KPMG
cutting through complexity™

December 11, 2014
2014-115

flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

United Kingdom – Draft Finance Bill Published, Reflecting Many Autumn Statement Measures

by Colin Ben-Nathan, Steve Wade, and Rachel Beecroft, KPMG LLP, London (KPMG LLP in the United Kingdom is a KPMG International member firm)

In This Issue:

The U.K. government's draft 2015 Finance Bill 2015 was published on 10 December 2014[1] with changes to income tax thresholds and the remittance basis charge. Changes to the treatment of gains on the sale of U.K. property by non-U.K. residents and of non-U.K. property by U.K. residents were also introduced amongst other measures.

This draft legislation relates to announcements made in the Chancellor's Budget speech on 19 March 2014, and some of the measures announced in his Autumn Statement last week (see *Flash Alert* 2014-114, 4 December 2014, for details of the Autumn Statement).

Responses to the various consultations undertaken throughout the year were also published.[2]

Why This Matters

There are several measures of note for international assignees and their employers including changes to the remittance basis charge and the impact of the new 90-day rule on the Statutory Residence Test. The main item of interest for employers of internationally mobile employees are the provisions in the draft legislation relating to the sale of property by non-U.K. residents (discussed in *Flash Alert* 2014-113 (3 December 2014), which is covered in more detail below).

Professional tax advisers and global mobility managers should be prepared to inform their clients and employees on international assignment of the changes and the impact on them of the new rules, once they take effect. Assignees to/from the U.K. with property in the U.K. or overseas should be made aware of the potential tax liabilities they will incur if they decide to sell those properties.

Employers will need to check their policies carefully, particularly any provisions regarding exceptions to the policy, and decide whether or not they are prepared to pay the tax on the disposals of main residences. Appropriate adjustments to policies and clear communications should be prepared.

Many of the measures included in the Finance Bill were covered in *Flash Alert* 2014-114 on the Autumn Statement and in *Flash International Executive Alert* 2014-032 (20 March 2014) on the 2014 U.K. Budget. There were no new legislative provisions published that were not included in the Autumn Statement.

Tax Thresholds and Rates

The rates and allowances for income tax, capital gains tax, and National Insurance Contributions (NICs) for 2014/15 were confirmed as previously announced. The nil rate band for inheritance tax purposes remains frozen at £325,000 despite speculation that this would increase.

Changes to Remittance Basis Charge

The increase to the annual charge paid by non-domiciled individuals resident in the U.K. who wish to retain access to the remittance basis of taxation was confirmed. The charge paid by people who have been U.K. resident for 12 out of the last 14 years will increase from £50,000 to £60,000. A new charge of £90,000 will be introduced for people who have been U.K. resident for 17 of the last 20 years.

Sale of U.K. Property by Non-U.K. Residents and of Non-U.K. Property by U.K. Residents

As announced in the government's response to the consultation "Implementing a capital gains tax charge on non-residents," changes will be made to private residence relief (PRR) for capital gains tax (CGT) purposes that affect both U.K. resident and non-U.K. resident taxpayers. Please see *Flash Alert* 2014-113 mentioned above for details.

Currently an individual is entitled to relief from CGT on the sale of his/her only or main residence. Where an individual has lived in the property from the date of purchase to the date of sale, any gain arising on the sale is covered by PRR and fully exempt from CGT. The last 18 months of ownership of the property are covered by the relief, even where the individual has not actually lived in the property during that period.

Taxpayers with more than one residence are able to elect to choose which residence is their main residence for PRR and this will continue. However, a new rule is being introduced, from April 2015, for situations where the property is located in a different 'territory' to that in which the taxpayer is resident. The new rule will restrict the availability of PRR for both non-U.K. residents with property in the U.K. and U.K. residents with property located in another country (the draft legislation refers to "territory").

The Finance Bill contains the draft legislation to incorporate these proposals into law from 6 April 2015.

KPMG Note

The meaning of "territory" for this purpose is not entirely clear, but we understand from discussions with Her Majesty's Revenue and Customs (HMRC), for example, that it will mean the whole of the USA rather than a single U.S. state, and the same will apply for other countries with separate states, provinces, or cantons.

From April 2015, any residence owned by a U.K. or non-U.K. resident will only be capable of qualifying for PRR if it is located in a territory in which the individual is resident or, where it is located in a different territory, the individual meets the "day count" test in relation to the residence.

The Day Count Test

The day count test will be met if the individual or his or her spouse/civil partner spends at least 90 midnights in the property in the relevant tax year (although no one day can be counted twice by virtue of both the individual and their spouse/civil partner being there at the same time). This will be important for assignees whose families remain at home.

Where the individual owns the property for only part of a tax year, the draft legislation has clarified that the 90-day threshold in the day count test will be reduced pro-rata.

While there appear to be a couple of drafting issues with the legislation, the above is the apparent intention of the day count test.

Periods of Absence and the Need for Re-occupation

As well as the last 18-month period of ownership, other periods of absence from the property (in particular the period whereby the individual cannot occupy the property because he is required by his employer to work outside the country) can also be covered by the relief provided the property is occupied as the main residence both before and after the period of absence. This is particularly important for assignees from the United Kingdom.

