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THE AUTUMN STATEMENT

The Autumn Statement, the last in its current format, took place on 23 November 2016 and the associated draft 2017 Finance Bill legislation was published on 5 December 2016.

Recently the Autumn Statement has been the chance for the government to announce forthcoming changes to personal taxation but this year the fact that there has been a change of government and the Brexit vote meant that changes relevant to the financial services industry were fewer than usual.

The changes most relevant to the financial services industry, based on the Autumn Statement alone, are considered below.

INCOME TAX

Personal allowances and tax bands

No change was announced to the levels of the personal allowances and tax bands, previously announced in the Summer Budget, that will apply from 2017/18. Rates of tax remain the same.

Personal savings allowance and dividend allowance

No changes were announced here.

CAPITAL GAINS TAX (CGT)

Capital gains tax annual exempt amount

The CGT annual exempt amount for 2017/2018 was not announced in the Autumn Statement but, with 1% CPI inflation to September, it is likely to rise to £11,300.

Capital gains tax rates

No announcement was made on any change to the rates of CGT on capital gains which exceed the annual exempt amount. These are likely therefore to continue to be at 10% (where gains fall within the investor's basic rate income tax band) and 20% (where gains fall within the investor's higher rate tax band). For gains that are related to carried interest or residential property, the equivalent rates that are likely to be 18% and 28%.

Of course, the availability of entrepreneurs' relief means that a 10% rate of CGT applies on the disposal of certain business interests. Finance Act 2015 made some amendments as to what constitutes a 'material disposal of a business asset' and 'associated disposals' thereby restricting entrepreneurs' relief in some cases. However, in the Autumn Statement it was announced that the government will consider bringing forward legislation to amend the changes made by Finance Act 2015 to entrepreneurs' relief in order to support businesses by ensuring that the relief is available on certain genuine commercial transactions.

NATIONAL INSURANCE CONTRIBUTIONS (NICs)

The 2017/18 National Insurance Contribution (NIC) thresholds will rise marginally, thanks to the 1.0% September inflation number. There will be a re-alignment of the starting points for employer's and employee's NICs at £157 a week – the two had been £1 apart. The upper earnings/profits limit will rise to £45,000, in line with the higher rate threshold. There is no change in the main employer and employee NIC rates for 2017/18.

Class 2 contributions (currently £2.80 a week and now generally collected via self- assessment in January) will be £2.85 a week in 2017/18 and then disappear from 2018/19. The Class 3 voluntary rate will rise by £0.15 to £14.25.

From April 2018 employer's NIC will also be levied on employee termination payments to the extent that they exceed the normal £30,000 income tax-free ceiling.

INHERITANCE TAX (IHT)

There were no new announcements in the Autumn Statement relating to inheritance tax, other than a minor extension of the existing exemption for gifts to political parties. It was also confirmed that the changes to the IHT treatment of UK residential property would go ahead.

Exemption for gifts to political parties

From Royal Assent of the Finance Bill 2017, inheritance tax relief for donations to political parties will be extended to parties with representatives in the devolved legislatures, as well as parties that have acquired representatives through by-elections.

Inheritance tax charge on 'enveloped' UK residential property

It was confirmed that the government's proposals to charge inheritance tax on UK residential property, when it is held indirectly by a non-domiciled individual through an offshore structure (such as a company or a trust), will be implemented as planned from April 2017.

PENSIONS

The following were the main announcements on pensions:

Money Purchase Annual Allowance

The headline change is the reduction of the Money Purchase Annual Allowance (MPAA) from £10,000 to £4,000 with effect from 6 April 2017. As a reminder, the MPAA is triggered by one of a list of events, for example drawing income from flexi-access drawdown, taking an uncrystallised funds pension lump sum (UFPLS), establishing a scheme pension from a SSAS or by purchasing a flexible annuity.

