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Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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1. Requirement for large businesses to publish tax strategy: draft guidance

HMRC have published high level draft guidance on the requirement for large businesses to prepare and publish their tax strategy contained in Clause 149 and Schedule 19 of the Finance (No 2) Bill ("FB"). This guidance explains:

- The qualifying criteria for publishing a tax strategy;
- What a tax strategy must contain;
- When penalties may be charged (including reasonable excuse); and
- The appeals process. See http://deloi.tt/1V9WdwM

The guidance makes it clear that the strategy should be published for the first time before the end of the first financial year commencing after Royal Assent of FB16. After this, the strategy must be published annually, but not more than 15 months after the day on which the previous strategy was published.

2. Register of People with Significant Control comes into effect

From 6 April 2016 UK companies and LLPs will be required to hold a register of People with Significant Control ("PSC"). The register is to be held in addition to existing registers, such as the register of directors and register of members. The PSC register will include information about the individuals who own or control companies including their name, month and year of birth, nationality, and details of their interest in the company or LLP. From 30 June 2016, UK companies (except listed companies) and LLPs will need to declare this information when issuing their annual statement to Companies House. A person with significant control is someone who holds more than 25% of shares or voting rights in a company, or who has the right to appoint or remove the majority of the board of directors. Guidance for companies and LLPs can be found here: http://deloi.tt/1SCvKmV.

3. Parking fines not deductible: First-tier Tribunal

The First-tier Tribunal has dismissed the taxpayer's appeal in a case on penalty charge notices /parking fines in respect of armoured vans that collect and deliver cash. The Tribunal held that the payment for the fines was a disbursement or expense but it was not money wholly and exclusively laid out or expended for the purpose of the trade, nor was it a loss connected with the trade. The company argued that safety of its personnel demanded that vans park as near as possible to the delivery point, even if this triggered a fine. The Tribunal said 'We do not accept the appellant's core argument that the trade cannot be conducted without incurring [parking fines] solely caused by safety imperatives.'

4. VAT: Court of Appeal holds taxpayers ‘should have known’ of the link to fraud

The Court of Appeal has agreed with HM Revenue & Customs (“HMRC”) that Davis & Dann Ltd and Precis (1080) Ltd should have known that their trades in ‘grey market’ Gillette razor blades were connected with fraud. HMRC disallowed more than £4 million in input VAT (Value Added Tax) claimed by the taxpayers and, on appeal, the First-tier Tribunal concluded that, taken as a whole, the evidence surrounding these deals indicated that the only credible explanation for them was that they were connected with fraud and that the appellants should have known that. The Upper Tribunal (“UT”) recognised that some of the circumstances surrounding the deals at the heart of the appeal might have justified a suspicion that there might be a fraud behind them but concluded that ‘. [i]f the terms of dealing are broadly consistent with the way in which transactions in the market are ordinarily conducted, it can hardly be said that the only reasonable explanation for the circumstances in which the transactions took place is that the transactions are connected with fraud, even if some facets of the transactions might raise a suspicion of fraud’ and overturned the First-tier Tribunal‘s confirmation of HMRC’s assessments. However, the Court of Appeal decided that the UT had been wrong to focus on individual aspects of the deal and had paid too little attention to the warnings given by HMRC about indications that the transactions were linked with fraud (e.g. an unsolicited offer of goods followed soon after by an unsolicited offer to buy those goods). The decision suggests that businesses need to be cautious about transactions, even when they have the appearance of ‘typical’ transactions that they enter into, if there are circumstances that might suggest a link to fraud (e.g. events that suggest that the transaction is ‘too good to be true’).

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