Tax update

A round-up of recent tax issues

If you have any questions or feedback, please get in touch with your usual *Smith & Williamson contact* or me at the email address given below.

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1 General news

1.1 Autumn statement and spending review date

The Chancellor of the Exchequer, George Osborne, has announced that there will be an Office for Budget Responsibility forecast alongside the Spending Review on Wednesday 25 November 2015. The government will therefore publish a joint Autumn Statement and Spending Review on this date.

Smith & Williamson plans to post commentary on key tax issues mentioned on our website.

www.gov.uk/government/news/chancellor-announces-autumn-statement-forecast-alongside-spending-review

1.2 ATED and relief declaration return

As a reminder, the deadline for filing a relief declaration return for properties that were within the scope of the annual tax on enveloped dwellings (ATED) charge on 1 April 2015, but which qualify for a relief, is 1 October 2015. We have received the following note from HMRC regarding the return enabling taxpayers to file a relief declaration return for ATED:

"We are writing to you to provide an update following your involvement with HMRC's consultation on Annual Tax on Enveloped Dwellings (ATED) Reducing the Administrative Burden for business.

We said in the response document www.gov.uk/government/consultations/annual-tax-on-enveloped-dwellings-reducing-the-administratie-burden-for-business that we would be launching a new ATED digital service to enable customers to file their ATED returns online.

We had hoped to launch a digital Relief Declaration Return ahead of the filing date of 1 October for the 2015/16 chargeable period, but this has not been possible.

However, in the interim, a new, simplified Relief Declaration Return www.gov.uk/government/publications/annual-tax-on-enveloped-dwellings-relief-declaration-returns has now been released on the HMRC website. Customers that own a property or properties eligible to a relief, and have no ATED liability for the 2015/16 chargeable period, can use this return to claim relief. No property details are required and only one return needs to be filed for each relief code being claimed.

Customers that have a liability to ATED for the 2015/16 chargeable period should continue to use the existing ATED return: www.gov.uk/government/publications/stld-annual-tax-on-enveloped-dwellings-ated

For the 2016/17 chargeable period, a new digital service will be available for which users will need to register. Full details will be available on the HMRC website before the service goes live."

More detailed guidance about ATED returns can be found at: www.gov.uk/government/publications/stld-annual-tax-on-enveloped-dwellings-ated

1.3 HMRC ISA guidance on shares on the closed GXG Market

HMRC's August bulletin contained a note on the implications for ISA managers of investments formerly quoted on the GXG market. This closed as a recognised with effect from 18 August 2015.

HNRC has confirmed that investments held in an ISA that were listed or traded on the GXG Official List or GXG Main Quote can continue to be held as ISA qualifying investments until the company joins a new exchange. If the new exchange is, a recognised stock exchange for HMRC purpose, the investments can remain within the ISA.

If the new exchange is not a recognised stock exchange the ISA manager must sell the investments (and the cash proceeds remain in the stocks and shares ISA), or transfer them to the investor to be held outside the ISA. This must be done within 30 days of the company joining the new exchange."

www.gov.uk/government/publications/isa-manager-bulletin-67/isa-manager-bulletin-67

1.4 And finally....Tax Simplification?

As you can see, we have received the latest published edition of the tax legislation.

This edition now runs, approximately, to a staggering 20,300 pages, and eight volumes (as opposed to the two in 1994/95).

It does not, of course, include Finance (No.2) Bill currently going through Parliament following the Summer Budget.

In 2010, in commenting on the then 11,000-odd pages of legislation, George Osborne, the new Chancellor, remarked that Britain had "one of the most complex and opaque tax codes in the world" and it needed to be simplified.

Mr Osborne said his "dream" was "that people might actually understand the tax laws which they were being asked to comply with."

Sweet dreams, Chancellor.

2 Private client

2.1 HMRC action flawed in denial of Special Relief

The First-tier Tribunal (FTT) has found that HMRC had not acted reasonably from an administrative law 'Wednesbury' perspective (see Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223) in its arrival at a decision to deny Special Relief under TMA 1970 Sch 1AB para 3A for determinations it had issued to a taxpayer. The unreasonablesss was in HMRC failing to address the disparity in tax charge between the determinations and subsequently submitted self assessments as required by statute. The Tribunal did not, however, rule that the decision itself was incorrect as this was found to be outside of its jurisdiction. As the Tribunal could not substitute its own view, it was limited to allowing or dismissing the appeal, which it allowed, meaning the claims to Special Relief stood.

