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Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

December 2017

Autumn Budget 2017 Japanese Business Tax

The Chancellor of the Exchequer, Philip Hammond, delivered the government's first Autumn Budget on November 22, 2017 against a backdrop of slower growth in the UK economy. His announcements were largely targeted at supporting the robustness of the UK tax system, whilst continuing to promote the UK as a favourable location for business.

The Chancellor stated that draft legislation will be released in July 2018 for changes announced today, whilst legislation for measures that have been previously announced will be published in the draft Finance Bill on December 1, 2017.

This bulletin sets out the key measures for Japanese owned groups. For detailed coverage and comment on the UK Autumn Budget 2017 visit Deloitte's dedicated website at www.ukbudget.com.

1. Business tax

(1) Corporation tax rate

The Chancellor echoed the commitment made previously to ensure that the UK remains competitive, by offering the lowest corporation tax rate in the G20. No changes were announced regarding the rate reduction to 17% from April 1, 2020, which has previously been enacted.

This means that in certain cases, there would be a continuous need for Japanese groups to consider any potential impact from the Japanese anti-tax haven ('JCFC') rules, the threshold for which is currently set at "less than 20%", together with the reformed JCFC rules that apply from April 2018.

(2) Withholding tax on royalty payments made to non-UK residents

New rules are to be introduced to expand the circumstances in which withholding tax (WHT) is levied on royalty payments to persons not resident in the UK, where these payments are made in connection with UK sales. Whilst the changes are specifically targeted at businesses operating in the digital economy they do have wider effect and will impact royalty payments made to a low or no tax jurisdiction.

These payments will now be subject to WHT (subject to any applicable tax treaties) even if the group has no taxable UK presence. A consultation will be published on December 1, 2017 on the proposed rules, which will have effect from April 2019.

(3) Changes to the hybrid mismatch rules

The Chancellor announced certain changes to the hybrid mismatch rules.

Two changes were announced that will take effect from January 1, 2018. Firstly, a change to confirm that taxes charged at a nil rate will be disregarded for the purposes of the hybrid mismatch rules and, secondly, another to clarify the scope of the legislation with respect to multinational companies.

A number of other changes were also announced including confirming that withholding taxes are to be ignored for the purposes of the hybrid mismatch rules, amending the potential restriction that may arise in deduction/non-inclusion arrangements involving hybrid payees in certain circumstances and broadening the circumstances in which ordinary income may be taken into account. These and other changes will take effect from January 1, 2017.

(4) Corporate Interest Restrictions

A number of changes have been announced to the Corporate Interest Restriction (CIR) rules, which were recently enacted and which took effect from April 1, 2017. These changes are generally aimed at resolving unintended mismatches and making the Public Benefit Infrastructure Exemption more workable.

The CIR rules are complex and following consultation with HMRC and HM Treasury a number of potential mismatches and distortions between accounting and tax measures had been identified. Today's proposed changes appear to deal with some of those, but others will remain and we can expect further changes to the CIR rules over time, which companies will need to monitor.

No changes have been announced that should fundamentally affect the operation of these rules for most corporate groups.

(5) Enhancing R&D tax credits

The Research & Development Expenditure Credit (RDEC) for large companies will become more generous, with the rate set to rise from 11% to 12% from January 1, 2018. This change will increase the after-tax benefit of RDEC claims from 8.91% of amounts qualifying for RDEC to 9.72%. The reduction in the corporation tax rate in April 2020 will further boost the after-tax benefit to 9.96%.

This increase in the RDEC rate is further evidence of the government's continued support for investment in innovation and technology in the UK.

A new advanced clearance service will also be piloted, to provide pre-filing agreement for RDEC claims for three years, which will be welcomed by many companies.

(6) Review of the intangible asset regime

The UK's intangible asset regime has now been in place for over 15 years and the government has therefore announced that it will consult on the regime, to assess whether any targeted changes should be made to ensure that it better supports businesses investing in intellectual property.

In addition, rules will be introduced in respect of transactions occurring on or after today's date to ensure licence arrangements between a company and a related party are treated by both as occurring at market value and that cash and non-cash transactions are treated consistently.

2. Chargeable Gains

(1) Freezing of the indexation allowance from January 2018

Under current law companies disposing of chargeable assets (typically real estate assets) at a gain can index their original cost to take account of inflation. However, the Chancellor announced that indexation allowance will be frozen from December 31, 2017, with the effect that companies making disposals on or after January 1, 2018 will have their indexation restricted. This change is likely to increase gains when chargeable assets are sold after January 1, 2018.

