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2015 has seen a wide range of developments in U.K. tax, reflecting the continuing public concern in the U.K. regarding corporate tax affairs, as well as the desire of the newly elected government to show that it is taking these concerns seriously.

I. Introduction[1]

The May elections in which the current government came to power meant that, in addition to the usual March budget, there was an extra "summer" budget this year. These two budgets together with November's Spending Review and Autumn Statement have resulted in three major batches of U.K. tax legislation over the course of 2015 (one of which, Finance Bill 2016, will reach its final form in 2016).

II. Corporate Tax

A few measures which are not specifically international in scope should be mentioned first, as they are likely to have an impact on many businesses which have a U.K. presence:

- corporation tax is to be reduced from its current rate of 20% to 19% from April 2017, and to 18% from April 2020; and[2]
- there have been a number of amendments to the corporate debt and derivatives code, with the general aim of more closely aligning tax and accounting treatment.

Significant developments have also occurred in the taxation of two specific industries, banking and the oil and gas sector:

- banks operating in the U.K. are currently liable to pay the "bank levy", a tax based on banks' worldwide balance sheet assets. The bank levy was raised from a maximum rate of 0.156% to 0.21% in April 2015, and is now set to fall incrementally, with a maximum rate of 0.1% from January 2021,[3] and to only apply to U.K. balance sheets of U.K. headquartered banks from then on.[4] Reductions in the bank levy will be counterbalanced by a new 8% surcharge on profits made by banks (with the first 25 million pounds of profits exempt),[5] and by denying tax relief for compensation payments paid by banks to their customers; and[6]
- the top rates applicable to companies operating in the oil and gas sector have reduced from 60% or 80% to 50% or 67.5%, and a number of changes have been made to incentivise further development of fields.[7]

In terms of international corporate tax, one of the more significant developments of 2015 was the enactment of a legislative framework to exempt interest in relation to private placements from withholding in respect of U.K. income tax. The precise scope of this exemption is currently being developed, and although the government has stated that it expects the relevant detailed legislation to become law during the course of 2015, that legislation has not yet been published at the time of writing.[8]

There have also been two changes announced that may affect international groups in particular. Firstly, the U.K.'s controlled foreign company ("CFC") regime has until now allowed U.K. losses to be set off against profits of a CFC which were apportioned to, and therefore taxable for, a U.K. company under the regime. The government has now enacted legislation withdrawing this relief with effect from July 8, 2015, with time-apportionment where companies' accounting periods straddle this date.[9] Secondly, it has so far been necessary for groups of companies which hold more than 5%, but less than 75%, of U.K. companies with which they wish to claim or surrender losses to hold their shareholding through a U.K. or EEA-resident "link company". With retroactive effect for accounting periods beginning on and after December 10, 2014, this residence requirement has been removed.[10]

III. Residential Property

Residential property held by companies has been subject to an "Annual Tax on Enveloped Dwellings" ("ATED") since April 2013,[11] and companies disposing of properties on which ATED has been chargeable have also been liable to ATED-related capital gains tax ("CGT") at 28%. The threshold for ATED to apply was reduced with effect from April 2015, from a market

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value of 2 million to 1 million pounds, and a further reduction to 500,000 pounds is set to take effect from April 2016.[12]

In addition to ATED-related CGT, the government introduced a new form of CGT which applies from April 6, 2015 to non-residents disposing of U.K. residential property ("NRCGT").[13] Some key differences from ATED-related CGT are that:

- there is no minimum value above which NRCGT applies;
- NRCGT applies to individuals as well as companies; and
- NRCGT is chargeable at a variety of rates, which may be below the 28% chargeable under ATED-related CGT.

ATED-related CGT takes precedence over NRCGT. The government has recently published further amends to counter inadvertent consequences which arose from the drafting of the NRCGT rules. The rules will come into force in 2016, with retrospective effect.[14]

IV. Tax Treaties, International Tax Cases, and Devolution

The U.K. signed new tax treaties in 2015 with Algeria,[15] Bulgaria,[16] Croatia,[17] Kosovo,[18] Senegal,[19] and Sweden.[20] and agreed minor amendments to the Jersey[21] and Guernsey[22] treaties. It has also recently announced plans to begin negotiations on double taxation agreements with Nepal, Romania, Trinidad and Tobago, and Uzbekistan, and to work on agreements and protocols with a range of other countries.[23]

In a significant case, the U.K. Supreme Court cast some doubt on the long-standing practice of HM Revenue & Customs ("HMRC"), the U.K. tax authority, of treating U.S. LLCs as fiscally opaque (*Anson v Commissioners for Her Majesty's Revenue and Customs* [2015] UKSC 44). HMRC have subsequently released guidance stating that, in most cases, they expect such entities to continue to be treated as opaque, but the treatment is no longer as clear as it was.

