

As the Coalition Government puts the final touches to its first scheduled Budget we examine the prospects of changes in the UK tax system to be announced on 23 March. As is customary, speculation is building up as to what measures may or may not be included in George Osborne's speech, from a fuel duty stabiliser to a new, further crackdown on non-doms.

In considering what changes are likely to be introduced, we should first bear in mind the policy document published on 9 December 2010 'Tax Policy making: a new approach'. This emphasised the Government's commitment to a 'more competitive, simpler, greener and fairer' tax system. As part of this it made a commitment 'in most cases' to publish draft clauses to be included in a Finance Bill at least 3 months before the Bill is introduced to Parliament. This means that any draft clauses first published with the Budget should (in most cases) only be introduced in the 2012 Finance Bill rather than the 2011 Finance Bill. This could mean that substantive changes to the tax system announced on 23 March may not come into effect until 6 April 2012. However, there is still scope for immediate changes to be made.

Many individuals worried about potential changes may be considering taking action now. We will only be able to judge the efficacy of these steps with hindsight and they may prove to be unnecessary or imprudent. However, there are some sensible steps that can be taken and we have identified those below.

Non-doms

In the 2010 Emergency Budget it was announced that the rules on the taxation of non-doms would be placed under review (notably in this respect no reference was made to the new consultation procedures) and since then there has been occasional press speculation as to possible changes. We believe that if any change is forthcoming it is likely to occur in the following ways:

- A change to the application of the remittance basis charge. This could apply so that all non-doms are subject to the annual £30,000 charge, not just those who have been resident for more than seven years.
- A change to the deemed domicile rules. This could apply so that all long-term residents of the UK are taxed as UK domiciliaries. This is already the case for inheritance tax (after 17 years of residence) and could be extended to income and gains tax. Identifying when the line would be drawn (7, 10 or 17 years) is a matter of guesswork.

Possible actions

- Non-doms who are in their first seven years of residency and who do not intend to pay the £30,000 charge could consider realising non-UK gains in the current tax year to avoid having to do so in a future year when they are taxed on a worldwide basis.
- If a new shorter period of residence is introduced for the deemed domicile rules, this could subject many more individuals to inheritance tax on their worldwide assets. Therefore it could be prudent for individuals who have been resident in the UK for the longer term to set up excluded property trusts now, to preserve their inheritance tax exemption in future years.
- Non-doms who are beneficiaries of foreign trusts may want to take steps to ensure that all past distributions and gains are fully matched to avoid the possibility of a future gain (taxable on the worldwide basis) being matched with a past distribution.
- For further details on the possible outcomes of this review please see our article: <http://www.withersworldwide.com/news-publications/777/what-now-non-doms.aspx>

Residency rules

In light of some high profile cases, speculation has been rife for a number of years about the introduction of a new statutory UK residence test that would clarify the circumstances in which individuals will (or will not) be treated as resident in the UK. Despite the speculation, no announcement has been made or looks likely to be made. However, this could be a matter that is raised for consultation in the interests of producing a 'simpler' tax system.

There would seem to be little that can be done in anticipation of any change, but non-residents who spend time in the UK and taxpayers who are thinking of emigrating should ensure that they are fully conversant with the steps that need to be taken to ensure that they are treated as resident or non-resident.

For individuals who have been non-resident for less than five years and are contemplating returning, they should bear in mind that 5 April 2011 is the last date by which they can return and have all gains made while they were non-resident taxed at the 18% rate.

Office of Tax Simplification

In the five months since it was established, the Office of Tax Simplification has undertaken the herculean task (perhaps best identified with the cleaning of the Augean stables) of reviewing 1,042 tax reliefs to identify those that could be repealed or simplified to produce a simpler tax system. It is worth noting that its remit is not to raise (or reduce) revenue but to simplify the system by abolishing or modifying reliefs.

Their report has thrown up a number of items that are perhaps most likely to be subject to further consultation announced in the Budget rather than immediate change. These include:

Inheritance tax

The subject of inheritance tax was identified as requiring a full review, but is perhaps one that would fully expose differences between the Conservatives and the Lib-Dems. It has been identified as a 'longer term project' and is probably more likely to be parked for the short term. In the longer term, the Conservatives' stated aim is to increase the nil rate band to £1,000,000 although this was not included in the Programme for Government and any change seems unlikely in this Parliament.

The principal private residence relief

This relief exempts taxpayers from capital gains tax on the sale of their principal residence, but has come into the spotlight because of the provisions that allow taxpayers to choose which residence is their main one (the 'flipping' so beloved of MPs). The OTS has recommended that this complex relief is simplified and it could well be subject to consultation and the introduction of anti-forestalling measures (such as restricting the ability to swap between residences) should not be ruled out. Taxpayers in a position to elect should therefore make sure that they have done so before Budget Day.

Entrepreneurs' Relief

This fiendishly complex relief (a parting gift of the last Government) was rightly identified by the OTS as in need of simplification. Again any change is likely only to be introduced from 2012 after consultation.

Other reliefs

In total the OTS has recommended the abolition of 47 reliefs, the simplification of 17 the retention of 54 and the closer examination of 37. The simplification of the UK's tax system is to be encouraged and providing that the Government does not treat it as an opportunity for revenue raising, to be welcomed by taxpayers and advisors.

