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tax lawflash

6 December 2012

# Tax Measures in UK Chancellor's Autumn Statement 2012

*Statement shows that the UK is still "open for business" and includes measures designed to encourage investment while also targeting tax avoidance and evasion.*

On 5 December, UK Chancellor of the Exchequer George Osborne reaffirmed his 2011 announcement that the UK is "open for business". The tax-related changes announced are intended to facilitate growth in the UK and to encourage investment while at the same time clamping down on tax avoidance and evasion.[1]

## Corporation Tax Rates

The rate of corporation tax will fall from the current 24% to 23% in April 2013, as previously announced. The reduction in rate to take place in April 2014 will now be a larger reduction than was previously announced and will now fall to 21% in April 2014. For banks, however, this is countered by an increase in the bank levy to 0.130% for short-term chargeable liabilities and 0.065% for long-term chargeable equity and liabilities; both levy increases will take effect on 1 January 2013.

But there are also some tax incentives for businesses: notably, a significant temporary increase in the annual investment allowance from £25,000 to £250,000 per annum for qualifying investments in plants and machinery for two years from 1 January 2013. This is available to all companies and is expected to benefit small and medium-sized enterprises in particular.

## Anti-Avoidance

In addition to a range of specific targeted anti-avoidance changes designed to tackle specific schemes of which HM Revenue & Customs (HMRC) has become aware, it was announced that a general anti-abuse rule (GAAR) will be introduced in the Finance Bill. This was widely expected following the consultation that took place over the summer of 2012. The consultation was the outcome of a review of a potential GAAR commissioned by HMRC in 2010. One of the key concerns with a GAAR remains the uncertainty that may result for taxpayers, and it is expected that HMRC's guidance on the new rules will be critical in assessing the true impact to businesses. An advisory panel (on which HMRC will not be represented) is to be established by HM Treasury to oversee development of the guidance, and a draft of the guidance will be released later in December together with draft legislation.

The new rules are expected to take place from royal assent of the Finance Bill 2013 (which should occur in summer 2013), but it is not yet entirely clear what transitional arrangements may be included. They are expressed to be aimed at "highly abusive contrived and artificial" schemes rather than "centre ground of tax planning", although the boundaries are often hard to identify clearly. It is hoped that the new rules will not catch existing unchanged arrangements. It is also hoped that the government will attempt to make the GAAR somewhat narrower than their original intention to address serious concerns of uncertainty for taxpayers and businesses that have been raised during the consultation process.

1. For more information, read our 24 March 2011 LawFlash, "A Budget for Growth and Reform: Britain Is Open for Business," available at http://www.morganlewis.com/pubs/TaxLF_UK-BudgetForGrowthAndReform_24march11.pdf, and our 23 March 2012 LawFlash, "Tax Measures in UK Budget 2012," available at http://www.morganlewis.com/pubs/Tax_LF_UKBudget2012_23mar12.pdf.

## International Tax Compliance and FATCA

The UK government has confirmed that it will introduce legislation to implement the agreement concluded with the United States in September 2012 (UK-US Agreement), which improves international tax compliance measures and implements the US Foreign Account Tax Compliance Act (FATCA). The UK-US Agreement follows the joint statement made in July 2012 by the governments of France, Germany, Italy, Spain, the UK, and the United States. This announced the publication of the Model Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA, which provides a framework for the reporting of certain financial account information by financial institutions to their respective tax authorities, followed by automatic exchange of such information under existing bilateral tax treaties or tax information-exchange agreements. Aimed at tackling tax evasion, the UK-US Agreement is designed to improve the scope and nature of information exchange between the UK and the United States and to establish a basis for a reciprocal approach to FATCA implementation. The UK government has confirmed that it will be looking to enter into enhanced tax information–sharing agreements with other jurisdictions in a form similar to the UK-US Agreement.

## Transfer Pricing and International Groups

The UK government has announced that it will take additional steps to improve tax compliance within the large business sector, including international groups. In particular, the UK government has confirmed that it will increase its domestic funding of HMRC and improve HMRC's specialist resources in order to enhance their risk assessment capabilities for international groups and to accelerate the identification of and response to the challenge of transfer pricing arrangements. In addition, the government has confirmed that it will establish a new specialist department aimed at building and developing HMRC's capability to tackle offshore tax evasion. This announcement reflects increased focus in recent years of transfer-pricing issues and may be viewed as a response to recent press coverage of certain large multinational corporations with UK activities that are supposedly taxable but that pay little UK tax.

In an international arena, the UK government has confirmed that, alongside France and Germany, it will provide additional resources to the Organisation for Economic Co-operation and Development to improve international efforts to deal with profit-shifting and erosion of the corporate tax base at a global level.

## Employee Share Schemes

It was announced that the government will proceed with a proposed "employee shareholder" status. This is designed to enable employees to acquire up to £2,000 of shares in their employer in a tax-advantaged manner in exchange for giving up certain employment rights, which is hoped both to incentivise employees and to enable employers to offer a greater choice of employment contracts. Capital gains on such shares will be exempt from tax, and the government is still considering further tax breaks on the income-tax and national-insurance contributions that would otherwise arise on an acquisition for less than full value. The rules are not likely to commence until 2013 or 2014. These rules had already been tentatively announced but received a generally lukewarm reception. Many commentators appear to feel that the proposals may not be sufficiently attractive commercially to result in a wide take-up.

The government is also reviewing the possibility of simplifying certain aspects of the UK's tax-advantaged employee share schemes. No further details are available but any changes are intended to take effect from 2012.

## Stamp Duty Land Tax

As was previously announced, the government intends to introduce an "annual residential property tax". These rules will impose an annual charge, in conjunction with increased stamp duty land tax rates of 15% on purchase, in respect of UK residential property with a value in excess of £2 million acquired by "non-natural persons". The rates are not yet known, but it was previously indicated that the range of annual charges would be from £15,000 for a property with a value of £2 million to £140,000 for properties valued at more than £20 million. The rules are intended to take effect from April 2013, but the precise scope is unclear as draft legislation will not be available until later in December.

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## Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:


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