AUTUMN STATEMENT – CORPORATE TAX

Tolley®Guidance

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Autumn Statement 2013 — Corporate Taxes

Produced by Tolley

The Chancellor of the Exchequer, George Osborne, delivered his 2013 Autumn statement to the House of Commons on 5 December 2013. Many of the tax measures referred to in the statement have been announced in the past, although there are a few exceptions. This article summarises the key tax announcements which are relevant to larger companies and groups.

Documents relating to the Autumn Statement are available on the HMRC page of the gov.uk website .

Anti-avoidance measures

According to the Autumn Statement document, the anti-avoidance measures and measures to tackle tax evasion announced "will raise more than £6.8 billion of new revenue over the forecast period and protect billions of pounds of revenue, making it the largest avoidance and evasion package announced this Parliament. This commitment is underlined by the announcements that the government will further strengthen HMRC's capacity to assess the tax risks posed by large multinational companies and that HMRC will be required to secure an additional £3.7 billion in compliance yield by the end of 2014/15 whilst being exempt from government spending cuts.

The Statement reiterated that the government will continue to work with the G20 and OECD in tackling tax avoidance by multinational companies by progressing the 15 Action Points identified in the OECD's Action Plan on Base Erosion and Profit Shifting .

For previous commentary on the Action Plan see the Does BEPS Action Plan go far enough? news item.

In addition, the following targeted anti-avoidance measures for UK corporation tax were announced:

- Amendments to the worldwide debt cap rules to limit the ability of multinational groups to allocate excessive debt to UK companies. These rules have immediate effect from 5 December 2013.
- Measures closing down corporation tax avoidance schemes exploiting the use of intra-group derivatives.
- Amendments aiming to prevent abuse of the Controlled Foreign Company (CFC) rules by the transfer of profits from offshore intra-group lending. These rules have immediate effect from 5 December 2013.
- Amendments to the Business premises renovation allowance to simplify and clarify the rules and their application and to reduce the risk of exploitation.
- Rules to prevent offshore contractors who lease equipment to oil and gas operators from minimizing their UK tax liabilities by using associate companies in tax havens.
- Amendments to double tax relief rules to reinforce the government's policy that relief for foreign tax should only be given where income has been taxed twice – once in the

UK and once in the foreign territory. These changes have immediate effect from 5 December 2013.

The Autumn Statement document also reiterated the changes that were made in Finance Act 2013 to the corporate loss buying rules, specifically that the rules would not apply where there is a common understanding on the principal terms of the transaction between the parties.

Amendments to Controlled foreign companies (CFCs) rules

Also with immediate effect from 5 December 2013, amendments have been announced to the CFCs rules aiming to tackle offshore transfers of profits arising from UK intra-group lending (LNB News 05/12/2013 158).

The new legislation prevents a creditor relationship of a CFC from being a Qualifying Loan Relationship (QLR) for the purpose of the full or 75% financing exemption in TIOPA 2010, s371IB or section 371ID. The new provision will apply if the creditor relationship arises as a result of any arrangement which has a main purpose of transferring out of the UK profits from a loan made by a UK company connected with the CFC. The rule will apply on a loan by loan basis and will prevent the full or 75% exemption provisions from applying to the creditor relationship of the CFC. It will ensure that further arrangements cannot be entered into to circumvent its effect. Amendments will also be made to TIOPA 2010, ss 371IH(10) to ensure the rules on the definition of QLRs work as intended.

For further guidance on the current rules see the Controlled Foreign Companies (CFCs) — from 1 January 2013 guidance note.

Amendments to the debt cap provisions

Two changes have been announced to the debt cap provisions, to TIOPA 2010, s 345 and TIOPA 2010, s 353A (LNB News 05/12/2013 152). With immediate effect from 5 December 2013, the grouping rules in the debt cap provisions are amended. The changes ensure that a UK tax-resident company that does not have ordinary share capital, for instance a company limited by guarantee, can be a relevant group company for the purpose of the debt cap. The definition of a 75% subsidiary for debt cap purposes will also be amended in order to ensure that indirect ownership of a company can be traced through intermediate entities without ordinary share capital. The changes put it beyond doubt that the ultimate parent of a worldwide group may be regarded as beneficially entitled to 75% of the profits or assets of a UK group company for the purposes of the debt cap grouping rules even taking into account intermediate companies which do not have ordinary share capital.

The regulation-making powers have also been amended in order to enable regulations to include conditions to be met by companies making an election to transfer debt cap liabilities to another group company.

For further guidance on the current rules see the Worldwide debt cap - main provisions guidance note.

Anti-avoidance measures targeting Total Return Swaps scheme

With immediate effect as of 5 December 2013, rules have been introduced to close down a loophole which enabled companies to avoid paying corporation tax on profits paid to an overseas group company.

For further guidance see the Derivative contracts guidance note.

