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December 11, 2015
2015-147

flash Alert

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

United Kingdom – 2016 Draft Finance Bill Published

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In This Issue:

The U.K. government's draft Finance Bill 2016 was published on 9 December 2015. The Bill contains measures concerning the changes to the rates and thresholds for income tax and National Insurance Contributions, modifications to personal tax allowances and deductions, more details on the Apprenticeship Levy, simplification and clarification of the rules governing Restricted Stock Unit-type awards to employees, as well as other measures related to pensions, benefits-in-kind, and travel and subsistence relief.

Rather than publishing the entire draft Bill as one document, the individual clauses and explanatory notes have been published separately[1]. The Bill incorporates the changes announced in the Autumn Statement and Spending Review 2015.[2]

Why This Matters

There were no new legislative provisions published that were not already provided for in the Autumn Statement. That being said, there are several measures of note for international assignees and their employers. Where these measures give rise to additional costs, it is important that these are considered and budgets adjusted accordingly. Where appropriate, payroll administrators should be planning for adjustments to withholdings.

Draft Finance Bill 2016 Key Provisions for Individuals and Employers

Tax Thresholds and Rates

The rates and allowances for income tax, capital gains tax, and National Insurance Contributions (NICs) for 2016/17 were confirmed as previously announced. (See GMS *Flash Alert* 2015-144 (2 December 2015).)

Apprenticeship Levy

The Chancellor announced an Apprenticeship Levy in the Summer Budget. The recent Autumn Statement confirmed that it will be set at 0.5 percent of an employer's 'paybill' (see GMS *Flash Alert* 2015-144 (2 December 2015)), with a flat allowance against the Levy of £15,000 for all employers. So, employers with an annual wage bill of £3 million or less (on government estimates, over 98 percent of employers) will pay nothing.

KPMG LLP (U.K.) Note

Draft legislation is expected in the new year; therefore, we have no further details at this time on exactly how the 'paybill' will be calculated or on the collection method.

The Levy is a significant new cost for large employers. According to government estimates, it is set to raise £11.6 billion by 2020/21. We know that 'paybill' means an

KPMG LLP (U.K.) Note (cont'd)

employee's total earnings, but does not include benefits-in-kind. It is not yet clear, though, whether 'earnings' directly follows the income tax definition. If it did then there is a query around the treatment of any benefits dealt with under new voluntary payrolling rules that take effect from next April: as these are re-classified as earnings, will they be included in the 'paybill' figure? If the answer is "yes," what impact would that have on the take-up of voluntary payrolling (the simplification it offers may not counter-balance a direct increase in costs)? The alternative is that "earnings" is defined as for Class 1 NIC purposes. We shall have to wait and see.

The Levy is to be collected "alongside PAYE," so those businesses that face a liability will need to await more detail on how the reporting and payment requirements tie in with their existing requirements under Real Time Information (RTI).

Employers may also be keen to know how they will be able to use their vouchers in their "digital account." Large employers could have to commit to significant apprenticeship training programmes to be able to use all of their vouchers. It may not be enough to support programmes in their own work-place and many employers are already considering what else they could do, for example using them to support apprenticeships at their suppliers. We anticipate considerable interest and engagement in the proposals that emerge over the coming months as employers start to consider exactly how the Levy affects them.

Deemed Domicile

As reported in *Flash Alert* 2015-088 (17 July 2015) at the Summer Budget 2015, the government announced a number of potential changes in respect of the taxation of individuals who claim to be non-U.K. domiciled ("non-doms"). In October 2015, a consultation document was published and details of the questions asked as part of that consultation were reported in *Flash Alert* 2015-123 (12 October 2015). The consultation closed on 11 November 2015.

In summary, the government's proposals introduced changes for two groups of non-doms: long-term U.K. residents and returning U.K. doms (that is to say, an individual born with a U.K. domicile who subsequently acquires a domicile of choice outside the U.K.). It was proposed that all non-doms who had been resident in the U.K. for at least 15 out of 20 years would become deemed U.K. domiciled from the start of the next tax year and would be taxed accordingly in the United Kingdom. For returning U.K. doms, it was proposed that they would reacquire their U.K. domicile for the duration of their stay in the United Kingdom. For inheritance tax purposes at least, a "residence condition" has now been attached to these rules such that to be caught, the returning U.K. dom must have been resident in the U.K.:

(a) at some point in the past; and

(b) in at least one out of the two prior tax years.

These measures are due to take effect from 5 April 2017.

KPMG LLP (U.K.) Note

Although the consultation has now closed, the government has only published the draft amendments to the inheritance tax legislation to implement the changes and has not published any other draft legislation to implement changes to the income and capital gains tax. In this respect, a response to the consultation and draft legislation is expected to be published in early 2016 and draft legislation to be published also at that time.

While we were expecting the income and capital gains tax draft legislation on 9 December, we welcome the fact that the government is taking the time to consider the representations made during the consultation period. This should still allow for adequate time to review and comment on the amended legislation, given the proposals will not take effect for over a year.

Employer-Related Securities – U.K. Tax Simplification

The main changes, and the changes most relevant for employers of internationally mobile employees, announced at Autumn Statement 2015 relate to Restricted Stock Unit (RSU) type awards (i.e., a conditional right to receive a specified number of shares on a future vesting date if conditions are met), which are a popular form of employee share award in U.K. listed and international companies.

Following the significant changes to the U.K. tax and NIC sourcing rules for internationally mobile employees who have been awarded employment-related securities and options that took effect from 6 April 2015, there has been a lot of uncertainty on the correct charging provision for RSUs and whether the 'securities option' or 'general earnings' rules apply. This has a number of implications including whether the new NIC sourcing rules apply. It is proposed that, with effect from 6 April 2016, RSUs will be taxed under the 'securities options' rules rather than the 'general earnings' rules.

