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Asia Autumn Statement 2013

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We set out below the personal tax highlights from today's Autumn Statement. Unsurprisingly the main focus of the statement was the UK's economic progress, and many of the measures announced are UK focussed.

Many are of much wider and greater impact however. You will see we lead with the changes announced to the taxation of non resident investors in UK real estate. This was one of the most leaked announcements, and as expected George Osborne confirmed that UK capital gains tax will apply to gains on sales of property by non residents. This will only apply from April 2015, so there is a good 15 month window to explore restructuring opportunities if credible. Much detail remains to be explored, including whether the measure will apply only to gains accruing after April 2015, and whether direct real estate holdings or real estate funds and property companies will also be caught.

Again firmly within the international sphere, the focus on offshore evasion continues apace, with the announcement that HMRC will focus on extracting as much as possible from information gained from the tax information exchange agreements it has entered into. The message of the paramount importance of compliance really just keeps getting louder.

Equally, the changes to partnership taxation may have an impact on international fund managers and partnerships, and not exclusively UK ones, and will have to be closely taken into account by anyone conducting any UK business via a partnership structure.

Fairness for all?

Today's Autumn Statement must have been a rather more enjoyable one for George Osborne to deliver than many would have expected twelve months ago. With economic indicators looking rather perky, he was able to deliver a fairly upbeat message. In the midst of that were some recurring themes, not least the idea of fairness. A much repeated sentence in the Autumn Statement document is the idea that 'those with the most in society make a fair contribution'. This raises a host of economic, political and philosophical questions, which we don't even try to answer here. The key question for today is what does that mean for our clients in real terms.

Well, not surprisingly, there is a continued focus on tax avoidance, including through the use of partnerships, and the extension of capital gains tax to non resident investors in UK residential property. The latter seems relatively sensible given that the UK has been one of the very few countries which hasn't imposed tax on property gains derived by non residents, and given the apparent robustness of the prime London residential market it is to be hoped this proposal will have little economic impact. Overall, there weren't many surprises, and, as ever, the devil will be in the detail which will be available with the publication of the Finance Bill.

Capital gains tax and residential property

The unknown unknown

The major unexpected announcement today is that the principal private residence relief from capital gains tax is to be curtailed so that the current provision which automatically exempts a proportion of the gain on the disposal of a property equivalent to the last three years of ownership which has at any time been the vendor's main residence has been restricted to 18 months. This will reduce the extent to which individuals will be able to claim an exemption from tax where they own more than one residence.

The more known unknown

Less surprisingly, as it had been widely leaked beforehand, the Chancellor today announced that capital gains tax would be extended to the sale of residential properties owned by non-residents. This builds on the measures that took effect from April this year that already impose capital gains tax on some residential properties sold for more than £2m by companies (including non-resident). However, there appears to be no threshold to this tax, so all properties will be included whether they are owned by oligarchs or hard working families. Perhaps the only surprise is that the tax will not take effect until April 2015 after a period of consultation, rather than with immediate effect.

One interesting question this raises is whether there will be a flurry of property sales between now and April 2015, or whether as many suspect most non resident property owners are longer term investors who are therefore less focussed on capital gains tax applying to gains raised. Let's hope it doesn't trigger an unexpected sell off of UK property.

The Chancellor's Statement confirmed that non-residents will benefit from the same exemption from tax on their primary residence as residents do currently, but it is not clear whether they will have the same flexibility to determine which property is to be treated as their main residence.

There is also no reference in the documents released today to a rebasing of the values of the properties caught by this new tax. Such a rebasing was provided for on the extension of capital gains tax to companies earlier this year, so is to be hoped that it will apply in this case as well.

New enforcement mechanisms are likely to be proposed in the consultation, which could result in purchasers or solicitors being obliged to withhold part of the purchase price paid to a non-resident to ensure that HMRC can collect the new tax.

It also remains to be seen whether this tax will be extended to the sale of shares in foreign companies that own UK property.

