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Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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1. Transfer of trade/tax losses: taxpayer wins in First-tier Tribunal

The First-tier Tribunal has given its decision in favour of the taxpayer, Leekes Ltd, which claimed relief for losses as a result of its succession to the business of Coles Ltd ('Coles') against the profits of the enlarged trade. The Leekes group acquired Coles, a company in a similar business, which was loss-making. The trade and assets were then transferred into another trading company in the group, which naturally succeeded to the trade but then simply carried on a single trade. HMRC and Leekes Ltd agreed that there was a succession of a trade, and that Leekes Ltd had only one trade following the succession. Thus both parties agreed that ICTA s 343(3) and not ICTA s 343 (8) and s 343 (9) were relevant to the case. HMRC argued that s 343 (3) required Leekes Ltd to 'stream' profits so that tax losses transferred on the succession to Coles' trade could not be offset against profits of the enlarged trade. HMRC argued that the references in s 343 (3) to 'a trade' should be taken to refer to the trade of Coles and that therefore, in determining what profits the losses transferred were available to use against, only profits generated from the 'old' Coles trade should be considered. The taxpayer argued that, taking account of authorities and the principles behind the legislation, there was no justification for restricting the offset of losses available to the successor company, Leekes Ltd, and Leekes Ltd should be allowed to offset the losses transferred against profits of its enlarged trade post-succession. The Tribunal decided that the preferable interpretation of s 343 (3), on the premise that a succession has occurred, is that all the losses of the predecessor's trade which has been subsumed with the successor's trade should be available for offset against the combined profits of the single trade of the successor company. The appeal was therefore allowed.

2. Regulations to restrict share capital reductions in takeovers in force

The Companies Act 2006 (Amendment of Part 17) Regulations 2015 SI 2015 No. 472 were made on 3 March 2015 and came into force on 4 March 2015. The background is that takeovers of UK public companies are 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. This is being achieved through an amendment to Companies Act 2006 s 641 which prevents a company from reducing its share capital alongside a 'cancellation' scheme of arrangement to facilitate its takeover. It will still be possible to effect a takeover by means of a ''transfer' scheme of arrangement, but these will attract stamp duty.

3. Mandatory use of new XBRL taxonomy from 1 April 2015

Accounts submitted to HMRC as part of a Company Tax Return are required to be ‘tagged’ using a suitable Extensible Business Reporting Language (‘XBRL’) taxonomy. As a result of the publication of the new UK GAAP accounting standards FRS 101 and FRS 102, and the release in September 2014 of a new XBRL taxonomy that supports these standards and also EU-adopted IFRS, HMRC have issued updated guidance on which taxonomies should be used in future. For return filings on or after 1 April 2015, accounts prepared under the new standards must be tagged using the new taxonomy. However, in order to avoid unnecessary re-tagging of accounts, accounts prepared before 1 April 2015 and tagged under the existing IFRS taxonomy will be acceptable regardless of when the return is eventually filed.

4. Treasury Select Committee report on the Autumn Statement

The Treasury Select Committee has published its report on the Autumn Statement 2014. On Diverted Profits Tax, the Committee comments that tackling tax avoidance, specifically the problems associated with base erosion and profit shifting, is an internationally recognised problem which requires an international response. This is currently taking place in the form of the OECD’s base erosion and profit shifting project. The Committee notes the Government’s decision to announce a unilateral Diverted Profits Tax ahead of the conclusion of the OECD’s work, and says this should not be permitted to destabilise the international effort. Chair Andrew Tyrie comments that the imposition of a tax by the UK on diverted profits could be at odds with the OECD’s international work in this area. The lengthy and complex draft legislation may also increase uncertainty for businesses.

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