UK INWARD INVESTMENT

OCTOBER 2017

INTRODUCTION

Welcome to this latest edition of UK Inward Investment and one which goes to print at an interesting time in the UK's history. Whilst Brexit negotiations are now underway, much speculation remains about how the talks will develop and what the likely outcomes might be. Meanwhile, the pound remains weak and the market stable, which provides some exciting opportunities for those looking to invest in the UK.

Predictions were that Foreign Direct Investment would slump after the Brexit vote but Andy Crook highlights how that has not been the case. He looks at why the UK market is still attracting investment and the factors which influence this.

While Brexit might grab the headlines, there are also many changes in tax legislation that have a major bearing on the UK economy and those looking to invest here. Lisa Spearman looks at what is changing and highlights some of the areas where it is possible to come unstuck if you do not seek professional advice.

Liz Cuthbertson is getting quite a reputation for her thought-provoking and insightful articles on property, having featured in Accountancy magazine a couple of times in recent months. Here, Liz looks at some of the key changes we are expecting to become legislation in the UK later this year and the impact of them on those who are either looking to buy property in the UK or who already own UK property.

The increasingly global nature of business means that more than ever overseas employees are visiting the UK to carry out work for their international group employer. Even on a short term basis a Pay As You Earn (PAYE) obligation exists, although not all are aware of this. Mansel Turnham examines the subject of overseas employees and provides us with the what, when and how.

Outsourcing is becoming a popular choice for many and especially for UK subsidiaries of overseas parent companies. Ross Lane looks at some of the benefits for doing so and highlights the types of services which can be provided.

The recent developments in the Brexit negotiations have the potential for positive outcomes as far as VAT is concerned. Richard Collier considers what we know so far and shares the good news.

I do hope you enjoy reading the articles by our team at Mercer & Hole. As always, please do get in touch with me or your usual contact at the firm if you would like to discuss any of the topics we have covered in more depth.

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IN THIS ISSUE:

FOREIGN DIRECT INVESTMENT POST BREXIT

FOREIGN DIRECT INVESTMENT (FDI) HAS FALLEN SINCE THE FINANCIAL CRISIS BUT AT OVER 9% OF GDP IT REMAINS A SIGNIFICANT PROPORTION OF THE UK ECONOMY. THE BREXIT VOTE BROUGHT PREDICTIONS OF A BIG DROP-OFF IN THIS FIGURE WITH THE SLUMP EXPECTED TO BEGIN ALMOST IMMEDIATELY. HOWEVER, SO FAR THERE HAS BEEN NO SIGN OF A FALL.

Many overseas companies have actually increased their investment in the UK since the vote and there has been no decline in FDI with the UK confounding expectations and continuing to prove attractive. So what is it that makes the UK so attractive and will this continue post Brexit?

We don't know what the landscape of Brexit Britain will look like but it is almost certain that the UK's access to the free European market will be restricted. You would expect that many businesses may well be taking a wait and see approach to Brexit negotiations with regards to their investment decisions but what is clear is that is not the case for all. There are a number of factors driving this.

The drop in Sterling since the vote makes investing in the UK a cheaper option. I've seen a number of US firms set up UK subsidiaries with the sole objective to supply their US holding company with services for a cost less than these services could be obtained at home. For larger companies, making acquisitions of UK companies can also be cost effective.

The UK remains a business friendly environment with a low level of restrictive rules and red tape. Despite a hung parliament at the last election, the political landscape remains relatively stable and we have a legal system that can be relied upon.

The rate of corporation tax in the UK is currently 19% which is the lowest in the G7. Further reductions to 17% have been announced and the UK government clearly see low corporation tax as an inducement for investment. The tax allowances for Research and Development (R&D) are generous and with foreign owned companies more likely to invest in R&D, this is likely to have had a very positive effect on FDI.

