



Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

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1. Autumn Statement on 25 November

The Chancellor of the Exchequer has announced that there will be an Autumn Statement and updated forecast from the Office of Budget Responsibility on 25 November, alongside the spending review.

2. Revenue and Customs Brief 15 on the Supreme Court's decision in Anson

HMRC have published the Revenue and customs Brief 15 on the Supreme Court's decision in Anson. HMRC's Brief confirms that HMRC will continue with their existing practice to treat US LLCs companies. This is on the basis that the decision in Anson was specific to the facts and findings determined by the First-Tier Tribunal on the interpretation of foreign law and relevant LLC agreement and need not to be applied more generally. This means that, where US LLCs have been treated as companies within a group structure, HMRC will continue to treat the US LLCs as companies, and where US LLC has itself be treated as carrying on a trade or business, HMRC will continue to treat the US LLC as carrying on a trade or business. HMRC also propose to continue their existing approach to determining whether a US LLC should be regarded as issuing share capital. Individuals claiming double tax relief and relying on Anson will be considered on a case by case basis.

The Anson case concerns an individual member of the Delaware limited liability company ("the LLC"). The issue was whether Mr Anson, the member, was entitled to double taxation relief for a US paid on the profits of the LLC, his share of which was taxed on him personally in the US on the basis that for US tax purposes it was transparent entity. In the UK, HMRC contended that it was a corporate entity that had paid the equivalent of a dividend, and so the investor had not been taxed on the same income in the UK. The Supreme Court held that the findings of fact made by the First-tier Tribunal were decisive. 'Questions about whether the members had a right to the profits, and if so, what is the nature of that right, were questions of non-tax law governed by Delaware law. The FTT's conclusion on them was a finding of fact. Domestic tax law then fell to be applied to the facts as so found.' Since the First-tier Tribunal had found that the members of that particular LLC had an interest in the profits of the LLC as they arose, double tax relief was due.

3. HMRC penalties discussion document: Summary of responses

HMRC have now published a Summary of Responses to HMRC Penalties: a Discussion Document, which had been published in February 2015. The Discussion Document had sought views on how to change the way penalties are applied as HMRC deliver more

digital services. The Summary of Responses also sets out what HMRC propose to do next. Late filing and payment penalties are also given priority. HMRC will look at options such as not charging a penalty where no tax is due, or where the period of lateness is very short or for the first default. They will also consider increased use of non-financial sanctions, and how they can help prompt compliance by better use of the reminders etc. and by providing improved guidance to taxpayers. As regards inaccuracy penalties, HMRC plan a longer timetable to develop options. HMRC's aim is for a simpler system, and HMRC will explore, inter alia, further administrative burdens, de minimis limits, and varying penalty percentages according to the taxpayer's compliance history, the degree of inaccuracy and the extent of co-operation. Further consultation on both these area will follow. If it is decided to proceed, the earliest possible date for legislation would be Finance Bill 2017.

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