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United Kingdom tax alert
Autumn Statement 2016 delivered

The UK Chancellor of the Exchequer delivered the new government's first Autumn Statement on 23 November 2016, reiterating the message that Britain is "open for business." As a result, his announcements were targeted at supporting business confidence in the robustness of the UK economy and the tax system.

The government's message was consistent with the direction of previous budget announcements, supplemented by a range of positive economic data. The Chancellor stated that draft legislation will be released on 5 December 2016.

This alert sets out the key measures for foreign-owned groups. For detailed coverage and comment on the UK Autumn Statement 2016, please visit Deloitte's dedicated website at www.ukbudget.com.

Business tax

Corporation tax rate: The Chancellor restated the government's commitment to the UK having the lowest corporation tax rate in the G20. He confirmed that the current rate of 20% will decrease as expected, to 19% in April 2017 and 17% in April 2020. These reductions were contained in Finance Act 2016 and, therefore already have been enacted.

Business tax roadmap: The government released its Business Tax Roadmap in the budget announced in March 2016 (for prior coverage, see the **alert dated 16 March 2016**). In the Autumn Statement, the Chancellor took the opportunity of stressing the importance of providing certainty to business and he reaffirmed the government's commitment to the roadmap.

He referenced two areas in particular:

- New interest deductibility rules will be introduced in April 2017 as planned. These rules broadly follow the OECD's recommendations in action 4 of the BEPS project. As a result, an interest deduction will be disallowed where net interest expense exceeds GBP 2 million, it is greater than 30% of the group's tax-adjusted UK EBITDA and the group's net interest to earnings ratio in the UK exceeds that of the worldwide group. These rules could have a significant impact on many foreign-owned multinationals, particularly where the group relies on the earnings of non-UK subsidiaries to support the borrowings of UK companies.

- Following a consultation held earlier in 2016, the UK's loss relief rules will be reformed, with new rules applying as from 1 April 2017. As from that date, groups with UK taxable profits in excess of GBP 5 million will be able to shelter only 50% of their profits in excess of GBP 5 million with brought forward losses. At the same time, the loss relief rules will be relaxed. With the exception of capital losses, all other tax losses generated after 1 April 2017 will be able to be used against any type of income in any company in the UK group, where those profits also were generated after 1 April 2017. The government also announced that, when implementing the rules, it will be taking steps to avoid unintended consequences.

Hybrid mismatches

The hybrid mismatch rules were enacted in Finance Act 2016 and will come into force on 1 January 2017. The UK tax authorities (HMRC) have announced that detailed guidance will be released on 5 December 2016 setting out how the rules will work in practice. In the meantime, the Chancellor announced in the Autumn Statement that certain minor technical modifications will be made to the rules in relation to financial sector timing claims and the rules concerning deductions for amortization. These changes will be released in draft form on 5 December 2016 and will be included in Finance Bill 2017. They will have effect from 1 January 2017.

Research and development (R&D) and patent box: The government announced a GBP 23 billion investment in a National Infrastructure and Innovation Fund, including a substantial increase in support for R&D. The government also announced that it is looking at ways to enhance the existing R&D tax credit regime to make the UK an even more attractive location for carrying out R&D activities.

The Finance Bill 2017 will include legislation to expand the scope of the patent box. This change will enable companies participating in cost sharing arrangements with one or more other parties to benefit from the regime, under which income from patented technology is taxed at a 10% rate.

Substantial shareholdings exemption (SSE): Earlier in 2016, the government announced that it was looking at making changes to the SSE regime, under which certain corporate disposals take place free of tax. In the Autumn Statement, the Chancellor said that the SSE will be simplified and that the investing company requirement will be removed. As a result, more groups likely will be able to benefit from the SSE. These changes will take effect from April 2017.

Taxation of nonresidents with UK income: The government announced a consultation on how foreign companies are taxed on their UK income. Currently, companies without a trading business in the UK are subject to income tax on their UK earnings, rather than corporation tax. This includes foreign companies that generate income from UK rental property, interest and royalties, and the consultation will consider whether corporation tax should apply going forward.

This consultation also will consider whether the UK's new rules on interest deductibility and loss relief will apply in this context. Certain other questions will need to be addressed as part of the consultation, including whether the current 20% rate of tax on this income will reduce to 17% in the future, in line with the corporation tax rate reduction.

Northern Ireland Corporation Tax (NICT): The government previously announced that the power to levy corporation tax in Northern Ireland is being devolved to the Northern Ireland Assembly, with the expectation that a 12.5% rate of NICT will be introduced as from 1 April 2018. The Chancellor now has announced that measures will be included in Finance Bill 2017 to enable all small and medium-sized businesses trading in Northern Ireland to benefit from this rate. Certain other changes will be introduced to prevent abuse of the regime.

