UPCOMING EVENTS & LIKELY DATES

April 2018
NEWSLETTER

2018

Q2	Prudential (Portfolio Dividends)	Supreme Court Judgment
	Fidelity Funds (WHT on dividends to non resident UCITS)	ECJ judgment
	FII (dividends from controlled interests)	Supreme Court permission to appeal
JUNE	Test Claimants in the CFC and Dividend GLO (Jurisdiction and time limits for Tax Claims)	High Court Hearing
JULY	BAT Industries (45% WHT on interest for EU claims)	Upper Tribunal Appeal

German Ministry of Finance Guidance on Anti-Treaty Shopping Rule

The German Ministry of Finance has published its official guidance on the German anti-treaty shopping rule, in direct response to the decision of the Court of Justice of the European Union ('CJEU') in Joined Cases C-504/16 and C-613/16 Deister Holding and Juhler Holding (reported in the January 2018 newsletter). The CJEU had held that the German anti-treaty shopping provisions breached the Parent-Subsidiary Directive ('PSD').

Issued on 4 April 2018, the guidance provides that the previous German laws on anti-treaty shopping (dated 2007) are no longer to be applied in open cases where the foreign recipient of a distribution of profits claims a tax refund under the PSD, so that all such open cases must now be approved by the Federal Central Tax Office. Significantly, the guidance also comments on the applicability of the subsequent (2012) anti-treaty shopping provision. The guidance stipulates that the 2012 provision allows holding entities that only carry out asset management to claim tax relief under the PSD, provided that the said entity actually exercises its shareholder rights and does not merely exist for the purpose of avoiding tax.

It is worth noting that the guidance only concerns dividend withholding tax under the PSD. Specifically, the guidance does not affect withholding tax relief on interest or royalties (under the Interest and Royalties Directive) or relief on other dividends not falling within the scope of the PSD.

Slovak Emission Allowances Tax Breaches EU Law

The CJEU has held in C-302/17 PPC Power that the Slovak tax on sold or unused greenhouse gas emission allowances is not compatible with EU law as it is contrary to the principle of the free allocation of allowances.

During 2011-2012 Slovakia levied a tax of 80% on allowances that were sold or were not used by entities participating in the EU Emission Trading System ('EU ETS'). The allowances had been allocated to those entities free of charge in accordance with Directive 2003/87/EC (the 'EU ETS Directive').

The CJEU held that the free allocation of allowances was intended to prevent EU ETS regulated entities from losing competitiveness as a result of the introduction of the EU ETS. The economic value of allowances underpins the EU ETS, as selling unused allowances encourages undertakings to invest in emission reducing measures. However, depriving these undertakings of 80% of the value of such allowances removes most of the economic incentive to invest in measures to reduce emissions. In conclusion, the tax has the effect of neutralising the free allocation of allowances and is therefore incompatible with the EU ETS Directive.

HMRC May Not Open Enquiry into Voluntary Self-Assessment Return

The First-tier Tribunal ('FTT') has held in Patel v HMRC [2018] UKFTT 185 (5 April 2018) that a voluntarily submitted self-assessment return does not qualify as a return under section 8(1) of the Taxes Management Act 1970 ('TMA'). Consequently, HMRC cannot open an enquiry into a voluntary return.

The appellants had completed paper tax returns as they had been unsuccessful in registering for online self-assessment. The returns were voluntary, meaning HMRC had not given the appellants notice under section 8(1) TMA requiring the delivery of such returns. Following amendments made by the appellants to the tax return so as to reduce tax liabilities, HMRC sent them notices of enquiry under section 9A TMA.

The FTT held that, on the wording of section 8 TMA, 'a return under section 8' plainly meant a return which the taxpayer had been 'required by a notice given to him by an officer of the Board to make and deliver to the officer'. The words 'may be required by a notice given to him' confers a discretion on HMRC whether or not to issue a notice; for example, tax liabilities can be collected without such notice under the PAYE system.

However, the fact that HMRC did not issue a notice did not mean a voluntary return became one under section 8 TMA. This conclusion could not be changed by applying the doctrine of purposive construction, as the words used by Parliament as well as its expressed intention were 'entirely clear'. However, it was open to HMRC, on receipt of a voluntary return and within prescribed time limits, to issue a notice under section 8 TMA requiring the taxpayer to make a return (and effectively resubmit the voluntary return).

JHA BLOG

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