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AUTUMN BUDGET 2018

THE FORBES DAWSON TOP 10
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Experts in keeping things simple

Personal tax

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Income tax thresholds and allowances to increase a year earlier than expected

The personal allowance has been increasing at a steady rate over recent years and currently stands at £11,850.

In their election manifesto last year, the Conservatives promised for the personal allowance to be increased to £12,500, and the higher rate threshold to be increased to £50,000 by 2020.

However, the Chancellor announced yesterday that these changes will now be implemented a year earlier and will apply from April 2019.

The increased thresholds will mean basic rate tax payers save £130 per year, higher rate tax payers will keep an extra £860 per year. Additional rate taxpayers will save £600 with these changes.

Our view

The surprising move to bring these changes in a year earlier than expected will be welcomed by all.

The continuing increase in the personal allowance has removed more than 1.5 million people from income tax since 2015/16.

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Capital Gains Tax on residential property 2

Restriction of Principle Private Residence Relief

An unexpected announcement was made to restrict the tax relief available on the disposal of a main residence. Commonly known as Principal Private Residence Relief ('PPR'), this is a very valuable relief that in simple cases can offer complete exemption against the capital gains tax arising on the disposal of the main, or only residence.

The Chancellor has indicated he will consult on making two changes to this relief, that will be implemented from 6 April 2020.

- He will restrict the final period that attracts the relief (after moving out of the home and before sale) from the last 18 months to the last nine months.
- There will be no lettings relief (for the period the property is let) unless the owner occupies the property alongside the tenant.

Our view

It seems the attack on residential property is not over! The second measure does at least tie into the Government's initiative to try to free up more homes for owner occupiers by restricting tax reliefs for landlords. It is not yet clear how the change will apply, however, as owner occupiers who let out part of their property would usually attract full PPR relief in any event.

The restriction to the relief in the final period will bring more people into the charge to Capital Gains Tax. For example, in the cases of separation or divorce where it typically takes longer to sell the property, or if the property market slows, again meaning delays on sale.

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Entrepreneurs' Relief

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Extension to the minimum qualifying period and anti-abuse measures

With a reduced rate of 10% capital gains tax on qualifying disposals for lifetime gains of up to £10 million, Entrepreneurs' Relief is one of most valuable tax reliefs. The government announced two changes to the rules:

- For disposals taking place on or after 6 April 2019, the minimum qualifying period throughout which certain conditions for Entrepreneurs' Relief must be met is extended from 12 months to 24 months. The government's stated intention is to encourage longer term business investment. The exception is where a business ceased to trade before 29 October, where the one year qualifying period still applies.

- With immediate effect, two additional requirements were introduced in relation to shareholdings. Before Budget day, an investor's shareholding requirement was 5% of both nominal value and of voting rights in the qualifying company's share capital throughout the qualifying period (EMI option holders don't have to meet these conditions. Shareholders must now also be entitled to at least 5% of the distributable profits and of the net assets in a winding up. This is to tackle perceived abuse of the current rules.

Our view

Business owners and advisors can breathe a collective sigh of relief as Hammond extolled the virtues of Entrepreneurs' Relief for the private investment sector of the economy.

Whilst the lengthening of the holding period is likely to affect some exit planning, the aim here is to ensure the relief is targeted at genuine business investors, as is the anti-abuse rule. Business owners wanting to incentivise their employees will also need to factor this in, as the qualifying period between grant of option and share disposal will also increase to 24 months.

With the reduced rate and the lifetime limit remaining intact, there is no doubt that the relief continues to be one of the most attractive, despite these further tweaks.

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SDLT for first-time buyers

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SDLT cut for first-time buyers under shared ownership schemes

The Government will extend first-time buyers relief in England and Northern Ireland so that all qualifying share ownership property purchasers can benefit, whether or not the purchaser elects to pay SDLT on the market value of the property.

