AUTUMN STATEMENT – OWNER-MANAGED BUSINESSES

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Autumn Statement 2013 — Owner-Managed Businesses

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Today, George Osborne delivered his Autumn Statement. HM Treasury released the Autumn Statement Document to accompany the Chancellor's speech.
This news item covers the main announcements which will be of relevance to owner-managed businesses.

New exemptions and Reliefs

Indirect employee share ownership exemptions

There is to be a package of three new tax reliefs to encourage wider use of indirect employee ownership structures, such as employee benefit trusts or employee share ownership trusts. Following on from a consultation in July of this year, the Chancellor confirmed in the Autumn Statement (see para 2.60) that Finance Bill 2014 will include legislation to provide three exemptions:

- from capital gains tax for disposals of shares that result in a controlling interest in a company being held by an employee ownership trust (from April 2014)
- from inheritance tax in respect of transfers of shares and other assets to employee ownership trusts
- from income tax on up to £3,600 per year in bonus payments made to employees of indirect employee-owned companies which are controlled by an employee ownership trust (from October 2014)

For more background to this proposal, see the Incentives for indirect employee ownership: consultation news article (subscription sensitive).

Exemption for occupational health treatment for employees

As trailed in a consultation in June this year, the Government is proposing to introduce an exemption for up to £500 paid by employers for medical treatment for employees where this is recommended by the new Health and Work Service. The Chancellor announced in the Autumn Statement (see para 2.49) that this exemption will also include treatment recommended by employer-arranged occupational health services. The legislation will be included in Finance Bill 2014.

Abolition of employer NICs for Under–21 employees

In a move to encourage employment of young people, the Chancellor announced a new NIC exemption for secondary National Insurance Contributions (NIC) in respect of payments to an employee who is under 21 years old. See para 2.128 of the Statement.

As things stand, an employer has to pay secondary Class 1 NIC at a rate of 13.8% on an employee's earnings that exceed the secondary threshold (currently £148 per week). Under the new proposals, the employer would not pay any secondary contributions in respect of the earnings of an employee under 21 until that employee's earnings reach the Upper Earnings limit (currently £797 per week).

The legislation for this exemption will be included in the National Insurance Contributions Bill currently before Parliament (see the National Insurance Contributions Bill news article (subscription sensitive)) and will take effect from 6 April 2015 onwards.

It seems likely that employer will still have to pay Class 1A contributions in respect of non-cash benefits paid to the under-21s.

Qualifying loan interest

Finance Bill 2014 will amend ITA 2007, ss 392 and 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), the loan 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

Improvements to film tax relief

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%.

The cultural test will also be modernised.

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

Theatre relief

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, with effect from 2015.

Social investment relief

At para 2.51, the Autumn Statement document confirms the introduction of a new tax relief for equity and certain debt instruments in social enterprises.

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 for details.

This relief will be available from April 2014. Draft legislation for the relief may be published on 10 December 2013. Alternatively, it may be published along with the Government's road map for social investment in January 2014.

As a result of the consultation, Social Impact Bonds will now be included within the scope of the relief.

Anti-avoidance

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." (p.72) This commitment is underlined by the announcement that HMRC will be required to secure an additional £3.7 billion in compliance yield by the end of 2014/15 and that HMRC will be exempt from government spending cuts.

There are a number of specific measures announced which come in with immediate effect (from 5 December 2013), though draft legislation for Finance Act 2014 will not be available until 10 December 2013. These are:

- tackling mixed partnerships, typically corporate partners (para 2.124) - see below
- closing a specific avoidance scheme that uses Total Return Swaps (para 2.116)
- changes to the world wide debt cap provisions (para 2.118)
- reinforcing double taxation relief to ensure that relief is only given where income is double taxed (para 2.119), and
- changes to the controlled foreign company rules related to profit shifting (para 2.121)

Further to this, the Autumn Statement document confirms the introduction of legislation to tackle the use of compensating adjustments, which has effect from 25 October 2013. See the Amendments to compensating adjustments legislation — draft legislation issued news item.

The Autumn Statement document also announces changes which relate to anti-avoidance that will come into effect from April 2014. The key anti-avoidance announcements are as follows.

Business premises renovation allowance

The changes to BPRA possibly been 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

BPRA Technical review, para 1.16

Partnerships: disguised employment

Significant measures regarding partnerships were subject of consultation in October 2013. See the Consultation on partnership signals major changes news item for more information. Broadly, the disguised employment measure proposed would mean that an LLP would need to apply PAYE to payments to a member that meets one of two conditions:

- he would be regarded as an employee, or
- he has no economic risk, entitlement to share of profits and entitlement to assets on winding up

At the time of the consultation there were concerns expressed that the measures, as described, could affect many commercial arrangements beyond the intended 'abusive' arrangements.

