

United Kingdom*

I. Taxation

The Finance Act 1986, which received the Royal Assent on 25th July 1986, contains a number of detailed tax changes. The most significant for anyone who does business in or with the United Kingdom are as follows:

A. INHERITANCE TAX

The structure of Capital Transfer Tax (a tax imposed on both lifetime gifts and on a deceased's estate) has been changed and the tax has been renamed Inheritance Tax. The major change is that the tax on lifetime gifts between individuals is abolished. However, gifts made within seven years of death will generally be brought into charge at a tapered rate. Gifts within three years of death will be charged at the full death time rate. A gift in which any benefit is reserved for the transferor remains part of the transferor's estate.

B. INCOME TAX

(1) There is an increase in the main personal allowance in line with the statutory indexation requirement. Basic rate income tax is reduced from 30 percent to 29 percent.

(2) Changes are also made with effect from April 6, 1985, so that tax is withheld at source from U.K. earnings of £500 or more of nonresident entertainers and sportsmen. Their earnings, prize monies, and income from advertising, sponsorship, and endorsements will now be paid net of tax at the basic rate.

(3) A new incentive is to be introduced to encourage savings. Individuals will be able to invest up to £2,400 a year from January 1987 in a managed "Personal Equity Plan"; provided shares are held for the calendar year after the year of investment, any capital gains and reinvested dividends will be free of tax.

(4) The time limit for investment in the Business Expansion Scheme has been extended indefinitely, and a number of changes principally to the existing qualifying company conditions have been introduced.

C. CORPORATION TAX

(1) The corporation tax rate for the financial year 1986 for small companies is reduced to 29 percent and the effective marginal rate on profits

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from £100,000 up to £500,000 is 36.5 percent. The corporation tax rate for other companies is 35 percent.

(2) ACT for dividends paid on or after April 6, 1986, is 29/71sts of the dividend paid. The tax credit will be a similar proportion.

(3) For accounting periods beginning after June 3, 1986, the amount of ACT permitted as a deduction against corporation tax on foreign source income is the lower of 29 percent of that income and the remaining corporation tax liability on that income after deduction of double taxation relief.

D. CAPITAL GAINS TAX

(1) The annual exemption is raised to £6,300 for individuals and trustees for disabled persons. Exemption for other trustees is £3,150.

(2) Where an individual transfers chargeable assets on or after March 18, 1986, to a dual resident trust, he can no longer claim holdover relief, and if a U.K. resident trust becomes dual resident, any heldover gain becomes taxable at that time.

E. STAMP DUTY

(1) A number of important changes have occurred in Stamp Duty in the field of company reconstructions, takeovers, amalgamations, and demergers. Existing exemptions cease to apply from October 27, 1986, and a lesser relief has effect on certain conditions for instruments executed after March 24, 1986, where the whole or part of a company's undertaking is transferred. Between the above dates a rate of 0.5 percent applies.

(2) Subject to qualifying conditions, a transfer of all shares in a target company to the acquiring company will be exempt from duty. This exemption applies to instruments executed on or after August 1, 1986.

(3) The rate of Stamp Duty to be applied on transfers of stock or marketable securities on or after October 27, 1986, will be 0.5 percent; the issue of bearer shares will attract duty at a rate of 1.5 percent.

(4) A new Stamp Duty Reserve Tax is introduced to tax certain agreements relating to share transactions on or after October 27, 1986, that in practice escape liability to Stamp Duty. In addition, the transfer of U.K. stocks for conversion to depositary receipts will be subject to the new duty for such deposits of shares made after March 18, 1986. The rate applicable to the former is 0.5 percent and to the latter 1.5 percent.

II. Litigation

The major recent changes in the practice and procedure of commercial litigation are as follows:

A. COMMERCIAL COURT PRACTICE

A Guide to Commercial Court Practice was issued in September; it sets out recommendations for speedier interlocutory proceedings and trials.

B. RULES OF THE SUPREME COURT

(1) New rules introduced in October allow the court to direct an exchange of written statements of oral evidence that witnesses are to give in all actions before the Chancery Division, the Commercial Court, the Admiralty Court, and Official Referees' business.

(2) The Court may also order that a "without prejudice" meeting of experts be held for the purpose of identifying those parts of their evidence about which they are in issue. Further, the experts can be required to prepare a joint statement indicating those parts of the evidence on which they agree.

(3) A new Order 62 of the rules came into force on April 28, 1986. The order substantially amends the rules relating to costs, redefining the bases of taxation, and abolishing "party-and-party" costs. These changes represent the most fundamental changes to the rules on costs this century.

C. LIMITATIONS OF ACTIONS

The Latent Damage Act 1986 provides new time periods in claims for negligence. The time limit is either six years from the date damage is suffered or three years from the date upon which it ought reasonably to have been known that damage had been suffered, whichever time is the later. These time limits are subject to an overriding limit that bars all actions brought after fifteen years from the date of the acts or omissions constituting the negligence.

D. SOLICITORS' RIGHTS OF AUDIENCE

Solicitors have been given a limited concession allowing them rights of audience in open court before Judges in the High Court in formal or unopposed proceedings.

III. Insolvency

The Insolvency Act 1986 consolidates the provisions of the Insolvency Act 1985 and the Companies Act 1985 provisions on directors disqualification. New rules under this Act will be published in October 1986, and the Act is expected to be in force in December 1986.

IV. Property

A. SOLICITORS' MONOPOLY OF CONVEYANCING WORK

The Administration of Justice Act 1985 introduces "licensed conveyancing" into the English legal system. A new breed of conveyancers, licensed by the "Council for Licensed Conveyancers" will be permitted to carry out property transfers that in the past were restricted to solicitors only.

