KPMG

Autumn Statement 2016

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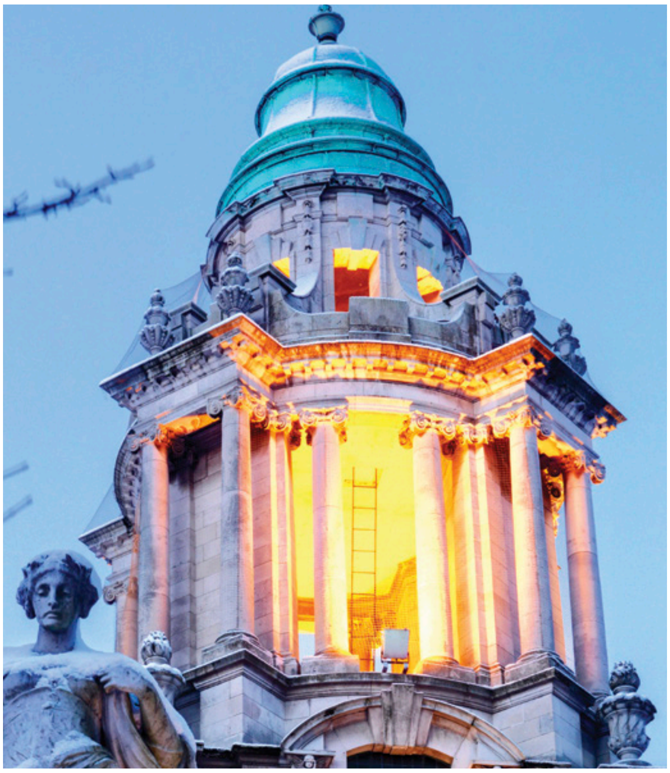


Foreword

Johnny Hanna
Partner and Head of Tax
KPMG in Northern Ireland

Earlier today, and against a backdrop of slower economic growth forecasts and considerable uncertainty around the nature of the exit deal which the UK will strike with the EU, the Chancellor Philip Hammond delivered his first and (as it turns out) last Autumn Statement.

Recognising the importance to businesses of tax certainty and stability the Chancellor took the opportunity to reinforce the Government's commitment to the business tax roadmap previously issued in March 2016. In particular he re-affirmed that the UK corporation tax rate would fall to 17% in 2020. This follows comments earlier in the week from the Prime Minister that the aim is not simply for the UK to have the lowest corporation tax rate in the G20 but also to have a tax system that is "profoundly pro-innovation" ensuring that the UK is "one of the best places for research and development in the world".

In sticking to the key themes within the business tax road map, the Chancellor announced some additional measures to tackle tax avoidance, ensure all individuals living in the UK pay their fair share of taxes and also ensure a level playing field for large and small businesses and between different corporate structures. Further details of these measures will be available when the draft Finance Bill is published in a few weeks.

The news that the Northern Ireland Executive will receive an increase in its capital budget of £250m through to 2020-21 is most welcome. This should provide much needed support in the context of the new Programme for Government priorities of boosting productivity and promoting growth within Northern Ireland. Further details as to how the Executive may allocate this "extra" spending will be unveiled next month when the Finance Minister outlines his budget to the Northern Ireland Assembly.

For small and medium sized businesses (SME's) trading in Northern Ireland the Autumn Statement highlights that the Draft Finance Bill 2017 will amend legislation to ensure that all Northern Ireland SME's have the potential to benefit from the Northern Ireland Corporation tax regime (the 12.5% tax rate for trading profits) expected to be in force from April 2018.

The background here is that under existing legislation SME's would either be fully within or fully outside the Northern Ireland Corporation tax regime depending on whether 75% or more of their UK wide staff time and cost related to work carried on within Northern Ireland. While no details are provided we expect that this 75% condition may be relaxed in the Finance Bill or alternatively that SME's may be permitted to elect into the same regime applying to larger companies. This should be welcome news and level the playing field for all Northern Ireland based SME's.

Welcome measures announced for individuals include confirmation of the increase to the national living wage effective from April (a word of caution for employers to ensure compliance) and also that the personal tax allowances and thresholds are to be increased to £12,500 and £45,000 respectively in 2017/18 rising to £50,000 by 2020. In addition it has been confirmed that the personal allowance will increase in line with inflation going forward.

There have been many significant changes to our tax regime in recent years, including early moves by the UK to adopt the OECD's recommendations under its BEPS project. Many of the changes have been positive and indeed a recent World Bank survey has moved the UK into the top 10 of 'business friendly' tax environments.

As well as highlighting the new announcements from the Autumn Statement, this publication also attempts to summarise the current position on some of the material upcoming measures in advance of the release of draft Finance Bill 2017 clauses to be published on 5 December 2016. Very little mention of "Brexit" negotiations or the timing or direction of same but no doubt that will once again dominate the news over the coming months!

