Executive summary

On 6 July 2018, the United Kingdom (UK) published draft clauses intended to form part of the Bill that will eventually become Finance Act 2019. Other clauses may be published separately, possibly in advance of or as part of the Bill that will be published as Finance (No. 3) Bill in the autumn. The draft clauses are open for consultation until 31 August 2018. A number of technical notes, consultation responses and other documents were also released.

Some of the key areas covered in the documents include:

- Taxing gains made by nonresidents on UK immovable property along with the imposition of corporation tax on non-UK resident property income
- Tax adjustments for lease accounting changes (IFRS 16)
- Changes to the UK controlled foreign company (CFC) rules to meet the UK's obligations under the European Union (EU) anti-tax avoidance directive (ATAD)
- Changes to bring the UK exit charge and hybrid rules in line with ATAD

Highlights from the draft provisions and the other documents are summarized below.
Global Tax Alert

Detailed discussion

Property tax

Taxing gains made by nonresidents on UK immovable property

The draft clauses propose a significant rewrite of the capital gains provisions relating to nonresidents. They confirm that from 6 April 2019, UK tax will be chargeable on gains made by all persons regardless of residence (subject to limited exemptions) upon the direct or indirect disposal of all types of UK immovable property. Indirect disposals involve the sale of interests in non-trading entities deriving at least 75% of their gross asset value from UK land. There will be rebasing to April 2019 with an option to use original cost in some circumstances.

The existing nonresident capital gains tax (NRCGT) regime will be subsumed within the new regime and the annual tax on enveloped dwelling related capital gains tax regime will be abolished.

Corporation tax on property income and gains of non-UK resident company

As expected, the clauses confirm that non-UK resident companies that carry on a UK property business or have other UK property income will be chargeable to corporation tax on income from 6 April 2020. A non-UK resident company will be charged to corporation tax on the disposal of UK property from 6 April 2019 as part of the reforms above.

Business tax

Changes to UK CFC rules

A technical note suggests that two specific changes will need to be made to the UK CFC rules to ensure their compliance with the ATAD. These relate to the definition of control, and the treatment of certain non-trade finance profits generated by UK activity.

- The UK CFC control rules, which are set out in Chapter 18, Part 9A TIOPA 2010, will be amended so that any interests held by associated enterprises (those linked by reference to 25% interests rather than control), wherever they are resident, are taken into account when assessing control
- Non-trade finance profits which fall within the scope of Chapter 5 by virtue of UK “significant people functions” will no longer qualify under the CFC finance company exemption in Chapter 9

There are as yet no draft clauses for these changes but the Government has confirmed it intends to include them in Finance Act 2019 and for them to have effect from 1 January 2019.

ATAD: corporation tax exit charges

The draft clauses make changes to corporation tax exit charges, including the rules for deferred payment of exit charges on a transfer of assets or tax residence between the UK and a European Economic Area (EEA) State by companies resident in the UK or an EEA State. There are also changes to repeal existing provisions that provide for the postponement of exit charges (s187 TCGA 1992, ss 860-862 CTA 2009). Finally, there are changes to ensure that the tax base for an asset coming within the charge to corporation tax that is subject to an exit charge in another EEA State is based on the market value used to compute that charge. The changes have effect from 1 January 2020.

ATAD: hybrid and other mismatches

There are amendments to the hybrid and other mismatches regime in Part 6A of TIOPA 2010 in relation to the treatment of permanent establishments and regulatory capital. The amendments have varying commencement dates. The ATAD also requires provisions to deal with reverse hybrids from 1 January 2022 and the Government will consider this in due course.

Tax adjustments for lease accounting changes

The draft clauses aim to ensure the tax rules continue to operate as they currently do, following the introduction of IFRS 16. Section 53 Finance Act 2011 is repealed for accounting periods commencing on or after 1 January 2019 and there are rules spreading the tax relief on any transitional adjustment in the accounts over the duration of the lease term.

