have been frozen. There is also no cut in the Class 1 (Secondary) NICs rate which is payable by employers.

The self-employed

From 6 April 2024, there will also be a cut to Class 4 NICs paid by self-employed individuals. The main rate will be reduced from 9% to 8%, resulting in maximum tax savings of £377 for those with taxable self-employed profits in excess of £50,270. This measure is expected to cost the Exchequer £345 million in 2024/25.

Finally, there is also some long overdue simplification in respect of NICs payable by self-employed individuals. From 6 April 2024, self-employed earners with profits in excess of £6,725 will no longer be required to pay Class 2 NICs at £3.45 a week to receive state pension benefits. This measure is expected to cost the Exchequer £380 million in 2024/45.

Those with profits of less than £6,725 may continue to pay Class 2 on a voluntary basis to bank credits toward the state pension, with the Class 2 NIC amount frozen at £3.45 per week for the 2024/25 tax year.

Individuals with gaps in their NIC records may also continue to pay Class 3 NICs at £17.45 per week, again frozen from 2023/24. The deadline for paying voluntary NICs for the tax years between 6 April 2006 and 5 April 2018 has also been extended to 5 April 2025.

Business Tax

Capital Allowances – Full Expensing

As widely speculated in advance of the Autumn Statement, the Chancellor confirmed that full expensing of qualifying capital expenditure will continue indefinitely, rather than coming to an end in 2026.

The full expensing regime allows businesses to claim a 100% first year allowance (“FYA”) for main rate qualifying expenditure (broadly speaking, plant and machinery). The 50% FYA is also being extended indefinitely on special rate assets (for example on plumbing systems within a building).

Cars do not generally qualify for the full expensing regime or annual investment allowance (AIA), however new fully electric cars may qualify for a separate targeted 100% FYA.

Whilst the permanent introduction of the full expensing regime is heralded as “the biggest business tax cut in modern British history” being worth over £10bn per year, the real benefactors of this relief will be the capital intensive industries, rather than the majority of British SME businesses focused on the service sector (for many of which, the existing £1m AIA already provided ample capital allowances relief).

It should be noted that full expensing remains a company only relief, and therefore offers no further benefit to sole traders and partnerships, though they may be able to claim the AIA.

Despite this not being an obvious handout to many SMEs, if the projected £10bn per annum savings are realised, the trickle-down effect of increased liquidity, capital investment and business confidence in the corporate sector may become tangible for smaller businesses over the longer term.

Furthermore, a consultation has been launched to consider the extension of these enhanced reliefs to companies leasing out assets, whilst retaining the legal ownership.

Research & Development

Following the publication of draft legislation in July 2023, the Government has confirmed that a single ‘above

the line' R&D tax credit regime will be introduced for accounting periods commencing on or after 1 April 2024.

A taxable credit of 20% (of qualifying expenditure) will be available to all companies. However, in a departure from the draft legislation, the Chancellor announced today that the expenditure credit will be taxed at the small profits corporation tax rate of 19% for loss-making companies, and at the applicable corporation tax rate for profitable companies (noting that the main rate is 25%), which increases the value of the cash repayment available to loss-making companies.

Whilst the new unified regime is broadly modelled on the existing Research and Development Expenditure Credit ('RDEC') regime for large companies, there are a number of nuances to be aware of:

- The PAYE/NIC cap on repayable tax credits included in the existing SME scheme is to be imported into the new scheme, meaning that any repayable tax credit is capped at £20,000 plus 300% of the claimant's overall PAYE and NIC bill for the qualifying period – with a view to ensuring that the claimant has substance in the UK.

- Costs incurred on subcontracted R&D could be qualifying expenditure, provided the contracting entity is the "decision maker" and risk taker in respect of the R&D activity undertaken, whereas under the existing RDEC scheme, subcontracted expenditure is not a qualifying expense. The requirement to be a decision maker is to avoid the double counting of R&D relief, but this will certainly lead to complexities on contracts for R&D services in order to ensure that the correct party claims the relief.

- The changes to the operation of the scheme also negate the need for a prohibition on subsidised R&D for companies previously claiming under the SME scheme.

- R&D work subcontracted to overseas bodies will only be a qualifying expenditure where it is "wholly unreasonable" to carry out the R&D activity in the UK, or there are regulatory or legal reasons why the R&D cannot be carried out in the UK.

Loss making SME R&D intensive companies will be able to continue to claim an enhanced deduction of 186% on qualifying expenditure, and will be able to surrender tax losses for a repayable tax credit of 14.5%. R&D intensive companies are currently defined as those which incur 40% of their total expenditure on qualifying R&D activities, however following today's announcement, this has now reduced to 30%.