Partnerships: corporate partners

The rules intended to tackle corporate partners come into partial effect immediately (from 5 December 2013). The substantive effects of the measures will come in from 6 April 2014, but forestalling measures operate with immediate effect.
Exchequer Secretary to the Treasury's statement re Finance Bill 2014: Measures with Immediate Effect

The draft legislation published on 5 December 2013 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. The anti-avoidance measures provide that the individual partner's profit share is increased for tax purposes by an appropriate amount.

Company car benefits

The Chancellor announced that Finance Bill 2014 will include two measures to tighten up on the car benefit rules (see para 2.131). 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

Administration and risk management

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 the 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. When combined with the provisions accelerating the tax payments in tax avoidance cases and requiring taxpayers to accept the ruling of a test case, these promoters could be put 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 (subscription sensitive).

Beneficial ownership of companies

As previously announced by David Cameron, 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

Business rates

The Autumn Statement includes a package of measures targeting business rates. This includes the following measures:

- a 12 month extension of Small Business Rate Relief (SBRR) doubling
- capping business rates increase at 2% for the year from 1 April 2014
- introducing a 50% reoccupation relief for 18 months on business rates where premises have been empty for more than a year
- providing an annual £1,000 discount on business rates on properties with rateable value below £50,000, for 2 years from 1 April 2014
- relaxing the SBBR rules to allow business in receipt of SBRR to take on another property without losing entitlement, and
- improving administration through a consultation in the spring, allowing payment over 12 months and clearing the backlog of appeals

It is worth noting that the proposed discount, reoccupation relief and SBBR may constitute state aid and contribute towards the EU cap on de minimis aid in accordance with Article 2 of Commission Regulations (EC) No 1998/2006. This should be clarified when draft legislation for Finance Bill 2014 is published on 10 December 2013.

The maximum amount of de minimis aid that a business can receive in a rolling three-year period is €200,000, which is currently £166,430 according to the official euro exchange rate. If a business is already in receipt of de minimis aid, they may therefore not be eligible. The Regional Employers National Insurance Contributions Holiday is also de minimis aid, as is the Seed Enterprise Investment Scheme. More importantly, the business rates reliefs will have an impact on the eligibility of a company for SEIS.

The amount of de minimis aid received by the business will reduce the potential amount of SEIS qualifying shares that a company can issue. The amount of aid will be deducted from the maximum qualifying investment in the company of £150,000. See the Seed Enterprise Investment Scheme (SEIS) guidance note.

Tax simplification

Simplification of unapproved shares schemes

Following from a consultation earlier this year, the Government now proposes to implement a package of simplifications in the area of unapproved employee share scheme. See para 2.112 of the Statement.

As yet, there has been no response document published in respect of the consultation, so it is not yet clear what the exact ingredients of the simplification package might be, but the main recommendations covered in the consultation were to:

- apply a consistent tax treatment for all employment-related securities in share-for-share exchange and rollover situations
- allow corporation tax relief where there is a takeover by an unlisted company

- align the position of inbound and outbound internationally mobile employees and allow a corporation tax deduction in cases where income tax is payable
- extend the time limit for the employee to 'make good' tax due on a notional payment arising under an unapproved share scheme before a charge under ITEPA 2003, s 222 applies
- change the method of valuation of listed company shares to use the simple measure of closing price on the day of trading

Simplification of expenses and benefits

The Chancellor outlined the Government's response to the recommendations of the OTS in their interim report on employee benefits (see para 2.111 of the Statement). He reported that the Government has implemented four of the ‘Quick Wins’ identified in that 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 OTS’ final recommendations on receipt of its final report ahead of Budget 2014.

The OTS has published a table summarising the 'Quick Wins' and which ones fall within which tranche for implementation.

Tax rates and allowances

The Chancellor's statement confirmed various rates and allowances for 2014/15 that had already been announced, either at the Budget or in last year's Autumn Statement.

- the personal allowance will increase to £10,000 for 2014/15 (the Chancellor also confirmed that this allowance will be indexed to the Consumer Price Index from 2015/16 onwards)
- the higher rate threshold will increase to £41,865 (the Chancellor also confirmed that this threshold will rise by 1% per year from 2015/16 onwards)
- the lifetime allowance for pension schemes will go down from £1.5 million to £1.25 million from 2014/15
- the annual allowance for pension scheme contributions will go down from £50,000 to £40,000 from 2014/15

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 will be increased.

HMRC overview of tax announcements in Autumn Statement 2013

Corporation tax

The Chancellor announced in the Budget that the main rate of corporation tax would reduce to 20% from 1 April 2015. Planned corporation tax rates, and those that have been in operation in recent years, are now as follows:

FY	2012	2013	2014	2015
Small profits rate	20%	20%	20%	20%
Main rate	24%	23%	21%	20%

Standard fraction	1/100	3/400	1/400	0
Marginal rate	25%	23.75%	21.25%	20%

Low salary / high dividend remuneration strategies will continue to prove most effective for owner-managed companies.

Capital gains tax

The annual exemption will be £11,000 in 2014/15, and £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%).

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