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Switzerland Autumn Statement 2013

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Fairness for all?

Today's Autumn Statement must have been a rather more enjoyable one for the UK Chancellor George Osborne than many would have expected twelve months ago. With economic indicators looking relatively favourable, he was able to deliver a reasonably positive message. Not surprisingly, the main focus of the Statement was the UK's economic progress, and many of the measures announced focus on the UK domestic market. However, the other themes include fairness and combating tax avoidance and evasion, and a number of the measures in these areas will have a wider impact.

We set out below the personal tax highlights which are primarily relevant in an international context. As predicted, these include the extension of capital gains tax to non-resident investors in UK real estate.

Capital gains tax and residential property

Extension of capital gains tax to non-residents

Currently the UK is one of the relatively few countries which does not charge non-residents to tax on gains derived from UK real estate. However, as anticipated the Chancellor today announced that capital gains tax would be extended to the sale of residential properties owned by non-resident individuals. Perhaps the only surprise is that the change will not take effect until April 2015 after a period of consultation, rather than with immediate effect.

The change builds on the measures that took effect from April this year, which already impose capital gains tax on some residential properties sold for more than £2m by offshore companies. However, the new measure does not appear to include a threshold, so all properties will be included regardless of their value.

One interesting question the change raises is how it will affect the UK real estate market. Many people suspect that most non-resident owners of UK real estate are longer term investors who are therefore less focussed on capital gains tax, but it remains to be seen whether the new measure will trigger increased property sales between now and April 2015, particularly in the prime London residential property market.

Much of the detail of the new measure has yet to be clarified, including whether it will apply only to gains accruing after April 2015 and whether real estate holdings of funds and property companies will also be caught. It also remains to be seen whether this tax will be extended to the sale of shares in foreign companies that own UK property, which will otherwise be a significant loophole.

The Chancellor's Statement did confirm that non-residents will benefit from the existing 'principal private residence' exemption for main residences. However, it is not yet clear whether they will have the same flexibility as UK residents to determine which property is to be treated as their main residence for the purposes of the exemption.

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

Principal private residence relief for main residences

One unexpected announcement today is that the principal private residence relief from capital gains tax is to be restricted. Under the current rules, the exemption applies automatically to the proportion of the capital gain on sale which relates to the last three years of ownership if the property has at any time been the seller's main residence (even if it no longer is). The three-year period is to be reduced to 18 months with effect from April 2014. This will reduce the extent to which individuals will be able to claim an exemption from tax where they own more than one residence.

Dual contracts and non-domiciled UK residents

It is not uncommon for non-domiciled taxpayers who work in more than one country to have separate employment contracts with different employers to cover their duties in and outside the UK. Under current rules, if these arrangements are appropriately structured and implemented, the remittance basis applies to income paid by a non-UK employer in respect of duties performed outside the UK.

HMRC are known to regard dual contract arrangements with suspicion and already scrutinise them very carefully. The UK Government now proposes to legislate to prevent non-domiciled resident taxpayers from using dual contract arrangements artificially to assign part of their employment income to an overseas employment contract to avoid tax liabilities in the UK. 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. The new measure will take effect from April 2014.

Offshore evasion strategy

Not surprisingly, the UK continues to focus on offshore tax evasion It was announced today that a project will be launched in early 2014 to ensure that HMRC are ready to exploit data generated by the UK's recent tax information exchange agreements with the Isle of Man, Guernsey, Jersey, the Cayman Islands, Gibraltar, Bermuda, Montserrat, the Turks and Caicos Islands and the British Virgin Islands. This only serves to confirm the ever-increasing importance of effective tax compliance.

Today's Statement also contained an update on the UK-Swiss 'Rubik' tax agreement and the Liechtenstein Disclosure Facility (LDF). Apparently the UK-Swiss agreement is now expected to generate a total of £1.9 billion over the forecast period. This is less than originally anticipated and according to the Statement the UK government is therefore working closely with the Swiss authorities to ensure that the agreement is being fully and properly implemented. On the other hand, the LDF has so far yielded over £800 million, which is well in excess of the original estimate of £630 million by 2013-14.

Apart from that, the Statement confirmed the recent announcement by David Cameron that the UK will be creating a publicly accessible central registry of company beneficial ownership. This is intended to help to prevent the misuse of companies for tax evasion, money laundering and other crimes. The Statement does not contain any further details about the proposal or the timing of its implementation.

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