Why the reduction? When the MPAA was introduced in 2015, the government said at that time that if it felt that the MPAA system was being abused, it would be amended. An example is the abuse comes in the form of an individual investing £10,000, receiving tax relief on the full amount and then withdrawing the £10,000 and only paying income tax on 75% of that amount. Whether or not there has been evidence of the abuse is speculative but there is obviously enough of a concern at the Treasury to introduce the reduction. Consultation on the detail of the change will take place.

Currently, the alternative annual allowance, which is available for final salary benefits, is £30,000 (the annual allowance less the MPAA of £10,000). It should follow that a reduction in the MPAA means that the alternative annual allowance reduces to £36,000. We will have to wait for clarification on this.

Pension scams

The government has said that it will publish a consultation paper on options to tackle pension scams including cold calling. It will also give firms greater powers to block suspicious transfers. The issue of blocking transfers to suspicious schemes has resulted in many cases being referred to the Pensions Ombudsman so clarity on what is permitted and guidance with a process will be most welcomed.

Foreign pensions

Somewhat quietly, changes were announced to the tax treatment of foreign pensions. The fact that the government is starting to make changes to the tax treatment of monies that have benefited from UK tax relief and been transferred overseas, usually in the form of a transfer to a qualifying recognised overseas pension scheme (QROPS), shows that they are taking overseas transfers more seriously. Indeed HMRC will shortly be holding meetings with the pensions industry to look at QROPS and QROPS changes with a view to dealing with any unanswered questions from providers and advisers.

The Autumn Statement confirmed that the tax treatment of foreign pensions will be more closely aligned with the UK's domestic pensions tax regime by bringing foreign pensions and lump sums fully into tax for UK residents so they are taxed in the same way as UK pensions.

For those individuals that have emigrated and transferred their UK pension funds (which would have benefited from UK tax relief) to a QROPS there will be an extension from 5 to 10 years of the right for the UK to tax any foreign lump sum payments.

The latest amendments to the ROPS (Recognised Overseas Pension Schemes) list, published by HMRC on 15th November, shows a significant cull in the number of overseas schemes meeting HMRC's criteria. It therefore comes as no surprise that there is to be an update to the eligibility criteria for foreign schemes to qualify as overseas pension schemes for tax purposes.

The government will also stop further contributions being made to specialist pension schemes for those employed abroad ("section 615" schemes).

Salary sacrifice

The Autumn Statement confirms that although there will be tax changes to a number of salary sacrifice arrangements, as previously outlined in the earlier consultation arrangements relating to pension contributions will be exempted from these changes. For more information, see page 8.

SAVINGS AND INVESTMENTS

Offshore funds

UK taxpayers invested in offshore reporting funds pay income tax on their share of a fund's reportable income, and capital gains tax (CGT) on any gain when shares or units in their fund are sold or otherwise disposed of. The government has announced that it intends to bring in legislation to ensure that performance fees incurred by such funds, and which are calculated by reference to any increase in the fund's value, are not deductible against reportable income but instead reduce any tax payable on capital gains on disposal. This new treatment, which applies from 6 April 2017, will 'equalise the tax treatment between onshore and offshore funds'.

Authorised investment funds: dividend distributions to corporate investors

The government has announced that it intends to modernise the rules on the taxation of dividend distributions to corporate investors in such a way as to allow exempt investors, such as pension funds, to obtain credit for tax paid by authorised investment funds. Proposals will be included in draft secondary legislation in early 2017.

Individual Savings Accounts (ISAs)

The government has confirmed that the annual subscription limit for the ISA will increase from £15,240 to £20,000 from 6 April 2017. The Junior ISA and Child Trust Fund limit will increase from £4,080 to £4,128 from 6 April 2017.

National Savings & Investments Bond

National Savings & Investments (NS&I) will offer a new “market leading” three-year savings bond for 12 months from Spring 2017. The bond will be open to anyone aged 16 or over, subject to a minimum investment of £100 and a maximum of just £3,000. The Chancellor pointed to an “indicative rate” of 2.2%, but warned this could be adjusted to reflect market conditions once the product is launched. At present the best three-year fixed rate bonds available are paying about 1.6%.

