Charter Tax Consulting Ltd

Budget Announcements 19 March 2014: Client Summary Note

Introduction

On 19 March 2014, the Chancellor delivered his 2014 Budget Statement. The Chancellor believes the UK remains on course for recovery and is naturally keen to see our economy continue to recover. His message is still very much to support business, keep corporation tax rates low and also to stamp out what is seen as unacceptable tax avoidance.

Probably the biggest unpleasant surprise for our clients in this Budget is the extension of the ATED regime to properties worth just £500,000, and also the extension of the 15% SDLT rate to properties in this bracket being purchased by certain corporate parties.

Businesses who regularly provide prompt payment discounts and calculate their VAT liability accordingly were also in for an unwanted surprise to see the rules change to require that VAT now be calculated on the full amount.

A more pleasant surprise for those of us with funds in pensions is the promised legislation to give more flexibility on pension drawdowns and the now arguably archaic requirement to buy an annuity.

Other good news stories include the increase of the annual investment allowance to £500,000, increases in the ISA thresholds (now "NISA's"!) and a tax exemption for non-resident sportsmen (and women!) coming over for the Glasgow Grand Prix.

Most of the other key changes were as already expected, although sadly for in particular a number of the large professional partnerships, the rules on the taxation of "salaried partners", to now catch such parties as employed rather than self employed, look set to hit our statute books from 6 April 2014. Clients with "dual employment contracts" will also need to carefully examine their position as they may find that the remittance basis is denied them in respect of their foreign income going forward.

Set out below is an initial summary of the key proposals in today's announcements, that may affect our clients, though naturally bespoke advice will always be required and action should not be taken on the basis of these notes alone. As ever, we will be happy to assist our clients or contacts in relation to any of these issues, so please do contact us should you have any queries.

Janet Paterson, FCA, CTA, AIIT, TEP
Director, For and on Behalf of
CHARTER TAX CONSULTING LIMITED
11 ST JAMES'S PLACE
LONDON SW1A 1NP

Janet.paterson@charter-tax.com

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Expansion of the ATED Regime

Clients owning UK residential property worth £2m or more through certain corporate vehicles will already be aware of the new ATED regime, and indeed will be looking at having to complete another ATED return next month.

The Government rationale for introducing the ATED regime was that it thought that individuals were avoiding a liability to SDLT by using companies to own properties, and buying the shares in the companies, rather than buying the properties direct (an SDLT charge would arise on a direct property purchase but not a purchase of shares). Unfortunately the Government didn't believe the professional and industry representations that in fact such avoidance was not as common as they thought – not least because often one doesn't want to risk buying a company, and possibly the liabilities that go with it. Even more unfortunately, the Government continue to think that such avoidance remains prevalent in lower property price brackets and so wish to lower the threshold above which the ATED regime applies.

So, legislation will be introduced in Finance Bill 2014 to reduce the ATED threshold to £500,000 – albeit in stages. From 1 April 2015 a new band will come into effect for properties with a value of £1-£2 million, giving annual charge of £7,000. From 1 April 2016 a further new band will come into effect for properties with a value of £500,000-£1m, with an annual charge of £3,500. There will be a transitional rule for the £1 million to £2 million band requiring returns to be filed on 1 October 2015 and payment by 31 October 2015.

There are no indications in the Budget that the existing exemptions to the ATED regime won't also apply to the properties of £500,000+, and indeed the Budget mentions that the regime would not apply to "genuine commercial businesses and other limited categories".

The Budget also confirms that the ATED charge will increase in line with the September 2013 Consumer Prices Index of 2.7 per cent (rounded down to the nearest £50) for the chargeable period 1 April 2014 to 31 March 2015. The increased charges will therefore be as follows:

Property Value	**Charge for tax year 2013-14**	**Charge for tax year 2014-15**
More than £2m but not more than £5m	£15,000	£15,400
More than £5m but not more than £10m	£35,000	£35,900
More than £10m but not more than £20m	£70,000	£71,850
More than £20m +	£140,000	£143,750

Of course in addition to the ATED charge itself, inclusion in the ATED regime means that capital gains tax will apply on the sale of the property (currently at a rate of 28%). As the ATED-related capital gains tax charge will take effect from 6 April 2015 for properties worth £1-£2m, the charge will apply only to that part of the gain that is accrued on or after that date. Similarly, as the extension to the ATED-related capital gains tax charge will take effect from 6 April 2016 for properties worth £500,000-£1m, the charge will apply only to that part of the gain that is accrued on or after that date. Legislation on the capital gains tax elements of this measure is to be introduced in Finance Bill 2015.

By way of some limited good news, the Government is due to consult on possible options to simplify the administration of ATED, in particular for property businesses eligible for reliefs.

SDLT – Expansion of the 15% Rate

The application of the 15% SDLT rate very much mirrors the property acquisitions affected by the ATED – in other words, residential properties worth £2m+ that are purchased by certain corporate vehicles.

The expansion of the ATED regime down to properties worth just £500,000 is therefore also going to be accompanied by the expansion of the SDLT 15% rate. However, this expansion of the SDLT charge will take place well before the expansion of the ATED regime. From 20 March 2014, the 15% SDLT rate will therefore apply where UK residential property is purchased by certain types of corporate vehicle that would be within the ATED regime.

