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Budget 2020

Forbes Dawson's Top 10

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BUDGET 2020:FORGET BREXIT – THE NEW 'B' WORD IS BORROWING

Today's Budget was hotly anticipated, with many commentators expecting the Government to refocus its attention on the 'domestic tax and spend agenda', having put Brexit to bed. That was before the Coronavirus outbreak of course, and it is of no surprise that Rishi Sunak, appointed to the role only weeks ago, would be forced to act. With global stock markets facing unprecedented pressures and an emergency interest rate cut by the Bank of England announced only hours earlier, the Chancellor took to the dispatch box to announce a £30bn package of measures to stimulate the UK economy.

The question on everyone's minds, however, is how these emergency and other spending measures unveiled will be paid for. Top of the agenda was, as predicted, a cut to Entrepreneurs' Relief. Although the Government stopped short of scrapping the relief entirely the allowance has now been significantly curtailed. However, it could have been a lot worse. Rumours of a potential attack on Inheritance Tax and pensions reliefs have turned out to be unfounded … at least for now. If anything is certain, though, this Government is going to need to borrow to keep up with the vastly extended spending commitments.

We have put together our usual 'Top Ten' to distil the main measures announced today that we think will be of interest to our clients and professional contacts. As ever, we welcome the opportunity to discuss how today's Budget affects you and/or your clients' affairs.

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11 MARCH 2020

ENTREPRENEURS' RELIEF ALLOWANCE SLASHED

From 11 March 2020 the lifetime limit on gains qualifying for Entrepreneurs' Relief has been cut from £10 million to £1 million.

Entrepreneurs' Relief allows a taxpayer to pay capital gains tax at a rate of 10% on the sale of certain business assets, shares in a personal trading company or EMI shares. The previous limit could save a taxpayer up to £1 million in capital gains tax over their lifetime.

The new £1 million lifetime limit on gains will take into account all previous disposals. For example, a taxpayer with one previous gain qualifying for Entrepreneurs' Relief of £700,000, say in 2017/18, now has a lifetime limit remaining of just £300,000.

The devil in the detail …

As expected, any events that have taken place before 11 March 2020 and that crystallise a gain after Budget Day, will be subject to the new rules, for example, a gain that has been previously rolled over into loan notes.

Various anti-forestalling rules have been introduced for those who entered into certain contracts in advance of the Budget. These are discussed overleaf.

OUR VIEW

A change to Entrepreneurs' Relief was widely predicted before the Budget with some forecasting the complete abolition of the relief.

Whilst a reduction in the lifetime limit to £1 million of gains will mean most taxpayers can continue to claim Entrepreneurs' Relief on their full proceeds this will clearly have an impact on serial entrepreneurs.

Since each taxpayer has a £1 million lifetime limit, ensuring each spouse holds shares in the family company now makes even more sense in order to double up on the limit. This assumes, of course, they both meet all the criteria.

With no cuts to Investor relief, which will still have a £10 million lifetime limit, it may make sense for investors to structure their investments to qualify for this relief. However, this is a very different relief with no involvement allowed in the running of the company.

ENTREPRENEURS' RELIEF ANTI-FORSTALLING

Unconditional Contracts

Entering into an unconditional contract generally triggers a disposal for capital gains tax purposes and many will have scrambled to do so before Budget Day, with conveyance or transfer of legal title taking place afterwards.

In such circumstances, the disposal date will now be the later date unless the transferor makes a statement, when claiming relief under self-assessment, that:

1. The contract was not entered into in order to accelerate the disposal date; and,
2. If and where the parties to the contract are connected, that it was entered into wholly for commercial reasons.

Exchange of securities

Taxpayers can elect (under s169Q) to disapply the special relieving provisions on share for share exchanges in order to trigger a disposal, taking advantage of relief at a time when they qualify. For reorganisations that took place between 6 April 2019 and 11 March 2020, the disposal date will now be the date the election is made, if either:

- Both companies have substantially the same set of shareholders; or
- The same shareholder before and after the share exchange controlled both companies; or
- The taxpayer has more shares in the new company than held in the old company and on 11 March 2020 met all the conditions for Entrepreneurs' Relief in the new company.

OUR VIEW

Retrospective legislation (stretching back to 6 April 2019) is never welcome as it means that taxpayers cannot plan their affairs.

These anti-forestalling measures are largely unprecedented and given the usual hurry to execute contracts before Budget Day, they may catch out many.

