Tax and the Queen's Speech 2015

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Tax analysis: Gary Richards, tax partner at Berwin Leighton Paisner, reviews what the Queen's Speech 2015 means for tax practitioners.

Which Bills announced in the Queen's Speech will have a tax impact?

While all Bills announced in the Queen's Speech 2015 which provide for government expenditure will have an impact, the most important are the Bills dealing with NICs and tax rates (the so-called 'tax lock') and the Scotland Bill.

In addition, the personal allowance (interestingly, no mention was made of the lower earnings level for NICs) is meant to rise each tax year so that a person whose only income comes from working 30 hours a week at the minimum wage is outside the tax system.

The tax lock should prevent income tax, VAT and NIC (employer and employee) rates increasing through this Parliament and ensure the NIC upper earnings level (at which employee's contributions drop to 2%) stays aligned with the higher rate income tax threshold.

The Scotland Bill is meant to enable the Scottish Parliament to set thresholds and rates of tax on earnings in Scotland (and keep the tax so raised), keep a proportion of standard and reduced rate VAT, and assume responsibility for air passenger duty and aggregates levy.

Are there any items that you are particularly concerned with, or that could cause unintended consequences?

Quite apart from how the tax flexibility meant to be afforded to the Scottish Parliament under the Smith formula can be reconciled with the tax lock provisions (which apply across the whole of the UK), the obvious concern is what changes may be made to the scope of and rates of tax--most obviously CGT, corporation tax and IHT--not subject to the tax lock.

A more subtle concern would be restrictions on or removal of reliefs available under income tax and extensions of the tax base, perhaps presented as amounting to counteracting 'abusive tax avoidance' by taxpayers, and lobbying for new or enhanced tax incentives such as further extensions of the VAT reduced rates being rejected because of the possible impact on public finances.

You can envisage HMRC either being even more rigid in their implementation of the Litigation and Settlement Strategy (LSS) in order to raise tax in disputes or, conversely, being forced to be more flexible under the LSS to reach settlements to raise some money, especially if they lose the VAT compound interest litigation before the Supreme Court.

Is there anything that has been eagerly awaited?

The Scotland Bill has been eagerly awaited so that business operating on both sides of the border, and those who are potentially subject to the Scottish tax regimes, can evaluate whether they wish to migrate to/from Scotland or restructure their operations. It may also provide some form of template for how tax autonomy may operate in other parts of the UK (Northern Ireland and Wales in due course) and the additional costs/reporting obligations that those which have up to now treated the UK as a single market may now face.

What should lawyers take note of? Is there anything they should do now to prepare for these changes?

Personally they might want to accelerate contributions to pensions and invest in tax mitigation arrangements before thresholds and scope are reduced. They should be encouraging clients to review their options and assess the risks to their structures--eg whether to 'lock in' to entrepreneur's relief at its current £10m threshold; non-residents to rebase their property portfolios; or take advantage of current IHT reliefs.

What is the proposed timeline on the most important changes for tax practitioners?

The Budget on 8 July 2015 and subsequent Finance Bill will provide a much clearer indication of domestic tax trends in the UK. It is more likely to be the Finance Acts 2017 and 2018 that contain any agreed outcomes from the base erosion and profit shifting (BEPS) process which have been consulted on, with particular reference to the UK corporate tax base and our generous interest deductibility regime.

Do you have any predictions for the future?

Whatever enthusiasts for the Laffer curve say, one cannot rule out the rate of CGT becoming aligned with basic rate/higher rate income tax rates and corporation tax rates being unchanged but the corporation tax base being widened (eg more restrictions on tax losses or earning stripping rules now applying to banks having wider application).

One 'wild card' is whether, as part of a deal on Europe prior to the 2017 (or possibly 2016?) referendum, the UK might be prepared to accept the common consolidated corporate tax base (CCCTB), given the alleged enthusiasm by some corporates for the reduced compliance costs (eg the possibility of no transfer pricing within the EU) and that one outcome of the BEPS process is that there may be less benefit to the UK in retaining autonomy over the corporation tax base.

More conceivably, given the straitjacket of the tax lock, unless the UK economy accelerates with a commensurate increase in tax receipts, one could foresee HMRC insisting on tax in dispute being paid up front (like the diverted profits tax) to give itself revenues this Parliament. This may in turn result in clients needing lawyers to mount judicial review and/or human rights challenges on their behalf.

Gary Richards advises on a wide range of international and domestic transactions, many of which have a significant real estate content. He provides tax structuring advice on M&A transactions, as well as tax planning in the case of refinancing and insolvency. VAT planning is another area of expertise in increasing demand for Gary, particularly dispute resolution with HMRC. He is chair of the Law Society's Tax Law Committee.

Interviewed by Kate Beaumont.

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