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Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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1. HMRC update their paper on FRS 102

HMRC have updated their overview paper, originally published in January 2014, which is designed to assist companies which are thinking of choosing or have already chosen to apply FRS 102. It provides an overview of the key accounting changes and the tax considerations that arise for those companies that transition from old UK GAAP 1 to FRS 102. Although it concentrates on the corporation tax position, the paper may also assist individuals (and other entities) within the charge to income tax as many of the accounting and tax issues will be similar. However, there are significant differences between the two tax regimes which are not reflected in the paper.

2. Consultation on the tax deductibility of corporate interest expense

The Government is consulting on the proposals in Action 4 of the OECD's BEPS Report: Interest Deductions and Other Financial Payments. This consultation is open until 14 January 2016. The Consultation Document mainly consists of a summary of the ‘best practice’ approach outlined in the Final Report. The UK Government has not yet formed a view on many of the policy choices open to it, and the open consultation represents a genuine opportunity for business to influence the outcome. The government acknowledges that a move to a structural interest limitation would be a major new approach in UK tax policy. The government expects to announce the direction of travel in its forthcoming Business Tax Roadmap, due to be delivered with the annual Budget, in March 2016. The suggestion that the new rules could be applied to the aggregated Tax EBITDA of all group companies within the UK could be a helpful approach. It would deal with many of the issues identified in the Action 4 Final Report, such as loss-making individual entities and holding companies with substantial non-taxable dividend income. However, it is by no means certain that such a UK sub-grouping would be permitted under EU Law. See http://deloi.tt/1OKrVPJ.

3. Consultation on the Patent Box

HMRC have published a consultation document on the Patent Box. This follows on the Forum on Harmful Tax Practices setting out as part of the BEPS programme a new framework that will apply, from 1 July 2016, to tax regimes which offer preferential treatment to income from IP. Because of the agreed timescale, HMRC plan to publish draft legislation in December informed by the consultation process, rather than publish a response document and then draft legislation. A response to the consultation will be published in spring 2016, along with any necessary changes to be made to the draft legislation, including changes responding to comments on the

December draft. Comments are invited by 4 December.

4. DMWSHNZ Ltd: notional transfer within a group: taxpayer loses in Court of Appeal

The Court of Appeal has dismissed the taxpayer's appeal in the case of DMWSHNZ Limited v HMRC. The issue was whether the taxpayer, together with another company in the same group, had made a valid capital gains notional transfer election to move a gain crystallised on the redemption of loan notes to a group company. That group company had losses to set off which would completely extinguish the chargeable gain. The Court of Appeal concluded that the transfer was ineffective. The legislation allowed the notional transfer only where the actual disposal was to a third party, and in this case there was no such disposal. The taxpayer put forward arguments based on fairness and purposive construction. However, Lewison LJ, who gave the only judgment, stated that 'Parliament has drawn a line which differentiates between those cases where it can be done, and those where it cannot.' He also rejected attempts to rely on non-statutory materials.

5. HMRC meeting on Senior Accounting Officer progress

On 23 September HMRC chaired a round table discussion on Senior Accounting Officer ('SAO') to assess progress to date, share experience and consider the potential future direction of the regime. In summary,HMRC believe SAO to be a success, driving up levels of compliance and raising the profile of tax within organisations. They did, however, concede that consistency of approach by individual Customer Relationship Managers ('CRMs') was a continuing challenge and the recent focus on the administrative aspects and the associated penalties has diverted attention away from the 'main duty' of the regime and its intended focus. HMRC indicated that all but three of the 350 penalties raised related to administrative failures and nearly two thirds of these have been raised in the past 18 months. Although this is still in its early stages HMRC are therefore exploring relaxing some of the formalities of the regime, such as the requirement to issue hard copy, 'wet signed' certificates and the requirement for a separate notification and certification. This potential relaxation of formality is likely to go hand in hand with renewed focus on the main duty and the accuracy of the certificate which may in due course be supported by additional guidance on 'reasonable steps'. HMRC also emphasised their view that SAO should be a standing agenda item for CRM meetings that it should be considered in conjunction with all significant tax matters rather than as a separate exercise and that it should be considered central to the business risk review.

6. Recovery of VAT on pension scheme costs: HMRC Brief

As expected, HMRC have issued a further brief about the deduction of VAT on pension fund management costs. The Brief follows HMRC Briefs 43(2014) and 8(2015) on the topic, which set out changes to HMRC's policy in response to the CJEU judgment in the case of PPG Holdings BV. It confirms that the current "transitional period" (during which employers and pension funds can continue to apply the "old" rules for recovering VAT on pensions-related services, as set out in VAT Notice 700/17) will be extended to 31 December 2016. It also acknowledges that there are corporation tax issues arising in connection with the use of 'tripartite contracts' as outlined in HMRC Brief 8(2015), and considers some alternative options aimed at enabling employers to recover the VAT incurred on pensions-related services. However, there are still open issues with each of these alternative options. HMRC have stated that further guidance will be published this year.

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