FINANCE BILL 2014

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TOP 5 FINANCE BILL ISSUES

About ICAEW

ICAEW is a professional membership organisation, supporting 140,000 Chartered Accountants. Under our Royal Charter, our world-leading Tax Faculty works closely with MPs, HM Treasury & HMRC on the Finance Bill to help strengthen and inform new tax law, in the public interest. ICAEW sponsors the APG on Business, Finance and Accountancy the fastest-growing business group in parliament.

This briefing focuses on five particular areas where ICAEW has concerns about the impact the proposed changes in Finance Bill 2014 will have on the profession, the wider economy and in the public interest. We will be producing further briefings on these points as part of the committee stages of the Bill.

Clause 68 and Schedule 13, Limited liability partnerships, treatment of salaried members

- **Measure:** Finance Bill 2014 introduces measures which change the tax treatment of some salaried members of limited liability partnerships (LLPs). From 6 April 2014, those affected will be taxed as employees rather than as self-employed individuals. This measure does not change the legal position or employment status of those involved, but will increase the overall tax paid as the tax cost of employment is usually higher than self-employment.

- **Context:** Limited liability partnerships are partnerships, in which the partners have limited liability unlike in traditional partnerships, where it is unlimited. Tax law for LLPs presumes the partners to be self-employed, regardless of whether their working relationship with the business is actually more like one of an employee. This means the partners pay self-employed levels of income tax and NIC rather than the rather higher amounts paid by employees.

- **Our view**
  - We do not think that there should be an automatic presumption that LLP members are self-employed if they are in reality employees. We believe that the existing rules and tests as to whether a person is employed or self-employed should be used rather than the creation of yet further complicated rules.
  - The increasing divide between employment law and tax law leads to more uncertainty, complexity and unfairness as individuals are taxed as employees, but without equivalent employment rights. The proposals to tax LLP salaried partners as employees will add a further group of individuals who will be in this position.

- There has been insufficient time for businesses to make the necessary arrangements given the legislative and regulatory timetable. Those LLP members subject to the new legislation will be taxed as employees from 6 April 2014. The real-time information (RTI) requirements for reporting payroll data merely add to the high administrative burden for LLPs and also HMRC.
- The government has failed to stick to its own commitment to consultation. Although the possibility for reform was announced last May, the current rules were first proposed only in December 2013, creating great uncertainty amongst LLPs as to how these measures would be introduced and work in practice from 6 April 2014.

- **Recommendation:** ICAEW is calling for a one year delay to the introduction of these new rules, and HMRC to consult again with the tax profession – in keeping with consultation guidelines and timetable to arrive at a longer term solution to the problems that these proposals seek to address. A wholesale, rather than piecemeal review of personal tax legislation is needed - a personal tax roadmap.

Clause 16, Treatment of agency workers

- **Measure:** Budget 2013 announced that the Government would be strengthening legislation to prevent the use of onshore & offshore employment intermediaries (otherwise known as employment agencies) to avoid income tax and national insurance.

- **Background:** Employment agencies have agreements with companies (construction, retailers, agricultural etc) to provide a set number of workers, for a set number of hours, at a set price. For the purposes of tax, the agency designates workers (willingly or not) as self-employed. In this way PAYE and national insurance contributions can be avoided. If the agency is based offshore, this problem is made more acute by HMRC finding it difficult to track down the agency. The new rule proposed states that if a worker is under the supervision, direction or control of someone else, then they should be designated an employee, and paid through PAYE rather than self-employed.

- **Our view:** We support reasonable measures to tackle tax avoidance and evasion and the principle of moving responsibility for paying PAYE down the chain towards end users. We are however doubtful whether the proposals in their current form will work in the manner intended. In the short term, the considerable costs of switching will be passed onto vulnerable workers. Employment agencies that cannot make the transition may be unable to fulfil their contracts to service the needs of their clients and thereby provide work opportunities. In the long term this problem will be compounded by unscrupulous agencies looking to protect their profits - potentially by exploiting workers further and in other ways.

- **Recommendation:** We suggest that a comprehensive review of the onshore and offshore employment/self-employment/agency/personal service companies rules should be undertaken starting from first principles to arrive at a consistent and coherent approach. We also recommend a one year delay that should enable agencies and businesses to agree new prices, and put into place secure data systems for sharing workers' personal details.