Whilst previously overseas companies invested in Europe, often the UK, to give access to the European markets, in future we will see companies invest in the UK just to give access to UK markets. In time we will see trade agreements with overseas nations outside Europe and European companies will want to use the UK to give access to these markets.

Whether the UK will ultimately gain or not from Brexit remains to be seen. There is no doubt that the country's economic performance and its ability to attract FDI has confounded critics to date. A post Brexit Britain will remain an attractive proposition to many investors.

IF YOU WOULD LIKE TO DISCUSS ANY ASPECT OF INVESTING IN THE UK, I WOULD WELCOME YOU TO GET IN TOUCH WITH ME OR YOUR USUAL CONTACT AT MERCER & HOLE.

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REGULATORY CHANGES: WHAT TO LOOK OUT FOR IN ADDITION TO TAX ISSUES

TAX PLANNING IS A KEY CONSIDERATION FOR ANYONE INVESTING IN THE UK BUT THERE ARE A NUMBER OF REGULATORY MATTERS WHICH HAVE RECENTLY BEEN INTRODUCED, OR WILL SHORTLY BE INTRODUCED, WHICH MUST NOT BE OVERLOOKED. THE CONTEXT IS THAT IN RECENT YEARS, THE UK HAS BEEN AT THE FOREFRONT OF THE TAX TRANSPARENCY AGENDA AND IS KEEN TO ENSURE THAT GLOBAL TAX AVOIDANCE AND EVASION IS ELIMINATED WHEREVER POSSIBLE.

Readers may be familiar with Foreign Account Tax Compliance Act (FATCA) which was a United States initiative to ensure that the global activities of US citizens were identified. FATCA was both adopted and adapted by other countries so that in addition we have the Common Reporting Standard (CRS) which is organised by the Organisation for Economic Co-operation and Development (OECD). Together these initiatives facilitate the exchange of information between tax authorities so that transactions are linked back to a country of residence and tax obligations can then be enforced.

In addition to signing up to the International agreements, the UK has also introduced a number of domestic transparency initiatives which will affect inward investors. Liz Cuthbertson explains some of the new tax charges affecting even non-residents in her article 'Is investment in the UK still alive?' but there needed to be a means of policing them. For this purpose, the UK now has a register of "persons with significant control" over companies with a presence in the UK. This means there is a publicly accessible record at Companies' House, which must be maintained by the company, of the individuals behind it. Failure to comply is a criminal offence.

In a not dissimilar vein there is also a register of Trusts and again the individuals behind the trusts must be disclosed. The Trust register is administered by HMRC and any trust with a UK tax liability must comply again at the risk of criminal sanction for a failure. The information required is extensive and may take some time to collect but there are deadlines for registration.

The final piece of the jigsaw (hopefully) is a new and tougher "requirement to correct" tax returns with an omission or error. Failure here will attract financial penalties.

The authorities are hoping to prevent money laundering and tax evasion through a combination of tough penalties and reputational damage. The problem is that even innocent errors can be caught in this regime and ignorance of the law will not be a defence.

AT MERCER & HOLE WE ARE HAPPY TO ADVISE YOU ON HOW THESE CHANGES IMPACT UPON YOU SO THAT YOU CAN CONCENTRATE ON YOUR BUSINESS HERE, IN THE KNOWLEDGE THAT YOU ARE FULLY COMPLIANT. IF YOU NEED FURTHER INFORMATION, PLEASE CONTACT LISA SPEARMAN OR YOUR USUAL PARTNER.

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IS INVESTMENT IN

FIRST BREXIT, THEN MORE TAX CHANGES APPEAR TO TAKE AT LEAST SOME OF THE BLAME FOR HURTING THE UK ECONOMY. STERLING HAS DEPRECIATED AND SO, FOR SOME OVERSEAS INVESTORS, THIS HAS PRESENTED GOOD INVESTMENT OPPORTUNITIES. SOME KEY CHANGES TO UK TAX ARE EXPECTED TO BE LEGISLATED LATER THIS YEAR. BELOW I COMMENT ON THE IMPACT OF THESE AND WHAT NOW NEEDS TO BE DONE BY CLIENTS EITHER LOOKING TO BUY PROPERTY IN THE UK OR WHO ALREADY OWN UK PROPERTY.

