13 September 2017 saw the publication of a number of draft clauses intended to form part of the Bill that will eventually become Finance Act 2018, together with further draft legislation in relation to Making Tax Digital and other policy papers and consultation outcome documents.

Nearly a year ago, it was announced that the Chancellor’s key fiscal event, the annual Budget statement, will move from its traditional spring slot to autumn, with the Autumn Statement moving to spring and reverting to being a review of wider economic and fiscal challenges. 2017 is the transitional year for this, with a Budget in March as well as the first Autumn Budget that has just been announced as taking place on 22 November.

The draft clauses are open for consultation until 25 October 2017.

Separately, HMRC also published on the same day its consultation into its process of evaluating the tax risk profile of the UK’s largest businesses.

The draft provisions, and other documents published on the day, are discussed in more detail below.
Business tax

Large business risk consultation

Though not part of the draft Finance Bill clauses, on 13 September 2017 HMRC published a consultation into its process of evaluating the tax risk profile of the UK’s largest businesses.

The Business Risk Review (BRR) is the mechanism by which HMRC assesses the risk profile of the largest businesses in the UK, typically those with a turnover of £200m or more. Qualifying businesses are currently allocated either a low risk or non-low risk rating based on an assessment of a number of risk factors. The risk rating that is awarded by HMRC drives the level of scrutiny that it applies, enabling HMRC to focus its resources on what are perceived to be the highest risk businesses, with the aim of more effectively closing the tax gap.

HMRC is consulting on the BRR as it accepts that there has been limited change to the BRR process in the last ten years and businesses have been demanding greater clarity on certain aspects of it. HMRC views this as a further opportunity to enhance the shift in the compliance behaviours of large businesses.

The consultation is broad in its scope, considering the procedural elements of the BRR as well as asking wider questions on how else the behaviours of large business can be influenced. Please see our alert which discusses this in more detail. The consultation will close on 6 December 2017.

Withholding tax on debt traded on a multilateral facility (MTF)

The Government is proposing to remove the requirement to withhold tax on interest for debt issued on an MTF operated by an EEA-regulated recognised stock exchange by including such securities in the definition of ‘quoted Eurobond’ so as to enable them to benefit from the quoted Eurobond withholding tax exemption. The measure also widens the definition of alternative finance investment bonds (AFIBs) - Shari’ah-compliant financial instruments also known as ‘sukuk’ - to enable them also to qualify for the quoted Eurobond exemption.

These amendments take effect from 1 April 2018 (or 6 April 2018 for income tax purposes).

Partnership reporting requirements

Changes are to be introduced to clarify who is to be treated as a partner where there are bare trust arrangements (where beneficiaries are not otherwise treated as partners), to deal with situations where partnerships are partners in other partnerships and to ensure that profit allocations are aligned for tax and commercial purposes. A partnership return profit allocation will be treated as conclusive for tax purposes and there will be a relaxation of the administrative requirements for certain investment partnerships. The changes will generally have effect for the 2018-19 partnership return, although some provisions will be effective from Royal Assent.

Bank levy

The draft clauses include detailed legislation to enact changes to the bank levy so that it will be chargeable only on equity and liabilities recognised on the UK balance sheets of banks and building societies. This follows a consultation process that began in December 2015. While these changes should be welcomed by UK headquartered banks, which will no longer have to pay bank levy on non-UK liabilities, the continued delay in implementation until 1 January 2021, although expected, will come as a disappointment.

Following responses to the consultation, the draft clauses exclude both foreign subsidiaries and foreign branches from the charge to bank levy. They also allow banks a choice of whether to calculate their chargeable liabilities on a consolidated basis, or by adding up the amounts for individual entities. Where the UK group holds loss-absorbing debt instruments issued by its overseas subsidiaries, these can also be deducted from its UK liabilities. The netting rules are extended so that amounts owed to any member of the group (whether within or outside the scope of the bank levy) can form part of a netting agreement.

Other changes and administrative updates will apply for periods of account ending on or after 1 January 2018, or from Royal Assent of Finance Act 2018. These include changes to the way groups nominate their ‘responsible member’ for bank levy purposes and how the liability is shared around the group.
Employment taxes

Termination payments

The main employment tax measure relates to the taxation of termination payments. The draft legislation addresses the removal of the foreign service exception and its interaction with the amendments to the relief for termination payments included in the Autumn Finance Bill published on 8 September.

The draft provisions published on 13 September retain foreign service exception (or relief) in cases where the employee is non-UK resident in the tax year in which the employment is terminated. The existing Statutory Residency Test will be used to determine whether an employee is UK resident in the tax year they receive their termination award. In other cases, the employee will not get any relief or exception in recognition of foreign service. Those who have worked abroad but are resident in the UK in the year their employment is terminated will be therefore be taxed in the same way as others who have not worked abroad. However, credit for foreign taxes will still be available.