(2) Taxing non-residents' gains on immovable property

The government announced that tax will be charged on gains made by non-residents on disposals of all types of UK immovable property, extending existing rules that applied only to residential property. Assets will be rebased to their value as at April 1, 2019, so that only gains after that date will be subject to the new rules.

This measure will broaden the UK's tax base to include disposals of UK commercial property by non-residents, both directly and indirectly (including where ownership is held through a land rich company).

An anti-forestalling rule will counteract certain arrangements entered into on or after November 22, 2017. In addition, the rules will be protected by a TAAR, which will apply to all arrangements entered into where the main purpose or one of the main purposes is to secure a gain or gains not subject to the new rules.

This measure may have an impact on the measurement of deferred tax assets and liabilities. Any impact of deferred tax re-measurement should be recorded for IFRS and FRS 102 purposes when the legislation is substantively enacted, and for US GAAP purposes when it is enacted. Disclosure of the announcement and the associated impact also may be required in financial statements.

(3) Change in deferred gains on branch assets

Existing legislation allows for the postponement of a tax charge that would otherwise arise where the trade and assets of a foreign branch of a UK company are transferred to an overseas group company. The postponed tax would then become due following the disposal of the assets, or of the shares of the company holding the assets.

Changes will be introduced to ensure that corporate reconstructions involving an exchange of shares in the overseas company do not crystallise the postponed tax charge.

3. Industry specific measures

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

Digital Economy - The government has published a position paper on how it thinks the corporate tax rules should respond to the modernization of the economy and deliver appropriate results for digital businesses that generate value in unique ways. Responses should be sent by January 31, 2018.

The Chancellor also reiterated the government's commitment to the OECD's and EU's deliberations on the taxation of the digital economy; however, the government also reserved its right to consider introducing a limited turnover based tax should no international agreement be reached.

Oil and Gas companies - in order to support the industry a new Transferable Tax History (TTH) mechanism will be introduced for UK Continental Shelf oil and gas producers, for deals that complete on or after November 1, 2018. This new mechanism will allow companies selling North Sea oil and gas fields to transfer some of their tax payment history to the buyers, who will then be able to offset the TTH against the cost of decommissioning the fields when they reach the end of their lives. The government expects this to provide new investors with certainty on the tax relief available for decommissioning costs.

Banks - The Chancellor confirmed that the scope of the Bank Levy will be redefined, such that UK headquartered banks will only have the levy applied to their UK balance sheet liabilities. This change will take effect for accounting periods ending on or after January 1, 2021.

4. Compliance

(1) Change to instalment payment dates for large companies

The government has previously announced that the dates on which very large companies should make quarterly instalments of corporation tax are to be brought forward by 4 months, for accounting periods beginning on or after April 1, 2019. A company is classed as very large if its taxable profits in an accounting period exceed £20 million, prorated by the number of companies in the worldwide group. For a 12 month accounting period, the payment dates will therefore involve an initial payment due 2 months and 13 days after the beginning of the accounting period and then three further payments made at three month intervals.

Accordingly for a calendar year end company, instalments will be paid during the accounting period on 14 March, 14 June, 14 September and 14 December.

(2) Making tax digital

The government previously enacted rules on Making Tax Digital for Business (MTDfB), which require businesses, self-employed individuals and landlords to keep records digitally and update HMRC on a quarterly basis. It has been announced that only businesses with a turnover above £85,000 per year will be required to use MTDfB from April 2019, and then only to meet their VAT obligations. The government has now confirmed that the earliest that MTDfB will be introduced for corporation tax would be April 2020.

(3) Multilateral instrument

The text of the Multilateral Instrument (MLI) was adopted in November 2016 and has now been signed by over 70 countries, including the UK. The MLI modifies Double Taxation Agreements (DTAs) both in order to prevent tax avoidance and improve dispute resolution. In order for the MLI to modify UK DTAs it must be given effect in UK law. Legislation will therefore be introduced to amend the existing powers for giving effect to DTAs in UK law, which have previously only been used to give effect to bilateral arrangements, to also give full effect to the MLI.

5. Indirect taxes

Legislation will be introduced to enable HMRC to hold online marketplaces jointly and severally liable for unpaid VAT relating to sales of goods in the UK. Other VAT changes are unlikely to have broad application to Japanese owned businesses.

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