A perspective on the draft Finance Bill 2017

OMB Tax voice

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Pete Miller reflects on the Draft Finance Bill

Having reviewed the Financed Bill clauses after they were published in December, here is my personal view of the more important or noteworthy issues.

Partnerships

The most interesting amongst the latter, in my view, is the “clarification of tax treatment for partnerships”. All we know, so far, is that there will be legislation “to clarify and improve certain aspects of partnership taxation to ensure profit allocations to partners are fairly calculated for tax purposes.” This type of issue was one of the main themes of the consultation document earlier this year on partnership taxation. HMRC seemed only concerned with ensuring that the right partners paid the right tax at the right time, and how to deal with inconsistencies between, for example, persons listed as partners at Companies House and those shown as partners on the accounts or partnership returns.

What was completely missing from the consultation document, and from the further announcements, is any suggestion that the Government might deal with the inherent unfairness in the compliance rules for partnerships. The particular problem is that partnerships are required to have a nominated partner who is the person required to submit an annual partnership return to HMRC. That return includes a list of the partners and their profit allocations and those are the amounts that each individual partner must put on their own tax returns. The nominated partner is also the only person who is entitled to, for example, amend the return or appeal HMRC decisions.
What this means, of course, is that if individual members of the partnership dispute the figures on the tax return,

they have no standing to amend the partnership return or, indeed, to force the nominated partner to do so. So, for example, a partner who disputes their profit share as shown on the partnership return is required by these rules to put what they believe to be an incorrect number onto their personal tax return. But their personal tax return must be signed by them as being complete and correct to their best of their knowledge and belief, so there is a clear dichotomy here. The tribunals and courts have had to look at a number of cases in this area, and concepts such as natural justice and human rights have been raised on several such occasions. But the situation is clearly unsatisfactory and has not always been resolvable by the tribunals: in one relatively recent case, the tribunal held that they could not disturb the current position because the legislation could not possibly be read in compliance with the Human Rights Act, so the tribunal itself had no jurisdiction.

If the Government was serious about people paying their fair shares of tax, making it possible for individual partners to self assess what they consider to be the right amounts in those cases when there is some dispute over partnership shares or other similar issues, which can only be dealt with by the nominated partner, should take priority.

Enablers

Another key change emerging from the Finance Act 2017 concerns the way in which ‘enablers’, such as tax advisers and accountants, are treated from a taxation perspective. Until now tax avoidance penalties have only ever been targeted at tax-payers themselves, not the professionals who advise people on their tax affairs, so this is quite a significant step. Under the new proposals, enablers who assist their clients in trying to gain tax advantages that HMRC believes were never intended by Parliament could be fined up to 100 per cent of their fees, if the tax planning fails. The new rules only apply to tax-saving arrangements that would be subject to the general anti-abuse rule, in contrast to HMRC’s original suggestion that these penalties might apply to tax advice on normal commercial transactions, such as the transactions in securities rules, an area in which we specialise.

Penalties

In a related development, taxpayers will find it harder to avoid penalties if they have failed to take proper care when submitting their tax returns. Until now businesses have only had to prove to HMRC that they sought general professional tax advice, but that is about to change. Under the new rules business owners must be able to demonstrate that they took “appropriate” advice which is pertinent to their own business’s needs and circumstances. So relying on generic advice, taken, for example from a scheme promoter, will no longer be adequate to prove that the taxpayer was not careless if the scheme fails and that they have therefore submitted an incorrect tax return.

Substantial Shareholdings Exemption

A very welcome change is the extension of the substantial shareholdings exemption, whereby a sale of a trading company by a trading group is exempt from corporation tax. This was occasionally difficult to operate, either because it was hard to prove that the vendor was a trading group or because of problems ensuring that the company that was sold continued to trade after the sale. Both these requirements are to be repealed, so that from 1 April 2017 most sales of a trading subsidiary will be exempt from corporation tax.

Loss relief

Another set of welcome changes mean that companies will be able to use losses more flexibly, with carried forward losses being available to set against all future sources of income and also being available for group relief. At the moment, carried forward losses can usually only be set against the same kind of income in future years and cannot be used for group relief.

On the downside, companies with profits in excess of £5m will not be able to shelter all their profits with losses brought forward. The use of such losses will be restricted to 50% of the profits over £5m (25% for banks and similar companies).

Patent Box

There is also a minor change to the patent box. The relief available is related, in part, to the proportion of the relevant research and development carried out by the claimant company, which has caused some difficulties where R&D has been carried out by more than one company under some kind of cost sharing arrangements. So the intention is to clarify these rules so that companies will get appropriate credit for the R&D which they financed.

Employee Shareholder Status

One final point worth mentioning, as it was a bit of a surprise, relates to the employee shareholder status. This is the relief whereby companies could allow employees to acquire shares in the company in return for giving up certain employment rights. The tax element was designed to ensure that the first £2,000 value of shares issued to employees was free of income tax on earnings and any gain on selling all the shares, up to a maximum of £100,000, would be free of capital gains tax. The Government has decided that this relief is not being used appropriately and, indeed, the entire regime, including the employment law aspects, will be repealed in due course.