RPC

Corporate tax update

Third quarter 2017

Welcome to the latest edition of our Corporate Tax Update, written by members of RPC's Tax Team and published quarterly. In this edition we highlight some of the key tax developments of interest to UK corporates from the third quarter of 2017.

In early September the Finance (No.2) Bill 2017 was published. This Bill contains those provisions that were removed from the Finance Bill 2017 in order for that Bill to receive Royal Assent before this year's general election. Less than a week later, draft legislation for the Finance Bill 2018 was published. Sandwiched in between these two events was an announcement that the Chancellor's first Autumn Budget would be delivered on 22 November 2017.

In other highlights this quarter also saw the publication of a decision on corporate tax residence, the Supreme Court decision in the *Rangers FC* case, the ECJ take a narrow view of the scope of the VAT cost sharing exemption, and the first published opinion of the GAAR panel.

Any comments or queries?

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Finance (No.2) Bill 2017 and Finance Bill 2018

Finance (No.2) Bill 2017

On 8 September 2017, the provisions withdrawn from the Finance Bill 2017 that went on to receive Royal Assent before this year's general election, were re-introduced and published as Finance (No.2) Bill 2017. more›

Finance Bill 2018

On 13 September 2017, the Finance Bill 2018 draft legislation was published. There are few measures contained within the draft legislation that are likely to be of significant direct interest to UK corporates. more›

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On 11 July 2017, the publication of "Good Work: the Taylor Review of Modern Working Practices" made a number of recommendations on the taxation of workers in the so-called "gig economy". more›

Rangers FC case – Supreme Court upholds decision that EBT contributions should be taxed as 'redirected' employment income

On 5 July 2017, the Supreme Court unanimously held, in what has become known as the "big tax case" that payments by an employer to an employee benefit trust (EBT) were 'redirected' earnings properly subject to tax and NICs under the PAYE system. more›

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Stamp duty s.77 relief – revised HMRC guidance on "disqualifying arrangements"

On 1 July 2017, HMRC published revised pages in its Stamp Taxes on Shares Manual as to the meaning of "disqualifying arrangements" for the purposes of section 77 Finance Act 1986 relief (**Section 77 Relief**). more›

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Upper Tribunal confirms that shares without dividend rights are ordinary share capital

On 6 September 2017, the Upper Tribunal over-turned a First-tier Tribunal decision, holding that shares with no dividend rights are "ordinary share capital". more›

Failure to prevent facilitation of tax avoidance – HMRC guidance on new offences

On 1 September 2017, HMRC published guidance for companies and organisations to follow in respect of the new corporate offences of failure to prevent facilitation of UK and foreign tax evasion. more›

First-tier Tribunal finds in favour of taxpayer in first decision on senior accounting officer rules

On 3 August 2017, the First-tier Tribunal held that HMRC was not justified in making penalty assessments against the finance director of a group of companies for a failure to comply with the senior accounting officer rules in Schedule 46 to the Finance Act 2009 (the SAO rules). more›

First opinion of GAAR Advisory Panel issued

On 18 July 2017, the first opinion of the General Anti-Abuse Rule (GAAR) Advisory Panel was issued. more›

Finance (No.2) Bill 2017 and Finance Bill 2018

Finance (No.2) Bill 2017

On 8 September 2017, the provisions withdrawn from the Finance Bill 2017 that went on to receive Royal Assent before this year's general election, were re-introduced and published as Finance (No.2) Bill 2017.

Of particular interest are the provisions providing for:

- corporation tax loss reform (in respect of which draft guidance[1] was published by HMRC on 31 July 2017)
- new rules on interest deductibility (in respect of which further draft guidance[2] was published by HMRC on 4 August 2017), and
- changes to the substantial shareholding exemption (SSE) regime

which are in each case due to take effect from 1 April 2017.

The Bill as published can be viewed here.

Finance Bill 2018

On 13 September 2017, the Finance Bill 2018 draft legislation was published. There are few measures contained within the draft legislation that are likely to be of significant direct interest to UK corporates. However the publication has confirmed that, from April 2018 (and as previously announced), there will be no requirement to withhold tax from UK-source interest payments on securities traded on a multilateral trading facility (MTF) operated by an EEA-regulated recognised stock exchange.

The draft legislation is open for consultation until 25 October 2017.

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1. See here.
2. See here.

