H M Revenue & Customs have now published draft provisions for inclusion in Finance Bill 2017, which should be enacted next summer. There are also some announcements affecting possible tax law changes after 2017. This document aims to summarise them.

Penalties for giving ineffective tax advice

A new provision will put us advisers at risk where we give tax advice to a client to do something to reduce his tax bill. It can apply to "arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions" where the arrangements are defeated by assessment by HMRC or in the judiciary.

This comes on the back of recent ethical guidelines by various professional bodies (including the Chartered and Certified Accountants, the Institute of Taxation and the Society of Estate and Trust Practitioners). The now have disciplinary powers where a member advises on tax where the advice is clearly against the will or Parliament (whatever that may be).

It is hoped that HMRC will apply this law sparingly, perhaps restricting it to cases which are sold as tax schemes, which could spell the end of schemes as we know them. However, the rules as drafted do not only apply to schemes, although, in many cases, it will be difficult for HMRC to prove what, reasonably, is reasonable behaviour.

The headlines for Independent Tax clients

Most of our clients are individuals or small and medium-sized businesses (or both). The headlines affecting them are as follows:

- There is an attack by the government on what are called disguised remuneration schemes which are methods of extracting profits from companies, eg Employee Benefit Trusts and EFRBS. In our view, these have probably been ineffective since 2010, but:
  - We now have the legislation for a new tax charge on 6 April 2019 where any loans or quasi-loans to directors and employees created by such schemes then still exist.
  - A work-around by setting up a scheme from a self-employment source is to be outlawed.
  - There is then clarification that a Corporation Tax deduction is only available for payments which create a PAYE charge.

Clearly, anyone now implementing any scheme to extract profits from a company will need to be aware that there are major inherent risks. For those who have implemented them in the past, particularly where there remain outstanding loans, we will be examining the 23 pages of draft legislation in more detail over the next few weeks.

> Most tax-efficient salary sacrifices by employees, where they agree to replace a part of salary by a benefit in kind, are to have the tax-efficiency removed.

> The law on the foreign aspects of pensions is to be tightened. In our view, many claims made about some foreign pensions such as QROPS and QNUPS were not justified where the person for whom the pension fund is held is UK-resident. The new law will make such schemes less attractive for such persons. Another change will make it less attractive to emigrate to another country with a favourable tax regime to avoid tax on income from a pension generated in the UK.

> We now have draft legislation for the much-heralded changes in rules for those who are non-domiciled.

Some more detail on the above and other announcements is given below.

Changes in rates of tax from 6 April 2017

The Income Tax Personal Allowance will increase to £11,500 and the higher rate threshold to £45,000.

The primary (employee) and secondary (employer) thresholds for NICs are to be aligned, so that all NICs will start paying on weekly earnings above £157.

The annual subscription limit for Junior ISAs and Child Trust Funds will be increased in line with inflation to £4,128. The ISA subscription limit will increase from £15,240 to £20,000.

The money purchase annual allowance, which restricts the amount of tax-relieved contributions an individual can make in a year into a defined contribution pension if they have flexibly accessed their pension savings is to be reduced to £4,000.

The benefit in kind percentages for company cars are to change slightly. For cars with emissions below 50 grams of CO2 per kilometre, bands will be based on the mileage range of the car. The relevant percentage for cars emitting greater than 90 grams of CO2 per kilometre will rise by 1%.

The charges under the Annual Tax on Enveloped Dwellings are to be increased slightly.

Changes in law from 1 or 6 April 2017 (except where stated otherwise) (or sooner)

Salary sacrifices

The Income Tax and NIC advantages of new salary sacrifice schemes are to be removed. The taxable value of benefits in kind where cash has been forgone will be fixed at the higher of the current taxable value or the value of the cash forgone and will include benefits which are currently exempt. There will be exceptions for pensions saving, employer provided pensions advice, childcare, cycle to work schemes and the provision of Ultra-Low Emission cars, with emissions under 75 grams of CO_2 per kilometre.

Those already in salary sacrifice contracts at that date will become subject to the new rules in respect of those contracts at the earlier of:

- an end, change, modification or renewal of the contract; and
- 6 April 2018 (except for cars, accommodation and school fees, when the last date is 6 April 2021).

VAT flat rate scheme

There will be a new 16.5% flat rate of VAT for all FRS businesses with limited costs, such as many labour-only businesses. Businesses using the scheme, and new businesses joining the scheme, will need to complete a simple test, using information they already hold, to work out whether they must use the new 16.5% rate. To support businesses, the government will introduce an easy to use online tool that will help them determine whether the new rate applies to them.

Disguised remuneration schemes

Contributions to a disguised remuneration scheme such as an Employee Benefit Trust or EFRBS will only qualify for a tax deduction if Income Tax and NICs are paid within a specified period. This will have effect for contributions made on or after 1 April 2017 (for Corporation Tax purposes) or 6 April 2017 (for Income Tax purposes). Please refer to other long-term changes concerning such schemes set out below.

