

Global Tax Update

United Kingdom

Deloitte Tohmatsu Tax Co.

September 2017

1. **First Senior Accounting Officer 'main duty' decision: greater clarity on 'reasonable steps'**

The First-tier Tribunal has allowed an appeal against a Senior Accounting Officer (SAO) main duty penalty for financial years 2012 and 2013 where the SAO was the finance director of a privately owned group. HMRC had imposed the penalties on the previous SAO of the group as a result of an error correction notice filed by its advisors in 2014 in relation to VAT returns estimating an overall net error of £1.36m. The Tribunal found that HMRC had not established that the SAO failed to meet his main duty, although did agree that there were not 'appropriate tax accounting arrangements' in place. HMRC had relied on the absence of selective or 'thematic' testing to conclude that there had been a main duty failure.

In coming to her decision, Judge Falk cited several activities undertaken by the SAO that in her view were part of taking 'reasonable steps'. These included:

- A board approved tax policy;
- A tax risk register;
- Documentation of processes (although she noted that formal documentation was desirable rather than always required);
- Appropriately qualified and trained team members;
- Assurance in the form of audits and advice from external advisors;
- Engagement with HMRC's VAT specialist.

Consideration was given to the size and complexity of the business, and the SAO's access to and control over resources to undertake such activities. The Tribunal found that, although the SAO may not have undertaken specific tax testing, his approach and the activities that he evidenced were proportionate to the business and that 'one size does not fit all' when it comes to approaching 'reasonable steps'. The judge

did note, however, that more would be expected of an FD of a publicly quoted group, so such groups should assume that such testing would be expected to be undertaken in relation to their tax risks.

Finally, the Tribunal expressed some concerns over HMRC's approach to the case, notably the handling of confidential taxpayer information where one taxpayer (the SAO) would reasonably be expected to have access to another's (the company's) information to respond to the penalties imposed. We await to see whether the decision will be appealed to the Upper Tribunal. See <http://deloi.tt/2uswgUo>

2. **VAT: Temple Retail: value of recharges between associated companies: Upper Tribunal**

Temple Retail Ltd and Temple Finance Ltd are part of the PerfectHome group, which sells goods on hire purchase to credit-constrained customers. Temple Retail (which is fully taxable) recharged 20% of the group's advertising and premises costs to Temple Finance (which is a partially exempt finance house). The Upper Tribunal has rejected HMRC's arguments that a greater share of the expenses should have been recharged to the partially exempt company, which should in turn have applied a less generous partial exemption method. In particular, the UT rejected the argument that a breach of fiscal neutrality occurred simply because PerfectHome had split its business between two companies. Fiscal neutrality is an aid to interpretation, not a tool for HMRC to recharacterise transactions. The taxpayer had structured its operations in a particular way, and (in the absence of any abuse of law) HMRC should respect that choice. The UT also dismissed HMRC's other grounds of appeal, that the FTT had taken an irrational approach to HMRC's arguments, had failed to record its reasons in sufficient detail, and had misdirected itself about VWFS. See <http://deloi.tt/2vSBbhS>.

3. VAT exemption and platform services: First-tier Tribunal

The First-tier Tribunal has published its decision in the case of Blackrock Investment Management (UK) Ltd, concerning whether the supply of an electronic investment management platform called 'Aladdin' was exempt from VAT on the basis that it constituted the management of a special investment fund (SIF). The First-tier Tribunal ruled that Aladdin, the software package used by Blackrock to manage its UK investment funds, is capable in principle of qualifying for VAT exemption as the management of a SIF, but in this case was subject to VAT because not all the funds that the services related to were SIFs. The First-tier Tribunal ruled that Aladdin was specific to, and essential for, the management of a SIF, and that Aladdin was provided as a 'distinct whole'. Aladdin allowed a portfolio manager to manage up to 40 portfolios, whereas this was around 10 portfolios previously. Furthermore, Aladdin carried out sophisticated performance and risk analysis, and cash flow management in multiple currencies, and monitored increased regulatory compliance – all tasks that would be burdensome and impractical to carry out without Aladdin. Consequently, viewed in isolation, the provision of Aladdin qualified for VAT exemption as the 'management of special investment funds' even though decision-making responsibility remained with the portfolio managers. However, Blackrock used Aladdin to support the management of a group of funds including SIFs and non-SIFs. Blackrock argued that the service received from the US associate company should be apportioned; the reverse charge should not be applied to the VAT-exempt element relating to the management of SIFs, whilst the reverse charge should be applied (and recoverable) in relation to the management of non-SIFs. The First-tier Tribunal rejected this argument; the application of different rates of VAT to a single supply did not apply in this situation. See <http://deloi.t/2vr4vY4>

Newsletter Archives

To see past newsletters, please visit our website.

www.deloitte.com/jp/tax/nl/eu

Contacts

Deloitte LLP (London)

Yuki Konii, Partner ykonii@deloitte.co.uk

Hiro Hidaka, Director hhidaka@deloitte.co.uk

Issued by

Deloitte Tohmatsu Tax Co.

Tokyo Office

Shin-Tokyo Building 5F, 3-3-1 Marunouchi, Chiyoda-ku, Tokyo 100-8305, Japan

Tel: +81 3 6213 3800

email: tax.cs@tohmatsumax.co.jp

Corporate Info.: www.deloitte.com/jp/en/tax

Tax Services: www.deloitte.com/jp/tax/s/en

Deloitte Tohmatsu Group (Deloitte Japan) is a collective term that refers to Deloitte Tohmatsu LLC, which is the Japan member firm of Deloitte Touche Tohmatsu Limited (DTTL), a UK private company limited by guarantee, and firms affiliated with Deloitte Tohmatsu LLC that include Deloitte Touche Tohmatsu LLC, Deloitte Tohmatsu Consulting LLC, Deloitte Tohmatsu Financial Advisory LLC, Deloitte Tohmatsu Tax Co., DT Legal Japan, and Deloitte Tohmatsu Corporate Solutions LLC. Deloitte Tohmatsu Group is known as one of the largest professional services groups in Japan. Through the firms in the Group, Deloitte Tohmatsu Group provides audit & assurance, risk advisory, consulting, financial advisory, tax, legal and related services in accordance with applicable laws and regulations. With about 11,000 professionals in nearly 40 cities throughout Japan, Deloitte Tohmatsu Group serves a number of clients including multinational enterprises and major Japanese businesses. For more information, please visit the Deloitte Tohmatsu Group (Deloitte Japan)'s website at www.deloitte.com/jp/en.

Deloitte provides audit & assurance, consulting, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 245,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

All of the contents of these materials are copyrighted by Deloitte Touche Tohmatsu Limited, its member firms, or their related entities including, but not limited to, Deloitte Tohmatsu Tax Co. (collectively, the "Deloitte Network") and may not be reprinted, duplicated, etc., without the prior written permission of the Deloitte Network under relevant copyright laws. These materials describe only our general and current observations about a sample case in accordance with relevant tax laws and other effective authorities, and none of Deloitte Network is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. The opinions expressed in the materials represent the personal views of individual writers and do not represent the official views of Deloitte Network. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

Member of
Deloitte Touche Tohmatsu Limited

© 2017. For information, contact Deloitte Tohmatsu Tax Co.



IS 669126 / ISO 27001