Proskauer

UK Tax Round Up

April 2017

Welcome to the Tax Round Up, the first edition of what will be a regular bulletin highlighting the latest tax developments relevant to UK companies and asset managers. We plan to produce this monthly with the next one in mid-May.

Budget and Finance Bill

The Chancellor presented his first Budget on 8 March and the Finance Bill was published on 20 March.

The Budget itself did not result in a lot of new announcements, but this is mainly because plenty of new law had already been trailed. This has resulted in significant new legislation in the Finance Bill which is summarised below. In addition, there are a number of proposals subject to consultation which we also discuss.

Finance Bill Legislation

The most significant pieces of new law in the Finance Bill are:

Interest Relief Restriction

The much discussed interest deduction restriction rules have been introduced and will be effective from 1 April 2017 once the Finance Bill receives Royal Assent. They amount to a hugely significant extension to the body of law disallowing deductions for interest expense. Even if the rules do not result in material tax consequences, at 156 pages of legislation they are detailed and complex and are likely to require additional advice from external experts and compliance time. The rules are summarised here, but, broadly, restrict annual UK group interest deduction to the greater of £2 million, 30% of a tax-adjusted EBITDA figure or the worldwide group adjusted interest: EBITDA ratio (excluding related party interest expense and interest on certain other debt instruments). If you would like to discuss this further please do contact one of the Proskauer tax team.

Carry Forward Loss Restriction

Similarly long and complex rules (a mere 115 pages) introduce new provisions aimed at limiting how much carried forward losses UK companies can be offset against profits but also at simplifying the way that allowable losses can be used. These rules will also apply from 1 April and are likely to require analysis for businesses with carried forward losses. The rules will be of particular interest to UK-based investment funds with UK corporate general partners, which might need to reorganise their arrangements to avoid adverse consequences specific to them.

Substantial Shareholding Exemption

Effective from 1 April, there are important relaxations to the substantial shareholding exemption, including removing the requirement for the holding company to be part of a trading group and introducing a full or partial exemption when the holding company is (directly or through a partnership) owned by qualifying institutional investors. These changes should add to the potential attractiveness of UK holding companies, particularly for investment funds.

Disguised Remuneration for LLP Members

As well as expanding the disguised remuneration rules for employees, the Finance Bill introduces new anti-avoidance rules aimed at similar arrangements involving third party payments for trading income. These might be relevant to investment management and advisory businesses organised as LLPs and advice should be sought wherever any non-standard remuneration arrangements are in place.

Employee Shareholder Shares

Finally, and as announced last November, the Finance Bill removes all tax advantages from holding employee shareholder shares.

Consultations Partnership Taxation

On 20 March, HMRC published its Summary of Responses to the consultation on their proposal to clarify the tax treatment of partnerships launched last August. The document shows that HMRC have listened to concerns (particularly from the investment fund sector) that some of the suggestions would have introduced impracticable and burdensome reporting requirements on UK partnerships and undermined longstanding practice around the use of nominee partners. In particular, it is recognised that it is not appropriate for UK partnerships to have to report on the ultimate recipients of their profits through tiers of partnerships. Instead it is proposed that the allocation of profit to the partnership which is the immediate partner will have to be reported on four different bases, reflecting the possibly different types of partner in that partnership. Also certain reduced reporting requirements will apply to investment partnerships that report to HMRC under the Common Reporting Standard. The next stage will be draft legislation that will also be subject to consultation and comment, with the new rules applying to accounting periods starting on or after 5 April 2018.

Double Tax Treaty Passport Scheme Relaxation

HMRC also published its response to the consultation on relaxing the rules for DTTP scheme eligibility. It confirms that HMRC will publish new terms and conditions and guidance for the scheme which will expand the scheme to apply to all borrowers (including UK partnerships) that have an obligation to deduct UK withholding tax and overseas partnerships, sovereign investors and pension funds as lenders where they meet certain criteria.

New Withholding Tax Exemption

HMRC are planning to consult on a new exemption for withholding tax for interest paid on debt instruments that are admitted to listing on a multilateral trading facility. While this new exemption might not be of wide application, it might indicate that the Government is unlikely to narrow other existing exemptions from withholding tax, such as the quoted Eurobond exemption.

Non-Resident Companies Subject to Income Tax

The consultation on taxing non-resident companies that are subject to income tax and non-resident CGT under corporation tax principles has been published with a closing date of 9 June. If you would like any assistance in contributing to the responses please contact one of the Proskauer tax team.

Other Items Offshore Fund Rules

An amendment, effective 23 March, has been made to the offshore fund rules so that performance fees paid by a "reporting" fund vehicle to the fund manager or adviser can no longer be deducted from the fund investors' reportable income.

Third Party Consideration VAT Recovery Case

In *U-Drive v HMRC*, the Upper Tier Tribunal considered whether a hire car company that paid garages to repair vehicles damaged by drivers of their cars rather than paying the insurance claim costs could recover the VAT on the garage's invoices. While the court recognised that U-Drive obtained a benefit from paying the garages rather than the insurance claim, it decided that the garages did not supply the service to U-Drive and so U-Drive could not recover the VAT that it paid on the garages' invoices.

Updated HMRC Guidance on VAT and Holding Companies

It has been reported that HMRC will publish updated guidance on the ability for holding companies to recover their VAT costs by the end of April. This issue is relevant to holding companies established across a wide range of corporate acquisitions and, hopefully, will give some much needed clarity on when VAT costs can recovered and what needs to be done to ensure that it can be.

Related Professionals

- **Catherine Sear**
  Partner