Johnny Hanna
KPMG in Northern Ireland

Taxation of companies and businesses

New measures announced in the Autumn Statement

The Chancellor acknowledged that certainty for business in its tax environment was a key consideration and recommitted the Government to the principles set out in the Business Tax Roadmap issued by the Treasury in March 2016. This includes the commitment to cut the main UK corporation tax rate to 19% in 2017 and to 17% by 2020 (a measure which has already been legislated for in Finance Bill 2016).

Many tax changes coming in next year have already been announced in previous Budgets and are discussed elsewhere in this publication, however, there were several new measures announced today. These include:

Research & Development

The Government recognises that R&D and innovation are key drivers to the economy and an extra £2b a year will be available for the following matters:

- To set up a new fund to support collaboration between business and UK's science research bases. This is intended to increase the number of ideas which are converted into commercial successes and to increase the funding available for research capacity
- To build upon the existing UK tax incentives provided by way of the R&D tax credit regime. Hopefully this may result in the level of enhanced tax relief on R&D expenditure being further improved

In addition, amendments will be made to patent box rules so that where R&D is undertaken on a cost sharing basis by two or more companies, these arrangements will not enhance or detract from the tax incentives available. This would appear to level the playing field regardless of how R&D expenditure is commercially structured.

Reform of substantial shareholding exemption (SSE)

SSE was originally introduced in 2002 to exempt from corporation tax qualifying disposals of shareholdings and has helped attract holding companies to the UK. However, as the Government acknowledges, the regime is quite complex, particularly when compared to foreign counterparts (such as the Netherlands and Luxembourg), and the availability of the exemption is often dependent on factors outside the company's control. OECD activity to target base erosion and profit shifting (BEPS) has prompted many groups to reconsider their holding company locations - SSE reform is a key element in the Government's plan to increase the UK's competitiveness as a holding company jurisdiction. The Government has reacted to these concerns and, following consultation earlier in the year, has announced changes to simplify the rules, remove the investing requirement and provide a more comprehensive exemption for companies owned by qualifying institutional investors.

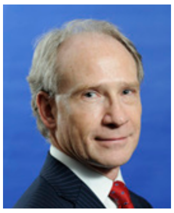
KPMG Comment

"The removal of the investing requirement (i.e. completely removing the before and after disposal trading test for the investor company) alone represents an important positive change to SSE which will go a considerable way to its overall simplification and will bring SSE more into line with its foreign counterparts noted above. Although these changes will be widely welcomed, it should be noted that SSE relief continues to apply only to the disposal of trading companies, unlike similar 'participation' reliefs in other jurisdictions."

Reform of the taxation of non-resident companies

The Government has announced that it will consult on bringing non-resident companies that receive taxable income from the UK into the UK corporation tax regime. This is a very significant change for such companies. Currently, non-resident companies are likely to be subject to UK income tax on that income.

The announcement says the aim is to deliver "equal tax treatment" for UK and non-UK companies receiving UK taxable income. It specifically mentions the application of rules on corporate interest expense deductibility and the loss reforms. However, although many aspects of income tax and corporate tax are similar, it would likely bring in other rules including anti-avoidance rules on the late



Tom Alexander
Partner

payment of interest, specific rules on derivatives and other complex financial instruments and the loan relationships regime more generally. The consultation will be on the "case and options" for making the change so it may be that not all aspects of the corporation tax regime will apply.

The application of the proposed loss reforms could materially accelerate tax liabilities for non-resident companies, but it is not all bad news. The rate at which such companies pay tax may be reduced to 17% when the corporation tax rate has been reduced, rather than the 20% income tax rate which currently applies. Furthermore, the announcement infers that the BEPS 4 interest restrictions that will be coming in for UK corporates in April 2017 will not apply to income tax. On the assumption that non-resident companies are only brought into the UK corporate tax net on UK taxable income from April 2018 at the earliest, they would effectively get a year's grace before the new interest restrictions apply.

KPMG Comment

"The announcement refers to taxable income and it is hoped that this does mean that capital gains made by non-resident companies will not be bought within the charge to corporation tax. This will definitely be one to watch as UK corporates are charged to corporation tax on chargeable gains."

Partnerships

As a follow up to the consultation on partnership taxation, the Government has now decided to legislate to ensure that partnership profit shares are allocated to partners fairly for tax purposes. Draft legislation is to be issued for consultation.

Insurance Premium Tax

As one of the Chancellor's tax raising measures the IPT rate will rise from 10 % to 12 % from 1 June 2017

Anti-avoidance

The Government has restated its intention to be at the forefront of ensuring that individuals and businesses pay the right tax at the right time in the right country. Enablers of tax avoidance schemes that are ultimately defeated by HMRC will be subject to a new penalty regime. A consultation will be held on the proposed requirement for intermediaries arranging offshore structures to notify HRMC of the structures and the related client lists.

