



Corporate tax update

First quarter 2017

Welcome to the latest edition of our Corporate Tax Update, written by members of RPC's Tax team and published quarterly. In this first 2017 edition we highlight some of the key tax developments of interest to UK corporates from the first quarter of 2017.

The Finance Bill 2017

The Finance Bill 2017 was published on 20 March 2017, being widely reported as the longest ever at 762 pages. However a much shorter Bill received Royal Assent on 27 April 2017 following the calling of a snap general election. [more>](#)

2017 Spring Budget

The Chancellor's first full Budget was light on genuinely new measures of interest to corporates. A number of measures announced as part of the 2016 Autumn Statement were confirmed or further clarified. [more>](#)

Corporation tax – general

Non-resident companies and corporation tax – consultation

On 20 March 2017, a consultation document was published on the Government's plans to extend the scope of UK corporation tax to non-resident companies in receipt of certain income and gains. [more>](#)

EBT contributions did not pass the “wholly and exclusively” test – First-tier Tribunal

On 24 February 2017, the First-tier Tribunal held, in respect of three cases heard together, that contributions made over a period of time to employee benefit trusts (EBTs) were not deductible for corporation tax purposes. [more>](#)

VAT

Enactment of extra-statutory concession on insolvency VAT clawback

On 28 March 2017, the Enactment of Extra-Statutory Concessions Order 2017 was made which, amongst other things, enacts ESC3.20. The Order came into force on 6 April 2017. [more>](#)

Upper Tribunal dismisses taxpayer appeals in tripartite arrangement VAT cases

On 17 March 2017, in two separate cases the Upper Tribunal dismissed two taxpayer appeals in cases involving tripartite arrangements. [more>](#)

Any comments or queries?

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“Dwelling” conditions for VAT zero-rating purposes must be assessed at completion of building – First-tier Tribunal

On 21 February 2017, the First-tier Tribunal held that an assessment as to whether a building is designed as a “dwelling” (for the purposes of VAT zero-rating on construction services) must be made once construction of the building is complete. [more>](#)

UK “builder’s block” not incompatible with EU VAT law

On 7 February 2017, the Upper Tribunal held that the UK’s “builder’s block” was not incompatible with EU law. [more>](#)

Upper Tribunal confirms position that representative member must make VAT overpayment claims

On 3 January 2017, the Upper Tribunal held that a claim for overpaid VAT must be made by the representative member of a VAT group. [more>](#)

Stamp taxes

SDLT – changes to filing and payment process (responses)

On 20 March 2017, HMRC published responses to its consultation on planned changes to the stamp duty land tax (SDLT) filing and payment process. [more>](#)

Stamp duty – review of physical stamping process (update)

On 2 March 2017, the Office of Tax Simplification (OTS) published a progress report on its review of stamp duty on paper transactions, following the launch of the review at the end of 2016. [more>](#)

The Finance Bill 2017

The Finance Bill (FB) 2017 was published on 20 March 2017, being widely reported as the longest ever at 762 pages. One effect of the Prime Minister's decision to announce a snap general election has been to take this dubious honour away from FB 2017. A much-reduced FB 2017 was fast-tracked through Parliament before it was dissolved on 3 May. Among the provisions dropped from FB 2017 (and to be enacted, we assume, later this year) are those dealing with corporation tax losses reform, the new rules on interest deductibility and the changes to the substantial shareholding exemption (SSE). Whilst it is only right that such important changes are given sufficient parliamentary scrutiny, it is far from ideal that the gap between important new rules taking effect (1 April 2017 in the case of the CT losses, interest deductibility changes and SSE reform) and the enactment of the legislation is being increased further still.

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2017 Spring Budget

The Chancellor's first full Budget was light on genuinely new measures of interest to corporates. A number of measures announced as part of the 2016 Autumn Statement were confirmed or further clarified. These include the new restrictions on corporate interest deductibility, reform of the corporation tax losses regime and the changes to the UK's SSE (each effective from 1 April 2017¹). See [here](#) for links to our earlier commentary on these measures.

- **Withholding tax exemption for debt traded on MTFs:** it was announced that interest on interest-bearing securities issued by companies admitted to trading (and not listed) on a multilateral trading facility (MTF) should not be subject to UK withholding tax. The existing quoted Eurobond exemption from UK withholding tax requires that the debt is "listed". Under a consultation document published by HMRC on 20 March 2017 it is proposed that the new exemption would be limited to MTFs on regulated stock exchanges regulated in EEA territories. The new exemption would, it is hoped, increase the competitiveness of UK MTFs. The proposed exemption is to take effect from April 2018.

The consultation document can be viewed [here](#).

