LEGISLATION DAY: COMPLIANCE

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Introduction

Since 2010, it has become the norm for draft tax legislation to be published late in the calendar year for eventual inclusion in the following year's Finance Bill. This is published one week or two after the Chancellor's Autumn Statement, and the publication date has generally become known amongst tax practitioners as 'Legislation Day'. This year, Legislation Day was on 9 December.

We have divided our commentary on the draft legislation amongst seven subject areas: Income tax & NICs, Corporation tax, Inheritance tax, VAT, Stamp taxes, Pensions & Compliance, avoidance and evasion. Our commentary does not attempt to cover everything for which legislation was published. Instead, we have opted to cover about 25 significant topics on which there is now more detail available than on Autumn Statement day (25 November).

Draft legislation is always subject to amendment of course, both before and after it is introduced to the House of Commons.

See Simon's Taxes Binder 1 for information about recent New Developments which are to be incorporated into the commentary.

GAAR penalties

As announced in the March 2015 Budget, Finance Bill 2016 will introduce a new tax-geared penalty for cases which have successfully been challenged under the General Anti-abuse Rule ("GAAR"). The penalty will be 60% of the value of the tax advantage that has been counteracted by the GAAR and is intended to provide a disincentive from entering into abusive tax avoidance arrangements.

The "value of the counteracted advantage" is the additional amount due or payable in respect of tax as a result of the counteraction under the GAAR legislation.

The penalty will be triggered when a taxpayer submits a return, claim or other document to HMRC which includes arrangements which are later found to come within the scope of the GAAR. The penalty will become chargeable at the point when HMRC have successfully counteracted the abusive tax arrangements under the GAAR (ie. when the counteraction is final – where there is either no appeal by the taxpayer or, if there is, where that appeal has failed).

The existing inaccurate returns penalties in FA 2007 Sch 24 will apply in GAAR cases but, where the total of the GAAR penalty and a Sch 24 penalty exceeds the amount of tax at stake, the total penalty will be restricted to 100% of that tax. In other words, the combination of both penalties will never exceed 100% of the tax that otherwise would have been due. This is subject to the inaccurate returns enhanced penalties for offshore matters, where the maximum penalty is 200% of the tax due, for deliberate and concealed inaccuracies in relation to a category 3 territory.

The new GAAR penalty will apply to tax arrangements entered into on or after the date of Royal Assent to Finance Bill 2016.

GAAR procedural changes

Finance Bill 2016 will also make two procedural changes to the GAAR:

- a GAAR Advisory Panel opinion will enable the counteraction of "equivalent arrangements" by other users; and
- a "provisional counteraction" under the GAAR will be introduced.

The counteraction of "equivalent arrangements" will allow HMRC to issue a "notice of binding" to a taxpayer, where the tax arrangements in question are substantially the same as the "lead arrangements". The "lead arrangements" are arrangements in relation to which HMRC have already issued a GAAR notice, although there will be no requirement for the lead arrangements already to have been referred to the Advisory Panel at the stage the notice of binding is issued.

The effect of the notice of binding will be to counteract the tax advantage based on the Advisory Panel's opinion in relation to the lead arrangements – ie. the treatment of the equivalent arrangements will follow the treatment of the lead arrangements. As a safeguard, a taxpayer who has received a notice of binding will have the right to make representations which can include that no tax advantage has arisen to the taxpayer, and that the taxpayer's arrangements are materially different to the lead arrangements.

Further legislation is expected to be introduced, following consultation, to cover the situation where the tax arrangements in the lead case are corrected before the lead case has been referred to the Advisory Panel.

HMRC will be able to issue a new provisional counteraction notice where there are reasonable grounds to believe that a particular tax advantage has arisen to the taxpayer from tax arrangements which are abusive. The notice will set out adjustments which are, in the view of HMRC, required to counteract the perceived tax advantage. The taxpayer will have a right of appeal against those adjustments, and that appeal will result in the cancellation of the adjustments after 12 months from the date on which the provisional notice is given, unless HMRC issues the taxpayer with a GAAR notice under FA 2013 Sch 43 para 3.

Simple assessment

For 2015/16 and subsequent tax years (effective from the date of Royal Assent to Finance Act 2016) HMRC will have a new power to make a "simple assessment" of an individual's or trustee's income tax or capital gains tax liability without that person first being required to complete a self-assessment tax return. HMRC will instead assess their tax liability on the basis of information already held.

Where a person is subject to a simple assessment they are not required to notify HMRC that they are chargeable to income tax or capital gains tax unless the simple assessment does not cover all sources of income or gains. In addition, HMRC may withdraw a notice to file a self-assessment tax return prior to the issue of a simple assessment.

HMRC may, by notice, make a simple assessment for a year of assessment in respect of a person who, when the assessment is made, has not delivered a return for the year and is who is not required to deliver such a return. The notice comprises an assessment of the amounts in which the person is chargeable to income tax and capital gains tax for the year of assessment to which it relates, and an assessment of the amount of income tax payable after taking account of tax deducted at source and tax credits. The notice must include details of the information used when making the assessment and particulars of how the amount due may be paid and when. HMRC can issue more than one simple assessment in a tax year.

HMRC may withdraw a simple assessment if necessary and once withdrawn the assessment no longer has any effect. The person may appeal against the assessment within 30 days. HMRC may suspend a simple assessment if the person notifies that they believe it is incorrect and

provides supporting information. This allows the person to dispute the amount due without having to make a formal appeal. If the assessment is suspended the person will be required to pay the sum of money that is not in dispute. After considering the dispute, HMRC must either confirm the assessment, withdraw the assessment or issue a further assessment either in addition to, or in place of, the original. There is still a right of appeal if the person disagrees with the assessment after the suspension is lifted.

Where the person was given notice of the simple assessment after the 31st October following the year of assessment the amount shown in the simple assessment, less any payments on account and income tax paid at source, is payable at the end of the period of 3 months after the day on which that notice was given. In any other case it is payable on or before the 31st January after the end of the year of assessment.