



Transatlantic tax issues

Nick Farmer ACA, CTA, ADIT

International Tax Partner

T: +44 (0)1784 497153

E: nfarmer@menzies.co.uk

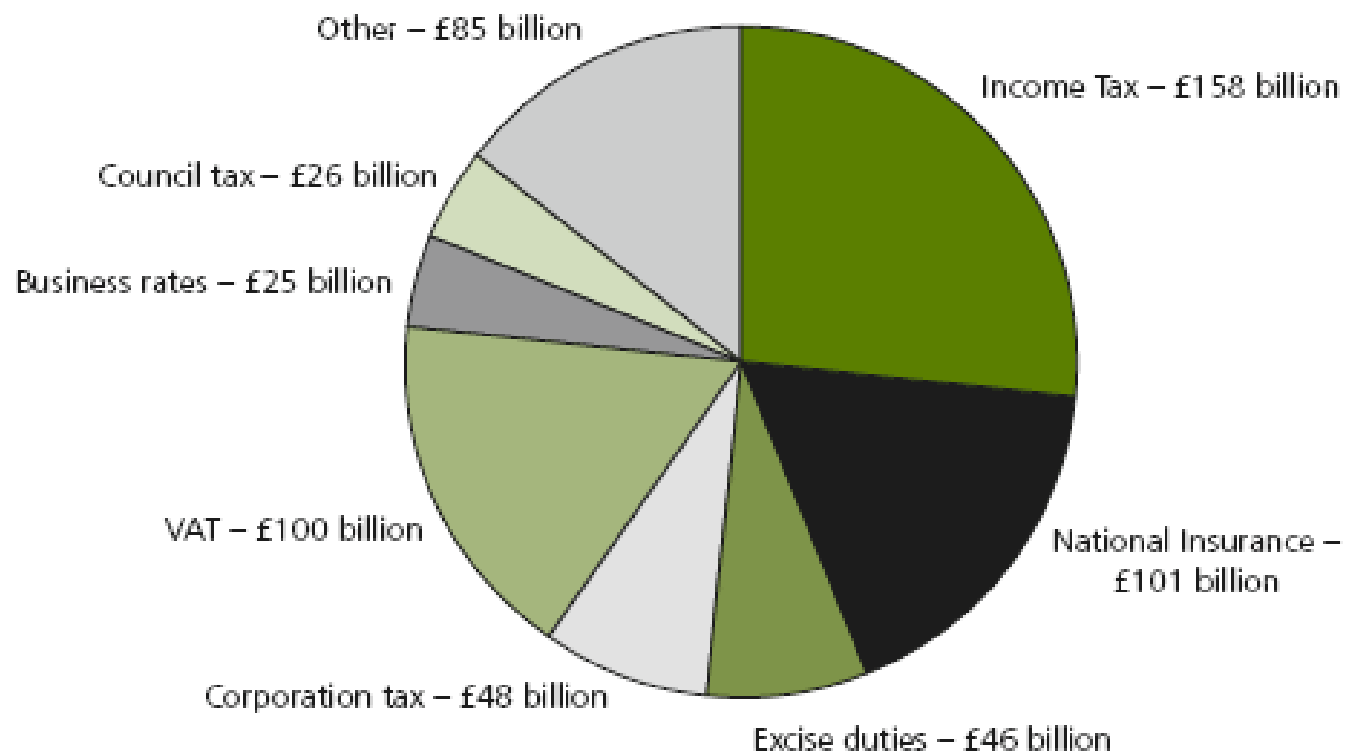
www.menzies.co.uk

Introduction

- Structure of presentation:
 - UK Corporate taxes
 - Analysis and structuring
 - VAT
 - A foreign kind of tax
 - UK Personal taxes
 - It all depends on status
 - Transatlantic experiences

UK Government receipts 2011-12

Chart 2: Government receipts 2011-12



Source: Office for Budget Responsibility, 2011-12 estimates. Other receipts include capital taxes, stamp duties, vehicle excise duties and some other tax and non-tax receipts – for example, interest and dividends. Figures may not sum due to rounding.

UK corporate tax



- Analysing the system



UK Government intentions

- Five year road map for reform of corporation tax
- Aim to:
 - encourage multinationals to come to Britain
 - create most competitive corporate tax regime in the G20
- Simplify system and reduce rates
- Move towards a territorial corporate tax system

UK Corporate tax overview

- **Rates:**
 - Mainstream rate of corporation tax of 26%.
 - Rate to reduce by 1% annually to 23% in 2014.
 - Small companies rate of 20%
- **Payment:**
 - Small companies pay 9 months after year end.
 - Large companies pay by quarterly instalments.
- **Filing with HMRC:**
 - Deadline is 12 months after year-end.
 - All returns and accounts must be filed online.