- **Double Tax Treaty Passport (DTTP) scheme – update:** it was announced that the DTTP scheme would be updated as from 6 April 2017. A subsequent consultation response, published on 20 March 2017, confirmed that from that date the scheme will be available to:
 - all UK borrowers that have UK withholding tax obligations. This will include partnerships, individuals and charities (ie not just corporate borrowers)
 - "Transparent" lenders, provided that all beneficial owners of the income are eligible for the same treaty benefits and are resident in the same jurisdiction
 - sovereign and pension fund lenders, again provided that all beneficial owners of the income are eligible for the same treaty benefits and are resident in the same jurisdiction.

The consultation response document can be viewed [here](#).

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1. Though note the delay to the enactment of the legislation, following the announcement of the snap general election.

Corporation tax – general

Non-resident companies and corporation tax – consultation

On 20 March 2017, a consultation document was published on the Government's plans to extend the scope of UK corporation tax to non-resident companies in receipt of certain income and gains. The focus of the consultation are such companies who are currently subject to income tax and/or non-resident capital gains tax. This would impact upon non-residents who do not operate in the UK through permanent establishments located here. The deadline for consultation responses is 9 June 2017, but it is not clear when any changes would take effect.

As proposed the new corporation tax charge would extend to:

- income from UK real property, and
- gains on sale of UK residential property by closely-held companies.

Note that gains from commercial property sales are not (yet) affected.

The consultation was first announced as part of last year's Autumn Statement and the policy behind the planned extension of the scope of UK corporation tax is to ensure that such non-resident companies become subject to the important corporation tax changes taking effect from April 2017, for example:

- the corporate interest deduction restrictions, and
- the reform of the corporation tax loss regime.

The consultation document can be viewed [here](#).

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EBT contributions did not pass the “wholly and exclusively” test – First-tier Tribunal

On 24 February 2017, the First-tier Tribunal² held, in respect of three cases heard together, that contributions made over a period of time to employee benefit trusts (EBTs) were not deductible for corporation tax purposes. In each case the Tribunal held that there was a duality of purpose to the making of the contributions. At least in part, the relevant company's intention was to make funds available to a principal shareholder.

The decision can be viewed [here](#).

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2. In *Always Sheet Metal Limited, Prazz Consultants Limited and J C McCahill Limited v HMRC* [2017] UKFTT 0198 (TC).

VAT

Enactment of extra-statutory concession on insolvency VAT clawback

On 28 March 2017, the Enactment of Extra-Statutory Concessions Order 2017³ was made which, amongst other things, enacts ESC3.20. The Order came into force on 6 April 2017.

ESC3.20 disapplied the clawback of input tax credit for an insolvent business that has not paid (or not fully paid) the consideration for a supply. New section 26AA of the Value Added Tax Act 1994 gives broadly the same effect as ESC3.20 in that it “turns off” the disallowance of input tax in cases of non-payment of consideration if:

- the supply took place before the business entered into insolvency proceedings (but, broadly, not more than six months before insolvency – this is a new restriction not contained in ESC3.20)
- HMRC is notified of the insolvency
- the insolvency was not entered into with a main purpose of disapplying the input tax clawback (or obtaining another tax advantage).

The Order can be viewed [here](#).

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Upper Tribunal dismisses taxpayer appeals in tripartite arrangement VAT cases

On 17 March 2017, in two separate cases⁴ the Upper Tribunal dismissed two taxpayer appeals in cases involving tripartite arrangements.

In the first case (*Adecco*) the Tribunal decided that the contractual position was consistent with the economic reality of the transaction. Adecco supplied the temporary workers to Adecco’s clients. One contract was entered into between Adecco and its client, with another contract between Adecco and the worker. In no cases were contracts entered into directly between the client and the worker. Adecco had appealed to the Tribunal on the basis that it had incorrectly accounted for VAT on the full amount paid to it by the client. Adecco’s view was that it should be liable for VAT only on the commission element of the client’s payment, as it supplied introductory services only. The Tribunal, agreeing with the First-tier Tribunal, held that Adecco was in fact making a supply of the workers to its client (with the effect that VAT was due on the full amount paid by the client).

In the second case (*U-Drive*), the Tribunal held that on the facts the contractual position did **not** reflect the economic reality. U-Drive’s appeal was dismissed. U-Drive could not seek input VAT recovery on amounts invoiced by third-party garages for repairs as only the car owners could receive the garages’ repair supplies. This was the case even though the only contract was between U-Drive and the garage.

Both Tribunal decisions applied a two-stage process, following the Supreme Court decision in *Airtours*⁵, of:

- considering the contractual position, before
- deciding whether that contractual position reflected the economic reality of the transaction.

The Tribunal decisions can be viewed [here](#) and [here](#).

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3. SI 2017/495

4. *Adecco UK Ltd and others v HMRC* [2017] UKUT 113 (TCC) and *U-Drive Ltd v HMRC* [2017] UKUT 112 (TCC). The constitution of the Tribunal was the same in each case.

5. [2016] UKSC 21. For our previous commentary on this decision, see [here](#).

