Executive summary

The emphasis in the UK Chancellor’s Autumn Statement on 25 November was on the UK Government’s spending review. Nonetheless, there were a number of new announcements on tax, over and above the Chancellor’s change of position on tax credits. The Chancellor confirmed new penalties against schemes caught by the general anti-avoidance rule and tough measures against tax evasion. He also confirmed the proposals for local councils to have a limited ability to vary business rates, as well as promising the results of the Government’s review of business rates at the time of next year’s Budget.

The underlying documents also released on 25 November by HM Treasury revealed more tax announcements. The Government confirmed that it is going ahead with new rules from January 2017 to neutralize hybrid mismatches, in line with best practice recommended by the Organisation for Economic Co-operation and Development (OECD). Large businesses will be required to publish their tax strategies but it appears that instead of a voluntary code of practice, there will be “a framework for cooperative compliance.” The intention to proceed with changes to the taxation of asset managers’ performance-based rewards and to consult on limiting the scope of bank levy to UK operations from 2021 were also confirmed. In addition, there are new anti-avoidance rules including action on capital allowances, intangible assets and stamp duty reserve tax and announcements on rates.
The new apprenticeship levy is a new tax which requires employers to pay an additional 0.5% on their employment costs. It alone constitutes over half of the tax rises announced in the Autumn Statement, though only a limited number of employers will pay the levy. The “cash flow” proposal to require payment of capital gains tax on residential property within 30 days of disposal echoes the proposed acceleration of corporate tax payments for the largest companies from April 2017. It will be interesting to see if the Chancellor proposes more tax payments be made earlier than at present. The “digitalization” of HMRC should support him in this.

The proposed tax changes are light on detail. For more of that, we will have to wait for the draft clauses to Finance Bill 2016 which are due to be published on Wednesday, 9 December. New consultations are also expected then, such as the one promised on company distributions.

Detailed discussion

Business taxes

Large business tax compliance

The Autumn Statement confirms the Government will be pressing ahead with its summer Budget proposals to require large businesses to publish their tax strategies as they relate to or affect UK taxation. Full details of what will be required will not be known until a consultation response is available and the draft legislation is published as part of Finance Bill 2016. However, a requirement that tax strategies are published will impose a new obligation on large businesses in general, despite HM Revenue & Customs’ (HMRC’s) acknowledgement that the vast majority of large businesses already meet their responsibilities in respect of taxation.

A further element of the summer Budget proposals for large business tax compliance was the introduction of a new voluntary Code of Practice setting out the behaviors which HMRC would expect from large business taxpayers. In place of this element, the Autumn Statement confirms that the Finance Bill 2016 legislation will provide for a “framework for cooperative compliance.” This may suggest that HMRC has listened to representations that the Code of Practice proposals were inappropriately one-sided, and proposing instead a two-way process, which imposes responsibilities on HMRC as well. Again, the detail of what is now proposed will not be known until HMRC publishes its response to the consultation, with legislation in Finance Bill 2016.

Partnerships and intangible fixed assets

New rules have been announced to counter two arrangements involving partnerships and intangible fixed assets. HMRC asserts that the changes are confirmatory only and that neither of the targeted arrangements were effective absent the law change.

The first change concerns the application of the related party provisions when determining whether an intangible asset is a pre-FA 2002 asset. The definition of a related party has been expanded to include any person that meets the participation condition. This condition is drawn directly from the transfer pricing provisions and applies where a person directly or indirectly participates in the management, control or capital of the other or another person participates in each of the affected persons. The intended effect of the amendment is to confirm that a partnership is capable of being a related party for the purposes of the commencement provisions.

This widened definition of related party is also imported into the anti-avoidance provisions concerning situations where the asset’s value is derived from or acquired in connection with disposals of pre-FA 2002 assets.

The provisions apply with effect from 25 November 2015. As a result, tax deductions for amortization may no longer be available in relation to both historic and future transactions.

The second change is intended to ensure that the market value override provisions within the intangible fixed assets regime apply to transfers of intangible fixed assets between companies and partnerships. This change takes effect for transactions that occur on or after 25 November 2015 (unless they are affected pursuant to an unconditional contract that was unconditional before that date).

The Government has also announced that it will consider a review of the intangible assets regime more broadly as part of the Business Tax Roadmap in 2016.

