

FINANCE ACT 2017 - IMPACT OF GENERAL ELECTION

- ◆ As a result of the snap general election, most of the provisions of the draft 2017 Finance Bill published on 20 March were left out of the bill that received Royal Assent on 27 April and became the Finance Act 2017.
- ◆ The measures that were removed included some of the most significant proposed changes, such as the introduction of the new corporate interest restriction, the reforms of the corporate losses regime and the substantial shareholding exemption and the changes to the taxation of UK non-domiciliaries.
- ◆ Many of the provisions which have been dropped (the “Dropped Provisions”) were already meant to have taken effect (from April 2017), and so their current status is in question. Taxpayers who were relying on these changes have been left in limbo.
- ◆ Assuming there is no (unexpected) change of policy, we would expect the Dropped Provisions to become law under a future Finance Act passed later this year.
- ◆ The question is what date they will take effect from. In particular, some have questioned whether the Dropped Provisions are now able to take effect from April 2017 as this would involve retrospective legislation.
- ◆ One option for the new government is to implement the Dropped Measures from April 2018, with the imposition of transitional rules for those who acted in good faith on the expectation that the new rules would come into effect in April 2017. However, there is precedent in both case law and political practice for the second Finance Act passed following a snap election to have effect from a date before the election was called.
- ◆ The last snap general election in the UK was in October 1974, which saw the re-election of the Labour government. That year, before the general election, the Labour government introduced and passed the Finance Act 1974; following the general election, a second Finance Bill was introduced which received Royal Assent on 13 March 1975 as the Finance Act 1975. A number of provisions implemented in the 1975 Act – most notably, the introduction of capital transfer tax (now inheritance tax) – took effect from the date of the 1974 Spring Budget (26 March 1974).
- ◆ Although not truly a snap election, certain provisions announced prior to the calling of the 2005 general election were also back-dated to April 2005 by the post-election Finance Act in that year (the relevant provisions, dealing with certain tax arbitrages, were implemented in substantially amended form when eventually enacted, albeit that the changes were generally to the advantage of the taxpayer).
- ◆ This demonstrates that, following the general election, there is a clear precedent for the new government to implement the Dropped Provisions with (retrospective) effect from April 2017, to the extent that the government had expressed, prior to the general election, an intention to legislate for the provisions being implemented with effect from a particular date (that is, April 2017 in this case).
- ◆ Furthermore, such an approach is permitted by law. In recent years, the UK government has enacted various retrospective legislative provisions and, despite challenge from taxpayers, the courts have been willing to uphold the effectiveness of such provisions on the grounds that they are proportionate measures, of which the taxpayer received adequate warning, striking a fair balance between the public interest and the right to peaceful enjoyment of one's possessions.
- ◆ In conclusion, there are good grounds for believing that the Dropped Provisions will be implemented as part of a second Finance Bill later this year and take effect from April 2017. While taxpayers should defer decisions that rely on this happening for as long as possible, for those that have no option of waiting, our best bet would be to assume the Dropped Provisions will come in from April 2017.

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MAY 2017

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