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tax lawflash

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Tax Measures in 2013 UK Budget

UK government supports businesses, focusing on the UK's competitiveness while clamping down on tax avoidance and evasion.

On 20 March, UK Chancellor of the Exchequer George Osborne released the UK's 2013 budget. The budget reaffirmed the government's goal to make the UK a competitive place to locate multinational businesses,[1] and it includes a number of measures designed to support businesses and encourage growth and jobs. There are also several measures to address the growing public concern with tax avoidance and tax evasion, designed to ensure that businesses pay their "fair share" of tax. The budget is stated to be tax neutral. There are a number of tax cuts being introduced; this is largely balanced with "spending consolidation".

International Competitiveness

The government has made it clear that it is trying to establish stability and promote growth in business and industry. The rate of corporation tax will reduce from 24% to 23% from 1 April 2013, with a further reduction to 21% from April 2014 and to 20% from April 2015. The 20% rate would mean that the UK would have the joint lowest rate of corporation tax (by comparison with current rates of tax) in the G20 (the group of finance ministers and central bank governors from 20 major economies) by April 2015.

This measure reinforces recent tax reforms in the UK, which have been designed to make the UK an attractive place to locate and headquarter multinational businesses.[2] These reforms include the recent changes reducing the scope of the controlled foreign company (CFC) rules, which have now taken effect for accounting periods beginning on or after 1 January 2013, together with the optional exemption for the profits of overseas permanent establishments. In addition, the "patent box" regime, which was announced in the 2012 budget,[3] will take effect from April 2013. This regime is designed to encourage growth and investment in UK innovation by permitting a reduced rate of corporation tax of 10% on profits from the exploitation of UK and European patents.

To balance these measures, however, the government is very keen to ensure that multinationals pay their fair share of tax in the UK and is at the forefront of the Organisation for Economic Co-operation and Development's (OECD's) focus on "base erosion and profit shifting". The OECD is due to deliver an action plan to be presented to the G20 in summer 2013. The plan will focus on a number of areas of the tax treatment of multinationals, including transfer pricing, allocation of tax in rights between countries, intragroup financing, and other arrangements.

1. For further information, read our 6 December 2012 LawFlash, "Tax Measures in UK Chancellor's Autumn Statement 2012," available at http://www.morganlewis.com/pubs/Tax_LF_UKChancellorAutumnStatement-TaxMeasures_6dec12, and our 24 March 2011 LawFlash, "A Budget for Growth and Reform: Britain Is Open for Business," available at http://www.morganlewis.com/pubs/TaxLF_UKBudgetForGrowthAndReform_24march11.

2. The UK has recently risen to eighth in the 2012 World Economic Forum Global Competitiveness Report, with the government looking to build on this progress.

3. For further information, read our 23 March 2012 LawFlash, "Tax Measures in UK Budget 2012," available at http://www.morganlewis.com/pubs/Tax_LF_UKBudget2012_23mar12.

Tax Avoidance and Evasion

The government has also made it extremely clear that it intends to close the “tax gap” that arises as a result of tax avoidance and tax evasion. The key new weapon against tax avoidance is the introduction of the general anti-abuse rule (GAAR), which will cover corporation tax, income tax, national insurance, stamp duty land tax, and the new annual residential property tax (which is discussed further below). The GAAR will take effect when the Finance Act 2013 obtains royal assent. On its terms, the GAAR will be a very wide rule, although it is stated not to be targeted at the “centre ground of tax planning” but only at artificial and abusive tax-avoidance schemes. Where it applies, abusive tax arrangements will be counteracted on a just and reasonable basis, although HM Revenue & Customs (HMRC) will need to refer cases to an independent panel for its opinion prior to taking any such action (but it will not need to follow that opinion).

In addition to this, HMRC will be consulting on measures to target a “hard core of high risk promoters” who are selling abusive tax-avoidance schemes. The government is also continuing to close loopholes and shut down abusive schemes as it becomes aware of them. It is now clear that the introduction of the GAAR will not replace the raft of targeted anti-avoidance rules in the UK tax code nor prevent the introduction of additional targeted rules. Since April 2010, the government has shut down 30 tax loopholes, partly relying on the disclosure of tax-avoidance arrangements under the UK’s disclosure of tax-avoidance schemes rules.

Coupled with the focus on tax avoidance is a further commitment to reduce tax evasion. The UK has recently entered into exchange-of-information agreements with the Isle of Man, Jersey, and Guernsey, with a view to reducing evasion, and is in discussions with other territories to enter into similar agreements.

Focus on Partnerships and Asset Management

The budget contained some interesting announcements that relate to partnerships, both generally and in the context of investment funds. Although precise details and timing are not clear, the government is intending to review partnership law and is keen to ensure that the UK remains attractive as a domicile for investment funds (authorised funds in particular). The review will cover the rules governing limited partnerships, which may need to be updated—bearing in mind that the current legislation governing limited partnerships dates back to 1907—to “more effectively accommodate” their use for private equity investments. Possible changes may include the introduction of an option for limited partnerships to elect for legal personality.