UK RESIDENTIAL PROPERTY

INHERITANCE TAX

From 6 April 2017 UK residential property will be within the scope of UK Inheritance Tax (IHT) for the beneficial owner(s) no matter how it is held. Therefore, non UK domiciled individuals can no longer shelter their UK property or properties from UK IHT with the use of offshore companies as has been afforded by accepted structuring in the past. Instead, the beneficial owners of UK property will have UK IHT exposure in the event of their death in which case they will have a chargeable UK estate and IHT at 40% potentially payable on the amount at stake. Computing just how much is in a person's estate is complex but this should certainly be considered.

Existing wealth holding structures containing UK residential properties will therefore benefit from a review to identify both the UK tax exposure and reporting obligations if retained and whether any possible improvement to overall UK tax exposure can be made. Often holding structures have, of course, been created for reasons other than tax and therefore there could be very good reasons to them. These must not be overlooked in the overall decision-making process.

Unless the properties are sold and the proceeds removed from the UK, which is probably a drastic option for most, the reality is that non domiciliaries are going to face at least some UK IHT at some stage over time. As the rate of UK IHT on death is 40%, they should therefore look to reduce UK IHT exposure in a reasonable way whilst meeting their overall succession plan.

Bespoke UK estate and tax planning is something we offer to all our clients ensuring that their asset wealth is both protected and passes on to the persons of their choice on death..

COMMERCIAL PROPERTY

Non domiciled clients can still shelter UK commercial property from UK IHT with the use of an offshore company provided the non domiciled beneficial owner or owners are neither domiciled nor deemed domiciled in the UK at the time of doing so. Unsurprisingly, therefore, it is possible that commercial property investment in the UK by non domiciliaries is, as reported in the media, apparently thriving.

INCOME TAX

If income arises from a UK asset that income is UK source and is generally taxable in the UK. Rental profits are assessable on a non UK resident landlord and there are strict UK filing and payments obligations to adhere to. Our compliance team prepares UK tax returns and deals with all correspondence with HMRC.

THE UK STILL ALIVE?

BRINGING FUNDS TO THE UK

To avoid any unwanted UK tax charge the most appropriate funds for any investment need to be identified. For individuals not resident in the UK there should not be an issue although if you are only absent for a short time you should seek advice. For non-UK domiciled individuals who have been resident in the UK more care will need to be taken to prevent unwanted consequences.

Clean capital should be used in priority to any other funds – this is primarily the funds the individual had before they became resident in the UK. Gifts from non-UK resident and non-UK domiciled individuals also represent a source of tax-free funds. Care must be taken to ensure any gifts are effected offshore before being remitted to the UK.

It is common for individuals who have been resident in the UK for a long period to have accounts that are a mixture of clean capital and income and gains that have arisen since they became resident in the UK. Withdrawals from these mixed accounts will have UK tax consequences – income and gains are deemed to be withdrawn before any of the clean capital. Ideally before coming to the UK accounts should be set up to receive income and gains, preventing the clean capital from being tainted.

As part of the changes to the rules on the taxation of non-domiciled individuals the government is also planning to introduce a one-off opportunity for non-domiciled individuals resident in the UK to 'cleanse' their non-UK mixed accounts. The legislation is still in draft but it should present an opportunity to access previously buried clean capital within the window of oppourtunity. There will be strict conditions - one in particular is that you will have to have made a claim for the remittance basis while resident in the UK.

No matter where you are resident or domiciled, it is critical that individuals investing in the UK seek full advice before doing so. Taxes in the local jurisdiction may also need to be considered and we will work collaboratively with our overseas TIAG and TAG Law member firms to do so.

