



International news and analysis to help you in your international tax strategy.

➔ Focus on: United Kingdom – Disclosure of tax avoidance schemes



On 1 November 2008 the new Tax Avoidance Schemes (Information - Amendment) Regulations 2008, SI 2008/1947, issued by Her Majesty's Revenue and Customs (HMRC) will enter into force. The new provisions amend the Scheme (Information) Regulation 2004, which prescribe the information to be provided when certain persons (i.e. promoters) are required to notify tax planning arrangements.

On being notified about the existence of the arrangement, HMRC allocate a Scheme Reference Number (SRN) to the promoter, which must pass on the SRN to its client, on becoming aware that the client has implemented such an arrangement.

The client must then report the SRN back to HMRC, thereby identifying itself as a user of the scheme and it must also pass on the SRN to other parties who may obtain a tax advantage from the arrangement.

The new Regulation prescribes the following:

- the information that a promoter must provide to a client;
- the information that the client must provide to other likely beneficiaries of the tax arrangement; and
- the period within which the client must provide that information.

Provided certain conditions are met, a client who is an employer is exempted from the duty to provide information. Generally, this applies in the case of employment schemes, where the person obtaining a tax advantage is an employee who obtains the advantage by reason of his employment.

The Commissioners' anti-avoidance strategy has four main elements:

- To discourage taxpayers from using schemes. This includes a critical appraisal of all new legislation to reduce the potential for tax avoidance as well as publicising successes in closing down avoidance schemes.
- To identify as early as possible schemes that are being used.
- To challenge avoidance schemes by contesting returns and, where necessary, pursuing the matter through the Courts.

To produce legislative changes that will close down avoidance schemes where litigation is not appropriate or where the amount of tax at stake is particularly large.

Opportunities for taxpayers: new obligations of compliance.

LATVIA

The proposals of amendments to corporate taxation

On 14 August 2008, the Ministry of Finance presented certain amendments to tax laws, which introduce several new tax incentives and make the Latvian tax system in line with EC law. Once approved by the Cabinet of Ministers and approved by the Parliament, the new provisions will enter into force, although some of them are expected to become effective in 2009. The main amendments relating to corporate taxation are summarised as follows:

- abolition of the 5% withholding tax currently imposed on payments made to non-residents for the use of aircraft employed in international transportation;

Contents

FOCUS ON:

UNITED KINGDOM:

Disclosure of tax avoidance schemes

LATVIA:

The proposals of amendments to corporate taxation

AUSTRALIA:

Business income of foreign hybrid exempt

INTERNATIONAL MODELS:

The Singapore Equity Remuneration Incentive Scheme for start-ups

- introduction of the "notional interest deduction", i.e. the possibility to deduct notional interest expense from the taxable income, which will be calculated based on the amount of retained earnings, if any, and the specific interest rate on loans granted to Latvian enterprises, as determined by the Bank of Latvia;
- introduction of a reinvestment incentive, under which any gains on the disposal of a fixed asset (subject to certain exceptions, such as for assets held for resale, transportation vehicles, artworks, etc.) will be disregarded if the proceeds are reinvested into a more useful similar asset, within the prescribed time limits;
- extension, until the end of 2013, of the period within which the acquisition of the qualifying high technology equipment will give rise to an accelerated depreciation. (The period is currently set to end in 2010.) It is also proposed to maintain at 1.5 the index applied to the acquisition costs of such equipment for depreciation purposes. The index would normally decrease annually;
- accelerated depreciation of registered trademarks and patents by means of applying the index of 1.5 to their acquisition costs for depreciation purposes; and
- extension of loss carry-forward from 5 to 8 years.

AUSTRALIA

Business income of foreign hybrid exempt

The Interpretative Decision ATO ID 2008/117 issued on 5 September 2008 by the Australian Taxation Office confirms that the business income derived by a US LLC, which is treated as a foreign hybrid company for Australian income tax purposes, is non-assessable non-exempt income of the shareholder in the LLC.

