Deloitte Tax LLP
Global Employer Services

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Summary

In his Budget the Chancellor said he plans to raise £500m annually by tackling avoidance, anticipating a greater level of activity in this area. There are, as expected, no new increases in the rates of income tax, capital gains tax and national insurance. However, as previously announced, the personal allowance remains frozen until at least 6 April 2011. There is no clear explanation of how the announced fiscal measures and expenditure plans will reduce the public sector deficit to £89 billion by 2013/14.

Despite the top income tax rate increasing to 50%, the Chancellor has retained the capital gains tax rate at 18%. However, planning to convert employee reward from income to capital gains through "growth shares" is being looked at with a consultation planned for Summer 2010. Also, unspecified measures are to be taken against the tax-effective distribution of employee reward through employee benefit trusts.

Deloitte's View

As anticipated, the Budget did not introduce any significant new tax measures. However, the Chancellor has set out an intention to mitigate against tax avoidance schemes, with a review of employee benefits trusts and geared growth arrangements for shares.

HMRC approved share incentive plans – Anti-avoidance

Two pieces of anti-avoidance legislation were introduced in relation to HMRC approved share incentive plans (SIP). First, legislation will be introduced to ensure that a company will no longer be able to obtain an upfront corporation tax deduction to a SIP trust if, at the time the contribution is made, it is not genuinely intended that the shares acquired by the SIP trust would be passed to employees ie it is part of a tax avoidance scheme.

Second, where alterations are made to a company's share capital or the rights

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attached to shares, and the alterations materially affect the value of the SIP shares, HMRC are already able to withdraw the HMRC approved status of the plan. However, the legislation will be amended so that approved status may be withdrawn even if, at the time of the alteration, there are no participants in the SIP or no shares have been awarded.

The legislation will apply for contributions made to the SIP trust and for alterations to the share capital/share rights made on or after 24 March 2010.

Deloitte's View

We would not expect many companies to be affected by these anti-avoidance provisions. They may, however, be regarded as prudent housekeeping by HMRC to prevent future avoidance.

Anti-Avoidance – taxation of earnings

The government has announced the introduction of anti-avoidance legislation designed to counteract attempts to avoid income tax and national insurance contributions via the use of Employee Benefit Trusts, other trusts or intermediaries. In addition, the intention is to include arrangements that seek to avoid the restrictions on pension tax relief.

In addition, as part of the overall tightening on planning relating to employment income, anti-avoidance measures have been announced relating to certain HMRC approved company share option plans and particular HMRC approved share incentive plans. Consultation has also been announced in respect of making awards in geared growth interests. The intent of the consultation will be to ensure that amounts which should be taxed as employment income are brought within the charge to income tax and national insurance contributions.

Deloitte's View

The reach of this proposed anti-avoidance legislation has yet to be defined and any changes would not be introduced before 6 April 2011. Although the Chancellor has announced his intention to consult, review and take action to counter avoidance, it remains to be seen in what form these changes will take and how extensive they will be. This will be an important area to keep under review.

Tackling offshore tax evasion

There will be increased penalties for individuals who fail to pay the taxes due on certain undeclared offshore income and gains. The current tax geared penalties for inaccurate tax returns, failure to notify tax liabilities, and failure to submit tax returns, which can be up to 100% of the tax due, can in certain circumstances be increased further by either an additional 50% or 100%.

The level of the maximum penalty will be determined by the level of information exchange between the overseas country and the UK. The level of additional penalties will vary from zero for countries where there is automatic information exchange through to 100% where no information exchange agreement is in place. It is expected that this new penalty regime will apply to tax periods commencing on or after 1 April 2011.

Deloitte's View

The government is continuing to target tax evasion associated with UK taxpayers holding undeclared assets offshore. The detail of the proposed legislation is awaited with particular interest in how the penalties will be applied in practice where there are both UK and overseas tax failures and what level of mitigation will be accepted e.g. in complex remittance situations.

Security for payment of PAYE from employers with a history of non-compliance

From 6 April 2010 HMRC will be empowered to require certain employers to provide a financial security where PAYE or National Insurance is at serious risk. HMRC will set the security required according to the potential tax liability involved, although employers will have a right of appeal. The new regulations will introduce a new criminal offence for employers who fail to pay the security and impose fines of up to £5,000.

HMRC have indicated that the measure will affect employers who have a history of serious non-compliance in terms of paying late or not paying PAYE or national insurance.