There were also further developments in tax devolution, notably the replacement of stamp duty land tax (property transfer tax) in Scotland by a separate land and buildings transaction tax from April 1, 2015, overseen by a newly-created tax authority.[24] In a similar vein, the devolved Welsh administration has launched a consultation on a Welsh land transaction tax which it plans will come into effect from April 2018,[25] and is also currently enacting legislation for the creation of a Welsh revenue authority to oversee the collection of devolved taxes in Wales.[26] In addition, legislation was enacted which creates a mechanism for Northern Ireland to set a separate rate of corporation tax; under a recent agreement, the Northern Ireland administration has decided that the rate will fall to 12.5% from April 2018, matching the trading income rate currently in force in the Republic of Ireland.[27] Some legislation has been enacted with effect from April 2016,[28] and other legislation is currently underway,[29] to give Scotland wider powers to set income tax rates, following on from the Scottish referendum in 2014; legislation is also in progress which will simplify the process for Wales to introduce its own rates of income tax.[30]

V. BEPS

Although the (near) final reports of the OECD's BEPS project were only issued in the last quarter of 2015, the project has already resulted in the following U.K. measures:

- country-by-country tax reporting will be required for accounting periods commencing on or after January 1, 2016, implementing Action 13 ("*Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*"). The final format for reporting that will be required was under consultation until November 16, 2015, and has not yet been released;[31]
- a consultation was published in October regarding modifications to the U.K.'s patent box regime in response to Action 5 ("*Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*"), and in particular, more closely linking the benefits of the relief to research and development expenditure on the intellectual property in question.[32] Draft legislation aimed at achieving this objective was published as part of Finance Bill 2016;[33]
- the government issued a consultation in October on what amendments might be made to U.K. legislation in light of Action 4 ("*Limiting Base Erosion Involving Interest Deductions and Other Financial Payments*").[34] The proposals notably include limiting interest deductions to a fixed ratio percentage of EBITDA, with a suggested range of 10% to 30%, which would mark a radical departure from the current U.K. approach to interest deductibility; and
- following a December 2014 consultation, the government has published draft legislation to be effective from January 1 2017, which is designed to implement the agreed OECD rules for addressing hybrid mismatch arrangements proposed as part of the response to Action 2 ("*Neutralising the Effects of Hybrid Mismatch Arrangements*").[35] This legislation was published as part of Finance Bill 2016, and will replace existing anti-arbitrage rules contained in the U.K. tax code.

VI. Individuals

Individuals who are U.K.-resident for tax purposes may have a non-U.K. "domicile"—a complex concept which could broadly be described as an intention to live in (or often, to return to) a country other than the U.K. for the long term. Such individuals are not subject to U.K. inheritance tax on their worldwide assets, and are only taxed on their non-U.K. income and gains to the extent that they are remitted to the U.K.. Although a charge—increased in 2015—can apply to access this basis of tax on income and gains, this can be a very advantageous status for taxpayers, and it has attracted sustained attention and some criticism in the U.K. media. The government has been in consultation on measures which would mean that individuals will be deemed to be U.K. domiciled once they have been U.K. resident for more than 15 of the last 20 tax years, and which would also automatically deem individuals who are born in the U.K. to have U.K. domicile when U.K. resident.[36]

In other international developments, the government has published draft legislation to make technical changes to employee share schemes, including to the treatment of internationally mobile employees.[37]

From a domestic perspective, the method and rate at which dividends received by U.K.-resident individuals will be taxed will change from April 2016. This will result in an increase in the effective rates for dividend income from 0%, 25% or 30.56% to 7.5%, 32.5% or 38.1% (with a 5,000 pound allowance).[38] These changes will follow a recently issued consultation in relation to taxation of company distributions generally, and it is possible that further changes to dividend taxation will be made in due course.[39]

