



# Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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## 1. R&D Expenditure Credits

Companies which have not yet elected into the new above the line R&D regime but are planning to do so for the year ended 31 December 2015 should be considering how the change will affect their quarterly instalment payments (QIPs). The tax liability for tax paying companies will rise as the R&D super-deduction will not be available and there will be an additional credit in the profit and loss account. If adjustments are not made to the QIPs, the company will incur interest on underpaid tax, because the R&D Expenditure credit is only offset against the tax liability when it is agreed by HMRC. The R&D Expenditure credit does not accrue interest as it is not a tax amount, so there is no interest on the credit to offset any interest incurred on underpaid tax.

## 2. HMRC guidance: restricting share capital reductions in takeovers

The Companies Act 2006 (Amendment of Part 17) Regulations 2015 came into force on 4 March 2015. The background is that takeovers of UK public companies were increasingly being carried out via 'cancellation' schemes of arrangement, which do not incur a liability to stamp duty. The Government saw this as a 'tax loophole' and took action to block it. The change is that company law no longer allows a takeover to be structured as a cancellation scheme of arrangement. Schemes are only permitted where

they involve a transfer of shares, which is liable to stamp duty at 0.5%.

The guidance specifies how the duty is to be calculated and paid, as well as the paperwork to be submitted, depending on the details of the transaction.

Where a court order is required to sanction a scheme other than a company takeover (such as the adoption of a new holding company) and the scheme and court order qualify for stamp duty exemption or relief, the court order must still be presented to, and assessed by, HMRC. If a relief/exemption provision applies to the scheme and court order, the court order will be subject to compulsory adjudication and the relief /exemption must be applied for in the normal way.

## 3. Claim for 'deemed' underlying tax fails in Upper Tribunal

The Upper Tribunal (Mrs Justice Proudman and Judge Colin Bishopp) has dismissed the taxpayer's appeal in the Peninsular and Oriental Steam Navigation Company (P&O) case and held that a double tax relief booster structure entered into by P&O failed to achieve its objective. The scheme involved an Australian group member injecting A\$193 million into a UK unlimited company, in exchange for the issue of shares. The money earned a modest return in the UK company for a short period. The company

then resolved to reduce its capital to a nominal amount, with a credit of A\$193 million going to reserves. That, with the profit from the interest, was then paid to its Australian parent as a dividend and a dividend was then paid to the UK. Credit for deemed UK tax was claimed on the full amount of the dividend by the lower tier company. This dividend was mainly sourced from a reduction of capital which had not been taxed. The rules at the time provided for a deemed credit where dividends were paid from a UK company. The Upper Tribunal agreed with the First-tier Tribunal that P&O were not entitled to a DTR credit of over £20 million in respect of payments made to it, directly or indirectly, by related companies, although it has adopted rather different reasoning. It did not need to explore the possible application of the Ramsay line of cases; the scheme did not work, and that was enough to dispose of the appeal.

#### **4. VAT: HMRC Brief on compound interest claims**

HMRC have issued a Brief outlining their stance following the Court of Appeal's decision in favour of the taxpayers in the case of Littlewoods Retail Limited and Ors. The Brief confirms that, as expected, HMRC are seeking leave to appeal against the Court of Appeal's ruling that the payment of simple interest to the taxpayers did not provide them with adequate recompense for the overpayments of VAT that they made, and that they were entitled to compound interest. HMRC maintain that the Court of Appeal's decision does not mean that they should pay compound interest to other taxpayers and the Brief states that HMRC will continue to seek stays of High Court and County Court actions over the payment of compound interest, and to stand over appeals to the Tribunals, to await the final conclusion of the Littlewoods litigation (whether that be a refusal of its application for leave to appeal to the Supreme Court or a decision from the Supreme Court). It is likely to be several months before the outcome of HMRC's application for leave to appeal is known.

In the meantime, businesses should maintain existing Tribunal appeals and High Court/County Court claims, and should lodge new ones as necessary.

#### **5. Trends in MTIC VAT frauds: discussions with HMRC**

Irrespective of the commodity involved, HMRC believe that MTIC fraud is commonly perpetrated in areas where there is poor supply chain management. Increasingly, those involved in the frauds seek to legitimise their trade by trading with larger businesses, building up relationships and legitimate trading patterns before using them to disguise their fraudulent activities. HMRC aim to be one of the most advanced tax authorities in dealing in fraud (and also the most co-operative). HMRC officers frequently visit businesses in the UK to warn them of risks, and sometimes discover that frauds have been perpetrated through subsidiaries (or, perhaps, branches) elsewhere in Europe. HMRC ask that warnings received in the UK are passed on to offices elsewhere in Europe. HMRC also stress the importance of refreshing 'know your customer/supplier' checks on a regular basis. They suggest that spikes in trading patterns can sometimes be traced to fraudsters turning their attentions to other legitimate businesses to target trade through different routes.

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