Corporation tax – general

UK legislation on assumption of capital for purposes of permanent establishment 'distinct and separate' profits attribution not incompatible with UK/Irish double tax treaty

On 22 September 2017, the First-tier Tribunal[3] held that the attribution of notional equity and loan capital to a UK permanent establishment of a non-resident company (PE) as required by UK legislation governing the profits of a PE that are subject to UK corporation tax is compatible with the provisions of the UK/Irish double tax treaty (DTT). The PEs in question were not allowed a corporation tax deduction for interest, to the extent disallowed by the relevant UK legislation.

Section 11AA(3)(b) of the Income and Corporation Taxes Act 1988 (now rewritten to the CTA 2009), as in force at the relevant time, provided that for the purposes of determining the profits of a non-resident company that are attributable to a PE "it shall…be assumed that the PE has such equity and loan capital as it could reasonably be expected to have [were the PE a distinct and separate enterprise, engaged in similar activities under similar conditions, dealing independently with the non-UK company]".

The UK/Irish DTT (which prevails over UK legislation where there is conflict) provided simply that only such profits attributable to a PE may be taxed in the UK, again on the basis of a 'distinct and separate' enterprise, and that deductions shall be allowed in the UK for expenses that are incurred for the purposes of the PE "whether in the [UK] or elsewhere".

The appellants in these joined appeals argued that the DTT should override the UK legislation, which required an attribution of 'notional' capital which differed from the actual level of capital employed by the PE.

The Tribunal held that the UK legislation was not incompatible with the DTT. Specifically it held that section 11AA(3)(b) was not inconsistent with the OECD model treaty commentaries published up to the relevant time. The UK rules were an application of the general principle set out in the OECD model treaty (on which the UK/Irish DTT was based) and, as such, "do no more than give effect to the [DTT] requirements".

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OTS publishes document on scope of review of capital allowances regime

On 21 September 2017, the Office for Tax Simplification (OTS) published details as to the scope of its review of the UK capital allowances system. The key question being considered by the OTS is whether the capital allowances system should be replaced by accounting depreciation for the purposes of giving tax relief on investment in tangible assets.

The OTS report is due to be published in Spring 2018.

The scoping document can be viewed here.

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3. In *Irish Bank Resolution Corporation Ltd and another v HMRC* [2017] UKFTT 0702 (TC).

Jersey-incorporated UK property holding companies held to be UK tax resident by Tribunal

On 14 July 2017, the First-tier Tribunal[4] held that a number of Jersey-incorporated companies established to hold UK property were, in fact, UK tax resident as a result of the central management and control of the companies taking place in the UK.

A group headed by a UK resident parent undertook a tax-planning proposal designed, and carefully implemented, by its accountants. The aim of the proposal was to allow the group to access latent capital losses on certain assets (including UK real estate) on the basis that the crystallised losses would include indexation. Very broadly, the proposal involved newly-established wholly-owned Jersey companies purchasing the assets at an artificially high price and selling them shortly afterwards at a loss. Critical to the success of the proposal was that the Jersey companies would be treated as non-UK resident prior to sale of the assets.

The Tribunal, in a lengthy judgment, agreed with HMRC that the tax planning scheme did not work as the Jersey companies were UK tax resident throughout.

The facts of the case were considered by the Tribunal at some length, and this serves as a helpful reminder as to the importance of contemporaneous records in circumstances were the tax residence of a non-UK company is questioned. The Tribunal looked at emails, board minutes and hand-written notes in determining who exercised central management and control of the Jersey companies (and where).

After concluding its review of the relevant facts, the Tribunal then considered the relevant case law including *Bullock v Unit Construction*, *Wood v Holden and Laerstate*. Stressing the "unusual features" in this case, primarily being the fact that the only transactions that fell to be undertaken by the Jersey companies whilst they were (supposedly) Jersey resident were those of acquiring the assets at substantially more than their then market value, the Tribunal held that the "real business" of the companies was to undertake the parent's tax planning proposal. In the words of the Tribunal, these transactions were "inherently uncommercial" from the Jersey companies' perspective.

The result, according to the Tribunal, was that the only strategic decisions taken by the Jersey companies' boards were those to implement the parent's plans. In doing so, they were acting on what was in effect an instruction from the parent company. The Tribunal drew an "essential distinction" between this case and the facts in *Wood v Holden* (an otherwise apparently similar case in some respects) in that unlike in *Wood v Holden* the Jersey board in this case were presented with a sole transaction which had no commercial merit for the companies themselves. Accordingly the "inescapable conclusion" was that "the board was simply doing what the parent… wanted it to do and in effect instructed it to do. In the circumstances, the line was crossed from the parent influencing and giving strategic or policy direction to the parent giving an instruction."

