

Briefing

BUSINESS



Abolishing the retirement age:
The choice is passed to employees

SMEs:
Are you prepared for an imminent HMRC inspection?

Social media at work:
Can it add value to your business?

Online:
Flexible pension proposals
Do you know the implications of the new Bribery Act?

The Future of Assurance:

The questions following the failures



In this edition:

Following the failings in regulations that led to the banking crisis, Alan Donaldson reports on the future of assurance. He analyses the various proposals and tries to draw a conclusion on how your reporting procedures are likely to change in the near future, suggesting it is likely management decisions will be subject to greater challenge, particularly in areas such as fair values, impairment, future cash flows and going concern.

Alan looks at some of the difficult questions that could be asked of you and your auditors and asks should the scope of assurance be extended? Is there still a misunderstanding of the purpose of an audit, the so-called expectations gap?

From April this year, when you turn 65 it will no longer be compulsory to retire, Wemyss Stewart looks at the rules and repercussions for businesses. Also in the online edition we explore the new rules on illicit sweeteners in the Bribery Act.



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Scott-Moncrieff acquire corporate recovery practice

AS a member of Moore Stephens UK, Scott-Moncrieff has acquired the Glasgow based Corporate Recovery practice of Moore Stephens LLP. This move strengthens and deepens the resources of the UK network at a time when the need for restructuring has never been greater. The 15 staff will be based in Scott-Moncrieff's Glasgow office in Bothwell Street where they will be

assimilated into the firm's Corporate Consulting Services, led by partner Stewart MacDonald, effectively doubling the group's size. Stewart MacDonald comments: "We have been advising on many business turnaround assignments, including business restructuring, refinancing and debt recovery. Looking forward I see this being an area that will continue to grow, so when the

opportunity arose to acquire an experienced corporate recovery team we moved to bring them in house.

"For the past two years there has been an increase in the number of requests from businesses asking for assistance on turnarounds, help with cash flow issues etc and there is no question business leaders value the advice of trusted business advisers in challenging

circumstances. The additional resources we can now offer from the expanded team will be welcomed by those in need of support.

"As well as covering our offices in Edinburgh and Glasgow, the expanded team will be looking to work with companies throughout Scotland." ■

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The future of assurance

Audit procedures and reporting is set to change and will impact on you and your shareholders, writes **Alan Donaldson**.

SIGNIFICANT corporate failures are inevitably followed by questions about the role and effectiveness of the statutory audit. We saw this following the collapse of Enron and, more recently, with the problems in the banking sector. Any debate on a major change to statutory audit should be of interest to us all whether we are in the profession, an executive director or a non-executive director, since the roles and responsibilities of the auditor are unlikely to be looked at in isolation. In the first instance, it is likely that any changes will apply only to listed companies, but in due course and depending on what changes if any are finally agreed, they may also be introduced for other companies.

I would first like to consider the impact of the financial crisis on Assurance. We now have in place for listed companies the new UK Corporate Governance Code which became effective for periods commencing on or after 29 June 2010. This requires directors to report on the company's business model within the business review of the annual report. The Board should be responsible for determining the nature and the extent of the significant risks it is willing to take. We have also had two reports, one from the Audit Inspection Unit (AIU) and the other a joint report from the Financial Reporting Council (FRC) and the Financial Services Authority (FSA) with similar themes.

The AIU report is calling for a major shift in auditor behaviour requiring the use of greater professional scepticism. Management assumptions and judgements should be subject to greater challenge, particularly in areas such as fair values, impairment, future cash flows and going concern.

The FRC / FSA joint report on the banking crisis continues the theme of auditor scepticism. The FRC announced plans to review the value of audit and whether it can be enhanced. Areas which are to be considered will include whether the auditors work and conclusions can be more closely aligned with shareholder interests, whether a company's business model and major risks should be more clearly highlighted and whether the audit report should change to make it more useful. At a European Commission level, a consultation paper on audit policy and the lessons from the crisis has been published covering, among other things, the role and value of audit especially with regard to stakeholder communications. The FRC has supported the recommendation of improved engagement between Audit Committees and investors in enhancing audit quality.



Should the scope of assurance be extended? Is there still a misunderstanding of the purpose of an audit, the so-called expectations gap? My view is that this is much less so, at least for informed stakeholders. There does seem to be support from the regulators for auditors to play a wider role in areas including the commentary on the business model, risk management and internal control, commenting on management judgements and estimates, reviewing statements on future performance and alerting shareholders, investors and regulators to problems arising.

If any of these changes were to progress, it is likely that the content of audit reports and the nature of communications by auditors would need to change. As a first option, the existing audit report could be maintained but further information from the existing audit process could be made publically available. This might include more detail of key issues discussed

between the auditors and the Audit Committee. The second option would be to extend the scope and reporting beyond the existing model to cover in more detail the potential wider role of the auditor. The precise format would be dependent on agreement being reached between the regulators and auditors on the extended roles and responsibilities of both directors and auditors.

There may be some barriers to change, not least of which is "can all stakeholders 'wants' be satisfied?" There would need to be clarification of 'auditors' liability' for greater responsibilities being assumed by auditors. From a company perspective, disclosures to be too commercially sensitive and the cost/benefit equation would need to be looked at carefully. In addition, auditors must retain their independence to perform an effective audit.

Looking ahead, these are difficult questions and a solution that satisfies all may be hard to find. I believe that some form of change is inevitable over the short to medium term. It is interesting to note that the Institute of Chartered Accountants of Scotland has recently issued a report outlining a new model of corporate assurance including the external audit. The report also develops the responsibilities of the Audit Committee and company directors. The key recommendations include an annual report which tells a coherent story of the business, with a new requirement for the Board to outline their rationale and key assumptions for concluding that the business is viable for at least the next twelve months and for the auditor to provide an explicit opinion on the directors' going concern judgements. The second recommendation is for assurance to be provided on the front half of the annual report by a new 'balanced and reasonable' opinion. The third recommendation calls for an expanded and meaningful Audit Committee report which specifically discloses the key areas of discussion between the Audit Committee and

the external auditors. The Audit Committee is also asked to disclose its policy for ensuring an effective audit process. ■



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“You can keep your gold watch”

From April this year, when you turn 65 it will no longer be compulsory to retire, **Wemyss Stewart** looks at the rules and repercussions for businesses.

DESPITE calls from business groups to delay the abolition of the default retirement age (DRA), the Government has confirmed that the DRA of 65 will be phased out from 6 April this year and will be completely abolished on 1 October 2011.

