Budget 2012:

Client Summary Note

Executive Summary

On 21 March 2012, our Chancellor delivered his 2012 Budget. Although there is some good news in terms of reduced corporation tax rates, incentive for investments and the proposed drop in the top rate of personal tax from 50% to 45% (from April 2013), for the London property market in particular, this Budget will not be welcome.

For our non-dom clients, there is little further news at this point, other than confirming what we already know that there should be some relaxations to some of the remittance rules come 6 April 2012. We hope that the detail of these relaxations should be available soon.

There is also a renewed attack on a number of tax avoidance schemes, and in particular a proposal that the UK will (finally) have a General Anti-Avoidance Rule – although fortunately consultation is promised on this first.

More information on these proposed changes is given below:

As ever, we will be happy to assist our clients or contacts in relation to any of these changes, so please do contact us should you have any queries.

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UK Property

Clients wishing to own UK properties through offshore companies are to be hit hard by this Budget. Indeed, it is likely that many such structures will need to be re-examined, to consider whether they should continue.

Stamp duty land tax rate increase for properties over £2m

The SDLT rate for properties worth more than £2m will now increase to 7% (currently for residential properties over £1m, the SDLT rate is 5%). This will apply for all transactions where the effective date (normally the date of completion) is on or after 22 March 2012.

Transitional provisions are, however, to apply so that in most situations the old rates will continue to apply in respect of contracts entered into before 22 March 2012 but completed on or after that date.

Stamp duty land tax: enveloping of high value residential properties

Worse still, we are told to expect legislation in the Finance Bill 2012, to apply a 15 per cent rate of SDLT to residential properties over £2m, purchased by certain non-natural persons. However, even though we do not yet know the detail of these provisions, we are told that **this charge will take effect from 21 March 2012.**

There will be transitional rules that will apply to transactions that would otherwise be within the higher rate charge but where the contract was completed and signed by all parties to the transaction on or before 21 March 2012.

For the purposes of the higher rate charge 'non-natural person' is set to include companies, collective investment schemes (including unit trusts), and partnerships in which a non-natural person is a partner. However, fortunately there will be exclusions from the charge for property developers and corporate trustees in certain circumstances (yet to be announced). Apparently, the political objective is to dis-incentivise the ownership of high value residential property in structures that would permit the indirect ownership or enjoyment of the property to be transferred in a way that would not be chargeable to SDLT.

In addition, the Government have announced their intention to introduce legislation to apply an annual charge for residential property owned by such “non-natural persons”. We are told that the Government will consult on the introduction of such an annual charge, to be applied on properties over £2 million, and to expect legislation to be introduced in Finance Bill 2013, with the measure coming into effect in April 2013.

CGT charge on non-resident non natural persons

The Government will consult on the introduction of a CGT charge on residential property owned by non resident, non natural persons. Legislation will be introduced in Finance Bill 2013 with the measure coming into effect in April 2013. This measure will be consulted on in conjunction with the SDLT enveloping annual charge for high-value residential properties.

Stamp duty land tax: sub-sales rules

Currently, one of the more popular SDLT avoidance schemes uses an existing relief in place, known as the sub-sale relief. Legislation will be introduced in Finance Bill 2012 to try and prevent this perceived abuse of the provisions.

Reform of the taxation of non-domiciled individuals

HMRC have already undergone a consultation in relation to the reform of (and, largely, improvements to) the tax regime for non-doms. A digest of these issues which we produced at the time may be found here:

http://www.charter-tax.com/images/stories/uk%20autumn%20announcements%20-%20non-doms.pdf

Following this consultation, we are told to expect legislation in Finance Bill 2012 to make changes to the taxation of non-domiciled individuals, with effect from 6 April 2012, to:

• allow such individuals to bring their overseas income and gains to the UK tax-free in order to make a commercial investment in a qualifying business;
• increase the existing £30,000 annual charge to £50,000 for those resident in the UK in 12 or more of the last 14 tax years; and
• reduce the complexity of some aspects of the existing remittance basis rules.

Unfortunately, as yet, we do not have the draft of such legislation (as revised) although it has already been announced that much of the draft legislation for the Finance Bill 2012 will be released on 29 March 2012, so we might hope to shed some further light then.

Statutory residence test

This would seem to still be scheduled for the Finance Bill 2013, to take effect from 6 April 2013.

Ordinary residence

Following consultation, the Government now plan to abolish the concept of ordinary residence for tax purposes, though overseas workday relief will be retained and placed on a statutory footing. Legislation will be in Finance Bill 2013 and have effect from 6 April 2013.

The Government will also put SP1/09 on a statutory footing (SP1/09 provides an administrative easement for employees who are resident but not ordinarily resident in the UK and have a single contract of employment covering duties carried out in the UK and overseas).

