

RSM! Thailand

**Special UK Budget Issue
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Advantage

Tax and business law intelligence for international companies



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UNITED KINGDOM 2009 Budget Review

As British expatriates make up a large portion of RSM Thailand's client base, RSM Advantage thought that it might be useful to re-produce the 2009 UK Budget, as Bentley Jennison.

Corporation Tax

Business Payments Support

HM Revenue & Customs are prepared to agree, in the current economic climate, to spread all tax payments due to them over a period of up to 6 months. However, this only applies to tax liabilities that are summarized by our RSM affiliate in the UK, RSM not yet due. Interest will be due on the deferred tax payments. Also, where a company is expecting to make losses in the current period that would be carried back to reduce the tax liabilities due, then the tax liability can be reduced to account for this under the business payment support system.

First Year Allowance on Plant & Machinery

For businesses investing in new plant and machinery, a temporary First Year Allowance of 40% will apply on expenditure between 1 April 2009 and 31 March 2010. This relief does not apply to cars or fixtures and fittings. This relief will effectively be given after the 100% relief arising under the Annual Investment Allowance.

Extension of the 100% Allowance on Energy Saving Plant

First Year Allowances are available on acquisitions of qualifying plant and machinery that saves energy or water and is included on the Government list at www.ece.gov.uk. This list has been amended for the latest developments in energy and water efficient technologies.

Car Allowances

The tax relief on cars acquired or leased after 1 April 2009 is dependent on the emission levels of the cars rather than the list price of the vehicle. The cut off is now 160g/km rather than the list price of £12,000. Compared to the previous rules, the new rules are generally less favourable for acquiring cars, whilst they are generally more beneficial for new leases.

Trading Loss Carry Backs

There is an extension of the ability of a company to carry back trading losses from 1 year to up to 3 years. The extension applies to losses arising in the accounting periods ending between 24 November 2008 and 23 November 2010. The losses that can be carried back 2 or 3 years are however capped at a total of £50,000 per company per annual loss period.

Intra-Group Debt Waivers

In the case of companies being owned by the same people, such as being part of the same group, when intra-group loans are waived, these are non-taxable for UK tax purposes. However, for trading balances, the release of the debt would not be tax deductible for the supplier company but the customer company would be taxed on the value released. Hence, a tax cost arises to the group. For debts formally released on or after 22 April 2009, this release will no longer be taxable for the customer company.

Late Interest Rules

Where a company has not paid interest to a connected company within 12 months of the end of its accounting period then tax relief for the interest is deferred until it is paid, unless the recipient is a UK resident company.

The rules have changed so that for accounting periods beginning on or after 1 April 2009, tax relief is available on the interest as it arises in the accounts. Any interest that has not previously been relieved will qualify for relief as it is paid. If a company prefers the paid basis for relief then it can elect for the first accounting period after the change to be on the paid basis and thereafter on the accruals basis.

Foreign Denominated Losses

Where companies have prepared their accounts in a currency other than Sterling, the tax profits or losses are calculated in the foreign currency then translated to Sterling at the end of the period. Any losses are then carried forward in Sterling and offset against the translated profits of later years.

For accounting periods commencing on or after 29 December 2007, the losses are carried forward in the foreign currency profits before translation to Sterling.

The company can elect for the change to be deferred to the first accounting period commencing after Royal Assent.

International Tax

Overseas Dividends

From 1 July 2009, foreign dividends received by all UK companies will be exempt from tax regardless of the level of holding (unless they fall within the anti-avoidance provisions). Currently, such dividends are taxable in the UK with relief for tax suffered overseas - if you own over 10% of the overseas company.

This is good news for small and medium sized groups as it should simplify their situation. The pre-budget report and draft legislation had previously stated that the exemption would only apply to large companies.

Controlled Foreign Companies

The CFC legislation will be amended to remove certain exemptions, which do not fit in with the exemption for

overseas dividends. Consultation is continuing on the CFC rules to deliver new legislation to tax profits earned offshore that have been diverted from the UK. Initial proposals led to a number of UK plcs moving their head offices overseas. The current proposals appear more likely to achieve the objective of not taxing profits that are genuinely earned overseas. However, the exemption for holding companies will be removed with effect from 1 July 2011.

