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UK Budget 2015

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The Budget that wasn't

Much was expected of George Osborne when he got to his feet today to reveal the details of a hotly anticipated Budget – would it be an election giveaway, a vote winner, a last hurrah or preparation for another five years?

Well – it wasn't much of anything really. Or rather it was short on substance but long on politics (and bad jokes). We have some good headline grabbers – the end of tax returns is inspired – but it should come as no surprise that there were no surprises. The reality is that this year's real Budget will come just after the election, just as the Emergency Budget in 2010 was what mattered that year.

All of that said, what was announced today and what can we make of it? A few themes can be picked out – aside from jokes about two kitchens or fraternal relations that is…

A fair focus

Fairness was, as has become habitual, a recurring theme. We now know that fairness means many things, including a crackdown on avoidance, an increasingly tough approach to offshore disclosure facilities and milk and honey for 'hard working families'. There was though little in the way of new crackdowns, with the real emphasis on toughening up existing legislation. There is much to commend this approach, and if nothing else it avoids adding to the thicket of somewhat overlapping measures that are already in force. There remains the rather crucial question of what fairness means, and this has become ever more pressing since this idea alone seems to define what is and what isn't acceptable tax planning. This is important if only because without a clear and consistent policy approach, taxpayers remain mired in uncertainty. Of course the debate is developing and ongoing, and of course fairness is incredibly important, but so is legal certainty, and it is to be hoped that once the populist underpinning of some of today's announcements dies down, there will be some further certainty on what does and does not comprise acceptable planning by private client taxpayers.

Disclosure – going, going, gone

Leading though with things that are not here to stay, there has long been the expectation that the Liechtenstein and the Crown Dependencies Disclosure facilities would terminate early. It was confirmed today that both these will close early, and be replaced by a tougher new facility running from 2016-mid 2017, which is designed to be a last chance facility, operating on harsher terms, requiring at least 30% of the tax at stake in addition to interest and penalties, be paid by those wishing to come forward under it. Importantly, the new facility will offer no immunity from criminal prosecution in 'appropriate' cases. It will be interesting to see what this will mean in practice.

The Lichtenstein and Crown Dependencies Disclosure Facilities will now close in December this year, so anyone wishing to get under the wings of these more attractive facilities will have to move very fast indeed.

General Anti Abuse Rule penalties to be introduced

The GAAR remains in many ways relatively untested – there do not appear to have been any opinions of the Advisory Panel since it was set up in July 2013, and therefore it remains difficult to assess its precise impact and scope. Nevertheless, the GAAR is likely to be having a deterrent effect. As part of a strategy to enhance the deterrent effect, if nothing else, it was today announced that legislation will be introduced in a future Finance Bill that introduces a specific, tax-geared penalty that applies to cases tackled by the GAAR.

DOTAS to be strengthened

Since its introduction nearly a decade ago, the Disclosure of Tax Avoidance Schemes (DOTAS) legislation has been amended and strengthened several times. Further enhancements were announced today and these include measures requiring employers to notify their employees of their involvement in avoidance schemes connected with their employment, enabling HMRC to identify users of undisclosed avoidance schemes and introducing protection for those who wish to provide voluntary information to HMRC about non-compliance.

Accelerated Payment Notices (APNs)

APNs permit HMRC, in an increasing range of cases, to issue demands for disputed tax upfront where liability has not yet been established. The regime is already fraught with controversy, APNs have placed a number of taxpayers in serious difficulty by making demands for payment where liability has not been established and investigations were opened many years prior to the introduction last year of APNs.

Add to this the fact that it is expected that there will be a number of judicial review challenges to the APNs which have already been issued, and one has to question the prudence of today's announcement that HMRC will issue an additional 21,000 APNs, as this runs the risk of simply miring an already stretched HMRC in further disputes and costs. This smacks of easily populism and appears to have little to do with a genuine crackdown on avoidance.

Capital gains tax

Entrepreneurs' Relief

With effect from 18 March 2015, the availability of Entrepreneurs' Relief, which reduces the rate of capital gains tax to 10% on up to £10 million of gains arising on the sale of interests in trading businesses, will be restricted as follows:

- the rules that allow shareholders in joint venture companies to benefit from the relief are to be restricted, so that a shareholder who only has a small indirect stake in a trading company will no longer qualify for Entrepreneurs' Relief.
- the application of Entrepreneurs Relief to a disposal of goodwill to a related close company, which had been perceived as being exploited for tax avoidance purposes, will also be abolished.