Taxation of corporate debt and derivative contracts

The Government intends to include legislation in Finance Bill 2016 to ensure that the tax rules for loan relationships and derivative contracts interact correctly with new accounting standards. The changes will deal with three specific circumstances in respect of interest-free loans and loans on non-market terms. Draft legislation will be published as part of the draft clauses for Finance Bill 2016. This follows substantial reforms to the rules of loan relationships and derivative contracts contained in Finance (No. 2) Act 2015.
Capital allowances and leasing
The Government is introducing new anti-avoidance measures which target two specific tax avoidance schemes involving capital allowances and leasing that have been disclosed to HMRC.

The first scheme relates to non-taxable consideration being received when taking over tax-deductible lease obligations. The legislation is designed to ensure all consideration payable is taxable income.

The second measure addresses a number of disclosed avoidance schemes, all of which result in a capital allowances disposal value that is significantly less than the actual value of the plant and machinery being disposed of. The measure will prevent the seller receiving capital allowances significantly in excess of the actual economic depreciation of the plant and machinery.

Other business tax announcements
- The Government has confirmed its intention to introduce new rules, effective from 1 January 2017, to neutralize the tax benefits that arise from using hybrid mismatch arrangements. This follows the OECD’s final report on 5 October 2015 on base erosion and profit shifting (BEPS) Action 2 on hybrids, as well as a UK consultation based on an earlier version of the OECD’s recommendations launched on 3 December 2014.
- A consultation on the rules concerning company distributions is planned for later in the year. This is considered in more detail in the personal tax section below, but is not believed to concern any possible changes in the dividend exemption rules.
- Continuing the theme in recent years of extending creative tax reliefs in the cultural sector (e.g., TV, film, video games, orchestras and theatres), the Government announced its intention to explore the case for a new tax relief for museums and galleries, plus a consultation in Budget 2016 on expanding support for grassroots sport through the corporation tax system.

Employment taxes
Apprenticeship levy
A new apprenticeship levy will apply from April 2017. However, fewer than 2% of employers are likely to pay the levy because it is set at 0.5% of total salary costs, with each employer having an allowance of £15,000 to offset against the payment. Consequently, an employer’s salary costs would need to exceed £3m before any payment is due. The levy would be payable through Pay as You Earn (PAYE), and employers with multiple PAYE schemes will need to ensure that the £15,000 allowance has been correctly allocated to ensure the correct amount of the levy is paid.

This is a significant measure which is predicted to generate tax revenues of over £2.7b per year from 2017/18 onwards, and there is no requirement to provide apprenticeships to be liable to the levy.

Employee share schemes
Despite much historical discussion with HMRC, as well as earlier consultation and resulting legislation with regard to share based reward and internationally mobile employees, there would still appear to be a lack of consistency with regard to the tax and national insurance treatment of certain employment related securities and options. The Government will now introduce a number of technical changes to correct some of these inconsistencies in Finance Bill 2016.

Employee benefits and expenses: tax simplification
The Government has confirmed that it has responded to the final report of the Office of Tax Simplification (OTS) review of employment status and will be taking forward the majority of the OTS’s proposals. In addition, as part of the OTS report on simplifying the administration of employee benefits and expenses, the Government will publish a call for evidence on the existing tax treatment of employer provided accommodation.

Disguised remuneration
The Government has announced its intention to take further action against what it regards as disguised remuneration, and has stated that it will consider legislating in a future Finance Bill “to close down any further new schemes intended to avoid tax on earned income” with effect from 25 November 2015. Further documents and draft legislation are needed to fully understand the implications of this statement.

Salary sacrifice
Following a number of anti-avoidance measures regarding salary sacrifice (and proposals to limit similar perceived avoidance in the consultation on the simplification of the tax and National Insurance Contribution (NIC) treatment of termination payments), the Government remains concerned as to the growth of salary sacrifice arrangements. It has, therefore, announced that it will gather further evidence to shape its approach to salary sacrifice in the future, which will include seeking input from employers.
Pensions
Following the recent consultation on the system of pensions tax relief, the Government is considering the representations received and will publish its response at Budget 2016. With regard to pensions automatic enrollment, the Government will now delay the next two scheduled increases in employer automatic enrolment minimum contribution rates by six months each to align the increases with the start of the relevant tax year.

The Government also announced that Finance Bill 2016 will include measures to simplify the tests around the payment of Dependant’s Scheme pensions and to enable the pension tax rules on bridging pensions to be aligned with Department for Work and Pensions legislation.

The Government had previously announced its intention to create a secondary market for annuities in order to allow individuals to sell their annuity streams. Further details of this, together with the framework for the consumer protection package, will be announced in December as part of the consultation response, with a view to legislation being included in Finance Bill 2017.

