CHARTER TAX

Charter Tax Consulting Ltd

Autumn Statement: 23 November 2016

Client Summary Note

Introduction

All so often, when a new Chancellor comes into office, we see some significant tax law changes as the new incumbent wishes to put his mark on the tax landscape. We have also become accustomed to the Autumn Statement being accompanied by some seriously lengthy press releases and reams of draft legislation.

However, our new Chancellor's mark on the tax landscape has instead been to say that going forward he wants us to go back to the days of having just one proper Budget each year (in the Autumn), with the Statement in the Spring then just being a response to the Spring forecasts from the Office for Budget Responsibility – announcement of any legislative changes in the Spring would then become the exception rather than the norm. This is a delightfully sensible approach, as it should then allow for a suitable lead time for changes to the tax rules announced in the Autumn, to be reviewed before coming into effect from the start of the next tax year.

Another delightful observation from our new Chancellor is that he understands that businesses like stability. As such, the Autumn Statement today was relatively benign. Various pre-announced changes are still going through and there were the (now usual) further "crackdown on tax avoidance" style changes but really nothing too earth-shattering.

We have summarized below the changes, as announced today, which are likely to affect our clients. However, the draft Finance Bill clauses are due for release on 5th December 2016 and so that is when we expect to see the full devil in the detail and of course we will be in touch again with details of the further news likely to affect our clients.

Non-Dom Update

The Chancellor announced nothing new with respect to the non-dom reforms.

He did confirm that the changes previously announced will be implemented. This will include the change whereby non-domiciled taxpayers are treated as UK domiciled for all tax purposes once they have been UK tax resident for 15 out of the previous 20 tax years and the inheritance tax charge on UK residential property held in an offshore structure. We await the full draft legislation on 5th December for these proposed changes and will of course issue a further suitable press release on this as appropriate.

Following consultation, the Chancellor confirmed that the Business Investment Relief, enabling non-dom taxpayers to be able to remit funds to the UK and invest in business here without triggering a charge to tax, is due to be extended. As yet, detail of the scope of this change has not been announced. However, this could be a valuable relief available to non-doms in the UK.

One point not mentioned in the Autumn Statement, but which is worth noting from the Government consultations in August, is the possible availability of a 'mixed fund amnesty' for non-doms with mixed funds which mean they cannot remit to the UK without incurring a UK tax charge. If this proposal is taken forward (and we expect that it will be), non-doms could benefit from separating the income in their mixed fund so that assets attracting no tax or lower rates of tax could be brought to the UK before assets attracting higher rates of tax.

Taxation of Foreign Pensions

The taxation of foreign pensions is to be brought in line with the taxation of UK pensions. Currently, only 90% of overseas pension income is taxed in the UK with the remaining 10% excluded from tax. Additionally, lump sum payments from foreign pensions are generally taxed in the country of origin rather than the country in which the recipient is resident. It appears that these reliefs will be removed and overseas pensions will be taxed in the same way as UK pensions.

Furthermore, there is a suggestion that specialist pension schemes for those working abroad are to be closed to new investment. This could significantly affect planning currently used involving "QROPS" and "QNUPS" and we will be watching closely for the release of the draft legislation on these issues. Exporting of pensions for individuals leaving the UK are also going to have to move to a 10 year window (currently 5 years).

Employment Taxes

The Chancellor is following his predecessor's continued focus on making it more difficult for employers to find ways for their employees to pay less taxes. New legislation to be brought into force in this connection has been announced as follows:

1. *Employee Shareholder Scheme*

The tax advantages in connection with shares awarded under the Employee Shareholder Scheme will be abolished for arrangements entered into on, or after, 1 December 2016.

The measure removes the income tax relief and capital gains tax exemption applying to shares received as consideration for entering into an employee shareholder arrangement. The reliefs are to be denied in connection with agreements entered into on, or after, 1 December 2016. This allows any individuals who have received independent advice regarding entering into an employee shareholder agreement before 23 November 2016 to effect the agreement before 1 December 2016 to secure the income tax and capital gains tax advantages known to be available at the time of the advice. The effective date is 2 December 2016 in the cases where independent legal advice was received prior to 1.30pm on 23 November 2016.

This is a real shame as Employee Shareholder Schemes had become quite popular and were indeed relatively recently introduced and government supported schemes.

2. *Taxation of Different Forms of Remuneration/Salary Sacrifice*

Employers are able to remunerate their employees in a number of different ways as an alternative to a cash salary, which currently give rise to inconsistencies in the tax treatment of different types of remuneration. Some measures have been announced to unify the system.