Wasting assets

Legislation will be brought in from 6 April 2015 to restrict the application of the Court of Appeal's ruling in *Executors of Lord Howard of Henderskelfe v HMRC*, where the sale of the 240 year old painting of Omai by Sir Joshua Reynolds was treated as a wasting asset with a predictable life of less than 50 years and exempt from capital gains tax. From 6 April, this exemption will only apply to assets used in a business which owns them, not where they are lent to the business owner (as was the case for the Omai painting).

Non-residents and capital gains tax on residential property

The Government has confirmed the Finance Bill 2015 will contain provisions which will effect as of 6 April 2015 and non-UK resident individuals, trusts, personal representatives and closely controlled companies will be subject to capital gains tax on gains accruing in relation to UK residential property on or after that date.

Inheritance tax

Deeds of Variation

Deeds of Variation have long been used as a way of varying the disposition of an estate post-death in order to take account of changed family circumstances since the preparation of the Will and also to take advantage of tax benefits which may not have been utilised on death. In his Budget speech, the Chancellor announced a review of the use of Deeds of Variation as part of the Government's wider clamp-down on tax avoidance strategies.

This announcement is concerning as, if the review concludes that Deeds of Variation are being misused, this could mean the end of this important planning tool. However, the review may well go in the same direction as the many previous proposals to end the use Deeds of Variation and end up on the legislative cutting room floor. This is more likely if the main purpose of the announcement was to allow the Chancellor an opportunity to take a swipe at The Leader of the Opposition, whose family was revealed to have used a Deed of Variation following his father's death.

Taxation of trusts

The changes to the taxation of lifetime trusts proposed in last year's Budget, but postponed in the Autumn Statement, have now been resolutely kicked into touch. The Chancellor has confirmed that the proposal to introduce a so-called 'settlement nil rate band', which would be spread across all lifetime trusts created by the same settlor, will not now be introduced.

However, the Government will still pursue ways of reducing tax avoidance through the use of multiple trusts (so-called 'Rysaffe planning'). The details on this are to follow, but it has been confirmed that:

- The rules will only apply to additions to more than one relevant property trust made on the same day;
- There will be a de minimis of £5,000 (i.e. additions of £5,000 or less will not be treated as a same day addition – allowing for additions to cover trustee fees, for example);
- The calculations will be simplified so that non-relevant property will not have to be included in the calculation of the relevant property charges (i.e. ten year anniversary charges and exit charges); and
- The grace period for additions to existing will trusts where the will was executed before 10 December 2014 will be extended to include deaths occurring before 6 April 2017.

Tax simplification

The Government confirmed that it is still committed to the simplification of the taxation of trusts, including the ten yearly charges on discretionary trusts.

The exemption for inheritance tax on the death of emergency services personnel and humanitarian aid workers announced in the Autumn Statement will apply for deaths occurring on or after 19 March 2014. This extends the current exemption for members of the armed forces whose death is caused or hastened by injury while on active service to members of the emergency services and humanitarian aid workers responding to emergency circumstances.

Farming

The Chancellor recognised the difficulties posed by factors beyond farmers' control by extending 'profit averaging' from two to five years from April 2016. The rules, introduced to soften the impact of fluctuations in profits caused by weather, commodity prices and other external factors, will now allow farmers to average the profits of five consecutive years for income tax purposes where these vary by more than a set percentage (between 25% and 30% of the higher figure). This is something which the NFU has been lobbying for and which will help farmers plan, specifically those who would otherwise pay different rates of tax year to year, for the future.

Business rates

It was announced on Monday that there will be a review of national business rates intended to consider significant changes to the business rates system and ensure that it is 'fair, efficient and effective'. A report will be issued by March 2016.

Compliance

As has been mooted for several years, the Government is to press ahead with the introduction of 'digital tax accounts', starting in 2016 and to be fully rolled out for individuals and small businesses by 2020.

These digital accounts will replace the annual tax return and will take data already available to HMRC, such as payroll information provided through the PAYE system and combine it with information from other third parties, such as banks, pension providers and investment funds and managers to pre-populate an online account which can be used to calculate the amount of tax payable. This models a system already in place in Denmark.

