Pinsent Masons

Budget 2015: UK tax and offshore briefing

19 March 2015

In the Budget 2015, the Chancellor of the Exchequer announced further plans to tackle tax evasion and avoidance. Whether they are enacted depends on who is in Government after the General Election - although the shadow Chancellor confirmed this morning that there was nothing in this Budget he would reverse.

The coalition upped the ante on those that might use the financial and professional industry to hide assets - shortening current disclosure opportunities, increasing penalties for non-compliance, legislating to require financial intermediaries to promote the disclosure facilities - and introducing new criminal offences aimed at taxpayers, banks and professional advisers. But, notably, there were no new announcements about the push for registers of beneficial owners.

New criminal offences and tax penalties

Last year, HMRC consulted on a new "strict liability" offence of failing to declare offshore income. Unlike other offences, a prosecutor would not need to prove intent to defraud. The Chief Secretary to the Treasury today announced plans to press ahead with introducing this new offence, saying that no longer will it be possible to argue ignorance of a liability to tax and to blame it on your tax adviser. Treasury documents say that changes from the initial proposal will be put out for fresh consultation shortly – and suggest that, whilst the initial proposal was for the offence to apply only to income connected with countries who have not adopted the "common reporting standard", the proliferation of countries adopting the standard may lead this to change.

Penalties are also being beefed up. The UK has traditionally applied penalties by reference to the tax at stake. Today, plans were announced to link the penalty to the size of the assets concerned – a system which may make penalties more like fines for criminal offences, which are in part geared to ability to pay.

Banks and other third parties

There will also be a new criminal offence of a "corporate failure to prevent tax evasion or the facilitation of tax evasion". This measure is targeted at employers, principally banks, fiduciaries and professional services firms. Those employers, and their employees, might say that they already have to report suspicious activity by their clients under existing anti-money laundering rules. However, an AML report has the effect of the exonerating the person making it from criminal liability and some might say that this merely encourages systematic reporting so as to "pass the buck" to the law enforcement agencies. The corporate offence would mean that banks and other employers have to pay greater attention to their employees and customers' activities.

The territoriality of this measure is not yet clear - in particular whether it would apply to activity taking place only in the name of UK employers. It is possible it may operate like the UK's anti-bribery laws – which can criminalise the activity of foreign corporates in some circumstances. The new offence goes some way to explain why many banks are reviewing their offshore businesses.

Tax penalties on third parties who assist others in evasion will also be introduced, geared to the tax at stake. As the Chief Secretary put it, if you help someone to evade tax of £1m, you can expect to pay a penalty of £1m or more. Third parties will also be subject to "name and shaming" provisions.

Curtailing disclosure facilities

A surprise announcement from the Budget yesterday was the bringing forward of the closing date of the Liechtenstein Disclosure Facility from 6 April 2016 to **31 December 2015**. The Crown Dependency facility has also been brought forward from 30 September 2016 to the same date.

Significantly, this means that none of the present facilities will be open when the first set of bulk data under "UK FATCA" is sent to the UK on 30 September 2016 by the Crown Dependencies and Overseas Territories. By then, a new "last-

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chance" facility will be in place, running until mid-2017. The terms will be less generous: the fixed penalty will increase from 10% to 30% and the express guarantee of immunity from prosecution will no longer be available. It is not clear whether the shorter look back period under the LDF will also go.

By the time of the first exchange of data under the "Common Reporting Standard" (30 September 2017), no disclosure facilities will be available at all. The Government has also announced plans to legislate to require "financial intermediaries" and professional advisers to warn their clients about the information exchange and to promote the existence of disclosure facilities (presumably the legislation will be in place before the last chance facility comes to an end). Again the territoriality of this measure is unclear. Intermediaries should in any event be encouraging all their clients to undertake a tax "health check" well before information is exchanged. **Offshore trustees and fiduciaries should take up the initiative themselves on this, not forgetting that in some cases they can incur personal liability for tax.**

By closing the LDF early, the "burning platform" just had petrol doused on it. If anyone is any doubt about whether they have fully paid past taxes they need to act quickly. But taking away the guarantee of immunity from prosecution for those who come forward after the LDF has closed could be counter-productive. How many people will think twice about disclosing if they could up end up just writing their own prosecution case? If anyone has any concerns about prosecution, the best advice is to register to use the LDF before it is taken away on **31 December this year.**

Avoidance

The Chancellor of the Exchequer announced that more "accelerated payment notices" will be issued in relation to historic tax avoidance disputes … notwithstanding the current judicial review Pinsent Masons has brought of the legislation on behalf of members of film partnerships promoted by Ingenious Media. He also confirmed that the "diverted profits tax" aimed at multinational corporations will be legislated for before the end of Parliament and will be effective from 1 April 2015 – despite concerns that it has been rushed through and will be ineffective. And banks were plundered further through an increase to the bank levy and a consultation on removal of the right to claim a tax deduction for any compensation paid in relation to mis-selling scandals.

If you have any questions about Budget 2015 or the further announcements made today, please contact:

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