Amendments to the double tax relief rules

The government has announced two changes to the double tax relief rules, effective immediately, with the aim that relief for foreign tax is only available where income has been taxed twice – once in the UK and once in a foreign territory.

The first change targets those avoidance schemes which seek to exploit mismatches between the amounts of UK and foreign income. It therefore requires the amount of relief for foreign tax on non-trading credits from a loan relationship or intangible fixed asset to be limited to the amount of UK tax on the net amount of the credit after deducting related debits.

The second change is designed to reduce any credit allowed or deduction given to the taxpayer, where arrangements in place enable a repayment made by a foreign tax authority to be received by a person other than the taxpayer.

For further information see the Tax Information and Impact Note (TIIN), draft legislation and explanatory note issued by HMRC.

For further guidance on double tax relief see the Double tax relief guidance note.

Modernising the taxation of corporate debt and derivative contracts

Following consultation on the review of the legislation governing the taxation of corporate debt and derivative contracts (LNB News 06/06/2013 75), legislation has been announced clarifying and rationalising the taxation of corporate partners where loan relationships and derivative contracts are held by a partnership.

Legislation will be introduced to further enhance the existing anti-avoidance provisions at CTA 2009, s 492 preventing abuse of the 'bond fund' rules in CTA 2009 Chapter 3, part 6. Under the amended rules corporate investors will be able to make a claim to disapply the bond fund rules in certain circumstances.

Change in ownership rules

Two changes have been announced which ease restrictions on the availability of corporation tax losses imposed by the existing 'change of ownership' rules.

The first change allows for "a holding company to be inserted at the top of a group of companies" (presumably this means without the rules having effect).

The second change is to the definition of 'a significant increase in capital' when a change of ownership occurs in a company with investment business. Following this change in the definition, a significant increase in capital will occur where the capital in the company after the change of ownership (amount B) exceeds that before the change (amount A) by both £1m and 25%. Under the existing rules the increase is significant if B is either £1m (or more) greater than A, or B is at least twice A.

These measures will be included within Finance Bill 2014 and we await the publication of the draft Finance Bill clauses on 10 December 2013 to understand how these changes will be presented and when they will come into effect.

For further guidance on the change of ownership rules see the Change in ownership provisions guidance note.

Associated companies rules

The Autumn statement has announced that the associated companies rules will be simplified in April 2015, to be based on 51% group. The main and small profits rate will also be unified at 20% at the same time, as already announced.

Further details should be available with the publication of Finance Bill 2014.

For further guidance on the current rules associated companies rules see the Associated companies guidance note.

Bank levy amendments

The bank levy was introduced in Finance Act 2011. It is payable by UK banks, banking groups and building societies, and foreign banking groups operating in the UK through a permanent establishment. The tax is levied on the total chargeable equity and liabilities reported in the relevant balance sheets of affected banks at the end of the chargeable period. The rate of the bank levy has been increased from 0.13% to 0.156% from 1 January 2014, with a view to offsetting the benefit banks would otherwise obtain following the reduction in the rate of corporation tax.

In addition to the change in the bank levy rate announced today, the government has announced legislation following its review of operational aspects of the Bank Levy in 2013. The consultation responses will be published alongside the draft legislation on 10 December 2013. The proposed new legislation includes measures for the following:

- The protected deposit exclusion will be limited to amounts insured under a deposit protection scheme
- All derivative contracts will be treated as short-term
- Relief for a bank's High Quality Liquid Assets will be restricted to the rate applicable to long term liabilities
- The Bank Levy definition of Tier One capital will be aligned with the new Capital Requirements Directive. This measure will have effect from January 2014
- Liabilities in respect of collateral that has been passed on to a central counterparty will be excluded from January 2014
- The legislation-making powers within the Bank Levy will be widened to ensure it can be kept in line with regulation. This measure will have effect from the date of Royal Assent.

These changes will have effect from January 2015, unless stated otherwise.

Oil, gas and energy

Onshore oil and gas allowance

Existing corporation tax rules subject ring fenced profits arising from a company's onshore oil and gas activities to a supplementary charge and offer field allowances to reduce those profits.

The new allowance announced today, and having immediate effect, provides for a deduction from adjusted ring fenced profits subjected to the supplementary charge, equivalent to 75% of capital expenditure incurred in relation to an onshore site. This is likely to benefit companies involved in onshore exploration, appraisal and development projects (including shale gas and other hydrocarbons) at an early stage and which are economic but not commercially viable.

For further information on the allowance please see the Tax Information and Impact Note (TIIN), draft legislation and explanatory note issued by HMRC.

Oil and gas exploration

A package of measures has been announced to support oil and gas exploration in the UK and UK Continental Shelf, including the following:

- The ring fence expenditure supplement will be extended for all onshore ring fence oil and gas losses and qualifying pre-commencement expenditure incurred on or after 5 December 2013. This will be included in Finance Bill 2014.
- The Government will review options to mitigate the impact of the profit transfer targeted anti-abuse rule on oil and gas exploration and appraisal and similar activity in other sectors.

