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Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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Autumn Statement 2016 Japanese Business Tax

(1) Introduction

The Chancellor of the Exchequer, Philip Hammond, delivered the new government's first Autumn Statement, reiterating the message that Britain is 'open for business' on November 23, 2016. As a result his announcements were targeted at supporting business confidence in the robustness of the UK economy and the tax system.

The government's message was consistent with the direction of previous Budget announcements, supplemented by a range of positive economic data. Following the Autumn Statement, draft legislation was released on December 5, 2016.

This bulletin sets out the key measures for Japanese owned groups. For detailed coverage and comment on the UK Autumn Statement 2016 visit Deloitte's dedicated website at www.ukbudget.com.

(2) Business tax

1) Corporation tax rate

The Chancellor restated the government's commitment to the UK having the lowest corporation tax rate in the G20. As a result he confirmed that the UK's current rate of 20% will decrease as expected, to 19% in April 2017 and 17% in April 2020. These reductions were contained in Finance Act 2016 and have therefore already been enacted.

Depending on the activities that are being carried out in the UK, for Japanese headed groups, a reduction in the UK corporation tax rate gives rise to a possible concern under the Japanese anti-tax haven rules ('JCFC'). The Japanese government are considering reforms to the JCFC rules as part of the 2017 Tax Reform Proposals and therefore, it would be important for Japanese groups to monitor these changes along with the corporation tax rate reductions in the UK.

2) Business Tax Roadmap

In the March Budget the government released its Business Tax Roadmap. The Chancellor took the opportunity of stressing the importance of providing certainty to business and in that context he reaffirmed the government's commitment to the Roadmap.

He referenced two areas in particular:

Firstly, new interest deductibility rules will be introduced in April 2017 as planned. These rules broadly follow the OECD's recommendations from Action 4 of the BEPS recommendations. As a result a disallowance will occur where net interest expense exceeds £2m, it is greater than 30% of the group's tax-adjusted UK EBITDA and the group's net interest to earnings ratio in the UK exceeds that of the worldwide group.

These new rules could have a significant effect for many foreign owned multinationals, particularly where the group relies on the earnings of non-UK subsidiaries to support the borrowings of UK companies.

Secondly, following a consultation exercise earlier in the year the UK's loss relief rules will be reformed, with new rules applying from April 2017. From that point groups with UK taxable profits in excess of £5m will only be able to shelter 50% of their profits in excess of £5m with brought forward losses. At the same time the loss relief rules will be relaxed. With the exception of capital losses, all other tax losses generated after April 1, 2017 can be used against any type of income in any company in the UK group, where those profits have also been generated after April 1, 2017.

The government also announced that when implementing the rules they will be taking steps to avoid unintended consequences.

3) Hybrid mismatches

The hybrid mismatch rules were enacted in Finance Act 2016 and come into force on January 1, 2017. Detailed guidance were released on December 5, 2016 setting out how the rules will work in practice.

In the meantime the Chancellor announced that certain minor technical modifications will be made to the rules in relation to financial sector timing claims and the rules concerning deductions for amortisation. These changes have been released in draft form on December 5, 2016 and will be included in Finance Bill 2017. They will have effect from January 1, 2017.

4) Research & Development ('R&D') and patent box

The government announced a £23bn investment in a National Infrastructure and Innovation Fund, including a substantial increase in support for R&D. The government also announced that it will be looking at ways to enhance the existing R&D tax credit regime to make the UK an even more attractive location for carrying out R&D activity.

In addition Finance Bill 2017 will include additional provisions in respect of the Patent Box regime, under which income from patented technology is taxed at a 10% rate. The provisions will cover how the regime will apply to companies within a cost sharing arrangement, with the intention that companies are neither advantaged nor disadvantaged. These particular changes will only come into effect for accounting periods commencing on or after April 1, 2017.

5) Substantial Shareholdings Exemption ('SSE')

Earlier in the year the government announced that they were looking at making changes to the UK's SSE regime, under which certain corporate disposals take place free of tax. The Chancellor stated that the SSE will be simplified and that the investing company requirement will be removed. As a result we expect more groups to be able to benefit from this exemption. These changes will take effect from April 2017.

