Q2 2008

GLOBAL PERSPECTIVES

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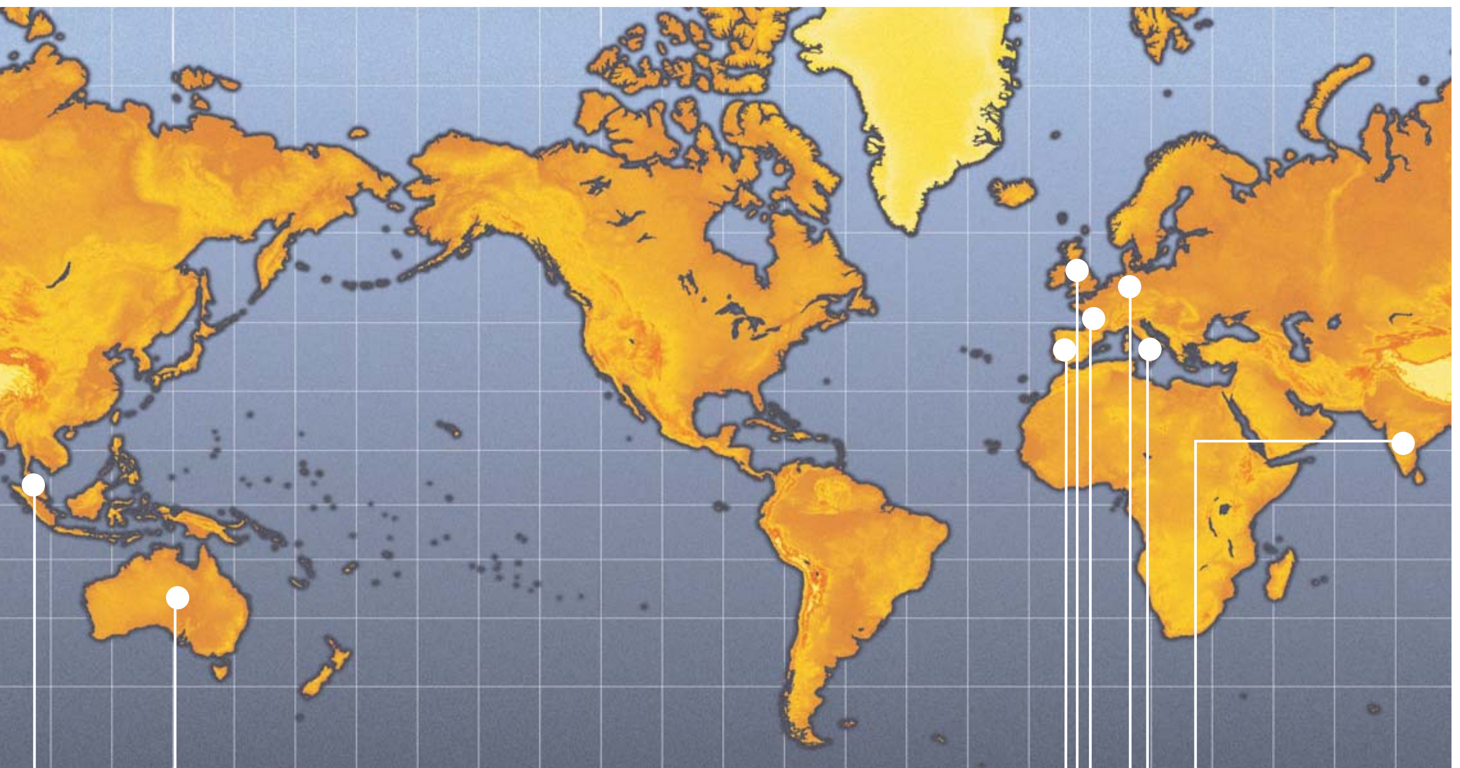

UK
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HMRC TO GAIN NEW ACCESS POWERS

The 2008 Finance Bill includes provisions which mark a revolutionary change to the powers available to HMRC to access information. The provisions apply to all taxes, and combine both the power to enter business premises to inspect documents and assets, and the power to obtain information and documents.

According to the new provisions, HMRC will henceforth have the power to access records even before returns are filed, to make unannounced visits to check records, and to have the right to copy or remove documents from business premises. The definition of the documents and records they can access is deliberately defined very widely, and there will be no right of appeal against such inspections.

It should be noted, in addition, that the powers will include the ability for HMRC to inspect third parties' premises. Paragraph 10 states that HMRC "may enter any business premises" and inspect those premises as well as assets and documents located there "for the purpose of checking the tax position of any person".

It is understood that the new powers will be used to check, inter alia, that appropriate records are being kept, to compare business records with actual business activity, and in addition, to check on actions being taken which are relevant to "tax avoidance schemes". In particular, HMRC are expected to use their new powers to access documents relating to questionable tax planning projects marketed by a number of unregulated businesses.