Inheritance tax: spouses and civil partners domiciled outside the UK

The Government will consult on legislation to increase the IHT-exempt amount that a UK domiciled individual can transfer to their non UK domiciled spouse or civil partner. The Government similarly proposes to allow individuals who are domiciled outside the UK and who have a UK domiciled spouse or civil partner to elect to be treated as domiciled in the UK for the purposes of IHT. Legislation will be in Finance Bill 2013.

Inheritance tax: "10 year charges" on trusts

The Government will consult on simplifying the calculation of IHT periodic and exit charges for trusts. Legislation will be in Finance Bill 2013.

UK Corporation Tax

Corporation tax rates

From the year commencing 1 April 2012, the main rate of corporation tax is to reduce to 24%. This is to reduce to 23% in the following year and for the year commencing 1 April 2014 will go down even further, to 22%.

The small companies rate will remain at 20%.

Enterprise Zones

Legislation will be introduced in Finance Bill 2012 to provide 100 per cent first-year allowances for trading companies investing in plant or machinery for use primarily in designated assisted areas within Enterprise Zones.

Bank Levy rate

Finance Bill 2012 will set the full rate of the Bank Levy at 0.088 per cent with effect from 1 January 2012. The Government has also announced that legislation will be included in Finance Bill 2012 to set the full rate of the Bank Levy from 1 January 2013 at 0.105 per cent.

Tax transparent fund

Legislation will be introduced to permit the authorisation of tax transparent funds from summer 2012. Regulations will be made to establish the tax treatment applying to UK investors' holdings in tax transparent funds and to establish the treatment of transactions for the purposes of stamp taxes. In order to clarify the position going forward for all investors in collective investment schemes (CIS) including the new tax transparent funds, the capital gains rules for mergers and reconstructions of CIS will be simplified and rewritten in regulations, and changes may be made to what constitutes a disposal.

Corporation tax reliefs for the creative sector

The Government will introduce corporation tax reliefs for the production of culturally British video games, television animation programmes and high end television productions. Consultation on the design will take place over the summer. Legislation will be in Finance Bill 2013 and will take effect from 1 April 2013, subject to State aid approval.

Patent Box

The Patent Box will allow companies to elect to apply a 10 per cent rate of corporation tax from 1 April 2013 to all profits attributable to qualifying intellectual property (IP).

Qualifying IP includes patents granted by the UK Intellectual Property Office ('IPO') and the European Patent Office ('EPO'), as well as supplementary protection certificates, regulatory data protection and plant variety rights. The Government intends to extend the Patent Box to other EU Member States which have similar examination and patentability criteria as the UK. A list of qualifying patent jurisdictions will be published as secondary legislation in 2012.

The Patent Box will apply to existing as well as new IP, and to acquired IP provided that the group has further developed the IP or the product which incorporates it.

Tax simplification for small businesses

The Government will consult on introducing a voluntary cash accounting basis for unincorporated businesses up to the VAT registration threshold, with a view to introducing legislation in Finance Bill 2013. It will also consult on a simplified expenses system for business use of cars, motorcycles and home.

The Government will also consult on proposals to introduce a disincorporation relief.

Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs)

Legislation will be introduced in Finance Bill 2012 to:

- disregard loan capital for the purposes of the limit on the proportion of a company's capital which an investor can hold without being treated as "connected";
- allow shares to carry a preferential right to dividends providing their amount and the date that they are payable is not dependent on a decision of the company, the holder or anyone else, and providing that the dividends are not cumulative;
- remove the £500 minimum investment limit; and,
- remove the £1 million limit for VCT investment for companies not in partnership.
- increase the annual investment limit for qualifying companies to £5 million
- increase the employee limit to fewer than 250 employees;
- increase the size threshold to gross assets of no more than £15 million before investment and £16 million after; and,

The proposed legislation is subject to State aid approval, and will take effect through Treasury appointed day orders.

To ensure both EIS and VCTs are targeted at genuine risk capital investments, the Government will also introduce a new disqualifying arrangements test for the schemes to exclude companies set up for the purpose of accessing relief, and will exclude investment in some Feed-in Tariff businesses. Monies used to acquire shares in another company will not be regarded as being 'employed' for the purposes of a qualifying business activity.

Seed Enterprise Investment Scheme.

This new incentive is still set for inclusion in the Finance Bill 2012. Following consultation, changes have been made to the legislation to allow companies to:
• qualify if they have subsidiaries;
• determine eligibility by reference to the age of any trade rather than to the age of the company;
• remove reference to the holdings of other entities in calculating asset and employee tests;
• allow previous (but not current) employees to qualify; and
• allow directors who have qualified under SEIS to continue to qualify under EIS, subject to time limits.

VAT

The VAT registration threshold will increase from £73,000 to £77,000, from 1 April 2012.

With effect from 1 October 2012, perceived loopholes and anomalies in the VAT legislation are due to be amended. The proposed changes involve:

- removing the zero rating currently applicable for approved alterations to listed buildings
- removing the current ability for some self storage supplies to be VAT exempt;
- applying VAT to all hot food and to sports drinks;
- apply VAT to all supplies of the rental of hairdressers' chairs
- applying VAT in all cases to the sale of cold food for consumption on the supplier's premises (even if those premises are shared with other suppliers); and
- charging the standard rate of VAT on the purchase of all holiday caravans.

