

## APPENDIX II

# FINANCE ACT 2016

### Lecture Summaries by Milton Grundy

*Milton Grundy*

#### FINANCE ACT 2016

It is our custom, when each Finance Bill is published, to hold a series of in-house lectures on the principal changes made. Below are my brief summaries of the lectures on this year's Act.

Even the most casual observer may be prompted to ask whether 649 closely printed pages of text is really necessary to update our tax code in a not specially eventful year. It may be said that the prolix drafting is necessary to counteract avoidance, but many tax systems work perfectly well with much less statutory language – in the Netherlands, for example, or Hong Kong, and now that we have a GAAR and umpteen TAARs and that the courts have become implacably hostile to avoidance schemes, one might have thought that the time had arrived for our shelves of Yellow and Orange Books to get narrower, rather than wider.

In the meanwhile, we have to deal with the world as we find it. Somehow or other we all have to get our minds round all this new material, and I hope readers will find these summaries helpful in that task.

*Conrad McDonnell*

#### DIVIDENDS: SECTION 5 AND SCHEDULE 1

The dividend tax credit has been abolished. Dividends are now taxed at up to 38.1% with an exemption of the first £5,000.

The entrepreneur doing business through an LLP suffers tax at the top rate of 47% (45% income tax plus 2% national insurance); with a company distributing its profits in full, the shareholders formerly enjoyed a slight tax advantage over the LLP partner, but now he suffers a disadvantage. It is still the case that non-residents have no tax liability on UK dividends.

#### **BENEFITS: SECTION 7**

The Section disapplies the ‘fair bargain’ concept to benefits derived from loans, living accommodation and vehicles. Section 16 and Schedule 3 makes changes to rules applicable to share schemes. Section 17 clarifies the treatment of benefits derived from Restricted Stock Units.

#### ***Michael Jones***

#### **TRANSACTIONS IN SECURITIES AND DISTRIBUTIONS IN WINDING UP: SECTIONS 34 AND 35.**

With rates of corporation tax and capital gains tax at historic lows, it is perhaps not surprising that shareholders in private companies with substantial accumulated profits should be looking at ways of cashing in their holdings and continuing the business in a new vehicle – a transaction given the misleadingly playful name of *phoenixing*. Section 34 amends the transaction in securities rules in Part 13 of ITA 2007 and Section 35 introduces a TAAR to counteract transactions of this kind.

#### **DMF RULES**

Many of us thought that the investment manager who could boast that he paid less tax than his cleaning woman came to the end of the road last year. Evidently not. Section 37 amends Chapter 5E of Part 13 of ITA 2007, to enlarge the scope of the Disguised Investment Management Rules as they affect individuals

who perform investment management services, and sections 38 and 39 introduce new provisions covering ‘carried interest’.

*David Goldberg QC*

LOAN RELATIONSHIPS AND DIVIDENDS:  
SECTION 49 AND SCHEDULE 7

The Act makes a number of small amendments which are of particular relevance in the context of tax avoidance. As always, the starting point is the profit ascertained in accordance with accounting principles. This rule is well-established, though not one with which the speaker agrees, and these amendments modify the rule in appropriate cases, concerned with non-market loans, transfer prices and exchange gains and losses (these last, in particular, striking the speaker as unnecessarily complicated).

HYBRIDS AND OTHER MISMATCHES:  
SECTION 66 AND SCHEDULE 10

These provisions insert a new Part 6A into TIOPA 2010 effectively replacing the old arbitrage provisions. They are intended to counteract tax avoidance through arrangements resulting in a double deduction or in a deduction without a corresponding inclusion. The provisions apply even where the corresponding absence of inclusion or double deduction is in the context of a foreign tax system; the speaker was surprised that we should want to police the tax systems of other countries.

*Nikhil V. Mehta*

PATENTS: SECTIONS 64 AND SCHEDULE 9

The section amends the present patent box legislation (in sections 357A – GE of the Corporation Tax Act 2010). The

benefit is a lower rate of corporation tax on profits from intellectual property. A company can elect in but not out. The new regime restricts the calculation of profits to the “streaming” and “sub-streaming” method and, in order to be BEPS-compliant, it requires a “substantial amount” of the relevant R&D to be undertaken by the claimant. There are extensive provisions for calculating the amount available for relief. The new regime will be phased in between now and 2021.

### *Laurent Sykes QC*

#### SECTIONS 76 TO 82

The new provisions extend the scope of UK corporation and income tax so that a non-resident will be within the charge to one of the two if dealing in UK land or of developing UK land for the purposes of disposing of it. It does not matter that the income may be non-UK source under general principles and that there may be no permanent establishment, branch or agency and possibly also no trade. The liability is not overridden by double tax treaty protection where a main purpose of the arrangements is to obtain a tax advantage in relation to these taxes, including a tax advantage consisting of treaty protection where this is not consistent with the object and purpose of the treaty (a concept which is not explained).

At the same time the transactions in land provisions are expanded. Some big points are (i) the overriding of treaty relief, (ii) the absence of a clearance, (iii) the removal of the exemption for the disposal of land dealing companies, and (iv) the watering down of the “sole or main object” test to one of “a main purpose”. It will often be the case for instance that an investor will have a main purpose of ultimately disposing of the land to benefit from capital growth. Concern has been expressed that this would now be caught and a gain taxed as income.

So there are now even more points to consider when dealing with land, particularly residential land, to include: these rules, the diverted profits tax, non-resident CGT and ATED-CGT.

*Michael Firth*

**ENTREPRENEUR'S RELIEF:  
SECTION 86 AND SCHEDULE 13**

The changes made to this relief in FA 2015 had “unintended effects”, which these provisions seek – retrospectively – to reverse. Fresh definitions of “trading company” and “trading group” are provided and there are rules dealing with joint venture companies and partnerships.

**INVESTORS' RELIEF: SECTION 87 AND SCHEDULE 14**

This introduces a new relief for investors. It applies a 10% rate of capital gains tax to a gain up to £10 million made by an individual on new shares in an unlisted company held for three years. The relief does not appear to apply to joint owners of shares. The shares must be “qualifying” shares – a rule which requires, principally, that the company be a trading company or part of a trading group and the shareholder is not an employee.