Cap on Interest Deductions

For accounting periods ending on or after 31 December 2009, the amount of interest that can be deducted against UK taxable profits will be restricted based on the level of external interest in the worldwide group. This could significantly increase the amount of UK tax that is payable.

VAT

Simplification of the Option to Tax Rules

New rules come into effect from 1 May 2009, which aim to make it easier to opt to tax land and buildings.

The measures aim to broaden the automatic permission conditions and thereby lessen the need to seek HMRC permission to opt to tax.

Change of Standard Rate

The temporary reduction in the standard rate of VAT to 15% will cease on 31 December 2009 and the 17.5% rate will apply from 1 January 2010.

Anti-forestalling arrangements will be introduced in the Finance Bill of 2009 to counter arrangements that seek to apply the 15% rate to supplies of standard rated goods or services on or after 1 January 2010.

Such arrangements aim to reduce the VAT burden for businesses that cannot recover all VAT incurred and the new measures aim to prevent this by imposing a supplementary charge to VAT of 2.5% where certain conditions are met.

Cross-border VAT Changes

Several changes will be phased in from 1 January 2010 for businesses involved in cross-border supplies of goods and services. The changes include:

- Measures to achieve a situation where more supplies, but not all, are taxed in the country where the customer (rather than the supplier) is established;
- New time of supply rules for services;
- European Sales List reporting for supplies of cross-border services and changes to European Sales List reporting for goods; and
- A new electronic refund procedure for VAT incurred in other EU Member States.

Employment Taxes

NIC Increase for the Average Employee

There will be an increase of 0.5% on all rates of NIC, both primary and secondary, from 6 April 2011. In addition to this, the primary threshold will be raised to bring it in line with the income tax basic personal allowance. For employees on lower salaries, the increase in the primary threshold will offset the higher NIC contribution rate, with those earning up to approximately £26,450 per annum (assuming an annual 3% increase in all bands and thresholds between 2009 and 2011) noting a decrease in their contributions. For those earning in excess of this, level contributions will exceed current values.

Changes to Company Car Taxation

Changes to company car taxation from 6 April 2011 will:

- Remove the £80,000 price cap used to determine the car benefit charge;
- Remove discounts given to cars using various alternative fuels and to Euro IV diesel cars; and
- Reduce the lower threshold CO2 emissions figure by 5g/km thereby raising the percentage used to determine the car benefit charge by 1%.

Personal Tax

Rates of Income Tax

From 6 April 2010, a new rate of 50% on general income and a 42.5% rate on dividend income will be introduced on any income, which exceeds £150,000. Trustees of most trusts will also be taxed at 50% on general income and at 42.5% on dividends on any amounts exceeding £1,000 per year.

Also from 6 April 2010, the personal allowance will be reduced by £1 for every £2 of income exceeding £100,000 (after taking into account any trading losses, gross pension contributions and gift aid). Incomes of £112,950 or more will therefore receive no personal allowance - leading to a marginal tax rate of 60% on those affected.

Losses of Unincorporated Businesses

Up to £50,000 of trading losses made by a sole trader or a partnership in 2008/09 and 2009/10 can now be carried back up to 3 years. This effectively means that losses suffered in 2008/09 can be carried back against general income in 2005/06 and 2006/07.

No changes have been made to the unlimited loss rule, which still allows losses made in 2008/09 and 2007/08. Any unused losses continue to be carried forward against future trading profits.

Anti-avoidance Measures

The government has expressed concerns about spouses who work together in their own limited companies who pay themselves low salaries with the balance by dividends and one spouse generates the majority of the income and shifts some of it to a lower tax-paying spouse.

Fortunately, given the current economic challenges, the government has confirmed that it will not legislate against this as yet, but will instead keep it under review. Other loopholes have been closed with immediate effect.