AMENDMENTS TO UK TAX FILING DEADLINE

While the deadline for completing your personal tax return is not until 31 January 2009 for filing online, taxpayers who file paper returns (including those whose affairs are too complex for HMRC's online filing system to accept) must now submit their returns by 31 October 2008.

Where possible we would like to assist you in completing your return as early as possible – particularly if you are due a refund of tax arising from overseas workdays claims, pension contributions, trading losses, or tax-efficient investments (EIS & VCT).

Australia

NEW MIT WITHHOLDING TAX REGIME

Australian Tax Office (ATO) rules effective from July 2007 for the current tax year are causing reporting difficulties for some clients, resulting in non Australian tax residents becoming liable for Australian taxation under the new regime.

In essence, the new withholding tax rules apply where payments are made to non-Australian tax residents from Managed Investment Trusts, especially Australian property trusts. The tax will be applied at 30% with no allowance being made for the tax status of the recipient.

Many clients will find themselves facing over or under-payments, and will need to make the necessary adjustments. Therefore any non-residents with Australian funds should clarify their position with their investment manager. Should you require assistance, then please contact your usual Phoros tax advisor.

AUSTRALIA AND BERMUDA ENTER TAX INFORMATION EXCHANGE AGREEMENT

Australia has recently announced a Tax Information Exchange Agreement (TIEA) with Bermuda. The provisions of the treaty permit the exchange of information on all tax and criminal matters between the two jurisdictions. In addition the agreement is to be backdated to January 2006.

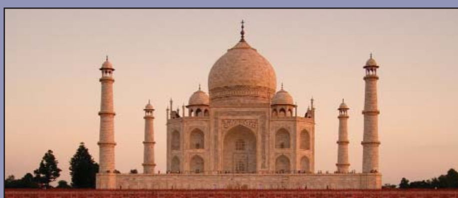
The past few years have seen the Australian Government and tax authorities taking an aggressive stance with what they perceive to be tax avoidance. This is unlikely to be a problem for individuals conducting their affairs correctly. However anyone who either is, or was previously, the beneficiary of a Bermuda Trust, or has made use of Bermuda for structuring private equity deals may unwittingly be caught up with this legislation.

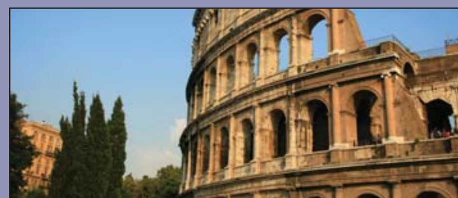
In order to avoid costly investigations we would suggest that those who may be affected review the historical reporting of their tax position. In some scenarios it may be helpful to approach the ATO in order to clarify the purpose of existing structures.

France

FRENCH INHERITANCE AND GIFT TAX CHANGES

On 1 January 2008, significant changes took effect to French inheritance and gift tax legislation. Married couples and couples united through a Pacte Civil de Solidarité will benefit the most, with IHT no longer being applied on the first death. Interestingly, there will no longer be IHT between brothers and sisters residing at the same address, which will come as a huge relief for many people. The French reforms have been extended also to raise the IHT





thresholds for more remote family members such as nieces, nephews and children. Gift laws have also been amended, which will make the gifting of relatively large sums to children far more effective.

FRENCH CAPITAL GAINS TAX CHANGES

Ownership of French real estate via a company has enabled vendors to dispose of shares in the holding company, benefiting from the reduced tax rate of 15% if the shares had been held for more than two years.

Under the 2008 Finance Bill, gains from 26 September 2007 are to be taxed at 34.43%, irrespective of the holding period.

Germany

INHERITANCE TAX REFORMS

Significant reforms of the German IHT regime are scheduled to take effect shortly. The reforms will ensure Germany remains an attractive environment for business succession.

The new legislation will be phased in over a ten year period, and apply to assets such as agricultural estates, including forestry, shares in a partnership, and shares in a business, provided the shareholding was greater than 25% at the time the tax charge was triggered. There will also be a holding requirement of fifteen years for the benefits to apply.

One important change will be the valuation methodology, whereby assets are valued at their fair market value. As a result it is anticipated that the overall tax IHT tax burden will increase.

If you hold German real estate, or non-situs assets such as shareholdings, and feel these changes may impact upon you, let us know.

PERSONAL COMMUTING EXPENSES

Historically, an individual taxpayer has been able to deduct their commuting expenses between their home and place of work. However this has now been changed. The German Courts have ruled that the deduction will only be permitted if the commuting distance is in excess of 20km.

India

REMITTANCE FACILITIES TO INDIA

In February 2008, India provided updated guidance on remittances of funds to India by Non-Resident Indians, Persons of Indian Origin and Foreign Nationals. Non-Resident Indians (NRI) are classified as individuals who are resident outside India but retain their Indian citizenship, either through passport, marriage or lineage.

