



Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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1. Tax deductibility of corporate interest expense

Following consultation, it was announced at Budget 2016 that new rules will be introduced which limit the tax relief for the interest expense that can be claimed by large multinationals. The new rules will be in line with the OECD/G20's recommendations under Action 4 of the BEPS project and will apply from 1 April 2017. The Government has now published a further consultation document on the detailed policy design and implementation of these rules. The deadline for responses is 4 August 2016. See <http://deloi.t/1OITEHq>

2. R&D Expenditure Credit ("RDEC") replaces R&D super-deduction for large companies

The 30% R&D super-deduction regime for large companies ended on 31 March 2016. From 1 April 2015, when the RDEC was introduced, companies were able to choose between the regimes, although once the RDEC had been chosen that was irrevocable. RDEC is a more generous regime but the very different impact on accounting, tax payments and, foreign tax credits, meant that not all companies did elect for RDEC. For accounting periods that straddle 1 April 2016 companies can only claim the RDEC as it is not possible to split the accounting period and claim the super-deduction for the days up to 31 March 2016.

3. Consultations

A number of consultations have been published:

(1) Reforms to corporation tax loss relief: consultation on delivery

HM Treasury has launched a consultation on how best to deliver proposed reforms in corporation tax loss relief legislation, and how to deal with the interactions with other areas of the corporate tax system. Comments are invited by 18 August 2016. At Budget 2016 the Government announced two major reforms to the loss relief rules:

- I. Losses arising from 1 April 2017 can be carried forward and set against the taxable profits of different activities within a company and the taxable profits of its group members;
- II. The amount of annual profit that can be relieved by carried-forward losses will be limited to 50% from 1 April 2017, subject to an allowance of £5 million per group.

Relief for carried-forward trading losses arising before 1 April 2017 will be restricted to 50% of trading profit, whereas relief for carried forward trading losses arising after 1 April 2017 will effectively be restricted to 50% of profit across the group. There will be no limit on losses carried back. The reforms will be confined to trading losses, non-trading loan relationship

deficits, UK property losses, management expenses and non-trading losses on intangible fixed assets (i.e. revenue losses). Capital losses will remain out on their own. See

<http://deloi.tt/1TG9dJn>

(2) Reform of the substantial shareholdings exemption

At Budget 2016, the Government announced that it would consult on reform of the substantial shareholdings exemption, with a view to making it simpler, more coherent and more internationally competitive. A consultation has now been published which sets out a number of options. Comments are invited by 18 August 2016. See <http://deloi.tt/1X0a4J1>

(3) Passport scheme

The Government is consulting on the tax treaty passport scheme to ensure that it still meets the needs of UK borrowers and foreign investors. There have been 3,000 'passports' issued over the last five years. The consultation asks whether the scheme should be expanded beyond corporate to corporate lending, to encompass funds and partnerships. See <http://deloi.tt/1qNOoBs>

(4) Secondary adjustments: UK's transfer pricing legislation

There is also a consultation on secondary adjustments under transfer pricing. A secondary adjustment rule aims to apply a tax charge on the excess cash arising on non-arm's length pricing e.g. when a payment is made to a tax haven. If the payment is disallowed under transfer pricing rules, the cash would still be left in the haven; secondary adjustments are intended to counteract that. Responses are invited by 18 August 2016. See <http://deloi.tt/1Vlh4yh>

4. VAT: Business review work supplied to lenders – Supreme Court Judgment

The Supreme Court has dismissed the Airtours

Holidays Transport Limited "person supplied" appeal, by a narrow (3-2) majority. The majority agreed with the conclusions of the Upper Tribunal and Court of Appeal that the independent business review carried out by PwC was supplied to the lenders, and not to Airtours, even though the company was liable to pay for the report. The Supreme Court focused on the terms of the engagement letter between PwC, the banks, and Airtours and concluded that since it expressly stated that the work was for the sole use of the banks that asked for it, that Airtours was entitled to no more than a redacted copy of the report and that PwC denied any duty of care towards Airtours, the supplies under it were made to the banks. It followed that Airtours did not receive any supply from PwC (despite the fact that the company was the party liable to pay for the work) and hence that it was not entitled to reclaim the VAT charged by PwC. As is illustrated by the dissenting judgments in the Supreme Court, and the comprehensive dissenting judgment in the Court of Appeal, there remains considerable uncertainty about the VAT treatment of supplies under tripartite arrangements.

5. CJEU decides against taxpayers in 'payment processing' exemption cases

The CJEU has delivered its judgments in the 'payment handling' cases of National Exhibition Centre Limited (on a reference from the Upper Tribunal) - and Bookit Limited (referred from the First-tier Tribunal). The cases concerned the VAT treatment of fees charged by the NEC and Bookit and whether they were exempt from VAT as payments for handling debit and credit card payments. In both cases, the CJEU has decided that the fees charged fell outside the scope of the EU law exemption for '...transactions ... concerning ... payments, transfers' and it follows that they were subject to VAT at the standard rate.

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