Published on *The National Law Review* https://natlawreview.com

Tax Measures in UK Budget 2012

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The budget includes a number of business-friendly measures, but also targets perceived tax avoidance.

The 2012 UK budget announced 21 March by the UK Chancellor contains a number of tax measures widely regarded as being pro-business, many of which were expected. However, there are also several measures designed to tackle tax avoidance in order to help balance the budget.

International business

Despite the anti-avoidance proposals, the budget contains considerable support for UK businesses. The main rate of corporate tax already had been due to drop from 26% to 25% in April, and the additional reduction of 1% becomes effective from April 2012.

In addition, as was widely known, the **Finance Act 2012 (**which will implement many of the budget measures) will contain the full reform of the UK's controlled foreign company (CFC) rules. This has been long awaited and should help the UK to be more competitive in the international holding company arena, as the scope of the CFCs (and their income) that are caught should be reduced. The new (draft) rules move from an entity-based test to a "gateway" test that identifies profits artificially diverted from the UK. Exemptions may be available both for entities and for certain income or profit streams, and there are safe harbours to protect genuine commercial businesses. However, the rules are surprisingly complex and are likely to add substantial compliance burdens and costs. They should apply for accounting periods starting on or after 1 January 2013.

Other measures relevant to the corporate tax area include the following.

- Additional tax reliefs for creative industries, including for the production of culturally British video games and certain television productions.
- Although not actually a corporate tax, the reduction of the top rate of income tax from 50% to 45% from April 2013 is intended to help businesses. This follows recent pressure from business as the current 50% rate has been perceived as a block to attracting and retaining top talent in the UK.
- From 1 April 2013, a "patent box" regime will be introduced, allowing companies to pay corporation tax at a reduced rate of 10% on a portion (starting at 60% and increasing to 100% by 2017) of their worldwide profits from exploitation of UK and European Patent Office

patents, and certain other intellectual property.
- An intention to enhance the enterprise management incentive (EMI) scheme (under which employees and officers in certain companies may benefit from tax-advantaged share options) by increasing the maximum limit of shares that may be acquired under EMI options from £120,000 to £250,000 measured at the date of grant—coupled with the extension of entrepreneur's relief (a reduced rate of capital gains tax of 10% on certain sales of shares and businesses) to shares acquired on exercise of an EMI option.

Anti-avoidance

In 2010, the UK government commissioned a team, led by tax barrister Graham Aaronson QC, to investigate the feasibility of a general anti-avoidance rule (GAAR). In November 2011, Graham Aaronson QC's report was released and came down in favour of a GAAR. The government now intends to start a consultation on a general anti-abuse rule in the summer of 2012, with a view to introducing the rule in 2013 to counteract artificial and abusive tax avoidance.

One of the key concerns with a GAAR is the uncertainty that may result for taxpayers. Although the ability to obtain advance tax rulings in the UK is quite limited, the government is clearly aware of this concern. The 21 March announcement indicates the government's intention to produce guidance aimed at offering taxpayers practical assistance to address this uncertainty, but it remains to be seen whether the GAAR will have a significant impact on commercial transactions, on the relationship between taxpayers and HM Revenue & Customs, or on the attractiveness of the UK for international business. It is not yet clear whether any effort will be made to reduce the large number of targeted or specific anti-avoidance rules already in the UK tax code.

Residential property

One target of the budget is the residential property sector, where there has been perceived planning to avoid or minimise stamp duty land tax (SDLT) on properties owned by wealthy individuals. Under a range of proposals, some of which applied from 21 March 2012, others to take effect in 2013, it will become unattractive to hold UK residential property through non-natural persons (such as companies, unit trusts, and some partnerships). The measures include a 15% SDLT charge on transfer of UK residential property worth more than £2 million to non-natural persons and an unusual provision to subject non-UK-resident, non-natural persons to UK capital gains tax on disposals of such UK property. The precise scope of the new rules is not yet known.

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National Law Review, Volume II, Number 96

Source URL:https://natlawreview.com/article/tax-measures-uk-budget-2012