Although this decision (which may well be appealed) may at first glance cause concern to those involved in the not uncommon use of offshore vehicles to hold UK commercial property, it is important to keep in mind the unusual facts of this case. Central to the Tribunal's decision in this case was the fact that, purely from the Jersey companies' perspective, the transactions that fell within the scope of strategic decision-making made no commercial sense unless required at the instruction of the UK parent.

The decision can be viewed here.

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4. In *Development Securities (No. 9) Ltd and others v HMRC* [2017] UKFTT 0565 (TC).

VAT

Disappointment for insurers and other financial services groups as ECJ takes restrictive view of scope of VAT cost sharing exemption

Insurance and other financial services groups will be disappointed by three recent ECJ decisions[5] as to the scope of the VAT cost sharing exemption (CSE).

The CSE, broadly, provides an exemption for VAT on services provided within groups whose members make exempt (or non-business) supplies provided:

- the intra-group supplies are "directly necessary" to enable the group members to make such exempt (or non-business) supplies
- only each member's exact share of the cost of the intra-group supplies are recovered
- exempting the intra-group supply would not lead to distortion of competition.

The ECJ decisions concerned (amongst other issues) whether, and if so to what extent, a further condition also applies to CSE – namely whether the exemption is restricted to groups carrying on activities in the "public interest".

The UK's CSE closely follows the wording of the relevant provision[6] in Council Directive 2006/112/EC (VAT Directive). The UK's CSE does not, however, refer to activities "in the public interest" (unlike the heading of the Chapter of the VAT Directive which contains the CSE). HMRC's published guidance makes clear HMRC's view that no such restriction applies to the CSE, so that insurers, banks and other financial service providers have assumed the CSE can apply to their internally-provided services.

Earlier this year two advocate generals (AGs), in distinct cases, reached differing opinions on this issue. Most recently in April the AG in the case of *European Commission v Federal Republic of Germany* opined that German VAT legislation restricting the CSE to activities in the "public interest" was incompatible with the VAT Directive. This was tentatively welcomed by the insurance and other financial services sectors, in the knowledge that only the final ECJ decisions would provide clarity as to the scope of the CSE.

In recent weeks in separate cases the ECJ has held that CSE is only available to groups carrying on activities in the public interest. In the first decision (related but separate cases involving *Aviva* and *DNB Banka*) the ECJ ruled it was determinative that the CSE is contained in a section of the VAT Directive headed "Exemptions for certain activities in the public interest". Accordingly neither Aviva nor DNB Banka was entitled to benefit from the CSE, as they carried on insurance and banking activities, respectively. On the same day in the *Commission v Germany* case, the ECJ reached the same view.

The impact of these decisions in the UK may not be immediate, as the UK will need to correct its national CSE legislation first. It seems likely that HMRC will consider the implications of these decisions in its ongoing consultation on the UK VAT group rules.

The ECJ decisions can be viewed here, here and here.

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5. In *Minister Finansów v Aviva Towarzystwo Ubezpieczeÿ na ÿycie S.A. w Warszawie* (Case C-605/15) and *DNB Banka AS v Valsts ieÿÿmumu dienests* (Case C-326/15), and *European Commission v Federal Republic of Germany* (Case C-616/15).
6. Article 132(1)(f).

ECJ decision on input tax recovery likely to be welcomed by property developers

On 14 September 2017, the ECJ held[7] that a taxable business may deduct input tax on renovations provided free of charge to a third party if:

- the services are not 'excessive' (ie in excess of what is needed to allow the business to carry on its taxable transactions)
- the cost of the services is reflected in the price of those taxable transactions.

The ECJ disagreed with the Advocate General's (AG) opinion, noting that, in the particular circumstances of the case, the taxpayer would not have been able to carry on its taxable business (the renting out of holiday premises, once built) without the renovations (to an existing public authority waste-water pump station) being carried out. In the view of the ECJ, the fact that the public authority also benefitted from the work was not fatal to the input tax claim.

The ECJ's decision will be welcomed by property developers, who would have been alarmed by the earlier AG opinion in this case. That earlier opinion called into question current published HMRC practice, that where a property developer has reached agreement with a local authority, for example under a 'planning gain agreement', the developer is not regarded as making a supply to the local authority (with the developer's input tax on construction works generally being viewed as attributable to the developer's taxable supplies).

The decision can be viewed here.