HM Revenue and Customs (HMRC) indicates that the other changes "are intended to simplify and clarify the law and make some minor technical corrections."[3] They cover tax-approved plans and, in the main, deal with procedural matters which are not covered in detail in this *Flash Alert*.

KPMG LLP (U.K.) Note

The clarity around RSU awards is welcome, although as noted in our commentary on the Autumn Statement, there will still be some uncertainty in relation to RSUs where the employer has the right under the plan to settle awards in cash and not shares. There is also uncertainty in an international context regarding the potential for a double charge to social security if the overseas rules do not mirror the U.K. rules. The proposed changes may also have implications for the capital gains tax base cost when shares obtained through RSU awards are sold; this will need to be analysed further by reference to the plan rules.

Simplification of Expenses and Benefits Administration

Trivial Benefits

The anticipated statutory exemption for trivial benefits-in-kind costing less than GBP 50 which was expected to take effect from 6 April 2015, has now been included in the draft Finance Bill 2016. An annual cap of GBP 300 for trivial benefits provided to office holders in close companies and employees who are family members of those office holders has also been included. A corresponding NIC exemption will be included in NIC legislation.

The changes to the trivial benefits legislation will take effect from 6 April 2016.

Relief for Travel and Subsistence and Employment Intermediaries

The draft Finance Bill clauses include the expected measures restricting the availability of travel and subsistence (T&S) relief for those engaged through employment intermediaries, including umbrella companies and personal service companies (PSCs).

From 6 April 2016, when considering whether T&S relief is available, an individual who is engaged through an employment intermediary and is supplying personal services to a third party and is under the "supervision, direction or control" of another person when carrying out his or her work will have to consider each engagement as a separate employment. This is intended to help ensure that such individuals cannot obtain relief for home-to-work travel (for which relief is not generally available to employees), while retaining relief for other T&S expenses.

This change will apply from 6 April 2016.

KPMG LLP (U.K.) Note

A consultation on the proposals was conducted over the summer, and the government's response (published alongside the draft Finance Bill clauses) notes that a key concern of respondents was the subjective nature of the "supervision, direction or control" test. Despite these concerns, the government has gone ahead with the use of the test, stating in the response document that although "a minority of engagements will be hard to categorise…clear guidance should help ensure businesses and individuals are able to understand when a worker is under the right of supervision, direction or control in the manner they undertake their work." HMRC is intending to review the existing guidance on supervision, direction, or control, and provide further guidance in relation to the T&S restriction ahead of its implementation.

Pensions

Although the results of the consultation issued in the Summer Budget 2015 are not expected until the 2016 Budget (expected in March 2016), there are two important pension reforms taking effect from 6 April 2016, that will impact many international assignees (and their employers, to the extent that tax equalisation arrangements apply to those individuals). These measures were reported in *Flash Alert* 2015-083 (10 July 2015).

Reduced Lifetime Allowance

The lifetime allowance for pension savings will be reduced from GBP 1.25 million to GBP 1 million. Transitional protection for pension rights already exceeding GBP 1 million will be introduced alongside this reduction so that the change is not retrospective.

Reduced Annual Allowance for High Earners

As well as the reduction to the lifetime allowance, a restriction on tax relief for pension contributions for taxpayers with income over GBP 150,000, will be introduced from April 2016. The GBP 150,000 threshold includes the value of pension savings. The restriction on tax relief will be achieved through the pro-ration of the Annual Allowance from GBP 40,000 to a minimum of GBP 10,000 for income of GBP 210,000 or more.

KPMG LLP (U.K.) Note

This is a potential additional cost for both employees and employers and should be considered when assignment cost projections and budgets are prepared. This has the potential to affect both contributions to U.K. and non-U.K. pension schemes and advice should be taken to determine that the new limits are applied correctly when calculating the U.K. taxes payable.

Employer-Provided Living Accommodation

The government announced at the Autumn Statement 2015 that it would issue a call for evidence on the current tax treatment of accommodation provided by employers. This has now been published[4].

Reform of Wear and Tear Allowance for Landlords

Under current rules, landlords renting fully furnished residential properties in the U.K. are entitled to claim relief for the "wear and tear" on their furnishings. The wear and tear relief is 10 percent of the gross rent (less council tax and water rates). This flat rate relief can be claimed even if it exceeds expenditure during the tax year and is an alternative to claiming the actual costs of replacement furnishings.

At the Summer Budget 2015, the government announced that from April 2016, the wear and tear allowance would be abolished and replaced with relief for costs actually incurred. A consultation was issued on the changes and that closed on 9 October 2015.

Following the consultation, the government decided not to make any changes to its proposals and draft legislation has now been issued to implement this. Individuals now have eight weeks to comment on the draft legislation issued.

"Simple Assessment"

At the Autumn Statement 2015, the government announced that as part of its aim to digitise and simplify the tax system, from the date the Finance Act 2016 takes effect, HMRC will be able to issue tax assessments to taxpayers already within self-assessment and who have "simple" tax affairs. This is where HMRC has access to all the information needed to make that assessment. Legislation has now been published to put this measure into effect.

Footnotes:

1 See: https://www.gov.uk/government/publications/finance-bill-2016-draft-legislation-overview-documents/overview-of-legislation-in-draft and https://www.gov.uk/government/collections/finance-bill-2016 .

2 See GMS *Flash Alert* 2015-144 (2 December 2015).

3 See: https://www.gov.uk/government/publications/employee-share-schemes-simplification-of-the-rules/employee-share-schemes-simplification-of-the-rules

4 See: https://www.gov.uk/government/consultations/employer-provided-living-accommodation-call-for-evidence

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The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom.

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