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Mazars US tax desk update

Update on recent UK tax developments

Following the UK's final exit from the EU on 31 December 2020, it held its first Budget on 3 March 2021 and released many consultations on future tax proposals on 23 March 2021 (referred to as "Tax Day"). These announcements were heavily influenced by the UK's need to deal with the economic impacts of Covid-19. There were many areas covered that will be of interest to international business.

Budget measures

Corporation tax rate: This currently remains at 19%, but from 1 April 2023 will become 25% for groups with taxable UK profits exceeding £250,000. A rate between 19% and 25% will effectively apply to those with smaller profits.

Temporary enhanced allowances for capital expenditure: To stimulate investment and prevent the deferral of capital expenditure attracting deductible allowances until the corporation tax rate rises, enhanced capital allowance rates will apply for expenditure incurred between 1 April 2021 and 31 March 2023. There are three enhanced rates: 130% (giving an effective tax deduction of almost 25%) for main plant or machinery, 100% for the main plant used in an oil & gas ring fence business and 50% for plant falling within a 'special rate' category. There are exclusions for capital expenditure acquired for leasing and cars, amongst other things.

Repeal of the provisions applying the EU interest & royalties directive from 1 June 2021: This will be important for those with UK companies as part of a European subgroup. The effect of the withdrawal will be for interest and royalty payments from UK group companies to European group companies. It will be necessary to look closely at tax treaty provisions to determine the level of withholding tax to be applied. Many UK tax treaties provide for a zero withholding tax rate, but some do not (examples include the treaties with Italy, Portugal, Romania and Estonia).

Extension of loss carryback: For corporate trading losses incurred in the years ending 31 March 2021 and 31 March 2022 the period, the ability to carry back losses to offset against prior year profits has been extended from one to three years. Similar temporary extended loss carryback extension rules apply for those subject to income tax.

Amendments to the hybrid & other mismatch rules: Many helpful changes have been made to the way the hybrid & other mismatch rules apply. These include revisions to identify dual inclusion income against which hybrid mismatches can be offset before counteraction is applied. For those affected, including those with group structures that include check the box entities, it will be important to check the impact of these changes, including the commencement date. Some of the changes apply from these will apply from the date of Royal Assent of the Finance Bill, and some from 1 January 2017. The changes to the dual inclusion income rule for hybrid payer deduction/non-inclusion mismatches, deduction/non-inclusion mismatches involving permanent establishments, and hybrid entity double deduction mismatches, will apply from the date of Royal Assent of the Finance Bill unless an election is made by 31 December 2021 to apply them from 1 January 2017. 31 December 2021 is also the deadline for making amendments to submitted returns that are otherwise out of date for amendment to take account of the new provisions.

"Tax day" consultations

Of the consultations announced on 23 March, the following may be of particular interest to those with business interests in the UK:

Transfer pricing documentation: Currently, there is no prescriptive method for documenting transfer pricing arrangements in the UK. There is a proposal that for those subject to the country by country reporting requirements, it will be necessary to have documentation in line with the OECD master and local file format. Also, it is proposed that there will be a requirement to submit details of material cross border transactions with associated enterprises with the tax return, potentially for all enterprises subject to UK transfer pricing rules.

Reporting of uncertain tax positions: International businesses with interests in the US and Australia may already be used to reporting ‘uncertain tax positions’ with their tax returns. There is a proposal to introduce this in the UK for tax returns to be filed from April 2022 for those required to publish a tax strategy or which are within the ‘senior accounting officer’ compliance regime. It will be limited to corporation tax, income tax (including PAYE) and VAT, and a £5m threshold will apply. The proposed definition of an uncertain tax position has seven tests: (i) a difference from HMRC's known position; (ii) a treatment not in accordance with known and established industry practice; (iii) certain changes in approach from that used in a previous tax return; (iv) a treatment that is novel and cannot reasonably be regarded as certain; (v) where the financial statements require a provision in respect of a probable different tax treatment expected to be applied; (vi) certain situations where HMRC has not yet expressed a view; and (vii) situations where there is conflicting professional advice.

VAT grouping, PESMs and Value shifting: The Government has indicated it will not proceed with any VAT grouping rules changes. However, it is not yet certain whether the recent CJEU decision in Danske Bank will impact the UK's treatment of cross border intragroup transactions between a VAT grouped branch and head office. Refinements are proposed to the administration and operation of partial exemption special methods and the capital goods scheme (affecting those with supplies that are subject to VAT and that are VAT exempt). The Government also intends to prepare new rules to mandate methods of apportionment of consideration when items with different VAT liabilities are supplied together for a single price. Other developments are also being explored for the way platform operations interact with the VAT system.

The tax administration framework and timely payments Following publication in July 2020 of the Government's 10-year vision for the UK's future tax administration system, two calls for evidence have now been released that seeks to explore how the legislative framework can be simplified and brought up to date for the 21st century. These consider how taxpayers enter and exit the tax system; the way that tax liabilities are calculated, assessed and paid; the way that technology can be enabled alongside better use of tax data and information; all while ensuring effective sanctions and safeguards exist to promote taxpayer compliance.

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