

Q4 2008

GLOBAL PERSPECTIVES

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UK

GREAT NEWS FOR UK DOMICILES WITH OVERSEAS REAL ESTATE

For many years, UK domiciled investors purchasing overseas property did so through an off-the-shelf company. This method was chosen, not to obtain a UK tax advantage, but rather to allow investors to take advantage of the flexibility of UK inheritance rules as opposed to local forced heirship rules.

Five years ago, the Government introduced the benefits in kind charge. This meant that perfectly legitimate planning such as off-the-shelf companies could now attract an annual Benefits In Kind (BIK) tax charge on the value of the use of the asset by the company's directors.

This rule has now been repealed, with the added good news that in certain circumstances, anyone who has incurred a tax charge on deemed benefits in kind during the period that the rule was in force can reclaim the charge. This could potentially be significant for a large number of UK taxpayers. However, the process of claiming a refund will be slightly different if the taxpayer has subsequently left the UK.

Phoros Accountancy is putting together a pro-forma claims process in order to keep costs to a minimum. If you, or perhaps any of your family members, feel you may have been affected by the old BIK tax charge, or would like some help with obtaining a refund, please let us know.

CHANGES TO UK FILING DEADLINES FOR TAX RETURNS

From April 2008, the deadlines for filing UK tax returns have changed. Previously, tax returns for years up to 5 April 2007 had to be filed with HMRC by 31 January of the following year, but from 2007/08 onwards a dual system will operate depending on whether the return is filed on paper or using the HMRC online system. Tax returns filed on paper were due by 31 October 2008. After that deadline, only tax returns filed online can be submitted before the final deadline of 31 January 2009. It is therefore vital that all taxpayers take into account the extra time that may be required to organise online filing - particularly if they have not yet been issued with a Unique Taxpayer Reference.

Individuals with complex tax affairs - in particular, claims for sideways loss relief, refunds of EUSD tax on unremitted offshore bank interest, or capital gains - are urged to ensure they do not leave their tax returns until the last minute. The HMRC online filing system has had difficulties processing non-standard returns, including entries such as those mentioned here.

INCREASE IN HMRC ENQUIRIES FOR OVERSEAS WORKDAYS RELIEF

Phoros Accountancy, as well as the tax return preparation industry in general, is seeing a marked increase in HMRC enquiries into tax returns - in particular, those involving a "fourth year" claim for overseas workdays relief. If you are claiming to be Not Ordinarily Resident in the UK during 2007/08, and originally arrived in the UK between 6 April 2004 and 5 April 2005, there is now a high probability that any claim for tax relief on overseas workdays will trigger an enquiry.

Enquiries into overseas workdays will typically require taxpayers to prove they are Not Ordinarily Resident (by producing copies of employment contracts, lease agreements, and proof of intention to leave the UK), to prove their workdays claim (by producing copies of travel documents, work diaries and expenses claims) and to prove their income was paid and retained offshore (by producing copies of bank statements). Typically, these enquiries can take two to three months to resolve, and can cost in the region of £2,000 to £5,000 plus VAT in fees.

Phoros would therefore advise individuals making claims in these circumstances to discuss their intentions with their advisers to ensure their claim is valid, and also to consider taking out insurance against fees for dealing with any enquiry which may arise.

PHOROS PUBLISHES 2008-2009 TAX-PLANNING REPORT

Phoros has published its hugely popular guide to UK tax planning for the HNWI individual. The report is objective and independent, assesses the pros and cons of retail financial products such as SIPPS, VCTs and EIS's, through to an analysis of transactions more common amongst the City such as Sole Trading in various rights, Insurance Portfolio Bonds, shipwreck exploration, financial derivatives, offshore trusts (in the new 30k environment) and agricultural estates.

Now in its fourth year, the report is renowned for pulling no punches, and for its complete independence of any insurance company, pension provider or scheme promoter.