They will need to be considered carefully by taxpayers who have entered into such contracts when completing their tax returns, otherwise they could be liable to penalties where HMRC believe the intention was to bring forward the disposal.

Also unexpected is the retrospective nature of the application of the new lifetime limit to share for share reorganisations carried out since 5 April 2019. This seems particularly harsh. Given the tax year is not over, most will not yet have filed the elections, even where the intention was always to crystallise a gain on all or some aspects of the disposal.

CHANGES TO THE TAXATION OF SAVINGS

Insurance Bonds

Top slicing relief ('TSR') is a long standing relief that allows gains arising in a year on the encashment of insurance bonds, to be split as if taxed over the years of ownership, facilitating relief from what could otherwise be higher or additional rates of income tax. The amounts involved can be significant where the policy has been held for several years.

In calculating TSR, HMRC's view to date has been that the personal allowance is restricted if the gain (with it all included in the year of encashment) pushes the taxpayer's income over £100,000.

Draft legislation has been released and is effective from today which allows the reinstatement of the personal allowance if the income, with the inclusion of the *annualised* gain, does not exceed £100,000.

The legislation also clarifies the treatment of other allowances and reliefs in the TSR calculation, by confirming that they must be set as far as possible against other income in preference to the insurance gain. They remove the general ability to offset other allowances and reliefs in the most favourable manner, for example personal savings allowances etc. This will impact upon taxpayers differently on a case by case basis.

Other savings

With interest rates reduced today, savings may not be on everyone's minds. However it is worth noting that the Junior ISA allowance has more than doubled from £4,368 to £9,000 per annum from 6 April 2020. The normal ISA allowance also remains at its generous level of £20,000 per annum.

OUR VIEW

This announcement on the availability of personal allowances is one that we have been pressing HMRC on.

As the new legislation is not retrospective, it remains unclear whether historical claims made on the basis that the personal allowance should be allowed, will now be settled in the taxpayer's favour.

We have previously challenged HMRC's interpretation as it does not accord directly with the legislation. This change reinforces our view was correct, which we believe can only be helpful.

HMRC has recently appealed a court decision (the Marina Silver case) made in favour of the taxpayer on this very topic. Apparently this case will still be heard in order to settle any ambiguity for earlier years.

The increase in the amount that can be contributed to a Junior ISA is a welcome change.

PENSION CONTRIBUTIONS RELAXATION

Higher earners have doctors to thank for a relaxation in the amounts that can be contributed to a pension without restriction.

Currently, anyone earning over £110,000 (who has a total income of over £150,000, including their pension contributions) would not be able to contribute the full £40,000 annual allowance into their pension. Instead it would be tapered by £1 for every £2 that their income exceeds £150,000, down to a £10,000 minimum contribution.

From 6 April 2020 those earning up to £200,000 (or £240,000 with the pension contribution) are no longer caught by these tapering rules; allowing a full £40,000 annual contribution to be made. A sting in the tail is that the minimum tapered allowance will be reduced from £10,000 to £4,000. Therefore, anyone earning more than £312,000 will be worse off as a result.

Unfortunately, there is no increase in the lifetime allowance for pensions, beyond the Consumer Prices Index inflationary increase which will take the limit to £1,073,100 from 6 April 2020.

OUR VIEW

This is a welcome change, as it allows many more high earners to help fund their retirement without unnecessary restriction.

The reduction in the minimum tapered amount for those earning over £300,000, seems a fair way to counter the increased tax benefits to those earning slightly less.

As a result of the relatively low lifetime allowance, in reality restrictions still apply (albeit in a different way) to pensions for those high earners.

NATIONAL INSURANCE THRESHOLD TO RISE

The Chancellor confirmed that the threshold beyond which National Insurance Contributions ('NICs') become payable will be significantly increased from 6 April 2020 as part of the Government's commitment to reduce contributions by the low paid. This measure had been previously announced in February.

For 2020/21 the threshold at which taxpayers start to pay NICs will rise to £9,500 per annum. The increase applies to both employed (Class 1) and self-employed (Class 4) individuals.

The initial increase is part of the Government's overall aim to raise the NIC threshold to £12,500 per year, in order to align more closely with the income tax personal allowance.

Whilst the Class 1 primary threshold and Class 4 lower profits limit will increase, the upper limits will stay the same, although other thresholds will see an inflationary rise. The threshold increases will not affect entitlement to contributory benefits such as the State Pension.

The Government says it is keeping to its manifesto promise not to increase the rates of income tax, NICs and VAT.

