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Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

October 2017

1. Finance Bills

The Finance Bill 2017-19 was published on 8 September 2017. As expected, the Bill covers the areas that were carried over from the previous Finance Bill which were not enacted due to the calling of the Election. These include corporate tax loss carried-forward rules, corporate interest restrictions and changes to the substantial shareholding exemption and the non-domicile rules. The Bill also includes legislation relating to Making Tax Digital. Royal Assent is likely in the first or second weeks of November. The Finance Bill is available here http://deloi.tt/2gQXi1L. The Explanatory Notes are available here http://deloi.tt/2vKCVpz.

2. HMRC consultation on the Business Risk Review

HMRC have published a consultation document on the Business Risk Review, which is a core feature of how HMRC manage tax compliance relationships with the large businesses. The current Business Risk Review process, performed by Customer Relationship Managers, places businesses into a binary 'low risk/non-low risk' category. HMRC are seeking views on many aspects of these reviews, including: whether this rating should be segmented into more categories of risk; the completeness of their assessment criteria; the information they gather to inform their assessments; and the regularity of the reviews themselves. HMRC are also seeking views on whether the low risk rating should be aligned with the requirements of the Tax Control Frameworks as set out by the OECD's Forum on Tax Administration's Large Business Programme, and what could encourage businesses to adopt and maintain lower risk behaviours. Comments are invited by 6 December 2017. See http://deloi.tt/2wZpwvx.

3. Office of Tax Simplification: review of capital allowances; future programme

The Office of Tax Simplification (OTS) has published a call for evidence as part of its review of capital allowances and depreciation. The project relates to tangible fixed assets only and will focus on whether the use of accounts depreciation to provide relief for capital expenditure instead of capital allowances would simplify the preparation of tax returns for business. The OTS would like to have arranged meetings with interested parties, or have received written responses, by 30 November 2017. See http://deloi.tt/2xZ2YgB.

4. Receivership & group relief: Farnborough Properties: HMRC win in Upper Tribunal

The Upper Tribunal has dismissed the taxpayer's appeal in Farnborough Airport Properties Company v HMRC. The case involves group relief and a company in a receivership, the issue being whether a receiver 'controls' the company over which it is appointed with the effect that the company is no longer within the same group relief group as other companies held by its ultimate parent entity. The power to appoint a receiver over a company's property is a remedy afforded to the holder of a security in respect of the company's liabilities for the purpose of the creditor enforcing that security. The Upper Tribunal has now agreed with the First-tier Tribunal that a receiver's powers were so extensive under the terms of a security that it could no longer surrender losses as group relief to other group companies. See http://deloi.tt/2xSUPuY.

5. VAT: CJEU limits scope of cost sharing exemption

The CJEU has issued three judgments concerning the cost sharing exemption ("CSE"). In Aviva and DNB Banka, AG Julianne Kokott had proposed that the CSE should not apply to cross-border supplies, and also considered potential distortions of competition, the nature of a cost sharing group, and whether a group can make a mark-up on its activities. In both cases, however, the CJEU has endorsed a more fundamental objection to the exemption, and has declined to rule on such details. In the court's judgment, the CSE only applies to activities which are exempt under Article 132 PVD as being in the public interest, and not to other activities which are exempt under Article 135 PVD. The CSE therefore simply cannot apply to banks and insurance companies. In EC v Germany, the CJEU determined that the CSE could not be restricted just to doctors, but should extend to all activities which are exempt under Article 135. On the basis of these judgments, therefore, the CSE remains available to the healthcare and education sectors; but Member States should no longer permit it to be applied by the financial services sector. The judgments are of particular significance in jurisdictions which do not permit VAT grouping, and certain Member States have applied the CSE in the financial services sector for many years. A number of questions therefore arise from the judgments about potential changes to national rules in light of these judgments, and what action affected businesses may now have to take.

6. VAT: SMS Group: VAT recovery on pipe welding system permitted: CJEU

SMS in Germany contracted to sell a pipe welding system to Zimekon in the Ukraine. In order to fulfil the contract, it imported equipment from Turkey into Romania, and accounted for VAT of EUR 327k. Shortly afterwards, however, Zimekon cancelled the contract. The CJEU has ruled that SMS was entitled to recover the Romanian VAT through (what was then) an Eighth Directive claim. SMS was not established in Romania, and it had not made any supplies in Romania. The fact that it could not prove what it intended to do with the goods (possibly it would sell them for scrap rather than transporting them to Germany) was not relevant to the question of whether it could recover the VAT. As the part payment of EUR 2m which it had received from Zimekon showed, it was clearly in business. In the circumstances, the Eighth Directive was an appropriate mechanism for reclaiming the VAT.

7. VAT: European Commission: proposals for EU VAT reform

The European Commission has published proposals for reforming the EU VAT system. These set out some fundamental principles or 'cornerstones' for cross-border supplies of goods: (1) taxation at destination; (2) vendors to be liable for charging and collecting VAT (unless the customer is a certified taxable person; and (3) an extension to the One Stop Shop. The Commission has also presented several 'quick fixes' to be implemented by 2019. The Commission hopes that these changes will apply from 2022. As well as prescribing the use of the VAT Information Exchange System, these will simplify call-off stock arrangements, chain transactions, and proof of transport rules, but only for certified taxable persons. The proposals will require unanimous agreement from all Member States in the Council before they can enter into force. More detailed proposals are expected in spring 2018. See http://deloi.tt/2ks5gjm.

8. VAT: MBFS: Agility contract purchase is a supply of services: CJEU

In Mercedes-Benz Financial Services, the CJEU has confirmed that certain contract purchase agreements should be classified as services rather than goods. MBFS's Agility contracts had a similar payment profile to many personal contract purchase deals (regular monthly payments with a balloon payment at the end). However, with Agility the balloon payment (over 40% of the price of the car) was the option payment. The CJEU considered whether this was a 'contract for hire… which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment'. In its judgment, an ownership transfer clause could indicate that Agility was a supply of goods. However, that could change if there was a genuine economic alternative to the option being exercised. Unlike a traditional HP contract where paying a nominal option fee would be the 'only economically rational choice', the financial terms of Agility suggested that not exercising the option was a genuine alternative. On that basis, Agility should be treated as a supply of services, meaning that VAT need not be accounted for in full at the outset of a deal. See http://deloi.tt/2ysHPwv.

9. VAT: RCB 3(2017): HMRC policy change on pension fund management by insurers

To date, HMRC policy has been to treat all pension fund management services provided by regulated insurance companies as exempt from UK VAT, irrespective of whether the fund belongs to a defined benefit, defined contribution, or hybrid scheme. This has created a discrepancy between the VAT treatment of pension fund management by insurers and non-insurers. In Revenue & Customs Brief 3(2017), HMRC have announced that they are withdrawing this policy from the 1 January 2018. Thereafter, insurers will only be able to exempt their pension fund management if they meet the conditions set out in ATP Pension Services. Consequently, insurers may need to start charging VAT on some of their services, which in many cases will increase the cost to schemes and employers. See http://deloi.tt/2xmgbwl.

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