FRANCE

NEW TAX TREATY TO AFFECT FRENCH TAX TREATMENT OF PARTNERSHIPS, REAL ESTATE AND IMPOSITION OF WEALTH TAX

Major revisions to a forty-year-old treaty between France and the United Kingdom will be of interest to UK domiciled clients considering a move to France, clients owning French real estate or clients with an interest in a French Partnership such as an SNC.

Overall, the new treaty will ensure the Partnership is somewhat more transparent than under the old 1968 treaty. There is also a particularly interesting aspect by which UK clients moving to France will be able to obtain a partial exemption from the notorious French Wealth Tax for a period of up to five years.

If you have an interest in a French Partnership, own French real estate or are considering a move to France, do let us know.

HEDGE FUNDS - CAPITAL RAISING IN FRANCE

A recent French tax case involving a UK company called Zimmer Limited could potentially have an impact on UK Hedge Funds choosing to capital raise in France.

In summary, Zimmer used a French distributor for raising capital, until the form of the distributor was converted to what is known as a "commissionaire". The role of the commissionaire was to act on behalf of the UK firm, albeit acting in its own name, with local authority to execute business, manage the marketing process, and with what would appear to be autonomy over pricing. The commissionaire did not need to revert to the UK company for any authority to vary the terms of their agreement, among other things.

The ruling is complex, with the wording of the agreements, the fact that Zimmer was a commissionaire and the fact that the French company could contract on behalf of the UK company all being points which were considered relevant. However, the net result was that the UK company was deemed to have a permanent establishment in France, and most advisors are expecting the French Revenue to try to expand upon the ruling.

If you are capital raising in the French market, either directly or with a commissionaire, service provider or distributor, reviewing your current arrangements would be worthwhile.

ITALY

ITALIAN REVENUE INCREASES PRESSURE ON NON-ITALIAN COMPANIES WITH ITALIAN TAX RESIDENT SHAREHOLDERS

A recent ruling by the Agenzia delle Entrate (187/E) will be of concern to Italian tax residents with overseas interests, even where they have no management or control of those interests.

In essence, an Italian shareholder of a UAE and Cyprus construction business sought a ruling from Agenzia delle Entrate to avoid a charge under the Italian CFC legislation, which would have seen profits taxed on the individual, irrespective of whether they were distributed. The taxpayer felt there was a strong case, as the company was funded by Swiss and French investors. Furthermore the business had a substantive PE in Dubai, where it was constructing a rail system.

The Italian authorities ruled against the investor, because both Cyprus and Dubai are on their "Black List". Each potential case would need to be assessed on its facts, but this could potentially affect Italian tax residents with shareholdings in other

blacklisted jurisdictions such as Jersey, Bermuda and the Cayman Islands.

This is likely to be of interest to existing or retired members of the hedge fund community, for clients who have used the aforementioned jurisdictions for transfer pricing purposes, or where offshore companies have been utilised to purchase real estate. If you feel that you may be affected, please let us know and we would be delighted to discuss some of the options available.

ITALY CHANGES CAPITAL GAINS TAXATION OF REAL ESTATE

The Italian tax system is to be changed, with capital gains tax on private real estate not being subject to tax after five years.

This will affect exiting arrangements, as well as future planning, where succession planning is a priority. If you have existing, typical Luxco type arrangements in place to ultimately hold Italian Real Estate, and wish to assess whether they should be retained, do let us know.

ITALIAN TAX AMNESTY DECLARED ILLEGAL

The EU Commission has confirmed that a recent Italian Tax Amnesty is illegal.

Italy had offered a VAT amnesty, but in simple terms, because the amnesty was offered with the assurance of no criminal penalties and without requirement to actually verify the VAT due, it breaches the EU's Sixth Directive.

Whether or not participants in the amnesty will now be prosecuted remains to be seen. However, what will be of most interest will be the impact upon tax amnesties offered by other EU member states. The promise that in return for a full and frank disclosure, all exposure to criminal liability or huge financial penalties will be dropped, is somewhat of an essential incentive.



