BUDGET 2016 (16/3/16)

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The 2016 Budget contains many far reaching changes. Some of these are set out below

Income tax personal allowance

This is £11,000 for 2016/17 and £11,500 for 2017/18.

The threshold for higher rate tax will be £43,000 for 2016/17 and £45,000 for 2017/18.

Planning

One can earn up to these figures without paying income tax. It maybe one can employ members of the family to do different jobs for the family company or business to make use of the exemptions

Capital Gains Tax rates to be reduced

This is to go down from 28% at the top rate to 20% from 6/4/16 except for residential property where the rate remains at 28% (even then there may be no CGT charge if the principal private residence exemption is available).

Planning for the interim

Where the new rate applies postpone the disposal until after 5/4/16. The purchaser may be given a call option to cover the interim period. Subject to the GAAR one may consider put and call options to cover the interim period.

Entrepreneurs' Relief to be extended to investors

This is to be extended to new investors who take share issues after 17/3/2016 in trading unlisted companies even though they are not directors or employees in the company owning 5% or more of the shares in the company. They must hold the shares for at least 3 years: the prize is the gain up to £10m is taxed at only 10%.

Example

Mr X and Mrs X own trading Ltd equally. They are directors of the company. They persuade a friend to invest in the company by way of share capital even though he will not be a director or employee of the company. The friend may nevertheless qualify for entrepreneurs' relief.

Corporation Tax rates to be reduced even further

Corporation tax will go down to 17% from 1/4/2020.

Example

A Jersey incorporated company resident in Jersey is to carry out a UK land deal (this is no longer treaty protected: see below). This may bear tax at the basic rate (20%) and further tax may be chargeable at 45% (with credit for the 20%) on the shareholder under ITA 2007 s720 (transfer of assets abroad). It is better to make the company resident in the UK and pay the low UK corporation tax rates.

The substantial shareholding exemption

There is to a be a consultation on the ambit of the substantial shareholding exemption.

Non-Qualifying Life Policies

There are to be consultations on reforming the personal portfolio bond legislation and the income tax charges when non-qualifying policies are surrendered (in part or whole) at a profit. The 5% tax free annual surrender will be unchanged.

Offshore Property Developers to be brought within the corporation tax net

Offshore companies making land dealing profits from UK land will be charged to corporation tax on the same. A technical note was issued on 16/3/2016. There will be legislation effective from budget day to ensure the new rules cannot be circumvented.

Example

A Jersey resident company does a UK land deal seeking to avoid UK tax under the UK/ Jersey double tax arrangement (SI 1995/1216) as amended. This new legislation will be in point. There is nothing in the technical note which seeks to say the arrangement is to be unilaterally overridden. However a protocol effective from 16/3/16 reserves to the UK government the right to tax gains from immovable property situate in the UK (new para 3B(1) to the Arrangement). Note the new legislation may also extend to the sale of shares in the Jersey company if it holds the land at the time of the sale and UK immovable property comprises more than 50% of the company's value (new para 3B(2). Para 9 of the technical note indicates HMRC accept the Diverted Profits Tax (which HMRC argue is a tax not covered by treaties being unique in nature; it thus overrides treaties) may not always be applicable hence the need for the new legislation.

<u>Non-Doms to get a new CGT rebasing relief</u>

The position of non-doms (people who are resident in the UK but not domiciled in hte4 UK) will be set out in the Finance Bill 2017 but the chancellor did promise rebasing for CGT purposes for those who become deemed domiciled on 6/4/17. Under the proposed changes non-doms will be tax encouraged to set up settlements and this will mitigate their tax positon.

The non-doms will thus have 2 major mitigating features available. The first is rebasing. The second is settlement creation.

Example

Mr X is resident in the UK but domiciled in the UK. Prior to becoming deemed domiciled in the UK under the proposed new rules he puts assets into a Jersey settlement. He leaves some valuable offshore company shares in his own name knowing they will be rebased to market value on 6/4/2017. The cost of the asset may have been £1m and the rebased value £10m. He knows he can sell the shares for £10m and remit the same to the UK tax free (depending how the rebasing rules are finally drafted).

<u>Stamp Duty Land Tax rates to be increased</u>

The extra 3% SDLT charge on second homes is confirmed.

There will be new rates applicable to non-residential and mixed use property, the top rate will be 5% after 16/3/16.

<u>Planning</u>

If one sells residential property mixed with commercial property the SDLT is at the reduced rates even on the residential part.

<u>GAAR Penalty</u>

If a scheme to avoid tax is successfully countered by the GAAR a penalty of 60% of the tax is payable as well as the tax. Curiously this may make the courts more reluctant to apply the GAAR as the penalty is hefty and unnecessary. Lord Scarman in Garvin v IRC [1981] STC 344 at 351 said tax planners may not be entitled to mercy but they were entitled to justice.

Example

Mr TA does a complex tax scheme which fails following an attack by HMRC under the GAAR. He made a commercial profit of £1m. £100,000 goes on legal costs and payments to the punter. £450,000 goes on income tax. £270,000 goes on the GAAR penalty. He can spend the balance.

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