Foreign pensions

The tax treatment of foreign pensions will be aligned more closely with the UK's domestic pension tax regime, including:

- bringing foreign pensions and lump sums fully into tax for UK residents, to the same extent as domestic pensions and lump sums;
- extending from 5 to 10 tax years the UK's taxing rights over recently emigrated non-UK residents' foreign lump sum payments from funds that have had UK tax relief;
- updating the eligibility criteria for foreign schemes to qualify as overseas pensions schemes for tax purposes;
- aligning the tax treatment of funds transferred between registered pension schemes; and
- closing specialist pension schemes for those employed abroad (section 615 schemes) to new entrants.

Non-domiciled individuals

Tax affecting non-domiciled individuals will be changed, including the following:

- The widening of the scope of Business Investment Relief for those who are non-domiciled investing in UK businesses.
- The extension of Inheritance Tax to UK residential properties which are held by non-domiciled individuals through overseas vehicles.
- Deeming those individuals who are not domiciled in the UK as UK domiciled for tax purposes if they are either (a) resident in the UK for 15 of the past 20 tax years, or (b) if they are born in the UK with a UK domicile of origin.

Tax avoidance and evasion

There will be legislation for a new penalty on those individuals or entities who enable the use of tax avoidance arrangements which HMRC later defeats ('enablers'). It can apply to "arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions. The penalty is up to the amount of the fees charged by the person giving the advice.

The legislation will also provide clarification as to what constitutes 'reasonable care' in relation to the application of the penalties charged on taxpayers following the defeat of tax avoidance.

There will be a new requirement for those who have failed to declare UK tax on offshore interests to correct that situation, with new tougher sanctions for those who fail to do so.

There will be new legislation to introduce a new more effective penalty for tackling aggressive VAT fraud. It will be applied to businesses and company officers when they knew or should have known that their transactions were connected with VAT fraud.

Substantial shareholding exemption

The investing requirement within the substantial shareholdings exemption (SSE) rules will be removed and the SSE rules will also apply to companies owned by qualifying institutional investors, without regard to the nature of the activities carried on by the companies they are invested in.

Simplifying small trading and property accounts

There will be 2 new allowances for individuals of £1,000 each, one for trading and one for property income. Where an allowance covers all of an individual's gross trading or property income (before expenses) then they will no longer have to declare or pay tax on this income. Those with higher amounts of income will have the choice to either deduct the allowance or deduct their actual allowable expenses.

IR35

Responsibility for deducting any tax and NICs where the IR35 rules apply where the work is carried on in the public sector will move to the public sector body, agency or other third party paying an individual's personal service company. For those workers, the 5% tax-free allowance for general business expenses is to be withdrawn. No changes are proposed where IR35 applies in the private sector.

The 5% tax-free allowance for general business expenses, available to workers currently applying the rules, will be withdrawn for PSCs working in the public sector. This will simplify administration and reflects the fact that PSCs no longer have responsibility for applying the rules. Public sector bodies will be responsible for determining whether or not the rules apply and will be required to share this information with agencies in order for them to operate the rules correctly. To address concerns about acting in good faith on incorrect or false information, transfer of liability provisions will be introduced to provide protection. Public sector bodies in scope are those subject to the provisions of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. The rules remain unchanged for the private sector.

Company losses

All companies will have more flexibility by relaxing the way in which they can use losses arising on or after 1 April 2017 when they are carried forward - these losses will be useable against profits from different types of income and other group companies.

Contributions to grassroots sport

A Corporation Tax deduction will be available for all contributions to grassroots sports through recognised sport governing bodies, and deductions of up to £2,500 in total annually for direct contributions. Sport governing bodies will be able to deduct all their contributions to grassroots sports.

Tax deduction from interest

Income Tax will not need to be deducted at source from interest distributions of open-ended investment companies, authorised unit trusts and investment trust companies, and from interest on peer-to-peer loans from 6 April 2017. This will bring these types of savings income into line with interest on bank deposits.

Pension advice

The first £500 worth of pension advice (including general financial and tax issues relating to pensions) provided to an employee in a tax year will be exempt from Income Tax and NICs.

Employees giving evidence

All employees (or former employees) called to give evidence, for example, at an inquiry, will be able to receive legal support funded by their employer tax-free.

EIS, Seed EIS and VCT investments

There will be some technical changes to the rules for EIS, Seed EIS and VCT investments concerning some conversions of shares and follow-on investments.

Employee shareholder status

The Capital Gains Tax exemption and Income Tax reliefs in respect of shares received as consideration for entering into most Employee Shareholder Status agreements are to be withdrawn immediately.

Museums and galleries

The scope of the museums and galleries tax relief that was announced at Budget 2016 will be broadened to include permanent exhibitions. Relief will be available on the cost of developing new exhibitions including those that are toured. The rates for the relief are 25% for touring exhibitions and 20% for non-touring exhibitions. The relief will allow museums and galleries to claim a credit worth up to £100,000 on exhibitions that are toured and £80,000 on non-touring exhibitions. The maximum credit allowable is the equivalent of qualifying expenditure of £500,000. The relief will take effect from 1 April 2017 to April 2022 unless renewed.