Tax-advantaged venture capital schemes

The government will include provisions in the Finance Bill 2017 to amend the requirements for the tax-advantaged venture capital schemes – the Enterprise Investment Scheme (EIS), the Seed Enterprise Investment Scheme (SEIS) and the Venture Capital Trust (VCT) to:

- clarify the EIS and SEIS rules for share conversion rights, for shares issued on or after 5 December 2016

- provide additional flexibility for follow-on investments made by VCTs in companies with certain group structures to align with EIS provisions, for investments made on or after 6 April 2017

- introduce a power to enable VCT regulations to be made in relation to certain shares for share exchanges to provide greater certainty to VCTs

In addition, a consultation will be carried out into options to streamline and prioritise the advance assurance service.

The government has confirmed that it will not be introducing flexibility for replacement capital within the tax-advantaged venture capital schemes at this time but will review this over the longer term.

Life assurance policies

See page 10 for the latest position

Offshore structures

The government announced that it intends to consult ‘on a new legal requirement for intermediaries arranging complex structures for clients holding money offshore to notify HMRC of the structures and the related client lists’. It is not certain at this stage what is meant by a ‘complex structure’. It is hoped that it would not extend to an offshore investment bond.

BUSINESS TAXES

Corporation tax

The main rate of corporation tax is currently 20% and will fall to 19% from April 2017. The Chancellor confirmed the goal of a 17% rate by 2020, but made no mention of the 15% rate hinted at by Theresa May to the CBI conference following Donald Trump's election victory.

For those running their own business, the low corporation tax rate (compared with the higher and additional rates of income tax) can make trading through a company an appealing option. However, the decision has been complicated in 2016/17 by the new tax rules for dividends, which give the Treasury a bigger share of large dividend payouts. There is also a future risk of government action to limit the financial benefits of incorporation. The Chancellor referred to a projected £3bn loss of income tax revenues by 2020/21 and said that "…the government will consider how we can ensure that the taxation of different ways of working is fair between different individuals, and sustains the tax-base as the economy undergoes rapid change." As ever, the best choice for any business depends on all the facts and it is important to take more than just today's tax rules into account when deciding on the appropriate trading vehicle.

The annual investment allowance

One widely expected move that never happened was a temporary increase in the annual investment allowance, which is a capital allowance. Since its introduction in 2008, this has changed with uncomfortable regularity in response to perceived economic conditions. For expenditure incurred on or after 1 January 2016 the allowance is £200,000.

Reform of loss relief

Following consultation, the government will legislate for reforms announced at Budget 2016 that will restrict the amount of profit that can be offset by carried-forward losses to 50% from April 2017, while allowing greater flexibility over the types of profit that can be relieved by losses incurred after that date. The restriction will be subject to a £5 million allowance for each standalone company or group. In implementing the reforms the government will take steps to address unintended consequences and simplify the administration of the new rules. The amount of profit that banks can offset with losses incurred prior to April 2015 will continue to be restricted to 25% in recognition of the exceptional nature and scale of losses in the sector.

Bringing non-resident companies' UK income into the corporation tax regime

The government is considering bringing all non-resident companies receiving taxable income from the UK into the corporation tax regime. At Budget 2017, the government will consult on the case and options for implementing this change. The government wants to deliver equal tax treatment to ensure that all companies are subject to the rules which apply generally for the purposes of corporation tax, including the limitation of corporate interest expense deductibility and loss relief rules. It is thought that this measure is mainly aimed at overseas landlords who own let property in the UK.

PROPERTY TAX

Stamp Duty Land Tax (SDLT)

No new announcements were made in relation to SDLT.

Annual Tax on Enveloped Dwellings (ATED)

The annual charges for the ATED will rise in line with inflation for 2017/18.

Letting agents' fees

The government has announced its intention to ban letting agents' fees charged to tenants to improve competition in the private rental market and give renters greater clarity and control over what they will pay. Letting agents are currently able to charge unregulated fees to private tenants. However, under the new proposals, landlords will have to meet their own fees when they decide to appoint a letting agent. The Department for Communities and Local Government will consult ahead of bringing forward legislation.

