

LIABILITY TO UK TAX

General Rule

For all tax purposes, the United Kingdom includes the six counties of Northern Ireland as well as Scotland, England and Wales.

An individual or company which is neither resident nor ordinarily resident in the UK will generally be liable to UK income tax on UK source income only. This would include UK rents, dividends, employment income, pension income etc. The rules on where the source is located can be complex and can depend on Irish and UK tax law as well as the Irish / UK Double Taxation Treaty.

A non-UK resident is not generally liable to UK Capital Gains Tax, even from UK sources. There are exceptions for the capital gains of a branch in the UK. Some profits that might appear to be capital gains, may in fact be income and therefore taxable. There would be Irish CGT for Irish residents.

The rules generally limit the non residents liability to the standard rate of tax (20%) or the dividend rate (10% or 32.5%). In some cases, there is an obligation on UK residents paying tax to non residents to withhold tax at the standard rate.

Irish residents (and other EU residents) are entitled to be the same tax allowances under UK tax law, as a UK resident.

The income tax liability of a non-resident in the UK can be assessed on a UK resident agent. UK rules impose an obligation on persons paying income to a non-resident to withhold tax at the standard rate. This applies to certain agents. For, example, a property

agent is obliged to withhold tax unless the Irish resident taxpayer can obtain consent of HMRC to pay without deduction.

There are various provisions which require deduction by a person making a payment by the payee is resident. This includes the following

- Rent (the tenant or agent is liable)
- Interest (the payer)
- Royalty payments (the payer)

There are also more general deduction obligations in respect of pension, employment income, savings income and company dividends

Business and Trading Profits

There is generally no UK tax on profits earned by an Irish resident company or business in the UK, unless they are earned by UK branch or UK resident subsidiary. Therefore, it is possible to do a very considerable degree of business with and in the UK, without coming within the remit of UK tax on business profits. There will however be Irish tax on the profits.

If an Irish company or personal business goes further than doing business with United Kingdom and proceeds to set up a branch or so called "permanent establishment" in the United Kingdom, then UK taxation issues arise on the branch profits and capital gains.

Individuals

Residence is a critical factor in whether an individual is liable to UK tax. An individual who is resident or ordinary resident in the UK, is liable to income tax and capital gains tax on all his worldwide income and capital gains.

Unlike the case in Ireland, residence, for tax purposes in the UK is not absolutely defined in term of presence for a particular number of days. There are a number of criteria

rather than a precise definition. The HMRC give guidance but is not necessarily definitive. An individual will generally be treated as a resident if he is present in the UK for 6 months or more i.e. 183 days (broadly similar to the Irish test). Where presence is for some temporary purpose only which is less than 6 months, he will not usually be regarded as resident.

The HMRC guidance indicates that an individual is UK resident if he makes habitual and substantial visits. HMRC regards stays of over 3 months per annum over 4 years to be habitual and substantial. If this average is met, then he is treated as a tax resident for the fifth year.

As in Ireland, the former position by which having available accommodation was sufficient to make an individual resident, no longer applies.

Company Residence

A company is resident in the UK if it is either incorporated in the UK (i.e. formed in the UK Companies House), or has a central place of management or control in the UK. This test is slightly different to the Irish test under which it is possible for a company not to be resident in Ireland although incorporated in Ireland, in some circumstances.

Once a company is UK resident it is subject to Corporation Tax on all of its worldwide profits. This includes UK profits, overseas branches, dividends from subsidiaries and investments received and other investment income.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.