Employer allowance

In addition, Rishi Sunak has announced an increase in the NIC Employment Allowance from £3,000 to £4,000 from 6 April 2020.

Employers will not have to do anything extra to claim the additional Allowance.

OUR VIEW

The lifting of the NIC threshold will be worth approximately £100 for each employed/self-employed individual. Coupled with the increases in the Employer Allowance this is positive news.

We are supportive of the Government's aims to align NIC with Income Tax as the dual regimes can cause unnecessary complication. It will be interesting to see whether this is the first step to a consolidation of income taxes with NIC regimes – something which the Office for Tax Simplification raised as a suggestion some time ago.

TAXATION OF COMPANY CARS

In order to support the transition to the use of an alternative measure of emissions for new cars for cars registered on or after 20 April 2020 there will be reduction of 2% in 2020-21 for the company car tax benefit charge based upon the new measure.

This will then return to previously planned levels, increasing by 1% in 2021-22 and 2% 2022-23. In 2024-25 the rates will be frozen.

The change to the fuel benefit charge and van benefit charge will increase in line with inflation.

Further benefits to company-owned electric vehicles

To further incentivise the uptake of low-emission vehicles, the Government have extended the First Year Allowance ('FYA') for low emission vehicles, zero-emission goods vehicles and equipment for gas refuelling stations by a further four years up to April 2025.

There have also been further capital allowances changes which seek to reduce the tax deductions available on higher emission vehicles. A writing down allowance of 18% will now be applicable to cars with emissions of up to 50g/km, with higher polluting cars above 50 g/km receiving the lower 'special' rate written down allowance of 6%.

From April 2021, companies that allow private use of zero-emission vans to their employees will apply a nil rate of tax within van benefit charges.

OUR VIEW

We have previously outlined the significant company car tax benefits associated with the provision of low and zero-emission electric vehicles.

With the ever-growing range of electric cars and improvements in infrastructure making these vehicles more accessible, the extension in the allowances available for low-emission vehicles will allow businesses to invest in a fleet of company cars and receive direct relief for their purchases.

We predict an explosion in electric company car schemes based on the NIC, VAT and lease hire benefits. But these further changes could see the operation of these schemes become the new normal, especially as the Government seeks to create a greener future.

STAMP TAXES

Stamp Duty Land Tax ('SDLT')

The Government announced proposals last year to introduce a surcharge on the purchase of residential property in the UK by non-resident individuals.

The Chancellor has now confirmed that a levy of 2% will be introduced from April 2021 and will apply not only to non-resident individuals, but also to those buying through a company. The non-resident surcharge is in addition to the normal SDLT rates and the existing 3% surcharge on individuals purchasing a second home. This brings maximum SDLT rates to 17% for overseas buyers purchasing an additional property in the UK worth more than £1.5m.

Stamp Duty and Stamp Duty Reserve Tax

The Chancellor has confirmed that proposals to extend the 'market value' rule for stamp duty will apply to the transfer of unlisted securities to connected companies effected on or after the date Finance Act 2020 receives Royal Assent.

Historically, it has been possible to use a simple planning technique known as 'swamping' to reduce the stamp duty charge arising on a share reorganisation where a specific stamp duty relief would not otherwise be available. This relied on the way the consideration was defined in stamp duty legislation.

Under the new proposals, stamp duty will be calculated on the market value of the shares, meaning this technique will no longer be effective in reducing stamp duty liabilities on certain company reorganisations.

OUR VIEW

This measure attempts to restrict the ownership of high-value residential properties, particularly in London, by overseas investors. However, as the surcharge will not be introduced until April 2021, overseas investors may see the next 12 months as a window of opportunity to accelerate their plans to invest in UK residential property.

We have been advising clients for some time that where possible, it may be advantageous to complete transactions before Royal Assent, whilst 'swamping' is still an option. No date has yet been given for Royal Assent but it is expected imminently.

However, whilst the new rules are likely to increase stamp duty liabilities on certain transactions, some comfort can be taken from the relaxation of a stamp duty anti-avoidance provision meaning certain partition demerger transactions will no longer be subject to multiple layers of stamp duty.

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BUSINESS TAX RELIEFS BOOSTED

Today's Budget unveiled a series of measures to support businesses, with a particular focus upon investment and innovation.

Structures and Buildings Allowances ('SBAs')

SBAs were introduced on 29 October 2018 to provide capital allowances tax relief for the construction, renovation or conversion costs for new, non-residential structures and buildings used for qualifying purposes over their lifetime. The new regime applied to all new construction contracts entered into after that date. The relief was initially set at a fixed 2% straight line deduction for qualifying expenditure.