David Nelson
Partner

The Chancellor's announcement in Budget 2016 that the UK would unilaterally implement the OECD's BEPS 4 recommended restriction on the tax deductibility of corporate interest expenses illustrated the Government's commitment to 'leading the way' in transforming the tax environment for multinational companies. Whilst there had been speculation by some that the Brexit vote may have forced a delay to the commencement date of the regime, the Chancellor has today confirmed that this will not be the case and the new regime will commence as planned on 1 April 2017. The new rules will apply to all amounts of interest and other financing costs that arise after this date so that groups will be required to prepare accounts for two notional periods of account, one ending 31 March 2017, the second starting on 1 April 2017.

To recap, the headline elements of the new rules will be as follows:

- A Fixed Ratio Rule (FRR) will apply to limit corporation tax deductions for net UK interest expenses (on either 'internal' or 'external' loans) to 30% of a group's UK earnings before interest, tax, depreciation and amortisation (EBITDA);
- A Group Ratio Rule (GRR) will also apply based on the net interest to EBITDA ratio for the worldwide group as recommended in the OECD report. It is envisaged that the group ratio itself is calculated by reference to the net third party interest expense of the consolidated group. This would be divided by an accounting measure of EBITDA for the group to give the ratio. Once the GRR has been calculated it would then apply to calculate the cap of the net UK interest expenses in the same way as the FRR;
- The existing 'worldwide debt cap' regime will be replaced by a new 'modified debt cap';
- A de minimis group threshold of £2 million net of UK interest expense will apply and will override the new modified debt cap (this is expected to remove 95% of UK groups from the new rules); and
- A 'Public Benefit Exemption' will ensure that the restriction does not impede the provision of private finance for certain public infrastructure in the UK where there are no material risks of tax avoidance.
- A few additional points to note in relation to the new regime:
- It remains the case that specific issues for the banking and insurance industry are being considered separately, but the timetable runs in parallel. The general expectation is that the impact of the new fixed ratio rule on banks and insurers should be limited. This is based on a working assumption that the majority of banking and insurance UK groups will be net interest recipients, therefore effectively taking them outside of this regime.
- The proposed Public Benefit Exemption has to date been more narrowly defined than had been hoped. Groups would elect for eligible projects to be excluded from the rules, with eligibility defined as being the delivery of services which provide a benefit to the public under Government policy. The project must be delivered as a result of a contractual obligation with a public body, must be a long term project (i.e. greater than ten years duration), and must generate at least 80% of its gross revenue from the provision of the public benefit services. In a possible relaxation, the Government has today stated that it will "widen the provisions proposed to protect investment in public benefit infrastructure". No details are currently available.
- Finally, the new regime will not signal the end for Advance Thin Cap Agreements (ATCAs). The 'arm's length' transfer pricing test will still apply to debt in addition to the new rules described above and there will therefore still be an opportunity to agree an ATCA with HMRC in the appropriate circumstances.

The expectation is that the new measures will raise in excess of £900 million per annum for the Exchequer from 2017-18 which demonstrates the significant impact of the new rules.

A second round of consultation was issued in May 2016 and closed in August 2016. A summary of the responses received together with draft legislation is expected to be issued by 5 December as part of the general publication of draft Finance Bill 2017 clauses. We anticipate that the

Mat Scott
Partner

Harriet Porter
Manager

Government will hold a further consultation period on the draft legislation in early 2017. Any key dates for comments should be highlighted at the time of the publication of the draft clauses.

KPMG Comment

"Implementation of BEPS 4 recommendations will have a significant impact on existing financing structures and on new investment proposals. Whilst companies are aware of the broad outline of the regime, final assessment of its impact will only be possible once the draft legislation is published along with guidance. The short time frame to April 2017 and the complexity of the expected legislation will make this very challenging".

Anti-hybrid rules

The UK has introduced new rules in relation to hybrid arrangements and mismatches which are effective from 1 January 2017.

It was announced as part of the Autumn Statement that the Government plans to make minor amendments, also effective from 1 January 2017, to the hybrid mismatch rules to ensure they work as intended. No further detail on specific amendments has been provided. As HMRC guidance on the legislation has not yet been published, it is not easy to work out where HMRC think the rules are deficient. However, is anticipated that HMRC will publish guidance ahead of the rules coming into effect on 1 January 2017.

The purpose of the new rules is to address domestic mismatch arrangements. A mismatch is defined as arising in either of the following circumstances:

- where an amount is deductible for tax purposes in one jurisdiction but there is no corresponding amount of taxable income in any other jurisdiction (a deduction/ non-inclusion mismatch); or
- where more than one tax deduction is generated in relation to the same payment either by two different taxpayers or, by the same tax payer in respect of different taxes ('double-deduction' mismatch).
- A mismatch can occur as a result of a payment by a hybrid entity or a payment under/ in relation to a hybrid instrument. The rules are targeted at structures or instruments exploiting differences in classifications of entities/instruments between jurisdictions to achieve one of the mismatch outcomes above.
- Under the new rules, where a mismatch arises, adjustments may be made to taxable profits to counteract the mismatch and provide symmetry in respect of the tax treatment.
- The specific counteraction varies in each case. In general, the rules provide for the UK to:
  - deny tax deductions, or limit their use, when a UK corporate taxpayer makes such a payment; or
  - impose additional taxable income when a UK corporate taxpayer receives a payment that would otherwise give rise to a mismatch.