“Dwelling” conditions for VAT zero-rating purposes must be assessed at completion of building – First-tier Tribunal

On 21 February 2017, the First-tier Tribunal⁶ held that an assessment as to whether a building is designed as a “dwelling” (for the purposes of VAT zero-rating on construction services) must be made once construction of the building is complete.

The decision can be viewed [here](#).

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UK “builder’s block” not incompatible with EU VAT law

On 7 February 2017, the Upper Tribunal⁷ held that the UK’s “builder’s block” was not incompatible with EU law.

The builder’s block prevents house builders from claiming input VAT recovery on certain specified goods supplied as part of a (zero-rated) dwelling. For the builder’s block to apply, the goods must be “incorporated” in the dwelling. However this does not include items “ordinarily” installed by builders as fixtures. Taylor Wimpey sought to recover input VAT on built-in ovens, extractor hoods, washing machines, dishwashers, freezers and other items based on the following (alternative) arguments:

- the UK builder’s block was incompatible with EU law, or
- the items in question were not “incorporated” into the dwelling, or
- if incorporated, they were of a kind “ordinarily” installed by builders.

The Upper Tribunal held that the Principal VAT Directive enabled the UK to exclude from the scope of input VAT recovery those specified items comprised in a dwelling which would, if supplied separately, be standard-rated for VAT purposes.

On the question on the meaning of “incorporated” the Tribunal held that both fixtures and fittings could be incorporated into a dwelling. The Tribunal favoured a test of “installation” as a way of viewing chattels. In other words, did the chattel have a material degree of attachment to the dwelling (ie more than simply being plugged in), but something less than the degree of annexation found in a fixture? By way of guidance only, the Tribunal suggested that built-in kitchen appliances and plumbed in white goods would be installed as fittings, and therefore within the scope of the builder’s block as “incorporated” in the dwelling.

Finally, incorporated goods can be removed from the builder’s block if “ordinarily” installed by builders. On this, the Tribunal held that the proper test was whether the incorporation/installation was, at the relevant time, commonplace or not out of the ordinary.

The decision can be viewed [here](#).

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6. In *Quitie Ltd v HMRC* [2017] UKFTT 0206 (TC).

7. In *Taylor Wimpey Plc v HMRC* [2017] UKUT 34 (TCC).

Upper Tribunal confirms position that representative member must make VAT overpayment claims

On 3 January 2017, the Upper Tribunal⁸ held that a claim for overpaid VAT must be made by the representative member of a VAT group.

This latest decision follows a number of recent cases looking at the question of VAT overpayment claims under section 80 VATA. See [here](#) and [here](#) for our earlier commentary on these decisions.

The taxpayer sought to rely, before the Upper Tribunal, on one remaining ground of appeal (the taxpayer accepting that the *Standard Chartered*, *Taylor Clark* and *Rover* decisions had dealt with the majority of its original grounds of appeal). However the taxpayer failed to convince the Upper Tribunal that “exceptional circumstances” existed in its case, that could allow for someone other than the representative member to make a section 80 VATA claim. In the Tribunal’s view, the taxpayer provided no evidence to demonstrate that the representative member could not reasonably have made the claim.

Although it is a shame that the taxpayer failed to provide evidence as to the difficulty involved in the representative member of the VAT group making the claim (so that the Tribunal did not consider what level of difficulty was required before it would depart from the general position) the Tribunal did state that, in order for the taxpayer to succeed on its one remaining ground of appeal, it would need to have been “virtually impossible” for the representative member to have made the claim.

The combined effect of these decisions would seem to be that in almost all cases, a section 80 claim will need to be made by the representative member of the relevant VAT group (ie the representative member at the relevant time), even where the group member directly concerned with the supply in question has since left the VAT group.

The decision can be viewed [here](#).

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8. In *Gala 1 Limited v HMRC* [2016] UKUT 0564 (TCC).

Stamp taxes

SDLT – changes to filing and payment process (responses)

On 20 March 2017, HMRC published responses to its consultation on planned changes to the stamp duty land tax (SDLT) filing and payment process. At the 2017 Spring Budget it was announced that the change to the SDLT payment and filing window, from 30 days to 14 days, will not now be implemented before April 2018.

The Summary of Responses can be viewed [here](#).

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Stamp duty – review of physical stamping process (update)

On 2 March 2017, the Office of Tax Simplification (OTS) published a progress report on its review of stamp duty on paper transactions, following the launch of the review at the end of 2016.

Essentially the OTS has identified two possible solutions to address the current “disproportionately unwieldy” physical stamping process:

- The **parallel approach** of digitising the stamp duty process, to sit alongside SDRT, or
- The **merged approach** of abolishing paper stamp duty and creation of an “umbrella” SDRT.

The OTS seeks views on a number of areas in connection with its review, by 31 May 2017.

The progress report can be viewed [here](#).

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About RPC

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