New tax allowance for property and trading income

As announced at Budget 2016, the government will create two new income tax allowances of £1,000 each, for trading and property income. Individuals with trading income or property income below the level of the allowance will no longer need to declare or pay tax on that income. The trading income allowance will now also apply to certain miscellaneous income from providing assets or services.

IHT charge on 'enveloped' residential property

Please see the earlier inheritance tax section for details on this.

TAX AVOIDANCE AND EVASION

Closing the 'tax gap' (the difference between what HMRC should receive in tax, if the legislation were applied as it was intended, and what it actually receives) remains a key government objective.

Since 2010, the government has secured around £130 billion in additional tax revenue as a result of tackling avoidance, evasion and non-compliance. The UK's tax gap remains one of the lowest in the world but the UK (together with all of the G20 countries) remains committed to bringing about a step change in international tax transparency and ensuring that profits are taxed where the economic activity takes place.

The measures referenced in this year's Autumn Statement are as follows:

Avoidance

Disguised remuneration schemes

Budget 2016 announced changes to tackle use of disguised remuneration schemes by employers and employees. The government will now extend the scope of these changes to tackle the use of disguised remuneration avoidance schemes by the self-employed. This will ensure that self-employed users of these schemes pay their fair share of tax and National Insurance.

Further, the government will take steps to make it less attractive for employers to use disguised remuneration avoidance schemes by denying tax relief for an employer's contributions to disguised remuneration schemes unless tax and National Insurance are paid within a specified period.

Strengthening tax avoidance sanctions and deterrents

As signalled at Budget 2016, to provide a strong deterrent to those enabling tax avoidance, the government will introduce a new penalty for any person who has enabled another person or business to use a tax avoidance arrangement that is later defeated by HMRC. This new regime will reflect an extensive consultation and input from stakeholders and details will be published in draft legislation shortly. The government will also remove the defence of having relied on non-independent advice as taking 'reasonable care' when considering penalties for any person or business that uses such arrangements.

It is important to remember though that these sanctions are directed at (aggressive) tax avoidance schemes that are later defeated by HMRC. To be 'defeated' the scheme needs to be 'attacked' in the first place. This means that tax effective arrangements specifically permitted by legislation (eg. registered pensions, ISAs, offshore bonds, EIS and VCT schemes) or accepted as effective, such as DGTs and loan trusts are not affected because they will not be challenged. So 'enablers' of these types of arrangement are at no risk from these sanctions and deterrents.

HMRC counter avoidance

The government is investing further in HMRC to increase its activity on countering avoidance and taking cases forward for litigation, which is expected to bring forward over £450 million in revenue by 2021/22.

The taxation of different forms of remuneration (including salary sacrifice)

Employers can choose to remunerate their employees in a range of different ways in addition to a cash salary. The tax system treats these different forms of remuneration inconsistently and sometimes more generously. The government will therefore consider how the system could be made fairer between workers carrying out the same work under different arrangements and will look specifically at how the taxation of benefits in kind and expenses could be made fairer and more coherent. The government will take the following action:

- *Salary sacrifice*

Following consultation, the tax and employer National Insurance advantages of salary sacrifice schemes will be removed from April 2017, except for arrangements relating to pensions (including advice), childcare, Cycle to Work and ultra-low emission cars. This will mean that employees swapping salary for benefits will pay the same tax as the vast majority of individuals who buy them out of their post-tax income. Arrangements in place before April 2017 will be protected until April 2018, and arrangements for cars, accommodation and school fees will be protected until April 2021.

The exclusion of pension-related salary sacrifice arrangements from these provisions was noted in the consultation and it is reassuring that it will be carried through into legislation.

- *Benefits in kind*

At Budget 2017 the government is to publish a consultation on the valuation of employer-provided accommodation and a call for evidence on the valuation of other benefits in kind.