In addition, the rules introduce the concept of 'imported mismatches' whereby a UK entity in a group may suffer a counteraction adjustment in respect of a mismatch arrangement between other non UK group entities further up the structure. This mismatch is counteracted in the UK despite the UK entity not being a direct party to the mismatch. Such a counteraction will only occur in the UK where the mismatch is not counteracted in another jurisdiction first.

The 'imported mismatch' rules will require the UK companies that are members of multinational groups to have detailed knowledge of the group structure above them and be able to analyse whether or not hybrid mismatches have arisen or will arise. In addition, the rules also expect the taxpayer to be able to form a reasonable view as to the tax treatment of payments/receipts in jurisdictions outside the UK;

- The hybrid mismatch rules are extremely complex and may affect many finance structures within groups. Without published HMRC guidance at this stage it may be difficult for groups to assess certain arrangements where the legislation may be widely interpreted or is perceived to be ambiguous;

- In general, the hybrid mismatch rules are only applicable for arrangements implemented between related parties. However, related parties is widely defined and requires, broadly, only a 25% investment by one entity in another in order to be 'related' for the purposes of these rules;

In addition, the rules can also apply to arrangements between unrelated parties when it is reasonable to suppose that such arrangements have been designed to give rise to a tax mismatch.

It is important to note that a tax avoidance motive is not a condition for the new hybrid mismatch rules to operate. This is a key difference to the UK's existing anti-arbitrage rules, which these provisions replace. The fact that there may be a valid commercial rationale driving a specific arrangement does not in itself prevent the application of the hybrid mismatch rules.

Another important point to note is the lack of transitional provisions for the new rules as there will be no grandfathering of any existing arrangements. It is therefore key for groups to review arrangements between group entities and with third parties now, in order to identify any potential exposure in relation to these rules from 1 January 2017.

KPMG Comment

"A significant challenge in relation to application of the new rules will be accessing relevant information in order to conclude whether or not a hybrid mismatch arises as a result of certain payments or arrangements and whether the entities are related or not. This will be substantially more challenging where the scenario involves financing arrangements with 'related' parties (e.g. related only by virtue of a 25% investment) and third parties."

Marie Farrell
Director

Corporation tax losses reform

The Government will introduce two major reforms to the loss relief rules with the aim of making the rules less restrictive and more in line with international best practice. The changes to the rules, which are modelled on the bank loss restriction regime, are aimed at increasing the flexibility for losses incurred on or after 1 April 2017, to be used within groups against any income. However, from the same date, carried forward losses are restricted to 50% of post-1 April 2017 profits. For banks, pre-April 2015 carried forward losses, which were already restricted to 50% of relevant profits, will be restricted further to 25% of profits.

The new loss relief rules may also apply in the future to all non-resident companies receiving taxable income from the UK following the Government's announcement to consult on non-resident companies being brought within the UK corporation tax regime.

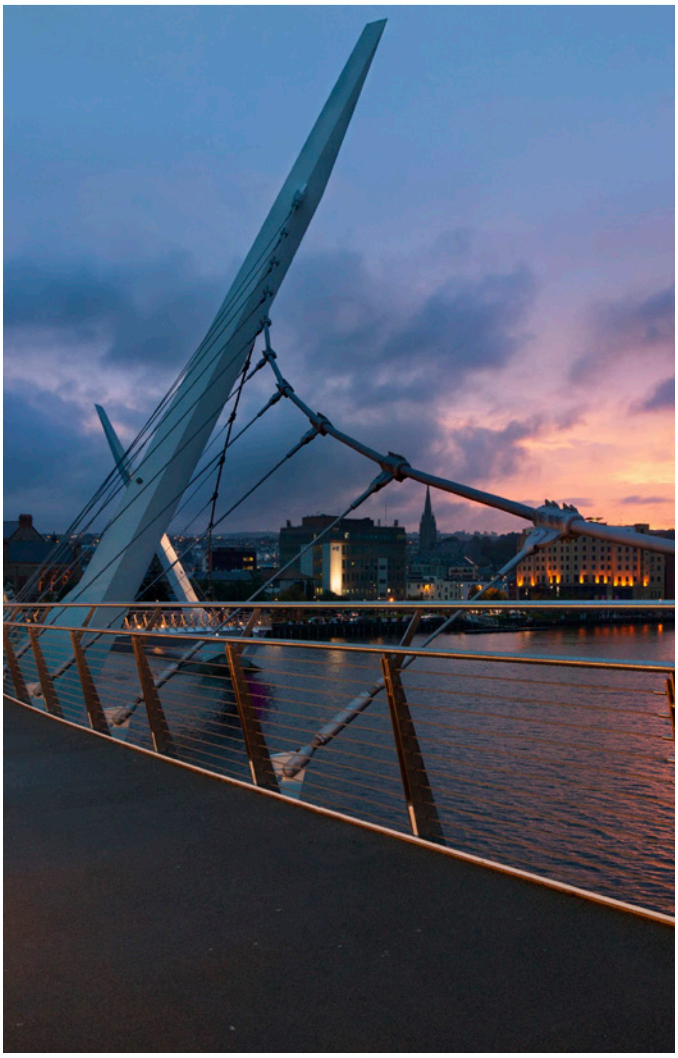
The new rules are extremely complex, with various detailed calculations required on an individual company basis. Thus the additional compliance burden is expected to be considerable. The loss restriction will however only apply if a group has taxable profits in excess of £5m a year meaning that a high proportion of taxpaying companies/groups will not be impacted.