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Making Tax Digital (MTD): VAT taking the lead

On 13 September 2017, HMRC published draft legislation for the Making Tax Digital (MTD) project. Together with the draft regulations requiring businesses to provide updates in digital format, and allowing HMRC to communicate digitally with taxpayers, the published package included an "overview" of the MTD legislation for VAT.

The VAT overview confirms that, from April 2019, businesses with a turnover above the VAT threshold[8] will need to:

- keep their VAT records digitally
- provide their VAT returns to HMRC through software that is compatible with MTD

This followed the publication of the Finance (No.2) Bill 2017 on 8 September 2017, which included the MTD provisions originally planned for the Finance Bill 2017 which received Royal Assent before this year's general election. These draft MTD provisions reflect the generally relaxed MTD timetable, although MTD for VAT is largely proceeding as planned, at least in terms of timing.

The VAT overview confirms that businesses will not, as a result of MTD, be required to submit information more frequently than they do currently. The overview also confirms that VAT submission and payment dates will be unaltered by MTD.

7. In *Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Sofia v 'Iberdrola Inmobiliaria Real Estate Investments' EOOD* (Case C-132/16).
8. Currently £85,000.

The MTD VAT regulations will be published in draft for consultation by April 2018.

The VAT overview can be viewed here.

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Purchaser under TOGC entitled to claim input tax deductions even though no VAT registration transfer

On 11 August 2017, the First-tier Tribunal[9] held that the purchaser of a business treated as a transfer of a going concern (TOGC) could claim input tax deductions related to the transferred business despite the fact that the seller's VAT registration was not transferred to the purchaser.

An election for the purchaser to acquire the seller's existing VAT registration on a TOGC is uncommon as the effect is that both VAT liabilities **and** entitlements to input tax credits transfer to the purchaser.

In this case the parties to the TOGC included contractual provisions in the business transfer agreement such that:

- pre-sale tax liabilities of the seller were **excluded** from the sale; but
- the benefit and burden all of the seller's business contracts were **included** in the sale

The Tribunal held that the obligation to pay the VAT element on invoices pursuant to supplier contracts, which passed to the purchaser, were not tax liabilities (and were not therefore excluded from the sale). Absent the sale, the seller would have been entitled to claim the input tax deductions. Accordingly, in the Tribunal's view, the purchaser was entitled to claim the input tax following the TOGC.

The Tribunal noted that HMRC had not pleaded that the sale was a 'sham' nor susceptible to *Halifax* or *Ramsey* arguments. As a result the Tribunal decided it could not give a view as to the purpose of the sale (in particular whether it amounted to a normal commercial transaction or, instead, a means of "isolating" the input tax from the VAT liabilities).

The decision can be viewed here.

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9. In *NT Advisors Partnership v HMRC* [2017] UKFTT 0625 (TC).

Employment taxes

New disguised remuneration loan charge – HMRC 'spotlight' on attempts to avoid charge by 're-describing' loans

On 10 August 2017, HMRC published a new anti-avoidance 'Spotlight 39'. This confirms HMRC's view that re-describing a loan as money held in a fiduciary capacity will not work to avoid a charge under the new provisions due to apply to any loans outstanding on 5 April 2019, which extend the scope of the disguised remuneration rules.

Changes to the disguised remuneration rules (contained in Part 7A of ITEPA 2003), included in Finance (No.2) Bill 2017, impose a Part 7A charge on loans outstanding at 5 April 2019. This measure is intend to persuade companies with employee benefit trusts (EBTs) that made loans to employees **before** Part 7A came into force, to wind up the arrangements.

According to the new Spotlight, HMRC have become aware that some taxpayers are being advised that re-describing an existing loan as money held in a fiduciary capacity will avoid the new charge. HMRC's message is clear; this will not work and "the only way you can avoid the new loan charge in 2019 is by making a repayment of the loan balance or settling your tax liability with HMRC in advance".

The Spotlight can be viewed here.

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Taylor Review on "gig economy" makes employment tax recommendations

On 11 July 2017, the publication of "*Good Work: the Taylor Review of Modern Working Practices*" made a number of recommendations on the taxation of workers in the so-called "gig economy".

Although tax changes were outside the formal scope of the Review, it nevertheless recommended (amongst other things):

- that the definition of employment status should be made consistent as between employment law and tax law
- that the disparity between rates of national insurance contributions (NICs) for the employed and self-employed should be addressed by increasing the rate of class 4 NICs for the self-employed

It is expected that consultations on this area may be launched later in the year. Whether the Government feels able to address the NICs disparity, in particular, is unclear in light of the attempt to do so earlier this year which resulted in a subsequent u-turn.

