UK SUMMER BUDGET | 8 JULY 2015

This week's exceptional post-Election summer Budget more than made up for the uneventfulness of the earlier, regular Budget in April.

With significant and unexpected developments on both the corporate and the personal tax fronts - arguably none more so than those in relation to the "non-dom" regime - there was much to digest.

We present a summary of some of the key points below.

PERSONAL TAXATION

Changes to the non-dom / inheritance tax regimes

The changes remove one of the major long-standing attractions of the tax regime for non-UK domiciled individuals, namely the potentially unlimited duration of its application.

The new rules will mean that individuals who have been resident in the UK for 15 out of the previous 20 years will be deemed to be domiciled in the UK for all UK tax purposes.

After this point the benefits of the non-dom regime, and in particular therefore the remittance basis of taxation, will no longer apply, with the consequence that the individual's worldwide income and gains will immediately fall within the scope of UK taxation.

The new rules will apply from 6 April 2017 regardless of the date of arrival in the UK (such that no special rules will apply to those already in the UK).

An additional measure provides that individuals who have a UK domicile at the date of their birth will not be able to benefit from the remittance regime if, at any future point in time, they acquire a non-UK domicile under general law and then wish to return to the UK and claim non-domiciled status.

There will also be significant changes in respect of the taxation of offshore trusts for such individuals.

A major change has also been made to the UK inheritance tax regime whereby, from April 2017, all residential property in the UK whether held directly or indirectly (for example through offshore companies or trusts) will fall within the charge to inheritance tax. This is a significant amendment of the current rules and represents the removal of a very commonly used planning technique for the mitigation of UK inheritance tax for non-UK domiciled individuals.

Taxation of fund management industry

The asset management industry has been one of several regular targets for specific measures in recent Budgets and the summer Budget continues this trend.

The main change, which comes into force with immediate effect, is that all proceeds from carried interest will be taxed at the rate of at least 28% (the higher rate of capital gains tax). This means that the so-called "base cost shift" technique - which allowed carried interest holders to reduce their taxable gain by offsetting a proportion of the cost to the fund of the relevant investment - is no longer available. It is noteworthy that the Government has elected to target this - until now - commonly used method of tax planning.

The Government has in addition launched a consultation into limiting the types of funds which, as a matter of principle, ought in its view to be able to issue carried interest benefiting from capital gains (as opposed to income) treatment. It is intended that any changes will be implemented from April 2016.

The underlying proposition is that the performance-linked reward of fund managers should not automatically receive capital treatment but should rather depend on the fund's activities clearly being of an investment nature. The new rules would not apply to co-investment made on the same terms as investments made by third parties.

The Government has outlined two possible routes to achieving its aims - the first option consists of a "white list" setting out specific activities which will be regarded as investment activities. Examples given in the consultation document include:

- Controlling equity stakes in trading companies intended to be held for a period of at least 3 years.
- The holding of real property for rental income and capital growth where, at the point of acquisition, it is reasonable to suppose that the property will be held for at least 5 years.
- The purchase of debt instruments on a secondary market where, at the point of acquisition, it is reasonable to suppose that the debt will be held for at least 3 years.

The alternative option would be based on the holding period and would thus focus on the average length of time for which investments were held by the fund.

The consultation is open for comments until the end of September.

Dividend taxation

The dividend tax credit which currently attaches to dividends received by UK tax resident individuals will be replaced with an annual dividend tax "allowance" of £5,000 from April 2016. The rates of taxation of dividend income in excess of that allowance will then be taxed at higher rates than at present: 7.5% for basic rate taxpayers, 32.5% for higher rate taxpayers and 38.1% for those who pay the top rate of income tax (being those whose annual income exceeds £150,000).

Individuals receiving significant annual dividend income will pay more tax than under the current credit regime. The change appears to be at least partly motivated by a desire on the Government's part to discourage remuneration in the form of dividends where they are used in preference to the payment of salary for tax reasons.

CORPORATE / FINANCE

Corporation tax rate - further reductions

In a further unexpected development the Government announced that the already historically low rate of corporation tax (20%) would be reduced again - to 19% for the financial year commencing 1 April 2017 and then to 18% from 1 April 2020.

Taxation of banking industry

One of the announcements in the summer Budget brings some limited comfort for the banking industry, namely the news that the rate of the bank levy is to drop in the coming years. From 1 January 2016 the rate will be 0.18% and will then drop by 0.01% per year until it reaches 0.14% in January 2020; there will then be a further reduction to 0.10% applicable from January 2021. In addition, from January 2021 the levy will apply only to the UK balance sheets of UK-headquartered banks.

However, this positive development was counter-balanced by the announcement that a new corporation tax surcharge of 8% will be applied to the profits of banking entities for accounting periods beginning after 1 January 2016 (subject to an annual allowance per group of £25m).

It will be interesting to see how the industry reacts to this, particularly in the light of the other industry-specific tax measures that have been introduced recently including the restrictions on the carrying forward of losses.

So overall another very mixed Budget from the banks' perspective.

Compliance

In the current climate no Budget passes without a general comment regarding anti-avoidance measures and this Budget was no exception.

Two particularly noteworthy announcements were that a consultation will be launched by the Government this summer regarding "special measures" that it will take against businesses which consistently undertake aggressive tax planning or refuse to engage with HMRC in a collaborative and transparent manner. Such measures may include publicly "naming and shaming" such taxpayers and the imposition of penalties.

Another notable announcement in this context is that the Government intends to publish a "voluntary" code of practice, which would address among other things the type of behaviour expected from large businesses in their interaction with HM Revenue & Customs. Such a code of practice currently exists in the banking industry but this is the first time that the concept will have been implemented outside that sector.

CONTACTS

DAVID KLASS
david.klass@gide.com
tel. +44 (0)20 7382 5552

SALLY FILDES
sally.fildes@gide.com
tel. +44 (0)20 7382 5602

You can also find this legal update on our website in the News & Insights section: **gide.com**

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).