Proskauer

UK Tax Round Up

July 2017

UK Tax News and Developments **Conservative legislative agenda set out in Queen's Speech**

Following the UK general election on 8 June 2017, at which the Conservative party won the largest number of seats but lost its overall majority, the Queen's Speech setting out the now minority Conservative government's legislative programme for the next two years was passed by Parliament on 29 June 2017. As expected, some of the less popular Conservative manifesto pledges were omitted but 27 bills were still proposed (of which eight relate to Brexit).

From a tax perspective, the following are of particular significance:

- Customs Bill: the implementation of legislation to enable the UK to have standalone VAT and customs and excise regimes after Brexit. Some provisions are likely to depend on whether the UK will stay in the EU customs union.

- National Insurance Contributions Bill: the implementation of legislation previously in the draft Finance Bill 2017 abolishing self-employed Class 2 NICs and reforming Class 4 NICs to include self-employed individuals. These provisions were only removed from Finance Bill (No. 2) 2017 when the snap election was called. It is considered very unlikely that the controversial proposed increase to NICs for self-employed individuals from 9% to 10% from 6 April 2018 and then to 11% from 6 April 2019 will be legislated for.

- Finance Bill (or Bills): it is understood that one or more later Finance Bills will include a range of measures including new tax avoidance provisions and other matters in relation to the EU and Brexit.

The Government has announced that the Summer Finance Bill 2017 will be published after Parliament's summer recess. This will include the provisions which were withdrawn from Finance Bill (No. 2) 2017 (see April and May 2017 Tax Round Up for further details) and those provisions will have effect from the dates originally announced.

New corporate offence of failure to prevent tax evasion to come into effect on 30 September

The effective date of the new corporate offence of failure to prevent tax evasion has been confirmed as 30 September pursuant to a statutory instrument.

Liability for this new offence is strict; however, there is a defence available if it can be shown that an organisation has reasonable procedures to prevent the facilitation of the underlying tax evasion offences in place. It is expected that over the coming weeks many firms will be reviewing their internal procedures and policies to ensure that they are in a position to meet the reasonable procedures standard by 30 September.

OTS report on simplification of corporation tax computation

On 3 July 2017, the Office of Tax Simplification (OTS) published its final report and recommendations on the simplification of corporation tax computations. The report covered four main areas:

- simplifications to assist small companies; for example, using accounting profit prepared under appropriate accounting standards as the basis of taxable profits.

- a number of measures to improve compliance burden for larger companies, including the application of transfer pricing rules to UK groups where an actual tax difference would arise and a review of anti-avoidance rules generally in order to align de minimis limits and motive tests across different rules.

- aligning tax rules more closely with accounting rules, such as aligning accounting and tax definitions and replacing the schedular system with a single business profit or loss (allowing losses to be fully pooled).

- reform of capital allowances regime by replacing the current system with tax deductions for accounts depreciation.

Given the broad scope of the recommendations made and the challenges currently being faced by the government and HMRC in relation to Brexit, there has been doubt cast on whether the suggested measures will be considered or adopted.

OTS report on reform of stamp duty on shares

The OTS has published a report on the reform of stamp duty on shares, including simplification and digitisation in order to address the main practical frustrations which taxpayer experience in the current regime.

The core recommendations of the report are:

- making stamp duty a self-assessable tax rather than its current "voluntary" status.
- aligning the scope of stamp duty with SDRT (for example, by excluding non-UK shares, introducing stamp duty reliefs into the SDRT rules and calculating it by reference to money or money's worth consideration).
- digitising the stamp duty process and providing taxpayers with a unique transaction reference confirming that the transaction has been notified to HMRC (and retiring the current stamping machines).
- amending company law rules to allow company registrars to write up a company's books on receipt of the transaction reference.

The main open point of interest to the private funds industry is the recommendation that consideration is given to how stamp duty should be charged on transfers of partnership interests. Currently stamp duty generally is not paid on such transfers, but a level of stamp duty might become payable if it is charged by reference to the SDRT that would be payable on a direct transfer of the shares and securities held by the partnership. This point is open to discussion.

HMRC guidance on stamp duty reorganisation relief and "disqualifying arrangements"

Relief from stamp duty is available on documents transferring shares in one company to another company in a corporate reorganisation under section 77 FA 1986, provided that a number of conditions are met, including that, at the time of execution of the relevant documents, there are no "disqualifying arrangements" in existence.

