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tax lawflash

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Tax Measures in the 2014 UK Autumn Statement

Announcements support UK growth and prevent tax avoidance.

On 3 December, UK Chancellor of the Exchequer George Osborne made a number of tax-related announcements in the 2014 Autumn Statement. Given the government's policy of consulting on significant tax changes in most instances and the impending general election next year, there were not many unexpected announcements.

Diverted Profits Tax

One of the more unexpected announcements was that the UK government plans to introduce a new "diverted profits tax" that will apply from 1 April 2015 at a rate of 25%. Because the UK government is committed to a low headline rate of corporation tax, it is making efforts to prevent avoidance and, in particular, the use of aggressive tax planning and the manipulation of "international tax rules". It is understood that the purpose of this new tax is to discourage multinational corporations from artificially diverting profits overseas to avoid UK tax, and it will apply if a business conducts significant activity in the UK but avoids UK corporation tax by recognising the profits outside the UK. Further details are expected to be published shortly. It remains to be seen how this tax will interact with the UK double taxation agreements (which could apply to prevent the UK from taxing profits recognised and taxed in other treaty jurisdictions, if the new law is not appropriately structured) and the existing UK legislation generally and, in particular, with respect to the "controlled foreign companies" and transfer pricing rules.

Stamp Duty Avoidance on Takeovers

The chancellor announced that a change of law will be introduced in 2015 that is designed to clamp down on an "abuse" of a corporate mechanic that is used on takeovers. Takeovers in the UK can generally be effected in one of two ways. The first is a takeover offer (which is similar to a tender offer in the United States), and the second is by way of a scheme of arrangement, a UK statutory process involving court approval. There are two types of schemes of arrangement: the first involves a cancellation of a target company's shares, with new shares being reissued to the bidder. The second type involves a transfer of the shares to the bidder. It has been increasingly common for takeovers in the UK to be effected by way of a scheme of arrangement, primarily because they can guarantee that the bidder acquires 100% of the target (broadly speaking, provided that 75% shareholder approval is obtained and the court approves the scheme of arrangement, the scheme will cover all of the shares in the target).

One of the side effects of a cancellation scheme of arrangement is that there is no transfer of shares and, therefore, there is no stamp duty (that would otherwise arise at 0.5% of the consideration where there is a transfer of shares). Interestingly, the proposal appears to be a change to (or even abolition of) the corporate regime that permits a cancellation scheme of arrangement, rather than a change to the stamp duty rules. Given the significant corporate benefits attached to schemes of arrangement, we assume that a transfer scheme will be unaffected and may still be used for takeovers. From a UK corporate perspective, there should not be significant differences between a cancellation scheme and a transfer scheme (other than the stamp duty saving), but it remains to be seen whether there are any non-UK issues, such as side effects under securities laws in other jurisdictions.

Investment Managers

One of the notable announcements that affects the investment industry is the government's plan to introduce measures to prevent investment managers from "disguising" their guaranteed fee income as capital gains to avoid paying higher income tax on such income. It is understood that the measures would not affect performance-

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related investment returns, such as returns in the form of “carried interest” that are typical for a private equity industry. However, the new measures could potentially apply to certain remuneration arrangements involving partnerships that operate by way of “fee waivers” that are more commonly used in the U.S.-based private equity funds. The full impact of the new rules will not be known until draft implementation legislation is released. Nevertheless, private equity fund managers may consider it worthwhile to identify and review early on any existing arrangements that could potentially be affected by these measures.

UK Withholding Tax

A new limited exemption from UK withholding tax is expected to be introduced in the Finance Bill 2015. It is expected that the exemption will apply to interest paid in connection with certain private placements in the form of long-term non-bank debt financing and is generally aimed at encouraging cross-border investment into the UK.

Multinational Enterprises and OECD-Led Measures

Following the UK’s active participation in the development of internationally based rules to address aggressive tax planning by multinational corporations with global activities, the UK government has confirmed in the Autumn Statement its support of the Organisation for Economic Co-operation and Development (OECD)–led base erosion and profit shifting (BEPS) project.

In support of the BEPS, the UK government has announced that it will implement the OECD model for country-by-country reporting and is committed to exchanging information among tax authorities in other countries with a view to improve transparency in the tax affairs of such multinational enterprises. The new rules will require corporations to provide high-level information to Her Majesty’s Revenue and Customs on their global allocation of revenue, profits and tax liabilities, and other information in relation to their activities in the relevant countries. It is generally believed that enhanced availability of information relating to global tax affairs of multinational corporations and the combined effort of all interested tax authorities would lead to an increase in tax revenues for the participating countries. The UK government will also consult on introducing new anti-hybrid rules that could challenge certain cross-border arrangements that can lead to different tax treatment in the jurisdictions in which such arrangements are structured.

General Anti-avoidance Measures

The UK government has expressed its continued commitment to tackle tax avoidance and offshore evasion and has announced, among other measures, its intention to increase penalties for tax evasion and introduce certain other measures that are expected to improve the functioning of the international agreements on exchange of information that are expected to take effect in 2015.

Measures Affecting UK Residential Property

The UK government announced a number of measures aimed at the UK residential market. Among these measures is the introduction of new rules with immediate effect that overhaul the way the UK stamp duty land tax is imposed on acquisitions of residential property.

In addition, it has been announced that the recently introduced annual tax on enveloped property (ATED) that applies to high-value residential properties owned by corporate vehicles or other non-natural persons will be increased by 50% above inflation. Starting 1 April 2015, company-held high-value residential properties will be subject to the following ATED charges: (a) a £23,350 charge for properties with a value of between £2 million and £5 million, (b) a £54,450 charge for properties with a value of between £5 million and £10 million (c) a £109,050 charge for properties with a value of between £10 million and £20 million, and (d) a £218,200 charge for properties with a value of above £20 million.

Non-UK Domiciled Individuals

The Autumn Statement includes announcements affecting individuals who are treated as UK residents but not domiciled in the UK for UK tax purposes and who claim remittance-based taxation in the UK. In the hope of improving the UK budget, it has been announced that the remittance basis charge for such individuals who have been resident in the UK for 12 out of 14 years will increase to £60,000 per annum, and a new charge will be introduced for individuals who have been resident in the UK for 17 out of 20 years, who will now have to pay a charge of £90,000 for each tax year in which they wish to claim remittance-based taxation. It is possible that,

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following further consultation, the remittance-based charge would have to apply for a minimum of three years.

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