Deloitte's View

This would seem to be another measure targeted at employers who deduct PAYE and National Insurance but fail to hand over the deductions to HMRC. The measure is likely to be aimed at employers who are persistently non-compliant. However, when the regulations are released for consultation we will be able to establish whether they will have broader application.

Extending charity tax reliefs to certain European organisations

Following the 2009 judgment in the European Court of Justice (ECJ), reliefs available to UK charities and Community Amateur Sports Clubs (CASCs) will be extended to equivalent organisations in the European Union (EU), Iceland and Norway. This will be achieved by the introduction of a statutory definition of 'charity', 'charitable company' and 'charitable trust'.

UK-resident individuals and non-UK resident individuals with UK taxable income will now be able to claim tax relief in respect of donations to qualifying charities in the EU, Iceland and Norway from 6 April 2010.

> **Deloitte's View**
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> This measure will be welcomed by expatriate employees making donations to charities elsewhere in Europe, who have not previously been able to claim relief for donations to non-UK charities. Individuals with significant contributions between the ECJ judgment date (27 January 2009) and April 2010 will want to consider making a claim to HMRC for tax relief on these donations.

Bank payroll tax

The Chancellor confirmed further details regarding the introduction of the Bank Payroll Tax (BPT). As originally announced in the pre-budget report this levies a 50% payroll tax on the payment of discretionary awards to employees of Banks, members of Banking Groups and certain other financial institutions where the amount of the award exceeds £25,000. It was originally estimated that the tax would result in the collection of approximately £550m in additional revenue, while it is now expected to be in the order of £2bn.

The main changes to the original draft proposals include;

- An exemption from the definition of "relevant banking employees" (for whom the levy applies) for overseas based employees who visit the UK for no more than 60 days during the tax year.
- A number of specific exclusions for:
    - Companies that do not carry out deposit taking in the UK which are BIPRU 730k firms and BIPRU full scope investment firms (within FSA definitions) and have a capital resources requirement of at least £100;
    - Insurance Special Purpose Vehicles;
    - Exempt BIPRU commodity firms and;
    - Firms who do not carry out relevant regulated activities (although there are some specific exemptions under this exclusion).
- There is also an exclusion from being a "banking group" where at least 90% of the trading income of the group is derived from insurance, asset management and related activities or non-financial activities. This does not prevent a bank within the group being subject to BPT in respect of its own activities.

As previously announced any tax due has to be paid by 31st August 2010.

> **Deloitte's View**
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> It is welcome that the Chancellor has confirmed that BPT is to be a one off levy and will only apply to awards up to and including 5 April 2010.

While most bonus awards to which BPT applies will now have been made, there will still be a substantial amount of work to be completed to determine the appropriate amount of tax for Banks and other financial institutions to provide for in their accounts as well as agreeing the amount payable with HMRC. The clarification provided is welcome but the rules will still apply arbitrarily for overseas banking employees working in the UK for more than 60 days.

Pensions

The Government has today issued a summary of the responses to last December's consultation document on how to implement the restriction of higher rate relief on the pension savings of high income individuals from 6 April 2011. Where the restrictions apply, higher rate relief will be reduced by 1% for each additional £1,000 of income between £150,000 and £180,000, so that at incomes of £180,000 and above relief will be restricted to the basic rate. This will work by imposing a tax charge to recover the excess higher rate relief that the individual will claim through their tax return as normal.

The main provisions proposed:

- The value of an employer's contribution to a defined benefit scheme will be determined using age-related factors which will take into account both the age of the individual and their normal retirement age under their pension scheme.
- Measures that can affect employees with a salary substantially less than £150,000 who receive exceptional payments, eg termination payments.
- The charges will apply in the year in which pension benefits are drawn by using the income of the previous year, although there will be an exemption where the member retires through serious ill health or dies.
- The tax relief restriction will apply equally to high income members of overseas schemes that benefit from UK tax relief, although it is recognised that some members may have difficulty meeting the self-assessment deadline for reporting any charge payable by them, and further consultation will take place on this point.
- There will be an obligation on employers, in conjunction with pension scheme administrators, to provide information to employees to enable them to be able to self assess their position.
- Where an individual's recovery charge exceeds £15,000 they can spread the payment (plus interest) over three years if their pension scheme is not able to pay it on their behalf.

From 6 April 2011 the special annual allowance will have no further relevance, and normal ongoing regular pension savings will no longer be protected.