Ultra Low Emissions Vehicles

Investment in Ultra Low Emissions Vehicles (ULEVs) will be incentivised by 100% first-year allowances on electric charge-point from 23 November 2016.

Offshore reporting funds

The deduction of performance fees incurred by offshore reporting funds will be disallowed in calculating UK investors' reportable income. Such expenses will instead, where incurred, reduce investors' taxable gains when they dispose of their holdings in an offshore reporting fund.

Changes announced for the future

Disguised remuneration schemes (again)

Existing disguised remuneration schemes such as Employee Benefit Trusts and EFRBS will be affected by the introduction of a new charge on loans that were made after 5 April 1999 and remain outstanding on 5 April 2019. Any such loans will be subject to PAYE on 6 April 2019.

The scope of the disguised remuneration rules will be extended to include schemes established for the self-employed, with effect from the date when Finance Bill 2017 becomes law, probably in the summer of 2017.

Class 2 NICs

Class 2 NICs are to be abolished from 6 April 2018. There will also be provisions to introduce a contributory benefits test into Class 4 NICs and where necessary to allow the self-employed to access contributory benefits through payment of Class 3 NICs.

Employee tax

There will be changes from 6 April 2018 to the tax treatment of employment termination payments, including:

> making all contractual and non-contractual payments in lieu of notice (PILONs) taxable as earnings;

> requiring employers to tax the equivalent of an employee's basic pay if notice is not worked;

> removing foreign service relief for employees who have spent time working outside the UK.

> Aligning NIC rules with those for tax.

The first £30,000 of a termination payment will remain exempt from Income Tax and NICs.

The dates for making good on benefits in kind will be aligned to 6 July following the tax year, from 2018/19 onwards. This is where an employee makes a payment in return for a benefit in kind with the effect of reducing the taxable value of the benefit in kind, often to zero.

The process for applying for and agreeing PAYE Settlement Agreements (PSAs) will be simplified from 6 April 2018. This will remove the requirement for employers to obtain up-front agreement from HMRC for items to be included in a PSA.

Life assurance policies

Individuals who, in certain unusual circumstances, have part-surrendered or part-assigned their life insurance policies and inadvertently generated a wholly disproportionate tax charge, will be able to apply to HMRC to have the charge recalculated on a just and reasonable basis.

Personal portfolio bonds

The government will be given the power to amend by regulations the list of assets that can be invested in without triggering the personal portfolio bonds anti-avoidance rules. This will take effect from the date when Finance Bill 2017 becomes law, probably in the summer of 2017.

Changes for large corporates

Distributions

The rules on the taxation of dividend distributions to corporate investors will be modernised. This will preserve the current ability of institutional investors, such as life companies with pensions business, to invest in a tax neutral way in authorised investment funds.

CoACS

From the date when Finance Bill 2017 becomes law, the operator of a co-ownership ACS (CoACS) will be able to elect to compute capital allowances and allocate them to investors, and legislation will clarify the treatment of assets acquired and disposed of. Also,operators of a CoACS will be required to provide specific tax-related information to investors and to HMRC, and legislation will clarify what amounts are to be treated as an investor's income where an ACS has invested in an offshore fund. The computation of the capital gain on disposal of units in transparent funds including CoACS will be clarified.

Insurance special purpose vehicles

As announced at Budget 2015, the government will ensure the reinsurance activity of insurance special purpose vehicles (ISPV) that issue ILS will be exempt from Corporation Tax. ILS offer alternative forms of risk mitigation for insurance and reinsurance firms by transferring insurance risk to capital market investors. In addition, payments to investors will be exempt from withholding tax.

Bank Levy

The Bank Levy's tax base will change to UK operations from 1 January 2021. Liabilities relating to certain funding for UK banks' overseas subsidiaries, as well as liabilities relating to the funding of UK banks' overseas branches will be exempted from the Bank Levy. The changes will take effect from 2021.

Interest deductions

The tax deductions that large companies can claim for their interest expenses will be limited with effect from 1 April 2017. The new rules will restrict each group's net deductions for interest to 30% of earnings before interest, tax, depreciation and amortisation (EBITDA) taxable in the UK or, if higher, to an amount based on the net-interest to EBITDA ratio for the worldwide group.

The legislation will also provide for repeal of the existing debt cap legislation and its replacement by a modified debt cap which will ensure that the net UK interest deduction does not exceed the total net interest expense of the worldwide group. Amongst other features, the rules will include provisions to protect investment in infrastructure that has a public benefit. There will be no special provisions for banking and insurance groups.

Losses carried forward

Large companies' (with group profits over £5 million) use of losses carried forward will be restricted so that they cannot reduce their profits arising on or after 1 April 2017 by more than 50%.

Patent Box

Specific provisions will be added to the revised Patent Box rules introduced in Finance Act 2016, covering the case where R&D is undertaken collaboratively by 2 or more companies under a 'cost sharing arrangement' (CSA). The provisions will ensure that companies are neither penalised nor able to gain an advantage under these rules by organising their R&D in this way.

Tax enquiries

There will be new legislation to allow discrete matters in large, complex or high risk cases to be concluded ahead of the final closure of a tax enquiry.