

Clients & Friends Alert

UK Autumn Statement 2015 – Key Tax Measures

25 November 2015

The Chancellor of the Exchequer delivered his budgetary Autumn Statement on 25 November 2015. In this Client and Friends Alert we have outlined the key tax measures that we expect to be of interest to Cadwalader's clients and friends. Following the two UK Budgets held in March and September 2015, the number of announcements made by the Chancellor in the Autumn Statement is less than has been the case in previous years. As regards those announcements which have been made, much of the detail is absent at this stage. Further detail and proposed legislative drafting for these measures is expected in the Finance Bill 2016, scheduled to be published on 9 December 2015.

Corporate Tax Measures

Transactions in Securities - The Government has announced a consultation on the taxation of company distributions later this year. The Government will also amend the Transactions in Securities rules and introduce a targeted anti-avoidance rule ("TAAR") in order to prevent opportunities for income to be converted to capital in order to gain a tax advantage (owing to the rate of taxation of income being higher than the rate of taxation for capital gains). The Transactions in Securities legislation is one of the key anti-avoidance provisions in the UK tax code. The announcement of a TAAR to complement what is itself an anti-avoidance rule seems, at first sight, to be overkill (given that the UK's general anti-abuse rule was intended to cover such gaps in anti-avoidance legislation). Developments in this area will be keenly awaited.

Loan Relationships and Derivative Contracts Reform - The Government has announced its intention to update the legislation for the taxation of company debt and derivative contracts to accord with new accounting standards. The proposed legislation is likely to follow recommendations made during on-going, and highly successful, public consultation regarding the modernisation of legislation in this area.

Hybrid Mismatch Arrangements - Following a public consultation in 2014 on legislative methods to counteract hybrid mismatch arrangements, the Government will introduce legislation with effect from 1 January 2017 to implement the OECD rules for addressing hybrid mismatch arrangements. The Government's intention in the proposed legislation is to prevent multinational enterprises avoiding tax through the use of certain cross-border business

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structures or finance transactions. These proposals will be keenly awaited to evaluate whether financing structures which are commonly used (including those taking advantage of the United States “check the box” rules) might be adversely affected.

Partnerships and Intangible Fixed Assets - The Autumn Statement contains proposals for the amendment of the intangible fixed asset rules to “clarify” the tax treatment on transfers of assets to partnerships, with effect from 25 November 2015. The Government’s stated intention is to prevent partnerships being used in arrangements that seek to obtain a tax relief for their corporate members in a way that the Government considers is contrary to the intention of the intangible fixed assets regime. In addition, the Government is also considering a more general review of the intangible fixed assets tax regime, although no date for such a review has been announced.

Investment and Asset Management Tax Measures

“Disguised Remuneration” - The Autumn Statement states that the Government intends to take action against taxpayers who have used or continue to use “disguised remuneration” arrangements despite legislation to counteract perceived abuses in this area being enacted in the Finance Bill 2015. Importantly, the Government has stated that it will also consider legislating in a future Finance Bill to close down any further new schemes intended to avoid tax on earned income, where necessary, with retrospective effect from 25 November 2015. Statements by the Government threatening such retrospective legislative action are rare, and generally are only made in circumstances where a high degree of aggressive tax avoidance is suspected by the Government.

Taxation of asset manager’s performance based awards - The Government has stated that it will introduce legislation to determine when performance awards received by asset managers will be taxed as income or capital gains. Notwithstanding a public consultation on this topic launched in July 2015, the Autumn Statement gives no detail of the measures which the Government is proposing should be introduced. Broadly, under the measures published in the July 2015 consultation document, a performance based award will, by default, be subject to income tax, unless the underlying fund undertakes long term investment activity. During the consultation, the draft legislation was drafted in a restrictive fashion, so that in order for a performance based award to qualify for capital gains tax treatment an arrangement had to fall within narrowly framed exceptions. The Government’s announcement of the measures to be included in the Finance Bill 2016 will therefore not come as a surprise, but will also do nothing to reduce concerns that provisions in the Finance Bill 2016 could adversely affect the basis on which some carried income will be taxed, with material consequences for asset managers, hedge funds and some private equity funds and arrangements.

Seeding relief and SDLT changes regarding certain authorised property funds - A new seeding relief for Property Authorised Investment Funds and Co-ownership Authorised Contractual Schemes (“CoACSs”) will be introduced in the Finance Bill 2016, along with changes to the stamp duty land tax (“SDLT”) treatment of CoACSs investing in property so that SDLT does not arise on the transactions in units. The defined seeding period will be 18 months, with a

three year claw-back mechanism and a portfolio test of 100 residential properties and £100 million value or 10 non-residential properties and £100 million value. Each of these changes will take effect from the date Finance Bill 2016 receives Royal Assent.

Tax Evasion and Compliance

Combating tax evasion - To combat tax evasion, the Government has proposed a series of new penalties, most of which are to be included in the draft Finance Bill 2016. Amongst these measures is a new criminal offence for tax evasion which would remove the requirement to prove intent in the most serious cases of failing to declare offshore income and gains. The Government will also bring in new civil penalties for deliberate offshore tax evasion and for those who enable tax evasion. Additionally, corporate entities which fail to prevent their agents from criminally facilitating tax evasion by an individual or entity will also face a new criminal offence. The Government further announced it will consult on an additional requirement for individuals to remedy any previous offshore non-compliance and will introduce new penalties for failure to comply. It is worth noting however that the Autumn Statement contains only a brief description of these measures and further information will be available when the draft Finance Bill 2016 is published on 9 December 2015.

Cash, tax evasion and the "hidden economy" - The use of cash is on the decline due to the increasing practice of using credit and debit cards and new technologies such as contactless and mobile phone payments. In 2016 it is expected that the volume of cash payments will be outnumbered by the volume of non-cash payments for the first time. HMRC therefore consider this as the best time to contemplate what this trend means for tax compliance. Through a document requesting a "call for evidence", and through presenting a set of six key questions, the Government is calling for evidence from individuals, businesses and industry bodies to seek a better understanding of the link between the use of cash and tax evasion and the failure to declare sources of income or register for tax. The Government is also seeking evidence on the challenges and opportunities that further innovation in this area may deliver and the potential effect that this change in practice may have on money laundering. Responses have been requested by 27 January 2016.

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