IF YOU WOULD LIKE TO DISCUSS HOW THESE CHANGES IN UK TAX LEGISLATION MAY IMPACT ON YOU OR YOUR CLIENTS, PLEASE GET IN TOUCH WITH LIZ CUTHBERTSON OR YOUR USUAL CONTACT AT MERCER & HOLE.

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INTERNATIONAL EMPLOYEES – SHORT TERM BUSINESS VISITORS

Where a UK company is part of an international group, it will be common for group employees to visit the UK to perform duties for the UK company. Where these visits form part of a secondment arrangement, resulting in the employee becoming UK tax resident, the UK company's obligations are likely to be clear – UK income tax and national insurance (if applicable) will need to be deducted via Pay As You Earn (PAYE) when their secondment commences.

However, not all organisations will be aware that a PAYE obligation also exists where group employees visit the UK and perform duties here on a short term basis. These visits could be for a number of days, weeks or months and the UK company will be treated as the employee's 'host employer' for UK tax purposes.

For Short Term Business Visitors (STBV), the basic position is that the UK company must operate PAYE in relation to the visiting employee's UK workdays – the obligation applies even if the UK company has not incurred the associated salary cost. This can be a considerable compliance burden as companies must monitor their visitors and UK workdays to ensure that PAYE is operated correctly under Real Time Information. There is no de-minimus and a single UK workday would be caught.

The good news is that the PAYE obligation in respect of income tax can be removed if the UK company is able to enter into a STBV agreement with HM Revenue & Customs (HMRC). A STBV agreement will be available if the UK has a Double Tax Treaty in place with the employee's home jurisdiction, which provides that their salary should not be subject to double taxation. The STBV agreement acts to modify the basic PAYE requirement to reflect the income tax relief available under the treaty.

For the agreement to be effective, the relevant employee must not spend more than 183 days in the UK in any 12 month period and the UK company must not bear the cost in respect of their UK workdays (although HMRC have stated that the latter requirement is relaxed if the employee spends less than 60 days in the UK). Even with an agreement in place, it is still necessary to maintain detailed records of UK visits and a report must be made to HMRC in respect of employees who worked in the UK for more than 60 days – this is due for submission by 31 May following the end of the tax year.

It is important to note that the STBV rules are not restricted to visitors from group companies – if an employee of an external organisations visited the UK to perform duties for the company, this could also be caught. UK employers should therefore consider all visitors when reviewing the position and establishing if an STBV agreement is required.

Unfortunately the national insurance position of the visiting employee is outside the scope of the STBV agreement and must be considered separately. The exposure to national insurance contributions (for both the employee and employer) will be dependent on the number of days spent in the UK by the employee and the terms of any social security agreement in place between the UK and their home country. The UK has a wide ranging agreement in place with other EU/EEA member states and there are also many individual agreements with other countries.

IF YOU WOULD LIKE TO DISCUSS ANY ASPECT OF OVERSEAS EMPLOYEES WORKING IN THE UK, PLEASE GET IN TOUCH WITH MANSEL TURNHAM OR YOUR USUAL MERCER & HOLE CONTACT.

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OUTSOURCING – WORKING SMARTER

Whether you are considering starting a new venture in the UK or establishing a UK subsidiary of an already established group there are a myriad of commercial, operational, legal and financial issues to consider. A key decision to be made from the outset is whether or not to outsource some or all of the 'back-office' functions that will be required in order to support the running of the business.

Many companies are keen to minimise the burden of the red tape and bureaucracy that comes with establishing a presence in an overseas territory. Despite attempts by the UK government to simplify the rules for new businesses, the regulations are still rather complex. Staying on top of developments can be time consuming and distracting when running the business should be of paramount importance.

Outsourcing provides clients with as much or as little support as required, avoiding the need to hire employees on permanent contracts, investing in infrastructure such as finance systems and of course paying for office space in which to house them.