VAT: special schemes
Clause 97 and Schedule 18

- **Policy**: From January 1st 2015 VAT on telecommunications, broadcasting and electronically supplied services (eg mobile phone coverage, television, music downloads and e-books) will be charged to consumers across the EU in the country where the service is consumed, and not (as at present) where the service originates.

- **Background:** In an attempt to avoid this becoming an administrative burden for retailers (doing 28 VAT returns across 28 EU member states), there will be a system available to UK retailers called MOSS – the Mini One Stop Shop. This is an online service that will give businesses the option of submitting one single quarterly VAT return to HMRC, which will establish the VAT due in respect of all sales across other EU member states, at the appropriate rate of tax in each state. Without MOSS, the retailers must register and account for VAT in every member state in which they have customers – potentially 28 VAT returns (including the UK), mostly in different languages and complying with 28 sets of varying VAT legislation and rates. While MOSS reduces some of the burden there are, however, many factors that will increase the burden on businesses that will take some preparation before the introduction of the new rules in January 2015.

- **Our view:** The principle behind the changes is to provide a level playing field for service providers. Currently, it is possible, for example, for a service provider to provide services to consumers across the EU but be based in an EU country with a low VAT rate which is charged to all consumers, enabling them to undercut service providers in the other EU country who must charge consumers the local higher VAT rate. While these proposals make sense in principle, the price is that it will create considerably more complexity and administrative burdens that could discourage intra-EU trade and the efficient operation of the single market. In addition HMRC has indicated that it intends educational services, such as webinars, to be exempt from these regulations as a service of education provided where the service is hosted. However there remain ongoing discussions at EU level as to exactly what services would be categorised as e-services, and in the absence of clear agreement at EU level there is a danger that different countries will treat similar transactions differently. There is therefore a danger that some businesses (which potentially will include ICAEW) could find themselves providing services that are subject to double or non-taxation.

- **Recommendation:** We suggest that wide publicity should be given to the forthcoming changes to minimise non-compliance. Anything that can be done to minimise the burden on businesses and barriers to international trade should be prioritised and more work needs to be done at the EU level to ensure that there is consistency of treatment across all EU member states.

103 ATED: reduction in threshold from 1 April 2015
104 ATED: further reduction in threshold from 1 April 2016
105 SDLT: threshold for higher rate applying to certain transactions

- **Measures:** The Government is seeking to make changes to the rules where residential property is owned by a non-natural person such as a company (also known as enveloped dwellings). Following measures introduced in recent years, properties in this category are now subject to a higher 15% rate of stamp duty land tax (SDLT) and properties with a value of more than £2m are now also subject to a separate annual tax on enveloped dwellings (ATED) and capital gains tax on disposal.

The measures will in effect extend the higher rates of SDLT and the ATED and related CGT to properties with a value of £500,000 or more. The threshold for paying 15% SDLT was reduced to £500,000 with effect from 20 March 2014. The lowering of the threshold for ATED will take place in two steps – down from £2m to £1m from 1 April 2015 and down from £1m to £500,000 from 1 April 2016. Many of these properties will be eligible for relief, for example because they are commercially let, and will not be liable to the tax, but under the present rules the company will have to file the ATED returns annually in order to claim the relief.

- **Background:** The proposals now under consideration arise because of the substantial difference that now exists between a purchase of property directly, where SDLT can be paid at rates up to 7% for properties over £2m, and the purchase of shares in a company which owns the property - a purchase of shares only attracting stamp duty at a rate of 0.5%. Measures were introduced to charge a higher rate of SDLT where property was purchased by a company and the value was over £2m. This has now been reduced to properties with a value over £500,000. This was complemented by the introduction of ATED.

- **Our view: General**
  These latest proposals are a major extension of the SDLT and ATED rules, but were introduced without any consultation. We were opposed to these measures when first introduced on the basis of the considerable complexity, the admin burdens, the difficulty in policing the measure and likely widespread non-compliance. We appreciate the policy intention and instead had suggested that ATED be replaced with a tax on gains made on a disposal of UK property whether or not it was owned by a non-resident. The Government has now issued a consultation document on such a measure, but in the meantime has lowered the thresholds for the application of ATED and the higher rate of stamp duty.