Remittances of funds to India by NRIs and Persons of Indian Origin are freely allowed on the basis of appropriate certification that the funds are eligible for remittance and all taxes owing have been paid. In certain circumstances a foreign national may be able to remit US $1M per financial year to India without any penalties, but it depends on the individual's nationality and the source of the funds. If you are considering making a capital remittance or investment to India then please contact your usual Phoros contact.

Italy

CAPITAL GAINS REFORMS

From 1 January 2008, changes to the capital gains regime will see a reduction in the amount of tax due, and a more attractive environment in which to account for losses.

The Pex (participation exemption) has risen from 86% to 95%, with the holding period reduced to twelve months for claiming both gains and losses. Previously there was an anomaly, whereby the holding period for a capital gain was 18 months and holding period for capital loss was 12 months. This resulted in the taxpayer being unable to use the losses against gains for the same period. This will only apply to shares, and not to Real Estate, unless a holding company structure has been used.

TRUST REFORMS

Following on from our April 2007 briefing note, the Italian Finance Bill 2007 (the "budget") has recently provided further explanation in respect of Italian Trusts. The law provides for two kinds of Trust, namely a transparent trust with a beneficiary and a non transparent trust without a beneficiary. If the trust is Transparent, then the beneficiary to the trust will be liable to pay tax. If the trust is Non Transparent, then the trust will be liable to pay tax.

At the end of 2007, the Agenzia delle Entrate ("ADE") stated that it is sometimes difficult to conclude from a contract, whether the purpose of the trust is to be transparent or not. In a case where the contract is not so clear, it is very important to understand the objectives of the trust so as to identify whether or not there is a beneficiary.

A Trust is deemed resident in Italy when one of the following conditions is met:

The registered office is in Italy;
The main office is in Italy; or
The main objectives of the trust are in Italy.

Please note that in the case of (ii) above, this can only be determined if the trust has a physical presence in Italy, otherwise the fiscal domicile of the trustee is then considered.

In addition, the ADE has introduced an anti-avoidance provision under which trusts established in jurisdictions not allowing for the exchange of information between tax authorities (so called "tax havens") are deemed to be resident in Italy until proof to the contrary is given. This action will take place when one of the beneficiaries are Italian tax resident and / or when a tax resident transfers Italian real estate into a trust.

A large number of City professionals have historical trust arrangements in the traditional offshore jurisdictions such as Jersey or Bermuda, for such vehicles as Employee Benefit Trusts (EBTs) or pre A-day International Pension Plans (IPPs). Where such persons are planning to become Italian tax resident, or to appoint Italian tax resident beneficiaries, a careful review of their overall position, and the terms of the trust deed should be undertaken.

Phoros has experience of reviewing such arrangements, helping their clients to both understand and subsequently overcome these problems with simple and effective changes, while remaining totally tax compliant with the Italian authorities.

Malaysia

EXPATRIATE WORKER INCENTIVES

Malaysia has extended the scope of its tax incentives for expatriates in an attempt to encourage more international companies to relocate to the country.

At present, expatriates working for, what are defined as, Operational Headquarters (OHQs) and Regional Offices (ROs) are only taxed on their income for the days spent in Malaysia. The Government has decided to abolish an anomaly, by extending the preferential tax treatment to what are known as International Procurement Centres (IPCs) and Regional Distribution Centres (RDCs).

The Government has also reinforced their commitment to developing the International Islamic Financial Centre, by confirming that expatriates brought in to develop this centre will be exempt from local income tax until December 2016.

The changes are to be effective from the 2008 tax year, and come at a time when several jurisdictions are making positive moves to attract expatriates.

Spain

NON-RESIDENT SPANISH HOMEOWNERS ENTITLED TO REBATE OF CAPITAL GAINS TAX

The Spanish Government has levied capital gains taxes for non-Spanish residents owning property in Spain at 35%, in comparison to the 15% CGT charge for Spanish tax residents.

In effect, this would mean that anyone who has sold a Spanish property between March 2004 and December 2006 would have paid an inflated capital gains tax rate, in some cases, by as much as 20%.

A change in Spanish law at the start of 2007 saw the standard CGT for non-residents being brought into line with residents' CGT and, although this went largely unnoticed, this now opens a window of opportunity for those who sold property between 2004 and 2007 to claim back tax. Those who sold property before 2004, are unable to claim as it is outside of the four-year period that the law allows for claims to be made.

If you believe you may have been affected by this, please contact your Phoros representative.

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Phoros Accountancy is uniquely positioned to service the demands of the internationally focused Financial Services professional.

Our tax and accountancy services range from the completion of a plain vanilla UK tax return for UK tax residents through to bespoke tax advisory work for a wide range of overseas tax jurisdictions including Australia, France, Italy, Spain and Germany.

The Phoros Group of Companies provides bespoke tax, trust and remuneration planning for financial services firms and their staff through independent offices in London, Milan, Madrid and Jersey. These companies include Phoros International, Phoros Accountancy, Phoros Trustees (UK), Phoros Trustees (Jersey), Phoros Spain and Phoros Italia.

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