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Recent Developments in International Taxation
United Kingdom

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Corporation tax

Rate
The United Kingdom's planned reduction in the main rate of corporation tax to 17 per cent has been put 'on hold'. The existing 19 per cent rate has been legislated to subsist for tax years commencing 1 April 2020 and 1 April 2021.

Capital losses
In a similar vein to the UK corporate income loss restriction introduced in 2017 (which provides that after a £5m group-wide loss allowance has been utilised, carried-forward losses can only be used to offset 50 per cent of profits), for accounting periods ending on or after 1 April 2020, companies will only be able to offset 50 per cent of chargeable gains using carried-forward capital losses. The existing £5m deductions allowance will now need to be shared between carried-forward income losses and carried-forward capital losses.

Digital services tax (DST)

A new two per cent tax on the revenue of search engines, social media platforms and online marketplaces ('in-scope activities') that profit from UK users has been introduced and will apply to revenue earned on or after 1 April 2020. The DST is billed by the government as an interim measure until an appropriate international solution is in place. The tax is chargeable on the gross revenue of large digital services businesses on a group basis (those with global in-scope activity exceeding £500m in the relevant accounting period) that is attributable to an in-scope activity and linked to UK users. There are some key exclusions to be aware of:

- an allowance of £25m exists, which means that the group's first £25m of in-scope revenue derived from UK users will not be subject to the DST (and if below that threshold, no DST is payable);
- financial service providers (including payment services) are excluded from the DST; and
- low margin businesses can opt into an alternative basis of charge calculated by reference to 80 per cent of the UK profit margin.

Businesses subject to DST will need to notify Her Majesty's Revenue and Customs (HMRC) within 90 days of meeting the relevant thresholds, submit annual self-assessment DST returns and pay any tax due within nine months from the end of each applicable accounting period (the same day as corporation tax).

Offshore receipts in respect of intangible property (ORIP)

From 6 April 2019, a 20 per cent income tax charge applies to many international businesses with valuable intangible property that is used to generate UK sales. The ORIP rules have received less publicity than the DST, but are also very important and are not limited to digital businesses.

The charge applies where a non-UK resident person located in a low tax jurisdiction (a jurisdiction with whom the UK does not have a full tax treaty) receives a 'UK derived amount'. A UK derived amount is an amount in respect of the enjoyment or exercise of an intangible property right where such enjoyment or exercise directly or indirectly 'enables, facilitates or promotes' UK sales. Intangible property is broadly defined and could catch payments derived from certain contractual rights as well as payments for intellectual property.

There are limited exemptions including where:

- the total value of UK sales is £10m or less in the tax year;
- the tax paid by the intangible property holding entity in its territory of residence is at least half of the UK income tax that would otherwise be payable under the charge; and
- the intangible property was not acquired from a related party, and all or substantially all of the development and maintenance of the intangible property took place in the holding entity jurisdiction.

Real estate

UK taxation of non-resident property gains

Since 6 April 2019, any person who is tax resident outside the UK and holds either: (1) a direct interest in UK land; or (2) a substantial (generally 25 per cent or more) indirect interest in UK land via an entity, including companies and most fund entities, that derives at least 75 per cent of its value from UK land (a 'property-rich' entity), is within the scope of UK tax on any capital gains realised on the disposal of that interest (although rebasing to April 2019 values may apply). Previously, non-UK investors were taxed on such gains only in limited circumstances.

Importantly, the rules continue to allow an exemption for some non-residents, such as certain pension funds, charities and sovereigns. While offshore collective investment vehicles (CIVs) (other than partnerships) are within the scope of the rules, helpfully, special rules have been introduced to prevent charges arising for many funds such that many fund structures, including the ever-popular Jersey property unit trust (JPUT), remain viable for UK property investment. However, the *quid pro quo* for those funds looking to benefit from the special rules is that investors in UK property-rich CIVs (whether UK or offshore) will not benefit from the 25 per cent *de minimis* threshold for the charge to apply to them, so all disposals of interests in such funds will potentially be caught by the rules subject to available reliefs. The rules are complex and the optimal application will depend on the particular structure and its investors.