The relief provides an exemption from SDLT where the property purchase price is £300,000 or below and the purchaser is a first time buyer. Where the purchase price is between £300,001 and £500,000, SDLT is only payable on the value over £300,000.

When first-time buyer's relief was introduced, many shared ownership buyers did not benefit from the exemption as they had a choice of how to pay SDLT under the scheme and elected to pay in instalments, when the relief did not apply.

The change announced yesterday corrects the position and enables the relief to be claimed by all individuals buying property under a qualifying scheme. The change will also be backdated to 22 November 2017 so that eligible purchasers who have not previously claimed first-time buyer's relief will be able to claim a refund.

Our view

This change by the government will not be as wide ranging as perhaps thought and will only apply to the acquisition of properties under a qualifying shared ownership scheme. It will not apply to individuals buying property outside of a qualifying shared ownership scheme, for instance where the property is acquired by two parties, one of which is a first-time buyer.

The first-time buyer exemption has saved £284m since it was brought in and has been claimed on the acquisition of 121,500 homes. According to the Budget documents, the extension to share ownership homes will cost £5m in 2019 to 2020 and is a positive step.

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Capital allowances

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Temporary lift in the Annual Investment Allowance and a new Structures and Buildings Allowance

From 1 January 2019 the maximum amount of the Annual Investment Allowance ('AIA') available to businesses investing in plant and machinery will increase from £200,000 to £1 million for a temporary period of two years, when it will revert back to current rates.

Alongside this, a new Structures and Buildings Allowance ('SBA') will be introduced for commercial construction works (such as offices and retail structures) commencing on or after 29 October 2018. This will provide tax relief for qualifying expenditure over 50 years at a rate of 2% per annum. In addition, expenditure on renovations or conversions of existing commercial structures or buildings will qualify. However, to compensate, the rate of writing down allowances for current special rate pool expenditure will reduce from 8% to 6%

Complex anti-avoidance provisions will be introduced, designed to prevent businesses from altering existing arrangements in order to take advantage of the relief. In order to claim the relief the structure must be in use, unlike plant and machinery allowances. However, there will be no balancing allowances or charges if a building is sold; instead the purchaser will simply claim the allowances available over the remaining 50 year period.

Our view

The temporary increase in the AIA should have a significant impact for small and medium sized businesses, as it will allow more to benefit from a tax deduction on their expenditure on plant and machinery in the year it is made. Businesses looking at making significant purchases in the remainder of 2018 should consider a deferral to come within the scope of the new rules.

The introduction of the SBA is the most significant change to the capital allowances regime since the abolition of Industrial Buildings Allowances ('IBAs') and could be regarded as being a replacement for IBAs; a change that will be welcomed by many businesses looking to acquire their own property.

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Corporate intangibles regime 6

Changes to the taxation of goodwill and other intangibles

Following the consultation released earlier this year, the Chancellor has announced two measures to more closely align the taxation of intangible assets with other chargeable gain assets.

Firstly a form of relief for the cost of acquired goodwill will be reintroduced, having previously been abolished back in 2015. The relief is being described as 'targeted', which will no doubt seek to prevent relief for goodwill arising from 'artificial' or internal reorganisations, and is expected to apply from April 2019.

As from 7 November 2018 there will also be a much called for change to bring the 'de-grouping' rules for intangible assets into line with the regime for taxing gains on other chargeable assets. This will avoid a dry tax charge on the disposal of a company holding intangible assets which had previously been transferred to it intragroup.

Our view

Both of these measures are welcome, eliminating an unnecessary anomaly within the UK tax system itself, and also bringing the UK treatment of goodwill back into line with that of most other major jurisdictions.

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‘Off-payroll’ working

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Proposed extension of the IR35 rules to the private sector

IR35 was introduced many years ago. This is a regime of tax legislation that targets ‘workers’ operating through their own personal service companies (‘PSCs’). It requires the PSC to distribute its income as salary to the director/shareholder in order to avoid additional tax. IR35 has not been successfully enforced and is very complex to administer.

