



## Budget 2011

### Measures relating to Residence, Domicile and other international issues

Budget content in this area was eagerly awaited; such was speculation of reform in many key areas. As it turned out, actual changes were few and far between, although the Budget statement sets out a commitment to some significant changes in 2012.

### Residence

Paragraph 3.8 of the Budget Overview describes the current situation as far as defining Residence is concerned, as 'unclear and complicated'. Surely no-one would argue with that!

The current position is largely based on published guidance from HMRC. After many years of reliance on the IR20 guidance, following the *Gaines-Cooper* decisions, HMRC effectively muddied the waters, with the introduction of replacement guidance in HMRC6. In doing so, they effectively brought in previously unannounced changes to the Residence test, provoking outrage and uncertainty in equal measure. We await the Supreme Court hearing on *Gaines-Cooper* - whether the outcome of this will influence HMRC remains to be seen.

It is proposed that a consultation document is issued in June 2011, leading to draft legislation on a statutory Residence test applying from 6 April 2012. Affected parties are advised to review the consultation document and give themselves the earliest possible idea of where we are heading as far as Residence is concerned.

The very idea of a statutory test has to be welcomed, regardless of what the test will consist of exactly. It is all too easy to look at the *Gaines-Cooper* situation as the trials and tribulations of a wealthy individual, but the uncertainty HMRC created in distancing themselves from IR20 practice has eroded the UK's credibility as competitive international business centre.

### Domicile & Remittance Basis

In the coalition government's policy programme published after the election, there was reference to a review of the taxation of non-domiciliaries, resulting in speculation as to wider reform than that introduced by the previous government from April 2008.

The reality was somewhat simpler - a retention of the £30,000 non-dom charge, with an increase in the charge to £50,000 for non-doms resident in the UK for 12 years or more, from April 2012. The lower charge will continue to apply to non-doms resident in the UK for 7 out of the last 9 years. Consultation will also be undertaken to remove from the remittance basis charge sums intended for commercial investment and other minor deregulatory measures.

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On the whole, this is government recognition of the value of non-domiciliaries to the UK economy.

### **Anti Avoidance - Double Tax Treaties**

Paragraph 3.56 of the Budget Overview confirms the government's intention to introduce legislation in Finance Bill 2012, to ensure no relief or exemption from UK tax is available where a claim is made under a UK Double Taxation Treaty.

The proposal is aimed at UK residents of all descriptions, plus non-UK residents entering arrangements to obtain relief or exemption in the UK and will adhere to OECD principles - whether there will be implications in terms of EU member treatment remains to be seen.

Draft clauses will be published in the autumn, followed by a consultation.

### **Other Measures - Corporation Tax and foreign profits**

With the emphasis on improving UK competitiveness, two measures are announced concerning Corporation Tax and foreign profits. These are:

- Useful interim improvements to the Controlled Foreign Company (CFC) regime applying from April 2011, prior to more fundamental reform of the CFC legislation in 2012; and
- The introduction in Finance Bill 2011 of an option to elect for a system of exemption from UK Corporation Tax, in respect of the profits of foreign branches. Any election made will be irrevocable, so companies affected, which will include smaller companies and groups will need to consider whether to elect carefully.

It is estimated the government are spending £2.5bn on short-term measures in the area of international profits, to improve the UK's position as a base for international business - not an insignificant sum, given current spending restraints.

Should you have any questions relating to the budget please do contact us.

### **Professional Tax Consultancy**