The Review can be viewed here.

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Rangers FC case – Supreme Court upholds decision that EBT contributions should be taxed as 'redirected' employment income

On 5 July 2017, the Supreme Court[10] unanimously held, in what has become known as the "big tax case" that payments by an employer to an employee benefit trust (EBT) were 'redirected' earnings properly subject to tax and NICs under the PAYE system.

The facts of the case, briefly summarised in our earlier update here, pre-dated the introduction of the disguised remuneration regime within Part 7A of ITEPA 2003, which was introduced (at least in the view of HMRC) to put beyond doubt that these types of arrangements do not have the intended tax effect.

The Supreme Court upheld the Court of Session's decision that the payments by the employer to the EBT were redirected emoluments of employment. In the Court's view, neither the applicable primary nor secondary legislation contained any requirement that the payments actually be received by the employee. Rather, the Court focused on the source of the payments and found that the payments were remuneration for the services provided by the employees, and that that was all that was required for a tax charge to arise.

The Court distinguished the facts of the case from circumstances where a tax charge did not arise unless and until a stated contingency occurred. In the words of the Court "the footballer was able to gain access to the cash when he wanted it...the scheme was designed to give each footballer access without delay to the money paid into the Principal Trust, if he so wished".

The decision can be viewed here.

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10. In *RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) v Advocate General for Scotland* [2017] UKSC45.

Stamp taxes

Office of Tax Simplification publishes report on stamp duty reform

On 10 July 2017, the Office of Tax Simplification (OTS) published its report on the modernisation of stamp duty. The core recommendations in the report are:

- replacing the process that requires sending a paper document to the Birmingham Stamp Office to be stamped, with a digital process (ie no more physical stamping)
- updating the rules governing company registrars' so that they are able to register transactions on the same day as and when required (ie removing the need to wait for a stamped stock transfer form to be returned by HMRC)
- limiting the scope of stamp duty to the transactions it applies to in practice (ie limiting stamp duty to transfers of UK shares only)

The report notes the practical frustrations caused by the fact that only in limited cases (less than 50 a year) can "same day" stamping be obtained, and that (currently) "time-consuming workarounds" are used by lawyers to deal with timing issues caused by the physical stamping process.

The report also makes a number of further, more technical recommendations, such as increasing the current £1,000 threshold for stamp duty and simplifying the stamp duty 'debt as consideration' rules.

It is not clear when reform of the stamp duty rules will take effect (or, indeed, if all of the recommendations will be followed).

It does however seem likely that the days of physical stamping are numbered. In a further development, on 14 August 2017 the Chancellor wrote to the OTS in response to its July report. The letter confirms the Chancellor's broad agreement with the "direction of travel" of the report's core recommendations, but does not commit to a timetable.

The report can be viewed here.

The Chancellor's letter can be viewed here.

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Stamp duty s.77 relief – revised HMRC guidance on "disqualifying arrangements"

On 1 July 2017, HMRC published revised pages in its Stamp Taxes on Shares Manual as to the meaning of "disqualifying arrangements" for the purposes of section 77 Finance Act 1986 relief (**Section 77 Relief**).

Section 77 Relief exempts a stamp duty charge arising where a company acquires the shares of a target company in return for the issue of shares in the acquiring company to shareholders of the target company. There are strict conditions attaching to Section 77 Relief which have included, from 29 June 2016, that there must be no "disqualifying arrangements" in place. Disqualifying arrangements are arrangements which can be reasonably assumed to have at least one purpose of securing that a **particular** person (or **particular** persons together) obtain(s) control of the acquiring company.

The updated HMRC guidance confirms that a pre-sale reorganisation taking place before a purchaser is identified will not be caught as a "disqualifying arrangement". Nor would an IPO or an appointment of a liquidator, typically, be caught.

The updated HMRC guidance can be viewed here.

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Miscellaneous

Upper Tribunal confirms that shares without dividend rights are ordinary share capital

On 6 September 2017, the Upper Tribunal[11] over-turned a First-tier Tribunal decision, holding that shares with no dividend rights are "ordinary share capital". From the point of view of legal certainty this was a welcome decision, removing an apparent conflict between recent decisions on this issue[12].