This means that after 1 October 2011 employers will no longer be able to use the DRA to compulsorily retire employees. The last day on which employees can be compulsorily retired using the statutory retirement procedures is 30 September 2011. This means that the last day to provide the six months' required notice is 30 March 2011. Short notifications (two weeks) will be permitted between 30 March and 6 April but risk the employee claiming compensation of up to eight weeks' pay.

Thereafter, dismissing an employee just because they have reached retirement age will be unfair unless the employer can objectively justify the retirement age. Employers are still able to dismiss older workers for reasons such as redundancy, misconduct and capability but if these reasons do not apply, employees will be able to continue working as long as they like. Of course employees can still choose to retire, whether at 65 or otherwise, but the timing of that retirement becomes a matter of choice rather than compulsion.

There was concern that the removal of the DRA could lead to increased costs and uncertainty for businesses in respect of benefits provided to older workers. In response to this the Government has stated that an exemption is going to be introduced so that employers can withdraw insured benefits, such as life insurance and medical cover. It will apply initially to employees aged 65 and above and will rise in line with the State Pension Age.



“Succession issues may leave younger employees disgruntled”

The removal of the default retirement age is a significant, and radical, change and employers should be considering how this affects their business in practice – for example, in relation to performance management procedures, flexible

working options, and leading discussions on employees' career aspirations.

Employers are understandably concerned that the abolition of the DRA is going to make it harder for them to deal with succession issues, which may leave younger employees feeling disgruntled

about what they perceive to be a 'bottleneck'. There is also the risk of increased claims of age discrimination and unfair dismissal being

brought against them, leaving employers having to deal with potentially costly claims. ■



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RHIZA

Robert Mackenzie

reviews the new risk management software from Moore Stephens.

The new software, called Rhiza, provides an easy-to-use solution to help clients implement and embed risk management processes in day-to-day activities. Rhiza's features include a comprehensive, single repository for all an organisation's risk registers. It supports the monitoring and testing of controls, with outstanding actions highlighted. Clear and robust management reporting is achieved at the click of a mouse. Rhiza also has five levels of user access, all with user-based password protection.

Moore Stephens developed the solution after spotting there was a real need for practical risk management software among clients, yet there was no cost-effective offering on the market.

There was a clear gap in the middle ground between basic spreadsheets and 'all singing, all dancing' risk management systems, more sophisticated and expensive than necessary for many businesses.

Rhiza has been developed as a generic solution. It deals with business risks from an enterprise-wide perspective, so can be used by organisations in any sector. It is also fully scalable, and can be implemented by the smallest business as well as by larger, more complex organisations. The software will accommodate a significant number of risks and then allow flexible reporting of those risks.

Rhiza is aimed at any organisation wanting to implement new risk management systems, or to refresh and upgrade what they have already. Please get in touch for further information on how Rhiza could help to embed risk management processes efficiently in your business. ■

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Is twittering merely frittering?

The rise of social media brings with it both risk and reward in a workplace context. In the first of three articles, **Robert Mackenzie** looks at this developing trend and the implications for business leaders.

WORKING with clients in both public and private sector organisations, one of the common features that has been apparent over the last twelve months has been an ever increasing demand for access to social media in the workplace. This has placed many business leaders in a difficult position, weighing up the pros and cons.

We have all heard of examples where irresponsible use of social media has led to an organisation receiving negative publicity, yet there are many benefits, too, to utilising an increasingly important channel (in all its various forms) to communicate with shareholders. The key is to do it in a responsible manner and the basis of doing so has to be built upon a clear understanding of what a workforce expects to get out of using social media.

This does not mean that business leaders must give carte blanche to the use of Facebook, Twitter, Flickr etc, but it does mean they must establish clear strategies and policies that have taken account of what the users anticipate social media to be used for and marry this to the business objectives of the organisation.

Once the business leaders understand the expectations of their staff, they can work with them to achieve a balance between the positive aspects of using social media and the essential guidelines that the leaders require to ensure that the use is responsible and positive from the organisation's perspective.

So, when we work with clients to establish how they will use social media we start with a survey of the entire workforce. While all organisations have individual views, the prevailing theme we identify is that staff in almost all organisations want access to social media.

The key elements our staff surveys have identified are as follows:

- A demand for access to be provided to social media tools for facilitating research, communicating with new audiences, professional networking and raising awareness of the role of the organisation.
- Knowledge of social media tools, and the purposes which these could serve, is often limited. A common comment is along the lines of "we would like to use [a specific tool] but we need to test it to see how it can fulfil our requirements". Often it appears that there



is demand for access to a controlled collaborative environment and the perception is that tools such as Facebook and Twitter are the most appropriate option.

- There is broad acknowledgement of the risks associated with providing access to social media sites to all staff and that there is a need to protect their organisation's brand. However, this is countered with the need to recognise that staff should be trusted.
- There is often frustration amongst the majority of interviewees that they are unable to access social networking sites for professionals/specialists e.g. LinkedIn. It is commented on by many that they felt embarrassed at not being able to accept invitations and interact with colleagues/peers.
- There is some concern that their organisation could be seen as being a regressive, rather than an innovative and creative organisation, by not adopting social media.
- However, some parties believe that there is a risk of trivialising the company by extending the organisation's work into non-professional environments.
- While a significant number feel there is no need for a corporate Facebook page there is belief that tools such as Twitter could be used to raise awareness of news about the organisation e.g. new guidance/training

advice being available/published etc. or LinkedIn to interact with like-minded professionals

- Often it is considered that there is scope for using more video/audio-related content within their organisation for training. This could be done via a dedicated YouTube page or by making better use of an existing website.
- There is demand for increased use of collaborative environments/communities of interest.

Business leaders we work with value this type of information as it enables them to establish the parameters within which the adoption of social media can be considered.

In the next article I will address the main concern of business leaders when considering

whether or not to proceed with introducing the use of social media in the workplace – what are the associated risks? ■



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HMRC comes a knockin'

50,000 SMEs to be 'checked', reports **John Walker**.

IT IS not surprising that HMRC are looking for ways to increase tax revenues at the moment. On 17 December 2010 they announced a 10-week consultation period in relation to a planned programme of 'Business Records Checks' for SMEs, that is, businesses with turnover of less than €50million and less than 250 employees.

Subject to the outcome of the consultation with interested parties, HMRC are planning to check the business records of 50,000 SMEs, beginning in the second half of 2011. HMRC say they have statistics to show that "poor business record keeping is responsible for a loss of tax in up to 2 million SME cases annually."