Taxation of Personal Dividends

Shareholders in UK companies are entitled to a non repayable tax credit on dividends received, which has the effect of fully covering basis rate tax on the dividend and reducing the higher rate tax rate where applicable to an effective 25% of the net dividend. The Finance Act of 2008 extended this credit to apply to dividends received from foreign company shareholdings where the individual receiving the dividend holds less than 10% of the shares in the company and the foreign company is not an offshore fund.

The Finance Bill of 2009 will extend the credit further to dividends where the individual holds more than 10% of the shares of the company. There are qualifying conditions, the main one being that the credit will only apply where the foreign company is located in a qualifying territory, that is, one which has a double tax treaty with the UK with a non discrimination article. The Finance Bill will also extend the credit to offshore funds, which are companies, where the funds are largely invested in equities. Where more than 60% of the fund's assets are interest (or similar) bearing, then the credit will not apply.

Offshore Fund Gains

At present, individual investors in offshore funds, which are not companies, unit trusts or partnerships (that is, mostly those constituted by contractual arrangements) have to consider their own capital gains tax position where the fund disposes of its underlying assets.

The Finance Bill 2009 will change the current definition of an offshore fund so that where the definition applies, the individual's interest in the fund will be treated similarly to a share in a company such that disposals of underlying assets by the fund will not constitute a disposal by the individual. Partnerships that are transparent for tax purposes will not be affected, as they will be specifically excluded from the definition of offshore funds. This treatment will apply from 1 December 2009.

Corporate investors continue to be taxed as at present pending further discussions between government and industry as to how a similar relief could apply.

Inheritance Tax

Nil-rate Band

From 6 April 2009 to 5 April 2010, the nil rate band that is the amount of value in an estate taxed at 0% is £325,000.

From 6 April 2010 to 5 April 2011, the nil rate band will be £350,000.

Since October 2007, where a surviving spouse/civil partner dies and the first to die of the marriage/civil partnership had not used his/her nil rate band it can be transferred to the second to die, thereby giving up to two full nil rate bands on the second death.

Agricultural Property Relief

From 22 April 2009, it is possible to claim agricultural property relief on qualifying land located in the European Economic Area. Claims may also be made for inheritance tax paid on or after 23 April 2003 in relation to such land.

Financial Planning

Pension Schemes Lifetime Allowance

The chancellor has announced that the pension lifetime allowance and annual allowance will be frozen at £1.8 million and £255,000 respectively for 5 years from 2010/11 to 2015/16. This will specifically affect any individuals with final salary schemes or healthy private pensions.

The pension lifetime allowance is the maximum value a pension fund can be worth whilst retaining the normal tax benefits of pension schemes. Any excess will be taxed at 25% if a pension is received, or 55% if the excess is taken as a lump sum.

The annual contributions limit is the maximum contribution that can be made into a pension and receive income tax relief in any one year.

Assuming modest growth of 5% pa on a fund worth £1.8 million in April 2010 (assuming the economy is starting to recover at this time) then the fund would grow by an additional £500,000. If taken out as a lump sum, then the 55% tax charge would result in a £275,000 tax charge.

For completeness, the pension lifetime allowance for 2009/10 is £1.75 million and the annual allowance for 2009/10 is £245,000.

Pension Contributions

From 6 April 2011, higher rate tax relief will be withdrawn in part on any pension contributions paid by individuals who have earned over £150,000 of income in the current year, or in any of the two previous tax years. Anyone who has earned more than £180,000 will receive no higher rate relief whatsoever.

Anti-avoidance provisions from 22 April 2009 mean that any individuals earning more than £150,000 who make any large non-standard pension contributions in a tax year before 6 April 2011 will potentially be charged a special tax rate, which effectively cancels all higher rate tax relief on any excess above £20,000. A standard contribution is one made at least every quarter. Strangely, one-off contributions that are made every year will be regarded as non-standard. We will be lobbying the Government to address this anomaly. Higher rate relief will continue to be given on regular ongoing pensions made up to 5 April 2011.

Venture Capital Schemes

The tax relief on Enterprise Investment Schemes subscribed for on or after 22 April 2009 has been extended. Previously only £50,000 of EIS shares subscribed for before 6 October could be carried back into the previous tax year.