The impact of the above, comparing the current regime with the future regime is set out in the table below.

	Existing effective rate of relief (25% CT rate)		Effective rate of relief for accounting periods commencing on or after 1 April 2024 (25% CT rate)	
	SME	RDEC	Loss-making R&D intensive SME	All other companies
Profit making company	21.5%	15%	N/A	15%
Loss-making company	18.6%	15%	26.97%	16.2%

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Continuing HMRC's clamp down on abusive R&D claims, further legislation and consultation will follow on additional measures to ensure that R&D tax reliefs deliver on their target of incentivising truly innovative businesses.

Creative sector tax reliefs

As previously announced, existing creative sector tax reliefs are to be replaced with above-the-line expenditure credits, similar to the Research and Development Expenditure Credit methodology.

The Audio-Visual Expenditure Credit ('AVEC') will supplement and eventually replace the following reliefs over the next few years:

- Film Tax Relief
- High-End TV Tax Relief
- Animation Tax Relief
- Children's TV Tax Relief

Meanwhile, the Video Games Expenditure Credit will replace the Video Games Tax Relief.

Productions in film, high-end TV, and video games categories will qualify for a more beneficial credit of 34%, whereas animated film and TV, along with children's TV, will enjoy an even more generous credit rate of 39%.

Today the Government has announced that it will open a consultation on further targeted increases in the generosity of AVEC from 2025, in recognition of the importance of the creative sector to the UK economy.

Base Erosion and Profit Shifting – Pillar 2

The Government will implement the Undertaxed Profits Rule, a component of the G20-OECD global minimum tax framework, in respect of accounting periods commencing on or after 31 December 2024.

The necessary legislation will be included in an upcoming Finance Bill. Additionally, technical adjustments to the Multinational Top-up Tax and Domestic Top-up Tax legislation will be made through the Autumn Finance Bill 2023.

Whilst this is primarily targeted at multinational businesses with turnover in excess of €750m, UK companies that are part of large multinational groups should remain aware of the impact of these rules.

Other measures for small businesses

The Government announced a number of other measures, mostly affecting small and medium-sized businesses. These are summarised below.

Off-payroll working (IR35) – calculation of PAYE liability in cases of non-compliance

Following a consultation, the Government announced that it will introduce legislation to address the potential over-collection of tax under the off-payroll working rules (commonly known as IR35). The rules, first introduced in 2000, set out that where an individual is working like an employee, they should pay tax like an employee, regardless of whether they are working through an intermediary such as a personal service company.

The Government previously introduced reforms, first for public sector clients and then for medium and large sized clients in the private and voluntary sectors, designed to improve compliance with the rules. The

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reforms shifted responsibility for determining employment status so that if the worker was deemed to be an employee, the user of the worker's services (the 'employer') became liable for deducting tax and national insurance from fees paid to the worker's intermediary.

However, current legislation does not allow HMRC to set off amounts of tax paid by a worker and their intermediary against the PAYE liability of the deemed employer.

The change will allow HMRC to reduce the PAYE liability of a deemed employer by accounting for taxes paid by a worker and their intermediary on payments received where an error has been made in applying the off-payroll working rules. The legislation, which will take effect from 6 April 2024, will also be available retrospectively to deemed direct payments made from 6 April 2017.

Expanding cash basis

Following a consultation at Spring Budget 2023, the Government is expanding the cash basis, a simplified way for over four million self-employed traders and partners to calculate their business profits for income tax purposes.

The proposed changes include removing the £150,000 turnover threshold above which businesses were unable to use the cash basis, making it the default basis for calculating trading income and removing restrictions on interest deductions and loss relief which had made the cash basis less advantageous than the alternative accruals basis. The proposed changes will take effect from 6 April 2024.

Businesses eligible to use the cash basis under the proposed changes but which prefer for commercial reasons to use the accruals basis will be able to opt out of the default cash basis.

Making Tax Digital - Simplification

The Government is also introducing a package of measures designed to simplify Making Tax Digital (MTD) for Income Tax Self-Assessment for small businesses.

MTD will require self-employed individuals and landlords to use compatible software to keep digital records and send quarterly updates to HMRC. Sole traders and landlords with income over £50,000 will be mandated to join MTD from April 2026, followed by those with income over £30,000 from April 2027.

The new measures include simplifying the requirements for taxpayers to provide quarterly updates, removing the requirement to provide an End of Period Statement, exempting some taxpayers from MTD, including those without a National Insurance number and enabling taxpayers using MTD to be represented by more than one tax agent.

