Budget 2016

Relatively benign but a sting in the tail for Guernsey

Reduction in headline tax rates

One of the primary focal points of the Chancellor's 2016 Budget speech appeared to be the UK's corporate tax regime with the aim of improving the position for small businesses, the main headline being the further reduction to the corporation tax rate to 17% from April 2020.

Further reductions were announced in relation to capital gains tax, with the rate being reduced from 28% to 20% for higher rate taxpayers and from 18% to 10% for basic rate taxpayers in relation to gains realised on or after 6 April 2016. Unsurprisingly, these reductions do not extend to gains realised on residential UK property (other than properties qualifying for Private Residence Relief) which has been the subject of targeted legislation over the last three years. Carried interest receipts arising from private equity structures will also be excluded from the reduction in the CGT rates.

The ability for individuals to benefit from Entrepreneurs Relief has been widened through the introduction of a new Investor's Relief to include external investors who realise gains on the disposal of ordinary shares in an unlisted trading company, providing the shares were acquired by that individual on or after 17 March 2016 and have been held for a period of at least three years from 6 April 2016. This will be subject to a lifetime cap of £10 million.

Stamp Duty Land Tax (SDLT)

Further Stamp Duty Land Tax (SDLT) changes were also announced by the Chancellor. Back in December 2014, the charging system for SDLT on residential property was reformed from a "slab" system to a "slice" system together with an increase in the rates charged. With effect from Budget day, this treatment was extended to SDLT on commercial or mixed use property. The new rates are as follows:

£0 - £150,000	0%
£150,001 - £250,000	2%
Over £250,000	5%

Whilst the change in rates is not dramatic (the top rate was previously 4% for all purchases over £500,000), it will still result in purchasers of high value commercial property paying more (but not substantially more) SDLT. For example, on a commercial property worth £2 million, an additional £9,500 SDLT will now be payable.

Detailed legislation has also now been published regarding the additional 3% SDLT charge on purchases of second homes, which was announced in the Autumn Statement last year and takes effect from 6 April 2016.

UK property development by non-residents

One measure which did not feature in the Chancellor's Budget speech but which could have significant impact for the Island relates to a Protocol amending the Double Taxation Agreement between the UK and Guernsey (as well as those between the UK, Jersey and the Isle of Man).

This will affect the tax treatment of trading profits for those dealing in UK land or those involved with the development of UK land. Whereas previously, tax was only payable in the UK if a permanent establishment (PE) had been created, it will now be the case that such profits will be taxed regardless of the residence of the company carrying on the trade or where the trade is carried on and irrespective of whether the trade is carried on through a PE in the UK.

The Protocol takes effect immediately (i.e. from Budget Day) and will be unwelcome news for those with property development structures currently in place that have yet to realise profits, as well as for local fiduciary providers.

Employee Benefit Trusts (EBTs)

A further announcement which may also be unwelcome news for those involved with employment benefit trusts (or other "third party arrangements") is the introduction of further measures to tackle perceived tax avoidance through the use of disguised remuneration schemes.

Of particular significance, is the introduction of a new charge in relation to any loans made from employee benefit trusts (or similar arrangements) which are still outstanding on 5 April 2019 and have not by that point been subject to PAYE under the existing Disguised Remuneration legislation (and were not made from funds which have been fully subject to income tax). This measure is primarily intended to bring into charge those loans made prior to the introduction of Disguised Remuneration which may currently be outside the scope of tax charges but which would have been subject to tax had they been made after the introduction of the Disguised Remuneration.

HMRC recently obtained victory in the "Rangers" case, which centred around loans made from an EBT to various employees of the football club that were not subject to PAYE or NIC at the time the funds were contributed to the EBT or when the loans were made. Rangers have now been granted leave to appeal to the UK Supreme Court over the decision but HMRC are clearly looking to secure their position in relation to other similar structures and bypass the issue of the taxing point for many historic loans being out of time for assessment through the introduction of this new future charge.

This could potentially cause significant difficulty for those structures where the majority of funds have been loaned out to beneficiaries and repayment is unlikely as there will be no liquidity to meet the tax charge in 2019, especially if the employer company is no longer in existence.

Summary

So, in summary, whilst at first glance Budget 2016 seemed relatively benign, there was certainly a sting in the tail for the Channel Islands in relation to property trading and development activities.

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