Seafarers are not affected as the current rules still apply to them. There is also no change if the payment is connected with a change in their duties or earnings (but but in practice such payments have often proven difficult to tax under s401 ITEPA anyway).

The draft legislation highlights a need to consider the impact on employees with a history of overseas work whose employment terminates whilst (resident) in the UK. The legislation also highlights the importance of determining the residence position of an employee on termination. This position could change by the end of the tax year, which in turn could impact the taxation of the termination payment if the employee becomes UK resident before that time.

The measure will apply to those who have their employment contract terminated on or after 6 April 2018 and the payment, or other benefit, is received after 13 September 2017.

Disguised remuneration

The majority of legislation to tackle existing, and prevent future use of, disguised remuneration (DR) avoidance schemes has already been enacted, or is included in the Autumn Finance Bill. These schemes seek to avoid income tax and national insurance contributions (NICs) on remuneration.

The draft clauses contain a revised close companies’ gateway, which is intended to put beyond doubt how the DR rules apply to the remuneration of owners of close companies. The revisions include an avoidance purpose condition, a time period in which the material interest condition must be met and require a stronger link between the relevant transaction and relevant step.

There are also provisions introducing a requirement for employees in scope of the loan charge to provide additional information to HMRC about the loans they have received.

The draft legislation does not include changes to ensure the tax and NICs from a DR employment income charge are collected from the appropriate person. These are yet to be published.

The proposals will apply from 6 April 2018 for income tax and 1 April 2018 for corporation tax.

HMRC has suggested that high-level settlement terms will be published later this year so that all DR users have a clear indication of what they will need to pay to settle with HMRC.

We still await consultations on the taxation of employer-provided accommodation, and of benefits more generally.

Personal tax

Taxation of offshore trusts

The main personal tax measure relates to the non-domicile changes, where provisions making further amendments to the taxation of offshore trusts have been proposed. These are largely anti-avoidance provisions and include:

► A benefits charge for settlors and close family members
► The disregard of capital payments to non-residents and migrating beneficiaries when attributing capital gains
► The attribution of certain income and gains charges to the settlor where benefits are received by close family members

► The attribution of capital gains and of deemed income to recipients of onward gifts (the recycling rule)

The new provisions will apply from 6 April 2018.

Pensions tax administration

Proposed measures will provide HMRC with powers to refuse to register, and to de-register pension schemes, which have a dormant company as a sponsoring employer. Similarly HMRC will be able to refuse to register and deregister a Master Trust scheme which is not authorised by the Pensions Regulator. The provisions in relation to dormant companies would come into force on 6 April 2018. Those in relation to Master Trusts would come into force on the later of the day on which the regime authorising Master Trust Schemes comes into force or Royal Assent to the Finance Bill. The purpose of the measures is to help restrict tax registration to those pension schemes providing legitimate pension benefits (6 April 2018 / Royal Assent).

Indirect taxes

The draft clauses include an extension to the scope of landfill tax to cover disposals made at sites without an environmental disposal permit, and clarify what material is taxable at sites that do have a permit.

This measure incorporates the changes to the definition of a taxable disposal for landfill tax for which a tax information and impact note was published in December 2016 and which was intended for inclusion in the Autumn Finance Bill. This measure will have effect from 1 April 2018.

The Government has also published a consultation outcome in relation to extending the scope of landfill tax to materials disposed of at illegal waste sites.

Making Tax Digital

The Autumn Finance Bill includes legislation allowing the introduction of Making Tax Digital for VAT. This primary legislation will give the commissioners of HMRC the powers to introduce regulations, to take effect no earlier than 1 April 2019, which will set out the detailed requirements that businesses will have to meet.

The announcements confirm that Making Tax Digital for VAT will indeed come into effect from 1 April 2019. From that date, businesses with a turnover above the VAT threshold (currently £85,000) will have to keep their records digitally (for VAT purposes only), and provide their VAT return information to HMRC through Making Tax Digital (MTD) functional compatible software.

HMRC has also issued for consultation draft regulations and further statutory material which allows HMRC to communicate digitally under Making Tax Digital, and also goes into more detail on certain aspects of the regime, including:

► Digital record keeping
► Reporting requirements
► Exemptions from the digital requirements (for instance for income below a threshold amount or for large partnerships with income over £10 million per annum)

The Government has confirmed its previous announcement that the scope of Making Tax Digital will not be extended beyond VAT before ‘the system has been shown to work well’, and not before April 2020 at the earliest.

The deadline for responses and comments is 10 November 2017.

What’s next

The draft clauses are open for consultation until 25 October 2017, and the official publication of the Finance Bill, of which these clauses will form part, is expected shortly after the Autumn Budget on 22 November 2017. Additional measures announced in the Budget may also find their way into the eventually published Bill.

The aim then is that the Bill will be enacted around March 2018, before the end of the current tax year.
Further information

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