Tax update

April 2019

In this month's update we report on (1) HMRC's guidance on self-reporting failure to prevent the facilitation of tax evasion; (2) HMRC's consultation on secondary preferential creditor status on insolvency of a business; and (3) a Parliamentary Select Committee's call for a public register of beneficial ownership in each British Overseas Territory. We also comment on three recent cases relating to (1) the concept of "staleness" in discovery assessment appeals; (2) a failed DOTAS application brought by HMRC; and (3) the extra-territorial reach of HMRC information notices.

News items

HMRC publishes guidance on self-reporting failure to prevent the facilitation of tax evasion

On 21 February 2019, HMRC published guidance explaining how and when a representative of a company or partnership should self-report the organisation's failure to prevent the criminal facilitation of UK tax evasion. The guidance sets out the information that must be submitted to HMRC. more›

HMRC consults on secondary preferential creditor status for employee and customer taxes on insolvency of a business

On 26 February 2019, HMRC launched a consultation entitled "Protecting your tax in insolvency", on the government's proposal to make HMRC a secondary preferential creditor for taxes paid by employees and customers (the new powers are contained in the proposed Finance Bill 2019-20). more›

Select Committee calls for public register of beneficial ownership in British Overseas Territories

The House of Commons Foreign Affairs Committee has published a report entitled "Global Britain and the British Overseas Territories: Resetting the relationship". more›

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Beagles – when does delay by HMRC render a discovery assessment invalid?

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Any comments or queries

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About this update

Our Tax update is published on the first Thursday of every month, and is written by members of RP C's Tax team.

We also publish a VAT update on the final Thursday of every month, and a weekly blog, RPC's Tax Take.

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Curzon – contractor loan scheme notifiable under DOTAS but scheme administrator not a "promoter"

In *HMRC v Curzon Capital Ltd* [2019] UKFTT 0063 (TC), the FTT has held that a contractor loan scheme was a notifiable arrangement for the purposes of the disclosure of tax avoidance schemes (DOTAS) regime, but that the administrator of the arrangements was not a promoter. Accordingly, HMRC's application for an order that the arrangements were notifiable was dismissed. more›

Jimenez – information notices have extra-territorial reach

In *R (oao Jimenez) v HMRC* [2019] EWCA Civ 51, the Court of Appeal has confirmed that HMRC can issue an information notice to a taxpayer under paragraph 1, Schedule 36, Finance Act 2008 (FA 2008), even if the taxpayer is non-resident. more›

News items

HMRC publishes guidance on self-reporting failure to prevent the facilitation of tax evasion

On 21 February 2019, HMRC published guidance explaining how and when a representative of a company or partnership should self-report the organisation's failure to prevent the criminal facilitation of UK tax evasion. The guidance sets out the information that must be submitted to HMRC.

The guidance does not specify who should submit the report but confirms that only those authorised to do so should and that that person must be prepared to act as the contact point for HMRC. Non-authorised reports and reports about foreign tax offences should be directed to the HMRC fraud hotline and Serious Fraud Office, respectively.

The guidance sets out the benefits of self-reporting but confirms that it does not guarantee immunity from prosecution (although the person submitting the report will not be guilty of failing to prevent facilitation).

A copy of the guidance can be viewed here.

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HMRC consults on secondary preferential creditor status for employee and customer taxes on insolvency of a business

On 26 February 2019, HMRC launched a consultation entitled "Protecting your tax in insolvency", on the government's proposal to make HMRC a secondary preferential creditor for taxes paid by employees and customers (the new powers are contained in the proposed Finance Bill 2019-20).

The proposal was first raised by the government in its budget statement in Autumn 2018. Its rationale is that more of the taxes paid in good faith by a business' employees and customers should, in an insolvency of that business, go to fund public services as intended, rather than being distributed to other creditors.

The proposal would make HMRC a secondary preferential creditor for certain taxes due from an insolvent business which have been paid to it by customers and employees, or withheld by it for payment to HMRC on their behalf. The proposal would catch VAT, PAYE (including student loan repayments), employee NICs and Construction Industry Scheme deductions. HMRC would remain an unsecured creditor for direct taxes such as corporation tax and employer NICs.

It is proposed that HMRC will be placed, in respect of its claims for the relevant taxes or amounts, in front of ordinary unsecured creditors (which is where such claims would ordinarily rest). In corporate insolvencies, this would also place HMRC, for these amounts, in front of floating charge holders and the prescribed part (a ring-fenced amount set aside for unsecured creditors in front of floating charge creditors). The amounts would rank after ordinary preferential creditors.

Any interest or penalties due in respect of the non-payment or late payment of the relevant amounts would also rank as secondary preferential debts.

The proposals, if brought into effect, would apply to insolvencies commencing on or after 6 April 2020.

All comments on the proposal must be submitted by 23.45 on 27 May 2019.

A copy of the consultation document can be viewed here.

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Select Committee calls for public register of beneficial ownership in British Overseas Territories

The House of Commons Foreign Affairs Committee has published a report entitled "Global Britain and the British Overseas Territories: Resetting the relationship".