Where the £5m profit figure is exceeded by the group, carried forward losses can only be used against 50% of the profit. Many larger groups that are impacted by the new loss relief rules may find that they have a higher cash tax liability perhaps due in part to the impact of the new rules to be introduced on corporate interest deductibility. The transition to the new loss relief rules will also mean it is often still necessary to divide post-2017 profits between trading and non-trading for calculating the loss set-off for each year, as pre-2017 losses carried forward can only be used against the relevant stream of income in later years. Therefore, the schedular system will remain relevant for pre-2017 losses carried forward, adding yet another layer of complexity.

There will be no change to the ring fencing of capital losses for corporation tax purposes (i.e. they can only be relieved against chargeable gains even where a company has taxable profits from other income sources in the year that a capital loss arises) - the reforms will be confined to trading losses, non-trading loan relationship deficits, UK property losses, management expenses and non-trading losses on intangible fixed assets (i.e. revenue losses).

KPMG Comment

"The new rules will give rise to winners and losers, impose a significant compliance burden, and will also affect some groups' deferred tax assets positions".



Mark Hood
Director

Transaction in land

The Chancellor confirmed the government will adhere to the Business Tax Roadmap issued at the time of Budget 2016. This included measures to expand the UK tax base in relation to UK land and was introduced in Finance Act 2016.

The main thrust of the new legislation is to bring offshore structures which are involved in an activity of trading in or developing UK land, within the UK tax net, regardless of residence. However, the rules apply to UK resident and non-residents alike (and to individuals, partnerships or corporates) and therefore will be of particular interest to anyone involved in business of trading/developing UK land.

A person will be brought within the remit of the new rules if any of the following conditions are met:

a. the main purpose, or one of the main purposes, of acquiring the UK land was to realise a profit or a gain from disposing of the land,

b. the main purpose, or one of the main purposes, of acquiring any property deriving its value from the UK land was to realise a profit or a gain from disposing of the land,

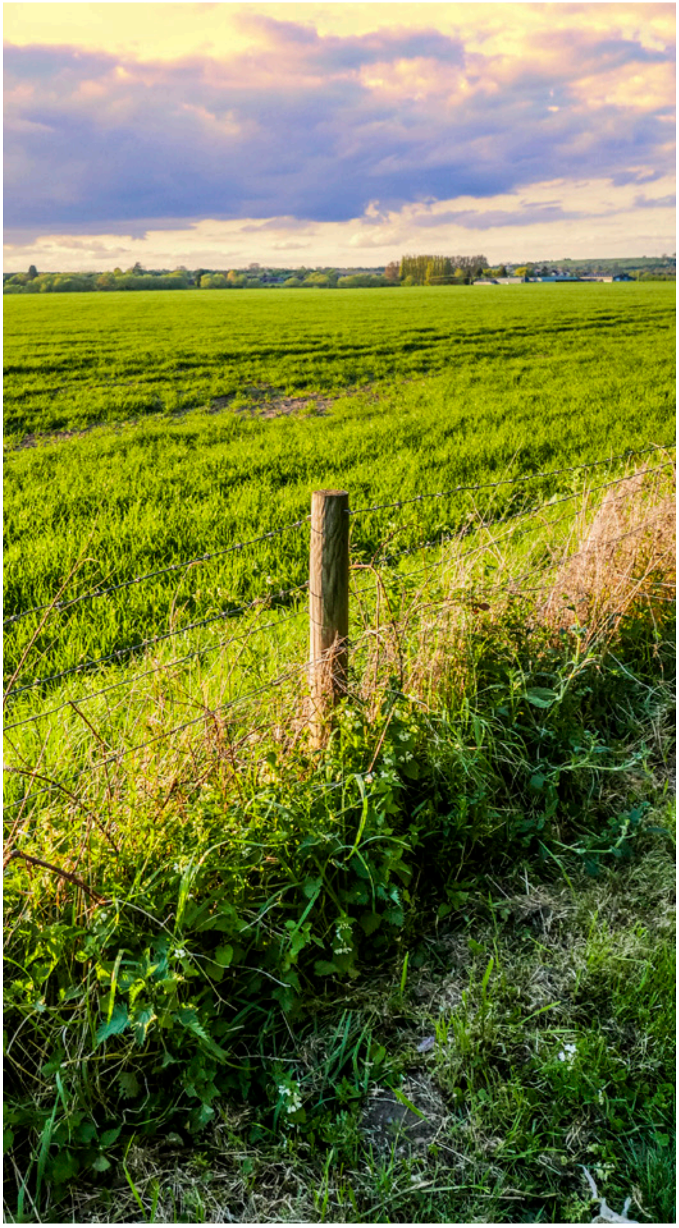
c. the UK land is held as trading stock, or

d. in a case where the UK land has been developed, the main purpose or one of the main purposes of developing the land was to realise a profit or a gain from disposing of the land when developed.