The following changes have also been announced which will have effect from the date that Finance Bill 2014 receives Royal Assent:

- Reinvestment relief will be extended to prevent a chargeable gain being subject to corporation tax where a company sells an asset in the course of exploration and appraisal activities and reinvests the proceeds in the UK or UK Continental Shelf. For the current rules see the Rollover reliefs guidance note.
- The scope of the substantial shareholding exemption will be extended to treat a company as having held a substantial shareholding in a subsidiary being disposed of for the required 12 month period before the disposal to scenarios where the subsidiary is using assets for oil and gas exploration and appraisal that have been transferred from other group companies. For further guidance on the current substantial shareholding exemption see the Introduction to the substantial shareholdings exemption and main conditions guidance note.

Energy tax: contracts for difference

The definition of 'contracts for difference' in the corporation tax derivative rules will be amended to include the terms 'investment contracts' and 'contracts for difference' introduced in the Energy Bill. This change will be enacted through secondary legislation once the Energy Bill has received Royal Assent.

Venture Capital Trusts (VCTs)

Over the summer, the Government consulted on changes to the VCT rules to restrict the tax relief available for certain share buy-back and re-investment arrangements between VCTs and their investors. The aim of the changes is to limit income tax relief for investors to new investments in VCT shares, as opposed to relief on existing investments in a particular VCT. (LNB News 19/07/2013 98). Following the, legislation will be introduced to ensure that investments which are conditionally linked to a VCT share buy-back, or that have been made within 6 months of a disposal of shares in the same VCT, will not qualify for new tax relief. This change will take effect from April 2014.

The government has also announced further consultation into the VCT rules. This consultation will focus on addressing the use of converted share premium accounts to return capital to investors, where that return does not reflect the profits on the VCT's investments. The VCT rules will be amended so that investors can subscribe for VCT shares via nominees, in order to enable VCTs to be used by different types of retail investors.

Creative sector tax reliefs

Film tax relief

Film production companies are subject to special tax rules in CTA 2009, part 15. These determine how taxable profits of the film production activities are to be calculated and special loss rules. Subject to meeting specified conditions, some films may also qualify for film tax relief. This relief can increase the amount of expenditure that is allowable as a deduction for tax purposes or, if the company makes a loss, can be surrendered for a payable tax credit.

A number of changes have been announced to enhance film tax relief. Relief will be available at 25% on the first £20 million of qualifying production expenditure, and 20% thereafter, for small and large budget films from April 2014.

The government will also reduce the minimum UK expenditure requirement from 25% to 10% and the cultural test will also be modernised.

The change in the rate of relief is subject to State aid approval. When renotifying film tax relief in 2015 the government will seek state aid clearance to increase the rate of relief to 25% for all qualifying expenditure.

New corporation tax relief for theatres

The government has announced today that it will consult in early 2014 on the introduction of a new limited tax relief for commercial theatre productions and a targeted tax relief for theatres investing in new works or touring productions to regional theatres to have effect from 2015.

Stamp duty

With effect from April 2014, Stamp duty and Stamp Duty Reserve Tax (SDRT) will be abolished on purchases of shares in Exchange Traded Funds (ETFs) where those ETFs are domiciled in the UK.

Other measures of interest to corporate tax professionals

Close company loans to participators

As well as new rules announced in Budget 2013 extending the scope of the close company provisions and introducing new anti-avoidance rules, a consultation was launched at Budget 2013. (LNB News 09/07/2013 102). The options for the alteration of the rules which were proposed in the consultation were:

- Maintain the current regime
- Increase the tax rate but retain the structure and operation of the regime
- Replace the current repayable charging system with a lower rated but permanent charge which arises annually on amounts outstanding at the end of each accounting period until the extraction is repaid to the close company; and
- Replace the current repayable charging system with a lower rated but permanent charge which arises annually on average amounts outstanding during the accounting period

The government has announced in Autumn statement 2013 that it does not intend to make any immediate changes "to the structure or operation of the tax charge on loans from close companies to individuals who have a share or interest in them."

For guidance on the current rules see the Implications of close company status guidance note.

Company beneficial ownership

The Autumn statement document reiterates the previous announcement by David Cameron that the UK will create a publicly accessible central registry of company beneficial ownership information (LNB News 17/06/2013 109). The aim of the registry is "to help prevent the misuse of companies for tax evasion, money laundering and other crimes" (p. 75 of the Autumn Statement document). This register may be useful to tax practitioners in complying with the client identification requirements of the money laundering regulations. Currently it can be arduous to ascertain exactly who the beneficial owners are, for instance for certain partnerships and trusts.

See the Money laundering (as relates to compliance checks) guidance note for further guidance.