UK Corporate tax overview

- **Losses:**
 - Carry forward indefinitely.
 - Distinction between trading, capital and finance losses.
- **Groups:**
 - 75% shareholding relationship.
 - No tax consolidation
 - Surrender of losses between group companies.

Reliefs and exemptions

- **R&D regime:**
 - 130% deduction for large companies
 - 200% deduction for SMEs
 - Increasing to 225% in 2012
- **Patent Box regime:**
 - To be introduced in 2013
 - 10% rate of tax on profits attributed to patents
- **Capital Allowances regime:**
 - 100% deduction for energy efficient equipment
 - 100% deduction for first £100,000 of P&M (reducing to £25,000 in 2012)
 - 20% deduction for P&M (reducing to 18% in 2012)
 - 10% deduction for Fixtures (reducing to 8% in 2012)

UK Holding company

- Treaty network - excellent
- Inbound Dividends - exemption regime
- Outbound Dividends - no withholding tax
- Overseas branches – exemption regime
- Capital Gains - exemption regime
- Tax rate - comparable and reducing
- EU law – advantages and disadvantages
- Interest deduction rules - complex
- Stamp Duty - unfortunate
- Anti-avoidance – new legislation in 2012

Inbound investment into UK



- Structuring into the UK



UK structuring

UK Branch

- Lower set up and running costs
- Profits only taxable if a Permanent Establishment
- No deduction for interest or royalty payments
- No audit requirement
- Overseas accounts must be filed at Companies House

UK Subsidiary

- Easy to incorporate
- More substantial presence
- Commercial liability ring-fenced
- Facilities movement of staff
- Easier profit determination
- Managed profit repatriation
- Financial Statements required
- Audit may be necessary

Funding – capitalisation alternatives

Loan Capital

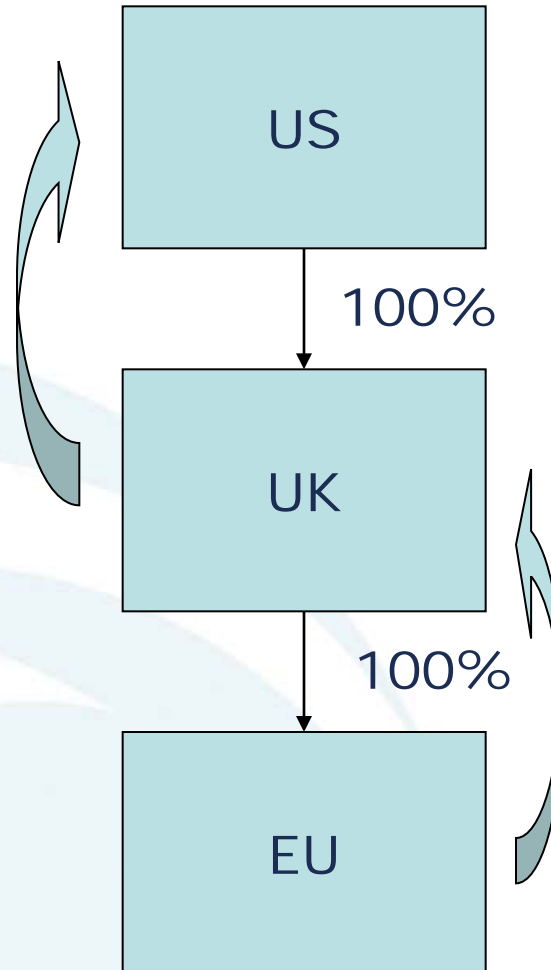
- Flexibility
 - Repayment of capital
 - Conversion into shares
- Anti-avoidance:
 - Thin capitalisation
 - Anti-arbitrage rules
 - Debt-cap rules
- APA available
- Withholding tax on interest
 - Treaty clearance needed
- Foreign exchange concerns

Share capital

- Commercial simplicity
- Improves commercial image
- Maximises profits
- No withholding tax on dividends
- £1 minimum capital
- Capital reduction possible

