UK reaffirms commitment to 'open for business' agenda, but announces anti-avoidance measures

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In brief

The UK government released its annual Autumn Statement on December 5, 2013, focusing on growth and managing debt while maintaining the 'Britain is open for business' agenda. The Statement reaffirms the government's commitment to corporate tax reform, including the 20% corporate income tax rate effective in April 2015. It also highlights economic benefits that already have resulted from current policy. UK Chancellor of the Exchequer George Osborne noted that corporation tax increases would be "economic madness" and added that the government is taking "further steps to make our business taxes yet more competitive."

Note, however, that the government also announced a number of targeted anti-avoidance measures that are primarily aimed at UK PLCs but may impact US multinational corporations (US MNCs) operating in the United Kingdom. While the 2014 Finance Bill will include any new legislation, certain measures will be effective retroactively from December 5, 2013.

In detail

The 2013 Autumn Statement sets out a range of tax measures expected to be legislated in the 2014 Finance Bill. The Statement does not include any major tax changes, but it does include a number of new tax relief proposals designed to encourage growth. In addition, it includes some targeted anti-avoidance provisions. US MNCs should consider whether these proposals might affect them.

Key tax relief proposals

Corporate tax: amending loss relief provisions

The government proposes to relax the rules restricting the availability of relief for trading and other losses when companies change ownership. In particular, this change would allow the insertion of a holding company at the top of a group of companies without restricting future loss carryforwards.

Abolition of National Insurance Contributions (NICs) for employees under age 21

Beginning April 6, 2015, employers no longer would be required to pay Class 1 secondary NICs at 13.8% on earnings paid up to the upper earnings limit (currently £797 per week, or £41,450 per annum) to any employee under the age of 21.

Anti-avoidance measures

Among the announced targeted anti-avoidance measures, the following proposals could be particularly important for US MNCs.

Controlled foreign company (CFC): profit shifting

The CFC 'financing company exemption' would be subject to two modifications. Under this exemption, the financing income in subsidiaries of UK companies is not taxed under the UK CFC rules. The first modification would remove the exemption for arrangements entered into after December 5, 2013, that have a main purpose of transferring profits from intra-group lending out of the United Kingdom. This change is intended to prevent the exemption from applying to arrangements that involve the transfer of existing UK receivables offshore to a CFC.

The second proposed modification would amend an existing anti-avoidance rule covering situations in which external group debt outside the United Kingdom is replaced with additional UK debt as part of putting receivables into a CFC. These amendments would take effect for accounting periods beginning on or after December 5, 2013.

Debt cap provisions

The government proposes to change the debt cap rules effective December 5, 2013. The debt cap is designed to limit the finance expense deduction for UK companies by comparing it to the worldwide group's total finance expense. The changes will be included in Finance Bill 2014.

The key change is designed to clarify that entities without 'ordinary share capital,' such as companies limited by guarantee or US LLCs, remain members of a debt cap group and do not fall outside the debt cap rules.

Other matters

Business rates – the Statement introduces a number of measures including: capping the inflationary increase in business rates at 2% in 2014-15; extending the doubling of small business rate relief to April 2015; introducing a discount of up to £1,000 against business rates bills for retail premises with a rateable value of up to £50,000 in 2014-15 and 2015-16; and introducing a temporary reoccupation relief in the form of a 50% discount from business rates for new occupants of previously empty retail premises for 18 months.

Bank levy – the Statement would raise the bank levy to 0.156% effective January 1, 2014; effective in 2015 the bank levy would have a broader taxable base.

Compensating adjustments - under previous rules, partnerships and wealthy individuals investing in private equity could claim a 'compensating adjustment' when they received payments from a UK company that were not deductible for the company as a result of transfer pricing provisions. Such partnerships and individuals no longer would be able to obtain a tax advantage in such circumstances.

The government also announced additional measures related to individual taxation. Some are particularly relevant to MNCs with expatriate employees in the United Kingdom. Further details can be found in the Global Watch newsalert published on December 5, 2013.

The takeaway

The Autumn Statement's measures seem to be aimed primarily at the UK electorate rather than at international businesses. The government has reiterated its commitment to recent tax reform, and although some of the anti-avoidance measures may be unwelcome, the general aim is to reinforce the central principles that UK CFC rules should look only to tax profits that have been artificially diverted from the United Kingdom and that the debt cap should apply to all UK companies of multinational groups.

US MNCs with UK affiliates should review their structures to consider whether they may be affected by the specific anti-avoidance measures announced, and whether they may be able to take advantage of the new relief provisions.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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