Transitional arrangements will be available for alteration works to listed buildings already underway. A consultation on the draft secondary legislation was published on 21 March 2012. Anti-forestalling legislation, effective from 21 March 2012, will apply to changes to the VAT treatment of self-storage and alteration works to listed buildings.

The Government will also introduce secondary legislation in autumn 2012 to formalise the temporary arrangements under which supplies of freight transport and related services taking place wholly outside the EU are not liable to UK VAT when performed for UK businesses and charities.

Further Anti-avoidance Provisions

The Government announced a further raft of anti-avoidance measures, some of which are to be introduced straight away, and some of which they plan to take consultation on, as follows:

General anti-abuse rule (GAAR) – The Government plans to introduce a GAAR targeted at "artificial and abusive tax avoidance schemes". There will be a consultation document issued in summer 2012, with a view to introducing legislation in Finance Bill 2013.

Personal service companies and IR35 – The Government plans to bring forward a package of measures to tighten up on avoidance through the use of personal service companies.

Transfer of assets abroad and gains on assets held by foreign companies – The Government plans to introduce amendments to the legislation we have in the UK which can attribute income and gains of offshore companies to their UK owners. However, as yet we are not told what these amendments will be. The Government is already on notice from the EU that this legislation requires amendment as it contravenes EU law, so one might expect that this is the driver for the change – although we do not yet know if the change is for better or for worse! The Government will publish a consultation including draft legislation after the Budget.

Property business loss relief – legislation will be introduced in Finance Bill 2012, to prevent property business loss relief being given where allowable agricultural expenses arise from arrangements entered into in which the main purpose, or one of the main purposes, is to obtain a tax reduction.

Inheritance tax: offshore trusts – with effect from 21 March 2012, there will be an amendment to the excluded property and settled property provisions in order to close an avoidance scheme involving the acquisition of interests in offshore trusts by UK-domiciled individuals.

Income tax: corporate settlor-interested trusts – with effect from 21 March 2012, there will be an amendment to the "settlements legislation" under the income tax rules, in order to close an avoidance scheme involving corporate settlors.

Disclosure of tax avoidance schemes (DOTAS) - The Government will be formally consulting over the summer on extending the "hallmarks" required for tax scheme notification, so as to capture avoidance schemes that do not currently have to be notified, with a view to publishing draft regulations later in the year.

Cap on unlimited tax reliefs – Legislation will be introduced in Finance Bill 2013 to apply a cap on income tax reliefs claimed by individuals from 6 April 2013. The cap will apply only to reliefs which are currently unlimited. For anyone seeking to claim more than £50,000 in reliefs, a cap will be set at 25 per cent of income (or £50,000, whichever is greater). Draft legislation will be published for consultation later this year.

Qualifying Recognised Overseas Pensions Schemes (QROPS) – There will be a number of changes to the pensions regulations. Of particular note are the changes in relation to the QROPS regime. There are to be new conditions that a pension scheme must meet to be a Qualifying Recognised Overseas Pension Scheme (QROPS). There are also new information and reporting requirements and shorter reporting time limits.

Income tax rules on interest – The Government will consult on changes to the income tax rules on the taxation of interest and interest-like returns, and the rules on the deduction of tax at source from such amounts. Following the consultation period there will be further opportunities to contribute to the development of policy. Any legislation will be in Finance Bill 2013.

Tax Administration

UK/Switzerland Agreement

There are some amendments to the UK/ Swiss tax agreement (see http://www.charter-tax.com/images/stories/uk-swiss%20tax%20agreement.pdf), following a Protocol signed on 20 March 2012.

The first amendment is that where a retention is made under the 2004 Agreement between the EU and Switzerland on the Taxation of Savings, a separate tax finality payment is to be made which, together with the retention, achieves an outcome equivalent to the single withholding rate under the October Agreement. Secondly, there is a provision for a levy on the assets of an individual who dies on or after 1 January 2013.

These charges will not apply where authorisation is given to disclose full bank account details to HMRC. Note also in particular the ability for non-doms to "opt out".

PAYE – Real Time Information (RTI), late payment and filing penalties

The RTI programme is, as the name suggests, intended to provide HMRC with regular information on payments to employees. HMRC will be piloting RTI during 2012-13 in preparation for full implementation from October 2013. HMRC will consult before the summer on new models for late payment and late filing penalties under Real Time Information. Legislation will be in Finance Bill 2013.

Information powers

The Government announced on 8 February 2012 that it has agreed to work with the governments of France, Germany, Italy and Spain to facilitate exchange of information between financial institutions and the US Internal Revenue Service for the purposes of the US Foreign Account Tax Compliance Act (FATCA), which aims to combat cross-border tax evasion. HMRC will consult with the financial institutions affected about how this can be done, with a view to legislation in Finance Bill 2013.