Forbes Dawson
THE TAX SPECIALISTS

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Entrepreneurs' Relief

The government will consider bringing forward legislation to amend the changes made by Finance Act 2015 to Entrepreneurs' Relief, in order to support businesses by ensuring that the relief is available on certain genuine commercial transactions.

Forbes Dawson's view:

Despite many commentators expecting the Chancellor to restrict the availability of Entrepreneurs' Relief there have been no changes unveiled. The announcement here relates to new rules which were introduced in March aimed at preventing individuals with a less than 5% economic interest in a business from qualifying for Entrepreneurs' Relief. The rules have potentially caused some genuine commercial structures (particularly corporate partnerships and joint ventures) to lose their ER status, so the announcement of a review is to be welcomed.

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Higher SDLT rates for second homes

Higher rates of Stamp Duty Land Tax (SDLT) will be charged on purchases of additional residential properties, such as buy to let properties and second homes, with effect from 1 April 2016. The higher rates will be 3 percentage points above the current SDLT rates.

Forbes Dawson's view:

This announcement comes on the back of the phased removal of higher rate tax relief on finance costs for individual buy-to-let investors. The possibility of an exemption for company structures may give further incentive to property investors to now incorporate.

The government has said it will consult on the policy detail, including on whether an exemption for corporates and funds owning more than 15 residential properties is appropriate.

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Deed of variation IHT planning to remain

Following the review announced at March Budget 2015, the government will not introduce new restrictions on how deeds of variation can be used for tax purposes but will continue to monitor their use.

Forbes Dawson's view:

Deeds of variation enable a deceased's estate to alter the distribution of that estate, or relinquish a bequest from an estate by changing the deceased's Will, and the prospect of a restriction in this area was widely criticised by the professional community. The review may have been more down to trying to embarrass Ed Miliband (whose father's estate had reduced its IHT bill using a deed of variation). Either way, this is good news.

Company distribution tax consultation

The government will publish a consultation on the rules concerning company distributions later in the year.

The government will also amend the Transactions in Securities rules and introduce a Targeted Anti-Avoidance Rule in order to prevent opportunities for income to be converted to capital in order to gain a tax advantage.

Forbes Dawson's view:

There is no further detail on these measures, but with the recent hike in dividend tax rates there is an incentive to structure extraction from a company in capital form (particularly where the 10% Entrepreneurs' Relief rate applies). It is to be seen whether this rule is to be targeted at specific types of arrangements or more general.

It is not clear what the consultation on company distributions is to cover, but the payment of dividends to employee shareholders could be one area at risk.

Pensions tax relief

At the Summer Budget 2015, the government launched a consultation on the system of pensions tax relief.

The Chancellor has said he is considering the responses received and will publish the government's response at Budget 2016.

Forbes Dawson's view:

The postponement of any changes to pension rules is a reflection of the fact that the UK pension tax system is now incredibly complex, although it could signal the possibility that any change will be significant.

We already know that tax relief for higher earners is to be reduced from 6 April 2016 and so it will be important for individuals to review their pension arrangements before the end of this tax year in case there are to be further restrictions.

Inheritance tax and undrawn pension funds

The government will legislate to ensure a charge to inheritance tax will not arise when a pension scheme member designates funds for drawdown but does not draw all of the funds before death. This will be backdated to apply to deaths on or after 6 April 2011

Forbes Dawson's view:

In 2014 the Government announced changes to IHT applied to pensions, but they could have potentially pursued people for IHT if they were judged to have left money in pensions to avoid it becoming part of their estate and therefore liable to the tax. It is good that any doubt over the potential liability to IHT has now been removed.

The Treasury is also looking at ways to simplify how scheme pensions are payable on death and we await further detail on this.

Clarification of time limits for self-assessment

The government will publish draft legislation clarifying the time allowed for making a self-assessment. It will make clear that the time limit is 4 years from the end of the relevant tax year.

Forbes Dawson's view:

This change is likely to be in response to a Tribunal case which HMRC lost in April this year (Higgs v Revenue & Customs). The tribunal agreed that taxpayers have the right to file a self-assessment return many years after the end of the tax year concerned, and are automatically entitled to a refund of any overpaid tax.

Now is the time to revisit any tax refunds which have previously been refused by HMRC. There may be a limited window of opportunity to recover this before the rules change.

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Capital gains tax payments on account

From April 2019 payments on account of any capital gains tax due on the disposal of residential property will be due within 30 days of completion. Gains covered by PPR will not be affected.

Forbes Dawson's view:

This will bring the rules for UK residents disposing of residential property in line with the recently introduced rules for non-residents. Although the associated reporting requirements have yet to be announced we expect there will be some linkage with the new "Digital tax account" which the Government has said it intends to introduce as part of plans to phase out the end-of-year tax return in a move towards a 'real time' system.

Changes to childcare support

The government will lower the upper income limit for childcare support per parent from £150,000 to £100,000 and increase the minimum income level per parent from the equivalent of 8 hours to 16 hours at the National Living Wage.

Forbes Dawson's view:

The introduction of tax-free childcare from early 2017 will allow a family with two children could begin to claim childcare support worth up to £40,000 through free hours and tax-free childcare support by the time both children are at school.

With the U-turn on tax credits, George Osborne was going to need another area to cut in order to deliver the promised £12 billion savings to the Welfare Bill, and it is no surprise that the eligibility criteria has been curtailed.

Anti-avoidance measures

The government will introduce new measures for those who persistently enter into tax avoidance schemes that are defeated by HMRC. These include a surcharge on those whose latest return is inaccurate due to use of a defeated scheme.

The government will also introduce a new penalty of 60% of tax due to be charged in all cases successfully tackled by the GAAR.

Forbes Dawson's view:

This announcement follows a raft of anti-avoidance measures in recent years, such as the new Advanced Payment Notice ('APN') regime for users of tax-avoidance schemes. Affected individuals may wish to consider the possibility of settlement opportunities with HMRC.