This case concerned an individual, Mr Scott ('S'), who submitted his tax returns for 2006/07 and 2007/08 on 30 November 2012. This was not sufficient to displace the determinations issued by HMRC for these years automatically as the returns in question were not filed within three years of the original filing dates (ie 31 January 2011 and 31 January 2012, respectively). S's only recourse, therefore, was to claim Special Relief. This meant he had to demonstrate:

a) it would be unconscionable for HMRC to deny the relief;

b) his tax affairs were otherwise up to date; and

c) he had not previously claimed this relief.

HMRC's failure to respond adequately on S's contention that the determinations were unreasonable and unreasonably excessive (both of which are accepted definitions of 'unconscionable' established in *William Maxwell v HMRC* [2013] UKFTT 459 (TC)) meant its decision was found to be unreasonable in a judicial review sense by the Tribunal, and could not be upheld.

The Tribunal made reference to *Wednesbury* which found '[a] court is entitled to investigate the action of the [decision-maker] with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account'.

www.bailii.org/uk/cases/UKFTT/TC/2015/TC04597.html

3 Business tax

3.1 Tax refund - French parented groups with non-French subsidiaries

French tax rules currently treat the taxation of dividends received by French parent companies differently depending on whether the dividends come from a French subsidiary or a non-French subsidiary. In the former case there is no tax, whilst in the latter case 5% of the dividend is taxed. The CJEU (Steria, case C-386/14) has held this is contrary to the EU principle of freedom of establishment. Businesses with a French parented group affected by this decision may like to consider their ability to claim any tax refund.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=166763&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=379297

http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-09/cp150092en.pdf

3.2 New exemption from land & buildings transaction tax (LBTT)

Prior to 6 October 2015 LBTT will have been chargeable on the transfer of Scottish properties held by an authorised unit trust (AUT) that is converting (or did convert) to an open ended investment company (OEIC). Scottish Statutory Instrument 2015/322 will exempt such property transfers from LBTT on the conversion of an AUT to, or its amalgamation with, an OEIC with effect from 6 October 2015. This brings the Scottish provisions in this area into line with those operating for the rest of the UK.

No SDLT is payable in the same circumstances on the transfer of properties situated in England, Wales or Northern Ireland, as a result of SI 2008/710 which came into force on 6 April 2008.

www.legislation.gov.uk/ssi/2015/322/pdfs/ssi_20150322_en.pdf

4 VAT

4.1 Zero-rating and clubhouse construction

The First-tier Tribunal (FTT) has found that a building's use after construction could be taken retrospectively to determine its intended use before completion. It has also provided its interpretation of what qualifies as zero rated construction work on a building that is used 'solely [as a] village hall or similarly in providing social or recreational facilities for a local community' per Item 2 in Group 5 of VATA 1994 Sch 8. The case concerned Caithness Rugby Football Club ('C'), which appealed against HMRC's decision that its clubhouse did not fall within this definition and, therefore, the supplies made in the course of its construction could not be zero-rated for VAT purposes. C's appeal was allowed.

HMRC argued that C's intended purpose for the clubhouse pre-construction did not reflect its actual purpose post-construction. HMRC referred to C's funding application forms and, in particular, the fact that these seemed to underestimate significantly the use of the clubhouse by parties other than C. These forms also did not indicate any intention for a broader community use when they could have done so. C accepted this, but also highlighted that the split of use between the parties involved, rather than the parties themselves, was HMRC's only contention.

HMRC also argued that the clubhouse did not fall within the definition because it was not controlled by the community and had been made available to non-local persons and also commercially with an apparent profit motive.

The Tribunal found that a building's use after construction could be taken to determine retrospectively its intended use before completion, despite HMRC's contentions to the contrary. This was on the basis that, for persons in C's position, it would often be impossible to know in advance exactly who would use it, and to what extent.

The Tribunal also found that the clubhouse was used for a wide range of sporting, recreational and social activities and that minor usage by non-local persons, and by implication commercial persons, did not prevent this being the case. Following the decision in *Jubilee Hall Recreation Centre Ltd v Customs and Excise Commissioners* [1999] STC 381, the FTT noted the building in question does not have to be controlled by the community to qualify as a 'village hall or similar'.

C's appeal was allowed with the implication being that HMRC's interpretation of the definition in question was too narrowly drawn.

www.bailii.org/uk/cases/UKFTT/TC/2015/TC04560.html

4.2 VAT and consignment stock

The CJEU has clarified when exemption (zero rating in the UK) can apply to consignment stock arrangements for fuel where an intermediary is involved. Case C-526/13 concerned a supplier, FKB, using intermediaries before supplying fuel for international transport.

The issue is of significance in determining the amount of VAT to be accounted for at each stage in the supply chain, and we understand that practice in the UK may in some circumstances have been similar to that in dispute at the hearing. The decision was specific to the fuel sector, but could have relevance for other supply circumstances.