The Chancellor has today announced that the relief will be increased to a rate of 3% per annum from 1 April 2020. This reduces the time it will take to relieve qualifying expenditure from 50 years to 33 and one third years.

Research and Development ('R&D') tax credits

Companies that are engaged in R&D can obtain additional tax relief against trading profits. For large companies the relief is given by way of an "above the line" expenditure credit (known as 'RDEC') equivalent to 12% of the qualifying expenditure incurred.

From 1 April 2020 the RDEC will be increased to 13%.

OUR VIEW

We welcome these changes, although it is worth pointing out that the enhancements to R&D relief are only being applied to the large company regime. The rates of relief for small and medium sized enterprises remain unchanged.

The acceleration of SBAs should be welcomed by all businesses looking to build, extend or renovate their own premises, particularly given the current economic climate.

It is often overlooked that SBAs may be available even if the building is leased (provided the lease is for a term longer than 35 years), or bought from a developer. The relief is also open to commercial property investors.

CHANGES TO CORPORATION TAX FOR NON-UK COMPANIES OWNING UK PROPERTY

A series of consequential amendments were announced to deal with potential anomalies and inconsistencies arising from the transition of Non-resident property holding companies into the corporation tax regime as from 6 April 2020, specifically:

- to ensure that the taxation of non trading loan and derivative income held in respect of a UK permanent establishment is not restricted;
- to provide relief for pre-trading finance costs (up to 7 years prior to commencement of trading);
- to align the regulations which allow for fair value movements in derivatives to be disregarded;
- and finally to clarify the circumstances in which an exception from the requirement and duty to notify chargeability to corporation tax may apply, where all of a company's income has been subject to deduction of UK income tax.

OUR VIEW

The previously announced changes to the taxation of non resident UK property holding companies will require a big shift in the compliance obligations of these non-UK entities.

These changes highlight the complexities involved in bringing these entities within the corporation tax regime, and perhaps suggest that further amendments might be required as the new regime beds in and further inconsistencies are identified.

OTHER CORPORATE TAX CHANGES

Amongst the other changes announced today were the following:

Digital services tax

The Chancellor has confirmed the introduction of a new 2% tax from 1 April 2020 on the revenues of search engines, social media services and online marketplaces which derive value from UK users.

Changes to the taxation of older intangible assets as from 1 July 2020

This measure will bring 'old' pre-2002 intangible assets within the corporate intangible regime. Previously these assets were outside of the regime and would be ineligible for amortisation relief unless acquired from a third party. This change is intended to benefit businesses with older but well established intellectual property rights such as trademarks, patents, design rights etc.

Corporate capital loss restriction

As previously announced the amount of brought forward capital losses within companies will be subject to the same restriction as has been applied to other types of losses since 2017. The £5m limit before the restriction applies will now be shared across all types of losses.

Corporation tax rate

Finally, the corporation tax rate remains on hold at 19%, as previously announced.

OUR VIEW

The changes to the loss restriction and the alignment of the intangibles rules are not unexpected, and the rate freeze had already been proposed ahead of last December's election.

Perhaps the biggest change is the introduction of the so called 'Google' tax. Internationally established tax principles have historically allocated the majority of value, and hence taxation, to the territory where value is created rather than where the end user resides.

The emergence of the digital economy has caused a major rethink as to how and where value is created and the digital services tax seeks to allocate a tax based upon the location of users in order to take account of the value derived from the 'interaction and engagement' with end users

INHERITANCE TAX – THE BIG NEWS IS ... NO NEWS!

Everyone had expected that a reform of inheritance tax would form a major part of the new Government's first budget. There is a well accepted view that the tax is too complicated and gives too many reliefs. A recent review had been carried out by the Office of Tax Simplification which advocated a number of changes, in particular a simplification of the lifetime gift rules.

Inheritance tax, however, was not mentioned at all in the Chancellor's address, and is also absent from HMRC's post-budget announcements. We will have to wait and see whether there is any form of further consultation announced in due course.

OUR VIEW

Given the current crisis with the world economy, the priority of the Budget will undoubtedly have been to bolster the UK environment and to support small businesses, particularly by giving reliefs on business rates. Inheritance tax is raising increasing revenues as reliefs are frozen and values of estates increase year by year. The Chancellor cannot afford any other giveaways that benefit the wealthy.

Nevertheless a reform of inheritance tax remains very much on the cards for future budgets so it could be case of 'watch this space'.

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