



# Tax Briefing

Keeping you up to date with events in your sector.

## Welcome

**I would like to welcome all readers to the autumn edition of our tax briefing. As this is my first editorial, I hope you find the articles of interest.**

We are all aware that we've been in a serious recession – caused by the credit crunch – and while there is some question as to whether or not we have emerged from it, the importance of confidence is obvious. Confidence to spend is the key to future growth in all sectors of the economy. What is clear, is that at present confidence is extremely fragile and can easily be destroyed by the wrong short-term decisions made by this or the next Government.

The raising of tax will play an important part in all our lives – both in the short and medium term. We are already beginning to see HM Revenue & Customs (HMRC) raise their game, and this edition of our briefing is dedicated to many of those areas where there has clearly been a change of attitude by HMRC.



**Mike Cooper**  
Tax Partner  
T: 020 7509 9201  
E: mcooper@cvcdfk.com

## A taxing summer

**All recessions have unexpected winners and losers. The major beneficiaries of the 2009 credit crunch seem to be the tax authorities of the developed economies.**

### The issue

HMRC have long believed that some people avoid UK tax by keeping their money outside the UK in secret bank accounts. They are not the only tax authority to believe this, as the US campaign against UBS has demonstrated.

In 2007, HMRC obtained court orders, which required the main UK banks to disclose details of their offshore customers. In practice, it was widely known that HMRC only held data on accounts with UK addresses operated by Barclays, HBOS, HSBC, LloydsTSB and RBS. Even so, a pre-emptive campaign encouraging voluntary disclosure recovered some £400m in unpaid tax at a collection cost of approximately £6m.

HMRC believe there are taxpayers who have not yet come forward – perhaps because their offshore accounts are operated by other financial institutions.

HMRC have now been granted a further court order requiring the same details from another 308 non-UK banks. At the same time, HMRC has done a special deal with one of the world's major financial centres, Liechtenstein.

Before HMRC launch their main assault using this and other new information, the taxpayers affected have been offered a last-chance opportunity to declare their hidden accounts. There are now two distinct disclosure opportunities for taxpayers with something to tell HMRC. One is for those with interests in Liechtenstein, the other is for those with other non-UK investments.

Taxpayers who have undeclared income or gains need to choose – they can try to stay one step ahead of the authorities, which will become increasingly difficult, or regularise their position. The 'carrot' is that people taking advantage of either opportunity will pay less than they would otherwise have to, as penalties are generally limited to 10%.

The 'stick' is the probability that HMRC will find out about the hidden accounts anyway. HMRC will now have access to much more information, which they will use to identify



**Tony Steintal**  
Tax Partner  
T: 020 7509 9438  
E: tsteinthal@cvcdfk.com



**“Taxpayers who know there is something they ought to be telling HMRC should talk to a Chantrey Vellacott DFK partner as soon as possible”**

taxpayers with undeclared income. This information comes from three areas:

1. Details of interest credited over the last six years on all bank accounts with a UK correspondence address.
2. Help from the tax authorities in a number of low-tax jurisdictions. New Information exchange agreements have been concluded with the British Virgin Islands, the Cayman Islands and Gibraltar as well as the Channel Islands, Isle of Man and others.
3. Liechtenstein has agreed to require all its banks and financial intermediaries to obtain from each of their UK clients either a certificate of disclosure or a certificate that they comply with their UK tax obligations. Where neither certificate has been supplied by 31 March 2015, it will be necessary for the bank or financial intermediary to close the account.

These additional powers represent a negation of the banking confidentiality that has traditionally been available and will certainly mean that only the most robust structures will survive in many offshore locations.

#### Caution

Any reader who has undeclared income or gains, or affairs in Liechtenstein, should contact their Chantrey Vellacott DFK partner for advice on what action to take. While any delinquent position will need to be corrected, HMRC disclosure opportunities will not be appropriate to all – or maybe even many – circumstances:

- At least one of the undeclared items must be offshore. If the whole under-declaration is domestic, neither facility can be used. HMRC is being pressured to extend the scope but have not yet responded.
- There is no opportunity to take an optimistic approach to a situation that is not clear-cut. HMRC require the taxpayer to decide whether an item is taxable, though there are many cases where the treatment is unclear.