The Lithuanian authorities contended that only the final supply of fuel to the end user (the shipping entity) could be exempted, whereas, here, the taxpayer contended the element of the supply of fuel via the intermediary was also exempt.

The CJEU held that where an intermediary acts in its own name and receives goods (fuel) for onward supply for international transport, the supply to the intermediary does not qualify for VAT exemption (zero rating in the case of the UK), even where the ultimate use of the goods is known and duly established and evidence confirming this is submitted to the tax authority in accordance with the national legislation.

The CJEU commented that exemption may apply if the transfer of the ownership of the fuel to the intermediary, using nationally approved procedures (such as 'flash title arrangements'), takes place, at the earliest, at the same time when the operators of vessels were actually entitled to dispose of the fuel as if they were the owners.

VAT notice 703 s.10 and VATA 1994 s.30(6)-(9) set out the conditions under which the supply of fuel for use in ships, aircraft and hovercraft to destinations outside the UK can be zero rated.

One of the requirements for zero rating in the context of fuel is that HMRC is satisfied that the fuel is shipped for use as 'stores' on a voyage or flight to an eventual destination outside the UK. In these circumstances the European VAT Directive does not provide for zero rating, but does provide for exemption (VAT Directive article 148(a). As indicated in VAT Notice 700, VATA 1994 s.47 provides that where a person acts as agent in their own name in relation to the supply of goods, the supply shall be treated as made by the agent as principal.

Following the CJEU decision there may be need to be some further guidance to clarify how HMRC will treat agency supplies in a range of supply chain arrangements.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=166824&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=349818

4.3 Listed buildings and transitional rules for the ending of zero rating of alterations

The ICAEW has issued the following reminder:

"The transitional arrangements under which approved alterations to protected buildings are zero-rated for VAT end on 30 September 2015. Protected buildings are listed residential dwellings and listed buildings used for charitable and other residential purposes.

These relate to the changes introduced on 1 October 2012, since when most supplies of alterations have been standard-rated. Under the transitional arrangements, zero-rating has continued to apply to approved alterations which were within the scope of a 'relevant consent' applied for before 21 March 2012, or a written contract with the builder entered into before 21 March 2012.

The transitional rules applied to the first grant of a major interest in a substantially reconstructed protected building where 3/5ths of the work, by cost, related to approved alterations, or where 10% of the substantial reconstruction, measured by cost, was completed prior to 21 March 2012.

It is the responsibility of builders to apply the correct rate of VAT and ensure they can provide satisfactory evidence of the entitlement to any zero-rating. Details of the evidence required can be found in the HMRC manuals at VCONST08980."

4.4 Customs Union Code

HMRC has issued a note concerning the adoption by the Commission of the Union Customs Code (UCC) Delegated Act and the publication of the final text of the Implementing Act. The approved text of both Acts will be published in the Official Journal shortly after the Implementing Act is adopted (expected to be late October to early November 2015). There have been a number of changes to the original draft and these changes are highlighted in HMRC's note.

Currently, import and export declarations can be lodged using either a manual (paper) declaration or electronically. The Union Customs Code (UCC) Council Regulation (EU) 952/13, which enters into force on 1 May 2016, requires all communication (including the submission of customs declarations) between customs authorities and economic operators, to be made electronically, except for specific exemptions.

The most fundamental change in the new UCC is the introduction of mandatory guarantees for customs procedures in certain circumstances. HMRC has confirmed that mandatory financial guarantees will be introduced for companies operating customs procedures such as customs warehousing or inward processing. HMRC has also added that to reduce or negate the need to provide financial guarantees for operating customs procedures, businesses will need to be certified Authorised Economic Operators ('AEOs').

While AEO status is not compulsory, businesses that ignore it are likely to see significant increases in associated import and export costs. Although the requirements for AEO authorisation appear numerous and onerous, AEO certified businesses will be able to use a simplified fast track application process for many EU customs procedures.

Preparing for AEO certification will involve an end-to-end look at the business and its supply chain processes. This should identify existing strengths and weaknesses and could ultimately lead to improved efficiency in supply chain management and compliance. To discuss the implications of the changes and possible AEO status for your business, please get in touch with your usual Smith & Williamson VAT contact.

www.gov.uk/government/publications/customs-information-paper-33-2015-union-customs-code-adoption-of-the-delegated-act-and-publication-of-the-final-text-of-the-implementing-act

www.gov.uk/government/publications/customs-information-paper-33-2015-union-customs-code-adoption-of-the-delegated-act-and-publication-of-the-final-text-of-the-implementing-act/customs-information-paper-33-2015

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