A targeted package known as “The UK Investment Management Strategy” aims to improve the UK as a location for fund domicile, addressing a concern that the share of funds domiciled in the UK has fallen in the last 10 years, as well as fund management. The package will cover tax, regulation, and marketing and will do the following:

- Abolish (from 2014) a stamp duty charge that applies on the redemption of units in unit trusts and open-ended investment companies
- Consult on a review of the “white list” of non-trading activities, which enables an investment manager to undertake investment management activities in the UK without exposing non-resident fund investors to UK taxation
- Consult on proposals to permit payment of interest without withholding from bond funds to non-UK investors
- Consult on proposals to clarify the extent to which non-UCITS (Undertakings for Collective Investment in Transferable Securities) funds established offshore may be managed in the UK

Also with a focus on partnerships, although less in the private investment fund arena, there will be some focus on potential avoidance techniques involving partnerships, including investigation of whether members of limited liability partnerships should be taxed as partners or whether there is a disguised employment relationship. This is likely to focus on whether those members have the necessary partnership characteristics, including a share of profit and loss, voting rights, and obligations to make capital contributions. There will also be a clamp down on some techniques that have been used to manipulate profits and losses by partnerships that involve companies and trusts. No further details are available in this respect, but changes are expected to be introduced in 2014.

Other Measures to Support Businesses

The government has also announced that it intends to abolish stamp duty (currently at a rate of 0.5%) on transfers of shares of UK companies listed on growth markets, including the Alternative Investment Market (AIM) and the ICAP Securities & Derivatives Exchange (ISDX), from April 2014. This is a welcome measure that should help lower the cost of capital and promote investment.

There will be some other measures designed to ease tax issues that do not reflect the true economic circumstances for companies operating in international markets. These include additional measures to enable the deferral of the "exit charge", which is the charge to tax imposed by reference to the market value of a company's assets when the company moves its residence outside the UK, and provisions enabling companies to calculate capital gains on certain assets, including shares in their functional currency, rather than solely by reference to the sterling acquisition and disposal amounts.

An extension to the Seed Enterprise Investment Scheme (SEIS) has been announced to extend tax relief available in respect of SEIS investments for the 2013–2014 tax year. The SEIS rules are designed to help small early-stage companies raise equity.

A review of the loan relationship rules has also been announced, with a view to modernising the rules to take effect in 2014 and 2015. It is not, however, anticipated that there will be a fundamental change in the way that debt relationships are recognised and taxed in the UK.

Employment

The 2013 budget contains a number of measures and announcements relating to employment that are intended to promote jobs and to encourage wider participation of employees in share ownership. The announcements include the introduction of a new annual allowance of £2,000, with effect from April 2014, which will be available to businesses and charities for offsetting against their employer's secondary national insurance contributions. From 1 September 2013, a new "employee shareholder" employment status will be introduced, under which employees can give up certain employment rights in exchange for shares in their employer. The status is expected to provide certain capital gains tax, income tax, and national insurance contribution advantages in relation to the employee shareholder's shares.

The government has confirmed that it will make a number of simplification changes to tax-advantaged employee share schemes generally to widen the scope of the schemes. The changes, which are expected to take effect from the date of royal assent to the Finance Act 2013, are meant to improve the overall operation and application of certain aspects of the existing tax-advantaged Save As You Earn (SAYE), Company Share Option Plan (CSOP), and Share Incentive Plans (SIP) schemes. In addition, the government is also considering replacing the current system of HMRC approval of tax-advantaged employee share schemes with self-certification by businesses operating such schemes.

The government will also consult on a number of proposals with respect to unapproved share schemes, with a view to simplifying the rules in the future.

Property

It was confirmed in the 2013 budget that the package of anti-avoidance tax measures targeting the residential property sector (non-resident corporate ownership of high-value residential properties in particular) will be introduced in the Finance Act 2013 as was originally announced in the 2012 budget.[4] Since the first announcement, the proposed measures have undergone a consultation process, and draft legislation was made available to the public for comments.

4. For further information, read our 31 January 2013 LawFlash, "Proposed UK Tax Measures on High-Value UK Residential Property," available at http://www.morganlewis.com/pubs/TaxLF_TaxMeasuresOnHigh-ValueUKResidentialProperty_31jan13, and our 8 February 2013 LawFlash, "New UK Capital Gains Tax Charge on High-Value UK Residential Property," available at http://www.morganlewis.com/pubs/Tax_LF_UKCapitalGainsTaxChargeHighValueProperty_08feb13.

The package consists of three measures applicable to UK residential property that has a value greater than £2 million and is acquired and owned by certain “non-natural persons” (such as companies, partnerships, and collective investment schemes). The measures consist of (i) a 15% rate of stamp duty land tax that has been in effect since 21 March 2012 on acquisitions of such property by non-natural persons, (ii) the introduction of the new annual residential property tax on such high-value residential properties owned by certain non-natural persons, and (iii) a new capital gains tax charge in relation to disposals of such high-value residential properties by such persons. A series of reliefs (wider than were originally anticipated) for genuine businesses carrying out genuine commercial activity is expected to be available as part of these measures.

While the final details of the measures will not be known until the legislation is officially enacted later this year, the measures are set to be effective as of 1 April 2013.

Personal Tax

A number of tax changes have been announced, largely to ease the burden of personal taxes. These include the introduction of the statutory definition of “tax residence” for individuals and the abolition of the “ordinary residence” concept to take effect from 6 April 2013.

The government has also announced that the personal income tax-free allowances will rise to £10,000 from 6 April 2014, although the threshold from which the higher tax rate is payable will be reduced from £32,010 (applicable in 2013–2014 tax year) to £31,865 effective from 6 April 2014. The top rate of income tax, which applies to income in excess of £150,000, is being reduced from 50% to 45% from 6 April 2013.

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