SQUIRE PATTON BOGGS

UK Spring Budget 2017
Real Estate Taxes

Given the seismic changes announced in recent years, this Budget was refreshingly light on real estate taxation reform.

The main changes, and their key impact, are outlined below.

Offshore Profits From Dealing in or Developing UK Land

The rules bringing offshore profits from dealing in or developing UK land within the scope of UK tax were introduced for disposals made on or after 5 July 2016 (with an exception for disposals made under contracts entered into before 5 July 2016).

That exception did not take into account that some contracts are entered into at an early stage in the development process, with transfers being made over an extended period of months or years. The intention was not, however, that profits from these types of long-term contracts should be exempted from the new rules.

As a result, the Chancellor has announced that the rules will be amended so that all profits recognised in the accounts on or after 8 March 2017 will now be within the charge to UK Corporation Tax or Income Tax, regardless of the date the contract was entered into. Special calculation rules will apply to accounting periods that straddle 8 March 2017.

As an aside, it is worth remembering that the government is still continuing to consult on the possibility of bringing all non-resident companies currently chargeable to income tax on their UK taxable income (including, for example, overseas companies within the non-resident landlord scheme) and non-resident capital gains tax on certain gains, within the scope of UK corporation tax.

Accelerating the Date for Payment of Stamp Duty Land Tax

The government has been consulting on its proposal to bring the window for filing and paying SDLT forward from the current 30 days to 14 days, as well as consulting on the process more generally.

This has been put into the "too difficult" box and changes will not be introduced until April 2018 at the earliest.

Changes to the Rules That Enabled an Allowable Loss to Be Created

Usually, capital gains and losses are treated differently from income profits and losses. In most circumstances, the fact that a capital asset has decreased in value does not allow an income profit deduction. An exception is where a business decides to change the treatment of an asset so that, instead of being treated as a capital asset for the long term benefit of the business, it is "appropriated" to trading stock.

Under the current rules, if a business treats an asset acquired otherwise than as trading stock as being appropriated to trading stock, the asset is treated as being disposed of for its market value, so giving rise to a chargeable gain or an allowable loss. At present, it is possible in some cases for an election to be made to reduce the chargeable gain or allowable loss to zero and take the capital asset into stock at its "no gain, no loss" value. In effect, the result is the capital gain or loss is converted into a trading profit or loss.

Under changes announced by the Chancellor, an election will only be able to be made where the appropriation into trading stock at market value would give rise to a chargeable gain, and not where it gives rise to an allowable loss. This means that it will no longer be possible to convert a reduction in the capital value of an asset into a trading loss.

Changes to the Election for Non-ATED-related Gains

To the extent that the owner of a residential property is subject to the annual charge on enveloped dwellings (ATED), the eventual disposal of that property by that owner can give rise to a charge under the ATED-related capital gains rules (introduced from April 2013) at a rate of 28%.

For periods from April 2015, where the owner was not subject to the ATED because, for example, the property was let and lettings relief from ATED was claimed, that portion of the eventual gain or loss on disposal is not subject to the ATED-related capital gain rules, but instead is subject to the non-ATED-related capital gain rules at a lower rate of 20%. In such cases, it has been possible to make an election to change the proportion of the total gain that is subject to the ATED-related capital gain and the non-ATED-related capital gain charges.

Changes announced by the Chancellor today will now mean that the election can only be made where there is a "non-ATED-related" gain, and not where there is a "non-ATED-related" loss. There is no change to the treatment of the "ATED-related" gain or loss, as that part of the gain or loss cannot be the subject of an election under the current rules.

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