In the past, HMRC could legally carry out only retrospective enquiries into business tax returns – or if a business did not file a return, HMRC could determine the amount of profit on which the business should pay tax. However, since 1 April 2009 HMRC have had the power to enter a person's business premises and inspect the premises, business assets that are on the premises, and business documents that are on



the premises, "if the inspection is reasonably required for the purpose of checking that person's tax position."

It is this power which HMRC are now planning to exercise. They are going to check whether the business records of SMEs comply with the statutory requirement that they must include records of all business receipts and expenditure, with descriptions of their nature, and records of all sales and purchases of goods. It seems safe to assume that if HMRC find that the records of a business are deficient, the next step will be an enquiry into a tax return submitted by that business, with a view to identifying and recovering any underpaid tax.

The legislation provides for a maximum

Go to scott-moncrieff.com and click on 'our tax services' for information on tax fee protection which insures you against accountancy costs incurred by an unexpected HMRC visit.

£3,000 penalty for any "inaccuracy" in business records. One of the subjects of the current consultation process is the question of what penalty "tariff" HMRC should apply, depending how serious any inaccuracy is.

This "real time" inspection of business records is obviously something completely new in the context of business records generally (although such inspections are already carried out in relation to PAYE, NIC and VAT). We will be closely monitoring future announcements from



HMRC about precisely how they propose to carry out their planned programme of business records checks, and we will keep readers up to date with this in a future Business Briefing. ■ **John Walker**, Director, Corporate Tax

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An alternative source of finance

Gareth Magee finds out about Panoramic Growth Equity, an independent private equity firm focused on helping SMEs.

AS a result of the banking crisis and the downturn in the economy, SMEs in Scotland struggle to secure funding via traditional channels. Recognising the problems businesses are facing, the Government launched the Enterprise Capital Fund scheme (ECFs), to address the cash flow, credit and capital needs of business. ECFs are venture capital funds aimed at SMEs which demonstrate promising growth.

£150m of public funds have been invested in the scheme so far – £50m from Government funds with an additional £25m from Barclays, HSBC, Lloyds TSB and

RBS and in late 2010 the Government announced further investment of £200m over four years. This investment was made available through nine different funds throughout the UK including Panoramic Growth Equity, which is one of only two firms offering these funds in Scotland.

David Wilson, one of Panoramic's partners provided a brief overview of the firm: "We have raised £34 million to invest in high growth UK SMEs. That has been an

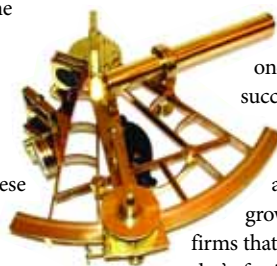
immense challenge but the team have successfully raised their first fund under the Government's Enterprise Capital Fund scheme, and we had to work very hard to become one of only a few successful recipients of this source of finance. ECFs are aimed at providing growth capital for smaller firms that would be 'under the radar' of private equity houses who seldom invest less than £5 million, thereby helping to address the equity gap.

"Alongside the Government's

financial commitment, we have raised capital from a group of financial institutions and high net worth investors. We plan to build a portfolio of 15 to 20 high growth businesses over the next five years. We will be investing across a range of sectors, with all partners having their own particular niche and in my case, being a scientist at heart, I have a natural interest in healthcare. We all have plenty of general businesses experience and understand what it takes to make a business tick. ■

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SME 300 Awards 2010

We look back at the winners and awards from last year.

SMEs provide the drumbeat to which the Scottish economy marches. They set the pace and are at the very heart of driving our collective efforts forward as we continue to tackle the challenges of the recession.

Scott-Moncrieff works closely with many SMEs and we have been involved from the outset with the SME 300 Awards. The programme, which recognises the skills and contribution of companies via a range of awards, was originally the E 250 when it was launched in 2007, but became the SME 300 in 2009 when the upper limit for participation was raised from an annual turnover of £15 million to £20 million per annum.

Our involvement has given us the opportunity to work with some outstanding companies and see at firsthand how they achieve their success.

“Scott-Moncrieff, together with the assessors from Glasgow Caledonian University, visited all the SME 300 nominee companies as part of the awards,” explains partner Gareth Magee, “and it is a privilege to see these businesses in action. We thought it might be interesting to ask the business leaders at a couple of this year’s award winners for some insight into what their key tips for success are and these sit alongside this article.

“As accountants, we are fortunate to be able to visit a wide range of companies as part of our everyday activities and see how they work, and it is really encouraging to see the high calibre of Scotland’s SMEs at close hand.”

Donald Forsyth, another partner involved with the SME 300 Awards, continues:

“Sometimes in Scotland we do not always appreciate the quality of what we have ‘on our doorstep’; somehow, we look at other countries and think that they are better at what they do than our indigenous equivalents. Last year Gareth Magee and I travelled to the USA to visit some of our clients over there, a trip which took us from the greater Boston area to Manhattan, to rural Massachusetts, and from Ohio to Alabama. After talking to a lot of people – from CEOs and FDs to professional advisers – it became clear that running a company there is just as challenging. It’s not a land of milk and honey; people have to apply themselves just as hard. Good SME businesses in Scotland and in the USA adopt similar approaches to achieve success.

“However, there is one major difference we noted – the attitude to risk; the USA admires risk taking to the extent that failure doesn’t have the social stigma it attracts in the UK. That’s something which we all still need to work on



Stewart MacDonald with award winner Andy Lothian



Paul Renz with award winner Colin Woodward

Pictures: Dominic Coccozza

here, but we came back reassured that many Scottish businesses we deal with are certainly the equal of those we saw in the States.”

The awards dinner was an excellent evening, bringing together many representatives from nominated companies who enjoyed networking with other business leaders and the speeches from Lord Falconer, Alasdair Northrop of Insider and Donald Forsyth.

Top honours on the night, which was hosted by the BBC’s Louise Minchin, went to software developers Petroleum Experts who were named Company of the Year and also picked up awards for Best Medium SME and Most Focused SME

company. Other winners were Andy Lothian of learning and development company Insights, who collected the Business Leadership award and construction industry recruitment specialists Contract Scotland, which collected the Best Employer award. The award for Best Small SME went to Optima Solutions, an Aberdeen based company who provide rig cooling operations to over 25 countries globally, while the other two awards, Best Newcomer and Fastest Growing Company, which are statistical categories based on company results were awarded to Zenith Oilfield Services and Ria Capital Services respectively. ■

“As a leader, be authentic and vulnerable. As well as sharing your vision, share your fears, uncertainties and problems with your team – particularly if you don’t have the answers. Then trust that together you have all the wisdom you need.”