Deloitte's View

It is disappointing that the Government has rejected any significant modifications to the proposals outlined last December for restricting higher rate tax relief on the pension savings of high income individuals.

The proposals are likely to carry a heavy administrative cost for employers and pension scheme managers and will be very difficult for individuals to understand and deal with through self assessment, without professional help.

Enterprise Management Incentives

Companies currently wishing to offer share options to their employees under Enterprise Management Incentives (EMI) must operate “wholly or mainly in the UK”. The criteria to be able to award such approved options is to be relaxed enabling companies who have a ‘permanent establishment’ in the UK to be able to qualify. This change will have effect on or after the legislation receives Royal Assent.

Deloitte’s View

This relaxation is welcome and will allow a wider range of employers to be able to make awards under EMI.

Changes to HMRC approved company share option plans

The HMRC approved Company Share Option Plan allows tax-advantaged options to be granted to UK employees. In particular, the gain arising on the first £30,000 of approved options could be exempt from income tax and National Insurance.
The current legislation is to be amended so that, from 24 March 2010, approved CSOP options may no longer be granted over shares in a company that is under the control of a listed company.

Deloitte’s View

HMRC have commented that this amendment was made to combat perceived avoidance. However, it is disappointing to see that the changes are not ‘targeted’. The changes may therefore have a wider impact than HMRC intended.

Employer supported childcare – relaxing conditions

The Government intends to relax the requirement for employer supported childcare schemes to be “available to all employees”. Currently, the employer’s support must be available to all employees in order to attract income tax and national insurance exemptions. As the schemes often work through a salary sacrifice arrangement, participation can take some low-paid employees below the national minimum wage thresholds. This can leave employers in a situation where they either fall foul of the national minimum wage regulations or, if they do not allow low-paid employees to participate in their scheme, no longer fulfil the “available to all” requirement.

The proposed change will relax the requirement, allowing employers to exclude employees at or near the national minimum wage without affecting the exemption for the rest of the workforce. This measure will not be included in the 2010 Finance Bill but the Government, if re-elected, intends to legislate for it in 2011. It will have retrospective effect from tax year 2005/06 onwards.

Deloitte's View

If introduced, this would be a welcome relaxation dealing with a practical problem affecting many employers offering childcare benefits.

Zero and low emission cars and vans

Company cars and vans will no longer attract an income tax charge if they have zero CO_2 emissions (e.g. electric vehicles). Hybrids which can run on electricity or petrol/diesel will not qualify for the exemption. In addition, petrol cars emitting 75g of CO_2 per kilometre or less will attract a reduced chargeable benefit of 5% of their list price. Ultra-low emission diesel cars will still be subject to the 3% surcharge, making the chargeable benefit for diesel cars 8% of list price.

These reductions and exemptions will also reduce Class 1A National Insurance liabilities for employers. The exemption is a temporary measure and will have effect from 6 April 2010 to 5 April 2015.

Deloitte's View

Tax incentives for electric cars and vans should further encourage employers to provide these vehicles and, in turn, encourage a wider variety of such models to be made available in the UK.

Remittance basis clarification

The anti-avoidance rules that prevent foreign income and gains of non-domiciliaries from being remitted tax-free to the UK will be strengthened. A new rule will deem a taxable remittance to occur if a UK resident non-domiciliary channels offshore income to the UK via a subsidiary of a non-UK resident company in which he or his family members are participators. This will close a potential loophole.

Deloitte's View

This corrects a minor anomaly in the 2008 rules, which does not appear to have been widely exploited.

Staff Canteens

The 2009 Pre-Budget Report announced a restriction to the tax exemption for free or subsidised meals provided in conjunction with salary sacrifice or flexible benefits arrangements, effective from 6 April 2011.

Today, HM Treasury released an impact assessment estimating an Exchequer yield of £110m per annum from 2011/12 arising from this change. HM Treasury has assumed that 250 employers will be affected, being large employers with more than 500 employees. It is estimated that approximately 280,000 employees currently participate in such schemes.

Deloitte's View

This will be the first time that the tax treatment of a benefit is determined, not by the nature of the benefit, but by the circumstances in which it is provided. We understand that HMRC is primarily concerned with arrangements involving an element of personal choice. The benefit of free or subsidised meals should continue to be free of income tax and NIC, provided this is not part of an arrangement where pay or other benefits have been given up in exchange as a matter of personal choice.

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