HMRC has updated its Stamp Taxes on Shares Manual to provide further guidance on "disqualifying arrangements", which broadly involve arrangements under which a particular person or persons together can obtain control of the relevant company. The new guidance makes clear that, in assessing whether particular persons together could obtain control, this is not a simple numerical test. It must be reasonable to assume that the parties to the arrangements intend to act in such a way that particular persons together obtain control of the acquiring company. It also is made clear that a reorganisation prior to a sale before a purchaser is identified will not be subject to a disqualifying arrangement.

The updated guidance also details arrangements that generally would not constitute a disqualifying arrangement (for example, IPOs, mergers and liquidations).

Contributions to EBT taxable as employment income

The case of *RFC 2012 Plc (in liquidation) v. Advocate General for Scotland* (the so-called Galsgow Rangers case) involved the payment of an amount by the employer to a discretionary employee benefit trust (EBT). On the recommendation of the employer, the EBT resettled such amount on a sub-trust in the name of the relevant employee, who was granted a loan by the sub-trust of the relevant amount. The Supreme Court agreed with the Court of Session's 2015 decision that the payment by the employer to the EBT constituted employment income of the employee on which the employer should have accounted for income tax and national insurance contributions through PAYE. It was found that the payments to the EBT constituted remuneration for the employee's employment and that it was irrelevant that such remuneration was paid to a third party rather than the employee.

This case predates the introduction of the disguised remuneration rules (Part 7A ITEPA 2003), which were introduced to counteract tax avoidance schemes involving the payment of employment remuneration via a third party (including an EBT), and so the decision is unlikely to have a large impact on EBT arrangements which are subject to these very broad anti-avoidance rules. However, any employer that was involved in a similar scheme predating the disguised remuneration rules, and in relation to which it has not entered into a settlement with HMRC, may expect a follower notice or other demand for tax in light of this decision.

It is yet unclear as to whether the decision will have any broader impact, although HMRC is expected to clarify its position on salary sacrifice and discretionary bonus waivers now that the litigation has concluded.

Taylor Report on modern working practices

Matthew Taylor published his review of modern working practices on 11 July which looks at the implications of new forms of work on worker rights and responsibilities, including tax. It states that the current situation, where a self-employed person doing the same work as an employed person can pay a different amount of tax or NICs despite receiving similar benefits, is "not justified or sustainable or conducive to the goal of a good work economy" and that the current tax system "acts as an incentive for practices such as bogus claims of self-employed status by both businesses and individuals".

In this regard it considers that the government's, now shelved, proposal to align employed and self-employed NICs was the correct approach and that "there is a case for companies and others who engage self-employed labour to contribute more to the overall NICs payments made by the self-employed in the same way as we do for employees".

We can expect that this particular debate will continue with the possible further alignment of the overall tax and NICs burden on employees and the self-employed in the future.

Extension of employment-related securities filing deadline

Due to issues with HMRC's annual employment-related securities (ERS) online fling system, HMRC announced that the deadline for employers to submit their returns would be extended from 6 July to 24 August this year.

FTT allows deductions for grant of share options

In *NCL Investments Limited v. HMRC*, the FTT allowed the taxpayer's appeal against HMRC's denial of a trading deduction on the grant of share options that reflected the accounting debit arising on the grant of the options by an EBT under IFRS2. HMRC had raised various objections to the deduction, including that it was capital in nature, all of which were denied by the FTT.

International Tax Developments **BEPS: draft update to the OECD Model Tax Convention**

The OECD has published the draft 2017 update to the Model Tax Convention alongside its related Commentary. The updates include the changes set out under Actions 2, 6, 7 and 14 of the BEPS project including the examples on non-CIVs and the new principal purpose test that previously have been published.

Comments on certain aspects of the draft are welcomed by the OECD by 10 August.

BEPS: revised draft guidance on attributing profits to permanent establishments and transfer pricing profit splits

The OECD has published revised draft guidance on the attribution of profits to permanent establishments to address certain changes to the OECD model tax treaty. The new draft includes high-level general principles for the attribution of profits to permanent establishments and a series of illustrative examples.

The OECD also has published a discussion paper on Action 10 of the BEPS project which includes revised draft guidance on the application of the transfer pricing profit split method and on the determination of the profits to be split. The revised draft also includes a number of illustrative examples.

Comments on the revised guidance are welcomed by the OECD by 15 September.

UK's remote gaming duty applies to Gibraltan businesses

The ECJ has decided that the UK's 15% remote gaming duty can apply to services provided by Gibraltan-based gaming business to UK customers because, from an EU law perspective, such services are treated as supplied within the single Member State of the UK.

Related Professionals

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