Periods during which the property is let/rented may also qualify for a measure of relief from CGT.

KPMG Note

General Comments

An issue with the new rules is that assignees who are working full-time outside the U.K. and who sell their main residence before reoccupying it, may have a CGT charge unless they meet the 90-day rule. KPMG LLP (U.K.) considers this is an area for concern and will be discussing this point with HMRC in the coming weeks (see further below). The position for U.K. tax residents is that they will continue to obtain PRR for their U.K. homes as under the current rules. For individuals who retire abroad but keep their homes in the U.K., they will be treated as entitled to PRR for the years they were in the U.K. but will be subject to the 90-day rule thereafter for each tax year from 2015/16 onwards (apart from the last 18 months of ownership).

For a U.K. tax resident with an overseas second home, from 6 April 2015, he or she must satisfy the new 90-day rule (unless he or she is also tax resident in the relevant country), even if that individual has already elected for the second home overseas to be his or her main residence for PRR purposes.

Impact on Assignees and Their Employers

Many assignees to and from the U.K. keep a residential property in their home location and may sell the property while on assignment. Typically these assignees, particularly those from the U.K., would expect such a sale to be free of U.K. CGT. However, such assignees may be caught by these new rules.

Assignees who are tax equalized (i.e., are guaranteed a net after-tax salary with the employer paying the tax due) may expect the employer to pay the CGT bill on the disposal of their old pre-assignment residence. This is because, in broad terms, the equalization policies typically intend that the assignee would pay the tax that he would have paid at home, and if he had been resident he would have been able to claim PRR.

Employers will need to check their policies carefully, particularly any provisions regarding exceptions to the policy and decide whether or not they are prepared to pay the tax on the disposals of main residences and include appropriate comment in their tax equalization policy.

Employees may be more reluctant to take up overseas assignments unless they receive some assurance that any tax costs associated with the sale of their former private residence will be met. In addition, employers that decide to meet these costs could face higher costs for overseas assignments.

New 90-Day Rule and Statutory Residence Test

As discussed in *Flash Alert* 2014-114 (4 December 2014), the new 90-day rule may also have an impact on an individual's residence status under the Statutory Residence Test (SRT).

Under the third automatic overseas test of the SRT, an individual is non-U.K resident for a tax year if:

- he/she works sufficient hours overseas,
- there are no significant breaks,
- the number of U.K. days where more than 3 hours work is performed in the U.K. is less than 31, and
- the number of days in the U.K. is less than 91.

KPMG Note

An individual could theoretically meet the new 90-day count test for PRR and satisfy the above SRT test. However, this would be a very risky strategy as staying just one extra day would break the third automatic non-residence test and potentially make the individual U.K. tax resident for that tax year. Where the individual has a spouse or civil partner, their spending days in the property (or another dwelling owned by the individual in the same territory as the property) for which PRR is desired may be preferable, subject to their own SRT status and personal circumstances.

Reporting of Employee Expenses and Forms P11D Dispensations

Under current rules, business expenses reimbursed to assignees have to be reported to HMRC (and the assignee) unless a relaxation known as a Form P11D "dispensation" is applied for.

However the government has published draft legislation to simplify this administration of employee expenses. This measure will remove the Form P11D employer reporting requirement and the need for employers to apply for the reporting dispensation in relation to qualifying expenses (i.e., those for which the employee in any event would be able to claim a deduction). Instead, the expenses will be exempted from tax, subject to anti-avoidance rules which will apply in relation to salary sacrifice arrangements (see below). This change will apply from 6 April 2016.

KPMG Note

The lead time is to enable employers to take stock of what their dispensations presently cover and to adjust to the new regime. This measure has generally been welcomed by employers, although concerns have been expressed about the need for good quality guidance and support from HMRC to assist employers in transitioning to the new approach.

The government has also decided to prevent qualifying expenses and benefits, as well as "scale rate" payments, being paid tax-free where this occurs as part of salary sacrifice arrangements. In particular, the government has reiterated its concern regarding the reduction in employee and employer NICs that results from implementation of salary sacrifice in this situation, which they say is "not in line with the spirit of the relevant NICs regulations". This is clearly aimed at arrangements whereby tax- and NIC-free scale rate payments are paid in lieu of salary and to cover the employee travel and subsistence expenses of site-based workers.

Footnotes:

1 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385160/Draft_clauses_and_explanatory_notes_for_Finance_Bill_2015.pdf .

2 See**:**

- https://www.gov.uk/government/consultations/employee-benefits-and-expenses-exemption-for-paid-or-reimbursed-expenses .
- https://www.gov.uk/government/consultations/employee-benefits-and-expenses-real-time-collection-of-tax-on-benefits-in-kind-and-expenses-through-voluntary-payrolling .
- https://www.gov.uk/government/consultations/employee-benefits-and-expenses-trivial-benefits-exemption .
- https://www.gov.uk/government/consultations/employee-benefits-and-expenses-abolition-of-the-8500-threshold-for-lower-paid-employment-and-form-p9d .

* * * *

The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click **here**. To learn more about our GMS practice, please visit us on the Internet: click **here** or go to http://www.kpmg.com .