

MGI OVERSEAS ASPECTS

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MGI Business Solutions Worldwide

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WHO WANTS TO BE A NON-DOM?

As the Government increases the "fee" for non-domicile status, the benefits for some start to become marginal at best.

UK non-domiciles are most commonly individuals who were born overseas but came to the UK to take up residence. However, they still retain links with another country and plan to return there in the future.

Prior to 6 April 2008, a non-UK domiciled individual could benefit from very advantageous tax breaks if they were taxed in the UK on the 'remittance basis'. This meant that only income arising in, and amounts remitted to, the UK were liable to income tax here. This was in contrast to a UK domiciled individual, whose entire worldwide income was liable to UK taxation.

This was considered to be somewhat generous to non-UK domiciled individuals by their UK domiciled counterparts, which, in turn, led to public and political pressure for the rules to be changed.

Therefore, from 6 April 2008, the UK Government has been seen as actively targeting non-domiciled individuals who have been resident in the UK for at least seven out of the last nine tax years. They have done this by levying a Remittance Basis Charge (RBC) of £30,000 per annum for those who choose to claim the remittance basis. In effect, this is simply an annual fee payable by anyone who wants to be treated as a UK "Non-Dom" for tax purposes.

In an attempt to appease continuing public resentment of non-domiciles and to help plug the budget deficit, from 2012/13 onwards the RBC will rise to £50,000 for individuals who have been resident in the UK for more than 12 years.



However, in a welcomed step, the Chancellor has declared that non-domiciles remitting funds to the UK to invest in businesses here will not be subject to these rules. Whilst this should, no doubt, help encourage more UK inward investment, it is not yet clear how the UK tax authorities intend to police this.

For the average Russian billionaire, £50,000 may

be neither here or there, but the increase to £50,000 has started to raise concerns for clients who are wealthy but not mega-rich. For some such Non-Doms, it might be cheaper to pay tax on their worldwide income (that is, not on a remittance basis) and thereby avoid the £50,000 charge. The calculations can be far from straightforward, but the tax costs for making the wrong decision can be considerable.

EUROPEAN COMMISSION, ONE; HM REVENUE & CUSTOMS, NIL

As the European Commission targets UK anti-avoidance legislation, we consider the potential impact.



Earlier this year, the European Commission (“EC”) ruled two pieces of UK anti-avoidance legislation to be incompatible with European Law. These were:

- The transfer of assets abroad legislation.
- The attribution of gains to members of non-UK resident companies legislation.

This EC ruling is hugely significant for UK taxpayers as it could have a monumental effect on how investors and businesses use foreign companies and offshore structures to minimise their UK tax burdens. It also puts a question mark over other pieces of legislation which may be considered as favouring UK investment over investment into other EU member states.

The EC argues that these provisions discriminate against investments made outside the UK, which are taxed more heavily than if made within the UK.

If the EC gets its way and these pieces of legislation are either renounced, or, more likely, amended to exclude EU-resident companies, then this could open the door to a whole myriad of tax planning opportunities for UK investors.

It would suddenly become easier to transfer shares, intellectual property or other income producing assets to overseas corporate structures in lower tax jurisdictions.

This would leave a large gap in the Government’s budget, so it must come as no surprise that

HM Revenue & Customs is unlikely to accept the EC ruling.

Whilst it is, in theory, very good news for UK investors and businesses, in practice, it may be some time before the current rules are amended.

In the meantime, taxpayers need to beware when transferring assets overseas or investing in them. The tax pitfalls which can arise through structuring these arrangements incorrectly can be twofold. Firstly, the UK tax authorities are able to rely upon some robust anti-avoidance provisions and, secondly, the overseas jurisdiction may have its own means of taxing investors.

Therefore, we would recommend that all investors seek professional tax advice before making cross border investment decisions.

GOVERNMENT TRIES TO ENCOURAGE INVESTMENT IN THE UK

Tax simplification and Research and Development tax breaks are intended to tempt new business to the UK.

Over recent years, the UK Government has tried to introduce tax legislation that encourages inward investment by both UK and foreign-based multinational businesses.

Thus far, the UK Government has achieved this in two main ways. The first is simpler legislation, which gives greater certainty to individuals and companies investing in the UK. The second is tax breaks, including Research and Development tax incentives and dividend exemptions.