NORWAY

INTRODUCTION OF EXIT TAX

Norway has introduced a particularly complex exit tax, which includes financial assets.

Values and gains are attributed in various ways, and can include an 'artificial gain' where there has been an FX movement.

The extent to which anyone may be affected is beyond the scope of this newsletter. Broadly, moving outside of the EU is more difficult than moving within the EU, moving to a jurisdiction without a tax treaty with Norway is more difficult than moving to a jurisdiction with a tax treaty, and the length of time you expect to be non-Norwegian tax resident is also an important consideration.

AUSTRALIA

ATO RAISES TARGET TAX TAKE AGAINST HNWS

In its latest report, the ATO has announced that it will seek to raise a further \$5.7bn over the next four years, much of that from HNW individuals.

It is hardly surprising that the ATO sees HNWs as fair game, when one considers that a recent investigation of 200 leading businessmen saw a personal tax capture of over \$100,000 per taxpayer. The Tax Commissioner is quoted as saying that the ATO will focus on discouraging the abusive use of tax havens and personal tax schemes. The problem continues to be returning Australian nationals who have accrued various legitimate tax planning tools while working in Europe and the US. Private taxpayers trying to explain those vehicles to the ATO have often met with difficulty, and the confusion is exacerbated when the taxpayer has little direct control over the asset, such as an old stock option scheme, semi-dormant EBT or passive pre A day IPP.

While an ATO tax investigation is often inconvenient, it can be an opportunity to assure the tax office that you have nothing to hide. With one major firm reporting investigations up nearly eleven-fold over the past year, one must appreciate the magnitude of the ATO's stance. Trigger points are the use of an overseas credit card, use of an overseas bank account, and returning executives.

Phoros Accountancy is registered with the ATO, and continues to develop a good relationship with several senior staff. We would strongly recommend that anyone planning a move to Australia takes advice one to two years in advance of their return, which should include optimising their departure dates, sale of a UK private residence and realisation of stock options - although the latter is likely to be less of a problem for the foreseeable future.

ATO RULING TO POTENTIALLY AFFECT OWNERSHIP OF NON-AUSTRALIAN LLP AND MANAGEMENT COMPANIES

The ATO has confirmed its firm stance on overseas trusts and partnerships.

The announcement confirms that if a non Australian company is a partner in a partnership, the actual partnership assets cannot be treated as "active assets" for the purposes of the Australian capital gains tax exemption when disposing of the shares in the foreign company.

The application of this rule may depend upon ultimate ownership, but the legislation could impact upon returning Partners in the typical UK LLP / Management Co / Cayman Co structure, and perhaps to a lesser extent, members of the Private Equity community.

If you would like any further information on this point, please let us know.

ATO FILING DEADLINE

If you prepare your own Australian tax return, it should have been lodged by 31 October 2008, with any tax payable after 21 November 2008.

If a tax agent lodges your return for you, the due date for payment will be determined by their lodgement program, and is printed on the notice of assessment.

If you would like Phoros Accountancy to submit your Australian tax return, deal with an ATO enquiry, or as is often the case for expats, file two or three outstanding tax returns, we would be delighted to help.



INDIA

NEW PENSION RULES TO IMPACT ON INTERNATIONAL WORKERS AND EXPATS

Last month, the Indian Ministry of Labour and Employment extended the Employees' Provident Fund Scheme 2008 and the Employees' Pension Scheme 2008.

Until now, pension contributions were only compulsory for relatively low-paid staff. Indian based expats and Indians working overseas were excluded.

The legislation has now been amended to encompass all international workers, unless there is a relevant treaty in place. Belgium, France and Germany have such agreements, but the UK does not.

With a number of firms seeking to expand into India, this legislation is of significant relevance. Phoros is putting together a corporate services package to handle these new measures on behalf of firms with local Indian hires, or expats who may be affected. If you would like us to help, please let us know.

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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.