In its report, the Committee urges the government to require the publication of public registers of beneficial ownership in each British Overseas Territory, as proscribed by the Sanctions and Anti-Money Laundering Act 2018 (SAMLA), by December 2020.

SAMLA, which became law in May 2018, makes provision for an independent post-Brexit sanctions and anti-money laundering regime.

It remains to be seen whether the report will be acted upon.

A copy of the report can be viewed here.

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Case reports

Beagles – when does delay by HMRC render a discovery assessment invalid?

In *Clive Beagles v HMRC* [2018] UKUT 380 (TCC), the Upper Tribunal (UT) has held that a delay of nearly two and a half years between HMRC discovering that a taxpayer's self-assessment tax return was insufficient and issuing an assessment, was too long as the discovery had become "stale" and the assessment was therefore invalid.

This case report is based on an article first published in Taxation magazine on 26 February 2019. A copy of that article can be viewed here.

Background

Between 2001 and 2002, Mr Clive Beagles (the taxpayer) participated in certain tax avoidance arrangements which were designed by KPMG to create a tax deduction with no corresponding taxable amount. The arrangements were ultimately found to be ineffective in *Astall v HMRC* [2009] EWCA Civ 1010.

On 29 January 2003, the taxpayer filed his self-assessment tax return for 2001/02 and claimed a loss of over £1million under the tax planning arrangements. He provided details of the transactions which gave rise to the loss in his return. The taxpayer also included an explanation of the arrangements in a standard form provided by KPMG.

HMRC failed to open an enquiry into the taxpayer's return within the statutory time period. It realised its mistake in June 2004 and initially decided to defer taking any action in relation to the taxpayer's return until it had made further progress in relation to other participants in the arrangements, in respect of whom HMRC had opened enquiries under section 9A, Taxes Management Act 1970 (TMA).

In August 2005, having received advice from leading counsel, HMRC informed KPMG that it had concluded that the tax planning arrangements were ineffective and that it intended to challenge the arrangements before the courts. On 15 January 2008, HMRC issued a discovery assessment to the taxpayer under section 29(5), TMA. The taxpayer appealed the discovery assessment and his case was placed on hold until determination of the other participants' appeals by the High Court and the Court of Appeal (their appeals had already been dismissed by the Special Commissioners). The Court of Appeal rejected their appeals in *Astall* and permission to appeal to the Supreme Court was refused in February 2010.

In February 2008, the taxpayer appealed the discovery assessment to the First-tier Tribunal (FTT) on the basis that, amongst other things, it had become "stale" by the time it was issued and was therefore invalid.

FTT decision

The taxpayer's appeal was dismissed.

In the view of the FTT, the discovery assessment was valid as (i) a hypothetical HMRC officer would not have been aware of the insufficiency of tax in the taxpayer's return, and (ii) the discovery made by HMRC had not become stale.

The taxpayer appealed to the UT.

UT decision
The appeal was allowed.

The taxpayer argued before the UT that:

- the FTT's conclusion that the date of discovery was on or around 18 August 2007 was perverse, contrary to the evidence, and based on a misunderstanding of the law
- the FTT's view that, even if the discovery was made some time earlier it was not stale, was perverse and wrong in law
- the FTT erred in its approach to section 29(5), TMA, in particular, with regard to what the hypothetical officer would have been aware of, and
- the FTT erred in its approach to section 29(6), TMA, in particular, whether the existence and relevance of a reason for the "market change condition" (an element of the planning arrangements), could reasonably be inferred.

Can a discovery become stale?
HMRC submitted that it was not possible for a discovery assessment to be invalid simply because the relevant discovery was made a substantial time before the date of the assessment and that any concept of staleness which had developed in case law was not correct as a matter of law.

The UT considered the relevant case law in which the concept of staleness has been discussed. It noted that it was first expressly referred to in *Charlton v HMRC* [2012] UKFTT 770 (TCC). In that case, the FTT said there might be circumstances in which, if an assessment was not made within a reasonable period after discovery, the discovery may lose its essential "newness" so that the assessment might be invalid. These comments were, however, obiter.

The case of *Pattullo v HMRC* [2016] UKUT 270 (TCC), was the first case in which the question of staleness was directly in point. Lord Glennie said in that case that, on a natural reading of section 29(1), TMA, it seemed wrong not to require HMRC to make an assessment promptly once a discovery had been made, although he noted that the legislation did not make any express provision for any limitation period, except for that specified by section 34, TMA:

"It would, to my mind, be absurd to contemplate that having made a discovery of the sort specified in s 29(1), HMRC could in effect just sit on it and do nothing for a number of years before making an assessment just before the end of the limitation period specified in s 34."

The next case the UT considered was *Tooth v HMRC* [2018] UKUT 38. In that case, Mr Tooth participated in the same planning arrangements as those considered in *Cotter v HMRC* [2013] UKSC 69. Because of the way in which Mr Tooth had completed his return, the Supreme Court's decision in *Cotter* meant that HMRC had not used the correct enquiry powers in his particular case and therefore had to close its enquiry into his claim without any adjustment. HMRC then decided to issue a discovery assessment.

