

November 22, 2017

The Chancellor delivered the 2017 Autumn Budget this afternoon. Set out below is a summary of certain key new tax measures announced. Unlike the Spring Budget 2017, the Autumn Budget did not (as far as tax was concerned) have a single targeted political focus. It did, however, contain a plethora of announcements and maintains the current direction of general tax change, with focuses on property, tax compliance, and the taxation of both partnerships and non-residents. If you would like to discuss any of the following, please contact us or your usual Weil contact and we would be happy to assist.

Key new announcements

- 1. Taxation of non-UK residents on the sale of (i) UK commercial property and (ii) a non-resident land rich entity:** from April 2015 non-UK residents were subject to UK tax on gains made on the sale of UK residential property. From April 2019 non-UK residents will be subject to tax on gains made on the sale of UK commercial (i.e. non-residential) property. For commercial property, UK taxation will only be levied on gains accruing from April 2019 (that is, over and above the April 2019 market value of the property) or the acquisition cost of the property, whichever is the greater.

As an additional new measure, from April 2019 non-UK residents will also be subject to UK tax on gains made on the sale of a "land rich" entity (whether UK resident or not). A land rich entity is an entity 75% or more of whose value derives (directly or indirectly) from UK land. In this case the gain potentially subject to UK tax will be based on the acquisition cost of the shares in the entity being sold and the consideration received by the seller for those shares. To be caught in the land rich taxation net the non-resident must have owned (alone or with "connected" persons) 25% or more of the land rich entity at some point in the 5 years prior to the sale.

Taken together, these new rules are likely to have a significant impact on the structures adopted, and levels of UK tax incurred, by a variety of clients, including real estate and infrastructure funds (although it is worth noting that certain overseas pension schemes may be eligible for an exemption from these rules).

- 2. Bringing non-residents within the scope of corporation tax:** historically non-UK residents who do not have a UK presence have, subject to tax treaties and domestic law exemptions, been subject to UK income tax rather than corporation tax on their UK source profits. The primary area where this is relevant is income derived from UK

land (e.g. rent). From April 2020 non-resident companies with a UK property business will be subject to UK corporation tax – the main impact being that they will, like UK companies, become subject to certain rules governing their tax calculations (including, for example, rules restricting interest deductible against profits for tax purposes to 30% of their tax EBITDA) which are likely to have a material impact on their annual UK tax bill.

- 3. Capital Gains Tax – Entrepreneurs’ Relief:** there will be a consultation in the Spring on extending the availability of entrepreneurs’ relief to entrepreneurs whose shareholding has dropped below 5% as a result of new equity investment. The extensions under consideration are aimed at incentivising such individuals to remain involved in the business, notwithstanding the dilution of their position. Although the details of the consultation have yet to be announced, any extension of the relief along these lines may render unnecessary the request commonly made by senior management teams of private equity-owned businesses for non-dilution language to be included in shareholders’ agreements.
- 4. Taxation of carried interest:** the current UK rules on the taxation of carried interest contain transitional provisions which dis-apply some aspects of the rules in certain circumstances (for example, where carried interest arises in connection with disposals of assets before specified dates). The Government believes that some managers have sought to take advantage of these transitional rules by reading them as applying more widely than was intended in order to avoid paying full UK capital gains tax on carried interest. Therefore, these transitional rules are to be removed in respect of all carried interest arising after 22 November 2017. The broad effect is that all carried interest arising after this date will fall to be taxed under current rules regardless of any connection with prior disposals.
- 5. Royalty Withholding Tax:** with effect from April 2019 the circumstances in which royalty payments (and payments for certain other rights) to persons resident in low tax jurisdictions will be subject to UK withholding tax are to be expanded. The scope of the revised rules will extend to royalty payments made in connection with sales

to UK customers and the rules are intended to apply regardless of where the payer is located. A consultation on the design of the new rules is expected on 1 December 2017, with legislation to be introduced in Finance Bill 2018-19.

- 6. VAT registration threshold:** notwithstanding rumours that Autumn Budget 2017 could see a reduction in the VAT registration threshold, the Government has announced that there will be no change to the VAT registration and deregistration thresholds for the next two years (to March 2020). Instead, the VAT registration threshold will remain at £85,000 (the highest in the EU) during this period while the Government consults on this area.

Reconfirmation of significant measures previously announced

- 7. Proposals to clarify tax treatment of partnerships:** at Budget 2016 the government announced that it would be reforming aspects of the UK tax rules in relation to partnerships. In particular, the reforms will impact allocations of partnership profits for UK tax purposes and partnership tax return filing obligations. They will be of particular relevance to fund sponsors whose businesses are structured to include partnerships or LLPs. The changes are expected to have effect for tax year 2018/19 onwards. The Government announced today that the reform will go ahead as planned but that the new rules have been revised “to be more compatible with commercial arrangements for allocating shares of profits and to avoid additional administrative burdens”. Detail of these revisions is awaited.
- 8. Bank Levy Re-Scope:** the Government has confirmed that proposed changes to the scope of the UK Bank Levy will apply for chargeable periods ending on or after 1 January 2021. The changes will see the Levy apply only on UK balance sheet equity and liabilities of banks and building societies. This means that overseas activities of UK-headquartered banking groups will no longer be subject to the Bank Levy. Certain other minor administrative changes to the Bank Levy will apply for chargeable periods ending on / after 1 January 2018.