Industry-specific measures

The Chancellor made a number of announcements relevant for specific industries, including the following:

- *Insurance companies*: The rate of Insurance Premium Tax will be increased from 10% to 12% as from June 2017.
- *Oil and gas companies*: The government announced measures to streamline the process for companies to opt out of the Petroleum Revenue Tax regime where they have never paid the tax and to simplify the reporting process in other cases.
- *Telecom companies*: The government announced funding for a coordinated program of integrated fiber and 5G trials with the aim of making the UK a world leader in 5G. Further details will be set out in budget 2017 as part of the government's 5G strategy.
- *Digital communications:* The Chancellor announced there will be a new 100% business rates relief for new full-fiber infrastructure for a five-year period from 1 April 2017, designed to support roll out to more homes and businesses.

Compliance

Making tax digital: The government remains committed to making major changes to tax administration, including electronic recordkeeping, online tax reporting and altering tax payment patterns. The government, therefore, will publish its response to the "Making Tax Digital" consultations in January 2017, together with provisions to implement the previously announced changes. The government has not yet consulted on whether and how these proposals might apply to large businesses.

Timing of the UK's fiscal announcements: The UK's fiscal year runs from 1 April to 31 March and the UK's fiscal calendar typically has included a budget in March and an Autumn Statement in November.

The Chancellor announced that the March 2017 budget will take place as normal and the UK then will move to having a single, annual fiscal event as from Autumn 2017. A Spring Statement will be introduced, with the aim of simply commenting on the UK's fiscal position, subject to the government reserving its right to make tax changes should the economic climate require it.

The move to a single, annual fiscal event is welcome as businesses will need to digest and respond to changes in UK tax laws only once a year. It also should allow more time for scrutiny of legislation by parliament, companies and the tax profession, which should lead to less uncertainty and better quality legislation.

Tax avoidance and evasion: The government continues to announce and implement a range of measures aimed at tackling tax avoidance and evasion. The key announcements in Autumn Statement 2016 include the following:

- Denying tax relief on employer contributions to disguised remuneration schemes unless tax and national insurance are paid within a specific period;
- Confirmation that the government will proceed with 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. The detail will be released on 5 December and it will be shaped by the consultation on the area to ensure it is properly focused; and
- Further investment and resources for HMRC to counter avoidance, including taking cases forward for litigation.

Payroll taxes

Alignment of national insurance bands: The employee and employer national insurance thresholds will be aligned from April 2017. This change will lead to a small increase in national insurance costs for employers. National insurance contributions by employees will not be affected.

Benefits in kind and salary sacrifice: Measures were announced to remove the tax and national insurance advantages associated with benefits in kind that are provided through "salary sacrifice" arrangements. As a result, all benefits in kind, in principle, will be subject to tax. This was an unexpected measure that will have a tax and national insurance impact on employers and employees.

The announcement contains some exceptions for employer pension contributions, childcare, cycle to work and ultra-low emission cars.

The government will consult on the changes, which are expected to apply from April 2017. There will be grandfathering for existing arrangements until 2018 with long-term benefits (accommodation, cars and school fees) potentially grandfathered until 2021. The government also will consult on the valuation of benefits in kind for tax purposes with further announcements expected in budget 2017.

PAYE Settlement Agreements (PSAs): Following an announcement in budget 2016 that the government plans to simplify the process of applying for and agreeing PSAs, the Chancellor has provided some further details. The new legislation is expected to be included in Finance Bill 2017 and is expected to apply from the 2018/19 tax year.

Employee shareholder status: The income tax and capital gains tax benefits associated with employee shareholder status schemes will be removed for arrangements entered into on or after 1 December

2016 in response to evidence that employee shareholder status is mainly being used for tax planning purposes.

Indirect taxes

The Chancellor announced some changes relating to VAT, including the following:

- A review of the VAT grouping provisions, with a focus on the eligibility conditions required for companies to join a VAT group; and
- Following a consultation, legislation will be introduced in Finance Bill 2017 to impose a new penalty for participating in VAT fraud. This penalty will apply to businesses and officers of companies who knew or should have known that their transactions were connected with VAT fraud. No further detail has been published, but the language of the announcement is consistent with that seen in connection with EU missing trader intra-community fraud (also known as MTIC or carousel fraud).

Contacts

If you have any questions or would like additional information on the topics covered in this alert, please email one of the following Deloitte professionals:

Christie Buck
cbuck@deloitte.co.uk

Bill Dodwell
bdodwell@deloitte.co.uk

Charlie Mason
chmason@deloitte.co.uk

Sayona Nakarja
sanakarja@deloitte.co.uk

Mark Saunderson
marksaunderson@deloitte.co.uk

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