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Remitting Funds to the UK for Business Investment

27 August 2013

Following the enactment of Finance Act 2012 on 17 July 2012, Private Client partner Alice Palmer and solicitor Emily Hewlett summarise the new tax relief for foreign income or gains brought to the UK by a remittance basis taxpayer in respect of certain qualifying investments in UK companies, to take effect from 6 April 2012.

Individuals who are resident but not domiciled in the UK are in general subject to UK income and capital gains tax on any foreign income and gains realised on non-UK assets which are remitted to the UK.

From 6 April 2012, Business Investment Relief offers remittance basis taxpayers the opportunity to remit foreign income or gains tax free for the purpose of making certain "qualifying investments". There is no limit on the amount that may qualify for the relief but if the investment subsequently ceases to qualify for the relief it will become taxable unless certain steps are taken within prescribed time limits.

What is particularly attractive about the Relief is that it can be combined with Enterprise Investment Scheme Relief, Entrepreneur's Relief and Business Property Relief, which can offer additional income capital gains and inheritance tax advantages. EIS Relief can give a capital gains tax exemption on the investment as well as offering a credit of 30% against other income at the time of investment. Entrepreneur's Relief can reduce the capital gains tax rate to 10% and Business Property Relief can offer a 100% exemption from inheritance tax. In the right circumstances this can make investing in the UK a very attractive financial proposition for non-domiciliaries.

Conditions

"Relevant person"

The investment can be made by the remittance basis taxpayer himself or a closely connected person which includes a spouse or civil partner, children or grandchildren, close company in which the taxpayer is a participator, a company that is a 51% subsidiary of a close company, any non-UK resident company in which the taxpayer is a participator that would be a close company if it were resident in the UK and any company that is a 51% subsidiary of such a company and the trustees of a trust of which any of the above persons is a beneficiary or anybody connected with such trust.

"Qualifying investment"

The investment must be made by way of shares being issued in or loan to an eligible trading,

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stakeholder or holding company ("the target company"). Shares purchased from an existing shareholder will not qualify. An eligible trading company is a private limited company which carries on at least one commercial trade (or is preparing to do so within the next 2 years) and carrying on commercial trades represents at least 80% of the company's turnover whilst the investment is in place.

"Trade" includes development and letting of property and research and development from which it is intended a commercial trade will derive. An eligible stakeholder company is one which exists wholly for the purpose of making investments in eligible trading companies and an eligible holding company holds controlling investments in an eligible trading company.

No relevant person can (directly or indirectly) obtain or become entitled to obtain any benefit in money or money's worth, which is directly or indirectly attributable to the making of the investment (the "extraction of value rule"). However, this does not prevent investors receiving benefits in the normal course of business and on arm's length terms (e.g. receiving a commercial salary as an employee or dividends in respect of shares in the company or making a disposal of a qualifying investment to a connected person at deemed market value).

Timing

The investment must be made within 45 days of the money or other property being brought to or received in the UK.

Claim

The relief is not automatic and the taxpayer is required to make a claim on his self-assessment tax return by 31 January following the tax year in which the investment is made (and any person who would not otherwise be required to file a tax return will need to file a return).

Duration of the relief

The relief will cease (and the funds will be treated as having been remitted) if, following one of the following "potentially chargeable events", the taxpayer does not take appropriate mitigation steps:-

- the target company ceasing to qualify as an eligible trading company, or stakeholder company of a holding company,
- the person who made the investment disposing of all or part of the investment,
- the extraction of value rule being breached, or
- the 2-year start up rule being breached.

This event will always be followed by a "grace period". Where part or all of the investment is disposed of, the funds must be taken offshore or reinvested within 45 days. Otherwise, the investor has 90 days to dispose of the investment and a further 45 days to take the proceeds offshore or reinvest them. The amount required to be taken offshore or reinvested is limited to the amount of the initial investment.

Mechanics

Investments made from mixed funds

Where the amount invested comes from mixed funds including income, capital gains and clean capital, the holding is treated as containing the same proportion of each kind of income, gains and capital as contained in the invested property. However, income and capital gains to which the relief applies do not become clean capital.

Interest

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Any interest or dividends arising on the invested funds will be taxable in the usual way as UK source income.

Assurance procedure

HMRC has made available a voluntary advanced assurance procedure to enable potential investors to seek their view on whether a proposed investment would qualify for relief. This might take up to 30 days.

Conclusion

This is potentially a very valuable relief as it allows non-UK domiciled individuals the opportunity to utilise unlimited amounts of offshore income and gains previously ring-fenced from remittance to invest in UK businesses in which they or their families have an interest (subject to the extraction of value rule). However, the mechanics of the relief are far from simple so obtaining specialist advice and/or utilising HMRC's advance assurance procedure is to be advised.

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For further advice please contact Emily Hewlett by email at Payne Hicks Beach.

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