As a consequence, the Government introduced a new regime in 2017, switching the obligation to account for PAYE and NIC to the ‘employer’. The 2017 rules only apply to the public sector.

The Government now intends to roll out the public sector changes to large and medium sized companies in the private sector. This change will apply from April 2020. It will require the paying companies to carefully consider the status of all its contracts with third party companies who are providing services. The paying organisation will become liable for any tax that should have been deducted on payments to the PSC.

Our view

This extension of the obligation to the private sector had been widely predicted. At least the Government have listened to representations and are not applying the rules to small businesses.

Although this change is not intended to apply to arrangements with individuals who are genuinely self-employed, it will make it harder for the small consultancy business to trade successfully.

The downside here is that individuals could be treated as employees for tax purposes without actually receiving the same employment benefits.

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Tax avoidance 8

HMRC to be restored as a preferred creditor in insolvencies

When a company goes into insolvency any amounts recovered for creditors are paid out under a strict order set by law. Under existing legislation, HMRC is classed as an 'unsecured creditor' meaning that it ranks alongside ordinary suppliers and customers of the business.

The Government believes that the public purse is losing out as a result of tax collected by businesses from employees and customers, such as PAYE and VAT not being paid over. This subsequently results in a loss to the Exchequer when the company becomes insolvent. The change in law, applicable from April 2020, will mean that HMRC – whilst still ranking below secured fixed charge creditors and other claims (e.g. redundancy and financial compensation schemes) – will stand ahead of holders of floating charges and other unsecured creditors.

In a further measure to tackle perceived tax abuse, legislation will be tabled to make directors and other persons involved in tax avoidance, evasion or phoenixism, jointly and severally liable for tax liabilities where there is a risk that the company may deliberately enter insolvency.

Our view

This is an about-turn to the position as it was only 2002 when HMRC removed its right as a preferential creditor.

Whilst this is good news for the Exchequer, it pushes ordinary trade creditors further down the pecking order.

We also have a concern that this could lead to an increase in the cost of borrowing for lenders without fixed charges, in view of the potential additional level of risk, at a time when many businesses are already feeling the pinch.

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Employment taxes

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Employment Allowance reform

The Employment Allowance was introduced in April 2014 to support small businesses and charities in helping them to grow by cutting the cost of employment. The allowance was initially introduced at £2,000 per annum but was increased to £3,000 per annum in April 2016, with eligible employers being able to reduce their Employer's NIC bill.

When introduced, the allowance offset the NIC costs of employing four full time workers on the National Minimum Wage. Since its introduction, over a million employers have benefited from the allowance.

From April 2020 the government will now reform the eligibility criteria further and restrict the availability of the Employment Allowance to eligible employers with an Employer's NIC liability below £100,000 in the previous tax year.

Our view

This measure will have a negligible impact on small businesses. We estimate that the restricted eligibility will only affect employers whose payroll costs are in excess of £725,000 per annum.

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SDLT surcharge for non-residents 10

New 1% surcharge for non-residents acquiring UK residential property

In January 2019 the Government will launch a consultation on the imposition of a 1% SDLT surcharge for non-resident buyers of residential property in England and Northern Ireland.

Theresa May had previously talked about this but had not pinpointed a figure.

Our view

Although this policy is consistent with the Government's general downer on residential property along with its fear that foreign investors (Russians and Chinese in particular) are driving up UK property markets, its effectiveness remains to be seen. There are already intrinsic weaknesses in the SDLT legislation which allow lower commercial rates of SDLT to be claimed for residences in certain circumstances and this kind of exploitation is likely to continue with increases in residential rates.

It may also be difficult to properly define a 'non-resident purchaser'. For example, will the higher rates apply to UK companies which are owned by non-residents? If so this may be difficult to monitor and enforce, especially where more complicated structures are involved.

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