Before the UK Budget: a round-up of developments

Tax changes and proposals over the past few months

Bitcoin

On 3 March 2014, HMRC issued a Brief as to how it will treat Bitcoin - a P2P digital payment system - at least until it changes its mind. For VAT purposes, Bitcoin mining (i.e. the process used to generate Bitcoin) is itself outside the scope of VAT, and any other income received by Bitcoin miners will be exempt from VAT. Where Bitcoin is exchanged for Sterling (or another currency), no VAT is due on the value of the Bitcoin. However, in all instances, VAT will be due in the normal way from suppliers of any goods or services that are paid for by Bitcoin.

In terms of income, corporation and capital gains tax, HMRC stressed that each case will be considered on the facts and therefore the tax treatment will depend on the parties and activities involved. Having said that, HMRC's starting position will be that the same rules apply to any Bitcoin trading profits or losses as they would to profits and losses made on exchange movements between currencies i.e. they are taxable, and any profits or losses on Bitcoin transactions must be reflected in the accounts. Where a profit or loss is not within the taxable trading profits (or otherwise within the loan relationship rules), they will normally be deemed to be gains and losses, and therefore will be taxable as a capital (or a chargeable) gain, or allowable as a loss. If a business accepts payment for its goods or services in Bitcoin, the usual recognition of revenue and calculation of taxable profits rules will apply.

Patent Box

The UK's Patent Box, in force from April 2013, broadly allows companies to pay corporation tax at just 10% on profits deriving from the use of qualifying patents. However, in October 2013, prior to a meeting of the Code of Conduct Group on business taxation, the European Commission decided that the UK's regime amounted to 'harmful' tax competition. The Code of Conduct for Business Taxation (set out in 1997), whilst not binding, suggests that 'Member States commit themselves not to introduce new tax measures which are harmful' (within the meaning of the Code).

At a meeting of the Economic and Financial Affairs Council in December 2013, a review of all patent box regimes in the EU was ordered to be undertaken and completed before the end of 2014. The review is to consider whether patent box regimes throughout Europe not only ensure consistency with the principle of equal treatment, but are also aligned with the overall picture of international developments, not least those in relation to the OECD BEPS initiative. The UK's Patent Box will be examined as part of that review, but, as yet, there has been no decision as to whether it is itself in breach of the Code of Conduct and we will have to wait for the review. No doubt the UK Government is hoping that the removal of the spotlight on its legislation, together with a possible 'safety in numbers' effect, will see its regime avoid any mandatory amendments.

OECD: digital economy

In July 2013 the OECD launched the Action Plan on Base Erosion and Profit Shifting (BEPS), setting out 15 actions intended to tackle BEPS in a 'comprehensive and coordinated way.' This is expected to result in significant changes to cross-border profit taxation rules. The ultimate aim is to ensure that profits are taxed where the economic activities that generate them are carried out, and where the value is created.

A specialist 'Digital Economy' task force has been established by the OECD as part of the BEPS programme. The task force's first meeting took place in October 2013. This involved an analysis of the different business models and identifying the special features of digital economy players (such as mobility, reliance on data, network effects etc). The findings were that there is no such thing as 'digital companies,' rather there has been a digitalisation of the economy as a whole. As a consequence, the OECD has concluded that 'there may not be…a solution for the digital economy but we will need to draw on features of digital economy' when revising the international tax system. A revised timetable setting out the expected publication dates of the numerous proposal discussion drafts was released in late February, with 24 March 2014 announced as the provisional publication date of 'The Tax Challenges of the Digital Economy' paper. A public consultation will follow in April, with the resulting report due to be finalised in September.

VAT – all change

As announced previously, HMRC is making two key changes to the way that VAT operates; both take effect on 1 January 2015. The first will affect the place of supply rules and will mean that supplies of telecommunications, broadcasting and e-services made by a business established in one EU Member State to a private consumer located in another Member State will be taxed in the Member State in which the consumer is located. These types of services are currently taxed where the business supplier is established. This means that businesses that provide these services to UK customers will charge and account for UK VAT, regardless of where in the EU they are based. This change will ensure that, in future, the services are subject to VAT where they are consumed.

The second change is the introduction of the VAT Mini One Stop Shop, an online service that will give businesses the option of registering in the UK to account for the VAT due in respect of B2C supplies of these services in all other Member States (at the appropriate rate of tax in each State) by submitting a single return to HMRC. Businesses will be able to register for the service with effect from October 2014.

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