



Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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1. Cross-border group relief claims: HMRC's letter to claimants

HMRC have now decided their approach on pre 2006 cross-border group relief claims and started to issue letters to companies which are affected. The letter invites the company to consider withdrawing some of their cross-border group relief claims and asks for a response by 5 June 2015. In the light of the CJEU's February 2015 decision on the Commission's infringement proceedings, HMRC take the view that the Supreme Court's decision in Marks & Spencer has effectively been overruled, as Courts and Tribunals would be bound to follow the CJEU. They therefore maintain that most claims fall at the first hurdle because taxpayers cannot satisfy the 'no possibilities' test at the end of the accounting period in which the losses were sustained. There are also comments on 'definitive losses', 'continuing to trade or receive income', 'time barred losses', 'cessation of all activities including winding up' and 'local law'.

2. New UK GAAP: effect on derivative contracts: deadline for election

One of the implications of adopting new UK GAAP is that many companies will be required to bring their derivative contracts onto the balance sheet for the first time and will then need to fair value the instruments each year. Unless specific

hedge accounting can be adopted, these annual fair value movements will be recognised in the profit & loss account / income statement, without corresponding movements on the underlying hedged transaction. The basic analysis is that these movements will then be taxable, as will the transitional adjustments resulting from initial recognition of the instruments. Where the Disregard Regulations (SI 2004/3256) apply, both the annual fair value movements and initial transitional adjustments are disregarded for tax purposes. The Regulations were changed with effect for periods of account beginning on or after 1 January 2015. They previously applied automatically unless a company elected out, but it is now necessary to elect in to the regulations if a company wants them to apply. For some groups, the time limit for making the election is imminent and they need to decide both whether they can make an election and whether they wish to do so. The election can apply to any of currency contracts, commodity contracts or interest rate contracts and the types of contract to which it applies must be specified in the election. For new adopters, once the election has been made, the position is locked in for a period of three years from initial adoption of new UK GAAP. The deadlines for new adopters are:

- For companies within SAO that had derivatives on adoption of new UK GAAP: 6 months after the **start** of the first new UK

GAAP accounting period (for companies with a 31 December year-end this will be 30 June 2015).

- For companies not within SAO that had derivatives on adoption of new UK GAAP: 12 months after the **end** of the first new UK GAAP accounting period (for companies with a 31 December year-end this will be 31 December 2016).
- For companies that did not have derivatives on adoption of new GAAP: 6 months after entering into the first relevant derivative contract. This applies to companies within SAO and to those outside SAO if it gives a later deadline than above.

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