Briefing

BURGES SALMON

Incentives and the Budget

March 2014

Employee share schemes

No new provisions relating to share plans were introduced in the Budget, but in terms of measures announced in the Autumn Statement 2013:

- Several OTS recommendations on the simplification of unapproved share plans will be implemented. These are generally to be welcomed including the extension of corporation tax relief where a company employs internationally mobile employees; extending corporation tax relief on option exercises in the context of a change of control; removing tax charges on the rollover of restricted securities and securities subject to the notional loan charge; extension of the time limits before s222 charges on late payment (by employees) of PAYE arise; and changes to the way employment related securities are valued etc.
- The suggested new measures concerning **"marketable securities"** (to avoid dry tax charges) and **"employee shareholding vehicles"** (intended to be less risky and more flexible than Employee Benefit Trusts - to be used to warehouse shares and to create internal markets for shares for employee) will be consulted upon further.
- The new reliefs for **transfer of a controlling interest** in a company to an employee ownership trust will be introduced in the Finance Bill 2014. These will provide significant benefits but will only be relevant for a relatively small number of cases.
- The SIP and SAYE limits will be increased as previously trailed (from 6 April 2014) - good news for participants in these tax advantaged all employee share plans.
- **Self-certification** of approved schemes will go ahead, as will the requirement for **online** filing for both approved and unapproved share plans (available from 6 April 2014) There will be some further changes to the rules for "tax-advantaged schemes" (the new name for approved plans) to clarify certain parts of the legislation and the purpose test has been modified. There will be revision of the legislation regarding declarations of companies when self-certifying or notifying changes to schemes. It will be important to take appropriate action to ensure approved plans retain their advantageous status and that now automatic penalties for failure to report correctly are avoided.

In addition, the abolition of stamp duty and SDRT on shares in companies quoted on recognised growth markets from 28 April 2014 may result in some savings for those using existing shares in their employee share plans.

Employment status

The previously announced far-reaching changes for **"disguised employees"** in LLPs (very broadly salaried partners) will go ahead. These are likely to increase "employment" costs in affected partnerships for certain groups of partners, further draft rules will be published as part of the Finance Bill 2014, along with revised guidance.

There are also changes to the rules on both **onshore and offshore intermediaries** (again previously announced). Some may catch the unwary so be careful if this applies to you, and the changes apply from 6 April 2014 so there is not much time to determine the impact.

Proposals from the Autumn Statement 2013 on the use of dual contracts for non-domiciled individuals will also be taken forward. UK resident non-doms will be taxed on overseas employment income on an arising rather than remittance basis. The measure will apply to both general earnings and employment-related securities income arising after 5 April 2014 from an overseas employment and **overseas employment income** provided through third parties This is unlikely to be welcomed by those affected.

Employee benefits

We already know that:

- From 6 April 2014 the limit on tax breaks for **beneficial loans** increases from £5,000 to £10,000 - good news.

- Employer funded **occupational health treatments** can be provided tax free up to a value of £500, probably from October 2014. Again good news.

Recommendations of the OTS report on employee benefits to be introduced include:

- Abolition of the £8,500 lower limit on benefits tax - action will be taken to mitigate the effect on vulnerable groups (so the simplification may not be so simple!).
- There will be a statutory exemption for trivial benefits - this should be helpful.
- There will be a new system for voluntary payrolling of benefits in kind.
- The expenses dispensation regime is to be replaced with a Reimbursed Expenses Exemption.

In addition the Government will undertake a call for evidence on remuneration practices in the 21st century to inform future changes to the current rules for expenses and benefits which are complex and can lead to unfair outcomes. There will also be a review of travel and subsistence expenses.

There are also some small changes to applicable rates for calculating company car tax and there will be a van benefit charge reduction to support zero emission vans (to review at Budget 2016).

Tax avoidance

As announced in the Autumn statement, where a large number of tax payers take part in a tax avoidance scheme and HM Revenue & Customs (HMRC) issues a notice to such a taxpayer, they should settle the tax outstanding if a similar dispute has been lost by the taxpayer. Penalties will be charged if the tax is not paid up front. Similar provisions will be introduced to require tax payers to pay income tax upfront on DOTAS (Disclosure of Tax Avoidance Schemes) registered schemes and schemes counteracted under the GAAR (General Anti-Avoidance Rule). This will come into effect when the Finance Bill receives Royal Assent (likely to be July 2014). These measures are intended to put all taxpayers involved in avoidance schemes on the same footing, however given the new powers afforded to HMRC in these circumstances, the proposals are likely to be met with resistance.

Savings and investment

There will be a consultation on QNUPS with a view to stopping IHT avoidance opportunities.

The Seed Enterprise Investment Scheme is to be made permanent - good news.

Venture Capital Trusts (VCTs) will be prevented from returning share capital to investors within three years of the end of the accounting period in which the VCT issued the shares (this is intended to ensure VCTs support growth which we suspect means no quick tax break for investors - you have to be in for the medium term). This will apply from 6 April 2014. Also, as previously announced, there will be a restriction on individuals' entitlement to VCT income tax relief where investments are conditionally linked in any way to a VCT share buy-back or have been made within six months of a disposal of shares in the same VCT. HMRC will also be able to withdraw relief if VCT shares are disposed of within five years of acquisition. Investments via a nominee will be allowed.

The Government will consult on the need to accommodate the use of convertible loans in EIS and SEIS. The Government has also expressed concern about contrived structures allowing investment in low-risk activities that benefit from income guarantees via government subsidies and will explore a more general change to exclude these activities (they will consult with stakeholders).

More information

If you would like more information, please get in touch with your usual contact in our employment, pensions and incentives teams or with:

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