General election: unsolved tax problems lie ahead

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Whatever the results of the upcoming election, the incoming government will find itself facing many challenges.

Just a few days after this article appears, a new government will be formed to lead the country for the next five years. No doubt Liam Byrne's famous 'I'm afraid there is no money' note won't be replicated but what might a candid tax minister write about unsolved tax problems?

Self-employment or employment?

There are huge financial differences between self-employment and employment. Those issues come to a head with freelancers – a group which provides their labour, typically with no or limited other services. The main differences are national

insurance. There are no 13.8% employer contributions, and the main self-employed rate is 2% lower than the employed rate, at 6%.

The fundamental challenge is that there is no clear definition of employment. Instead, there are lots of tax cases, with slightly changing emphasis over the years. The solution adopted so far has been to put the responsibility onto the engager to work out whether the individual is a quasi-employee, such that PAYE applies.

The parties have quite different approaches. The Conservative manifesto proposes abolishing self-employed national insurance, which would increase the gap to almost 20%. The Liberal Democrats and Reform propose abolishing the off-payroll rules, which would widen the tax gap, as contractor compliance is thought by HMRC to be poor. The Labour Party proposes abolishing 'worker' status, which is likely to mean that many more freelancers are given full employment rights, no doubt accompanied by a PAYE obligation.

The key challenge here will be to find a new definition of employment for tax purposes; the numerous cases demonstrate that there is no widely agreed definition. As the Upper Tribunal put it in the recent Adrian Chiles case (*Basic Broadcasting Ltd* [2024] UKUT 165): 'The uncertainty and financial exposures generated by the difficulty in establishing a clear and stable legal position continue to produce a very real human cost.'

Pensions

Chancellor Jeremy Hunt abolished the pensions lifetime allowance, which removed one challenge for high earners, although many other issues remain. Those in defined benefit schemes have no real means of knowing whether they have an annual charge and, if so, how much it could be. They also have no understanding of the effect on their ultimate pension should they ask the pension fund to bear the charge.

Many people have started to save, following automatic enrolment, but have inadequate savings to support retirement. There's a lot of complexity around the size of the tax free amount for those with one of the transitional protections. There seems no obviously good reason why where the pension holder dies before 75, the pension should be inherited tax-free (although I don't think that both income tax and inheritance tax charges should be levied – one is enough!).

The 2006 reforms did give us a single system, but today's pensions bear no resemblance to what was originally introduced. It is surely time to commission a proper review, so as to set a sustainable system for the next 20 years.

International corporate tax

One of the big decisions for the new Chancellor and tax minister will be where to take the UK's response to the expiry on 30 June 2024 of the digital services tax (DST) agreement with the United States; the adoption of Pillar 1 (the allocation of part of the profits from digital activities to market jurisdictions); and the potential implementation of the final part of the Pillar 2 package (which would allow a country to levy a top-up tax on an overseas company even where that country had no ownership interest).

All three issues depend on the United States. The DST agreement effectively accepted that five countries with a DST could continue to levy it without trade retaliation from the US, until Pillar 1 came into effect. The five agreed that DST paid could be credited against corporation tax once Pillar 1 came in – and there is a general expectation that the DST will exceed to the Pillar 1 corporation tax.

It seems highly unlikely that the US will adopt Pillar 1 in the near future – so the UK will need to consider whether renewing the DST moratorium is possible, which could require a trade-off with the Pillar 2 charge on US subsidiaries not owned by the UK.

Open areas from the March Budget

The new government will need to decide whether/how to take forward open areas from the March Budget. These include the abolition of the furnished holiday lettings rules; major changes to the non-dom rules; and the introduction of a criminal offence for promoters who ignore a 'stop' notice and continue promoting an egregious product. Any Budget would be some three months away, as 10 weeks' notice must be given to the Office for Budget Responsibility, so finding a way to give guidance on those open policies would be helpful.

There is also a broader issue about tax administration and HMRC service standards, where a longer term strategy and short term support may both be needed.

Lots to do!

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