Certain foreign entities which are considered as transparent for tax purposes in their home jurisdiction are classified as "foreign hybrids" under Australian tax legislation and are treated as transparent entities, i.e. the income derived by the entity is treated as derived by its partners. Section 23AH of the Income Tax Assessment Act 1936 treats active foreign branch income derived by an Australian resident company as non-assessable non-exempt income of the resident company and this income is de facto not subject to any tax. Subsection 23AH(10) extends this treatment to income derived through interposed partnerships and trusts.

The above mentioned Interpretative Decision concludes that where the LLC is a foreign hybrid carrying on a business in the United States, the LLC will have a permanent establishment in the US and will pass the active income test. It follows that section 23AH will apply to exempt income of the LLC in the hands of an Australian corporate shareholder.

The Interpretative Decision notes that the outcome may be different where the derivation of the business income of the LLC involves related parties of the LLC or the Australian shareholder.

INTERNATIONAL MODELS

The Singapore Equity Remuneration Incentive Scheme for start-ups

As announced in the 2008 Budget, the Inland Revenue Authority of Singapore has issued a circular letter containing the details of the Equity Remuneration Incentive Scheme (ERIS) for employees of start-up companies for the period 16 February 2008 to 15 February 2013.

According to its provisions, a "qualifying employee" of a "qualifying company" can benefit from a tax exemption of 75% of up to SGD 10 million of gains from employee stock option (ESOP) or employee share ownership (ESOW) plans over a 10-year period, provided the following criteria are met:

- The ESOP plan meets the minimum vesting period as prescribed by the Singapore Exchange, regardless of whether the company is listed on the Exchange. The vesting period is currently (i) 1 year where the exercise price of the option is equivalent to or exceeds the market value of the shares at the time the option is granted, and (ii) 2 years where the exercise price of the option is at a discount to the market value of the shares at the time the option is granted. The market value of the shares is to be substituted by their net asset value in the case of unlisted companies.

- The ESOW plan meets a prescribed minimum holding period, of (i) 6 months where the price payable to acquire a share is equivalent to or exceeds the market value of the shares at the time the share is granted, and (ii) 1 year where the price payable to acquire a share is at a discount to the market value of the share at the time the share is granted.
- A "qualifying employee" is an employee (excluding a non-executive director) who has been granted share options under ESOP plans or shares under ESOW plans, by a qualifying company. At the time the option or share is granted, the employee must be exercising employment for the qualifying company and also (i) be working for at least 30 hours per week for the qualifying company, and (ii) not have effective control of the qualifying company (i.e. not owning shares with voting power of 25% and more in the company).
- A "qualifying company" is a company that grants share options under ESOP plans and shares under ESOW plans to its employees within the first 3 years of its incorporation. At the time of grant of options or shares, the company must be incorporated and carrying on business in Singapore and have a total share capital which is beneficially held directly by maximum 20 shareholders: (i) all of whom are individuals, or (ii) at least 1 of whom is an individual with 10% or more of the company's issued ordinary share capital. In addition, the aggregate market value of the company's gross assets at the time the options or shares are granted must not exceed SGD 100 million.
- It is noted that the ERIS is available only in respect of ordinary shares and excludes Group ESOP or ESOW plans operated by the parent company of a qualifying company. In addition, the ERIS schemes for start-ups, small and medium sized enterprises and all other corporations are mutually exclusive such that a company may, at any one time, avail itself to only *one* of the schemes in respect of their ESOP or ESOW plans.

The Circular provides rules and examples for determining the market value of shares and gross assets of a company as well as the administrative and documentary requirements for qualifying companies and qualifying employees that are eligible for the tax exemption.



orienta@pragma-eu.com
orientasagl@bluewin.ch

This publication has been written in cooperation with Ts Tax Advisors
Contribution:
Dott. Sebastiano Garufi