Partnerships

Mixed use partnerships

As part of a wider review of certain parts of the partnership rules announced in the Budget earlier this year, the Chancellor confirmed today that measures would be introduced to counter the manipulation of profit and loss allocations by partnerships to achieve a tax advantage. Some partnerships allocate excess profits to corporate partners, subject to lower rates of tax, in circumstances where an individual partner may later benefit from those profits, or arrange for partnership losses to be allocated to individual partners, rather than corporate partners, to enable the individual to access certain loss reliefs.

The aim of the new rules is to reallocate the excess profits of a corporate partner to individual partners where the corporate partner's share is excessive and either the individual has the power to enjoy the corporate partner's share or there are deferred profit arrangements in place such that the individual will at some point benefit from the corporate partner's share. The new rules will extend to individuals who are not partners. Certain loss reliefs will also be denied to individual partners.

Following the recent trend for imprecise legislation, seen recently in the disguised remuneration rules introduced to target employee benefit trusts, the draft legislation published today requires profit shares to be varied between partners on a 'just and reasonable basis', 'notional profit' to be calculated by reference to the 'time value of an amount of money' equal to a partner's contribution to the business, and relies on the notion that it is 'reasonable to suppose' that the profit allocated to a corporate partner is intended to indirectly benefit an individual partner. This will no doubt create a myriad of uncertainly, potentially requiring partners to undertake some sort of transfer pricing exercise between themselves. It is therefore likely that many mixed use partnerships will abandon the use of corporate partners for deferred compensation. In this respect perhaps the legislation will achieve what it is intended to. Although this is completely at odds with the objectives of the FSA Remuneration Code which are to encourage rather than penalise deferred remuneration.

There is a requirement for the profit allocated to a corporate partner to constitute the 'deferred profit' of an individual member. It is therefore hoped that the innocent warehousing of surplus profits, where the intention is for those funds to be reinvested directly back into the business, will not be caught.

Dual contracts and non-domiciliaries

HMRC has long had a focus on the use of dual contracts whereby non-domiciled taxpayers have employment contracts with different duties in different locations for different employers. If appropriately structured and implemented, to date no UK income tax has been due on the income from a foreign employer for foreign duties.

This measure will prevent non-domiciled UK resident taxpayers from using dual contract arrangements to artificially assign part of their employment income to an overseas employment contract to avoid tax liabilities in the UK. This is interesting in so far as at the moment the arrangements only works if the income genuinely reflects the value of the duties performed overseas, but HMRC has sought to investigate a very significant number of such arrangements and has looked very closely indeed at whether too much income has been assigned to the overseas contract. It seems likely that this measure will seek to put beyond doubt what constitutes an artificial assignment, although we will have to wait for the Finance Bill to see the real detail.

Employment intermediaries facilitating false self-employment

Continuing along a well-worn path, and still focussing on employment income, the Chancellor announced further measures to counter the avoidance of employment taxes and national insurance contributions by using employment intermediaries facilitating false self-employment. This builds on the rules that came into force earlier this year to restrict the use of personal service companies.

Tax avoidance more generally

As part of the wider fight against tax avoidance, it was announced that users of schemes which have been shown not to work will be obliged to settle their dispute with HMRC, and penalties will be attached for non compliance. In addition, taxpayers who are using schemes which have already been defeated in court will have to pay the tax at issue upfront. This places the cashflow benefit squarely with HMRC, and must be an incentive to make taxpayers settle even where they consider their facts merit a different treatment.

Offshore evasion strategy

We already know that HMRC has more information than the British Library, and through the use of the CONNECT computer system it is able to use that information highly efficiently. It was announced today that a project will be launched in early 2014 to ensure it is ready to exploit data generated by the new automatic tax information exchange agreements (TIEAs) into which it has entered with the Isle of Man, Guernsey, Jersey, the Cayman Islands, Gibraltar, Bermuda, Montserrat, the Turks and Caicos Islands and the BVI. This only serves to confirm the ever increasing importance of effective compliance.

Tax compliance targets

A slightly curious announcement is the fact that HMRC's compliance yield targets are being increased by the Government so that is has to secure a further £3.7billion by the end of 2015-16. This must mean there will be an ever greater focus on investigations and compliance.

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