EU challenge to transfer of assets rules

On 16 February 2011, the EU Commission formally requested that the UK amend its rules on the attribution of the income and gains of foreign companies and trusts to UK residents. These rules are the mainstays of the UK's anti-avoidance provisions and this challenge could have a significant impact on the use of offshore structures by UK residents.

However, the UK is unlikely to simply give up its anti-avoidance regime. It has two months to respond, which makes it unlikely that any response will be announced with the Budget. Instead this is likely to be a longer term issue, the full ramifications of which will not be known for some time. We feel it is unlikely that any change will open up significant new opportunities for planning.

'Disguised remuneration'

Changes to the taxation of remuneration and in particular Employee Benefit Trusts were announced on 9 December 2010 (in time for inclusion in the 2011 Finance Bill). These changes have already been discussed in our earlier Stop Presses and will have full effect from 6 April 2011.

Since then a further HMRC Spotlight has been issued seeking to prevent a scheme that allowed beneficiaries to receive distributions tax-free. Regardless of the efficacy or otherwise of these anti-avoidance rules, these continued announcements serve to illustrate that HMRC and the Government no longer consider EBTs (or similar structures) to be valid planning tools except in very limited circumstances.

For more details please see:

- <http://www.withersworldwide.com/news-publications/929/the-employee-benefit-trust-ebt--down-but-not-out.aspx>
- <http://www.withersworldwide.com/news-publications/904/is-employee-benefit-trust-ebt-dead.aspx>
- <http://www.withersworldwide.com/news-publications/893/finance-bill-2011-ebt-is-dead-long-live-pension.aspx>

Philanthropy and charities

Gift Aid supplement

When the basic rate of tax was reduced from 22% to 20% on 6 April 2008 this reduced the amount of tax that charities could reclaim under gift aid. To compensate for this loss a transitional relief was introduced to allow charities to reclaim an additional 3% government uplift on gift aid donations. This concession was given in order to give charities 3 years of 'breathing space' to accommodate the drop in voluntary income expected. This relief is now set to expire on 5 April 2011 and the Treasury has indicated that it will not be extended, so individuals making charitable donations should (where possible) do so before 6 April to ensure that maximum value accrues to the charity.

Lifetime giving

Much has been made since the General Election of the role that philanthropy and charitable giving has to play in the 'Big Society'. While we know the Government is keen to foster a culture of giving in the UK, concrete steps to encourage philanthropy by corporates or individuals have been lacking. However, there are a couple of areas where progress looks more likely:

- The arts and cultural institutions sector is particularly hopeful that the Government will adopt the recommendations of the 2004 Goodison Report to extend tax reliefs on gifts of works of art in

order to encourage individuals to give works of art to charity during their lifetimes rather than on death (or not at all).

- There are also signs that the Government will enact provisions allowing tax-efficient giving through 'lifetime legacies' that, again, seek to encourage and incentivise individuals to make gifts to charities during their lifetimes rather than only on death.

Stamp duty land tax

The acquisition of large properties in Central London by purchasing companies that owned them, rather than the property itself, thereby avoiding the 4% charge to SDLT that would normally apply was always the Lib-Dems' first example of tax avoidance that should be outlawed. The Coalition's Programme for Government contained a commitment to "make every effort to tackle tax avoidance, including detailed development of Liberal Democrat proposals" and rules to subject such transfers to SDLT look increasingly likely. This topic was considered in a consultation held in 2008 but no steps were taken at that stage. Whether it will be subject to the full consultation period again or be introduced with immediate effect remains to be seen.

It is also worth noting that as announced at the first 2010 Budget, SDLT on residential properties sold for more than £1,000,000 will rise for sales finalised after 6 April. Purchasers looking to avoid the extra 1% charge will need to complete their purchases before then.

Going forward the increase in SDLT to 5% for residential properties only will present an interesting negotiation point in the context of the sale of landed estates. Purchasers will be looking to reduce the apportionment of price to a house to reduce their SDLT bill, while vendors may wish to do the reverse in order to increase the amount of the price that is subject to the principal private residence relief. For more details see our article here: <http://www.withersworldwide.com/news-publications/718/stamp-duty-land-tax-an-unexpected-consequence-rural-property-transactions.aspx>

Please join us for full coverage of the Budget announcements on Twitter (<http://twitter.com/WithersLLP>), our Stop Press and video highlights at our post-budget Breakfast briefing on 24 March 2011.

For further details please contact

Sarah Cormack	sarah.cormack@withersworldwide.com	+44 (0) 207 597 6165
Sophie Dworetzsky	sophie.dworetzsky@withersworldwide.com	+44 (0) 207 597 6378
Christopher Groves	Christopher.groves@withersworldwide.com	+44 (0) 207 597 6127

The information and comments contained herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

withersworldwide

16 Old Bailey, London, EC4M 7EG, tel +44 (0)20 7597 6000, fax +44 (0)20 7597 6543

© 2010 Withersworldwide is the trading name for Withers LLP, Withers and Withers Bergman LLP

Withers LLP London · Geneva Studio Legale Associato con Withers LLP · Milan Withers Hong Kong · BVI Withers Bergman LLP New York ·
Greenwich · New Haven

www.withersworldwide.com

© Withers LLP 2011