

THE UNITED KINGDOM AS AN OFFSHORE CENTRE

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The title may come as a surprise to some readers. The perception is that the United Kingdom has high taxes. However, in reality, first, the rates of tax are competitive and, second, the UK tax system has itself carved out a beneficial system for non-residents which permits them to make use of UK situate service providers without falling into the UK tax net. The top rate of income tax for UK residents or non-residents with UK source income is 40%. Further, following a recent announcement by the Chancellor, the top rate of capital gains tax is limited to a flat rate of 18%. However, non-residents are not chargeable to capital gains tax even if the assets disposed of are situated in the United Kingdom. Resident corporates are liable to corporation tax at a rate of 30% (with small companies liable to tax at a 19%). Non-residents are liable to tax on UK source income and on gains realised by a permanent establishment in the UK through which they carry on a trade in the UK. Finally, inheritance tax is chargeable at a rate of 40% on death transfers (20% on certain lifetime transfers) on all assets other than excluded property. In effect, non-residents who are non-domiciled are not liable to inheritance tax on foreign situate assets and certain UK situate assets e.g. Government securities.

Non-residents are in a favourable position in relation to UK partnerships. The United Kingdom has three types of partnerships: general partnerships, limited partnerships and limited liability partnerships (introduced by the Limited Liability Partnerships Act 2000). The limited liability partnership limits the liability of each partner in respect of the acts and omissions of the other partners. Partnerships are regarded as transparent for most tax purposes: unlike companies, they are not taxable entities, and it is irrelevant for the purposes of the taxation of partnerships where the central control and management of a partnership is exercised. Non-resident partners are not liable to UK income tax on foreign-source income. It should be noted that the profits of any trade carried on by the partnership in the United Kingdom will have a UK source.

Further, the UK offers a highly favourable tax regime for trusts made by settlors who are non-resident, not ordinarily resident and non-domiciled and which have at least one trustee who is not resident in the United Kingdom, even though the other trustee or trustees are resident. Foreign income and any gains arising to the trust (including gains arising on a disposal of UK-situate assets) are not chargeable to tax. Further, non-resident beneficiaries will not be chargeable to income tax or capital gains tax on distributions from such trusts.

UK resident companies also have their uses. For instance, a company (the parent) situated in a traditional tax haven may wish to set up a UK resident subsidiary company which acts as its agent in making sales to third parties who may not wish to be seen to trade with companies situated in traditional tax havens. Provided that the sales contracts are not made in the United Kingdom, the UK company will pay tax on its agency fees (ascertained on an arm's length basis) and the trading profits of the parent will not be chargeable to UK tax.

The United Kingdom does not levy tax on outgoing dividends, and accordingly a UK company can sometimes be used to advantage in reducing the exposure to tax on distributed profits of a foreign company. For example, a UK company, which is the holding company of an operating company situated in another territory may, as a result of the relevant double tax agreement or under the Parent/Subsidiary Directive, receive dividends from the operating

company free of, or at a reduced rate of, withholding tax. It may be entitled (by way of unilateral relief or treaty relief) to credit for such withholding tax and the underlying tax on the profits out of which the dividends are declared. If this amounts to 30% (the rate of UK corporation tax), there will be no UK tax to pay. The sale by the UK holding company of its holding in its trading subsidiaries, provided that the conditions for “substantial shareholding relief” are met, will be exempt from tax. The United Kingdom has an extensive network of tax treaties to which UK resident companies have access.

The clear advantage of using the United Kingdom in any structure is that, quite apart from the favourable tax regime it offers non-residents, it does not feature on any blacklist and the presence of an entity situated in the United Kingdom will, generally, not prejudice foreign revenue authorities against the transaction or structure.

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