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Budget 2011 — Open for business? (Swiss version)

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'The Government recognises that non-domiciled individuals make a valuable contribution to the UK economy and the current tax rules can discourage them from investing their foreign income and gains in the UK'.

In the Budget yesterday the UK Government kept its promise to introduce a fairer, more stable and more competitive tax system in the United Kingdom. As promised in June last year, a majority of the measures announced yesterday will be subject to detailed consultation before being introduced in April 2012 at the earliest.

Yesterday's announcements contain much welcome news for individual taxpayers (including the absence of a number of adverse changes that had been predicted and the introduction of various changes intended to encourage investment into the UK). We have examined some of the highlights below.

Non-domiciled taxpayers

There has been a review of the taxation of non-domiciled UK residents ('non-doms') pending since the Conservatives and Liberal Democrats published their 'Programme for Government' in May 2010. It has now been confirmed that the Government will issue a consultation document in June 2011, with a view to implementing various reforms to the remittance basis of taxation (including some welcome simplification) with effect from April 2012.

Although the detail has yet to be announced, the outcome of the review seems likely to be somewhat more positive than commentators had feared. The Chancellor explicitly acknowledged the wider economic contribution made by non-doms.

The remittance basis charge – From 6 April 2012, those non-doms who have been resident in the UK for 12 or more tax years will continue to be able to enjoy the benefit of the remittance basis of taxation, but at the higher cost of £50,000 a year (in addition to tax due on any income or gains arising in or remitted to the UK). The existing £30,000 charge will be retained for those non-doms who have been resident in the UK for between 7 and 12 years.

Remittances for commercial UK investments – A potentially more significant change is that, also from 6 April 2012, non-doms will be able to remit foreign income or gains to the UK for 'commercial investment in UK businesses' with no charge to UK tax. Although the scope of this change is not yet clear, it demonstrates a commitment to encouraging inward investment by non-doms and appears to indicate that the Government has no current intention to introduce a more wide-ranging reform of the way in which non-doms are taxed in the UK. Indeed, the Government has confirmed that there will be no other substantive changes in this area for the remainder of this Parliament.

Statutory residence test

There is currently no statutory test for UK tax residence. Whether or not an individual is tax resident in the UK is ascertained by applying a combination of the rules contained in statute, case law and HMRC's interpretation. Recent changes to these rules have left the law uncertain – particularly for those seeking to leave the UK. This lack of certainty has placed the UK at a competitive disadvantage in attempting to attract wealthy individuals and inward investment.

After a period of consultation, a statutory residence test will be introduced from 6 April 2012.

While the certainty this will bring is welcome, some caution should be exercised. A statutory test will clarify the status of many individuals, but the current rules will continue to apply for the time being. Consequently, individuals who may be affected by a change in the rules (for example those who intend to be non-UK resident for five tax years and then return) will need to be mindful that the rules may change during their period of non-residence. The new rules may make it harder for individuals who are currently treated as non-resident to maintain that treatment in future years.

Overall, however, increased certainty in this area, coupled with the other changes announced, can only increase confidence in the stability of the UK regime and encourage wealthy individuals who have been deterred from coming to the UK in recent years to reconsider their position.

50% income tax rate

While no immediate or future reduction of the 50% top rate of income tax was announced, the Chancellor made it clear that he regarded the 50% rate as a temporary rather than a permanent measure, and indicated that it may be reduced later in this Parliament.

Tackling tax avoidance

The Government has announced the launch of a new HMRC anti-avoidance strategy. HMRC will initially focus particularly on tackling disguised remuneration, stamp duty land tax (SDLT) planning and transactions involving companies and capital gains.

The new anti-avoidance strategy will comprise three core elements:

(i) preventing avoidance at the outset where possible;

(ii) detecting it early where it persists; and

(iii) countering it effectively through legislative change or challenge.

The manner in which these aims are to be achieved is interesting. Certainly, there seems to be a welcome commitment to tackling avoidance in a structured rather than a piecemeal manner (although inevitably it is still possible that some changes will be made at the last minute and possibly retrospectively).

Prevention – Prevention of tax avoidance is primarily to be achieved by a robust, principles-based tax system. However, there will also be policy reviews of high-risk areas to the extent that further perceived risks remain. The first two areas to be reviewed are schemes focussing on income tax losses and the commercial use of unauthorised unit trusts for tax avoidance.

Detection – There is to be further consultation on the introduction of a General Anti-Avoidance Rule ('GAAR') and a possible extension of the scope of the Disclosure of Tax Avoidance Schemes ('DOTAS') rules.

The concept of a GAAR presents a number of difficulties, not least of which is ensuring that it is formulated widely enough to catch those transactions it is intended to catch, but not so widely that it has unintended consequences. It remains to be seen how these difficulties will be resolved.

Counteraction – Tax avoidance is to be countered primarily by a combination of legislative change and an operational strategy which will include identifying taxpayer groups perceived as being of concern, including wealthy individuals and large businesses. The third element of the counteraction part of the strategy is litigation, which is no doubt designed to make clear that while HMRC do not wish to litigate, they will be prepared to do so where appropriate.

It would appear that selected groups of taxpayers can expect further attention from HMRC. This will increase the importance of proper compliance with their UK reporting obligations (particularly in the light of the increased penalties which were announced last year and will take effect on 6 April 2011). It may also discourage such groups from, for example, using planning schemes which are subject to the DOTAS rules. However, HMRC have previously indicated that individuals who have made a full and complete disclosure under the Liechtenstein Disclosure Facility (LDF) will not automatically be subject to particular scrutiny.

Unscheduled changes – Despite the Government's pro-active approach to tackling tax avoidance, there will inevitably still be some last-minute changes to block abuses. In recognition of this, an amended Protocol sets out the criteria that Ministers undertake to use in deciding whether an announcement of immediate legislative change is needed and justified, and the procedure that must be followed in such cases. It is to be hoped that the Protocol will operate to minimise the uncertainty and instability caused by excess piecemeal retrospective legislative changes.

Other changes

Capital gains tax: Entrepreneurs' Relief – The lifetime limit on Entrepreneurs' Relief, which was increased from £2 million to £5 million in the June 2010 Budget, will be increased further to £10 million with effect from 6 April 2011.

Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs) – The rate of income tax relief given under the EIS will increase from 20 per cent to 30 per cent of the amount subscribed for shares from 6 April 2011. The amount that can be invested under the scheme will increase from £500,000 to £1 million from 6 April 2012.

Legislation is also to be included in Finance Bill 2012 to expand the range of companies and investments that will qualify for EIS and VCT reliefs.

SDLT – As already 'spotlighted' by HMRC, a number of SDLT anti-avoidance rules will be introduced to counter known planning that seeks to avoid a charge to SDLT through sub-sale, alternative finance and exchange arrangements.

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