According to the Government, the changes will benefit around 1.7 million affected businesses and landlords who are set to be mandated to use MTD. The measures, which will take effect from April 2026, include maintaining the current MTD threshold at £30,000 and design changes to improve and simplify the system. The Government also announced that it will keep under review the decision on whether businesses and landlords with income below £30,000 should be mandated to use MTD.

Pensions

The life time allowance

As announced in the 2023 Spring Budget, the Government is going forward in removing the pensions

Lifetime Allowance (LTA) in an effort to boost the labour market by encouraging older workers to remain in, or return to, the workplace.

The removal of the LTA left a gap in terms of how lump sums and lump sum death benefits would be taxed going forward, and the position has now been clarified. As previously announced, the maximum tax free Pension Commencement Lump Sum will remain at a quarter of the amount of £1,073,100 (the amount of the abolished LTA), being £268,275. The same £1,073,100 threshold will also apply to authorised lump sums and lump sum death benefits, with lump sums in those categories not being taxed up to that level. Time will tell if this number will ever change.

This limit will not apply to those who have already secured some form of protection for their pension which set the LTA at a higher amount, in which case that higher amount will continue to be the benchmark.

The changes contain a lot of detail and the foregoing is a brief overview. Pensions taxation and financial decisions relating to pensions are complex areas and advice from a suitably qualified person is always essential.

The State Pension Increase

The Chancellor also announced that he is maintaining the triple lock and will increase the state pension in April 2024 in line with earnings growth between May- July, an 8.5% increase.

The state pension now stands at £221.20 per week (£11,502 per annum) barely £1,000 under the £12,570 personal allowance.

A 9.2% increase is required before the state pension exceeds the personal allowance. When one considers that the personal allowance is slated to be frozen until 2028, one can easily envisage a scenario in which pensioners with no other income may soon face the prospect of having to file a tax return.

Normally, any excess tax can be collected under PAYE from an occupational pension scheme but this will not apply to those pensioners whose sole pension is that of the state.

Pensioners paying the basic rate of tax will still be able to benefit from the 0% rates for savings and dividend income, but making sure that they are paying the correct amount of tax may start to get a lot more complicated.

What else was there?

HMRC Data Collection - Big Brother Is watching you (more closely)

New legislation will be introduced in the Finance Bill 2023-24 to amend the information which businesses provide to HMRC, which must be included in tax returns submitted for individuals, trustees and partnerships. This will allow HMRC to make regulations specifying the information that is considered relevant to the collection and management of tax. One such is a requirement to report dividends from an owner-managed business separately from other dividends, rather than lumping them together.

There will also be new legislation giving HMRC similar powers to specify what additional information is required from employers. Note that this will not affect individual taxpayers.

It will be interesting to see what additional information HMRC consider is “relevant” in this context, and what additional costs businesses will face as a result of the increased information they will have to provide to HMRC.

Calling Time on Promoters of Tax Avoidance

In the ongoing efforts to tackle tax avoidance, new measures will be introduced to target persistent promoters of tax avoidance schemes including:

- A new criminal offence applying to promoters of tax avoidance who fail to comply with a "Stop Notice" under the "Promoters of Tax Avoidance Schemes" rules; and

- The power for HMRC to apply to court to disqualify directors of companies involved in promoting tax avoidance and those individuals who exercise influence over such companies.

This is just another example of the government's determination to make those who promote tax avoidance face the consequences of their actions. It remains to be seen whether these latest in a number of deterrents available to HMRC will encourage greater compliance in such cases.

Venture Capital Schemes - No sunset just yet

Venture capital schemes such as the Enterprise Investment Scheme ("EIS") and Venture Capital Trust ("VCT") scheme provide tax incentives to investors making qualifying investments in newer, more risky, small and medium sized enterprises ("SMEs"). Such schemes were due to end for investments made on or after 6 April 2025 (under so-called sunset clauses).

The Government now intends to extend the time limit for tax relief under these schemes to qualifying investments made prior to 6 April 2035.

One of the significant challenges faced by SMEs is finding capital to expand and grow. Venture capital schemes have proved popular in encouraging investors, and so the extension to the availability of the various tax reliefs should benefit these businesses.

Stamp Duty & Stamp Duty Reserve Tax - further relief

Stocks and shares which are traded on a recognised growth market (but are not listed on any recognised stock exchange) are exempt from stamp duty and stamp duty reserve tax (the "Growth Market Exemption").

HMRC intends to extend the scope of the relief from 1 January 2024 to include smaller, innovative growth markets. It will also increase the market captalisation threshold condition from the current £170 million to £450 million.

Although a somewhat esoteric relief, the extension to the current rules will no doubt be welcomed by those affected.

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