The First-tier Tribunal (FTT) had held that shares having no dividend rights had rights to dividends at a fixed rate of 0%. Such shares should therefore be excluded from the definition of "ordinary share capital" with the result that, in the eyes of the FTT, the taxpayers in question were entitled to entrepreneurs' relief on sale of their shares as they each held over 5% of their company's share capital (excluding shares carrying fixed-rate dividend rights).

Perhaps not surprisingly, the Upper Tribunal (UT) rejected the FTT's approach. In the view of the UT the shares in question did not have any dividend rights at all. The effect was that these shares formed part of the "ordinary share capital" of the company which, in turn, meant that the taxpayers fell below the 5% threshold required for entrepreneurs' relief. The UT expressed sympathy for the taxpayers (as the offending share class had only arisen due to a requirement imposed by a local authority approached for a grant), even suggesting that Parliament might want to consider whether the legislation needs to be changing to prevent such "unfair" outcomes. However the UT concluded that the statutory provision (section 989 ITA 2007) was clear.

The decision can be viewed here.

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Failure to prevent facilitation of tax avoidance – HMRC guidance on new offences

On 1 September 2017, HMRC published guidance for companies and organisations to follow in respect of the new corporate offences of failure to prevent facilitation of UK and foreign tax evasion. These new rules came into force on 30 September 2017 pursuant to Part 3 of the Criminal Finances Act 2017 (CFA).

Broadly, it will be a defence against the new offences for the company or organisation to prove that they had in place prevention procedures. Guidance as to these prevention procedures has now been published in final form.

The guidance can be viewed here.

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First-tier Tribunal finds in favour of taxpayer in first decision on senior accounting officer rules

On 3 August 2017, the First-tier Tribunal[13] held that HMRC was not justified in making penalty assessments against the finance director of a group of companies for a failure to comply with the senior accounting officer rules in Schedule 46 to the Finance Act 2009 (the SAO rules).

11. In *HMRC v McQuillan* [2017] UKUT 344 (TCC).
12. See our previous commentary here on the *Castledine* decision and here on the First-tier decision in *McQuillan*.
13. In *Thathiah v HMRC* [2017] UKFTT 0601 (TC).

HMRC had argued that the nominated SAO had failed in his "main duty" to take reasonable steps to ensure that appropriate tax accounting arrangements are established and maintained.

The Tribunal noted that whilst the statutory penalties under the SAO rules were relatively modest, the potential impact on an individual's reputation and employment prospects could be more significant. Examining the facts given that this is an objective question, the Tribunal held that HMRC had failed to discharge the burden of proof that the SAO had not taken the required reasonable steps. In fact, the Tribunal held, the "overall impression" was one of gradual improvement and the individual had repeatedly asked for additional resources in order that he may properly carry out his duties.

The decision can be viewed here.

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First opinion of GAAR Advisory Panel issued

On 18 July 2017, the first opinion of the General Anti-Abuse Rule (GAAR) Advisory Panel was issued.

The GAAR was introduced to much fanfare in 2013 in order to deter and counteract "abusive" tax arrangements. A key taxpayer 'safeguard' to offset concerns as to the scope of the GAAR is the requirement for HMRC to refer potential GAAR cases to the independent Advisory Panel. The Advisory Panel is asked to opine as to whether the particular arrangements can be viewed as a reasonable course of action in view of the relevant tax provisions. Only in the event that the Panel opine that the arrangements are not so reasonable, can HMRC continue with a GAAR case.

The particular arrangements involved employee rewards in the form of gold bullion and utilising an employee benefit trust. The arrangements, if effective, would have both avoided a charge under the so-called "disguised remuneration" tax rules and also delivered a tax deduction for the employer company.

The Panel's decision, that the arrangements were not "reasonable", is unsurprising. The taxpayers in this case adopted a contrived set of steps in order to exploit a shortcoming in the relevant legislation that was clearly not intended by Parliament. Nor is it surprising that HMRC are choosing to refer these kinds of arrangements to the GAAR Panel. It seems unlikely that HMRC would want to take the risk of an adverse (in HMRC's eyes) Panel Opinion, at least in these early days of the GAAR at a time when HMRC might want to establish the credibility of the GAAR.

The Panel Opinion can be viewed here.

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About RPC

RPC is a modern, progressive and commercially focused City law firm. We have 83 partners and over 600 employees based in London, Hong Kong, Singapore and Bristol.

"... the client-centred modern City legal services business."

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- Winner – Law Firm of the Year – Halsbury Legal Awards 2014
- Winner – Commercial Team of the Year – The British Legal Awards 2014
- Winner – Competition Team of the Year – Legal Business Awards 2014

Areas of expertise

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