States of Guernsey
Revenue Service

GSCCA Circular 8
6 December 2018

Income Tax Measures within 2019 Budget (Billet XXIV of 2018)

Corporate Measures

Economic substance

To address concerns that companies could be used to artificially attract profits that are not commensurate with their economic activities and presence in Guernsey, legislation will require certain companies carrying on geographically mobile financial and other service activities to demonstrate they have substance in the island by:

- being directed and managed,
- conducting Core Income Generating Activities and
- there being adequate people, premises and expenditure.

For further information on the activities, draft legislation and guidance please go to www.gov.gg/economicsubstance.

Corporate Residence

In order to limit circumstances when companies are dual resident, the definition of corporate residence will be amended so that a company shall not be treated as resident in Guernsey in a year of charge, even if it is incorporated or controlled in Guernsey, if it is proved to the satisfaction of the Director that:

- The company is tax resident in Territory A under the domestic law of Territory A, and
- The company's business is centrally managed and controlled in Territory A, and
- Either:
    - The company is tax resident in Territory A In accordance with a Double Taxation Arrangement, in which a tie-breaker clause applies, or
    - The highest rate of tax on a company in Territory A is at least 10%, and
- The company's tax resident status in Territory A is not motivated by the avoidance, reduction or deferral of the liability of any person to tax.

The process for determining that a company is not resident is currently being discussed with the tax sub-committee of the GSCCA. It is anticipated that it will require companies to provide a certificate of residence from the other Territory.

Following positive responses to the consultation in August, the Policy & Resources Committee intends bringing forward proposals next year to recommend changing the definition of corporate residence from being determined by, broadly, shareholder control, to management and control in Guernsey (which generally considers where the directors meet and exert control).

Extension of the company intermediate rate (10%)

The company 10% rate has been extended to:

- Income from the regulated activity of operating an investment exchange under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, and
- Income from compliance and other related activities provided to regulated financial services businesses.

A Statement of Practice setting out examples and providing further guidance is currently being prepared in conjunction with representatives from the tax sub-committee of the GSCCA and other industry bodies.

Personal Measures

Withdrawal of personal allowances for high earners – Phase 3

With effect from 1 January 2019, the tax allowances and withdrawable deductions will be withdrawn at a decelerated ratio of £1 for every £5 that a person's "calculated income" exceeds the threshold which has been set at £100,000 (£142,896 for 2018).

As with previous years, those individuals likely to be impacted have been identified and have received a letter advising them of the Phase 3 changes with their 2019 coding notice. If they do not have a coding notice they will be advised of the changes with their interim assessment for 2019 when issued next May.

Our website and FAQ's have been updated to provide examples which will explain how the changes will affect our customers (see www.gov.gg/taxationfaq).

The website has also been updated with some examples explaining how the withdrawal interacts with the ability to carry forward the unused balance of pension contributions with effect from 1 January 2019. These have been replicated below:

Example 1
Mr X has taxable income of over £750,000 per annum. He contributed £20,000 into his personal pension scheme in 2017 and therefore has £30,000 of unused balance carried forward at 31 December 2017 (as the maximum he was entitled to deduct in 2017 was £50,000).

He contributed a further £35,000 into his personal pension in 2018, however due to the withdrawal of allowances the maximum he was entitled to deduct in 2018 was £1,000. He therefore continues to retain the £30,000 of unused balance carried forward (from 2017) at 31 December 2018.

Mr X then contributed £80,000 into his personal pension in 2019. For the purposes of determining the retirement annuity allowance it is only £35,000 (prescribed by Resolution of the States) and the unused balance carried forward amounting to £30,000 that can be taken into account. This total of £65,000 is then subject to the withdrawal of allowances, not just the £35,000 allowance for 2019. Mr X will therefore have no unused balance carried forward as at 31 December 2019, and will receive the £1,000 allowance for 2019.

Example 2
Mr Y had taxable income of £100,000 and made personal pension contributions of £20,000 in each of the years 2017 and 2018. Mr Y therefore had £45,000 (being £30,000 from 2017 and £15,000 from 2018) of unused balance to carry forward at 31 December 2018 (as his income was below the withdrawal threshold).

