EUROPEAN TAX ADVISORY

BUDGET
CORPORATE TAX REPORTING

FTI CONSULTING
Critical thinking at the critical time™

BUDGET: CORPORATE TAX REPORTING **20 MARCH 2013**

SUMMARY

Following the Budget Statement, FTI Consulting has undertaken a review of announced measures which may have an effect on our clients.

OVERVIEW

A budget of paradoxes….

The Government has re-affirmed its objective to make the UK one of the most competitive places to do business by using tax policy and capital investment to 'equip the UK to succeed in the global race'. However, they are also strongly committed to ensuring that the UK tax system is demonstrably fair, and as such, tackling tax evasion and avoidance has become an important area for the Government, both financially and politically.

Today's Budget has included further response from the Government on tackling the perceived 'fairness' of tax payments with strong reference made to 'anti-avoidance' measures and specific legislation, consultation and strategy details introduced to block what is seen as 'unfair' tax planning or avoidance.

It remains to be seen what impact these complex anti-avoidance measures, introduced to ensure large corporates 'pay their fair share' will have. The introduction of two new Targeted Anti Avoidance Rules (TAARs) introduced to combat the buying of unrealised losses between unconnected parties where obtaining a deduction was not a main purpose of the arrangements is likely to lead further doubt. It remains to be seen whether the uncertain tax landscape, sitting alongside the reduction in the main rate of corporation tax, will guarantee that Britain is open for business.

2013 BUDGET

Corporation Tax Rate

The main rate of Corporation Tax is being reduced to 21% from April 2014, falling to 20% in April 2015, which will unify the small profits rate and the main rate of Corporation Tax removing the complexity of marginal rate relief calculations. To counteract this reduction, the bank levy is to be raised to 0.142% from January 2014.

As in previous years, companies will need to consider the impact of the change in rate on deferred tax assets and liabilities included in their accounts. For those companies preparing accounts under UK GAAP or IFRS, this will mean that the deferred tax calculation should take account of the change in rate from the date that the reduction is substantively enacted i.e. when the resolution to reduce the tax rate has been passed. However for companies reporting under US GAAP, no adjustment for the change in rate should be made until the reduced tax rate has been enacted in the Finance Act which is likely to be in July 2013.

Corporation tax loss relief: Targeted loss buying rules

Legislation effective from today has been introduced to bring the tax treatment of unrealised losses on a change in ownership into line with the treatment of realised losses to prevent the set-off against other profits including by way of group relief. It is not clear how this 'anti-avoidance' measure will apply to commercial transactions.

Capital allowances

The rules preventing tax-motivated capital allowance buying are being extended to transfers of plant and machinery where tax written down value (TWDV) exceeds net book value (NBV) even where accessing the capital allowances was not a main purpose of the transaction. If the excess of TWDV over NBV exceeds £50m or there is a not insignificant benefit (less than 5%) to the purchaser, the excess capital allowances will be restricted for offset against profits that they could have reduced if the change of ownership had not taken place.

Deduction transfer TAAR

The TAAR will prevent the deduction of reliefs, deductions, allowances and expenses highly likely to arise after the change of ownership in respect of arrangements entered into on or before the change of ownership and the crystallisation of the deduction is the main or one of the main purposes of the arrangement.

Profit transfer TAAR

The profit transfer TAAR will apply where profits are transferred to a company following a qualifying change of ownership where the purpose of one of the main purposes of the transfer is to utilise future deductions.

Corporation tax loss relief: Loss loophole closure rules

HMRC has issued further detail on the updates to the corporation tax loss relief rules which are targeted at companies which engage in arrangements seeking to 'exploit loopholes in corporation tax legislation'.

The measures amend two aspects of the loss relief rules;

Group relief rules

Apportionments of profit under CFC rules will now be included in the profits of the surrendering company for calculating the excess losses eligible for group relief.

Change in company ownership rules

In direct response to perceived 'corporate loss buying', two amendments will be introduced:

i. An amendment to disallow trading losses where, in relevant circumstances, there is a transfer of the trade within the new group, following any change in ownership of the company.
ii. The introduction of a restriction of the availability non-trading debits, non-trading loan relationship deficits and non-trading losses on intangible fixed assets after a change in ownership of a shell or dormant company.

UK group relief

The new legislation, to be introduced in Finance Bill 2013, will amend the restrictions on when companies resident in the European Economic Area (EEA) can surrender losses attributable to their UK branches as group relief to shelter profits in the UK. The amended restriction will be based on whether their losses are relieved in another country in any period, rather than on whether they could potentially be relieved in another country.

Anti-Avoidance

The General Anti-Abuse Rule (GAAR), heavily discussed and consulted on in previous years, will be introduced in Finance Bill 2013 following a final review of measures by an independent advisory panel.

HMRC will also consult on new 'naming and shaming' proposals alongside a range of targeted disclosure requirements to re-affirm the Government's ethos. Budget day 2013 also saw the publication of HMRC's off shore evasion strategy "No Safe Havens".

The emerging offshore evasion strategy will focus on developing further bilateral agreements and promote greater multilateral action through international relationships to update global tax legislation for the internet economy.

Employers National Insurance Contributions

From April 2014 all businesses and charities will be eligible for a new £2,000 Employment Allowance which will offset against their employer NIC bill. The Government is going to engage in discussions on the implementation of the measure and will seek to introduce legislation in 2013.

Summary of other points

- *CFC Rules* - There are minor additional amendments to the new CFC rules which have had effect from 1 January 2013.
- *R&D credits* - The Above-the-line tax credit for R&D expenditure will be increased to 10 per cent from the proposed 9.1 per cent from Budget 2012. The new R&D credit system for large companies is to be introduced for qualifying expenditure incurred on or after 1 April 2013 as planned.
- *Patent Box* - As announced in Budget 2012, the Patent Box regime will be effective from 1 April 2013 and will give a reduced 10 per cent rate of corporation tax on profits from patented inventions.
- *Deferral of exit charges* – announced in December 2012, will enable companies to opt for deferred payment arrangements in respect of exit charges when they cease to be UK resident as a consequence of a transfer of their place of managements to another EU or EEA Member State.
- *Capital allowances* - The 100 per cent first year allowances for low emissions vehicles will be extended until 31 March 2015. From April 2013, the carbon dioxide threshold will be reduced from 110g/km to 95g/km.
- *Creative sector* - As announced in Budget 2012, from 1 April 2013 the Government will introduce corporation tax reliefs for the creative sector.

Summary of consultations and reviews announced:

- *Review of loan relationships and derivative contracts* – to modernise, clarify and strengthen the legislation contained within the Corporation Tax Act 2009. Legislation is expected in Finance Bill 2014 and Finance Bill 2015.
- *Review of partnerships* – to simplify the taxation of partnerships and review of the use of partnerships to avoid tax. In particular to counter the use of Limited Liability Partnerships to disguise employment relationships and the allocation of profits and losses.

FTI Consulting will respond to these consultations as appropriate.

CONTACT:

Toni Dyson
+44 (0)20 7979 7484
toni.dyson@fticonsulting.com

Carl Mellor
+44 (0)20 7979 7533
carl.mellor@fticonsulting.com

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