- HMRC only guarantee there will be no criminal prosecution under the Liechtenstein disclosure opportunity and then only when the criminality is only tax-related. Some element of risk therefore remains.

Where the general disclosure opportunity is appropriate, taxpayers need to follow a rigid procedure. The most important aspect being that there is an absolute deadline for notifying HMRC of a disclosure by 30 November 2009.

#### Errors and mistakes

In addition to the thousands of actual disclosures made in 2007, tax advisers dealt with many more cases where disclosure was unnecessary. Examples include:

- an expatriate worker in the UK who always kept his savings offshore and has now retired to his home country
- a UK resident with a US dollar account held at a mainland branch
- a UK national who operated an offshore account whilst abroad but closed it on his return to the UK; some years later, the bank reissued the account number to a completely new customer but still reported interest as having been credited more recently on that account.

No tax was due in any of these cases. Equally, each case needed to be resolved, sometimes at surprisingly great expense in terms of professional fees, to get at the real truth underlying each case.

#### Solutions and benefits

Taxpayers can protect against the cost of a misunderstanding by HMRC by taking out professional fees insurance, such as the AbbeyTax policy all Chantrey Vellacott DFK's clients are offered.

Taxpayers who know there is something they ought to be telling HMRC should talk to a Chantrey Vellacott DFK partner as soon as possible.

## Decision time for non-doms

**The 2008/09 Tax Returns are the first to be filed under the new regime. As the filing deadline of 31 January 2010 starts to loom, we highlight some of the issues which non-UK domiciliaries (“non-doms”) will need to address.**

The new rules are complex and administratively burdensome for all but the simplest cases. For 2008/09 onwards, unless they use the new remittance basis, UK resident non-doms are automatically taxable on their worldwide income and gains as they arise and also on any remittances of unremitted foreign income and gains from earlier “remittance basis” years. With certain exceptions, a non-dom will need to make an annual claim to use the remittance basis and pay the annual remittance basis charge (currently set at £30,000) and they will also lose their income tax personal allowances and their capital gains tax annual exemption. Those who are also subject to foreign taxation will need to take the effect of this into account when deciding whether making a claim is worthwhile.

FA 2009 has introduced a new restricted exemption for the foreign income of certain non-doms who have UK employment income and whose relevant foreign earnings do not exceed £10,000. The exemption does not apply to anyone who is a higher-rate taxpayer or who needs to complete a UK tax return. The conditions include the requirements that the only other foreign income or gains comprise interest not exceeding £100 and that all the foreign income is subject to foreign tax.

There are two circumstances in which the remittance basis applies without the need to make a claim. Where no claim is required, no charge is due and the personal allowances and capital gains tax exemption are not lost. Firstly, where



**Colin Heath**  
Tax Partner  
T: 020 7509 9440  
E: cheath@cvcdfk.com

**The new rules are extensive and very complicated but proper planning should avoid unwelcome surprises**



the individual's unremitted relevant foreign income and gains for the year are less than £2,000. They will pay tax as usual on their UK income and gains and also on their taxable remittances. Secondly, where the individual has no UK income or gains, or only taxed investment income not exceeding £100, and no taxable remittances, and they have either been UK resident for less than seven out of the previous nine tax years or they are under 18 at the end of the tax year.

All other non-doms will have to make an annual claim to use the remittance basis and will lose their personal allowances and capital gains tax exemption. All those claimants who have been resident in the UK for more than six out of the previous nine tax years and who are over 18 at the end of the tax year will also have to pay the annual remittance basis charge. Claimants will also have to decide whether to make an irrevocable lifetime election to be able to claim relief for foreign capital losses (even if they currently have no chargeable assets).

