ACTIVE PRACTICE UPDATES

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Killicks Accountants ACCA Association of Chartered Certified Accountants

AUDIT | ACCOUNTING | TAX & ADVISORY SERVICES

The 2012 Finance Bill Draft Clauses

As promised, the Government has published the draft clauses of the Finance Bill 2012 three months prior to the Budget on 21 March 2012. The clauses are intended for consultation until 10 February 2012.

Many of these provisions had been pre-announced in the 2011 Budget, but there were still a few surprises.

Seed investment

A new generous tax relief called Seed Enterprise Investment Scheme (SEIS) is being introduced and will apply to investments made on or after 6 April 2012.

The main elements of SEIS are:

- 50% income tax relief is given on qualifying investments
- A maximum annual amount of investment of £100,000 per investor
- The maximum SEIS investment is £150,000 per company
- Capital gains tax is not charged for certain disposals
- The investor must not own more than 30% of the company or be an employee
- There must be no pre-arranged exit

As with other forms of tax-advantaged investments, SEIS is hedged with conditions about qualifying trades and disqualifying events. However, this is a generous new tax relief, but where advice is required to ensure strict compliance.

As a separate development there are changes to the existing enterprise investment scheme (particularly in relation to who is a 'connected person'), to the types of share that may be used, and to the maximum amount the company may raise. The maximum investment per individual doubles from £500,000 to £1 million.

Statutory residence test

One of the most vexed taxation issues is deciding whether a taxpayer is resident in the UK. It involves more than just counting days in the UK.

A statutory residence test was to be introduced in 2012, for which details had previously been published. This follows the long-running case of Mr Robert Gaines-Cooper, whom the Supreme Court held was UK resident even though he met the then-current guidelines for being non-resident.

This statutory test has now been delayed by one year for further consultation, with the hope of being introduced in 2013.

In the meantime, it is proposed to increase the £30,000 non-domicile charge after seven years to £50,000 after 12 years. There are also some technical changes to this law.

Inheritance tax

The nil rate band is currently frozen at £325,000 until the end of this Parliament in 2015. From then, it is planned to increase each year in line with the Consumer Price Index (CPI) rather than the RPI, which has tended to show larger rises.

It should also be remembered that there is a new rate of 36% for inheritance tax from 6 April 2012 where at least 10% of the estate is given to charity. This is not enough to justify charitable giving solely on the basis of tax saved. However, it can make charitable donations tax-effective. If a person was planning to leave a significant sum to charity anyway, increasing the gift to 10% can save inheritance tax.

The draft clauses explain exactly how this 10% is to be calculated.

We can advise you to ensure that the relevant conditions are met.

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Pre-owned fixtures

The introduction of a capital allowance for features integral to a building has created problems when the seller has pooled such assets.

A new clause requires the seller and buyer to agree a figure representing such assets and for both of them to use the same figure in their accounts. Such agreement must be within two years of the sale. HMRC has suspected that existing laws have been exploited for tax avoidance.

Dividends from removed companies

There have been two separate developments on what happens to the share capital of a company removed from the register at Companies House.

When you have simply finished with a company, it may be removed from the register under Companies Act 2006 s1000 or 1003, without the need for a formal winding-up. More than 300,000 companies are removed from the register each year this way.

Under extra-statutory concession C16, the share capital which is returned to shareholders may be taxed as capital and not as dividend. This usually means that less tax is paid. It is intended that, from 1 March 2012, this will be subject to a £25,000 limit. Any distribution of share capital above this figure is taxed as dividend income.

In a separate development, the Treasury Solicitor announced a change in the law. Strictly, this share capital is *bona vacantia*, that means it belongs to the Crown. However, the Treasury Solicitor had announced that he would not seek to recover funds where the amount was below £4,000, as this was the estimated cost of a straightforward winding-up. Unexpectedly, this limit has now been removed completely, so any sum may be distributed.

HMRC had proposed having the non-dividend limit also at £4,000, but consultees said this was too low.

Part of the thinking behind these changes is that company law now makes it much easier to reduce share capital anyway.

If you plan to close a company that is no longer needed, we can advise you on how to minimise your tax liability

Safety enhanced cars

An employee who is provided with a company car pays tax on that benefit.

From 6 April 2012, it is planned that such security features as armour-plating and bullet-proof glass be excluded from the value used to calculate that benefit.

Asset-backed employment pensions

An asset-backed pension scheme arises when the employer's legal obligation to pay a pension is matched by the pension scheme's obligation to purchase an asset from the employer. There are many variations on this theme. Such schemes have become popular when schemes have large deficits.

These arrangements have been exploited in artificial tax avoidance schemes. So retrospective legislation is planned that restricts tax relief to the amount of contribution paid by the employer, with effect from 29 November 2011.

Enterprise zones

Just as the old enterprise zones are expiring, the Government announces the creation of new zones. However these zones do not have the same range of tax benefits. In particular, they do not all qualify for 100% first year capital allowances.

The Act allows some of these areas to be 'designated assisted areas'. Such zones will then qualify for the full allowance.

Pre-eminent works of art

An individual or company will be able to claim tax relief for a work of art which is gifted to the state or to an appropriate body. Relief may be given against income tax, corporation tax or capital gains tax.

SA Donate

This scheme allowed taxpayers to direct that any tax rebates be donated to charity. Very little use has been made of this scheme, which is therefore to be closed from 6 April 2012.

Controlled foreign companies

Tax law on controlled foreign companies (CFCs) is to be replaced with 60 pages of new tax law.

A CFC exists when UK residents control a company registered overseas. Tax law is designed to prevent this being used to avoid tax. This will be achieved by amending the regulations on excluded territories exemption. These are countries where there is little scope to avoid UK tax.

The new provisions extend the number of excluded territories and impose fewer regulations for those territories that are not excluded.

Patent box

The clauses include the much-trailed scheme to impose a corporation tax rate of just 10% on the exploitation of patents and some other intellectual property. Using this arrangement is entirely voluntary.

Instead of ring-fencing such profits (as applies to tonnage tax and oil taxation), the new scheme involves 'streaming' income. Corporation tax is calculated in the normal way, but a deduction is then calculated to reduce the tax to 10 per cent on relevant income.

As usual, the arrangements are subject to many pages of detailed provisions, including anti-avoidance provisions.

Research & Development

As a separate provision, the Bill includes measures to increase tax credits for research and development.

As your taxation advisers we aim to keep you up-to-date, but personal advice should always be sought before taking any action – we would be delighted to advise you on any taxation matter.