Additional new measures

Personal tax

9. Income tax thresholds and the Personal

Allowance: the income tax personal allowance will increase to £11,850 for the tax year 2018/2019. The higher rate threshold (above which individuals in England, Wales and Northern Ireland pay income tax at 40%) will increase to £46,350 for 2018/2019.

10. Capital Gains Tax Annual Exempt Amount:

for 2018/2019, the capital gains tax annual exempt amount will increase in line with the Consumer Prices Index (“CPI”) to £11,700 for individuals and personal representatives and £5,850 for most trustees of a settlement.

11. Stamp Duty Land Tax (“SDLT”) relief for

first-time buyers: the Government will legislate in Finance Bill 2017 to 2018 to increase to £300,000 the price at which a property becomes liable to SDLT for first-time buyers, provided that the total consideration for the property is equal to or less than £500,000. These changes are proposed to apply with effect from today, 22 November 2017. Those claiming the relief will pay no SDLT on the first £300,000 of the consideration, and will pay SDLT at a rate of 5% on any excess. It is expected that the definition of “first-time buyer” will be narrowly construed, being restricted to individuals who have never owned an interest in a residential property (whether in the UK or elsewhere) and who intend to occupy the property as their main residence.

12. Council tax premium on empty homes:

the Chancellor has announced that councils will be given the power to charge a 100% council tax premium on empty homes.

13. EIS and VCT schemes: in order to encourage investment in “knowledge-intensive companies” (broadly, certain R&D innovation companies), the Government will legislate to: (i) double the limit on the amount an individual may invest under the enterprise investment scheme (“EIS”) in a tax year to £2 million from the current limit of £1 million (provided any amount over £1 million is invested in one or more “knowledge-intensive companies”); and (ii) increase the annual amount that “knowledge-intensive companies” may raise

under EIS and from venture capital trusts (“VCT”) to £10 million from the current limit of £5 million (although the lifetime limit under each regime will remain the same at £20 million). However, the Government also proposes to introduce a “risk to capital” condition to prohibit reliefs to schemes that are focused on capital preservation.

14. Pensions – the Lifetime Allowance:

the lifetime allowance for pension savings will increase in line with the CPI, rising to £1,030,000 for the tax year 2018/2019.

General

15. Indexation Allowance: the Government will legislate in the Finance Bill 2017-18 to freeze indexation allowance on corporate capital gains for disposals on and after 1 January 2018.

The allowance for subsequent disposals will be calculated using the Retail Price Index for December 2017, irrespective of the disposal date.

16. Taxation of Trusts: the Government has indicated that it is looking at ways to make the taxation of trusts “simpler, fairer and more transparent”, with a consultation document due to be published in 2018.

17. Investment Management Strategy: the Government has announced that it will publish a new long term strategy (an ‘*Investment Management Strategy 2*’) to ensure that the UK asset management industry “continues to thrive and deliver the best possible outcomes for investors and the UK economy”.

18. Employment Status Consultation: in response to the independent Taylor Review of Modern Working Practices, published in July this year, the Government will launch a consultation aimed at clarifying the employment status tests for the purposes of both employment rights and tax. The Government will also consult on how best to tackle “non-compliance with the intermediaries legislation (commonly known as IR35)” in the private sector. This latter consultation follows recent reforms in the public sector.

19. Oil and Gas sector – transferable tax history: the Government will legislate in Finance Bill 2018-19 to introduce ‘transferable tax history’ (“TTH”) for UK Continental Shelf oil and gas producers. The introduction of TTH is proposed

to allow the seller of an interest in a UK (or UK Continental Shelf) oil or gas field to transfer a portion of their tax history to a buyer of that asset thereby providing the buyer with certainty that they will be able to access tax relief on their decommissioning costs. The intention is to make the purchase of late-life fields more attractive (ensuring that the buyer has an ability to access tax relief in line with that which could have been claimed by the seller) and to deal with the situation under the current rules

where some deals that would be possible pre-tax are impossible post-tax. The Government has produced a paper entitled “An outline of Transferable Tax History”, which explains how TTH is intended to work, but which makes clear that the Government expects that legislation for TTH will be complex and require technical consultation. TTH is, however, intended to apply to all transactions completing on or after 1 November 2018, even where this requires any eventual legislation to have retrospective effect.

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