AUTUMN STATEMENT – PERSONAL TAX

Tolley®Guidance

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Autumn Statement 2013 — Personal Tax

Produced by Tolley

There were a number of measures in today’s Autumn Statement that will be of interest to personal tax advisers. The highlights include:

- the extension of capital gains tax to non-residents with UK-sited residential properties
- the exemption for principal private residence (PPR) relief is to be reduced from the last 36 months of ownership to the last 18 months
- the creation of a new voluntary class of NIC
- the ability to transfer £1,000 of the personal allowance to a spouse or civil partner

Property owners

Changes to principal private residence relief

From April 2014, the Government will reduce the final period of exemption from 36 months to 18 months from April 2014.
Autumn Statement 2013 , para 2.58

Currently, when a property is sold which has qualified for PPR relief at any time during the period of ownership, the last 36 months of ownership is exempt, regardless of how the property has been used during that period. The provision was originally intended to help those who needed to move and had difficulty in selling their home, but it has become a widely used planning tool for those with two qualifying residences. Indeed MPs accorded the provision some notoriety with their custom of 'flipping' their London and constituency homes.

It seems that the rest of the PPR relief provisions will remain unchanged. Nevertheless, the curtailment of the exemption could have a fairly significant effect on the amount of tax payable on properties which have been owned and lived in for just a few years.

In order to avoid tax on their main residence, homeowners will need to accelerate their decision on whether to sell the property when they move, to another part of the country or abroad.

Extension of the capital gains tax regime to non-residents

As widely anticipated, the Chancellor announced that the government will introduce a charge to capital gains tax on future gains made by non-residents disposing of UK residential property from April 2015.
Autumn Statement 2013 para 2.59

The basic principle of CGT has always been that it is a charge on those resident in the UK. However with the popularity of the UK, and London in particular, as a property investment destination for the worldwide wealthy, the principle is now seen as a 'loophole' in the context of property.
TCGA 1992, s 2

FA 2013 introduced the annual tax on enveloped dwellings and the related capital gains tax charge on residential property held by non-natural persons - typically companies. Those measures went some way towards addressing what was seen as unacceptable tax planning in relation to property, but they apply only to properties worth in excess of £2 million. The current proposal adopts the more direct remedy of imposing a CGT charge on all residential property in the UK (subject to available reliefs such as PPR relief).

A consultation document on the proposals will be issued in early 2014. Clearly, there will be a number of issues to address, including:

- compliance — HMRC must ensure that non-resident owners of residential property are aware of their reporting obligations
- collection — HMRC has limited powers of enforcement against non-residents and may be expected to instigate a tax collection scheme comparable to the non-resident landlords' scheme
- apportionment — to avoid being retrospective, it may be that where the period of ownership straddles April 2015, the gain will have to be apportioned to the chargeable and non-chargeable period (possibly based on a time apportionment basis or a revaluation as at 6 April 2015)

Whilst this measure will catch wealthy foreign investors it will apply equally to British nationals living overseas. Currently, if a person leaves the UK without selling a property, the sale will be free of capital gains tax if he does not return within five years. After April 2015, that exemption will be lost. Combined with the revision to the PPR relief rules, those leaving the UK may need to make an early decision on whether to sell their home.

Business premises renovation relief

HMRC is in the process of conducting a technical review of business premises renovation allowances (BPRA) prompted by notifications under the disclosure of tax avoidance schemes (DOTAS) regime.

The areas of concern include:

- the definition of ‘qualifying expenditure’
- financing of the expenditure via circular loans
- the availability of BPRA at a time when the building is not a qualifying building or where the work may not commence for several years
- use of BPRA in the manipulation of profits and losses of partnerships with a corporate partner (note the taxation of partnerships and the use of corporate partners is being reviewed in a separate consultation and is being examined by the Office of Tax Simplification)

BPRA Technical review , para 1.16

Whilst the aim of the review is to make the rules simpler and ensure that taxpayers can be more certain of its application, it seems that a targeted anti-avoidance rule will be introduced

and some of the definitions will be tightened up so it remains to be seen whether this will result in simplification. The draft legislation will be released next week.
Autumn Statement 2013 , para 2.117

Energy efficiency grants for landlords

Funds are to be made available to private landlords as grants to improve the energy efficiency of their properties. The Government estimates that 45,000 of the least energy efficient properties will be improved and, since the total amount available is £90m, this would suggest an average grant of £2,000 per property. The method of applying for the grant and the criteria of assessment are unclear. It is also uncertain whether commercial landlords will be able to benefit from the grants or whether the scheme will be limited to residential landlords only.
Autumn Statement 2013 , para 2.38

Residential landlords can already claim a revenue deduction against their rental income for capital expenditure on energy-savings items incurred before 6 April 2015 under ITTOIA 2005, s 312. No deduction would be available in relation to this expenditure to the extent it was funded by a Government grant.

