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UK AUTUMN STATEMENT 2014

Whilst the Autumn Statement, delivered on 3 December 2014, contained some pleasant surprises for certain groups of taxpayers - including purchasers of UK residential property at the less expensive end of the market - this was countered by a number of significant anti-avoidance and revenue-raising measures.

We highlight below some of the announcements in the Autumn Statement that could have a material impact for those in the corporate, finance and private equity sectors, and certain changes which may affect individuals who have been, or plan to be, tax resident but non-domiciled in the UK on a long-term basis.

DIVERTED PROFITS TAX

One of the biggest talking points arising from the Autumn Statement is undoubtedly the new, "diverted profits" tax aimed at countering avoidance by multinational companies seeking to reduce their exposure to UK taxation by means of the diversion of profits to lower-tax jurisdictions.

The tax will apply at a rate of 25% from 1 April 2015 (5% higher than the standard rate of UK corporation tax that will apply from April 2015).

It will apply to business activities between connected entities that are set up to achieve an "unfair tax advantage".

The announcement is not surprising given the Government's statements in the months leading up to the Autumn Statement that it would tackle such avoidance by multinationals.

However, barely any detail has accompanied the announcement and it is therefore not known at this stage how the charge will be calculated. There is some speculation that a withholding tax may be applied to certain royalty payments, for example. It is expected that draft legislation will be available in the coming days.

RESTRICTING CARRIED FORWARD RELIEFS FOR THE BANKING SECTOR

Big news for banks (whether UK banks or overseas banks with a presence in the UK) - although not wholly surprising, given the political background and the other measures that have already been directed at the banking sector such as the bank levy - is the announcement that the proportion of banks' taxable profit that can be offset by carried-forward trading losses (and certain other types of losses and expenses) will be restricted to 50%.

The restriction will apply from 1 April 2015, but only to reliefs accruing before that date.

This measure seeks to address what the Government perceives as the injustice of banks using losses accrued during the financial crisis to offset profits, in what would otherwise in some cases have been for many years to come.

However the measure is not limited to banks. It refers to the concept of "banking company", which is an authorised person under the Financial Services and Markets Act 2000 that carries out regulated activities and is liable to UK corporation tax. Regulated activities for these purposes include accepting deposits, dealing in investments as principal, dealing in investments as agent, arranging deals in investments, and safeguarding and administering investments.

Certain categories of company are however excluded, such as insurance companies, pension scheme managers, investment trusts, asset managers and commodities traders.

This has come as something of a shock to the banking sector where both UK banks and foreign banks with large amounts of deferred tax assets held in the UK will be affected. The one positive aspect of this is that the restriction will only apply to reliefs accruing before 1 April 2015 and will not apply to reliefs that arise in the first five years of a bank's beginning to carry out banking activities.

DISGUISED FEE INCOME OF INVESTMENT MANAGERS TO BE SUBJECT TO INCOME TAX

In another unanticipated move, legislation will be introduced with effect from April 2015 which will ensure that guaranteed fee income of investment managers is subject to income tax, rather than being treated as a capital gain and therefore subject to a lower rate of tax.

The new rules will target the annual management fees paid to managers of private equity funds, typically based on a percentage of assets under management.

Amounts that are genuinely linked to the performance of the fund (such as carried interest returns) are not intended to be caught by the new rules.

The reasoning behind this measure is the proposition that such fees represent work undertaken to manage the investment and are not dependent on investment performance.

The British Private Equity and Venture Capital Association (BVCA) has amongst others welcomed the clear statement from the Treasury that carried interest is specifically not targeted by this measure.

Draft legislation is expected to appear shortly.

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REMITTANCE BASIS CHARGE TO INCREASE

The annual charge paid by some non-UK domiciled, UK tax resident individuals who use the remittance basis of taxation is to increase from April 2015.

- The charge for those who have been UK resident for at least seven out of the nine tax years before the relevant tax year will remain at £30,000.
- The charge for those who have been UK resident for at least 12 out of the previous 14 tax years will increase from £50,000 to £60,000.
- There will be a new charge of £90,000 for those who have been UK resident for at least 17 out of the previous 20 tax years.

The Government will also consult on making an election to use the remittance basis effective for a minimum of three years, in order to prevent taxpayers from arranging their affairs so as only to pay the charge occasionally. Eligible taxpayers can currently make an election for a single tax year only.

There are, however, no changes to the remittance basis of taxation itself.

COMMENT

Arguably the most striking of the above measures are the restriction on the use of carry-forward losses by banks and the new diverted profits tax.

As regards the former, it is perhaps an indication of the perception of the banking industry, and in particular its role in the financial crisis, that the Government feels that it is justified to apply a restriction on a fundamental feature of the UK tax system to one category of taxpayer only.

As regards the diverted profits tax, it will be interesting to see, when the draft legislation is published, how the new rules will catch their intended target, whether they will be compatible with fundamental European Treaty freedoms such as the freedom of establishment, and whether they can achieve what is presumably their ultimate aim - namely to change the behaviour of multinational taxpayers when it comes to structuring the group at the international level.

Please feel free to contact any member of the London Office tax team listed below for further information.

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