- *Employee business expenses*

A call for evidence will be published at Budget 2017 on the use of income tax relief for employees' business expenses. This will include expenses not reimbursed by an employer.

Evasion

The main provision of note was the requirement to register offshore structures. The government will consult on a new legal requirement for intermediaries arranging complex structures for clients holding money offshore to notify HMRC of the structures and the related client lists.

RESIDENCE AND DOMICILE

While the detail of the tax changes will be included in Finance Bill 2017, it seems clear that these changes will proceed. Based on the Autumn Statement and past consultations our conclusions are as follows:

Reforms to the taxation of non-domiciled individuals

As previously announced, from April 2017 non-domiciled individuals will be deemed UK-domiciled for all tax purposes if they have been UK resident for 15 of the past 20 tax years, or if they were born in the UK with a UK domicile of origin. This status will fall away once they have been non-resident for more than four consecutive years.

Non-domiciled individuals who have a non-UK resident trust set up before they become deemed-domiciled in the UK will not be taxed on income and gains arising outside the UK and retained in the trust provided no further amounts are added to the trust.

From April 2017, inheritance tax will be charged on UK residential property when it is held indirectly by a non-domiciled individual through an offshore structure, such as a company or a trust. This closes a loophole that has been used by non-domiciled individuals to avoid paying inheritance tax on their UK residential property.

People with an overseas domicile of choice, but who have a UK domicile of origin, will be deemed domiciled if they become resident in the UK. However, this will only apply once they become tax resident in one of the two tax years following their return to the UK.

The government will change the rules for the Business Investment Relief (BIR) scheme, which is available to non-UK domiciled and UK resident taxpayers who are taxed on the remittance basis in the UK, from April 2017. The effect of this change is to make it easier for non-domiciled individuals to bring offshore money into the UK for the purpose of investing in UK businesses. The government will continue to consider further improvements to the rules for the scheme to attract more capital investment in British businesses by non-domiciled individuals.

LIE POLICY TAXATION – THE LATEST POSITION

Life assurance policies

In the light of some tax cases it became apparent to HMRC that some policyholders, who took large part surrenders from an investment bond when there was little economic gain in the bond and, especially, early in the "life" of the bond, could face disproportionately high tax bills. This is because any chargeable event gain when a part surrender is made is calculated according to the "5% rule" so if the amount actually withdrawn exceeds the cumulative "5% allowances" for the bond, a chargeable event gain would arise regardless of whether there was any "real" gain and regardless of the amount of any such gain.

In order to consider and then deal with this inequity, HMRC issued a consultative document in the summer of 2016 that put forward three ways in which the chargeable event rules could be amended to prevent this problem arising in the future. These were:

- taxing the economic gain

- introducing a 100% allowance (from the date of investment as opposed to accruing it at a rate of 5% per annum for 20 years)

- permitting the deferral of excessive gains

On 5 December 2016 the government published a summary of responses and draft legislation on the "part surrender" position. Of the three options discussed in the consultation, the most favoured alternative in the responses was the 100% allowance. However, having considered the responses, HMRC has decided not to legislate any of the three options presented in the consultation document.

Which basis of charge would be adopted was not made clear in the Autumn Statement. Instead it was stated that 'the government will legislate in Finance Bill 2007 regarding the disproportionate tax charges… 'which will allow applications to be made to HMRC to have the charge recalculated on a just and reasonable basis'. This change will take effect from 6 April 2017.

This approach arises from an alternative proposal put forward by industry which will allow the small number of policyholders who inadvertently generate a 'wholly disproportionate' gain to apply to HMRC to have the gain recalculated on a 'just and reasonable' basis. Applications must be made in writing and received by an officer of HMRC within 2 years after the end of the insurance year in which the gain arose. A longer period may be allowed if the officer agrees. If following an application the officer considers the gain is 'wholly disproportionate' then the officer must recalculate the gain on a 'just and reasonable basis'.

