

Comment

Views on topical issues

My Autumn Statement wish list

Francesca Lagerberg

Head of tax, Grant Thornton UK



Hopefully, the chancellor has learnt lessons from the 'omnishambles' March Budget.

As the rain sweeps in and winter draws closer, it's time for the annual pre-Christmas tax festival known these days as the Autumn Statement. This year it will take place on the 5 December, swiftly followed by an early 'present' of the draft Finance Bill 2013.

So if I could wave a magic wand, what would I like to see in it? First and foremost I would like to see no surprises. The 'omnishambles' of the March Budget, where a few tax proposals were put out with no apparent consideration of their operational or practical impact, should surely provide the salutary lesson that good legislation comes from good consultation. The swift reversal of the 'pasty' tax and the charitable donation capping show that it is far better to plan, consult, reflect and then legislate if necessary.

However, the Public Accounts Committee and media mauling of a few global corporates has shed light on how offshore structures can legitimately be used to apparently significantly reduce UK tax and the temptation of government to be seen to be acting may be too strong for the coalition to resist. My hope would be that any action arising is no more than an opening of a sensible debate around this area rather than a knee-jerk proposal that makes the UK uncompetitive.

Keeping on the corporate theme it will be intriguing to see if the chancellor continues his drive to reduce mainstream corporate tax even further than planned and perhaps to a single corporate tax rate. This is expensive to achieve so would undoubtedly mean the loss of some reliefs and exemptions to fund it. The downside here is whether this could adversely hit the small and medium-sized entities that are the engine house of UK economic growth and which often rely on tax breaks to help them through the early years of business.

We will see the introduction of a general anti-abuse rule although with some modification after consultation. Despite it being controversial it is inevitable and the key is now getting the guidance right.

On VAT it would be helpful to begin to see the prompt incorporation of case and policy decisions into UK VAT law, e.g. the recent transfer of a going concern case about property letting (*Revenue & Customs Brief 30/12*) and the policy decision about land (*Revenue & Customs Brief 22/12*). This would provide certainty for taxpayers.

On personal tax issues, certainty is also a core theme. The Finance Bill 2013 is expected to include the much anticipated statutory residence test that through a combination of day counting and 'other factors' will provide a framework to help those with more complex personal lives, a legislative test to determine where they are resident.

And no Budget event would be complete without the rumour of the capping or reduction in higher rate relief for pensions. This is a part of a more general 'bash the rich' range of recent press commentary. The reality is that history shows that overly penal taxes on the wealthy rarely help economic growth or increase revenue, so hopefully common sense will prevail.

Civil conspiracy

Jonathan Fisher QC

Barrister, Devereux Chambers



Instead of always bringing criminal prosecutions, on occasions HMRC has sought to disrupt carousel frauds by pursuing conspiracy actions in the civil courts. One advantage of the civil route is that it is easier for HMRC to recover the proceeds of fraud than by prosecution in the criminal courts. However, the relaxed requirements in the civil courts are not to be taken for granted, as HMRC recently discovered to its cost in the *Sunico A/S* litigation.

The case involved an alleged conspiracy by multiple defendants to deprive HMRC of millions of pounds of VAT. HMRC alleged that one of the defendants, Premchand Nari, had been involved in the negotiation of a commission agreement on behalf an Indonesian company which was used as a vehicle for diverting the proceeds of the fraud.

The agreement was said to have been made in bad faith, but HMRC stopped short of alleging the agreement was a sham. It was also HMRC's case that the company had directed its share of the monies to be paid to another defendant, Shadapuri Hashu.

However, HMRC did not identify in its pleading which defendants were ultimately to share in the proceeds of the fraud, or in what proportion. In support of an application for summary judgment, the defendants submitted that the conspiracy claim should be dismissed because the pleadings failed to allege sufficient facts from which dishonest participation could be inferred.

The High Court agreed, and granting summary judgment Mr Justice Warren held that HMRC's pleading did not support the allegation that Mr Nari had negotiated the commission agreement. Since this was the only allegation pleaded in support of the fraud claim, the inferences sought to be drawn against Mr Nari were unsustainable. As regards Mr Hashu, HMRC had not pleaded anything which showed that he had been party to a conspiracy or had acted dishonestly in any way. HMRC's application to amend its pleading by including further allegations against the defendants was rejected as too late in the day (*HMRC v Sunico A/S* [2012] All ER (D) 172).

In a subsequent application by Mr Nari for his costs, Mr Justice Warren decided that it would not be proportionate to order costs payable on an indemnity basis since HMRC had brought the claim in good faith.

But it was appropriate to make an order for costs against HMRC on the standard basis. Mr Hashu's case raised different considerations because there are additional issues which will need to be explored at trial (*HMRC v Sunico A/S* [2012] EWHC 2892 (Ch)).

The pity of the case from the public perspective is that, as Mr Justice Warren made clear, the conspiracy claim would not have been rejected if the allegations contained in the proposed amended pleading had been included in the original claim.

Hopefully, the lesson has been well learnt. If HMRC alleges a civil conspiracy as an alternative to criminal prosecution, it must ensure that the claim is properly pleaded. The civil process has many advantages over the criminal process, but condoning HMRC sloppiness is not one of them.