Any profit or gain arising in respect of a disposal caught by these conditions will be treated as trading profits.

Taxpayers have been making representations to HMRC and it is anticipated that HMRC guidance should soon be issued. One area that has caused a certain degree of consternation is about the "main purpose" test and when it will be applicable. It is not expected that property investment activity will be caught but where do you draw the line between property investment and property development? Many property investors will carry out some form of works to maximise long term rental returns.

The new transactions in land rules also include what are known as 'anti-fragmentation rules' such that where an associated company makes a 'relevant contribution' to either the development of the land or any other activities directed towards realising a profit or gain from the disposal of the land, the profit of that associated company is effectively also bought into UK tax. The term "relevant contribution" is quite widely defined and guidance from HMRC as to what they expect to be captured would be welcomed.



Notably, a contribution can include a financial contribution so for companies falling into these provisions, they will need to consider these rules as well as the new hybrid mismatch rules and new interest deductibility restrictions in determining whether they will get a deduction for their financing costs.

The application of the rules does give rise to a number of practical issues, including:

- How to deal with situations where there has been a change intention e.g. from investment to trading or vice versa.
- How the rules will affect a mixed use project (i.e. one involving both investment and trading activities).
- How do you transition into the new regime where there have been historic fluctuations in the carrying value of stock?

The legislation is widely worded which creates uncertainty about what is caught by the new rules and how you calculate what the taxable profits might be. It is hoped that the HMRC guidance, once issued, will provide some clarity on these and other matters that arise from the legislation.

KPMG Comment

"The new transactions in land rules add to the myriad of legislation affecting UK property which has been introduced in recent years. The fact that HMRC have engaged in detailed discussions and consultations with various bodies in the property industry would make one hopeful that the final guidance, once published, will provide relatively clear answers to the many questions currently being asked"

Personal Taxes

Philip Caughey
Director

Susan Smyth
Associate Director

Avoidance and evasion

HMRC are proposing a number of more wide reaching and stringent measures to deal with individuals who are not paying what HMRC believe to be the correct amount of tax. HMRC propose to implement a new penalty regime for failing to correct past offshore non-compliance. The proposals require any person who has undeclared UK tax liabilities in respect of an offshore matter to correct the situation by September 2018, or face tougher new penalties for their "Failure to Correct (FTC)". The affected taxes are income tax, capital gains tax and inheritance tax. HMRC have proposed a table of penalties based on whether the behaviour is careless, deliberate or deliberate with concealment. In the very worst case a standard penalty of 200% is suggested. The penalty table also includes a minimum percentage penalty for both prompted and unprompted disclosures.

There is also an intention to introduce new categories to determine the penalty level – "lower", "standard" and "higher". These levels will be defined in legislation. Lastly, HMRC will also introduce asset-based penalties for offshore inaccuracies and failures.

HMRC are also looking at tackling marketed tax avoidance schemes by introducing penalties for enablers and users of defeated tax avoidance schemes.

National Insurance Contributions (NICs)

Class 2 NICs will be abolished from April 2018 and the Autumn Statement confirms that, following the abolition of Class 2 NICs, self-employed contributory benefit entitlement will be accessed through Class 3 and Class 4 NICs.

Foreign pensions

The Government intends to tax foreign pensions in the same way as UK domestic pensions by bringing foreign pensions and lump sums fully into tax for UK residents.

Tax Compliance

HMRC are seeking to remove the burden of an annual self-assessment tax return from certain individuals.

The Government has confirmed the introduction from 6th April 2017 of a £1,000 trading income allowance and a £1,000 property income allowance. Where individuals are in receipt of income below the new allowances, the income will not be subject to tax and will no longer need to be reported to HMRC. Where gross income receipts are in excess of these amounts, the recipient can simply take the £1,000 allowance as a deduction against their gross income to arrive at their taxable income figure, rather than having to calculate and deduct the actual expenses they have incurred to arrive at their taxable profit.

Tax Digitalisation

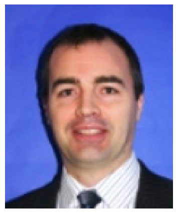
HMRC are also seeking to modernise the UK tax system by encouraging digitalisation. They refer to their proposals as Making Tax Digital (MTD).