It is possible to claim the remittance basis in some years and not others and there are complicated rules to deal with this. Because the charge is treated as a tax, it is payable under the normal self assessment rules so that, if the claim is to be made on an annual basis, the first payment due by 31 January 2010 will be £30K (for 2008/09) plus a first instalment of £15K for 2009/10 = £45K, with the second £15K instalment due by 31 July 2010. The payments due for 2010/11 will be £15K due by 31 January 2011 and £15K by 31 July 2011, and so on for subsequent years. This assumes that the charge is treated as income but the calculation of the instalment payments will be affected to the extent that it has been nominated as capital gains.

If payment is to be made from abroad, specific steps need to be followed to avoid the payment of the charge being treated as a taxable remittance. Also, it is necessary to nominate the specific income or gains to which the charge

relates. This point needs to be considered with great care, particularly since the inadvertent remittance of even one penny of a nominated amount could give rise to adverse tax consequences.

The definition of what constitutes a remittance has been significantly widened and care will need to be taken when considering bringing property into the UK, or using property in the UK, where the property was acquired out of unremitted foreign income or gains. Similarly, using foreign income and gains to pay for services in the UK or to fund or repay offshore borrowing related to UK property etc can trigger a taxable remittance. Further, the actions of others who fall within the new definitions of "relevant person" or "gift recipient" can trigger a taxable remittance.

There are some specific exemptions for property brought to the UK, the most useful on an everyday basis being the "temporary importation rule" and the exemptions for personal items of clothing, footwear, jewellery and watches and items where the "notional remitted amount" is less than £1,000. It should be noted, however, that selling an imported item in the UK will always give rise to a potentially taxable remittance.

The legislation includes transitional provisions to cover the change to the new basis and introduces detailed rules for matching remittances with foreign income and gains (particularly when dealing with "mixed funds"). Regrettably, the rules impose a heavy record-keeping and accounting burden in all but the most straightforward of cases. A point to note here is that foreign income and gains will always be measured in £sterling and that foreign currency itself is a chargeable asset – it is therefore possible to have taxable gains when no gain has been made in foreign currency terms.

Finally, the new legislation has extended certain anti-avoidance provisions to cover non-dom shareholders in non-resident "close companies" and non-dom settlors and beneficiaries of non-resident trusts. The transitional rules include provision for the trustees to make an election to revalue the trust assets (including the assets of underlying companies) as at 6 April 2008. The first deadline for making an election is 31 January 2010. In reviewing the application of the new rules, where relevant, non-doms will need to take the offshore trust/company position into account as well as their own personal circumstances.

The above is a brief attempt to highlight some of the issues involved. In summary the new rules are extensive and very complicated but proper planning should avoid unwelcome surprises and identify opportunities to mitigate the tax impact. For further information please contact Colin Heath.

## Action Points

### Remittance basis users need to:

- Review their offshore account arrangements
- Plan any remittances
- Maintain sufficient records



**Steven Levine**  
Head of R&D  
T: 020 7509 9426  
E: slevine@cvsdfk.com

## All change for Research and Development Tax Relief?

**There has been a lot of speculation in the press over the last few months on the future of Research and Development (R&D) Tax Relief. This arises from HMRC's recent consultation documents in which they have been revising some of their interpretations on the workings and operation of the tax relief. This briefing note reflects recent discussions with HMRC at policy team level – although these have not been confirmed at the time of writing.**

To recap, R&D Tax Relief can provide real cash flow advantages for all companies by enhancing actual costs, so that the tax-deductible costs are much higher. In addition, small and medium size enterprises (SMEs) – these being companies with under 500 employees, €100m turnover and/or €86m balance sheet assets – have the option to surrender tax losses for cash.

While these advantages have made the tax relief quite attractive, HMRC considers many companies may have claimed this for non-qualifying projects. Much of this re-interpretation seeks to clarify their guidance as well as lower some of the cost to the Treasury.

The re-interpretations are targeted at the following scenarios.

### (i) Costs of production

This is where companies sell items they have produced with a view to sale. Many companies assess scalability for projects with full production runs, claiming enhanced R&D relief on costs associated with this production.

HMRC has verbally accepted that R&D relief can be claimed where additional costs arise as a result of the R&D work, even though the items may eventually be sold.

