# Tax Alert
# Autumn Statement 2015

November 25, 2015

The Chancellor delivered the Autumn Statement and Spending Review this afternoon. In doing so he has (by and large) stuck with earlier promises to make the Budget the main tax event and deliver less in the way of tax change via Autumn Statements. This means that the tax measures in this year's Autumn Statement are generally either promises to do something in the next Budget (and are commensurately light on detail) or specific measures targeting either particular policy goals (or revenue shortages) or known tax "schemes".

Set out below (ordered by importance / interest) are the tax highlights from today's statement:

## Key points

- **Corporation tax: restitution interest** – As trailed by the Government prior to the Autumn Statement, a special 45% rate of corporation tax on income (withheld at source) is to be applied to payments by HMRC of restitution interest. Whether this measure will withstand a challenge under EU law is an open question.
- **New apprenticeship levy** – A new apprenticeship levy is to be introduced in April 2017 (at a rate of 0.5% of an employer's wages bill). Each employer will receive an allowance of £15,000 to offset against their liability so that the levy will only be paid on wages in excess of £3 million. This levy is clearly going to result in significant additional costs for many large and mid-size employers
- **Personal taxation**
  - **Taxation of asset manager's performance based rewards** – The government has reiterated its intention to introduce legislation dealing with performance awards (including carry) received by asset managers. The proposal remains that an award will be subject to income tax unless the underlying fund undertakes long term investment activity; while the details are yet to see the light of day it is expected that these requirements may cause practical difficulties for many asset managers. (It is also worth noting that the Government had previously indicated it would deliver draft legislation on this with the Autumn Statement but that this target appears to have been missed given the lack of any such draft accompanying the Statement.)
  - **Disguised remuneration** – The government has committed to taking action against those who have used, or continue to use, disguised remuneration schemes (although it has not set out what

will qualify as a disguised remuneration scheme). It has also announced that it will consider legislating to close down any new schemes intended to avoid tax on earned income, where necessary, with effect from 25 November 2015. The message appears to be that the Government is willing to legislate with retrospective effect if it doesn't like the tax outcomes of structures that it considers "convert" earned income to some other form of profit.

- **Employee share schemes** – The government has indicated that it will introduce a number of technical changes to "streamline and simplify" aspects of the tax rules for tax-advantaged and non-tax-advantaged employee share schemes. Details are yet to be announced.

- **Base Erosion and Profit Shifting ("BEPS") – Rules for addressing hybrid mismatch arrangements** – Following consultation, the government will introduce legislation with effect from 1 January 2017 to implement the agreed OECD rules for addressing hybrid mismatch arrangements. These changes are likely to be of particular interest to our fund manager clients as many acquisition and holding structures rely on instruments which may be vulnerable to challenge under the relevant principles. We await further details in order to understand the precise ambit of the Government's proposals in this respect.
- **Stamp duty land tax – Increase in stamp duty land tax for "additional properties"** – From 1 April 2016 SDLT at 3% above the current SDLT rates will be charged on purchases of additional residential properties (above £40,000) such as buy to let properties and second homes. This charge will not apply to corporates or funds making significant investments in residential property. The Government is to hold a consultation to discuss the policy detail.
- **Tools to encourage voluntary compliance and special measures to tackle the highest risk businesses** – Legislation will introduce:
  - a requirement that large businesses publish their UK tax strategies – this may be similar to the way in which the UK's Banking Code works, but limited detail is currently available;
  - a special measures regime to tackle businesses that persistently engage in aggressive tax planning; and
  - a framework for cooperative compliance.
- New criminal and civil penalties – A number of tax evasion linked offences and penalties are to be introduced in 2016. Little detail is available at this stage but what we do know is summarised below:
  - *General Anti-Abuse Rule (GAAR)* – a penalty of 60% of the tax due will apply in all cases successfully tackled by the GAAR (and changes will be made to the way the GAAR works to improve its ability to apply to marketed avoidance schemes).
  - *A criminal offence for tax evasion* – there will be no need to prove intent for "the most serious cases" of failing to declare offshore income and gains.
  - *Civil penalties for offshore tax evaders* – increased civil penalties will apply for deliberate offshore tax evasion, including the introduction of a new penalty linked to the value of the asset on which tax was evaded and public naming of tax evaders.
  - *Civil penalties for those who enable offshore evasion* – civil penalties for those who enable offshore tax evasion, including public naming.
  - *A criminal offence for corporates failing to prevent tax evasion* – a new criminal offence for corporates which fail to prevent their agents from criminally facilitating tax evasion by an individual or entity.

## Specific avoidance measures

- **Stamp Duty and Stamp Duty Reserve Tax Deep In The Money Options ("DITMOs")** – Shares transferred to a clearance service or depositary receipt issuer as a result of the exercise of an option will now be charged the

1.5% higher rate of stamp duty based on either their market value or the option strike price, whichever is higher. This is aimed at preventing certain avoidance schemes using DITMOs.

- **Company distributions** – The government will publish a consultation on the rules concerning company distributions later in the year. The government will also amend existing rules and introduce a new anti-avoidance rule in order to prevent certain schemes which convert income to capital being effective.

## Other points of interest

- **Requirement for taxpayers to update HMRC on a quarterly basis** – The Government plans to move to a system where most businesses, self-employed people and landlords will be required to keep track of their tax affairs digitally and to update HMRC at least quarterly via their (new) digital tax account.
- **Shortened payment windows for SDLT and CGT**:
  - Stamp Duty Land Tax – The government will consult on changes to the SDLT filing and payment process, including a reduction in the filing and payment window from 30 days to 14 days.
  - Capital Gains Tax – From April 2019, a payment on account of any CGT due on the disposal of residential property will be required to be made within 30 days of the completion of the disposal.

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If you have questions concerning the contents of this issue, or would like more information about Weil's Tax practice group, please speak to your regular contact at Weil, or to:


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