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Key Developments

Publication of draft clauses for Finance Bill 2019-2020

Draft clauses to be included in Finance Bill 2019-2020 were published on 11 July 2019. These are now subject to a period of technical consultation: comments are invited by 5 September 2019.

The number of clauses published this year was small, and most were pre-announced. Nevertheless, there were some that are noteworthy for large business. These include:

> The new digital services tax (DST), which is likely to be the biggest headline-grabber. In very broad terms, a new 2% tax will be imposed on the revenues of search engines, social media platforms and online marketplaces which derive value from UK users.

As already announced, the DST will come into force on 1 April 2020. However, the government has reiterated its commitment to disapply it once "an appropriate international solution is in place".

> An extension of the stamp duty and SDRT market value rule to the transfer of unlisted securities to connected companies in certain circumstances. In the government’s words, “the measure is narrowly targeted to only apply where contrived arrangements are used to minimise tax in circumstances where stamp duty relief is not available”.

In particular, it only applies if some or all of the consideration for the transfer consists of an issue of shares. It seems that a more general market value rule, as previously mooted, will not be pursued at this time.

Changes will also be made to ensure that most capital reduction partition demergers are only subject to a single stamp duty/SDRT charge.

> A corporate capital loss restriction that will mean that for accounting periods ending on or after 1 April 2020, companies making chargeable gains will only be able to offset up to 50% of those gains using carried-forward losses.

> Rules to shift the responsibility for operating the off-payroll working rules from an individual’s personal service company to the organisation or business that the individual is supplying their services to in certain cases. This will have the effect of extending the rules currently operational in
the public sector to the private sector (where the organisation or business receiving the services is large or medium sized).

> A new option that will enable the corporation tax due on an intra-group transfer of assets to an EU or EEA group company to be deferred over a period of up to five years. This is apparently a reaction to a recent First-tier Tribunal decision (presumably Gallaher v HMRC, see UK Tax News Issue 10 (2019)). It is designed to ensure that any restriction on the right to freedom of establishment imposed by the residence requirements in the rules for intra-group transfer relief (such as in Section 171 TCGA 1992 and the loan relationships, derivative contracts and intangibles equivalents) is proportionate and so compliant with EU law.

This measure may be short-lived: it includes an ability for the Treasury to withdraw the deferred payment option. This may be used if the Treasury determines that the immediate payment of corporation tax would not infringe any EU rights (for example following a final judgment to that effect by a UK court in the Gallaher case, or following Brexit).

> Changes to protect tax in insolvency cases by making HMRC a secondary preferential creditor in relation to VAT and other taxes collected by way of deduction (such as PAYE, employee NICs, student loan deductions and CIS deductions).

> Some technical and procedural amendments to the GAAR.

In terms of next steps, following the consultation period, the expectation is that these measures will be included in the Finance Bill 2019-2020. This bill should be introduced into Parliament after the autumn Budget (and the final content of the bill will be confirmed at that event).

Finance Bill 2019-20 - HMRC and HM Treasury, 11 July 2019

Finance Tax

Hybrid capital instruments: draft amending regulations

As anticipated, draft regulations have been published that will extend the circumstances in which an instrument will be treated as a “hybrid capital instrument” for the purposes of the new regime for those securities introduced by Finance Act 2019.

The regulations amend the definition of a “conversion event” to allow instruments which can be converted into the ordinary share capital of the debtor or a company which controls the debtor to be treated as hybrid capital instruments.

Looking at the changes in more detail, the definition of a “hybrid capital instrument” is set out in Section 475C CTA 2009. Currently Section 475C(5) only allows such an instrument to be convertible into ordinary share capital of (a) the debtor, or (b) a quoted company which is the ultimate parent of the debtor and which owns at least 75% of the ordinary shares in the debtor.
The concern with limb (b) is that, under typical takeover or change of control provisions, the acquirer may be any company that, together with its associates, obtains control of the debtor. Accordingly, the definition is to be broadened to cater for this.