COMMENT

The result of this whole process is that we are, in effect, back to the position we were in one year ago but with an additional statutory provision to cater for cases where disproportionately high chargeable event gains arise on part surrenders. In other words:

- *the chargeable event part surrender rules still apply. This means that a policyholder can still make a 5% tax-deferred withdrawal each year for up to 20 years; or to the extent the 5% allowance is not used in one year it can be carried forward to the next year and so on;*

- *there is still a risk that if a policyholder makes a large part surrender, a large "artificial" chargeable event gain may arise but in such cases the policyholder will have, from 6 April 2017, a statutory right to apply to HMRC so that it can deal with the position on a 'just and reasonable' basis.*

As for all of the draft Finance Bill provisions the time between now and its enactment can be used to clarify the detail of the form and operation of the new provision. HMRC has promised to issue detailed guidance before the new rules come into effect. It will be interesting to see how it deals with the deficiency rules that currently exist to give credit to people for large chargeable event gains on previous part surrenders when they fully encash their bond.

Personal portfolio bonds (PPBs)

As announced at Budget 2016 and following consultation, the government announced that it will legislate in Finance Bill 2017 so that in future it will have the power to amend by regulations the list of assets in the legislation that life assurance policyholders can invest in without triggering the PPB tax anti-avoidance rules. The changes will take effect on Royal Assent of Finance Bill 2017.

In a policy paper published on 5 December it was confirmed that a power would be given to the government to update the table of property categories in section 520(2) Income Tax (Trading and Other Income) Act 2005 in accordance with the above paragraph.

When the draft power is issued it will be accompanied by draft regulations to add UK real estate investment trusts, overseas equivalents of investment trust companies and authorised contractual schemes to the table in section 520(2) as proposed in the August 2016 consultation paper. At the same time category 7(a) in the table – an interest in a collective investment scheme constituted by a company which is resident outside the United Kingdom (other than an open-ended investment company) – will be removed.

INCOME TAX AND NATIONAL INSURANCE ALIGNMENT – A FURTHER REVIEW

The Office of Tax Simplification (OTS) has published its further review on the closer alignment of income tax and National Insurance, reaffirming its call for this outdated system to be reformed to make it fit for the future.

This review builds on the OTS's first report on this subject published in March 2016. This report concluded that aligning the way the two taxes are calculated would create a simpler, more transparent and fairer system for taxpayers and employers, and set out a 7 stage programme for bringing the two taxes closer together.

As the OTS recommended, further work was commissioned to get a fuller picture of the potential impact of the two key aspects of the proposals which are:

- the calculation of employee NICs on a similar basis to PAYE
- moving employer NICs to a payroll levy

Annual, cumulative and aggregate NICs

- The review considers what the impact might be across different demographics: earnings levels, ages, gender, industry sectors and location.
- About 5.5 million people would pay more NICs, £242 per year on average – mainly those who are paid more than £20,000 and those with two or more jobs.
- About 7.6 million people would pay less NICs - £169 per year on average – mainly lower earners and those working for only part of the year who still benefit from a full year's "NIC allowance".
- The link between NICs and contributory benefits, such as the state pension, would have to be considered, as would the link with Universal Credit entitlement.
- A new "NICs code" will be needed, similar to the PAYE code.

Employer payroll levy

The review sets out a number of options for introducing a payroll levy, without identifying a clear winner. These are:

- Flat-rate payroll levy.
- Replacing the employer threshold with a cumulative annual employee allowance.
- Replacing the employer threshold with a full-time equivalent employee allowance
- Linking it to a percentage of employee NICs

COMMENT

With a further review necessary it is interesting to speculate what the outcome might be and when a change is likely to be implemented.

INCOME WITHDRAWAL RATE FOR DECEMBER 2016

The appropriate gilt yield, used to determine the 'relevant annuity rate' from HMRC's tables for an adult member commencing income withdrawals (or reaching an income withdrawal review date), in December 2016 is 2.0%.

We would like to take this opportunity to wish all our readers a happy Christmas and a prosperous New Year.