### (ii) Costs of making prototypes that are sold.

Many companies assess production feasibility with a full-scale prototype. This is often a first-of-a-kind, that is then sold – frequently at a loss. HMRC's view is that a prototype produced with a view to being sold is 'production' and cannot qualify for enhanced R&D relief.

HMRC does agree that where a prototype is not produced with a view to being sold (for example, when it's a scale model), the costs could qualify for relief.

Further, costs that are incurred over and above a normal production cost can potentially be claimed where they relate to R&D work.

### (iii) Ownership of intellectual property

SMEs seeking the higher rates of R&D relief or to surrender tax losses for cash must prove they haven't disposed of all their Intellectual Property Rights (IPR) in the relevant projects.

HMRC has verbally confirmed that whilst SMEs do not need to own all the IPR on which the R&D project is based, they must be seeking to own IPR from the project that is being worked on.

### (iv) Qualifying activities

HMRC is seeking to clarify the range of workers that can be covered by an R&D claim. This revision is very helpful, as

many inspectors have previously challenged some claims where they believed not all workers qualified.

The range of workers covered by this clarification can include administrative staff.

It is crucial that claims for R&D Tax Relief are reviewed to ensure maximum compliance with legislation and with guidance. Many claims submitted by non-specialists have been challenged by HMRC and companies have lost out where submitted claims do not cover all qualifying costs. Further, HMRC has new powers to charge penalties and interest where it considers the claims have not been reasonably calculated.

R&D Tax Relief remains a very valuable one. The recent changes also clarify some of the more marginal rules, which may enable companies that have not taken advantage of this relief in the past, to qualify. Owners of businesses, who believe their claims could be improved, or their companies may qualify, should talk to their usual contact here as soon as possible.

Steven Levine heads the R&D team at Chantrey Vellacott DFK. You can call him on 020 7509 9426, or email [slevine@cvsdfk.com](mailto:slevine@cvsdfk.com). You can also find the Chantrey Vellacott R&D webpage at <http://www.cvsdfk.com/services/rd/>





**Alan Thomson**  
 Director  
 Tax Consultancy Services  
 T: 020 7509 9483  
 E: athomson@cvcdfk.com

## Senior Accounting Officers

**From 21 July 2009, Senior Accounting Officers (SAOs) of qualifying large companies, are required to provide personal certification that their accounting systems are capable of delivering accurate tax reporting in all the major tax areas – including employment, direct and indirect taxes.**

The SAO is the director or officer of the company who has overall responsibility for the company's financial arrangements.

Qualifying large companies, or groups, are defined as such if they have either of the following:

- UK turnover in excess of £200m
- gross assets in excess of £2bn.

The above does not apply to non-UK registered companies, partnerships, charities, crown estates or public bodies.

SAOs of such organisations will be required to:

- take reasonable steps to ensure that the company, or group, maintain appropriate tax accounting arrangements. They will be responsible for monitoring these arrangements and identifying any areas in which they are not appropriate
- provide an annual certificate to HM Revenue & Customs (HMRC) showing adequate systems are in place to produce accurate tax returns or to explain any shortcomings.

**Both of these obligations carry a potential £5,000 fine, per annum, levied personally on the SAO for failing to comply.**

There is a further fine of £5,000 if the company fails to notify HMRC of its SAO's identity.

So what should companies who come within this legislation do? They should:

- identify their SAO
- agree the responsibilities of other key personnel in the organisation with the SAO
- consider the effectiveness of internal processes and procedures used for tax reporting across all the major taxes.

### Key questions to be answered include:

**Corporation tax.** How is tax-sensitive information identified and recorded? Are the processes robust and kept up to date in light of ever-changing tax legislation?

**Employment taxes.** Are those responsible for the above, including expatriates and share schemes, aware of the information required for accurate tax reporting?

**Indirect tax.** Are those responsible for VAT reporting able to confirm that their systems can cope with all the various types of transactions that can occur for VAT?

At Chantrey Vellacott, we provide support and assistance to SAOs in assessing the effectiveness of the company's processes. We can suggest ways to improve processes already in place to meet the above requirements. To do this we would use both our tax and audit systems specialists.