Andy Lothian
of Insights

“Talent Management is a key element of any good Employer. Firstly by taking the time to recruit the right people, then helping them realise their potential by continually challenging them in the workplace and finally rewarding them appropriately for their contribution to the success of the organisation.”

Colin Woodward
of Contract Scotland

An impressive

Petroleum Experts is an exceptional company. Not only has this been recognised by it winning the accolade of Company of the Year at the recent SME 300 Awards, but it also picked up awards for Best Medium SME and Most Focused SME Company.

THE Edinburgh-based organisation produces petroleum engineering software designed to improve the efficiency of oilfields. It is technically outstanding and also operates a unique company structure/culture that is completely open and encourages impressive flexibility of its highly skilled workforce. This is allied to a high degree of customer focus, and the result is an extremely successful operation that has a very positive cash flow and which, in early February, acquired a US company as part of a business strategy that covers its next ten years of development.

As an illustration of how atypical this company is, ask yourself how many companies have one e-mail address, allowing all employees to see every piece of email communication? This is just one example of the highly unusual approach to building a

successful company adopted by Technical Director Hamid Guedroudj and his two fellow founding directors, Mark Deere and Michel Chartron.

All three founders were experienced petroleum engineers who recognised the limitations of existing workflow models for oil extraction, a process that involves as many as 22 disciplines, ranging from those dealing with the reservoir rock through to the refinery phase, and each of which impacts on others. They set out to design workflow modelling for each stage that would not only optimise planning for each element, but that could be assimilated into a single model for the overall process - "a software version of Lego", as Hamid says. This would greatly speed up and improve the efficient development of oilfields.

"We knew we had designed a good product, based on complex mathematical models that use algorithms to encapsulate all fundamentals, and our main hurdle was to persuade an oil company to adopt our approach. The industry has three basic groups of companies; the national (state) oil companies, the independents and the majors, like Shell, Exxon and BP. While it may have seemed more obvious to start with the smaller, independent operators we were confident that if we could persuade a major to use our



Hamid Guedroudj, Technical Director of Petroleum Experts receives one of his three awards from Scott-Moncrieff's Gareth Magee

winner

Hamid Guedroudj's top tips on what makes a successful SME business

software, the others would be more easily encouraged to follow, as the majors define the technical standards to the other two.

"Our breakthrough came with Statoil who began using our software in 1992, having evaluated 7 different systems before choosing ours. They remain a client today. Indeed, our client retention rate is over 99% and we number many oil giants amongst our clients.

"From the outset, our aim was not only to produce and sell software that would help oil companies become more efficient, but we wanted it to become an 'industry standard'. This is what we have achieved - since 1996 we have not lost any technical evaluation made by any company against any competitor worldwide and over 300 companies use our software daily. Many of them have created pockets of excellence within their organisation using Petroleum Experts software, in many cases restructuring their organisation around our technology and resulting in them saving hundreds of millions of dollars annually.

"As the company has grown, we have introduced new software tools to help oil companies tackle a range of challenges. IFM is our newest product range and it provides real time Integrated Field Management with optimisation. It was successfully piloted in Holland, Norway, the USA and Saudi Arabia and is now being used by clients such as Saudi Aramco, Shell, Statoil and Chevron.

"Petroleum Experts has trained thousands of oil industry personnel in the use of our software and over half the petroleum engineer jobs advertised globally state that the ability to use Petroleum Experts software is required. Looking ahead, we have exciting developments planned to help the oil companies meet the challenge of successfully extracting oil from increasingly more demanding locations such as deep water reservoirs. We are continuing to build a company that will be here long after the founders have left and this is what we call success - the creation of a company in which all employees share the benefit, both now and in the future." ■

To find out more about Petroleum Experts visit: www.petex.com or email: gareth.magee@scott-moncrieff.com

1

You must know why you are in business.

Just because you are a good cook, does not mean you should open a restaurant, so you must ask yourself questions such as "are we bringing value to anyone"? Why would anyone need your business?

2

You must know your definition of success

People will have different definitions. Only by knowing what we understand by "success" can we benchmark our progress. Most successful companies are based on long term views and not quick profits.

3

You must have real focus.

This is hugely important. It can be difficult to achieve, particularly for SME leaders. Keep on the track of the roadmap you set - too many get distracted by small difficulties.

Only when you know your roadmap can you correct your directions.

4

You must commit to what you are doing.

Too many people will try to keep their old job on while starting a new business "in case it fails" and are half hearted in their new venture. They have failed before they start.

5

Transparency is key.

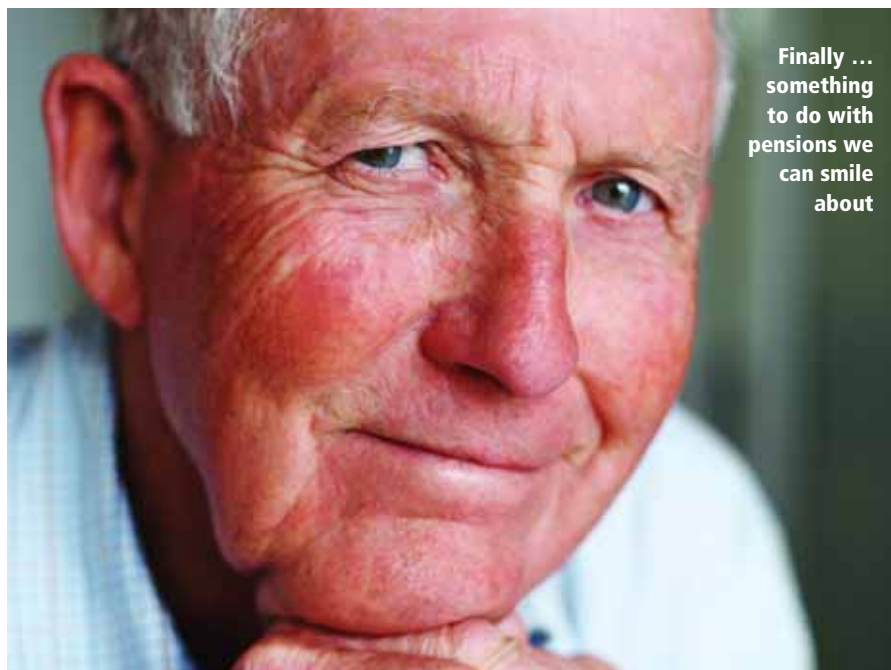
Without this the company will disintegrate. No-one understands the overall picture, except the MD and he/she ends up doing everything. The company can survive, but it will not succeed. Fundamental for the creation of a culture.

