

APPENDICES TO ARTICLES ON UK TAXATION OF NON-RESIDENTS

APPENDIX A

INLAND REVENUE BUDGET PRESS STATEMENT OF 29TH NOVEMBER 1994 INVESTMENT MANAGERS

The Chancellor proposes in his Budget to make changes to the rules for taxing the income of non-residents from transactions carried out through investment managers and brokers in the UK. The changes will ensure that the non-resident faces no liability to tax beyond tax, if any, deducted at source. They will apply to income arising on or after 6th April 1995.

The Chancellor's intention is to enhance further both the attractions to non-residents and the international competitiveness of the UK investment management industry.

DETAILS

Present position

1. At present tax chargeable on a person not resident in the UK can be assessed on a person acting as agent for the non-resident in the UK.
2. This rule does not apply to income from either -
 - transactions carried out through a broker, or
 - investment transactions carried out by an investment manager,provided those services are rendered in the normal course of the trade as a broker or investment manager and for full remuneration.

3. The exclusion of investment transactions from the rule above does not, however, apply if the non-resident is either the sole client of or connected with the investment manager.
4. Where income is excluded from assessment on the broker or investment manager under the above rules, Concession B40 limits the tax chargeable on the non-resident in respect of that income to the amount of tax, if any, deducted at source.

Proposals

5. The rule in Concession B40, limiting the tax chargeable to the amount of tax, if any, deducted at source will be made statutory. The limitation of charge for income from transactions carried out through a broker will remain unchanged. But the general restrictions in para 3 above on the limitation of charge for income from transactions carried out through an investment manager will be replaced by a narrowly targeted anti-avoidance provision.
6. The new anti-avoidance provision will only apply where exceptionally the investment transactions form part of a trade carried on in the UK by the non-resident. In those cases, the limitation on charge will not apply if either
 - the non-resident and persons connected with him are the sole or main client of the investment manager (sole or main client rule); or
 - the beneficial interest, if any, of the investment manager and persons connected with him in the income of the non-resident from the investment transactions exceeds 20% of that income (the 20% rule).
7. The sole or main client rule will be treated as satisfied from the start of a new business of investment management if it is satisfied within 12 months of the start of that business.
8. The 20% rule will be treated as satisfied where the period forms part of a period not exceeding five years for which, taken as a whole, the investment manager and persons connected with him had intended their beneficial interest not to exceed 20% provided that any failure to achieve that was for reasons outside their control.
9. Transactions in foreign currencies will be added to the list of permitted investment transactions.

10. These changes will generally ensure that non-residents are not exposed to any liability to UK tax beyond the amount of tax, if any, deducted at source on income from transactions carried out by investment managers or brokers in the normal course of their business. The income which is excluded from this rule by the anti-avoidance provision is income which forms part of a financial trade carried on in the UK through an agent either who is not wholly independent of the non-resident or on terms other than would be customary between independent parties acting at arm's length.

Non-residents carrying on a separate trade in the UK

11. As at present, the limitation on charge will not apply to transactions which are connected with a trade carried on by the non-resident in the UK other than through a broker or investment manager, for instance to the temporary investment of funds used in a manufacturing business carried on in the UK.

Commencement and self-assessment

12. These changes will apply to income arising on or after 6th April 1995.
13. Further changes will be made to the taxation of non-residents as a result of the move to self-assessment (see Revenue Press Release "Self-assessment" [see above]). Those changes will come into effect from the tax year 1996-97 for income tax and for accounting periods beginning after 31st March 1996 for corporation tax. They will extend the limitation on charge further to cover all investment income other than from property in the UK.

Existing arrangements

14. Most existing arrangements for managing investments of non-residents which qualify for the limitation of charge to tax deducted at source under the present rules will continue to qualify under the new rules. But there may exceptionally be arrangements where the non-resident is trading in the UK which qualify under the present rules but will fail to qualify under either the sole or main client rule or the 20% rule. For any such arrangements set up before Budget Day, the limitation of charge under Concession B40 will continue to apply -
- where the arrangements are in respect of any form of jointly held fund which was marketed by means of a prospectus or otherwise before Budget Day, for the intended life of the fund when it was marketed, but not beyond 5th April 2005; and

- in any other case, up to 5th April 1996.

15. Concession B40 will not apply to income arising on or after 6th April 1995, except as provided above.

Exchequer yield, economic benefit, compliance costs

16. These proposals will have no effect on the Exchequer yield from taxing non-residents. It is likely that they will attract substantial further investment management business to the UK with unquantifiable benefits for the economy and Exchequer yield. They will also reduce the compliance costs of investment managers and increase their international competitiveness.

NOTES

1. The rules for investment managers, which appear in TMA 1970 ss.78(2)-(5), were introduced in 1985. The rules for brokers, which appear in s.82(1), were introduced in 1915.
2. These proposals are the result of widespread consultation both as part of the consultations on self-assessment and separately with representatives of the investment management industry.
3. Various types of investment income are paid under deduction of tax at source or with a tax credit. But non-residents are generally able to receive payment under a reduced or nil rate of deduction, or repayment in whole or in part of the tax credit, under UK tax rules or a double taxation agreement.
4. Statements of Practice SP 14/91: "Tax treatment of transactions in financial futures and options" and SP 15/91: "Treatment of investment managers and their overseas clients" provide guidance on the circumstances in which investment transactions carried out through an investment manager would be regarded as forming part of a trade carried on in the UK by the non-resident.
5. The compliance cost assessment for the proposals on self-assessment also covers these proposals (see Revenue Press Release "Self-assessment" [see below]).