Commercial landlords are able to claim capital allowances on plant and machinery or integral features. The amount of any grant must be deducted from the total expenditure incurred to ensure capital allowances are only granted on the net amount.
CAA 2001, s 532 (subscription sensitive)

Business owners

Tax breaks for employee ownership structures

There is to be a package of three new tax exemptions to encourage wider use of indirect employee ownership structures, such as employee benefit trusts or employee share ownership trusts. These will exempt:

- disposals of shares from capital gains tax where it means that a controlling interest in a company will be held by an employee ownership trust
- transfers of shares and other assets to employee ownership trusts from inheritance tax
- bonus payments of up to £3,600 per year made to employees of indirectly employee-owned companies which are controlled by an employee ownership trust from income tax

Autumn Statement 2013 , para 2.60

For more information, see the Incentives for indirect employee ownership: consultation news item.

Employee shares schemes

Following a consultation earlier this year, the Government is to implement a package of simplifications in relation to unapproved employee share schemes. These are considered in more detail in the Autumn Statement 2013 — employment taxes news item.

Autumn Statement 2013 , para 2.112

There are also changes to share incentive plans (SIPs) and save as you earn (SAYE) schemes from 6 April 2014. The limits for free shares and partnerships shares in SIPs are to increase from £3,000 to £3,600 per year and £1,500 to £1,800 per year respectively and the limit for contributions to a SAYE scheme is to increase from £250 to £500 per month.
Autumn Statement 2013 , para 2.61

Tackling youth unemployment

The Chancellor announced two measures to encourage employers to take on younger workers:

- exemption from secondary Class 1 NICs in relation to an employee who is under 21 (until the employee's earnings reach the upper earnings limit, currently £797 per week) — to be effective from 6 April 2015

- changes to the funding mechanisms of apprenticeships, including the delivery of funding via HMRC

Autumn Statement 2013 , paras 2.128, 2.166

For more detail, see the Autumn Statement 2013 — employment taxes (subscription sensitive).

Partnerships anti-avoidance

The anti-avoidance measures mentioned in the Autumn Statement in relation to partnerships (disguised remuneration and corporate partners) have already been subject to consultation . For more information on the original proposals, see the Consultation on partnership signals major changes news item.

Whilst these provisions were expected to take effect on 6 April 2014, some anti-forestalling measures have been introduced from 5 December 2013 in relation to tax-motivated allocations of profit in partnerships with a mixture of individual and corporate partners. The draft legislation shows that where it is reasonable to suppose that an individual partner has the power to enjoy the profit share attributable to the company and there is a tax saving, the profits will be reallocated to the individual partner for tax purposes.
Autumn Statement 2013 , para 2.129

Qualifying loan interest

Finance Bill 2014 will amend ITA 2007, ss 392, 396 to ensure that where interest is paid on loans taken out to invest in close companies or employee-controlled companies resident in the European Economic Area (EEA) it will qualify for income tax relief. Presumably this is because the existing rules are incompatible with the requirement of freedom of establishment enshrined in EU law.
Autumn Statement 2013 , para 2.50

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. It was announced in Autumn Statement 2013 that the Government 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”.
Autumn Statement 2013 , para 2.128

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

Self-employed NICs

The Government plans to use the Self Assessment Tax Return to simplify the collection of Class 2 NIC.

By collecting Class 2 NIC after the end of the tax year once the trading profits are known, this could create two additional administrative advantages:

- the small earnings exemption application process could be abolished
- there will be no need to make an application to defer Class 2 NIC where the trader pays Class 1, 2 and 4 NIC

However, there are also a number of challenges which must be dealt with if the proposal is to be implemented, including:

- the small earnings exemption is based on accounting profits whereas Class 4 NIC are paid on taxable profits
- the Class 2 NIC legislation is broader in scope than the Class 4 legislation, meaning that some individuals are liable to Class 2 and not Class 4
- how to ensure the correct state benefit entitlement is recorded where Class 2 NIC is (potentially) not paid until 31 January after the end of the tax year

The consultation closed on 9 October 2013 and a summary or responses is to be published “in due course”. There is no timescale provided for the implementation of the simplifications.
Autumn Statement 2013 , para 2.115

Employee issues

Simplification of expenses and benefits

The Chancellor outlined the Government's response to the recommendations of the Office of Tax Simplification (OTS) interim report on employee benefits. The Government has implemented four of the ‘quick wins ’ identified in the report and announced that a further nine would be delivered in January 2014, with consideration being given to another 10 by the end of the Parliament. He undertook to consider the final recommendations of the OTS on receipt of its final report ahead of Budget 2014.
Autumn Statement 2013 , para 2.111

Dual contracts

Entering into dual contracts a tax planning device has proved useful for certain employees eligible to be taxed on the remittance basis on overseas earnings. Where such an employee has an employment that has some duties in the UK and some elsewhere, it may be possible for the employee to enter into two contracts, one in respect of the UK duties and one in respect of the overseas duties, so that remuneration under the overseas contract is only taxable when remitted to the UK. See the Foreign employment — dual contracts guidance note.

