The Finance Bill 2011

The coalition government has taken the new and welcome step of publishing draft clauses for next year's Finance Act

Although details of proposed changes have already been announced, the detailed provisions often show possible problems in implementing them, as we saw last year with restriction on tax relief for pension contributions. In areas such as anti-avoidance, a provision designed to catch an avoidance scheme can catch perfectly valid commerical transactions. Indeed the change on substantial donor rules is designed to deal with that problem.

These clauses were published at the beginning of December 2010. The next Budget is schedule for 23 March 2011. So publication is in keeping with the promise to give three months' notice of technical amendments.

Key changes proposed will affect:

- income and national insurance tax rates and thresholds
- employer supported childcare
- furnished holiday lettings
- substantial donor rules
- pension tax relief, and other pension changes
- corporation tax and capital allowance rates
- controlled foreign companies and foreign branches
- associated companies
- international accounting standards
- duty on beer and goods vehicles.

EMPLOYER SUPPORTED CHILDCARE

There is a technical change to the rules regarding childcare provided in the workplace.

The tax and national insurance concessions only apply if the scheme is available to all employees on equal terms. However, an issue arises if a salary sacrifice scheme is used. This is not available to lower paid employees who would otherwise earn less than the national minimum wage. The change allows such low-paid workers to be excluded from the scheme. This change is backdated to 2005.

It is worth noting that salary sacrifice schemes are only effective for tax if they change the contract of employment. We can advise you on whether a proposed scheme complies.

DISGUISED REMUNERATION

Changes are being introduced to bring within the PAYE charge various forms of "disguised remuneration" such as using investments and trusts to pay employees. These new provisions will only be of relevance if you have a tax avoidance scheme for paying staff.

FURNISHED HOLIDAY LETTINGS

A long-running issue is whether a person who lets property for holidays is running a trade or merely making an investment. The former is preferable as it means the owner can claim capital allowances, loss relief and capital gains relief. The loss relief against other trades is particularly valuable.

Among the conditions that must be met are that the accommodation must be available for 140 days a year and actually let for 70 days. (There are restrictions on letting to the same person for more than 31 days.)

The government has long proposed increasing these two limits by 50% to 210 days and 105 days. It now announces that these changes will be brought into effect from 6 April 2012. There is a new relaxation, that a failure to meet the "actually let" condition for up to two years will not result in losing the tax advantages.

There are other provisions relating to such lettings, including other changes that take effect in 2011. We can advise on this matter to see if such lettings can continue to attract favourable tax treatment.

FALLOWS&COMPANY
CHARTERED ACCOUNTANTS

Fallows & Company | 020 8399 4715
info@fallowsandcompany.co.uk | www.fallowsandcompany.co.uk
Archway House 81 - 82 Portsmouth Road Surbiton Surrey KT6 5PT

SUBSTANTIAL DONORS

This provision is a relaxation of a rule relating to large donations to charity.

It was introduced in 2006 to counter some tax avoidance schemes where the donor and the charity are linked. Charities have complained that these rules create unnecessary paperwork and catch innocent donations.

The present law requires an analysis of donations of £25,000 or more in one year or of £150,000 over six years. Consideration must then be given to whether there are any "value extracting transactions" between the donor and charity.

The new provisions replace the analysis test with a purpose test, and to shift the compliance burden from the charity to the donor. We can provide further details.

ASSOCIATED COMPANY RULES

The government is, as expected, proceeding with the plans to restrict the associated company rules to where there is interdependence between the companies.

At present, the threshold for the small profit rate of corporation tax can be triggered by an accident of family circumstances, such as on the marriage of two people who are already each running a business. A measure of relief is already provided by extra-statutory concession C9. This is now to be put on a statutory basis.

PENSIONS

The main change is the reduction of the annual allowance from £225,000 to £50,000. Any person whose pension fund increases by more than the annual allowance may be liable to pay additional tax. There are also provisions regarding drawdown of pension.

There are some consequential provisions regarding drawdown pensions, and inheritance tax. We can assist you in explaining the tax provisions of the new provisions on pensions.

CORPORATION TAX

The rates of corporation tax are being reduced, as are the rates for capital allowance for plant and machinery. The annual investment allowance is reduced from £100,000 to £25,000 from 6 April 2012.

CONTROLLED FOREIGN COMPANIES

The rules on controlled foreign companies (CFCs) are being changed in two stages.

The first stage is intended to apply to accounting periods that start after 31 March 2011, and so will not most companies for almost two years. The changes proposed are to:

- introduce an exemption for some intra-group trading transactions where there is little connection with the UK, and it is unlikely that UK profits have been diverted
- introduce an exemption where the main business relates to businesses that deal with intellectual property
- introduce a statutory exemption for three years when a foreign subsidiary comes within the scope of a CFC for the first time
- increase the de minimis exemption from these provisions for companies with UK chargeable profits of £50,000 to £200,000 a year
- extend transitional rules for non-local holding companies until July 2012.

Details of the second stage have yet to be announced, beyond that there will be a more fundamental reform.

If you are a shareholder of a foreign company largely controlled by UK residents, you may be affected by these provisions. We can discuss their implications with you.

VALUE SHIFTING

Value shifting refers to tax avoidance arrangements where a company reduces the value of an asset before its disposal, and then receives additional value by other means, usually in a tax-free form. These provisions are onerous for businesses that are not engaged in tax avoidance schemes.

From the day Finance Act 2011 receives Royal Assent (probably around July 2011), the existing rules will be replaced by a targeted anti-avoidance rule. The existing criteria will be replaced by a simpler purpose rule.

This change only affects companies that have either used such a tax avoidance scheme, or who believe that a genuine commercial transaction has been accidentally caught by these rules.

DEGROUPING

A degrouping charge may apply when a company leaves a group as a result of a disposal of shares. It applies if the company has acquired an asset from a fellow group company within the previous six years, and any gain or loss on that asset has been deferred under Taxation of Chargeable Gains Act 1992 s171.

The degrouping charge will be treated as additional consideration for the disposal. The charge may be reduced if there is also a chargeable gain on the shares. The change will have effect from Royal Assent to Finance Act 2011. The proposed changes have been subject to many amendments since the clauses were put out for consultation.

The broad effect of these changes is to avoid the degrouping charge where "it is just and reasonable to do so". This will be based on the amount of share capital involved and the circumstances for the company leaving the group.

The changes are otherwise very technical, but we can advise you if you believe you may be affected.

CHANGES TO ACCOUNTING STANDARDS

It is expected that the International Accounting Standard on leases will change in 2011, followed by a similar change to UK accounting practice in 2013.

The law is to be changed so that leases continue to be taxed on the current basis. Any change from adopting the new standard had not been introduced.

The changes relate to long-funding leases and to some anti-avoidance provisions. The provisions are technical, but we can advise when you change to the new accounting standard.

VAT ON SAMPLES

A business may provide a succession of free samples for marketing purposes. The current law allows VAT to be charged on the second and subsequent sample; only the first is relieved for VAT. Following a European case, the law is to be changed to relieve second and subsequent supplies, provided they are for genuine marketing purposes.

VAT ON PRINTED MATTER

A provision will be introduced to end the zero-rating for books and other printed matter that are supplied separately for another standard-rated supply. An example is when an instruction book is supplied separately from the equipment.

OTHER DUTIES

A new rate of duty is to be introduced for strong beers. This will be compensated by a reduction in duty for low-strength beers. The change will take effect in autumn 2011.

From 1 April 2011, there will be a new "exceptional rate" of vehicle excise duty for large goods vehicles.