The change will apply retrospectively from 1 January 2019 (or 12 February 2019 for stamp taxes), the date the hybrid capital instrument rules were introduced. Comments are invited by 9 August 2019.

Draft regulations: amendment to new rules on taxation of hybrid capital instruments - HMRC, 5 July 2019

Real Estate

Regulations made to introduce capital allowances for structures and buildings

Parliament has made the Capital Allowances (Structures and Buildings Allowances) Regulations 2019 (SI 2019/1087).

The regulations introduce new capital allowances for structures and buildings. They were announced at autumn Budget 2018 and are in substantially the same form as the earlier draft (see UK Tax News Issue 18 (2019)).

The regulations apply to qualifying expenditure incurred on or after 29 October 2019.

The Capital Allowances (Structures and Buildings Allowances) Regulations 2019 - Parliament, 4 July 2019

Funds and Private Equity Tax

HMRC publishes new Investment Funds Manual

HMRC has published a new Investment Funds Manual. This manual includes comprehensive HMRC guidance on the direct tax treatment of investment funds and investors.


Investment Funds Manual - HMRC, 5 July 2019

Employment Tax

Retention payment earned in year of receipt not over retention period

In Murphy v HMRC, the First-tier Tribunal (Judge Jeanette Zaman) has concluded that a payment received by a taxpayer from his employer was
earned, and therefore taxable, only in its year of receipt. This was the case despite conditions which required the taxpayer to be employed for prior periods.

The taxpayer worked for a company that was the subject of a merger transaction. In recognition of the value of the employees to the business, as part of the merger, employees - including the taxpayer - were offered a "retention payment". The retention payment was payable if the individual continued to be an employee of good standing on a specified payment date. In practical terms, this resulted in a requirement for the taxpayer to remain an employee for a 15-month period, spanning three tax years.

The taxpayer sought to argue that the retention payment was earned in or in respect of the entire 15-month period, i.e. over three tax years. The advantage of this from his perspective was that he only become fully UK-tax resident in the final tax year.

The tribunal disagreed. Although there was a need for continued employment during the retention period, it did not follow that the payment was earned in or in respect of that period. There was no “accruing right”. Instead, the taxpayer only become entitled to the payment on the payment date. Thus, it was earned on or otherwise in respect of the taxpayer’s employment on that date, and was taxable only in that year.

*Murphy v HMRC [2019] UKFTT 0409 (TC)*

**Contentious Tax**

**Enquiry into LLP must be opened under corporation tax provisions**

The First-tier Tribunal (Judge Ruthven Gemmell) has agreed with the taxpayer in *Inverclyde Property Renovation LLP & Clackmannanshire Regeneration LLP v HMRC* that an enquiry into an LLP’s tax returns must be opened under the corporation tax self-assessment provisions in Paragraph 24, Schedule 18 Finance Act 1998, and not under Section 12AC TMA 1970. Therefore, the disputed closure notices in this case were invalid.

The tribunal noted that the deeming provisions in Section 863 ITTOIA 2005 and Section 1273 CTA 2009 have the effect that, if an LLP carries on business with a view to profit, tax is paid as if the LLP is a partnership. However, the tribunal did not consider that this deeming is broad enough to apply for the purposes of tax administration (i.e. the TMA 1970). For these purposes, LLPs should therefore be treated as bodies corporate.

*Inverclyde Property Renovation LLP & Clackmannanshire Regeneration LLP v HMRC [2019] UKFTT 0408 (TC)*
Anti-Avoidance

GAAR panel opinion on arrangements involving second-hand bonds and gilts

The GAAR panel has found that an avoidance scheme designed to produce a tax-free transfer of a pre-determined amount from a company to its shareholders was not a reasonable course of action. In operation, the schemes were very similar to those previously considered (see UK Tax News Issue 16 (2019)). The GAAR panel reached the same conclusion in those cases.

GAAR advisory panel opinion on close company arrangements involving second-hand bonds and gilts options - HMRC, 2 July 2019