Employment intermediaries and tax relief for travel and subsistence
The Government has responded with regard to the consultation on employment intermediaries and tax relief for travel and subsistence and will legislate to restrict tax relief with effect from 6 April 2016. While details are limited, tax relief will be restricted for travel and expenses for those workers engaged through an umbrella company. For individuals working through personal service companies, tax relief will be restricted where the intermediaries legislation applies. How this will work in practice (for instance by reference to the proposal in the consultation document to make use of the existing “… supervision, direction or control” test) is not clear.

Other employment tax announcements
No update was provided with regard to the recent consultations on the simplification of the tax and NIC treatment of termination payments, or the discussion document on the intermediaries legislation (i.e. IR 35). Separately, HMRC has confirmed that more information on any changes to the taxation of termination payments will be published in 2016.

Personal taxes
Following recent changes to personal taxes announced in the summer Budget and the consultations already in progress, the Autumn Statement is light on major changes. There were nevertheless some significant announcements in a number of areas, and we can expect further details of changes proposed in the summer Budget when the draft Finance Bill 2016 is published on 9 December.

Capital gains tax
From April 2019, individuals and trustees who dispose of residential property will be required to make a payment on account of the capital gains tax (CGT) due within 30 days of the completion of the disposal. This is not intended to affect properties which are not liable to CGT as a result of private residence relief. Draft legislation will be published for consultation in 2016.

Finance Bill 2016 will also include some technical amendments to the rules for nonresident CGT rules. More clarity is expected on how these changes will operate once the draft legislation is published on 9 December. Some of the changes will apply from 25 November 2015, while some will be backdated to April 2015.

Contrary to rumors in the press, there has been no announcement of reductions to Entrepreneurs relief. However, the Government is considering amending the rules for entrepreneurs’ relief so that anti-avoidance measures introduced in Finance Bill 2015 do not affect genuine commercial transactions. It is believed these changes may affect companies which are members of partnerships, but further details will be needed to fully understand the implications.

Asset managers’ performance based rewards
As expected, the Government has confirmed it will introduce legislation to determine when performance awards received by asset managers will be taxed as income or capital gains. An award will be subject to income tax, unless the underlying fund undertakes long term investment activity. The draft Finance Bill on 9 December, or perhaps accompanying documents will provide more details of how this policy will be implemented.
Changes to the taxation of company distributions
A consultation on the rules concerning company distributions is planned for later in the year. In addition, the Government intends to amend the transactions in securities rules and introduce a targeted anti-avoidance rule to prevent opportunities for converting income to capital to gain a tax advantage.

Venture capital schemes
With effect from 30 November 2015, the provision of reserve energy generating capacity and the generation of renewable energy benefitting from other community support by community energy organizations will no longer be qualifying activities for enterprise investment schemes (EIS), venture capital trusts (VCT) and seed enterprise investment schemes. These activities also will not be eligible for social investment tax relief when it is enlarged. All remaining energy generation activities will be excluded with effect from April 2016.

The Government also intends to introduce increased flexibility for replacement capital within EIS and VCT in Finance Bill 2016, subject to state aid approval.

Making tax digital
Following on from the summer Budget announcement that the Government was to abolish tax returns, the Government has announced it will invest £1.3b to transform HMRC into "one of the most digitally advanced tax administrations in the world." The Government expects that "[t]hese reforms will deliver the biggest transformation of the tax system in a generation, making it more effective, efficient and easier for taxpayers and are a first step by HMRC towards meeting a new target to reduce the costs to business of tax administration by £400mn by the end of 2019/2020."

All small businesses and individuals will have access to digital tax accounts by 2016/2017. By 2020 most business, self-employed people and landlords but not individuals under PAYE will have to update their digital tax account at least quarterly.

The Government is to consult on "options to simplify the payment of taxes, including whether to align payment dates and bring them closer to the point when profits arise."

Historically, the time required for software developers to amend their systems has been overlooked by HMRC. Going digital is the right way to go but such a major reform should not be rushed.

Business investment
The Government will consult on changes to business investment relief (BIR) to encourage greater use of the relief. BIR allows non-domiciled individuals and their trusts to invest foreign income and gains into the UK without making a taxable remittance. However, there have been no further announcements relating to the proposed changes to the taxation of non-domiciled individuals in the Autumn Statement.