6

Reduce the hierarchy.

Keep this as small as possible to avoid pyramidal structures.

This produces a heavy management structure which becomes self-perpetuating, slows everything down and reduces useful resources.



Finally ...
something
to do with
pensions we
can smile
about

Pension proposals

The government is proposing to give us all more flexibility to choose the pension options that suit us best – both before and after age 75, writes, **Heather McGovern**.

A RECENT Treasury consultation proposes ending the requirement for individuals reaching age 75 to buy an annuity or choose an Alternatively Secured Pension (ASP), where pension funds remain invested and a limited amount of income can be drawn down. In fact, there will be no requirement to take benefits from a pension at any age. Interim measures ensure that anyone reaching 75 between 22 June 2010 and 6 April 2011 will not have to choose between ASP and annuitisation.

Under the proposals, ASP will be abolished. People currently in ASP will fall into the new regime from 6 April 2011. Individuals will be able to choose capped or flexible drawdown as an alternative, or in addition to an annuity, and they can do so whether aged under or over 75.

What is capped and flexible drawdown?

Capped drawdown will enable individuals to keep their pension funds invested and choose how much to draw down annually from their pension pot throughout their retirement (subject to a capped limit the same as the current under 75 rules).

Flexible drawdown will enable individuals to draw unlimited amounts from their pension scheme as long as they have satisfied a Minimum Income Requirement (MIR). Lump sums taken under flexible drawdown will be taxable at the individual's marginal rate of income tax.

How can individuals satisfy the MIR?

Individuals must show they have a sufficient level of secure income. This income must be in payment (rather than an entitlement to future benefits), guaranteed for life and take into consideration expectations of future living costs.

It is likely that the state pension and state second pension will count towards the MIR. Occupational pensions in payment and lifetime annuities increasing by at least Limited Price Indexation may also qualify.

How will lump sum death benefits be taxed?

A uniform tax charge of 55% will be applied (from 6 April 2011) to all lump sum death benefits paid from pensions in drawdown, and to benefits where pensions have not been put into drawdown where an individual is over 75. This



will replace the 35% tax charge currently applied to death benefits in drawdown under 75 and the (up to) 82% tax charge applied after age 75. ■

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Striking a wise deal

Ask the right questions before you bag your bargain.

WHILE the current economic climate creates challenges, it also offers opportunities, such as the potential to buy a business at a realistic price from an administrator. But, these transactions carry particular risks, so think carefully before you buy.

Firstly, gain a clear understanding of why the business got into difficulty. Is it fixable? And can you integrate the acquisition into your existing operations? Look out for liabilities that could arise post-transaction, such as those associated with employees and TUPE regulations. Take proper advice before committing yourself.

Ask plenty of questions. For example, it's vital to gain an understanding of client sentiment. How many customers may be lost? And are they key customers? Who are the essential employees, and can they be kept on board? Be wary, however, of senior management who may sell themselves hard!

Establish which suppliers are crucial. Some may demand 'ransom' payments, requiring you to settle debts attributed to the old company before continuing to supply goods or services. Can they be replaced?

Remember that the business will come with no warranties, so build that into your offer price, but don't push for an unrealistically low price. This could damage relations with the insolvency practitioners handling the administration. You are likely to need their help tying up loose ends after the transaction is completed.

Finally, if the acquisition makes sense, be ready to move fast. The administrators will be looking for a quick transaction, so use a lawyer who understands the need for speed. ■

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Breaking the glass ceiling

Lorna Gibb is all for putting the boot into sex discrimination.

RECENT interest in the role of women in football has centred on their knowledge, or apparent lack of understanding, of the offside rule. Two well-known male television presenters, apparently believing their microphones had been switched off, were recorded making disparaging remarks about a female assistant referee before kick off in an English Premiership clash. It is perhaps ironic that video footage showed the match official had called correctly the one controversial offside decision in the game.

As a matter of record, according to FIFA, "if a player is in an offside position when the ball is touched or played by a team mate he may not become actively involved in the play". It is the correct interpretation of the term "actively involved" which is the subject of much debate and which presumably led to the criticism being made of the assistant referee, and women in general, in that they are presumably incapable of grasping the finer points of the beautiful game.

What then are the lessons for business from this sorry incident?

Unacceptable behaviour occurs in many forms and is broadly described as conduct which is unacceptable by normal standards. For example, making stereotypical assumptions or holding ingrained perceptions about the ability of women to undertake tasks or manage posts that traditionally have been a male preserve.

It has been said that female managers face a glass ceiling when trying to secure senior positions, as they are only likely to hold such posts in sectors that are not directly involved in profit or loss making activities. That said, more and more women are in managerial roles and are making their presence felt in the boardroom. Indeed, a 2010 study by the Equality and Human Rights Commission, entitled *How Fair is Britain*, shows that women hold one in three managerial jobs in Britain, with women now doing better than men in every aspect of educational qualification.

A somewhat contrary picture has emerged from a 2011 government-sponsored committee looking at the number of women directors, as it was found that only 16 of the FTSE 100 companies have women in executive director posts. Significantly, the proportion of female directors in FTSE 250 companies was even lower at about 7%, with nearly half of them not having any women in the boardroom. More than 2,600 submissions from many of Britain's leading businesses and academics were sent to the committee and it is expected that its report will be published in the next month.

*"Only 16
FTSE 100
companies
have women
in executive
director posts"*



This topic has also been under consideration by the European Commission and a voluntary code is under preparation with the purpose of increasing the proportion of women directors. There is also the possibility of compulsory quotas being introduced if companies do not adhere to the code and the situation in Norway could be emulated, where a 40% quota on women's board representation was introduced in 2004.

One potential measure which is designed to end discrimination in the workplace, in terms of recruitment and promotion, is the use of positive action under the Equality Act 2010. With effect from April 2011, positive action will encompass a range of proportionate measures which businesses can implement where employees with a 'protected characteristic', which includes sex or gender, are disproportionately under-represented in a particular activity. Both men and women are protected under the Act.

For example, this means employers will be able to select a female applicant in preference to male candidates if, for example, women are under-represented in the workforce. The legal concept of positive action is considered to be necessary, as some discrimination was found to be so entrenched that merely prohibiting it did not eliminate the problem.

Importantly, employers can only take positive action when faced with two or more candidates who are 'as qualified as' each other, as the principle of selection on merit remains paramount in relation to recruitment or

promotion decisions. A wider interpretation of the phrase 'as qualified as' is that candidates must be of 'equal merit', taking into account their overall ability, competence, professional experience and 'any other qualities' required for the job.