HMRC has treated dual contracts with a degree of suspicion for a long time, frequently challenging them on the grounds that they do not reflect commercial reality. The measure announced in the Autumn Statement 2013 will, under provisions to be included in Finance Bill 2014, override the effect of a dual contract arrangement which in reality represents a single employment, applying UK tax on the full employment income where a comparable level of tax is not payable overseas on the overseas contract.
Autumn Statement 2013 , para 2.126

The new legislation, due to take effect from 6 April 2014, will not outlaw dual contracts, but will remove the tax advantage often previously delivered through their use.

Company car benefits

The Chancellor announced that Finance Bill 2014 will include two measures to tighten up on the car benefit rules. These new measures will:

- make sure that taxable car benefits can only be reduced by payments for private use made in the relevant tax year

- ensure that where an employer leases a car to an employee at reduced rates, the benefit is taxed as a car benefit rather than as employment earnings

Autumn Statement 2013 , para 2.131

Tax-incentivised investment

Social enterprises

The Chancellor confirmed the introduction of a new tax relief for equity and certain debt instruments in social enterprises from April 2014.
Autumn Statement 2013 , para 2.51

The relief was the subject of a consultation in June 2013 and the proposal was modelled on the enterprise investment scheme. See the Is a new tax relief for investment in social enterprise on the horizon? news item.

As a result of the consultation, social impact bonds will now be included within the scope of the relief.

Venture capital trusts

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. Legislation will be introduced to ensure that investments which are conditionally linked to a VCT share buy-back, or that have been made within six 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 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.

A further consultation will take place into the VCT rules, focusing on 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.
Autumn Statement 2013 , para 2.52

Pensions taxation

State pension

The basic state pension will increase by 2.7% from 6 April 2014. As this translates to a rise of £2.95 per week, it is assumed that this will take the payment to £113.10 (the 2013/14 weekly amount of £110.15 plus £2.95).
Autumn Statement 2013 , para 2.73

State pension age

The Pensions Bill currently before Parliament includes a statutory requirement for the state pension age to be reviewed at least every six years. Assuming the provision is enacted as drafted, the first such review must be published before 7 May 2017.
Pensions Bill , s 26

The Chancellor trailed this review in the Autumn Statement, suggesting that the increase in the state pension age to 68 could be brought forward and the state pension age could increase further to 69 or 70 in future.

This is likely to have a significant impact on employers as the state pension age tends to set the expected retirement age for most people. Indeed, many cannot afford to retire until they receive the state pension.

Therefore, employers may wish to consider:

- raising the retirement age in their occupational schemes in line with the state pension age
- contingency plans for alternative jobs for employees who are unable to continue to meet the physical or mental demands of their current jobs in their old age

Voluntary national insurance contributions by pensioners

Currently, people who are not liable to NICs are able to make voluntary Class 3 NIC in order to boost their state pension entitlement. Typically voluntary contributions are made by people working abroad.

Those over state pension age are prevented from making voluntary contributions, however from October 2015 a new class of contribution will be introduced to allow people who will reach state pension age before 6 April 2016 the opportunity to build up their entitlement. It seems likely that the Class 3A NIC will be set at a fixed weekly rate.
Autumn Statement 2013 , para 2.56

Individual protection 2014

The Chancellor confirmed that Finance Bill 2014 will provide for individual protection 2014 for those with a pension pot already close to the level of current lifetime allowance.
Autumn Statement 2013 , para 2.53

Tax relief for purchased life annuities

Following the responses to the consultation , the Government has decided not to withdraw income tax relief for interest on loans taken out to purchase life annuities by people aged 65 or over before 1999.
Autumn Statement 2013 , para 2.54

Rates and allowances

Income tax

As announced in Budget 2013, the personal allowance is to increase to £10,000 for 2014/15. From 2015/16 the personal allowance will increase by the consumer prices index.
TIIN: Income tax personal allowance

The 'higher rate threshold' (the basic rate band limit plus the personal allowance) will be £41,865 in 2014/15, meaning that the basic rate band limit will be £31,865. The rates of tax for 2014/15 will be announced in Budget 2014. As was pre-announced in Autumn Statement 2012, the higher rate threshold will be £42,285 in 2015/16.
HMRC overview of tax announcements in Autumn Statement 2013

From 6 April 2015, an individual will be able to transfer £1,000 of his personal allowance to his spouse or civil partner. In order to make the transfer both parties must not be higher rate or additional rate taxpayers (it is assumed that this will be assessed prior to the transfer of the £1,000). Therefore, this is only likely to be of benefit where one of the couple is not able to utilise the full personal allowance.