Advances in technology mean that businesses now regularly operate with a 'virtual' finance team using cloud accounting solutions such as Quickbooks Online or Xero to provide real time financial information to clients. This enables commercial decisions to be taken on a timely basis whilst ensuring that routine compliance matters such as filing annual accounts and tax returns can be dealt with quickly and efficiently.

The types of services which can be outsourced include:

- Payroll (including RTI compliance, year end submissions and BACS bureau);
- Book-keeping, including invoice payment;
- Preparation of management accounts;
- VAT return preparation, with EC sales listings and Intrastat returns;
- Assisting with group or bank reporting requirements; and
- Preparation of cash flow forecasts and budgeting.

Those who choose to outsource operate in a wide variety of sectors and a significant number are UK subsidiaries of overseas parent companies.

AT MERCER & HOLE, WE HAVE A HIGHLY TRAINED TEAM OF OUTSOURCING SPECIALISTS ON HAND TO FULFIL CLIENT REQUIREMENTS. IF YOU WOULD LIKE TO DISCUSS HOW YOU OR YOUR CLIENTS COULD BENEFIT FROM OUTSOURCING, PLEASE SPEAK TO ROSS LANE OR YOUR USUAL CONTACT AT MERCER & HOLE.

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INWARD INVESTMENT VAT

WHILST BREXIT NEGOTIATIONS HAVE BEEN KEEPING THOSE ON BOTH SIDES OF THE ENGLISH CHANNEL ON THE EDGE OF THEIR SEATS, SOME RECENT, VERY POSITIVE DEVELOPMENTS HAVE LED TO A BOOST IN BUSINESS CONFIDENCE IN THE UK.

A sensible transition period to 2021 is looking fairly certain now. This breathing space will ease the pressure, permit more time and thought to be applied to future arrangements and help foster a good working relationship with the EU. We are not yet there and the insistence on a special "bespoke" trading arrangement for the UK will slow matters, but the tide seems to have turned.

French President Macron's initiative for a tiered Europe with a space for those less-Europhile nations could provide a useful platform to ease the UK's future trading status with the EU bloc. In addition, there are strong indications that the UK is considering remaining in a variety of EU programmes on technical, scientific and other areas and is prepared to pay for that, all of which bodes well for the future.

VAT and customs duties are an integral (and often intricate) part of trade and investment as they directly impact margins and affect all decisions whether it be where to trade, invest, or employ personnel and how to go to market. The UK is blessed with a very positive and proactive VAT regime and HMRC, our tax authority, is comparatively benign compared with many around Europe.

Inward investment into the UK, if correctly managed, will generally permit VAT recovery on costs, even before sales are generated, easing 20% of start-up investment. An advanced VAT regime befitting a leading trading nation is already adapted to most industries and effectively manages complex new industries in the digital arena, along with finance, pharmaceuticals, manufacturing, international trade, biotech, green energy etc.

To address the challenge of Brexit, the government looks likely to continue to ensure an attractive VAT climate, generous VAT reclaim rules and the continuation of a regime that will largely mirror EU VAT rules to facilitate frictionless trade. The likelihood of a hard Brexit and the potential imposition of high WTO customs duty tariffs on trade with the EU is rapidly diminishing and advanced customs clearance procedures for trade with Ireland and our continental neighbours are receiving more attention.

The additional two year breathing space along with a more considered, softer Brexit position adopted by the ruling Conservative government (as well as the Labour opposition) both point to a promising future trade relationship with Europe. The UK will look outward and seek more free-trade agreements with the wider world, but will remain closely tied to the EU. Many overseas investors are looking to capitalise on the pound's current weakness to leverage value and take advantage of Britain's modern, pro-business environment.

IF YOU WOULD LIKE TO DISCUSS ANY VAT ISSUES, WE WOULD WELCOME YOU TO CONNECT WITH RICHARD COLLIER OR YOUR USUAL CONTACT AT MERCER & HOLE.

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