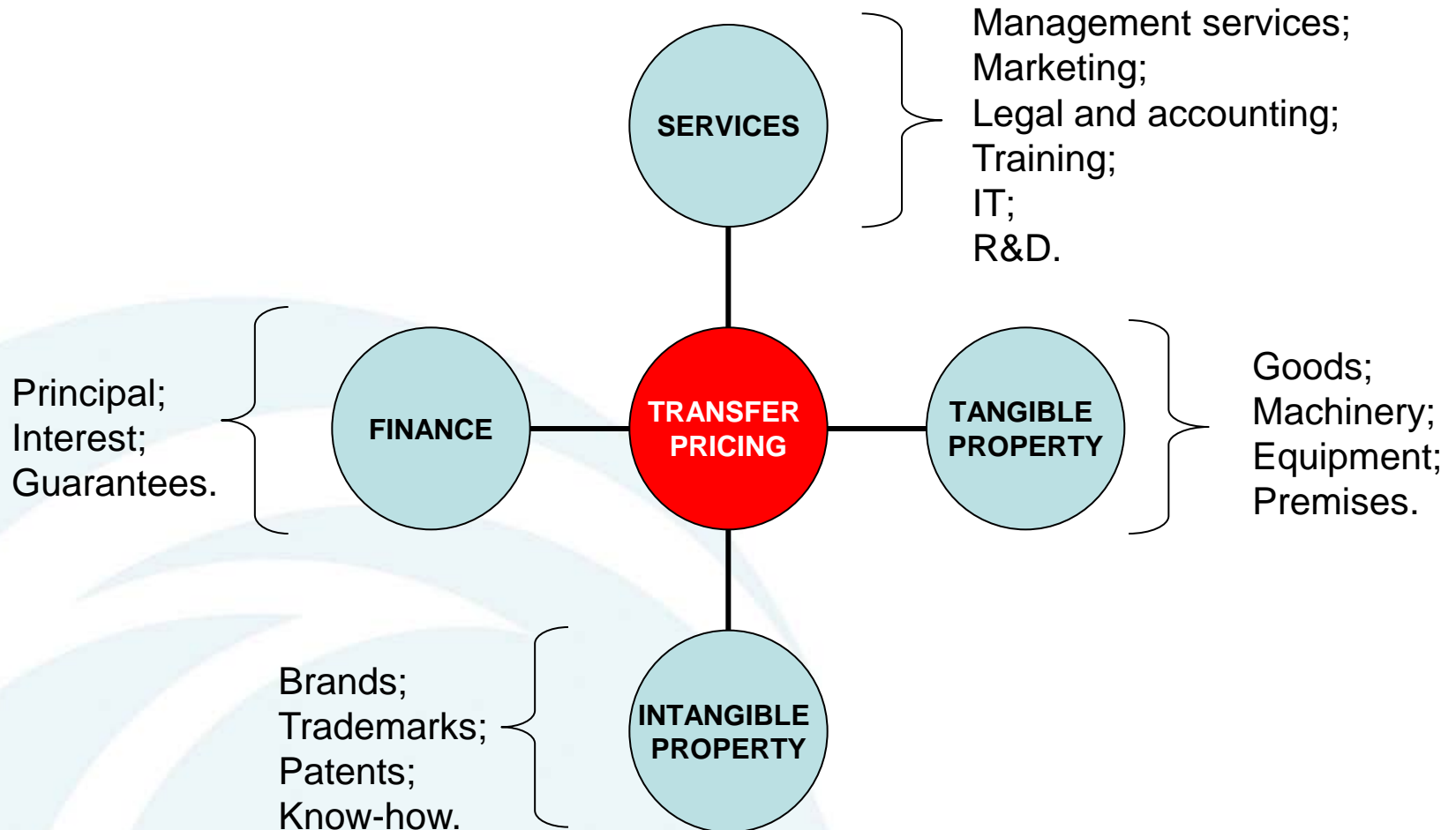
Repatriation of funds to US

US/UK Treaty:
No WHT on
dividends, interest or
royalties



Benefits from EU
Directives:
- 0% WHT on
dividends
- 0% WHT on royalties
and interest

Transfer Pricing – Key aspects



Transfer Pricing - exemption for SMEs

	Maximum number of staff	And less than one of the following limits	
		Annual Turnover	Total assets
Small Enterprise	50	EUR 10 million	EUR 10 million
Medium Enterprise	250	EUR 50 million	EUR 43 million

- Limits apply to whole group and not entity by itself
- Transaction must be with a related person in a 'qualifying territory'
- **Deductibility of costs still subject to general rules**
- **Must still consider overseas tax regime**

US Limited Liability Companies

- Treatment of a US Limited Liability Company
 - Transparent?
 - Opaque?
- Upper Tier Tribunal confirmed HMRC's view that US LLC's are opaque corporate entities
- Reason for decision:
 - Delaware LLC Act states that members have no interest in specific LLC property
 - Court found that member had no 'proprietary right' to underlying assets and income

UK tax treatment of US LLCs

Transparent

UK MEMBERS

- Taxed as profits arise
- Credit relief for US tax



Members pay tax
in US as profits
arise



Opaque

UK MEMBERS

- Taxed on distribution
- No credit relief for US tax



Value Added Tax (“VAT”)

- A foreign kind of tax



The VAT impact

- VAT is an EU transaction tax
 - Other countries have VAT e.g. China and India
- VAT applies to goods and services
- High level of collaboration between tax authorities
- A VAT number gives business credibility
- UK VAT rates:
 - Standard rate of 20%
 - Reduced rate of 5%
 - Zero-rated
 - Exempt from VAT
 - Outside the scope of VAT
- EU VAT rates vary from 15% to 25%
- **Must consider VAT on all EU transactions**