The extension to the 15 per cent rate of SDLT will take effect for transactions where the effective date (normally – but not always - the date of completion) is on or after 20 March 2014. Transitional provisions are promised to ensure that, in the great majority of cases, the existing threshold will continue to apply in respect of contracts entered into before 20 March 2014 but completed on or after that date.

On a better note, the Government has undertaken to consult on the SDLT treatment of the seeding of property authorised investment funds and the wider SDLT treatment of co-ownership authorised contractual schemes.

Taxation of Non-Residents on UK Property Gains

The Budget reconfirmed the Government's plans to introduce a capital gains tax charge on residential property disposals by non-residents (over and above the aforementioned ATED regime).

The detail of the exact changes remain sparse but we are promised a consultation period "shortly after the Budget", with the changes still due to be introduced from April 2015. We remain optimistic that there will be some sort of provision to ensure that only gains arising from April 2015 onwards will be subject to the new charge and that any market value increases prior to that date will be protected.

Main Residence Exemption

It is also worth reminding ourselves that announcements have already been made that changes are to be introduced to the existing main residence capital gains tax exemption. Currently, where a property has been an individuals' main residence, it obtains a capital gains tax exemption for both the time it has been the individual's main residence and for 3 years thereafter. This gives the individual in effect a grace period to sell the property while finding a new one. However, this 3 year grace period will be cut back by half, to just 18 months.

Non-Doms and Dual Contracts

Further announcements have been made with regard to the Government's proposals to stop "abuse" of the tax system by UK resident non-domiciliaries arranging to have what are known as dual employment contracts.

Currently, individuals resident in the UK but not domiciled here are, broadly, not subject to UK income tax on their foreign employment earnings, provided such earnings are not remitted to the UK. However, if the individual works both in the UK and abroad, normally he will try and find some sort of separation as to what he is paid for his UK vs his non-UK duties by way of separate contractual arrangements so that it is then possible to separately identify his remuneration for his non-UK duties, and then ensure that such remuneration is not remitted to the UK. Arrangements to deal with such situations are commonly known as "dual contracts".

However, from 6 April 2014, in effect for a UK resident non-dom claiming the remittance basis in respect of overseas employments, where there is also an employment with the same or an associated employer, and the employments are somehow “related”, the remittance basis will be denied on the foreign element of the employment income, unless the foreign employment income is already taxed overseas, at a rate that is not less than 65% of the UK’s additional rate of tax. Based on a 45% UK additional rate of tax, this gives an applicable foreign tax rate of at least 29.25%. Income from each overseas employment will be considered independently – the income and foreign tax credit relief available for all overseas employments are not aggregated for the purposes of the 65% test.

There will be relieving provisions to prevent charges arising on nominal directorships if they (or their associates) own/control less than 5% of the company’s ordinary share capital. We are also promised that the legislation will take into account employments held for legal/regulatory reasons

These changes will have effect for employment income arising on and after 6 April 2014. Income which arises on or after this date but which is related to employment duties performed in a year prior to 2014-15 will benefit from transitional provisions, however.

Inheritance Tax and Trusts

The Government still plans to “simplify” filing and payment dates for IHT relevant property trust charges. “Simplifications” are also now expected to the calculation of the available nil rate band where there are multiple trusts created by the same settlor.

Consultation is expected, with new legislation to be introduced in Finance Bill 2015.

On a welcome note, a consultation is also promised on options to extend the IHT exemption for armed forces personnel who die on active service to all emergency service personnel who die in the line of duty, or whose death is hastened by injury incurred in the line of duty, again with legislation to be in Finance Bill 2015.

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Partnerships, LLP's and "Salaried Partners"

Despite much lobbying, the Government still appears set to introduce wide reaching changes to the taxation of LLP, from April 2014.

The proposals will have a massive effect on LLP's that have what are known as "salaried" partners. Historically their status as self employed partners has been recognised for tax purposes, even though their profit share may be fixed. From April 2014 they are to be taxed as employees. Complex rules and definitions are to be given in Finance Bill 2014 as to where one draws a line between who is and who is not a "salaried partner" for the purposes of these rules, but for sure most large professional practice firms will be looking at a large tax hit as a result of these rules.

The proposals also introduce harsh new rules on "tax-motivated allocations of business profits or losses in partnerships (not just LLPs) where the partners include both individuals and companies (mixed membership partnerships) and tax-motivated disposals of assets through partnerships".

Anyone in a partnership should therefore review their position in relation to these rules, to see if they will be affected.

Pension Changes – Increased Flexibility

At last we are due to see some changes for the better in our pensions legislation, in particular a number of changes are being made to the drawdown, trivial commutation and small pots limits affecting the benefits that can be taken from a registered pension scheme as drawdown pension income and as taxed lump sums.

Legislation is also to be introduced to allow those with defined contribution pension savings to draw down from them from age 55 from April 2015, subject to their marginal rate of income tax and their pension scheme rules. The Government will also consult on increasing the minimum pension age so that it remains ten years below state pension age. Conversely, there will be consultation on whether those aged over 75 should still be able to claim tax relief on their pension contributions.

The Government also plans to consult on ways to give equivalent treatment to Qualifying non-UK Pension Schemes (QNUPS) and to UK-registered pension schemes. However, we are also warned that changes will "remove opportunities to avoid inheritance tax" and so the hitherto potentially very useful inheritance tax free status of QNUPS many now be expected to have a short life. Legislation is due to be introduced in Finance Bill 2015.