It should also be emphasised that positive action requires to be differentiated from positive discrimination, which is generally unlawful and occurs when a person is appointed, not on his or her merit, but because he or she happens to possess a protected characteristic.

The field of employment law is forever changing, as are the attitudes and culture of the workplace. Similarly, the attitudes and culture associated with the football field are likewise the subject of considerable change. Employers and employees (and football presenters) are not immune to change and therefore must willingly embrace the principles of equal opportunities.

Currently, all forms of positive action are entirely voluntary and there is no compulsory requirement for employers to implement any such measures. However, it is arguable that businesses need to do more to ensure women have access to the top jobs, and not only at director level, particularly as companies cannot afford to consider anything less than 100% of their potential talent base.

Putting the boot into sex discrimination and other forms of unacceptable behaviour is a much more preferable course of action, and less painful, than shooting oneself in the foot. ■

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Corporate Tax Reform: Delivering

Paul Renz reviews the outcomes from the HM Treasury's Corporate Tax Reform report which aims to create the most competitive corporate tax regime in the G20.

ON 29 November 2010, HM Treasury published a document entitled "Corporate Tax Reform: Delivering a More Competitive System"; it includes the following principles for corporate tax reform:

- lowering rates while maintaining the tax base;
- maintaining stability;
- being aligned with modern business practice;
- avoiding complexity;
- maintaining a level playing field for taxpayers.

In terms of the Government's approach, the document makes it clear that the direction of reform is to prioritise rate reductions, which will benefit all businesses, over introducing or broadening reliefs. A "main" rate of corporation tax of 24%, which it is intended will come into effect from 1 April 2014, will (based on announced plans in other jurisdictions) give the UK the lowest main rate in the G7 and the fifth lowest rate in the G20.

The document sets out proposed changes, which are explained further below, in the following areas:

- controlled foreign company ("CFC") rules;
- foreign branch profits and losses;
- the taxation of intellectual property ("IP") and research & development ("R&D") tax credits.

The document also states that "the Government ... does not intend to make any further significant reforms over the first three years" of the proposed reform programme.

Also on 29 November 2010, HM Treasury published a document entitled "The path to strong, sustainable and balanced growth" in which the Government states that it will "increase the proportion of tax revenues from environmental taxes".

The 29 November document was supplemented on 6 December 2010 by a written ministerial statement introducing a number of anti-avoidance provisions, and the publication on 9 December of draft legislation covering a range of tax changes to be included in the Finance Bill 2011.

CFC rules

Proposed changes to the CFC rules have been under discussion for several years and the rules, and the uncertainty surrounding the proposed changes, are cited as the reason for some high-profile relocations of groups' headquarters outside the UK. It is therefore ironic that the Corporate Tax Reform proposals were issued the week after Wolseley plc, the FTSE 100 supplier of plumbing and heating products and building materials, transformed itself into a Jersey incorporated but



Swiss resident company. It is proposed that "interim improvements" to the existing CFC rules will be included in the Finance Bill 2011 and new CFC rules will be included in the Finance Bill 2012.

Interim improvements to CFC rules

In summary, the proposed changes include:

- An exemption for a CFC carrying on intra-group trading activities where there is minimal connection with the UK;
- An exemption for a CFC with a main business of IP exploitation where the IP and the CFC have a minimal connection with the UK;
- A CFC which does not fully meet the conditions for either of the above exemptions will be able, in certain circumstances, to apply to HMRC for a reduction of the full CFC charge to reflect the extent to which the conditions are satisfied;
- A three year exemption for foreign subsidiaries that, as a consequence of a reorganisation or change to UK ownership, come within the scope of the CFC regime for the first time;
- Improvements to the de minimis exemption and deferral of the withdrawal of the exemption for certain holding companies. In particular, the de minimis limit for a company which is a member of a large group will be increased to £200,000. Whilst the limit for other companies is to remain at £50,000, the test (for all companies) is by reference to accounting profits (excluding capital gains and losses) rather than taxable profits.

Draft legislation and an explanatory note were issued on 9 December 2010. Responses by 9 February 2011 will be welcomed to allow drafting changes to be made in advance of the Finance Bill 2011. The changes will have effect for accounting periods beginning on or after 1 April 2011.

These amendments to the rules represent a move in the right direction in terms of reducing the compliance burden of companies with overseas operations, but the draft legislation still includes a number of uncertainties and the "safe harbour" thresholds, for example for intra-group transactions, may prove unduly restrictive.

New CFC rules

The following summarises the proposed new rules which, subject to the outcome of the present consultation, will apply from 1 April 2012:

- a mainly entity-based system that will operate by bringing within a CFC charge only the proportion of overseas profits that have been diverted artificially from the UK. A number of exemptions will be designed to minimise compliance burdens and focus attention on higher risk entities. In addition, where needed, rules will be designed to address specific sectors including banking, insurance and property;
- a partial finance company exemption which will allow groups to manage their overseas financing operations more efficiently while protecting the UK tax base. The exemption

"Proposed changes to the rules have been under discussion for several years."

a More Competitive System

Among the Treasury's principles for corporate tax reform is the desire to maintain a level playing field.



will work by considering the finance company's debt to equity ratio and applying a CFC charge to the extent that the company has excess equity;

- an exemption for incidental or ancillary interest income which arises within trading companies;
- a new approach to managing the risks arising from CFCs with IP related profits. This will work by identifying those CFCs which present the highest potential risk and then taxing "excessive profits" which have been diverted artificially from the UK.

Responses to the proposals made by 22 February 2011 will be taken into account in preparing draft legislation to be issued in the autumn of 2011 for inclusion in the Finance Bill 2012.

