

# Global Tax Update

## United Kingdom

Deloitte Tohmatsu Tax Co.

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### 1. **Company residence: 'central management and control': First-tier Tribunal decision**

The First-tier Tribunal has given an interesting decision on company residence in a case involving arrangements set up with a view to enabling the taxpayer group to augment capital losses. The arrangements involved UK group members granting options to various Jersey-incorporated companies to acquire assets at prices above market value, and, in order to be effective, required that the Jersey companies were not UK tax resident on the date of acquisition of the assets. The Tribunal held that central management and control had in reality been exercised in the UK by the UK-resident parent company and thus the companies were UK resident throughout. A number of features distinguished the case from *Wood v Holden*, in which the Court of Appeal held that a company will 'almost always' be resident where the board of directors meet. The boards of the Jersey companies had been presented with a transaction which had no commercial merit from the Jersey companies' perspective and thereby required instruction or approval from the parent for it to be lawful. 'In the circumstances, the line was crossed from the parent influencing and giving strategic or policy direction to the parent giving an instruction.' Thus the Jersey companies were managed and controlled in the UK. See <http://deloi.tt/2uG7DmK>.

### 2. **Corporation tax loss relief reform: draft guidance**

HMRC have published draft guidance in connection with the draft legislation to reform corporation tax loss relief to be included in the next Finance Bill, which is due to be published after the summer recess. (For the latest version of the draft legislation see <http://deloi.tt/2vpBj8k>). HMRC state that this is an initial tranche of guidance, focusing on the core rules and other aspects where guidance has been

specifically requested. Comments are invited by 25 September 2017. See <http://deloi.tt/2vjSKpY>.

### 3. **Corporate interest restriction: updated draft guidance**

HMRC have published an updated version of their draft guidance on the corporate interest restriction in connection with the draft legislation to be included in the next Finance Bill. (For the latest version of the draft legislation see <http://deloi.tt/2hteU3U>). An initial tranche of draft guidance was published on 31 March 2017. This second tranche of draft guidance amends and updates that initial tranche. In particular, it reflects the updated legislation published on 13 July 2017, and includes additional material. Comments about the draft guidance are invited by 31 October 2017. See <http://deloi.tt/2vnUsXO>.

### 4. **VAT: SI 2017/0778: use and enjoyment of telecoms services**

Further to the announcement in the Spring Budget, the VAT (Place of Supply of Services) (Telecommunications Services) Order 2017 has been laid before the House of Commons. The only material change from the draft Order published in May is that the new provisions will come into force from 1 November rather than 1 August. See <http://deloi.tt/2tmc3Lu>. The Tax Information and Impact Note accompanying the Order estimates that charging UK VAT on the use of mobile phones outside the EU might cost a typical consumer an additional £5 annually, but claims that it will safeguard about £1 billion of revenue from the potential exploitation of the current rules to argue that VAT is not due on certain supplies of mobile telecommunication services within the UK. See <http://deloi.tt/2uPICaj>.

### 5. **VAT: MJ Hickey: penalties for delayed tax: Upper Tribunal**

MJ Hickey Plant Hire and Contracts Ltd configured its accounting systems to exclude turnover from the

final day of each quarter from its VAT returns. The turnover was included on the next VAT return, so this produced a cash flow advantage rather than avoiding VAT altogether. When they identified the error, HMRC issued a penalty for £149,186 for a deliberate inaccuracy. MJ Hickey argued that the error was for delayed tax and therefore the penalty should be multiplied by 5% p.a. for a single quarter (i.e. a penalty of £1,865). The Upper Tribunal has agreed with MJ Hickey's approach. Penalties for delayed tax anticipate a combined view of inaccuracies across two returns which (when combined) result in the correct amount of VAT being paid at the wrong time. The rules on delayed tax penalties were intended to cover exactly this sort of systematic error which shifted VAT from one quarter to the next. The decision highlights the importance of reviewing any penalties issued by HMRC to identify all possible means of mitigating them. See <http://deloi.tt/2uncZiF>.

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