The VAT impact

- Different VAT rules for:
 - Goods or services
 - EU and non-EU customers
 - Business or non-business customers
- Must identify:
 - Nature of the supply
 - Place of supply
 - Goods – where goods located
 - Services – where business customer located
 - Other rules for land, conferences, exhibitions etc
 - Establishment in the UK
- VAT Registration
 - UK threshold of £73,000
 - Need proof of trading

VAT structuring

- Importing goods into UK:
 - Who is the importer of record?
- Provision of services:
 - Where is the place of supply?
- Classification of goods or services
 - Are they taxable supplies?
- Nature of activities in the UK
 - Is there a business establishment?
- Timeline for VAT registration
 - Must plan in advance



Individuals coming to the UK



- Concepts of residence and domicile



Residence and Domicile

- Different tax treatment for individuals depending on tax status.
- Concepts of importance:
 - Residence
 - Ordinary residence
 - Domicile
- Status affects tax treatment for:
 - Income Tax
 - Capital Gains Tax
 - Inheritance Tax
- Non-Domiciled Individuals have tax advantages:
 - Offshore income and gains can remain outside the charge to UK taxation:
 - Remittance Basis of assessment
 - Lose Personal Allowances
 - May have to pay an annual fee of £30,000
 - Offshore assets can remain outside the charge to Inheritance Tax:
 - Planning required as Deemed Domiciled after 17 years.

Employment Income

How employment income is taxed in the UK

Your UK domicile status	Your UK residence status	Arising Basis (AB) or Remittance Basis (RB) claimed	Employment duties performed wholly or partly in the UK		Employment duties performed wholly outside the UK
			Duties performed in the UK	Duties performed outside the UK	
Domiciled outside the UK	Resident and ordinarily resident	AB	Liable	Liable	Liable
		RB	Liable (on AB)	Liable (on AB)	Depends on status of employer
	Resident and not ordinarily resident	AB	Liable	Liable	Liable
		RB	Liable	Liable on remittance	Liable on remittance
	Not resident	AB	Liable	Not liable	Not liable

Statutory Residence Test (“SRT”)

- Existing law becoming too complex and contentious
- SRT to provide greater certainty
- SRT will apply from 6 April 2012
- Three part test:
 - Part A: Conclusive non-residence
 - Part B: Conclusive residence
 - Part C: Connection factors and day-counting
- Many of the rules turn on where individual is at midnight
- Much of the current ambiguity resolved in favour of HMRC
 - New rules harsher than existing law

SRT - connection factors

DAYS SPENT IN THE UK	MINIMUM NUMBER OF 'CONNECTION FACTORS' TO TRIGGER RESIDENCY	
	ARRIVERS	LEAVERS
Fewer than 10	Non-resident (Part A)	Non-resident (Part A)
10 – 44	Non-resident (Part A)	4
45 – 89	4	3
90 – 119	3	2
120 – 182	2	1
183 or more	Resident (Part B)	Resident (Part B)

Connection Factors:

1. A UK resident family
2. Accessible accommodation in the UK
3. Substantive UK employment
4. 90 days spent in the UK in either of the two previous tax years
5. Leavers only: more days spent in the UK than any other country in that year





Transatlantic experience



Examples of US – UK clients



Offshore and International tax team

Nick Farmer		<p>Nick specialises in providing tax advice to companies and their shareholders. He has extensive experience in both UK and international corporate tax issues, and has particular expertise in structuring inbound and outbound arrangements for corporate clients.</p> <p>Contact details: T: +44 (0) 1784 497100 E: nfarmer@menzies.co.uk</p>
Martin Peddie		<p>Martin has 15 years experience providing specialist tax planning advice to clients who are either resident but not domiciled in the UK or domiciled but not resident in the UK. He works closely with our private client team to ensure that clients domestic and international wealth management plans are integrated through the use of overseas and offshore structures for personal and corporate investment.</p> <p>Contact details: T: +44 (0) 1252 541244 E: mpeddie@menzies.co.uk</p>
David Truman		<p>David is a tax partner specialising in private client tax. He specialises in dealing with non-UK domiciled individuals, expatriate tax and the international aspects of taxation for employees, business owners and high net worth individuals. He also deals with trust taxation for both onshore and offshore trusts.</p> <p>Contact details: T: +44 (0) 20 7387 5868 E: dtruman@menzies.co.uk</p>
Jayne Simpson		<p>Jayne has worked in VAT for over 15 years starting her career with HMRC and more recently working for a Big 4 accountancy practice. She is a qualified Chartered Tax Advisor and has focused predominantly on International organisations over the past 5 years.</p> <p>Contact Details: T: +44 (0) 1784 497255 E: jsimpson@menzies.co.uk</p>