Stamp taxes
Purchase of additional residential properties
From 1 April 2016, higher rates of stamp duty land tax (SDLT) are to be imposed on purchases of additional residential properties, such as buy-to-let properties and second homes, where the purchase price exceeds £40,000. The higher rates will be 3% above the current SDLT rates. The higher rates will not apply to purchases of caravans, mobile homes or houseboats, or to corporates or funds making ‘significant investments’ in residential property. The Government will consult on the policy detail, including on whether an exemption for corporates and funds owning more than 15 residential properties is appropriate.

Changes to the filing and payment process
The Government will consult in 2016 on changes to the SDLT filing and payment process, including a reduction in the time limit for filing an SDLT return and paying the tax from 30 days to 14 days. These changes will come into effect in 2017/18.

Property investment funds
As previously announced, the Government will introduce SDLT seeding relief for property authorized investment funds (PAIFs) and co-ownership authorized contractual schemes (CoACSs). There will also be changes to the SDLT treatment of CoACSs investing in property so that SDLT does not arise on transactions in respect of units in CoACSs.

Key features of the seeding relief will be:

- A defined seeding period within which seeding transactions are available for relief (this will end either with the first third party investment or after 18 months from the initial transfer of property into the portfolio).
- The introduction of a portfolio test set at a minimum value of £100m and 100 residential properties, or £100m and 10 non-residential properties.
A three year clawback mechanism to recover the SDLT relieved (e.g., where some or all of the units received in consideration for the initial seeding are disposed of within three years of the end of the seeding period).

These changes are welcome as the current charge to SDLT where property is transferred to a PAIF or CoACS has inhibited the launch of new funds. It is also important that a similar relief is introduced in respect of land and buildings transaction tax for Scottish property, although it is not yet known whether the Scottish Government will follow a similar approach.

These changes will take effect from the date that Finance Bill 2016 receives Royal Assent.

Annual tax on enveloped dwellings and stamp duty land tax: extension of reliefs
The Government has announced that, from 1 April 2016, it will extend the reliefs available from the annual tax on enveloped dwellings (ATED) and from the 15% rate of SDLT to equity release schemes (home reversion plans), properties occupied by employees, and properties acquired for demolition or conversion into non-residential use.

Stamp duty reserve tax – deep in-the-money options
Following an informal consultation over the summer, the Government has announced that it intends to change the stamp duty reserve tax (SDRT) treatment of deep in-the-money options where they are used to transfer shares into a clearance service or depositary receipt scheme.

Transfers into a clearance service or depositary receipt scheme are subject to SDRT at a higher 1.5% rate instead of the usual 0.5%. Where the transfer is in respect of the exercise of an option, the SDRT is charged on the option's strike price with no market value override. As a result, the Government believes that institutions have been agreeing options with strike prices well below market value to reduce the SDRT liability on a transfer subject to the 1.5% rate.

With effect from 25 November 2015, where SDRT is chargeable at 1.5%, this will be calculated on the higher of the strike price or the market value of the share in question. Other share transfers are unaffected. The Government intends to legislate for this change in Finance Bill 2016.

This is a major change and it is expected that it will have a significant impact on deep-in-the-money options activity.

Tax administration and other anti-avoidance measures
Serial avoiders and general anti-abuse rule penalties
The Government has confirmed that it will press ahead with strengthened anti-avoidance sanctions proposals on which it consulted in the summer Budget. These include a 60% penalty for all cases successfully tackled by the general anti-abuse rule, as well as additional reporting requirements, surcharges, and a naming and shaming regime for "serial avoiders" who persistently enter into avoidance schemes that are defeated by HMRC.

Offshore tax evasion
Following recent consultations, the Government confirmed its intention to introduce in Finance Bill 2016 a new strict liability criminal offense for failure to declare offshore income and gains, civil penalties for those who enable offshore tax evasion (including public naming), and increased civil penalties for deliberate offshore tax evasion (including public naming and value based penalties).

The Government also intends to introduce a new criminal offense for companies that fail to prevent tax evasion but has not yet stated a timeframe.

The Government will consult on an additional requirement for individuals to correct past offshore non-compliance (with penalties for a failure to do so) and has launched a call for evidence on the impact of the trend away from cash on tax compliance.

Devolution of taxes
The devolution of various taxes to Scotland, Wales and Northern Ireland continues, and no significant tax related announcements were made in these areas other than a proposal to introduce legislation to remove the requirement for the Welsh Assembly to hold a referendum in order to implement the Welsh rates of income tax and the confirmation of the intended new Northern Ireland corporation tax rate of 12.5% in April 2018.
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