

Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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1. UK tax implications of FRS 101; FRS 102: HMRC papers

HM & Revenue and Customs (“HMRC”) have revised their two papers which summarise the key accounting changes and tax implications that arise for companies that change from old UK GAAP to FRS 101 or FRS 102. They were last updated in August 2016. It seems that neither paper has yet been updated for changes included in Finance (No.2) Act 2015 or Finance Act 2016.

See <http://deloi.tt/2byBRgi>

2. Creative industries reliefs: updated guidance

HMRC have published updated guidance about how to qualify for and claim the corporation tax creative industry tax reliefs: film tax relief; animation tax relief; high-end television tax relief; children’s television tax relief; video games tax relief; theatre tax relief and orchestra tax relief.

The guidance has been updated to add information about orchestra tax relief, and to advise companies that, if they receive more than 500,000 EUR a year in state aid, certain details will be published on the European Commission website.

See <http://deloi.tt/2f43Zw9>

3. FRC Annual Review of Corporate Reporting 2015/16

The Financial Reporting Council (“FRC”) has issued its Annual Review of Corporate Reporting for 2015/16. As a result of concerns identified in previous years, the Council undertook a review of companies’ tax disclosures by pre-informing 33 companies of an intention to look at those disclosures in their next set of accounts. The improved quality of information provided in companies’ effective tax rate reconciliations resulted in greater visibility of the factors affecting the tax charge and its sustainability. The FRC also wrote to

33 FTSE 350 companies informing them that it would review their tax disclosures in their next annual report and accounts. Most companies responded positively by improving aspects of their disclosures. The FRC also observed similar improvements in the quality of tax reporting by companies outside the review. However, it comments that it is disappointing that no FTSE 100 company subject to the review stood out as a role model in reporting of tax.

See <http://deloi.tt/2eHwBbt>

4. VAT: First-tier Tribunal decision in agent/principal case

The First-tier Tribunal has released its decision in the case of Hotels4U.com Limited (“H4U”). The case concerned whether H4U was supplying travel services to travellers as agent of a disclosed principal (in which case the supplies made would not be liable for Value Added Tax (“VAT”) in the UK) or as principal (in which case H4U would have to account for VAT under the Tour Operators’ Margin Scheme. The Supreme Court has already ruled on this issue in the case of Secret Hotels2 Ltd, and held that Secret Hotels2 acted as agent. H4U argued that its case was indistinguishable from Secret Hotels2, and there are a number of other appeals currently before the Tribunal where the appellants argue likewise. HMRC are seeking a reference to the Court of Justice of the European Union (“CJEU”) in all these cases on the interpretation of the EU Principal VAT Directive (on the meaning of ‘acting solely as an intermediary’ within Article 306 of the Directive and whether that is different from an agent in English law). The appellants strongly object to the reference as being an attempt to re-argue the matter before the CJEU. The First-tier Tribunal stated that it was only considering H4U’s position under UK law, and not the EU interpretation. The First-tier Tribunal concluded that with respect to the majority of contracts, H4U was acting as agent. There were a smaller number of contracts (many of which were governed by foreign law), where the First-tier

Tribunal was not able to make a decision on the evidence available.

5. Procedural irregularities do not prevent exemption for despatch: CJEU judgment

The CJEU has delivered its judgment in the German case of Josef Plöckl, about an intra-Community movement of goods (a car) where Mr Plöckl did not comply with the formalities of evidencing the intra-Community movement. Mr Plöckl seems to have treated the transaction as an intra-Community sale of the car when it was bought by a Spanish business (whose VAT number was cited on the sale invoice), rather than as an intra-Community movement of his own goods (which would have led to a Spanish VAT registration and acquisition VAT there), followed by a domestic sale in Spain on which he would have declared Spanish output VAT. The CJEU has followed the A G's opinion and concluded that the procedural irregularities in the case did not justify the refusal of VAT exemption for the movement out of Germany.

See <http://deloi.tt/2emUdFz>

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