UK Finance Bill 2012 Draft Clauses - getting there?

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Unusually perhaps, much excitement surrounded the publication of draft clauses for Finance Bill 2011 last week. These clauses set out some, if not all, of the promised changes to residence and domicile.

While draft finance bills may not usually be thought of as especially exciting, there was some justification: a number of hopeful sounding changes were initially mentioned in the Budget in March and positive Consultation documents were published in July.

The consultation marked a commitment to expanding the remittance basis and also creating certainty around when someone is and is not UK resident, and consequently there was unsurprising interest about how these proposals would be reflected in the draft legislation. Now that has been published, the real question is whether the optimism was justified. For the moment, the indicators are positive, although we are certainly not fully there yet.

Certainty and residence – the bad news first

Unfortunately, no draft legislation was released on the proposed statutory residence test. It is now intended that this will be included in Finance Bill 2013, and be effective from April 2013.

It goes without saying that this is disappointing, not least because the current state of the law is unclear at best, and downright confusing at worst. In the absence of any clear rules on when someone is and is not UK resident, advisers have to discern the position through a combination of HMRC practice and case law. This is unhelpful in terms of being able to provide certain and definitive advice, and undermines the attractiveness of the UK for a number of non domiciliaries and international clients for whom certainty of treatment is a key requirement.

That said, it is preferable that the legislation gets it right, and hopefully the wait will be worth it in this respect. The promise of certainty, while not quite the same thing as actual certainty, is at least hopeful.

Inward investment – and now for some good news

In a much more positive move, legislation on the proposed expansion of the remittance basis to permit inward investment was published. This looks generally sensible, and permits UK resident non domiciliaries ('RNDs') to use offshore income and gains to invest in a 'qualifying investment' in the UK without that being taxed as a remittance.

The category of 'qualifying investment' is generous, and includes companies carrying on trading activities, including the commercial development of residential property. The company can be AIM listed, and the investment can be in the form of shares or securities, with no minimum or maximum investment limits.

Gains on the investment will be subject to capital gains tax in the normal way, but of course this need not be the case if the investment is made though a trust or if an investment qualifying for Entrepreneurs Relief or the new Seed Enterprise Investment Scheme is made.

In a heartening response to the comments made during the consultation period, provided the original amount invested is removed offshore within 45 days of the investment being realised, no tax charge will arise on the original remittance. This had originally been suggested to be two weeks.

There is little doubt that this should prove attractive to a number of non domiciliaries and enhance the UK's attractiveness as a place to live and do business. Inevitably, the wish list is not fully complete yet and a number of additions would be welcome:

- Partnerships are not yet permitted investments. However, these may be included in Finance Bill 2013.
- There is as yet no pre investment clearance procedure. Again this may be included in Finance Bill 2013.

There are proposals to permit investment gains to be retained onshore to discharge the UK tax liability without this being a remittance, and this may be included in Finance Bill 2012, with draft legislation being released early in the New Year. This would certainly be helpful.

From £30,000 to £50,000

The draft legislation contained provisions to increase the remittance basis charge ('RBC') to £50,000 per year for UK RNDs who have been resident for 12 out of the 14 years immediately preceding the year of assessment. The RBC remains at £30,000 for those who have been resident for 7 out of the 9 tax years immediately preceding the year of assessment. It remains possible to opt in and out of the remittance basis year by year.

While the increase in the RBC was never going to be popular, it is unlikely to have a significant effect, and it is estimated that 3,500 individuals will choose to pay the higher charge in 2012-2013. What is helpful is the commitment that no further changes will be made during the present Parliament.

Foreign Currency Bank Accounts

The charge which can arise on currency gains on foreign currency bank accounts is to be removed from April 2012. This move will affect both domiciled and non domiciled UK residents bringing money denominated in foreign currencies to the UK. Foreign currency is presently an asset for capital gains tax purposes and subject to tax on gains realised on deemed conversion. This can present a compliance burden for individuals in terms of keeping track of exchange gains, and the simplification is welcome.

A boost for the art market

In a far reaching measure, a number of assets purchased with offshore income and gains which are brought onshore and then sold will not be subject to capital gains tax. This marks a departure from the present position and may prove significant to the art market.

Nominated Income

In a further simplification, the very complex rules surrounding the remittance of nominated income are to be amended. At the moment, income which is nominated as the income with respect to which the £30,000 charge arises should not be remitted to the UK, and if it is remitted the mixed funds rules apply, often with complex consequences. There will be an exemption for £10 of nominate income to be remitted. While not a seemingly large step, this should help in terms of reducing complexity, which is helpful.

Gifts of Pre Eminent Objects

Further to consultation, there is to be legislation to encourage donations of pre-eminent works of art or historical objects to the nation in return for a tax reduction. The relief will grant an income or capital gains tax reduction to individuals making donations, and a corporation tax reduction for companies making donations.

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