



Budget 2008:

Tax Rises for Property Developers

UK tax resident property developers (carrying on that trade in the UK) as well as other traders have in the past often structured their ownership of development property (or other trading assets) through an offshore partnership (typically one which is centrally managed and controlled in the Isle of Man) where the partners in that partnership are Isle of Man trusts of which the developer is both a settlor and a beneficiary. The purpose behind these structures was to greatly reduce the UK tax charge, often with developer only paying UK tax on any management fee he charged to the partnership. In achieving that goal these structures relied upon the provisions of the relevant double taxation agreement. It had been thought that whilst this strategy had a limited shelf life to terminate its efficacy the relevant double taxation agreement would have to be renegotiated and amended, and that thus this strategy could thus potentially be implemented for another few years.

On Budget Day, HMRC published, however, draft legislation to counter this tax avoidance scheme.

The draft legislation (which once enacted will be retrospective and deemed always to have effect) inserts a provision into the income tax, corporation tax and capital gains tax codes which makes it clear that members of a partnership include any person entitled to a share of the income or capital gains of the partnership. The purpose of this amendment is that a double taxation treaty cannot be used to exempt a UK tax resident person from UK tax on profits of a foreign partnership to which he (or it) is entitled.

Persons who have implemented these structures before Budget Day will need to carefully review the drafting of all documents and if this provision is considered relevant then reporting obligations, penalties and interest on late payment of tax will have to be considered in detail.

Taking effect from 12 March 2008, the draft legislation also contains a new provision which makes it clear that the UK retains taxing rights over the income of persons resident in the UK, i.e. that the business profits article does not trump the UK tax legislation, where the beneficiary of the treaty exemption is UK tax resident.

Property developers and others who have implemented this structure and/or were considering implementing this structure will need to review their ownership structures and consider whether there are now more tax efficient routes available to them.

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