In 2019, Mr Y had taxable income of £750,000 but chose not to contribute to his pension. The maximum amount Mr Y would be entitled to deduct in 2019 (and therefore is subject to the withdrawal) is (a) the maximum amount set by regulation (currently £35,000) and (b) the amount of the unused balance carried forward (£45,000). Owing to the level of Mr Y's income in 2019, the unused balance of £45,000 is subject to withdrawal in its entirety and therefore Mr Y has no unused balance to carry forward at 31 December 2019.

Double Tax Relief

Following the introduction of "tie breaker" clauses in a number of Double Taxation Arrangements, including the UK and Jersey, it was agreed to amend the "flow through" provisions in respect of distributions with retrospective effect from 1 November 2015.

This will mean that relief for the underlying tax suffered by a company will flow through to the beneficial member on distribution, if the company is either incorporated or controlled in Guernsey within the meaning of section 122 of the Income Tax (Guernsey) Law, 1975.

Pension amendments

- The following will be an acceptable contribution to a pension scheme eligible for tax relief:
    - *"for the purposes of section 36 of the law, money placed into the member's pension, must be of a monetary amount (i.e. cash, cheque, debit/credit card, standing order, direct debit or bank transfer). The payment must actually be paid to the scheme by the member;*

- *for the purposes of sections 157(A)(10) and 151(1) of the law, a transfer of funds from another pension scheme is not treated as a contribution or premium paid by or on behalf of the member and cannot be utilised for the carry forward provisions;*

- *if a member pays a contribution into the scheme and all or part of the contribution consists of funds withdrawn from any approved pension scheme, then tax relief will not apply to the amount of the contribution that has been withdrawn from an approved scheme.*

  In-specie contributions (i.e. transferring the ownership of an asset) are not allowable for the purposes of claiming tax relief or utilising the carry forward provisions."

- In order to increase flexibility and prevent small pension pots being significantly eroded by administration charges, the following amendments have been made to triviality provisions:

  - No changes are proposed to triviality where a fund value is less than £15,000, which is taxable at 20% if commutation occurs before age 50 and 10% if occurs on or after age 50.

  - Triviality is increased for members aged 50 or over from £30,000 to £50,000 (need to consider aggregated value of all approved schemes), taxable at 20% in the year of charge in which it is paid.

  - Triviality is introduced for a scheme in drawdown where either the aggregate value of the funds attributable to the member under that scheme at the time of making the payment is not greater than £50,000 (or £100,000 where the individual member has a guaranteed minimum retirement income for the remainder of his life of £20,000 per annum), taxable at 20% in the year of charge in which it is paid.

  Responsibility for reporting payment under ETI and deducting the relevant tax will be on the relevant person that has made the payment. Triviality payments should be declared by the member on their personal tax return.

- Transfers of pension funds to certain approved UK schemes will be subject to a 10% charge, unless the transfer is made either in respect of a UK resident, or to an individual who has not at any time been resident in Guernsey.

Miscellaneous amendments

- Removal of mortgage interest relief if the loan on a principal private residence is from a trust.

- Increase of the tax cap to £130,000 (non-Guernsey source income) and £260,000 (worldwide income).

- Extension of the permitted period for an individual to purchase an open market property in order to be eligible to claim the open market tax cap from 6 months to 12 months.

- Introduce an exemption for regulated end of service/gratuity schemes where the beneficiaries are non-resident and all income of the trust is non Guernsey source income (apart from Guernsey bank interest)

Legislation

The following legislation to implement these budget matters will be considered by the States at their 12 December meeting (see https://www.gov.gg/article/165821/States-Meeting-on-12-December-2018 under "legislation for approval"), and if approved will be effective from 1 January 2019:

- Income Tax (Zero 10) (Company Intermediate Rate) (Amendment) (Guernsey) Ordinance, 2018
- Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2018
- Income Tax (Pension Amendments) (Guernsey) Ordinance, 2018
- Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2018

The website and relevant forms will be updated to reflect these changes in early 2019.

N Forshaw
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