For more information, please speak to your usual Chantrey Vellacott tax advisor or Alan Thomson.

## Changes to VAT rules

**With effect from 1 January 2010, the UK, along with the rest of the EU, will start gradually to implement a package of changes to the VAT system. The main changes relate to the rules for determining the place of supply of services, although changes will also be made in other areas.**

While these are mainly technical changes and could be seen as overly complex, the recently introduced 30% penalty for incorrect VAT returns and payments means that the Revenue have real powers to punish taxpayers – even where errors are made innocently.

The main changes are summarised as follows:

- Many services supplied to businesses outside the UK but in the EU will cease to be chargeable to UK VAT. Instead they will now be chargeable to VAT in the customer's own country. Non-compliance of the new rules could lead to UK VAT being charged erroneously and you being commercially disadvantaged.



- Many UK businesses receiving services from elsewhere in the EU will be required to self-account for VAT on these supplies.



**Sharon Jessop**  
 VAT Manager  
 T: 020 7509 9137  
 E: sjessop@cvcdfk.com

- UK charities engaged in both business and non-business activities, which receive services from elsewhere in the EU (covered by the rules above), may be required to self-account for UK VAT on those supplies. Even if they relate solely to non-business activities.
- The place of supply of restaurant and catering services will change.
- The tax point rules for reverse charge and continuous services will be amended.
- EC sales list filings are to be extended to incorporate services as well as goods that are supplied to VAT-registered businesses elsewhere in the EU. Failure to file EC sales lists could lead to a financial penalty.
- Businesses supplying goods to businesses elsewhere in the EU and which exceed a quarterly threshold of £70,000 will be required to submit monthly EC sales lists. This threshold will be reduced to £35,000 on 1 January 2012. Businesses that do not correctly comply with the administrative requirements of EC sales lists may become subject to penalties.
- The system for recovering VAT incurred elsewhere in the EU (8th Directive Reclaim Mechanism) is to change. Failure to apply the revised procedures could lead to recoverable VAT being lost.

Certain other changes would be implemented after 2010:

- From 1 January 2011 the place of supply rules for cultural, artistic, sporting, scientific, educational, entertainment and similar services will change.

- From 1 January 2013 the place of supply rules for the long-term hire of transport will change.
- From 1 January 2015, intra-EU supplies of telecoms, electronically supplied services and broadcasting will become chargeable to VAT in the country where the customer is established or usually resides. Failure to apply the new rules correctly, could lead to UK VAT being charged in error and penalties being incurred in other member states).

If your business makes any of the type of supplies that are outlined above, we strongly advise you to seek professional advice. Evidence that businesses have sought professional advice can be used to avoid the 30% penalty.

Our VAT Consultants would be happy to advise you on any of the matters mentioned above.

## Action Points

- Businesses should consider whether the changes summarised above are likely to affect them.
- Changes may need to be made to business's accounting systems in order to deal with the new rules and reporting requirements.
- Businesses should consider taking professional advice in order to understand the new rules, and to potentially protect them from a 30% penalty.

## Who to Contact

For further information or advice, please contact the author of the relevant article, your usual Chantrey Vellacott DFK partner or one of the following:

### Birmingham

Suk Aulak  
0121 454 4141  
saalak@cvdfk.com

### Croydon

Richard Willis  
020 8686 3915  
rwillis@cvdfk.com

### Northampton

Debbie Ince  
01604 639257  
dince@cvdfk.com

### Watford

David James  
01923 255111  
djames@cvdfk.com

### Brighton & Hove

Ken Touhey  
01273 421200  
ktouhey@cvdfk.com

### Leicester

Elliot Harris  
0116 247 1393  
eharris@cvdfk.com

### Reading

Mike Adams  
0118 952 4700  
madams@cvdfk.com

### Colchester

Dawn Lay-Flurrie  
01206 549303  
dlay-flurrie@cvdfk.com

### London

Mike Cooper  
020 7509 9000  
mcooper@cvdfk.com

### Stevenage

Mark Stevens  
01438 741147  
mstevens@cvdfk.com

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