Non-resident corporate landlords

From 6 April 2020, non-UK resident corporate landlords (NRCLs) became subject to UK corporation tax on their UK rental income, rather than to UK income tax. The different tax rates, computational

rules, and payment and filing requirements that apply to corporation tax (and the various corporate base erosion and profit shifting (BEPS)/Anti-Tax Avoidance Directive (ATAD) measures) will therefore apply to NRCLs going forwards – these are markedly different to the income tax rules.

Existing income tax withholding provisions under the non-resident landlord scheme will continue to apply to NRCLs, unless the NRCL has permission to be paid gross.

Covid-19 emergency measures

The UK Government introduced a number of measures in early 2020 aimed at easing the pressure on businesses during the Covid-19 crisis, including:

- a Job Retention Scheme whereby the government met 80 per cent of employment costs (including employer social security) of any 'furloughed' employees up to a maximum of £2.5k per employee per month – the scheme is currently being phased out and will end on 31 October 2020, with employers required to meet an increasing proportion of the employment costs together with all employer social security in the interim; a similar scheme was put in place to support self-employed workers;
- deferral of Q2 VAT payments for all businesses until the end of June 2020, and an extension of the time that businesses have to pay that VAT until 31 March 2021;
- deferral of income tax instalments for the self-employed; and
- suspension of business rates for a year for all retail, hospitality and leisure businesses.

In a 'mini-budget' announcement made on 8 July 2020, the government announced further measures to stimulate the economy, including:

- a reduction of VAT from 20 per cent to five per cent until 12 January 2021 aimed at the leisure industry, including restaurants, accommodation and visitor attractions;
- a new job retention bonus for employers for returning furloughed employees and measures to create jobs for persons aged 16–24;
- environmental recovery measures, including a green homes grant for homeowners; and
- a temporary increase in the nil-rate band for stamp duty land tax on residential properties to £500k.

New tax reporting regime: DAC 6

European Union Directive 2018/822 ('DAC 6') introduces a new tax reporting regime in the UK, which is in addition to the UK's existing domestic disclosure rules under the disclosure of tax avoidance schemes (DOTAS) and disclosure of avoidance schemes for VAT and other indirect taxes (DASVOIT) regimes. Brexit is not expected to impact the introduction of the rules.

DAC 6 applies to cross-border arrangements that satisfy certain 'hallmarks'. Although the first disclosures are not required until January 2021 (following deferral of the UK's first reporting deadlines due to the coronavirus crisis), the rules will apply retrospectively to any arrangements put in place on or after 25 June 2018. The scope of the reportable arrangements under the relevant EU Directive (and UK's implementing legislation) is very wide. HMRC released updated guidance in relation to the UK's implementation of DAC 6 on 6 July 2020, which can be found at **www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim600000**.

Other UK tax headlines

Entrepreneurs' relief

The longstanding UK capital gains tax relief known as 'entrepreneurs relief', which reduces the tax rate from 20 per cent to ten per cent on the disposal of certain business assets, has been scaled back materially and renamed 'business asset disposal relief' – previously individuals could benefit from a lifetime allowance of £10m gains (up to a £1m tax saving). This has been reduced to £1m gains (£100,000 tax saving). The change applies to all disposals made on or after 11 March 2020.

Off-payroll working rules

The UK was due to implement new rules for medium-sized and large businesses in the private sector from 6 April 2020 that require entities engaging the services of individuals through intermediaries (eg, personal service companies) to determine the employment tax status of the individual. These changes will be delayed to 6 April 2021. Similar rules are already in force for the public sector.

Brexit

No UK summary is complete without a note on Brexit. At the time of writing, Brexit continues on the timeframe set out in the Withdrawal Agreement made between the EU and UK in January 2020. Absent an agreement between the UK and EU, the transitional period (where the UK has ceased to be an EU Member State but EU law continues to apply) will cease automatically on 31 December 2020 and the supremacy of EU law in the UK will end.