The information released today states that taxpayers will be able to 'register, file, pay … at any time of the year' and the introduction of this system may well see the end to the traditional 31 January rush to complete a tax return. A 'pay as you go' system will allow taxpayers to spread tax payments over time, although this appears to allow for payment in advance rather than in arrears!

Simplifying the compliance burden is something that the Coalition has sought to do since it came to power in 2010 and while any simplification is to be encouraged, the privacy issues associated with the wider dissemination of personal data will need to be addressed.

Pensions

The key note of the Budget with regard to pensions was again flexibility. The Government has announced that as of April 2016 the tax rules will be changed to allow pensioners who have already purchased an annuity will be able to sell that annuity to a third party, subject to the agreement of the annuity provider. The pensioner would then be able to take the proceeds of the sale directly or draw them down over a number of years subject to tax at their marginal rate.

In line with the recent pattern, the Government has said that it will reduce the Lifetime Allowance for pension contributions from £1.25 million to £1 million from 6 April 2016. It is proposing that transitional protection for rights already over £1 million will be introduced and the Lifetime Allowance will be indexed annually in line with CPI from 6 April 2018. It is interesting to note that according to Government statistics over 96% of individuals currently approaching retirement have a pension pot worth less than £1 million.

Rumours of a restriction on tax relief on payments into pensions or the level of annual contributions fortunately proved to be unfounded. For now at least…

Corporation tax

The Government has proposed that new restrictions be imposed for corporation tax purposes upon a number of reliefs relating to carried-forward losses. The intention appears to be to ensure that such losses are only ever absorbed by future profits of an economically genuine character, as opposed to profits derived from contrived arrangements that are motivated primarily by the desire to accelerate the utilisation of historic losses. The precise mischief has not been clearly explained in the initial set of Budget Day materials but the Government's concern presumably relates to the possibility of taxable profits being generated from contrived activities between related parties, where the result is the reduction of actual tax exposure through absorption of historic losses combined with the generation of fresh tax deductions by the party bearing the cost of such arrangements.

Savings and ISAs

Following on from the Autumn Statement announcement that a surviving spouse or civil partner's ISA allowance will be increased to include the ISA holdings inherited from their spouse or civil partner, there were further 'give-aways' for savers.

Help to Buy: ISA

The new Help to Buy: ISA will be available from autumn 2015. These cash ISAs will attract a 25% bonus from the Government at the point that a first time buyer acquires a home as a residence. The bonus will attach to an initial £1,000 saved and then £200 a month with a total cap of £12,000, limiting the bonus to £3,000. This ISA cannot be used in addition to existing ISAs and contributions will utilise part of the individual's annual ISA allowance. The bonus will only be payable on properties acquired for £450,000 or less in London or £250,000 or less anywhere else in the UK.

Existing ISAs

Regulations will also be introduced in autumn 2015 to allow ISA savers to replace cash previously withdrawn without the replacement counting towards the saver's annual subscription limit. With effect from 1 July 2015, the definition of 'qualifying investments' for ISAs and Child Trust Funds will be extended, with a consultation taking place in the summer on further extensions.

Personal Savings Allowance

A new Personal Savings Allowance covering bank and building society interest is to be introduced, election permitting, from 6 April 2016. The Personal Savings Allowance for basic rate tax payers will be £1,000, £500 for higher rate payers and zero for additional rate payers. The obligation on banks to apply an automatic 20% deduction will also cease from April 2016.

Income tax rates and thresholds

From 6 April 2016 there will be one personal allowance for all regardless of when they were born set at £10,800 for that tax year and £11,000 in the following year. The basic rate threshold for the year commencing 6 April 2015 was confirmed at £31,785 with a higher rate threshold therefore of £42,385. For the following two years the basic rate threshold will be set at £31,900 and £32,300 respectively and consequently the higher rate thresholds at £42,700 and £43,300 respectively.

Alcohol

And on a lighter note… the duty rates on general beer, spirits and lower strength cider will be reduced by 2%, the duty rate on low strength beer will be reduced by 6% and the total duty rate on high strength beer will be reduced by 0.75%. Oddly, initial indications are that these changes will only take effect from 23 March 2015 rather than the day of the Budget, which is traditional (perhaps to take advantage of the higher rates for the Six Nations finals this weekend…).

The draft Finance Bill is due to be published on 24 March and is expected to receive Royal Assent before this Parliament is dissolved on 30 March.

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