Both the £50,000 limit and the 6 October deadline have now been removed allowing 20% income tax relief to be claimed against this and last year's income in whatever proportion a taxpayer decides. Companies who have raised money by issuing EIS, Corporate Venturing Scheme or Venture Capital Trust shares will now have 2 years to spend the cash.

ISAs

From 6 October 2009, people aged 50 or over will be able to invest up to £10,200 in tax free ISAs, up from £5,100. This will be extended to all investors from 6 April 2010 onwards.

Investors in Authorized Investment Funds / Investment Trust Companies

Investors in certain types of investment vehicles should be aware that from 1 September 2009, such funds are able to elect not to be taxed to corporation tax on certain types of income that they receive. Instead, the individual investor may be personally taxed as if they owned the income-generating assets directly.

Compliance Regime

HMRC Powers/Compliance

A number of changes have been announced in relation to tax payments and Revenue powers.

Managed Payment Plans will allow income tax and corporation tax payers to spread payments over a period before and after the normal due date without incurring the normal late payment charges. This will not be introduced prior to April 2011.

Small tax debts will be collectible via PAYE. This is unlikely to be in place prior to April 2012.

HMRC will have power to demand from companies and other third parties the names and addresses of tax debtors. This will take effect from the date of the Royal Assent of the 2009 Finance Bill.

HMRC will stipulate revised record keeping requirements and will have new inspection powers expected to be in place from 1 April 2010 for environmental taxes, inheritance tax, stamp duty land tax, stamp duty reserve tax, insurance premium tax and petroleum revenue tax.

Time limits for claiming repayment of income tax, corporation tax and capital gains tax where there has been an error in a return will be revised with effect for claims made on or after 1 April 2010. From this date, the normal 5 years and 10 month claim deadline for non-companies and 6 years for companies will be reduced to 4 years.

Late Filing/Tax Payment

The 2009 Finance Bill will include amendments to the penalty regime for late returns and late payment of tax. The changes will affect income tax, corporation tax, PAYE, NIC, CIS tax, stamp duty land tax and stamp duty reserve tax, inheritance tax, pension schemes tax and petroleum revenue tax. There are currently a variety of penalty consequences and the new rules will replace these with more aligned rules, although not all at the same time. It is expected that the first use of the new regime will apply to late PAYE from April 2010.

The main elements of the new regime will be:

- An automatic £100 penalty for late return submission irrespective of whether the tax is paid on time;
- Daily penalties of £10 where the return is more than 3 months late (annual returns only);
- A penalty of 5% of the tax due for the return where the failure to submit is over 6 months; and
- 70% where there is a delay of over 12 months if information has been deliberately withheld (100% is deliberate concealment).

Where tax is paid late, the new provisions (mainly affecting self assessment taxes, corporation tax and inheritance tax) will provide for a penalty of 5% of the tax still unpaid one month after the payment date (or the filing date of the return), plus further 5%

penalties after 6 months and 12 months. Where time to pay has been agreed these penalties would be suspended. Similar penalties will apply for CIS and PAYE.

A new system of harmonized interest charges will also be introduced in the Finance Bill.

Offshore Disclosure Facility

It is confirmed that a second Offshore Disclosure Facility will be introduced in Autumn 2009. Full details are not yet available, but the penalty is likely to be higher than under the first Offshore Disclosure Facility.

A word of warning, HMRC are intending to make public the names of taxpayers who are found to be guilty of tax evasion and who do not either make an unprompted disclosure or when challenged so, do not make a full disclosure.

Corporate Transparency

For accounting periods commencing on or after Royal Assent the senior accounting officer of a large company will be responsible for establishing and monitoring the accounting system of the business to ensure they enable accurate tax reporting. The senior accounting officer has to certify annually that the systems are adequate or report the shortcomings. The company is required to notify HMRC the identity of the senior accounting officer.

There are penalties due by both the company and the senior accounting officer for careless or deliberate failure to comply with these rules.

The information herein was contributed by John Hodgson, Head of Tax, RSM Bentley Jennison. www.rsmbentleyjennison.com

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