Investors into the United Kingdom Important recent developments

By Graham Busch

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Companies

Corporation Tax Rates: The main rate of Corporation Tax will fall from 26% to 25% from April 2012, 24% from April 2013 and 23% from April 2014. The small companies' rate remains at 20%.

Good News for Holding Companies: The UK's holding company regime was enhanced in 2011 on two fronts:

1. The expectation that many holding companies will no longer be required to be audited. Currently, to require an audit such companies or groups would need to exceed any 1 of 3 limits, namely:
   - Turnover totaling £6.5m
   - Gross assets totaling £3.26m
   - Employees totaling 50

   Proposals currently under discussion will if passed mean that 2 out of the 3 limits would need to be exceeded for a compulsory audit to take place.
2. The substantial shareholdings exemption, whereby holding companies may dispose of underlying companies free of capital gains tax, has been improved. Previously, a holding company was required to hold the shares in the company

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being sold for 12 out of the previous 24 months. This 12 month holding now applies to the assets/trade, not to the shares themselves.

Controlled Foreign Companies: A simpler and fairer system of taxing (or not taxing!) profits from foreign companies has now moved a step further forward.

Draft legislation has been published, containing significant changes. In particular a gateway and safe harbours have been introduced which will eliminate a large number of companies from the CFC regime. A consultation period ends on 10th February 2012.

Research & Development Tax Relief: This represents a massive tax incentive to UK companies carrying out research and development activity. Recent changes include increasing the additional deduction for a Small or Medium-sized Enterprise from 100% to 125% (giving overall tax relief of 225%). Therefore, companies can now more than double-deduct such expenses for corporation tax purposes. So for every £100 of qualifying cost, a UK company can tax-deduct £225.

Patent Box: In April 2013, the UK will introduce a Patent Box which will allow companies actively exploiting patents to pay a reduced rate of 10% corporation tax on profits derived from this exploitation.

Individuals

Good News for Property Investors: Contrary to recent reports, the Government has not introduced legislation to counteract the use of companies to own residential property to avoid Stamp Duty Land Tax ("SDLT"). This means that the use of offshore companies by non-residents to own such properties remains an attractive structure. Potential benefits include:

- Saving of up to 5% UK SDLT on purchase/sale
- Avoidance of UK capital gains tax on sale
- Avoidance of UK inheritance tax
- Avoidance of the need to prepare UK statutory accounts

Domicile: Domicile in the UK is different from residence in that it relates to the degree of permanence of the stay in the UK. Individuals who come to live in the UK from other countries can be classified as resident but non-domiciled and such individuals may derive significant tax benefits from this status. These include exemption from UK income tax on unremitted foreign income, exemption from UK capital gains tax on gains arising from unremitted sales proceeds, and exemption from UK inheritance tax on foreign assets.

After such individuals have been UK

resident for 7 years out of the previous 9, this benefit comes at a cost of an annual charge of £30,000. From 6th April 2012, an increased charge of £50,000 for taxpayers who have been resident for 12 of the last 14 tax years will come into effect. However, on the plus side, non-doms will be allowed to bring foreign sourced income and gains into the UK free of tax to use for qualifying commercial investments.

Residence: The proposed new statutory residence test has been put back one year and will now not come into effect before April 2013. The present system therefore remains in place. In brief, an individual is tax-resident in the UK if he/she is present in the UK for more than:

- 182 days in a tax year, or
- 360 days over 4 consecutive tax years.

However, a ruling in a recent landmark tax case has re-affirmed the principle that the individual must really be resident elsewhere or else the days rule may be ignored by the UK tax authorities.

Swiss-UK Tax Agreement: The recent implementation of the Swiss-UK Tax Agreement provides a process for collecting tax on an anonymous basis from Swiss banks which hold assets belonging to UK residents. The rates of such tax are punitive and are only marginally below the highest UK tax rates attributable to the related income/gains. The agreement also includes a provision for the deduction of one-off sum of between 19%-34% to pay off historic personal tax liabilities connected to the asset. The agreement is intended to come into force on 1 January 2013.

Liechtenstein Disclosure Facility: This remains a potentially attractive alternative route to the Swiss-UK agreement and also a way to clear past tax liabilities relating to undeclared foreign income/gains. It requires the individual to hold a Liechtenstein bank account.

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