Foreign branch taxation

As a result of the changes to the treatment of overseas dividends (which have, generally, been exempt from corporation tax since 1 July 2009), the Government published a discussion document in July 2010 setting out options regarding foreign branch taxation. The following summarises the draft legislation issued on 9 December 2010:

- there will be an "opt in" exemption from tax for foreign branches;
- if the option for exemption is exercised there will be no relief in respect of foreign branch losses;
- the election will be irrevocable after the filing

date for the tax return for the first accounting period to which the election applies;

- the election will apply to all the branches of a company;
- the foreign profits will be calculated in accordance with the terms of the Double Tax Treaty with the state in which the branch is located (or by reference to the OECD model treaty if the applicable Double Tax Treaty does not include a non-discrimination article or there is no treaty with that state);
- because there has been a recent change to the OECD model treaty which has not yet been incorporated in any of the UK's existing treaties, there will be differences in the calculation of the profits of branches located in "full" treaty countries compared with branches in other locations. In particular, the revised model treaty provides for "internal" royalties and interest to be taken into account;
 - if there is a "full" treaty between the UK and the state in which a foreign branch is located, equity and loan capital will be allocated in accordance with the terms of that treaty; otherwise the capital allocation approach will be used;
 - the exemption will not be available to "small" companies in respect of branches in states with which the UK does not have a "full" treaty due to the perceived risk of the loss of tax through the diversion of personal income;
 - the exemption will also not apply to profits or losses arising from the long term business of

"The document makes it clear that the direction of reform is to prioritise rate reductions"

insurance companies, investment companies, the chargeable gains of close companies or, usually, international air transport and shipping;

- relief which has already been given for foreign branch losses will be clawed back by deferring the effect of the exemption from tax until such losses arising in the six years prior to that in which the election is made have been matched with profits. If the losses of a foreign branch in accounting periods beginning after 2005 (on a date yet to be specified) exceed £50 million, the exemption will not apply until all the foreign branch losses have been matched with foreign branch profits;
- the exemption will not apply to the profits of a foreign branch if the foreign tax payable is less than 75% of the UK corporation tax that would be payable on those profits unless a motive test is satisfied or the profits concerned are less than "the entry limit". For the purposes of the entry limit, profits exclude chargeable gains (and allowable losses) and the entry limit is £200,000 for large companies and £50,000 for other companies.

In a technical note issued on 20 December, HMRC invites comments as to whether there should be a rule requiring exempt foreign branches to minimise their profits by taking advantage of all available reliefs and whether specific antiavoidance rules are needed to cover leasing activities and the transfer of branches between group companies. In addition, views are sought on the allocation of capital allowances and amounts falling within the intangibles regime.

One consequence of the foreign branch profits exemption is that the residence of non-UK incorporated companies will be less important. Currently, a non-UK incorporated company is liable to UK corporation tax on its worldwide income and gains if "central management and control" is exercised here. Care therefore needs to be taken regarding, in particular, who the directors of the company are and where they carry out their duties. In the future, even if a non-UK incorporated company is controlled and managed in the UK, subject to meeting the conditions of the exemption and the potential application of anti-avoidance provisions, the profits of the foreign branch of the company would still not be liable to UK corporation tax. It would, of course, be necessary to exercise the option and there would be reporting and filing obligations. ▶

Corporate Tax Reform ... continued

It is intended to include legislation in the Finance Bill 2011 and that the new regime will be available for accounting periods commencing on or after a date, yet to be specified, in 2011.

The proposed exemption represents a welcome move forward towards equalising the tax treatment of branches with that of subsidiaries. The transitional rules and anti-avoidance provisions will, however, mean complex adjustments may be required to some structures. This contrasts unfavourably with the relative simplicity of the foreign dividend exemption.

Patent box

The Government confirmed its intention to introduce a preferential rate of corporation tax of 10% on net profits arising from patents. It is proposed that the reduced rate will apply to income arising on patents which are first "commercialised" after 29 November 2010 and that it will apply to "embedded" income included in the price of patented products as well as to royalty income.

Companies will have to exercise an election for the regime to apply. Responses to the proposals were invited by 22 February 2011. Further details will be published for consultation in spring 2011 with a view to publishing draft legislation in autumn 2011 for inclusion in the Finance Bill 2012.

In a press release also issued on 29 November 2010, Andrew Witty (the CEO of GlaxoSmithKline) said "The introduction of the patent box is a bold and forward-thinking measure" and that "the patent box has the potential to transform the way in which the UK is viewed by companies such as GSK as a location for new investments in high added-value R&D and manufacturing". He also confirmed GSK's intention to make new investments in the UK which, according to press reports, will amount to £500 million. Conversely, the following day the Institute for Fiscal Studies stated that their "analysis suggests that the policy will lead to a large reduction in UK tax receipts from the income derived from patents, is poorly targeted at promoting research, will add complexity to the tax system, and it is far from clear that any additional research resulting from the policy will take place in the UK".

Research and development tax credits

In March 2010, in response to David Cameron's invitation to "help the Conservatives reawaken Britain's innate inventiveness and creativity", James Dyson published "Ingenious Britain: Making the UK the leading high tech exporter in

Europe". The report made the following specific proposals for the R&D tax credit schemes:

- refocus the schemes on high tech companies, small businesses and new start-ups;
- increase the credit to 200%, when the public finances allow;
- improve the ease with which the credit can be claimed.

The Government has rejected the recommendation to restrict the sectors eligible for the credits, and the 29 November report makes no comment on increasing the rate of the credits. Whilst views are sought on whether there are any specific costs which should be brought within the scope of the scheme, it is stated that adding such costs would need to be balanced by savings elsewhere. Indeed, views are sought on any costs which should be excluded and internally developed software is cited as a specific example.

Comments are also invited regarding:

- the definition of R&D contained in guidelines issued by the Department for Business, Innovation and Skills;
- whether there should be a statutory definition of "production" (the costs of which are excluded in calculating the credits);
- further enhancements to promote additional investment in R&D by the smallest companies;
- whether Vaccine Research Relief is effective in incentivising research into drugs and vaccines;
- improvements to the claims process that would make it more streamlined and whether there would be significant benefits from an external auditing process for claims or a more formal pre-clearance procedure of R&D projects with HMRC.

Interest deductibility

The Report states that the Government has considered options for restricting the corporation deduction given for interest expenses but that it "does not intend to pursue significant changes to the UK's competitive regime for interest". The



absence of further major changes is welcome following the introduction of the worldwide debt cap for large groups. ■

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The illicit

The Ministry of Justice issued its final guidance on the Bribery Act on 30 March 2011 and confirmed that the Act will come into force on 1 July 2011, writes **Graham Scrimgeour**

BRIBERY has, of course, been illegal in the UK for a long time – going back to the Sale of Offices Act 1551, the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts of 1906 and 1916.

However the UK has faced criticism internationally for appearing to have weak enforcement against bribery (e.g. over allegations relating to BAE Systems sales to Saudi Arabia) and the new law was introduced to clarify and extend the prevention of bribery and corruption by:

- Replacing and updating the earlier legislation
- Creating general offences of offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage
- Creating an offence of bribery of a foreign public official
- Creating a new offence of 'corporate bribery'
- Creating a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (the only defence being if the organisation has adequate procedures in place to prevent bribery).

