

## 2011 Budget Commentary

Although a “fiscally neutral” Budget, the Chancellor announced measures aimed at promoting growth in the UK and attracting outside investment. There were also a number of bold and unexpected moves including an additional 1% reduction in the rate of Corporation Tax to 26%, a new relief from IHT on gifts to charities and a reduction, rather than the planned increase, in Fuel Duty.

There were also several announcements which will interest our non-domiciled client base as well as those offshore service providers dealing with UK resident individuals, and so as usual we have focused our commentary on these particular aspects.

- **Tax rates and allowances**

Although the Government has announced changes to the personal allowance and thresholds for 2012-13 there will be no overall benefit to higher rate taxpayers, and those who do not benefit from a personal allowance will see an increased tax liability. All other income tax rates and allowances will remain the same, including the 50% rate on income over £150,000. However the Government has reiterated that it considers this to be a temporary measure, and acknowledges that a permanent 50% rate “would do lasting damage” to the UK economy.

From 2012 increases in income tax, national insurance and capital gains tax rates and allowances will be based on the CPI rather than the RPI. As the CPI is consistently lower than the RPI this amounts to an increase in tax liabilities in real terms.

One of the more surprising measures to be announced is the consultation on reforms to merge the income tax and national insurance systems for employment income and benefits. Whilst few details have been announced today it will be interesting to see how these plans develop when the consultation document is published later this year.

From 6<sup>th</sup> April 2011 individuals and trustees disposing of qualifying business assets will benefit from an increased CGT lifetime allowance for entrepreneurs’ relief which will double to £10 million.

- **Taxation of Non-Doms**

The Chancellor confirmed that non-doms are “very welcome in this country” (provided they pay for the remittance basis) but he believes he can “ask more”. The existing £30k charge will remain for people who have been UK resident in 7 out of the previous 9 tax years. It is proposed that the charge for individuals resident for 12 or more years will increase to £50k from April 2012. But this may be of little concern as with tax planning the remittance basis charge can often be avoided.

Remittances of foreign income or gains to the UK for the purpose of “commercial investment in UK businesses” will not be taxable from April 2012. This may well create tax planning opportunities. Hopefully such tax free remittances will be available to all ‘relevant persons’ too (e.g. non-resident trustees). We would also like to see a similar relaxation in the rules for individuals bringing funds to the UK for the purposes of the investor visa.

The welcome proposal of a statutory residence test will hopefully give taxpayers some certainty about their tax residency. There are no further changes to the non-dom regime planned for the rest of the Parliament i.e. until May 2015 (provided the Coalition survives).

The detail on these new measures is subject to consultation. We will issue a further update on domicile and the statutory residence test following the publication of the consultation document in June.

- **Disguised Remuneration**

Following the publication of the Frequently Asked Questions (21.02.2011) it was hoped that further clarification of the new Part 7A would be given in the Budget. Unfortunately it looks like we will have to wait for the Finance Bill 2011 to fully understand how the new legislation will operate.

The objective of Part 7A is to prevent the avoidance or deferral of income tax and NICs on employment income. It will impact on employees whose employers have used trusts or loans to reward their employees with a view to avoiding or deferring paying tax and NICs.

Today's Budget note does update and replace the original press release but does not provide much additional detail. However, they do clarify that the provision of readily convertible assets for the 'purposes of securing the payment of sums' provided between 9 December 2010 and 5 April 2011 would also be caught by the anti-forestalling rules. Broadly this means that a tax charge will arise on the value of the readily convertible assets on 6 April 2012 if they have not been returned before that date or not otherwise charged to tax under the existing 'money's worth' charge.

What is clear is that the Chancellor is insistent, despite representations, to persist with using a small thermo-nuclear device to crack a nut and the consequence of the poor drafting and the complexity of the new legislation has already lead to the development of solutions.

- **Stamp Duty Land Tax ("SDLT")**

In line with the Government's strategy to tackle tax avoidance (see below) legislation will be introduced in the Finance Bill 2011 to close down SDLT schemes exploiting three specific areas namely the relationship between the rules for 'sub-sales' and alternative finance, narrowing the definition of 'financial institution' and preventing engineered reductions in market value at exchange.

The Chancellor also hinted at "...the taxation of very high value property, where evasion and avoidance are widespread and some of the wealthiest are not paying their fair share." It is unclear exactly what this means but the use of offshore companies may be in the Chancellor's sights. The SDLT crackdown is one such measure, but the Budget fell silent on the much speculated changes to Principal Private Residence Relief ("PPR"), the controversial concept of 'flipping' (the nomination of a second home as the main residence) and corporate ownership of UK properties.

- **Low Value Consignment Relief ("LVCR")**

To eliminate the competitive disadvantage faced by UK businesses supplying the same goods as those imported using the LVCR the level at which the relief applies will be reduced from £18 to £15 from 1 November 2011. The Chancellor hopes that this will help reduce the attraction for UK businesses to locate outside the EU as non-EU businesses (e.g. those located in the Channel Islands) supplying the goods whose value exceed £15 will now be subject to VAT at import. But given the value of CD's and DVD's there will still be opportunities for locating these businesses offshore.

- **Tackling Tax Avoidance**

The Chancellor strongly reaffirmed the Government's commitment to tackling the so called 'tax gap' (defined by HMRC as "the difference between tax collected and the tax that should be collected... if all individuals and companies complied with both the letter of the law and HMRC's interpretation of the intention of Parliament in setting law."). Of the £42bn tax gap, £7bn is said to arise as a result of tax avoidance.

Two new initiatives were announced. Firstly, HMRC will review areas of the tax code said to be at high risk, beginning with artificial income tax losses and unauthorised unit trusts. The second initiative will look at removing the cashflow advantage sometimes gained when taxpayers enter into 'schemes' whose effectiveness is disputed by HMRC but which may take years to resolve by levying an additional late payment charge.

Other areas which continue to be reviewed and developed include:-

- Continuing work on a possible General Anti Avoidance Rule (GAAR).
- 'Hallmarks' that describe schemes to be disclosed to HMRC, extension of the Declaration of Tax Avoidance Schemes regime to certain IHT schemes
- Denial of relief under double tax treaties where tax avoidance arrangements have been made in relation to the claim.
- Appointing HMRC 'relationship managers' for the wealthiest individuals (a similar scheme for large companies increased tax yield by £1bn in 2009-10).

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