

UPCOMING EVENTS & LIKELY DATES

March 2017
NEWSLETTER

2017

Q1	ITC (indirect claims for overpaid tax)	Supreme Court judgment
Q2	FII (dividends from controlled interests)	Supreme Court decision on permission to appeal
MAY	BAT (super tax on EU claims)	Tribunal hearing
JULY	Littlewoods (compound interest on repaid VAT)	Supreme Court hearing
Q4 2017 - Q1 2018 (Estimate)	Prudential (Portfolio Dividends)	Supreme Court hearing

2017 Spring Budget

EU Rights and Claims *Steve Bousher*

There does not appear to be any restrictions on EU law claims in today's budget announcements. However the last two previous restrictions on EU claims were not announced with the budget but were only introduced very late at the final reporting stages of those bills, namely Part 8C CTA 2010 (the 45% super tax on interest payments by HMRC introduced in FA (2) 2015) and section 234 Finance Act 2013 (prohibition on interim payments against HMRC).

There is one announcement that potentially infringes EU rights. A new 25% charge on pension transfers to qualifying recognised overseas pensions schemes has been introduced. This seems to involve a prima facie restriction on the EU right to free movement of capital. Although this does not apply where both the individual and the pension are located within the EEA, the right to free movement of capital applies outside the EEA as well. No similar charge would apply to transfers between UK registered pension funds.

Other announcements today include:

- Before the summer recess HMRC will launch a consultation on how it risk profiles large businesses. The aim of the consultation will be to seek changes to the current process in order to promote stronger tax compliance.
- There will be legislation in FB2017 to amend the law on profits from trading in or developing land in the UK to 'catch' offshore developers;
- There will be legislation in FB2017 to remove the ability of businesses to turn losses from capital assets into allowable trading losses;
- There will be a Minimum Excise Tax on cigarettes;

Looking forward there will be:

- An increase in Class 4 National Insurance Contributions staged over years 2018 and 2019 ;
- A cut in the dividend allowance from April 2018;

The anticipated changes to partnership taxation – consulted on last year and where draft legislation was promised before this year – have not been announced today. Instead the government has said, again, that it will publish a response document (to last year’s consultation) and draft legislation.

Prudential Assurance Company Ltd v HMRC

Supreme Court grants HMRC permission to appeal | *Peter Stewart*

The Supreme Court has granted HMRC permission to appeal on one issue, namely the amount of tax credit to which a taxpayer is entitled by way of reduction of the unlawful charge to corporation tax on foreign dividends under Schedule D Case V. The Court of Appeal held that credit should be given for the relevant foreign tax at the higher of the effective rate (i.e. the actual tax paid) or a credit at the foreign nominal rate. On all other issues (including those relating to ACT), the Court has reserved the decision on whether to grant permission for consideration at the hearing.

William Reeves v Revenue & Customs Commissioners

Holdover Relief – Definition of “Control” | *Peter Stewart*

A non-UK resident taxpayer was unsuccessful in appealing against HMRC’s disallowance of his claim for holdover relief from capital gains tax under the Taxation of Chargeable Gains Act 1992.

The taxpayer had disposed of his interest in a UK-based business by transferring it by way of gift to a newly formed UK company of which he was the sole shareholder and director. HMRC disallowed the claim for holdover relief on the basis of s167 of the 1992 Act because the taxpayer’s wife was not UK-resident and, as an ‘associate’ of his, could be deemed to control the company. The parties agreed that on a literal interpretation, ‘control’ included both ‘real’ and ‘fictional’ control and that the Act therefore attributed control of the company to his non-resident wife. The issue was whether a purposive interpretation should be adopted so as to allow a claim for holdover relief.

The First-tier tribunal held that it was not possible to interpret "control" purposively so as to refer only to 'real' control and excluding 'fictional' control. Nor was it possible to be abundantly sure that there had been a statutory drafting error so as to enable the Tribunal to correct the literal meaning of the legislation. The taxpayer had also not suffered any difference in treatment and had been taxed in exactly the same way as a UK resident with a non-resident wife.

JHA BLOG

JHA's blog is updated with major news and developments in the fields of tax litigation, sanctions law, commercial litigation and arbitration. The blog can be accessed [here](#).

- Simon Whitehead
- Paul Farmer
- Michael Anderson
- Ray Mc Cann
- Steve Bousher
- Philippe Freund
- Samantha Wilson
- Helen Mc Ghee
- Katy Howard

NEWSLETTER SIGN-UP

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.

"JOSEPH HAGE AARONSON" IS AN INTERNATIONAL AFFILIATION OF LEGAL PRACTICES CONSISTING OF JOSEPH HAGE AARONSON LLP (ENGLAND & WALES) AND JOSEPH HAGE AARONSON LLC (UNITED STATES). JOSEPH HAGE AARONSON LLP ("JHALLP") IS A LIMITED LIABILITY PARTNERSHIP REGISTERED IN ENGLAND & WALES WITH REGISTERED NUMBER OC382221. THE LLP IS AUTHORISED AND REGULATED BY THE SOLICITORS REGULATION AUTHORITY. A LIST OF LLP MEMBERS IS AVAILABLE FOR INSPECTION AT THE LLP'S REGISTERED ADDRESS: 280 HIGH HOLBORN, LONDON, WC1V7EE, UNITED KINGDOM.

JOSEPH HAGE AARONSON LLC ("JHA LLC") IS REGISTERED AT 485 LEXINGTON AVENUE, 30TH FLOOR, NEW YORK, UNITED STATES.

JOSEPH HAGE AARONSON DOES NOT PROVIDE LEGAL SERVICES AND ALL LEGAL SERVICES ARE PROVIDED BY JHA LLP AND/OR JHA LLC, EACH OF WHICH IS A SEPARATE AND DISTINCT LEGAL ENTITY. FOR THE AVOIDANCE OF DOUBT, JOSEPH HAGE AARONSON LIMITED (A PRIVATE LIMITED COMPANY REGISTERED IN JERSEY WITH REGISTRATION NUMBER 113955) ALSO DOES NOT PROVIDE ANY LEGAL SERVICES AND YOUR CONTRACTUAL RETAINER OR ENGAGEMENT WILL BE WITH JHA LLP AND/OR JHA LLC IF THE TERMS OF THE ENGAGEMENT EXPRESSLY SO SPECIFY.

THE USE OF THE WORD "PARTNER" IN CONNECTION WITH THE JOSEPH HAGE AARONSON TRADING NAME DENOTES A MEMBER OF JHA LLP OR JHA LLC, OR A CONSULTANT OR EMPLOYEE OF ONE OF THEM WITH EQUIVALENT STANDING AND QUALIFICATION. THE USE OF THE TERM "PARTNER" SHOULD NOT BE CONSTRUED AS MEANING THAT ANY FORM OF PARTNERSHIP EXISTS BETWEEN THE TWO SEPARATE ENTITIES OR BETWEEN THE DIFFERENT PRINCIPALS OF THE TWO ENTITIES.