There have also been significant developments relating to personal taxes paid by fund managers and similar professionals. In particular, the government enacted measures aimed at ensuring that "disguised fees" paid to investment managers are taxed as income,[40] as well as rules targeted at perceived tax avoidance/underpayment of tax by those working for investment funds, by denying base cost shift for recipients of carried interest.[41] As part of Finance Bill 2016, there is now also draft legislation which will limit the circumstances in which performance-linked returns from fund management may be treated as capital in nature by individual managers (and thereby benefit from the lower tax rates applicable to capital gains as opposed to income).[42]

VII. Diverted Profits Tax, Anti-avoidance, Compliance

2015 saw the enactment and coming into effect of the "diverted profits tax" ("DPT"), announced in 2014.[43] DPT is generally charged at a rate of 25% and applies to arrangements in the U.K. which are perceived to either "avoid" creating a U.K. permanent establishment or to "lack economic substance". Although the measure was ostensibly aimed at large multinational groups selling products and services in the U.K. to consumers, the legislative provisions are drafted in a complex manner, and the precise scope and application of the tax remain unclear. Since taxpayers are required to notify chargeability to HMRC, who will then set the level of DPT payable, it may be some time before the impact of the legislation is clear.

In further international developments, the government has published draft legislation that it intends to enact in 2016, which will introduce new civil penalties[44] and a strict liability criminal offence for failing to declare offshore income and gains,[45] along with civil penalties for those who enable offshore evasion.[46] Draft legislation has also been published to introduce a new criminal offence for companies which fail to prevent criminal facilitation by their agents of tax evasion.[47]

The government has also consulted on and is in the process of introducing a number of more general measures designed to improve compliance and reduce avoidance. These include a "special measures" regime for large companies that persistently engage in aggressive tax planning,[48] additional measures for large companies to engage with HMRC and publish their strategies in relation to U.K. tax,[49] and a specific penalty (at 60% of the tax due) for arrangements to which the relatively recently-introduced general anti-abuse rule applies.[50] These measures will sit alongside new powers granted to HMRC in 2015 to recover tax debts directly from recalcitrant taxpayers' bank accounts.[51]

VIII. Indirect Tax

The ECJ case of *Skandia America Corp. (USA), filial Sverige* (C-7/13) dealt with whether or not supplies made between a non-EU company and its EU branch were subject to VAT, or could—as had previously been the case in the U.K.—be essentially ignored for VAT purposes. HMRC have now announced that the U.K. approach will in future depend on the treatment applied by the EU jurisdiction in which a branch is located, and have published lists setting out the approach to be taken for different member states.[52]

A number of cases are before the U.K. courts which relate to claims for VAT overpaid in contravention of EU law, and the U.K. Court of Appeal recently held that interest on overpaid VAT should be paid by HMRC at a compound, not simple, rate in order to constitute proper restitution for the taxpayer in question.[53] In a surprising last-minute move likely to generate further litigation, the government amended 2015's second Finance Act shortly before enactment, introducing measures which tax interest awarded in this way at a punitive rate of 45%.[54]

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NOTES

[1] This article provides information and comment on legal issues and developments. The article is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

[2] s7 F(No.2)A 2015.

[3] Schedule 2 F(No.2)A 2015.

[4] 1.201, Summer Budget 2015; Re-scope of the Bank Levy– 2021.

[5] https://www.gov.uk/government/publications/bank-corporation-tax-surcharge/bank-corporation-tax-surcharge; Sch 3 F(No.2)A 2015.

[6] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443552/Restricting_tax_relief_for_banks__compensation_payments.pdf; s18 F(No.2) A 2015.

[7] https://www.mayerbrown.com/files/Publication/05f31b7a-5dc5-4f29-acb6-54ca3c93e910/Presentation/PublicationAttachment/1dccffa8-c64c-465c-8977-63c242c88ac7/update_oil-gas-tax-breaks_mar15.pdf

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418689/OOTLAR_v8.1.pdf, 1.6

[9] s36 F(No.2)A 2015.

[10] s35 F(No. 2)A 2015.

[11] s94 FA 2013.

[12] ss 109 and 110 FA 2014, Sch 8 FA 2015.

[13] Para 60 Sch 7 FA 2015.

[14] https://www.gov.uk/government/publications/capital-gains-tax-disposals-of-uk-residential-property-by-non-residents.

