



Tax Avoidance Schemes and the budget changes

Disguised remuneration

On 9 December 2010 the Government published plans to clamp down on perceived tax avoidance through the use of third party arrangements. The draft legislation was widely drawn. The proposals ensured that loans made via third parties, usually EBT's or EFURBs attracted PAYE and NIC as if they were employment income. This was to counter arrangements where the loans were never expected to be repaid.

Following a consultation process, there is to be amendments to the proposed legislation. The amendments are to provide specific exemption from the very wide-ranging provisions for arrangements that are considered harmless. Further draft legislation will be published in the Finance Bill at the end of March with a new Explanatory Note. These will be designed to exempt a number of entirely innocent arrangements that could have been caught by the rules as they stand. These include short term loans to employees for instance to exercise share options.

The Government has accepted this criticism and has undertaken to limit the impact of the legislation in particular around genuine share plans and long-term incentive plans involving deferred remuneration. It will also now protect investment income and gains of earmarked funds and exclude existing pension savings.

In addition, detailed anti-forestalling provisions introduced at the time meant that any loan or a payment made by an EBT or EFRBS could be immediately caught by the proposed new rules.

Inheritance Tax

Most new IHT tax schemes that are introduced after April 2011 will now fall under the DOTAS rules. This has always been a useful tool for HMRC and it was always a matter of time before IHT joined the other taxes within the rules.

It applies where property becomes relevant property as defined by s58 (1) IHTA1984 as a result of an arrangement and the main benefit is that an advantage is obtained in relation to a relevant property entry charge. More details will be available shortly.

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Listed Tax Avoidance Schemes

HMRC believe that individuals are happy to take a cash flow advantage by entering into a high risk scheme and waiting for the case to be lost. When that happens, all they pay is the tax due and the interest. They have decided to stop this cash flow advantage by introducing a list of specific schemes which will attract additional charges for late payment of tax to encourage the taxpayer to make an early settlement. The cases to be listed will need to be scrutinised by parliament to ensure that they do not use the power too widely. A consultation document will be issued in May 2011 with a view to introducing this from 2012.

Tax Treaty changes

The government also is looking to introduce from April 2012 measures to restrict the relief available where arrangements are made using double tax treaties to avoid UK tax. A consultation document will be issued in the autumn regarding this. A lot of tax mitigation schemes use measure like this so it could stop a number of them from being effective in the future.

Sale of lesser companies

Legislation will be introduced with effect from 23 March 2011 to ensure that the sale of lesser company legislation continues to have what HMRC refer to as “the intended effect”.

The rules impose a charge, at the time of sale, on profits of a lesser company that have been earned but not recognised for tax purposes before it changes ownership. It also gives matching relief. The changes will ensure that the deferred profits fall into charge to tax.

SDLT

HMRC are introducing rules to stop SDLT-avoidance schemes exploiting three areas which they feel do not work. It can only be assumed that this is a clarification of the rules if as they say the schemes do not work. The changes clarify the relationship between the rules for ‘sub-sales’ and alternative finance, narrow the definition of ‘financial institution’ for the purposes of alternative finance and counter the effect of an engineered reduction in market value when properties are exchanged. The new rules become effective on or after 24 March 2011.

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Corporate gains: degrouping charges

With effect from 23 March 2011 rules will be introduced to prevent groups of companies avoiding corporation tax on chargeable gains by using complex arrangements that seek to exploit the “associated companies’ exception” to a degrouping charge. This measure clarifies the rule that can impose a degrouping charge when an event follows another to which the associated companies’ exception applied. This is designed to stop a number of schemes that have tried to take advantage of the rules.

Conclusion

After a number of years of tinkering around the edges and being reactive to schemes it appears that the new government has decided to attack tax mitigation and produced some comprehensive rule changes. They have felt that there is a large amount of tax being avoided and they needed to do something about it.

Even though these rule changes have been introduced we do know that schemes are already being planned to circumnavigate these. They should be available in August after the finance bill is enacted. Once we have fully reviewed schemes available we will be in a position to provide more details.

Should you have any questions relating to the budget please do contact us.

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