The transferable amount will be increased in proportion to the personal allowance.
Autumn Statement 2013 , para 2.47

National insurance

The NIC rates and thresholds for 2014/15 have been published. The Class 1 upper earnings limit and the Class 4 upper profits limit are aligned with the higher rate income tax threshold of £41,865. There is no change to the percentage rates of NIC, although the weekly rates of Class 2 and Class 3 NIC will be increased.
HMRC overview of tax announcements in Autumn Statement 2013

As discussed above, the new Class 3A NIC is to be introduced from October 2015.

Capital gains tax

The annual exemption will be £11,000 in 2014/15, and to £11,100 in 2015/16. This was pre-announced in Autumn Statement 2012.
HMRC overview of tax announcements in Autumn Statement 2013

Inheritance tax

There were no announcements in relation to the nil rate band or the rate of inheritance tax. As previously announced in Autumn Statement 2012, the nil rate band is expected to remain at £325,000 until it is increased to £329,000 from 6 April 2015 (an increase of approximately 1%).

ISAs

The stocks and shares ISA limit will be £11,880 in 2014/15. The subscription limit for the Junior ISA and child trust fund will be £3,840 in 2014/15.
Autumn Statement 2013 , para 2.55

Also, the Government is exploring whether to widen the retail bonds eligible to be held in a stocks and shares ISA.
Autumn Statement 2013 , para 2.151

Anti-avoidance and compliance checks

HMRC has secured over £60bn in compliance yield since 2010 and had been projected to reach £120bn by the end of 2015/16. Based on this success, the Government has raised this by £3.7bn, revising the annual targets to £23bn in 2013/14, £24.1bn in 2014/15 and £25.1bn in 2015/16. To support this, HMRC is to be exempt from the departmental spending cuts.
Autumn Statement 2013 , paras 1.291, 1.292, 2.146

It seems likely that the HMRC campaigns and taskforces which have proved so successful will continue.

Application of decisions in test cases

As previously announced in Budget 2013, if HMRC is successful in challenging an 'avoidance case' in court, it will be able to send a notice to taxpayers who have used the same avoidance scheme or similar **requiring** them to acknowledge that the judgment applies to them and either:

- amend their Returns accordingly, or
- confirm to HMRC that their cases can be distinguished from the litigated case and that they stand by their original Returns

A tax-geared penalty would be charged if the taxpayer takes the latter action but is later found not to have a reasonable basis for that conclusion.

Following a consultation which closed on 4 October 2013, Finance Bill 2014 is expected to contain these provisions. However, the Chancellor went further than this in Autumn Statement 2013 and announced that, in addition to the above, HMRC will also be able to issue 'pay now' notices. These notices will "initially" be used in relation to tax avoidance schemes which have already been defeated in the courts but there will be a consultation in 2014 to widen the criteria under which the notices can be issued.
Autumn Statement 2013 , para 2.138–2.139

It does not appear that HMRC will be required by the new legal provisions to accept a taxpayer's Tax Return as filed if another taxpayer is successful in a similar avoidance case.

High-risk promoters

As previously announced in Autumn Statement 2012, high-risk promoters of tax avoidance schemes are to be targeted with a raft of new measures including information powers, penalties and the power to publish the promoter's details.

Following the consultation which closed on 4 October 2013, draft legislation is expected to be released next week which will include objective criteria to be used to determine whether promoters are considered to be 'high-risk'. Once a promoter is classified 'high-risk', their clients must identify themselves to HMRC. 'High-risk' promoters will find themselves subject to a higher standard of reasonable excuse and reasonable care.
Autumn Statement 2013 , para 2.137

Given that clients of high-risk promoters will be required to identify themselves as such to HMRC, the likelihood is that these taxpayers will be under greater scrutiny by HMRC. This may lead to these taxpayers disassociating themselves from these promoters and, when combined with the provisions accelerating the tax payments in tax avoidance cases and requiring taxpayers to accept the ruling of a test case, could put these promoters out of business if they do not moderate their behaviour.

There is a parallel here with the attitude that HMRC has been taking with regard to high volume agents. By seeking to get high volume agents to enter into a memorandum of understanding to apply specified standards of scrutiny concerning clients' business records and returns, HMRC is looking to change the behaviour of both the agent and the client. For more details, see 'Sign here, or else ' by Guy Smith in Taxation magazine 3 July 2013.

Beneficial ownership of companies

As previously announced by the Prime Minister, the UK is to create a publicly accessible central registry of company beneficial ownership information. The aim of the registry is "to help prevent the misuse of companies for tax evasion, money laundering and other crimes". 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.
Autumn Statement 2013 , para 1.314