[15] https://www.gov.uk/government/publications/algeria-and-uk-tax-treaty-double-taxation-convention-not-in-force

[16] https://www.gov.uk/government/publications/bulgaria-uk-double-taxation-convention-not-in-force

[17] https://www.gov.uk/government/publications/croatia-and-uk-tax-treaty-double-taxation-agreement-not-in-force

[18] https://www.gov.uk/government/publications/kosovo-tax-treaties

[19] https://www.gov.uk/government/publications/senegal-and-uk-tax-treaty-double-taxation-convention-not-in-force

[20] https://www.gov.uk/government/publications/sweden-and-uk-tax-treaty-double-taxation-convention-not-in-force

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[21] https://www.gov.uk/government/publications/jersey-tax-treaties-not-in-force
[22] https://www.gov.uk/government/publications/guernsey-tax-treaties-not-in-force
[23] https://www.gov.uk/government/publications/double-taxation-agreements-developments-and-planned-negotiations/planned-negotiations-on-double-taxation-agreements-and-tax-information-exchange-agreements
[24] https://www.revenue.scot/who-we-are
[25] http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf
[26] http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=12989
[27] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf.
[28] The Scotland Act 2012, Section 25 (Appointed Years) Order 2015 (SI 2015/2000).
[29] http://services.parliament.uk/bills/2015-16/scotland.html
[30] 1.233, Spending Review and Autumn Statement 2015.
[31] https://www.gov.uk/government/publications/technical-consultation-country-by-country-reporting
[32] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469969/Patent_Box_substantial_activities.pdf
[33] https://www.gov.uk/government/publications/corporation-tax-patent-box-compliance-with-new-international-rules
[34] https://www.gov.uk/government/consultations/tax-deductibility-of-corporate-interest-expense/tax-deductibility-of-corporate-interest-expense-consultation
[35] https://www.gov.uk/government/publications/corporation-tax-anti-hybrid-rules.
[36] https://www.gov.uk/government/publications/technical-briefing-on-foreign-domiciled-persons-changes-announced-at-summer-budget-2015, https://www.gov.uk/government/consultations/reforms-to-the-taxation-of-non-domiciles/reforms-to-the-taxation-of-non-domiciles.
[37] https://www.gov.uk/government/publications/employee-share-schemes-simplification-of-the-rules.
[38] https://www.gov.uk/government/publications/income-tax-changes-to-dividend-taxation.
[39] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483547/Company_distributions_-_consultation_document__7029_.pdf.
[40] https://www.gov.uk/government/publications/investment-managers-disguised-fees-income; Chapter 5E, Part 13, ITA 2007.
[41] ss43-45 F(No. 2)A 2015.
[42] https://www.gov.uk/government/publications/investment-managers-performance-linked-rewards.
[43] ss77-116 and Sch 16 FA 2015.
[44] https://www.gov.uk/government/publications/increased-civil-sanctions-for-offshore-tax-evaders.
[45] https://www.gov.uk/government/publications/tax-administration-criminal-offence-for-offshore-tax-evaders
[46] https://www.gov.uk/government/publications/tax-administration-civil-sanctions-for-enablers-of-offshore-tax-evasion
[47] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483367/A_new_corporate_criminal_offence_of_failure_to_prevent_the_facilitation_of_tax_evasion_-_summary_of_responses__7011_.pdf.
[48] https://www.gov.uk/government/publications/tax-administration-large-business-special-measures-regime.
[49] https://www.gov.uk/government/publications/tax-administration-large-businesses-transparency-strategy.
[50] https://www.gov.uk/government/publications/penalties-for-the-general-anti-abuse-rule.
[51] s51 and Sch 8 F(No. 2)A 2015.
[52] https://www.gov.uk/government/publications/revenue-and-customs-brief-18-2015-vat-grouping-rules-and-the-skandia-judgement/revenue-and-customs-brief-18-2015-vat-grouping-rules-and-the-skandia-judgement; https://www.gov.uk/government/publications/revenue-and-customs-brief-23-2015-vat-grouping-rules-and-the-skandia-judgment.
[53] *Littlewoods Ltd and others v HMRC [2015] EWCA Civ 515*.
[54] http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0079/amend/pbc0792110a.1-6.pdf; s38 F(No. 2)A 2015.