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**The Emergency Budget  
- How Does It Effect Tax Planning?**

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There has been a huge amount of analysis of the budget in the press and online but we have seen surprisingly little analysis of what the future now holds and of those important items that are less inclined to grab the headlines. This article is going to try and touch on some of these points, and also look at what tax planning opportunities are still available.

When the budget statement is made the Treasury always release a host of Press releases containing detailed briefing, also the odd consultation paper tends to appear. One such paper has just been published, entitled “**Tax Policy Making : A new approach**”. It heralds an era of more consultation, less surprises and less complexity. It promises, amongst other things, a simplification of the tax code. As the years of Labour government have left us with one of the largest and most complex tax codes in the Western world, this is not necessarily a surprise, but whether or not it means liberalisation of the tax code is of course another thing!

The Budget statement did indicate that in the short term at least the answer is probably no, taxation is going to remain strict. In particular the government indicated that it was going to look to consult on a possible **General Anti-Avoidance Rule (GAAR)**. There has been talk about the use of GAAR for some time, and a few countries have experimented with it. The general idea is that instead of using specific legislation to attack individual Tax avoidance schemes, there is a general principle applied in deciding whether or not a particular scheme is effective. This principle is that unless a course of action can be shown to have some genuine purpose other than tax avoidance, it should be treated as Tax Avoidance. If this idea works it means that complex technical tax avoidance schemes beloved of us lawyers may have seen their day, but in return we are spared the unbelievably complex, and sometimes poorly drafted legislation that has been showered on us in recent years.

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Another area where the budget has shown some teeth on the question of tax avoidance is **Stamp Duty Land Tax (SDLT)**. For some time now there have been a number of schemes around enabling the avoidance of the very high rates of SDLT chargeable on property transaction over £0.5m. At Herrington and Carmichael we are able to advise on such schemes but it may be wise to make hay while the sun shines as it seems likely that these schemes will be stamped out in the not too distant future. The good news however is that the consultation paper referred to above does promise an end to retrospective legislation of the sort used on a number of occasions by the previous government, so that if you can get your purchase done in time, and take advantage of such a scheme then you ought to be home and dry!

The big headline was of course **Capital Gains Tax (CGT)**, where the rate of tax for higher rate tax payers, estates and trusts was increased from 18% to 28%, without the re-introduction of any form of taper relief or indexation allowance to reflect long term investment. Although unwelcome, the increase was nowhere near as bad as some commentators were expecting. It is still open to the taxpayer to try and convert income into capital so that tax can be saved by taking advantage of the differential rates. Sadly not many of us have been very successful at making this sort of conversion. However there is much more that can be done about Capital Gains tax than is done by many of us, particularly married couples and those in Civil Partnerships. It is important to remember that transfers between spouses, (for these purposes please remember that includes civil partners) are completely free of tax. The acquiring spouse is simply put into the place of the original owner. This means that by putting assets into joint names a gain is split and each spouse is able to offset his/her personal allowance of £10,100 against the gain. Also it often pays to transfer a high gain asset to the spouse with a lower income so that the gain is taxed at the lower rate of 18%.

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In addition **Entrepreneur's Relief** whereby gains on qualifying business assets are taxed at 10% was increased from £2m to £5m. Not that many of us dispose of businesses with that sort of gain but for those who do this will be very useful. However and possibly more important the Budget heralded some simplification of the regime which may be very welcome to those seeking to claim this relief, more has to be said of this as little was announced.

Little or nothing was said about **Inheritance Tax (IHT)**, save that the threshold for the tax is to remain frozen at £325,000 until 2015. Bearing in mind the Conservative attitude to IHT, one is tempted to suspect that economics permitting we will see changes soon after 2015, this coupled with a desire to reduce tax complexity may signal a case of jam tomorrow. However for the present those who are concerned about IHT still need to plan ahead. For many people the availability of the transferable Nil Rate Band, (meaning that couples have an effective tax free allowance of £650,000) is enough to exempt many from the tax. For those for whom that is insufficient the principal answer remains the use of lifetime gifts and allowances. The most effective routes to use are:

**Potentially Exempt transfers.** A gift which you outlive by 7 years is exempt from tax.

**Normal Expenditure out of income.** Gifts which can be shown to be made out of surplus income can, if property structured avoid any tax whenever they are made and however large.

**Shared Property.** If you share a property with another person a gift of a share in that property may well qualify as a PET and escape the rule relating to gifts with a reservation of benefit., This can be particularly useful if you have a holiday home or rental property. However there are plenty of traps and careful advice is always needed.

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**Business Property.** For the brave investment in certain types of business can gain total exemption from tax.

For those in tax planning it was not an exciting budget and it seems likely that we will have to wait to see the final direction taken by the government. At Herrington & Carmichael we will continue to monitor the legislation and look for ways of helping those seeking to reduce their exposure to tax.

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Watchmoor Park  
Camberley  
Surrey  
GU15 3YL

tel: 01276 686222

3&4 Market Place  
Wokingham  
Berks  
RG40 1AL

tel: 01189 774045