With effect from April 2017, any income tax and National Insurance advantages of salary sacrifice schemes will be removed, with the exception of those relating to pensions, childcare, Cycle to Work and ultra-low emission cars. Arrangements in place before April 2017 will remain in effect until April 2018, and those relating to cars, accommodation and school fees will be protected until April 2021.

The government will be looking at how benefits in kind are valued for tax purposes, including a possible call for valuation evidence. Further details expected at Budget 2017.

Further measures on income tax relief for employee business expenses is also expected at Budget 2017.

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3. Disguised Remuneration

The Chancellor will extend the scope of anti-avoidance measures on 'disguised remuneration' to the self-employed.

The government will also make it less attractive for employers to participate in disguised remuneration avoidance arrangements by denying tax relief on contributions into such a scheme unless income tax and National Insurance are paid within a specified period.

4. Termination Payments

At Budget 2016, it was announced that effective as of April 2018, termination payments that are in excess of £30,000 and subject to income tax, will also be subject to employer's National Insurance Contributions. For the purpose of simplifying the application of these new rules, tax will only be applied to the equivalent of the employee's basic pay if their notice period is not worked. The first £30,000 of a termination payment continues to be exempt from income tax and National Insurance.

Corporate and Business Taxes

The good news is that the Chancellor has confirmed that the plans announced by his predecessor, for corporation tax to reduce to 17% by 2020, are something that he will commit to sticking to.

However, we can expect some other changes to the corporation tax regime in the not too distant future, in particular:

1. Non-UK Companies to Switch to Corporation Tax?

Currently, non-UK companies pay UK income tax (rather than corporation tax) on certain sources of UK income (in particular, rental income). The Chancellor announced that such UK source income received by non-UK companies will instead be brought into the charge to corporation tax. This could provide a welcome simplification to offshore companies renting out UK property as the current compliance regime is burdensome and old-fashioned. The corporation tax rate is due to drop to 17% so non-UK companies with UK rental property could stand to benefit from these changes, depending on their circumstances.

2. Restrictions on Tax Deductibility of Corporate Interest Expenses

Following consultation, the proposed debt cap for large groups is set to proceed, so that from April 2017 large groups may find that they have their interest expenses limited in the UK where the net interest expense is more than £2m, it exceeds 30% of UK taxable earnings and the group's net interest to earnings ratio in the UK exceeds that of the worldwide group.

3. ***Loss Restrictions***

   Proposals to restrict the carry forward of losses to 50%, from April 2017, are also due to proceed, although there should be a quid pro quo of allowing those losses to be used with greater flexibility.

4. ***Substantial Shareholding Exemption***

   The UK already has a very useful exemption for capital gains made by UK companies on qualifying "substantial shareholdings" though there are a number of hoops to jump through to qualify for the exemption. Happily the rules are to be simplified and (hopefully) made more generous from April 2017.

5. ***VAT-Flat Rate Scheme***

   There is some perceived abuse for some of the use of the flat rate scheme, so we can expect some changes for the small businesses that use these, particularly for predominantly labour-only businesses, where a new flat rate of 16.5% will apply from 1 April 2017.

Compliance and Enforcement

The Government's promise to 'Make Tax Digital' has been reaffirmed. This will see quarterly reporting to HMRC with a final year-end confirmation of the previous submissions. It will also draw on the increasing amounts of information HMRC are starting to receive from all types of intermediaries and institutions to 'pre-populate' certain fields of the tax return. Government responses to the consultation process are due to be published in January 2017.

As part of their clampdown on tax evasion, HMRC are receiving additional funding to pursue counter-avoidance. We assume this will mean more enquiries into taxpayers' affairs! Charter Tax is well placed to deal with such enquiries and has worked closely with clients on a number of such cases to date.

The proposed penalty for any person enabling another to use a tax avoidance scheme which is later defeated by HMRC is going ahead. As with all of the announcements, detail is not yet available, but the well advised taxpayer should be aware of the risks of any arrangement they enter into before proceeding.

The Government is continuing its policy of finding out more and more about what goes on outside its borders. As previously announced, there is to be a legally enforceable requirement to correct errors involving offshore interests within a defined timeframe. This follows the announcement of the Worldwide Disclosure Facility, which is widely considered to be the last chance for individuals with any irregularities to come forward and correct them before the penalties increase significantly.

Last but not least the Government will consult on a new legal requirement for intermediaries arranging complex structures for clients holding money offshore to notify HMRC of the structures and the related client lists. We can only imagine HMRC are looking for even more ammunition with which to attack the tax planning arrangements of those with international affairs.

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.

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