The suggested reforms include businesses switching to digital record keeping and providing quarterly updates to HMRC. In addition, for unincorporated businesses there are proposals to allow more businesses to use the cash basis, to eliminate basis periods and to simplify the distinct between capital and revenue. The cash basis would also be extended to unincorporated property businesses. HMRC are also suggesting a voluntary pay as you go system for taxpayers who wish to make voluntary tax payments and designing such a system if it were to proceed with the reform.

KPMG Comment

"The Autumn Statement has not introduced any additional complexities but has missed an opportunity to simplify an increasingly complex UK pensions' tax regime."

Employment Taxes



Eunan Ferguson
Director

The Chancellor's Autumn Statement contains a number of significant announcements and updates that had been well trailed in advance via the various consultation processes throughout the summer and autumn:

- The Treasury had previously highlighted its concerns in relation to the perceived extension in the use of salary sacrifice arrangements, where employees agreed to a reduction in cash pay in return for the provision of benefits by their employer and the proposed restriction of benefits under these arrangements will not come as a surprise following HMRC's consultation process. The announcements in the Autumn Statement confirm tax advantages relating to salary sacrifice outside of the published "white list" will be removed from April 2017, however, they also detail significant grandfathering provisions for arrangements put in place prior to that date until April 2018, whilst arrangements for cars, accommodation and school fees will be protected until April 2021. The addition of ultra-low emission vehicles to a "white list" of benefits unaffected by these changes, such as pension contributions, childcare and cycle-to-work schemes, together with the protection of cars until 2021 appears to provide the fleet industry with a partial reprieve.

  We will need to review the detail of the Chancellor's amendments, however, the scope and timing of these proposals seem to provide some certainty regarding significant administrative issues that could otherwise have been facing employers and employees currently in the process of renewing their benefits selection for the coming year. We would expect a significant increase in salary sacrifice registrations between now and 5 April 2017 to take advantage of this certainty.

- The Chancellor confirmed that the introduction of a requirement for public sector bodies to apply deduction of income tax and NIC from individuals engaged within that sector via their own personal service company (PSC) will be introduced without delay from April 2017. Additionally the Autumn Statement confirms that the 5% tax free allowance typically available under IR35 will also be withdrawn from those working in the public sector to reflect the fact that they no longer bear the administrative burden of deciding whether the rules apply.

  There is real concern within the public sector about the practicalities of moving to deduction at source by the April 2017 deadline, given the lack of published guidance and the list of issues regarding this proposal that still require resolution. Many public sector bodies would need significant lead times to put suitable systems in place to implement such a change. In order to allow both public sector contractors and engagers to prepare for the off payroll working measures we would welcome the publication of the associated legislation and detailed guidance as soon as possible to establish whether all key issues have been properly considered. It is important that these proposals should be demonstrably workable and understandable on a practical level before their mandatory introduction.

  Taken together with the Chancellor's assertion that rapidly rising incorporation and self-employment are hitting tax receipts it appears the Treasury's preferred direction of travel within both the public and private sector is that ultimately the PSC will no longer be responsible for deciding whether the intermediaries' legislation applies to it and instead the PSC's engager will make all relevant deductions at source.

- From April 2018, the Government will introduce employer NIC on termination payments in excess of the £30,000 exemption essentially aligning employer NIC with existing PAYE treatment, however, the full payment will remain outside the scope of employee NIC. In addition, we understand HMRC may consult further on a range of wider changes in relation to termination payments that includes taxing all payments in lieu of notice, contractual or otherwise, abolishing the foreign earnings exemption when the individual has worked overseas and rules to prevent any re-categorisation of existing contractual termination payments as damages to avoid income tax and NIC.

- In measures expected to reduce the administrative burden associated with payroll administration, employment benefits and expenses, the Government will;

  1. legislate proposals to simplify the PAYE Settlement Agreement process in Finance Bill 2017 to take effect from 2018 onwards

2. consider how benefits in kind are valued for tax purposes, publishing a consultation on employer-provided living accommodation and a call for evidence on the valuation of all other benefits in kind at Budget 2017

3. introduce legislation confirming with effect from April 2017 an employee must "make good" on any benefit-in-kind via payments to the employer by 6 July in the following tax year to reduce the value of the taxable benefit assessable on them

4. will align thresholds for Class 1 primary and secondary NIC from April 2017

- The income tax and capital gains tax advantages linked to shares awarded under ESS will be abolished for arrangements entered into on, or after, 1 December 2016 in response to evidence suggesting that the status is primarily being used for tax planning instead of supporting a more flexible workforce. The various reliefs in relation to ESS awards received prior to this date appear, by implication, to remain available.

KPMG Comment

"Whilst the employment tax measures announced by the Chancellor were well signposted, both the introduction of ultra-low emission vehicles to the salary sacrifice "white list" and the certainty offered to employers by the grandfathering provisions are most welcome. Early publication of guidance on the proposed operation of the off-payroll working rules would be welcomed".