Continuing in this vein, the 2011 Budget contained a number of additional provisions designed to simplify the UK's tax regime.

The two key provisions for businesses concerned revising the currently complex Controlled Foreign Companies (CFCs) rules and the long-awaited introduction of a UK 'patent box' regime.

Controlled Foreign Companies (CFC) interim improvements and reform

The current CFC legislation was introduced to avoid a UK tax loss arising when UK profits are artificially diverted to a foreign subsidiary which pays a lower rate of tax. When this occurs, the company is generally assessed for UK corporation tax on the same profits, less a credit for the overseas tax paid.

However, these rules have been branded as 'onerous' and 'costly' for those who fall unintentionally foul of them. Perhaps, more importantly, the rules are very unattractive to groups thinking of investing in the UK.

Amendments to these rules are to be implemented through a two-stage process. The first stage, known as the 2011 CFC Interim Improvement Measures, has been backdated to be effective for accounting periods commencing on or after 1 January 2011.

The most generous change to the rules sees the extension of the exemption from one to three years for foreign subsidiaries that, as a consequence of a reorganisation or change to UK ownership, come within the scope of the CFC regime.

Other welcome changes include:

- i. The introduction of an alternative de-minimus profits limit for large companies of £200,000
- ii. A removal of the need to recalculate the foreign company's profits using UK tax rules

The proposals for the second part of the CFC reform are scheduled to be disclosed later in 2011.

Patent box regime

The 'patent box' regime was first publicised by Alistair Darling in his pre-Budget announcement on 9 December 2009.

Since then, the UK has had a new Government, which has kept very little of the previous administration's objectives. However, the idea of a 'patent box' regime has held firm. Whilst many have been questioning why the implementation has taken so long (there have been four Budgets since the original announcement), it looks as though its inclusion in the Finance Bill 2012 is all but a given.

The regime ought to ensure that all income from patents first commercialised after 29 November 2010 qualifies for the reduced corporation tax rate of 10% from April 2013.

The policy objective is to create an affordable regime which encourages investment into the UK, whilst continuing to place high priority on high-tech Research and Development and manufacturing activity.

However, as with any new system, criticism has been levied as to whether or not the regime will fulfil the Government's aims. The Institute for Fiscal Studies (IFS) considers the regime to be "poorly targeted at promoting research". It claims that it distorts the decision to invest in patentable technologies and will add unnecessary complexity to the tax system.

The consultation period closed on 22 February 2011, so there is still a great deal of work to be done if the regime is to be in place for the beginning of the next financial year. Only then will we be able to see the fallout and assess whether the fears of the IFS are well-founded or not.

In the meantime, clients have been left in an invidious position, not knowing whether or not they will benefit from the much heralded 10% rate. If not, they might well need to consider developing their intellectual property overseas, exactly contrary to the Government's stated intention.

In addition to the new measures targeting multinational businesses, the UK Government has been keen to address uncertainties and perceived loopholes for individuals in recent years. One of the main areas that the Government has been keen to address is the treatment of UK non-domiciles, as discussed previously.



“HE WAS BORN AN ENGLISHMAN AND REMAINED ONE FOR YEARS.”*

The 2011 Budget leads to a new statutory residency test on the horizon

Another major announcement made as part of the 2011 Budget is the introduction of a statutory residency test.

In recent years, whether someone is regarded as resident or non-resident in the UK has become more contentious and less black and white.

Many still regard “counting the days” to be adequate, however, recent tax cases have proved that the UK Government now regards residence to be about a change in lifestyle.

This is good news for tax advisers, but bad news for our clients, who face considerable uncertainty. Anyone contemplating becoming a tax exile needs to consider very carefully how best to demonstrate that he or she is no longer resident in the UK. Relevant matters that need to be taken into account include whether the individual:

- Retains residential property in the UK and, if so, on what terms it may be leased to third parties
- Is employed by an non-UK employer or undertakes self-employed work overseas

- Can demonstrate integration into the overseas society (such as by joining the yacht club or working for local charities)

- Returns to the UK and, if so, for how long

A consultation process is currently underway to try and devise a suitable statutory test to replace the current subjective system but, until the results are published (perhaps with draft legislation), it will not be clear whether the statutory test will be a help or a hindrance.

* *Brendan Behan, Hostage (1958)*



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