  The lowering of the thresholds will bring many more properties within the scope of these arrangements and is likely to result in considerably increased burdens and compliance problems. We understand that yields from ATED are much higher than originally estimated but this may be explained by the fact that there will usually be an agent acting where property is worth £2m or more. This is much less likely to be the case as the threshold is lowered.

- **Recommendations:** Given the commitment to consult on a new CGT charge on UK property owned by non-residents, we believe that the ATED provisions should be dropped from the Bill pending that consultation so the two measures can be looked at holistically.
  The reporting requirements must be greatly simplified. Relief, once granted, should remain in place until the circumstances of the non-natural person change.

- **Our view: SDLT rates**
  The SDLT measures now discriminate against lower value properties over the £500,000 threshold. Properties with a value over £500,000, but less than £1m, are subject to a 4% SDLT rate, properties over £1m are subject to a 5% rate and over £2m are subject to a 7% rate. However, they are all now subject to a 15% charge where purchased by a company.

- **Recommendation:** A fairer approach would be to base the higher SDLT charge on a multiple of the applicable SDLT rate.

- **Our view: ATED rates**
Similar problems arise with ATED because a standard tax charge applies by reference to property bands. For example, from 1 April 2016 a property worth £500,001 will be subject to ATED at £3,500, an effective 7% charge, whereas a property valued at £1m will also be subject to a £3,500 ATED charge, an effective rate of only 3.5%. Given this is an annual charge this discriminates against lower value properties.

- **Recommendation:** Again a fairer approach would be to base the charge on a multiple of the property valuation.

Tax avoidance measures
Part 4, Follower notices and accelerated payments
Part 5, Promoters of tax avoidance schemes

- **Measures:** The Government is seeking to introduce a range of measures to deter the use of tax avoidance schemes by influencing the behaviour of promoters, intermediaries and their clients.

- **Background:** The government set out proposals in Raising the stakes on tax avoidance in August 2013 and we submitted our response in October 2013. The key proposals are:
  - Where a tax avoidance scheme has lost before the court, HMRC may issue ‘follower notices’ to those who have also used the scheme. On receipt of the notice the taxpayer will need to amend any return under dispute and pay any tax due. Failure to do so will expose the taxpayer to penalties.
  - Taxpayers who have entered into arrangements will be required to pay any tax in dispute where a follower notice has been issued, the tax planning was subject to the disclosure of tax avoidance rules (DOTAS), or the arrangements have been held to be subject to the general anti abuse rule.
  - HMRC will issue a conduct notice to a tax avoidance scheme promoter who meets one or more of 11 threshold conditions, and are involved in marketed tax avoidance schemes. The threshold conditions include persons who are deliberate tax defaulters, who breach the Banking Code of Practice, promote schemes which the GAAR Advisory Panel has determined fail the double reasonableness test or ICAEW members who have been disciplined by their professional body in relation to such activity. Failure to comply with the terms of any conduct notice can then result in the issue of a monitoring notice, which can result in the promoter being subject to some detailed monitoring activity including the need for promoters to inform all their clients.

- **Our view:** We fully accept that it is open to the government to take appropriate steps to curb what it considers to be unacceptable and aggressive tax avoidance schemes. We support reasonable measures to achieve this objective but any measures must not impose undue and unreasonable burdens on the vast majority of tax advisers not engaged in such activity but who provide professional tax advice to their clients.
- In respect of the promoter measures, the proposals are aimed at only a very small number of promoters and we are concerned that the proposals as currently put forward may be too widely targeted and could result in substantial extra compliance burdens and costs imposed on tax advisers such as chartered accountants giving tax advice to their clients in accordance with their professional duties.

- We are also concerned about HMRC having the power to demand the tax subject to dispute to be paid. While granting HMRC such a power might be reasonable in some circumstances, there is a danger that it will be abused and that tax might be demanded in circumstances where we do not think it is reasonable. Such a power might discriminate, for example, against a taxpayer who had made a protective disclosure under the DOTAS rules. We believe that such a power should be subject to additional safeguards.

FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest. ICAEW offers impartial expert briefing on the Budget, the Finance Bill and ad hoc policy issues for MPs, Peers and parliamentary staff.

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