COVID-19 ALERT:
UK TAX-RELATED CONSIDERATIONS FOR BUSINESSES

MARCH 2020

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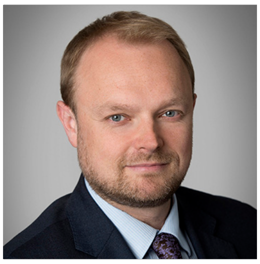

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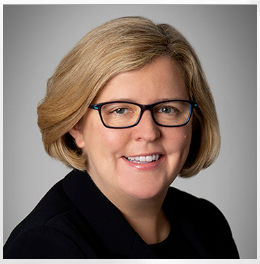

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As the global outbreak of the novel coronavirus pandemic (COVID-19) continues, businesses should consider both the risk of unexpected tax consequences from disruptions and opportunities to avail of government support for business implemented through the tax system. Emergency measures to address both the spread and the economic consequences are rapidly evolving. Extensive tax reliefs and grants are being made available to business as a result of COVID-19, but there are also some considerations and potential pitfalls.

Impact of travel restrictions

Corporate

Many jurisdictions (including the UK) determine a company's tax residence (and therefore the place where its worldwide profits are taxed) by reference to its place of incorporation and/or the location of its "central management and control" (i.e. strategic management). The latter is often equated with the location of the directors and, in particular, where their meetings take place. Companies are often careful to make sure that their directors attend board meetings in the jurisdiction of intended residence and avoid dialling in from outside that jurisdiction. Such arrangements will now be placed under great strain by the increased closure of borders, and various travel bans across the globe.

This problem has not gone unnoticed, and jurisdictions such as Guernsey and Jersey have already started to relax rules around corporate residence and substance. However, these reassurances aside, the tax authorities of the major financial jurisdictions are yet to issue comfort that the rules around residence will be relaxed in the face of the coronavirus pandemic. Absent such comfort, unwary companies may now risk having their global profits fall into another country's tax net or triggering "exit" tax charges as a result of a change in their residence.

Where possible, companies should consider postponing board meetings, or changing the composition of their boards or using committees or proxies. In all cases, it will be important to ensure that the people actually making the strategic decisions are those in the jurisdiction of residence, and that strategic decisions are not simply "rubber-stamped".

Permanent establishment

Companies may also need to consider whether they are trading through a permanent establishment in a particular jurisdiction where individuals are performing work in a country in which the company did not previously have a taxable presence.

Individuals

Individuals, stranded in a country in which they are not tax resident, should also consider whether they may unintentionally acquire tax residence. HMRC have recently published guidance stating that some additional days of presence due to certain COVID-19 circumstances can be ignored, on the basis that the presence is due to "exceptional circumstances", but additional UK work days may nevertheless lead to UK tax residence.

Cessation of trade?

Other corporate tax considerations for businesses include whether or not a break in activities could lead to a cessation of trade, which can have various tax consequences. Factors such as the length of the break and the intention of the directors will be relevant here; companies wishing to maintain their trading status should take these into account.

Coronavirus Job Retention Scheme

The Government will implement a scheme through HMRC to pay 80% of wages for employees who are furloughed but not laid off, up to a maximum of £2,500 per employee per month. The scheme will apply to all employers in the UK, regardless of size, and including non-profits. The scheme will be backdated to 1 March 2020, and will last for at least three months, after which it may be extended further. Employers can claim the 80% and still top up to the employee's usual income. The funding will be available through a grant provided on application to HMRC. The first grants are expected to be paid before the end of April. The scheme does not apply to the self-employed (e.g. contractors).

Deferred payment of tax liabilities

The Government has announced that VAT payments due from 20 March 2020 until 30 June 2020 will be automatically deferred until the end of the 2020-2021 tax year. Additionally, HMRC is significantly expanding its "Time to Pay" arrangements, allowing businesses to defer the payment of tax liabilities including corporation tax, PAYE and VAT (where they are otherwise due). We understand that, for groups which have a Customer Compliance Manager ("CCM") applications for "Time to Pay" should be made through that CCM. Other businesses should use the Time to Pay helpline. Before liaising with HMRC, companies should gather evidence as to how their business has been impacted by COVID-19.

For individuals who pay income tax through self assessment, payments due on 31 July 2020 will be deferred until 31 January 2021.

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Although HMRC would usually charge interest (but not penalties) on the deferred payments, the government has announced that both interest and penalties will be waived where "a business experiences administrative difficulties contacting HMRC or paying taxes due to COVID-19".

Although announced, no legislation has (at 24 March 2020) yet been introduced to enact these measures.

Accelerating tax refunds

HMRC has not published any formal guidance on accelerating refunds, but our understanding is that they are receptive to processing them (both on the corporation tax and VAT side) quickly.

IR35 extension to private sector delayed until 2021

On 17 March 2020, the Chief Secretary to the Treasury announced that the introduction of the "IR35 reforms" would be delayed until 2021. The reforms would have extended the existing rules which apply to the public sector to medium and large engagers in the private sector, and were previously expected to come into effect on 6 April 2020.

DAC 6 deferral

There have been reports of several EU jurisdictions deferring the enactment of the EU Mandatory Disclosure Directive (DAC 6), due to come into effect from 1 July 2020. The UK Government has not yet made an announcement on this (and it seems any deferral would need the EU's blessing).

Real estate investments

Disruptions may also impact statutory requirements and deadlines in relation to real estate investments, including by certain property funds and others.

For example, the "distribution condition" for UK REITs requires that at least 90% of income from property rental business is distributed for each accounting period, prior to the filing deadline for the relevant tax return (with limited concessions, which have not yet been extended). Deferrals of meetings to approve the distributions may jeopardise meeting these requirements.

In other contexts concessions have been made. Certain offshore collective investment vehicles formed before 6 April 2019 had until 6 April 2020 to make a "transparency election" under the new UK non-resident capital gains tax regime. Last week, HMRC extended that deadline to 1 October 2020.

HM Treasury / HMRC continuity

Despite the current situation, the Government is proceeding with usual finance and taxation measures following the 2020 Budget, and introduced this year's Finance Bill into Parliament as planned. The bill includes a number of key announcements from the Budget. On Thursday 19 March, the Government opened consultations on a number of business tax topics, including the disclosure of uncertain items (where businesses will be required to notify that they have taken a tax position with which HMRC disagrees), and the hybrid mismatch rules.

We expect that the Government will provide further benefits and concessions through the tax system to address the effects of COVID-19 and associated restrictions, while trying to proceed with business as usual.

With most people working from home, access to post directed to offices will often be restricted. Fortunately HMRC have had a push on their "Making Tax Digital" initiative and most dealings with HMRC are now through email or online filings, so should therefore carry on as usual. There will be occasional exceptions; for example, in stamping stock transfer forms or in certain cases where paper filings are still used. As noted above, HMRC have given some comfort on the interest and penalty position, but there will sometimes be other reasons (e.g. demonstrating title to shares) where this may present practical difficulties.

Our tax team is available to discuss any of these issues with you and answer any specific questions you may have. If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below.

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