Corporate interest restriction rule changes

There have been several amendments to the corporate interest restriction rules to correct and clarify particular areas. These areas include the treatment of capitalized interest, Real Estate Investment Trusts, unpaid employee remuneration and public infrastructure companies. There is also an extension to the notification deadline for appointing a reporting company (from 6 months to 12 months). The changes are intended to take effect from various dates.
Corporate interest restriction rules: changes to lease accounting standards

Adjustments to deal with changes to lease accounting standards are also included, together with a consultation response on this area. The proposed amendments take a hybrid approach between following the accounting treatment (where these already identify finance leases) and determining whether a lease would have met the definition of a finance lease if it were required to be assessed (where a right-of-use asset is recognized by the lessee in respect of the lease under the new accounting standard).

Corporation tax losses

A number of minor changes have been made to the new corporate loss relief rules that took effect from 1 April 2017, including:

- A restriction to the deductions allowance that may be used by a group member where a company is a member of one group and an “ultimate parent” of another. In such situations the company can only use a share of the allowance from the group of which it is a member
- Miscellaneous other corrections where potential claims for loss relief might exceed the limits of what was intended
- A change to the basic life assurance and general annuity business (BLAGAB) rules (relevant for the life insurance sector) to restrict the calculation of profits subject to the loss restriction to the shareholders’ share of total profits, together with other clarifications relating to the interaction of the BLAGAB and general loss relief rules

The BLAGAB changes are effective from 6 July 2018, while the other changes apply with effect from 1 April 2019.

Oil activities and petroleum revenue tax

The clauses provide a mechanism by which a company may transfer a portion of its historic profits, and the associated tax paid on those profits, to another company, on the sale of an oil license. This will allow the buyer company to claim a repayment of the tax paid in certain circumstances when it comes to decommission the oil field. This measure will have effect in relation to license transfers approved on or after 1 November 2018.

A separate clause enables participators in oil fields to obtain petroleum revenue tax relief for decommissioning expenditure where that expenditure was either incurred or funded by the previous holder of the interest in the oil field.

Royalty withholding tax – no new developments

Clauses further extending the royalty withholding tax rules were expected. However, while no draft clauses were released, it is expected that they will be included in Finance Act 2019 and be effective from 1 April 2019.

The December 2017 consultation proposed that payments for the exploitation of intellectual property or certain other rights in the UK (including the right to distribute goods/provide services in the UK) that are made to connected parties will, in certain circumstances, be subject to UK taxation even where the payer is not a UK resident. It was proposed that the rules would apply when the payment is made to a jurisdiction with which the UK does not have a double tax agreement, or has a double tax agreement but that agreement does not contain a non-discrimination article. We raised a number of concerns with the original proposal and expect some changes to the detail when the next version is released later this year.

Intangible fixed assets – no announcement yet

The response to the consultation on changes to the taxation of intangible fixed assets which is not covered in the draft clauses but which is still under active consideration is anticipated at a later date.

Tax Administration and disclosure

The power to take forward the EU mandatory disclosure rules (which will apply to transactions from 25 June 2018) is included in the draft clauses but the detail will be in separate regulations to be consulted on. The clauses also permit the implementation of new Organisation for Economic Co-operation and Development model mandatory disclosure rules, should the decision be taken to implement those. The Government will consult on how the new rules will interact with existing legislation, such as Disclosure of Tax Avoidance Schemes and the enablers’ legislation.
Next steps

The draft clauses are open for consultation until 31 August 2018 with the official publication of Finance (No. 3) Bill, of which these clauses will form part, after the Budget in the autumn. The date for the Budget is still to be set and there are political and practical questions as to how any date will interact with key stages of the Brexit negotiations, especially leading up to the October Council meeting (not least given the need to give the Office of Budget Responsibility 10 weeks’ notice). The Budget may give updates on items not covered in these July documents, such as the further Government thinking on taxing the digitalizing economy and the tax treatment of intangible fixed assets held by corporates.

The aim then is that the Bill will be enacted in March 2019, before the end of the current tax year.

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