UPCOMING EVENTS & LIKELY DATES

June 2017
NEWSLETTER

2017

Q2 - Q3 (Estimate)	45% Super Tax	First-tier Tribunal Judgment
July	Littlewoods (compound interest on repaid VAT)	Supreme Court hearing
Q3	FII (dividends from controlled interests)	Supreme Court Permission to Appeal

2018

February	Prudential (Portfolio Dividends)	Supreme Court hearing

AG Opinion: C-322/16 Global Starnet Ltd – Obligation to make reference and internal situation

Cristiana Bulbuc

The facts of the case are simple. Italy enacted new legislation in respect of concession holders of gaming services, effectively limiting the possibility of providing such services in Italy. Global Starnet criticised the new law as it introduced new requirements for concession holders that are applicable also to concession holders already active in the market.

In this case, AG Wahl addressed the extent to which 'the fact that a constitutional court of a Member State has declared a national measure compatible with the constitution has any bearing on the obligation, imposed on national courts of last instance, to refer a questions concerning the interpretation of EU law to the CJEU, when the national rules forming the basis of the constitutional court's assessment are similar to the relevant EU rules.' In his opinion, AG Wahl argued that the question should be answered in the negative. The fact that the court of a Member State can submit a question on the constitutionality of a national measure to the constitutional court, or the fact that such a question has been asked, has no bearing on that court's right or its obligation to make a reference to the CJEU.

The AG then went on to answer the second question which essentially asked whether the Treaty rules on the internal market, the Charter of Fundamental Rights of the EU, or the principle of the protection of legitimate expectations preclude national provisions which lay down new requirements applicable to both existing and new concession holders of gaming services. The AG held that this question should also be answered in the negative. According to the AG, the situation is purely internal to Italy and the national provisions do not have any effect on intra-Union trade. Alternatively, the provisions would be compatible with EU law.

The full opinion can be found here.

C-38/16 Compass Contract Services v HMRC – Periods for repayment of Input and Output VAT Fleming claims

Ramsey Chagoury

The First-tier Tribunal (Tax Chamber) requested the ECJ to provide a preliminary ruling concerning the compatibility with EU law of the UK's different treatment of output tax Fleming claims and input tax Fleming claims. The administrative practice and successive legislative interventions have resulted in different treatment with regard to the date from which the limitation period, within which repayment could be sought of VAT in breach of Directive 77/388, applied. The referring court asked whether that difference was compatible with the principle of equal treatment, under EU Law.

The ECJ held, the principles of fiscal neutrality, equal treatment and effectiveness did not prevent national legislation, which, in the context of the reduction of the limitation period, on the one hand, for claims for overpaid VAT and, on the other hand, for claims for deduction of input VAT, provided different transitional periods, with the result that claims relating to two accounting periods of three months were subject to different limitation periods depending on whether they concerned the repayment of overpaid VAT or the deduction of input VAT.

The AG suggested it was not contrary to EU law for a national measure to provide that the new limitation period should start to run, for the latter, from a later date than the date fixed for it to start running for the former. Alternatively, were the Court to give an affirmative answer to the first question, the national court would have to draw the appropriate conclusions from infringement of the principle of equal treatment in such a way that the remedies it granted were not contrary to EU law.

The full case can be found **here.**

C-580/15 Van der Weegan v Belgische Staat – Belgium exemption on savings deposits

Joseph Irwin

This case followed on from C-383/10 Commission v Belgium, in which the CJEU held that article 21(5) of the Belgian Income Tax Code, which applied a tax exemption reserved exclusively to savings income received from Belgian banks, was contrary to the freedom to provide services within the EU (article 56 TFEU).

Following that decision, article 21(5) was amended to extend the exemption to income received from credit institutions established in other Member States, provided that they meet conditions which are at least similar to those in force in Belgium.

Whilst ultimately leaving it to the referring court to verify, the CJEU held that the exemption system in question, whilst applying without distinction to income from Belgium and other Member States, was capable of constituting a restriction on the freedom to provide services. This was because it required compliance with conditions which were, in fact, de facto specific to the Belgian national market and, as such, was capable of discouraging Belgian residents from using the services of banks established in other Member States.

The judgment can be found **here.**

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
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