Proskauer

UK Tax Round Up

December 2018

UK Developments

Taxpayer succeeds in judicial review case against HMRC

On 22 November 2018, the Upper Tribunal published its decision on the judicial review case of R. (on the application of Vacation Rentals (UK) Ltd) (formerly Hoseasons Group Ltd) v. Revenue and Customs Commissioners [2018] UKUT 383 (TCC). The taxpayer applied for judicial review of HMRC's decision not to apply its (now withdrawn) guidance stating that fees on card handling services were exempt from VAT, on the basis that the taxpayer had a legitimate expectation that supplies of card handling services it had made would be treated as exempt in accordance with the guidance.

The Upper Tribunal found in favour of the taxpayer and quashed HMRC's decision not to apply the guidance to the supplies. The Upper Tribunal found that the statements in the guidance were clear, unambiguous and unqualified and therefore created a legitimate expectation for the taxpayer. The Upper Tribunal did not agree with HMRC's contention that the taxpayer was sophisticated and therefore had access to high quality advice in respect of the VAT treatment of such supplies, commenting that any such legal advice would have almost certainly concluded that the supplies fell clearly within the guidance. HMRC failed to provide evidence of any overriding public interest to justify its disapplication of the guidance.

Response to consultation on proposed reforms to limited partnerships

On 10 December 2018, the Government published its response to the consultation on the reform of limited partnership law. The consultation has focused on the perceived misuse of limited partnerships, in particular, Scottish limited partnerships in money laundering and other criminal activity.

In broad terms, the response concluded that limited partnerships fulfil important functions in certain areas of the economy, for instance, as investment vehicles. In order to preserve these important functions whilst minimising misuse, the Government has put forward a number of proposals to strengthen transparency and governance, including:

- stronger controls at the point of registration of new limited partnerships;
- filing a yearly confirmation statement including information on the limited partnership's activities, general and limited partners and persons of significant control;
- requirement for UK limited partnerships to retain some connection to the UK, either by maintaining their principal place of business in the UK, continuing some legitimate business activity in the UK or by maintaining a service address in the UK; and
- giving the Registrar the power to strike limited partnerships off the register that have been dissolved or which it is satisfied are no longer carrying on any activity.

The response document acknowledges that the above measures are likely to increase the administration and cost involved in setting up and operating a UK limited partnership, although the Government maintains that this will be minimal and proportionate to ensure that these vehicles are not used for illegitimate activities.

Government announces extensive reform of employment law following consultation

On 17 December 2018, the Government published the "Good Work Plan", which sets out its responses to and proposed implementation of the recommendations made by the Taylor review of employment practices in the modern economy. The main focus of the proposals relates to employment rights and employment law reform, although several of the action points also have an impact on the tax regime for employment and self-employment.

In particular, the Government has committed to introduce legislation to improve clarity on the definition of employment for tax purposes. The legislation is likely to reduce the current weight placed on the right to send a substitute in the distinction between employed and self-employed status and will instead focus more on the level of control exercised by the employer. The Government has also announced that it will publish proposals to more closely align the employment status definitions for employment law and tax purposes in order to minimise the differences between the two regimes.

In the report, the Government also confirms that it has no current plans to revisit the national insurance treatment of self-employed workers.

HMRC publishes new guidance on transfer of going concern ("TOGC") treatment for VAT

On 5 December 2018, HMRC published updated guidance on transactions which qualify as a transfer of a going concern (or "TOGC") and are therefore not subject to VAT. TOGC treatment is often relied on in asset sales (as opposed to share sales) to ensure no VAT arises on the purchase price.

Although the guidance has been updated it remains substantially similar to the previous guidance. The most notable changes are:

- where a transferee is relying on voluntary registration in order to satisfy the TOGC conditions, the transferee must be registered at the time of the transaction (i.e. it cannot apply retrospectively);
- confirmation that transfers to non-UK transferees can constitute a TOGC; and
- further guidance on transfers of property rental businesses has been included.

HMRC changes its position on VAT on payments for unfulfilled supplies

HMRC published a brief on 14 December setting out how payments or deposits for goods and services that customers do not take up will be treated from 1 March 2019. Before this change, such payments or deposits were treated as outside the scope of VAT. After the change becomes effective, such payments will instead be treated as payments for the supply of goods or services. HMRC has stated that the change is to align the UK VAT treatment of such payments to recent European Court of Justice decisions (*Air France-KLM Case C250/14* and *Firin OOD Case C107/13)*.

International Developments

European Parliament adopts amendments to proposals for digital services tax

On 13 December 2018, the European Parliament adopted proposals for a digital services tax on revenues created from digital activities where users play a major role in the value creation. The European Parliament adopted a number of amendments to the original proposals announced earlier this year by extending the scope of the digital services tax, lowering the threshold for the tax to apply and introducing country by country reporting. This was seen as a controversial move as a number of Member States had voiced opposition to the original proposals, with France and Germany putting forward alternative proposals for a digital tax with a narrower scope.

Together with the recent announcement that the UK will introduce its own digital sales tax from 2020 as detailed in our UK Budget Blog, it seems very likely that tax on revenues generated from digital sales and services will form part of the tax landscape in Europe in the near future.

Cayman joins The Crown Dependencies in publishing substance proposals

The Cayman government has published the International Tax Cooperation (Economic substance) Bill, 2018 which aims to introduce a requirement for companies carrying on certain activities in Cayman to demonstrate that they have sufficient substance. The Cayman Bill is broadly similar to the proposals recently published by Jersey, Guernsey and the Isle of Man, the key feature of the Bill being that companies carrying out certain activities must demonstrate that they are directed and managed in Cayman by demonstrating certain practices. These measures are being introduced in response to the concerns raised by the EU's Code of Conduct Group regarding minimum substance requirements for companies to establish tax residence. This was discussed in greater detail alongside other key features of the Crown Dependencies' proposals in our August edition. One helpful aspect of the proposals announced by the Cayman government is that it has been made clear that the legislation will not extend to Cayman investment funds.

Double Tax Treaties

Jersey, Guernsey and Isle of Man

On 12 December 2018, the following orders were made implementing the double tax treaties concerning Jersey, Guernsey and Isle of Man on 2 July 2018;

- the Double Taxation Relief and International Tax Enforcement (Jersey) Order 2018;
- the Double Taxation Relief and International Tax Enforcement (Guernsey) Order 2018; and
- the Double Taxation Relief and International Tax Enforcement (Isle of Man) Order 2018.

In our July edition, we commented on the updates introduced in the new treaties, which included the introduction of a 'principal purpose' test, new (prescribed) exemptions from withholding tax and the replacement of the double residence 'tiebreaker' test with a mutual agreement procedure.

Poland

Further to the two texts discussed in our November edition, HMRC has published one more in its series of "synthesised" texts of double tax agreements to incorporate the effects of the changes made by the adoption of the Multilateral Instrument (MLI). The latest in this series is the agreement with Poland. The MLI entered into force in Poland on 1 July 2018. The revised treaty will not be backdated and instead will come into force at various dates (dependent on the form of taxation) throughout the first half of 2019.

Related Professionals

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