B. POWERS OF ATTORNEY

Under the Enduring Powers of Attorney Act 1985 the donor of a power of attorney can make provision for his own future mental incapacity. If the donor makes such provision, the donee of the power continues in the position (to a limited extent) following the onset of the donor's mental incapacity.

C. BUILDING SOCIETIES

The Building Societies Act 1986 substantially extends the power of building societies. Although their primary purpose of raising money from members and lending to members on the security of residential property is retained, the Act allows societies to extend this role into other property services. Building societies will be able to provide the following services: money transmission services; acting as agents; managing, as agents, mortgage investments or land; establishing and managing personal equity plans; giving insurance advice; estate agency; surveys and valuations; and conveyancing. Further, a Building Society Commission is established to undertake supervisory functions.

D. LOCAL GOVERNMENT

From April 1, 1986, most local authority documents are now available for public inspection as a result of an amendment to the Local Government Act 1972 introduced by the Local Government (Access to Information) Act 1985.

V. Financial Services

Major changes occurred in the City of London on October 27, 1986, as a result of changes to The Stock Exchange Rules. Further, the Financial Services Bill (due to be enacted in November 1986) makes substantial changes to the regulation of investment business.

A. CHANGES TO STOCK EXCHANGE RULES

With effect from October 27, 1986, stockbrokers' fixed commissions on the sale and purchase of shares for their clients were abolished. On the same date "single capacity" was also abolished.

Before these changes there were two types of individuals in The Stock Exchange: jobbers and brokers. Jobbers acquired securities and made their profit on the difference between the buying and selling prices. Brokers bought and sold securities from the jobbers for their clients and made their profit on the commissions charged on the deals.

With the abolition of fixed commissions the brokers decided that they needed to make markets themselves. Similarly, jobbers decided that they would need to act as brokers. In order to safeguard the position of the investors, The Stock Exchange has introduced new rules that will preserve the competitive elements of the old system, but require disclosure of the capacity in which the trader acts. Although brokers may conduct business with their own jobbers, they may only do so if the in-house jobber at least matches the best price on the market. Jobbers are required to advertise their prices continuously on The Stock Exchange's electronic price service.

B. FINANCIAL SERVICES BILL 1986

This Bill, which is likely to begin to come into effect early next year, makes major changes in the law relating to the regulation of investment business. The definition of "investment business" includes: dealing or arranging deals in stocks and shares in U.K. or foreign companies, debentures and loan stocks, and government and other public securities; managing investments including collective investment schemes and venture funds; and advising on investments. "Investments" includes options, futures, and long-term insurance contracts.

The Secretary of State for Trade and Industry is given wide-ranging powers to authorize and regulate the carrying on of investment business. The majority of these powers are likely, however, to be delegated to the Securities and Investments Board as the "designated agency" under the Act.

The main regulatory provisions of the Act are as follows:

- (1) Anyone who carries on an investment business in the U.K. must be authorized (with some minor exceptions). Not only will doing business without authorization be a criminal offense, but the offending firm will be unable to enforce its contracts. Further, an injunction can be obtained to prevent a person from continuing to deal unauthorized and that person may be required to repay any profits made from the unauthorized business. The Act contains compensation provisions for investors suffering loss.

- (2) The Act specifies five main ways of becoming authorized:
 - (a) Direct authorization by the designated agency.
 - (b) Membership of a recognized self-regulating organization (SRO). This method will perhaps be the most common for those seeking authorization. Bodies such as The Stock Exchange and the Financial Intermediaries Managers & Brokers Regulatory Association already (prior to the Act) had a regulatory role. In order to qualify for recognition the SRO must satisfy the designated agency that its rules, and their enforcement, provide investors with at least equivalent protection to that provided by the agency.
 - (c) Membership by a firm of a professional body. Many professions carry on investment business incidental to their profession. Examples include solicitors, accountants, and actuaries. The professional bodies impose a code of conduct and enforce this code through their own disciplinary process. These bodies may apply to the Designated Agency for recognition.
 - (d) Insurance companies and friendly societies being already authorized to carry on insurance business under the Insurance Companies Act 1982.
 - (e) Recognized businesses from other Member States of the European Community. Where another EC Member State has an authorization regime at least equivalent in investor protection to that of the U.K., businesses authorized to carry on investment business in that EC Member State may carry on an investment business in the U.K. and operate collective investment schemes here.
- (3) Although in theory all authorized businesses, except insurance companies and friendly societies, are entitled to carry on all forms of investment business, in practice SROs and professional bodies will have rules that will limit the scope of their members' investment business.
- (4) A register listing all authorized persons (other than members of recognized professional bodies) will be kept by the agency and will be open to public inspection. This register is going to be important in checking on the authenticity of insurance intermediaries and other salesmen.
- (5) All investment businesses will be subject to "conduct of business" rules. These rules will either be those laid down by the agency, or alternatively the SROs and professional bodies will be required to have their own rules that provide investors with protection equivalent to that provided by the agency's rules. The rules provide for signed "customer agreements" and full disclosure of material interests.

- (6) The agency can prohibit the employment in connection with investment business of any individual who is not a fit and proper person to be employed in such business.
- (7) The Act also completely overhauls the mechanism for making public offerings of securities, repealing the prospectus provisions of the Companies Act 1985. Prospectuses will be classed as "investment advertisements" and cannot be issued unless the securities to which they relate are fully listed on the London Stock Exchange or the prospectus is registered or approved by a recognized investment exchange in the U.K. or abroad.