BRIEFING NOTE

December 2013

ROOKS RIDER SOLICITORS

Autumn Statement 2013 - Overview

The Chancellor made a number of announcements in his Autumn Statement delivered on 5 December 2013 relating to non-UK domiciliaries and their service providers. Some of the main points relating to this area and other key issues are set out below.

Extending Capital Gains Tax ("CGT") to Non-UK Residents Owning UK Residential Property

Non-UK resident individuals are not currently within the charge to UK CGT on disposals of UK property which they own personally. As widely anticipated, the Chancellor has announced that CGT would be extended to cover future gains made by non-residents disposing of UK property from April 2015. This builds on the changes in 2012 and 2013 that impose CGT on certain non-resident companies and other entities that hold high-value residential properties over £2 m.

Full details of the proposed new charge have yet to be published but there will be a consultation on these proposals in 2014. It is expected though that on the basis the new charge will apply only to future increases in value that there would be an effective rebasing, presumably to the market value of the relevant property at 6 April 2015. It may also be the case that private residence relief will be available for non-resident individuals who have occupied the relevant property as their only or main residence.

On the basis some had anticipated these measures would be introduced immediately, it is welcome that the Government has allowed a period of consultation on the proposed extension of CGT and that its introduction has been deferred until 2015 which will give non-UK residents a reasonable time to plan ahead. The consultation and the proposed legislation will need to address the following issues:

- Whether the charge should apply to all residential properties or only those above a certain value.
- The scope of the extension, in particular whether it will only affect individuals or also other entities such as trusts;
- The operation of private residence relief for these purposes;
- The rules for effective rebasing (which may be based on the Finance Act 2013 legislation relating to CGT charged on entities that currently fall within the Annual Tax on Enveloped Dwellings (ATED));

- How compliance issues are to be dealt with (e.g., imposing a withholding obligation on conveyancing professionals);
- Whether the charge will also be extended to the sale of shares in foreign companies holding UK property; and
- How the new measures would interact with ATED related CGT.

It would have been helpful to have announced this measure at the same time as the earlier consultation dealing with taxation of UK properties held by entities which are now subject to ATED.

Reduction in Private Residence Relief ("PRR")

The major unexpected announcement made related to the scope of PRR from CGT will be reduced with effect from 6 April 2014.

Where a residential property is occupied by its owner as his or her only or main residence throughout the period of ownership then in general the relief will amount to a total exemption from CGT on the property's sale. Where an individual has two or more residences which might otherwise qualify for the relief, an election may be made to determine to which the relief should be applied.

One of the aspects of this relief, and a feature which has perhaps encouraged the practice of switching main residence elections or "flipping", is that provided the property has been occupied as a tax payer's only or main residence for part of the period of ownership, the last 36 months of ownership are deemed to qualify for the relief (even if subsequent or prior to that occupation, the property has been empty or let.)

From 6 April 2014 the rule which treats the final 36 months of ownership as always qualifying for relief is to be reduced to 18 months.

Personal Tax

As announced by the Government in the Budget earlier this year, the income tax personal allowance for the 2014/15 tax year will be increased to £10,000 (but this only applies to those individuals born after 5 April 1948). This means that, after taking into account the personal allowance, such individuals will only be liable to higher rate (i.e. 40%) tax on income in excess of £41,865.

The Government has also announced that, as part of their initiative to recognise the value of marriage in the tax system, from 2015/16 onwards spouses and civil partners will be able to transfer up to £1,000 of their income tax personal allowance to their spouse or civil partner. This only applies, however, if neither is a higher rate tax payer (i.e. neither has income in excess of £41,865).

Income Tax: Dual Employment Contracts for Non-Domiciled Individuals

Legislation will be introduced in next year's Finance Bill to prevent UK resident non-UK domiciled individuals avoiding employment income tax by carrying out their duties under two employment contracts – one for their UK employment duties and one for non-UK duties. This practice seeks to take advantage of the fact that UK resident non-UK domiciled individuals are generally not subject to tax on income in respect of non-UK duties of employment for a non-UK employer unless remitted to the UK.

The Government has indicated that the legislation will counter the use of dual employment contracts by charging income tax on all of the income the individuals receives from his or her employment unless a comparable level of tax is already paid on the non-UK income in another jurisdiction.

Simplification of Inheritance Tax Charges on Trusts

The Government has been reviewing the way in which trusts are taxed for IHT purposes. It has been felt that the current rules are overly complex and following consultation, the Government will legislate to simplify trust calculations, filing and payment dates for IHT relevant property trust charges with effect from 2015.

Trust charges arise in relation to an exit charge on the distribution of relevant property and a periodic charge calculated every 10 years on the anniversary of the establishment of the trust. The calculations are complex and result in an effective tax rate not exceeding 6%.

It will also introduce legislation to treat income arising in such trusts which remains undistributed for more than 5 years as part of the trust capital when calculating the periodic charge.

Tax Evasion and Fraud

It was announced that HMRC will launch a project in early 2014 to ensure it is ready to exploit data generated by the new automatic tax information agreements (TIEAs). Since the 2013 Budget it has entered TIEAs with the Isle of Man, Guernsey, Jersey, the Cayman Islands, Gibraltar, Bermuda, Montserrat, the Turks and Caicos Islands and the BVI.

Effective compliance continues to be the order of the day for this Government. This follows an announcement last month that a planned register containing details of who really owns and controls UK companies will be made publicly accessible. It is apparent the Government is committed to the creation of a central registry of companies' beneficial owners, meaning those holding more than 25% of its shares or voting rights, or who otherwise control the way a company is run. Further information on this is due next year.

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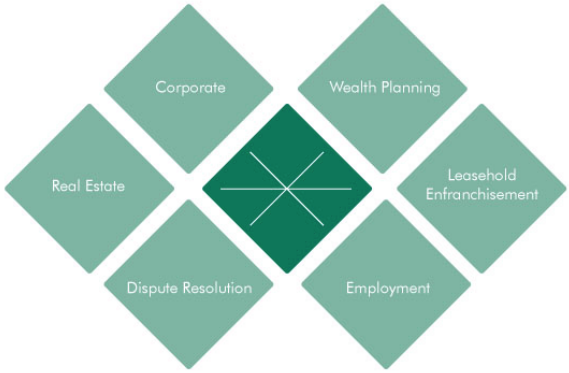

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