Requirement to prevent bribery by anyone acting on your behalf

Being honest and fair in your own dealings will no longer be enough ... you will now need to assess and monitor your organisation and also agents and others outside it who work on your behalf.

The most significant impact of the new Act is the requirement to have "adequate procedures in place to prevent bribery". The consequence being that if someone acting on behalf of the organisation (including an agent in a far flung part of the world) is found to have either bribed someone else or has been bribed, then the organisation is automatically guilty of failing to prevent the bribery unless it can demonstrate that it has adequate procedures to prevent bribery.

The penalty for failing to prevent bribery can be an unlimited fine on the organisation or on individual senior managers.

The penalties for bribing or being bribed can be an unlimited fine or up to 10 years in jail.

sweeteners



Gifts and hospitality

The scope of the new law and guidance includes gifts and hospitality. The guidance states that "bona fide hospitality and promotional expenditure which seeks to improve the image of a commercial organisation, better to present its products and services or establish cordial relations is recognised as an established and important part of doing business".

In order to amount to a bribe, "hospitality or promotional expenditure must be intended to induce a person to perform a function improperly".

In order for businesses to avoid challenge, key questions to ask when giving or receiving gifts or hospitality are:

- Does the event involve providing information about the product or service (better if it does)
- Who benefits? – the inclusion of other family members will require greater justification
- Is the level of expenditure appropriate? (lavish expenditure will be harder to justify)

The implications of the new Act are that businesses will need systems and records to demonstrate that such gifts and hospitality are appropriate and proportionate.

Facilitation payments

The OECD defines "facilitation payments" as "a payment to a government employee to speed up an administrative process where the outcome is already pre-determined". (i.e. the payment has not changed the outcome). Anti-bribery legislation in some countries permits facilitation payments (eg the Foreign Corrupt Practices Act in the US and similar legislation in Canada, Australia, New Zealand and South Korea).

However the new UK legislation criminalises the act of "influencing the performance of a foreign public official's function, which includes any omission to exercise those functions", so "facilitation payments" are illegal under the new Act.

UK businesses will therefore need to have systems to prevent such payments, and to identify and address any such payments that do occur.

Guidance on policy and procedures

The Ministry of Justice issued guidance on the implementation of the act on 30 March 2011, which describes what adequate procedures might look like.

The guidance (at www.justice.gov.uk) sets out six key principles for organisations to consider when preparing policies and procedures to prevent bribery:

1 Proportionate procedures

The procedures should be proportionate to the bribery risks that it faces and to the nature, scale and complexity of the organisation's operations.

2 Top level commitment

The top level management are committed to preventing bribery and foster a culture within the organisation in which bribery is never acceptable.

3 Risk assessment

Assessing the nature and extent of exposure to bribery risk, which is informed, documented and periodically reviewed and updated.

4 Due diligence

The organisation applies proportionate, risk based due diligence procedures on those who perform or will perform services on its behalf.

5 Communication (including training)

Bribery prevention policies and procedures are embedded and understood throughout the organisation through communication and training, proportionate to the risks faced.

6 Monitoring and review

The organisation monitors and reviews procedures and makes improvements where necessary.

Every commercial organisation needs to prepare and put in place an appropriate anti-bribery policy and procedures in time for the Bribery

Act coming into force on 1 July 2011. ■



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Do you know your QROPS from your QNUPS?

A recent legal clarification has established that a Qualifying Recognised Overseas Pension Scheme (QROPS) cannot invest in residential property without a significant penalty. There is a solution, however.

After five tax years of UK non-

residence, your QROPS fund can be transferred to a Qualifying Non-UK Pension Scheme (QNUPS), which has no investment restrictions.

It could therefore invest in residential property, as well as fine wines, antiques and other tangible

assets which a QROPS cannot. Furthermore, the funds within the QNUPS would benefit from UK IHT exemption even if you return to the UK and become UK domiciled again.

We are currently investigating whether UK resident and UK

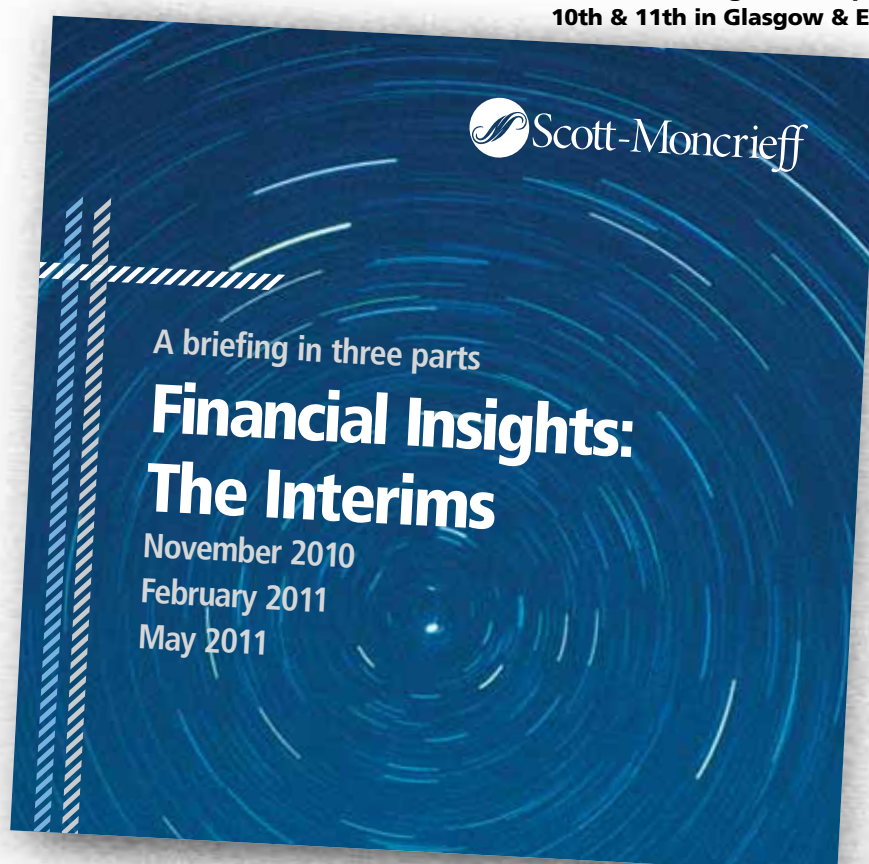
domiciled individuals can invest in a QNUPS directly to gain these IHT benefits. ■

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number crunchers*

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