HAGE AARONSON

LITIGATION SPECIALISTS

JULY 2013 NEWSLETTER

UPCOMING EVENTS AND LIKELY DATES

2013		
5 Sep	FII GLO (retrospective legislation)	AG's opinion
Oct	Littlewoods (compound interest)	High Court hearing
Oct	CFC & Dividend GLO (portfolio dividends)	High Court judgment
Nov	M&S (group relief)	2nd Supreme Court hearing
Q4	FII GLO (retrospective legislation)	ECJ decision
	M&S (group relief)	2nd Supreme Court judgment
2014		
29 April	FII GLO (dividend tax and ACT)	High Court hearing

Hage Aaronson move to new offices in Holborn

We are pleased to announce that we have moved to our new premises in Holborn, London. Our new address is:

Hage Aaronson
280 High Holborn
London, WC1V 7EE
United Kingdom

ROSIIP GLO: Taxpayers succeed

The ROSIIP GLO concerned the imposition of a 55% tax charges against pension-holders who had transferred their UK pensions into the Singapore ROSIIP Pension Fund. At the time of transfer, ROSIIP had been listed on HMRC's website as a QROPS – transfers to which attract no charge to tax. The fund was retrospectively withdrawn from HMRC's list in 2008 so that transfers made prior to its withdrawn were said to be "unauthorised payments" and were assessed to the 55% charges.

The pension holders argued that HMRC could not impose the tax charges against them because they had obtained a legitimate expectation from HMRC that they would not be subject to tax on their transfers. On the fifth day of the hearing, HMRC accepted that they could not maintain their assessments against the claimants and the assessments were withdrawn. The background to the withdrawal of these assessments suggests that HMRC may not be able to impose tax charges against individuals who make transfers into other funds which appeared on the QROPS list and were later removed retrospectively.

If you or your clients receive an assessment or enquiry in circumstances similar to those described above, please contact us.

Retrospective Changes to rules on interim payment applications in tax cases

A last minute amendment to the Finance Bill 2013 announced on 26 June 2013 has significantly limited the ability to make an interim payment application in High Court proceedings for repayment of tax. Such applications can now only be made in cases of financial hardship (where the payment of the sum is necessary to enable the proceedings to continue) or where "the circumstances of the claimant are exceptional and such that the granting of the remedy is necessary in the interests of justice." Applications made before 26 June are not affected.

The legality of the changes seems questionable given their abrupt and retrospective introduction and the fact that in practice they target EU law claims.

FII GLO 3rd ECJ reference

The 3rd reference in the FII GLO took place in the ECJ on 26 June. The reference concerned whether the retrospective reduction in the limitation period for mistake claims issued on or after 8 September 2003 (s320 FA 04) offended EU rights. The Supreme Court concluded in May 2012 that the like provisions which hit claims issued before that date (s107 FA 07) infringed EU law principles but could only reach the same decision for s320 FA 04 by a majority (5:2) and therefore referred the matter to the ECJ. The Advocate General's opinion is expected to be released on 5 September 2013.

Portfolio Dividend Claims: High Court Trial Concludes

The High Court hearing concluded on 19 July. The hearing dealt with issues arising out of corporation tax charges on foreign-source portfolio dividends, ACT charges on their onward payment and a number of issues specific to life assurance and pension business, as well as remedies, including the availability of compound interest, and HMRC's contention that unlawful tax paid under a mistake could not be recovered where the UK had applied its tax revenues against government expenditure ("the change of position" defence). Judgment has been reserved.

Similar issues will be considered in the context of dividends from subsidiaries at the hearing of the FII GLO, which is listed for 29 April 2014.

Exit Taxes

C-261/11 Commission v Denmark

The CJEU, following recent case law, concluded that the Danish rules on exit taxation of cross-border transfers of assets within a company are contrary to the freedom of establishment within the meaning of Article 49 TFEU. Under the rules, a transfer of assets internally within a company, but to a permanent establishment outside Denmark having the effect that the assets are no longer subject to Danish tax, is regarded as a sale and is taxed as if the assets had been sold in the year of the transfer. A transfer of assets between a company's different establishments within Denmark is not taxed. The CJEU affirmed its decision in *C-371/10 National Grid Indus*, and rejected Denmark's argument that the rule established in that case is limited to financial assets that are disposed of, or intended to be disposed of, after the cross-border transfer. However, the CJEU confirmed that Denmark can still tax assets that are not intended to be realized, provided the trigger for such taxation constitutes a measure less restrictive to the freedom of establishment than immediate recovery of the Danish tax at the time of transfer.

Belgium notional interest deduction regime contrary to EU law

C-350/11 Agenta Spaarbank NV v Belgische Staat

On 4 July 2013, the CJEU held that the Belgian notional interest deduction regime is contrary to EU law. Under the rules, Argenta Spaarbank was denied the notional interest deduction on its equity to the extent of

the net asset value of its permanent establishment situated in the Netherlands. Had the permanent establishment been established in Belgium, no reduction in respect of the permanent establishment's assets would have to be made. The Court concluded that the regime discouraged a Belgian company from carrying out its activity through a permanent establishment situated in another state and, consequently, amounted to a breach of the freedom of establishment in Article 49 TFEU.

CONTACTS

- Simon Whitehead
- Paul Farmer
- Michael Anderson
- Philippe Freund
- Robert Waterson
- Federico Cincotta
- Nicola Hine

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If you know someone who may be interested in this and future newsletters, please feel free to forward this message to them and/or request that we add them to our mailing list by return email.