Budget comment

The impact on MNCs

Business as usual, for better and for worse.

Sandy Bhogal
Mayer Brown
Sandy Bhogal heads the UK tax practice at Mayer Brown. His experience ranges from general corporate tax advice to transactional advice on matters involving corporate finance, banking, capital markets, asset finance and property. Email: sbhogal@mayerbrown.com; tel: 020 3130 3645.

This Budget may have signalled a break with convention in being the last Spring Budget before the government moves to a 'single annual fiscal event' in the Autumn, but the chancellor's Budget speech largely stuck to the blueprint presented at the Autumn Statement 2016. There were few, if any, surprises for MNCs, which will have taken some comfort from hearing the mantra of recent budgets repeated that the government wishes to preserve the UK's competitive tax system.

Of course, the flipside of a relatively uneventful Budget is that a number of significant, previously announced, measures remain in the pipeline, with MNCs needing to prepare for what is coming. In this respect, there will have been disappointment on the part of MNCs and their advisers that the government has not moved away from certain complex and material changes to the UK's corporation tax code that are due for imminent implementation.

The precise details of a number of legislative changes are still to be seen, with Finance Bill 2017 due to be published on 20 March 2017. Therefore, the following paragraphs necessarily only reflect the content of materials available at the time of writing.

Still with us: The Budget confirms that the already announced reform of the corporation tax loss relief rules and the 'BEPS 4' inspired tax deductibility of corporate interest expense rules will be included in Finance Bill 2017, to take effect from 1 April 2017. Both measures will inevitably impact MNCs doing business in the UK and their ongoing UK corporation tax profiles, as has been discussed in previous editions of *Tax Journal*.

There is perhaps a glimmer of hope in that changes to the proposed interest deductibility rules will be reflected in Finance Bill 2017 in the light of comments received, 'to ensure the rules don't give rise to unintended consequences or impose unnecessary compliance burdens'. In particular, it has been announced that the modified debt cap rules will be clarified to remove potential restrictions on the deductibility of carried forward interest expense; and the rules relating to debt guaranteed by related parties will be refined so as to remove certain 'performance guarantees' and all pre-31 March 2017 guarantees from related party interest calculations, and intra-group guarantees from the application of the group ratio rule. The definition of 'interest' will be clarified to include income and expenses from dealing in financial instruments as part of a banking trade.

On the plus side, previously announced revisions to the substantial shareholdings exemption (SSE) have also been confirmed for inclusion in Finance Bill 2017, again with effect from 1 April 2017. The complexity of the SSE has long been a source of anxiety for many MNCs with UK operations; and, therefore, the proposals to simplify the rules are very welcome: in particular, an exemption for companies owned by 'qualifying institutional investors'; and the removal of the requirements for the investing company to be a sole trading company or a member of a trading group, and for the investee company to continue to be a trading company or the holding company of a trading group after the disposal (except for disposals to connected persons).

Other measures of note: Two noteworthy measures of interest to certain MNCs have been introduced to take effect from 8 March 2017.

First, a policy paper and draft legislation have been published to amend the rules dealing with the appropriation of capital assets to trading stock. The concern appears to be with businesses that have loss making capital assets, which then seek to 'convert' capital losses into more flexible trading losses. This is because current legislation allows an election to be made to treat the market value of a capital asset appropriated to trading stock as increasing or reducing trading profit in certain circumstances, rather than crystallising a chargeable gain or allowable capital loss. The changes, to be included in Finance Bill 2017 but taking effect from 8 March 2017, will mean that the legislation will only permit such an election to be made where the appropriation into trading stock at market value would give rise to a chargeable gain and not where it gives rise to an allowable loss. Accordingly, any allowable capital loss that arises when the appropriation takes place will remain within the chargeable gains rules.

Second, the legislation introduced in Finance Act 2016 dealing with profits from trading in and developing land in the UK is to be amended to clarify that all relevant profits from dealing in or developing land that are recognised in the accounts on or after 8 March 2017 will be subject to the rules (removing the previous exclusion for profits arising from disposals governed by contracts entered into prior to 5 July 2016).

Other material points for MNCs to watch out for are:

- amendments to the patent box rules dealing with cost sharing arrangements;
- a response document to the consultation on the taxation of partnerships and draft legislation (slated for inclusion in Finance Bill 2017/18);
- proposed 'administrative changes' to the R&D tax credits system, advertised as increasing 'certainty and simplicity around claims';
- a (previously announced) consultation – due to be launched on 20 March 2017 – about bringing non-resident companies currently chargeable to UK income tax and non-resident capital gains tax within the scope of UK corporation tax;
- a consultation in the Summer on plant and machinery leasing in view of accounting changes to be effected by IFRS16 from 1 January 2019;
- a discussion paper to be published on 20 March 2017 dealing with the taxation of late-life oil and gas assets; and
- long awaited revisions to the double taxation treaty passport scheme, and a consultation on a new withholding tax exemption for debt traded on multilateral trading facilities.

There will also be a summer consultation on risk profiling of large businesses. Clearly, there is much in the coming weeks and months to keep MNCs and their advisers busy. ■