Capital Taxes

Kevin Bell
Partner

Kathy Blair
Manager

Non-domiciled individuals

In today's Autumn Statement the Government has confirmed, notwithstanding Brexit, that they will continue with their fundamental proposals to reform the taxation of UK non-domiciled ["non-doms"] individuals, that have been made previously and without deviating from its policy objective in this area. The Government is committed to introducing the changes with effect from 6 April 2017. The proposed reforms represent a significant tightening of the rules relating to non-doms, however they also offer opportunities for effective planning, particularly in the transition to the new rules.

Deemed Domiciled

From 6 April 2017, an individual who is not domiciled in the UK but has been UK tax resident for 15 out of the past 20 tax years, will be 'deemed' domiciled for all UK tax purposes. They will be subject to UK tax on their worldwide income and gains as they arise and will no longer be able to claim the remittance basis in respect of foreign income and gains. They will also be subject to UK Inheritance Tax ("IHT") on foreign and UK assets.

The Government proposals provide an opportunity, for these individuals to rebase their foreign assets on 5 April 2017, if certain conditions are met. As a result, on a future sale of those assets, only gains accruing from 6 April 2017 may be taxable. A further significant concession within the proposals is a one year opportunity from 6 April 2017, for individuals to to rearrange their overseas mixed funds, separating their income, capital gains, and 'clean' capital components of non-UK funds to manage future remittances to the UK.

Individuals approaching 15 years of UK tax residency or who intend to remain in the UK long term should review their asset holding structures now to ensure that efficiency is maintained for future years.

Individuals born in the UK who have acquired a domicile of choice elsewhere, on their return to the UK will be treated as having a UK domicile of origin for all tax purposes. In addition, these individuals will not be able to avail of the rebasing and mixed fund tidy up opportunities outlined above.

Trusts

The original proposals indicated that trusts established by non-doms would be protected from the impact of the new rules. This protection has been modified. Non-UK resident trusts created by non-dom settlors will be subject to special tax rules if the trusts settlor is 'deemed' domiciled in the UK. Income and capital gains can roll up within the trust without UK tax charges arising if there are no additions to the trust. Foreign assets held by non-UK trusts should remain outside the scope of UK IHT.

UK Residential Property

Historically the UK has offered generous tax treatment to overseas investors in UK property. A series of measures have been announced over the last number of years to mitigate the tax benefit. In addition to the capital gains tax charge, an Annual Tax on Enveloped Dwellings was also introduced.

Non-doms have been able to shield the value of UK residential property from IHT by holding the property through a non-UK company. From 6th April 2017, IHT will be extended to offshore structures holding UK residential property.

The proposals will be legislated in Finance Bill 2017 which is expected in early December 2016.

KPMG Comment

"We would have welcomed a delay in the introduction of changes to these complex rules until April 2018 to ensure that the changes, especially around offshore trusts, are properly thought through and will work when implemented. "

Indirect Taxes

Frankie Devlin
Partner

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Associate Director

The Autumn Statement has confirmed the introduction of legislation to strengthen the regime for disclosure of avoidance of indirect tax and a new and more effective penalty for those who participate and enable VAT fraud. As with recent Budgets, an increase in insurance premium tax has also been announced, increasing the rate from 10% to 12% with effect from 1 June 2017. It is also intended to shut down inappropriate use of the flat rate scheme, which was put in place to help small businesses. Although no other significant changes were announced in respect of indirect taxes, it is clear that there is more than enough for businesses to be thinking about regarding Brexit and its impact on supply chains and potential increased costs relating to Customs Duty and VAT. The big question is still "What does Brexit actually mean and will it be a hard Brexit?"

What we do know is that the operation of Customs Duty and VAT will change for both UK businesses that trade internationally and global businesses trading with the UK. Whilst there is much uncertainty as to which of the many trading models the UK will ultimately adopt, following EU regulations, every international trading business will be required to undertake a thorough review of its supply chains.

It is only through such review and understanding the existing supply chain models and identifying how Customs Duty and VAT currently apply that businesses will be able to assess the impact of any required changes and proactively plan to manage these changes.

KPMG's Brexit Indirect Tax Assessment Tool

There are a number of actions that businesses can take now to mitigate any potential Brexit risks and to maximize opportunities. KPMG has developed a tool which uses easily available data to map out and quantify the flows of goods, values, volumes, rates, destinations and countries of origin for goods moving into and out of the UK. Our analysis provides information to help answer the following important questions:

- What is your exposure to additional customs duty costs as a result of Brexit?
- What is your trade profile with the EU?
- What do you import into the UK and where from?
- What do you export from the UK and where to?
- What is the VAT cash-flow impact?
- What Free Trade agreements do you currently rely on?
- What opportunities does Brexit present?
- What immediate next steps should you be considering?

These questions are particularly relevant for businesses that trade on the island of Ireland on a cross border basis. There are many sectors that will be affected not least agri-foods, engineering, pharmaceutical, amongst many others where customs tariff exemptions may not be available.

KPMG Comment

"Whilst no significant indirect changes were announced in the Autumn Statement, Brexit continues to dominate the agenda. We do not know yet precisely what Brexit means, but we do know that businesses need to start planning now for potential changes to their trade models."

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