6) Taxation of non-residents with UK income

The government announced a consultation into the way in which foreign companies are taxed on their UK income. Currently companies without a trading business in the UK are subject to income tax on their UK earnings, rather than corporation tax. This includes foreign companies that generate income from UK rental property, interest and royalties, and the consultation will consider whether corporation tax should apply going forward.

This consultation will also consider whether the UK's new rules on interest deductibility and loss relief will apply in this context. Certain other questions will need to be addressed as part of this consultation, including whether the current 20% rate of tax on this income will reduce to 17% in the future, in line with the corporation tax rate reduction.

7) Northern Ireland Corporation Tax ('NICT')

The government previously announced that the power to levy corporation tax in Northern Ireland is being devolved to the Northern Ireland Assembly, with the expectation that a 12.5% rate of NICT will be introduced from April 2018. The Chancellor announced that measures will be included in Finance Bill 2017 to enable all small and medium sized businesses trading in Northern Ireland to benefit from this rate. Certain other changes will be introduced to prevent abuse of the regime.

(3) Industry specific measures

The Chancellor made a number of announcements relevant for specific industries, including the following:

- Insurance companies – The rate of Insurance Premium Tax will be increased from 10% to 12% from June 2017.
- Oil and gas companies – The government announced measures to streamline the process for companies to opt out of the Petroleum Revenue Tax regime where they have never paid the tax and to simplify the reporting process in other cases.
- Telecoms companies – The government also announced funding for a co-ordinated programme of integrated fibre and 5G trials with the aim of making the UK a world leader in 5G. Further detail will be set out at Budget 2017 as part of the government's 5G strategy.
- Digital communications – The Chancellor announced there will be a new 100% business rates relief for new full-fibre infrastructure for a five year period from April 1, 2017, designed to support roll out to more homes and businesses.

(4) Compliance

1) Making Tax Digital

The government remains committed to making major changes to tax administration, including electronic record keeping, online tax reporting and altering tax payment patterns. The government will therefore publish its response to the Making Tax Digital consultations in January 2017, together with provisions to implement the previously announced changes. The government has not yet consulted on whether and how these proposals might apply to large businesses.

2) Changes to the timing of the UK's fiscal announcements

The UK's fiscal year runs from 1 April to 31 March and the UK's fiscal calendar has typically included a Budget in March and an Autumn Statement in November. The Chancellor announced that the March 2017 Budget will happen as normal and the UK will then move to having a single, annual fiscal event from Autumn 2017.

A Spring Statement will then be introduced, with the aim of simply commenting on the UK's fiscal position, subject to the government reserving its right to make tax changes should the economic climate require it.

The move to a single, annual fiscal event is welcome as businesses will only need to digest and respond to changes in UK tax laws once a year. It should also allow more time for scrutiny of legislation by Parliament, companies and the tax profession, which should lead to less uncertainty and better quality legislation.

3) Avoidance and evasion

The government continues to announce and implement a range of measures aimed at tackling tax avoidance and evasion. The key announcements in Autumn Statement 2016 include:

- Denying tax relief on employer contributions to disguised remuneration schemes unless tax and national insurance are paid within a specific period;
- Confirmation that the government will go ahead with a new penalty for any person who has enabled another person or business to use a tax avoidance arrangement that is later defeated by HMRC. The detail was released on 5 December and the government said it will be shaped by the consultation on the area to ensure it is properly focussed; and
- Further investment and resource for HMRC to counter avoidance, including taking cases forward for litigation.

(5) Indirect taxes

The Chancellor also announced certain changes in respect of VAT including:

- A review of the VAT grouping provisions, with a focus on the eligibility conditions required for companies to join a VAT group;
- Following consultation, legislation will be introduced in Finance Bill 2017 to impose a new penalty for participating in VAT fraud. This new penalty will apply to businesses and officers of companies who knew or should have known that their transactions were connected with VAT fraud. No further detail has been published but the language of the announcement is consistent with that seen in connection with EU Missing Trader Intra-Community fraud (also known as 'MTIC' or carousel fraud).

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