HMRC argued that it had discovered that there was an insufficiency in Mr Tooth's return in 2009, when it opened an enquiry into the claim. However, the discovery assessment was not issued until 2014. The FTT had found as a fact that the officer made a discovery in 2014 when issuing the assessment, but in the view of the UT that discovery was the same discovery that had been made in 2009 when the enquiry was opened. The UT, in overturning the FTT's decision on that point, was very clear that the same discovery could not be made twice, even by two different HMRC officers. As the discovery had been made in 2009, then it was clearly stale by 2014. The UT said:

"We entirely agree with the Upper Tribunal in Charlton that on making a discovery, HMRC must act expeditiously in issuing an assessment. If, to use the words of Charlton, an officer has made a discovery, then any assessment must be issued whilst the discovery is "new"...

... Here, HMRC discovered the insufficiency in 2009. It was incumbent on HMRC, at that stage, to decide what to do consequent upon this discovery. It was not open to HMRC without more to make a discovery of insufficiency and then to "park" the question of issuing a TMA s 29 assessment until a later date."

In the taxpayer's appeal, the UT said that it could see force in the submission that the concept of "newness" involved in a discovery relates simply to the nature of the discovery at the time at which it is made. It was not convinced that *Pattullo* was wrongly decided, particularly given the earlier obiter comments to similar effect in *Charlton*. It therefore concluded that the concept of staleness was relevant to the principles governing discovery.

What was the date of discovery?

It was common ground that HMRC had to surmount a relatively low threshold to establish that it had made a discovery. The relevant officer had to have concluded or "found out" from the evidence before him that there was an insufficiency in the return and that conclusion had to be "new". The officer had to believe that the available information pointed to a discovery, and that belief had to be reasonable. This process was comprehensively covered in *Anderson v HMRC* [2018] UKUT 159 (TCC). *Anderson*, and the other key discovery cases cited above, also suggest that a discovery involves both a subjective and an objective element. In other words, the relevant officer must believe that the available information points in the direction of a discovery and that belief must be a reasonable one for the officer to hold.

Against the factual findings made by the FTT, the UT found that the relevant officer had made a discovery of the insufficiency of the taxpayer's return at the latest by 1 August 2005, when he had received advice from leading counsel and was prepared to challenge the arrangements before the courts. In the view of the UT, this was a reasonable belief. The FTT's finding that the discovery took place following the decision in *Astall* was not consistent with its own earlier findings.

While it might be possible for an officer to discover the same insufficiency more than once for different reasons, it was not possible to make the same discovery twice for the same reasons.

Was the discovery stale when the assessment was made?

In *Pattullo*, the UT suggested that a discovery would become stale on any view after a period of 18 months. In *Charlton*, the UT suggested that a delay of three or four months to accommodate the final determination of another appeal which was material to liability would not cause a discovery to lose its newness. In the instant case, there was a delay of nearly two and a half years before the assessment was issued. There was no ongoing litigation at the time of the discovery. The UT recognised that HMRC had referred to the prospect of a discovery assessment in correspondence, but it could not use such a notification to justify leaving a matter open without taking any action for an unlimited period. The UT therefore concluded that the delay was material, and the discovery had lost its quality of newness by the time of the assessment. Accordingly, the assessment was invalid.

This conclusion was sufficient to dispose of the appeal in the taxpayer's favour, however, the UT went on to consider the remaining points that had been argued before it.

Should HMRC have been reasonably aware of the insufficiency in the return?
Section 29(3), TMA, provides that a taxpayer who has filed a self-assessment return can only be assessed under a discovery assessment if one of two conditions is met. The first condition (fraudulent or negligent conduct on the part of the taxpayer) is found in section 29(4). That condition was not relevant in the taxpayer's case. The second condition, found in section 29(5), requires that a hypothetical HMRC officer could not have been reasonably expected to have been aware of the insufficiency of tax from the information made available to him or her at the relevant time. In the taxpayer's case, the relevant cut-off time was the time at which the officer ceased to be entitled to enquire into his return. For the purpose of this condition, the information that is treated as made available to the hypothetical HMRC officer is set out in section 29(6), namely, the information that is contained in the return, or accompanying documents provided by the taxpayer (or information the existence of which and the relevance of which as regards the insufficiency of tax could reasonably be expected to be inferred by the officer from the return and any accompanying documents).

The leading cases on the application of section 29(5) are *Hankinson v HMRC* [2012] STC 485, *Lansdowne Partners LLP v HMRC* [2012] STC 544 and *Sanderson v HMRC* [2016] STC 638, and the following can be distilled from these cases:

- the test in section 29(5) is applied by reference to a hypothetical HMRC officer not the actual officer in the case. The officer is regarded as having the characteristics of an officer of general competence, knowledge or skill, which include a reasonable knowledge and understanding of the law
- the test requires the court or tribunal to identify the information that is treated by section 29(6) as available to the hypothetical officer at the relevant time and determine whether, on the basis of that information, the hypothetical officer applying that level of knowledge and skill, could not have been reasonably expected to be aware of the insufficiency
- the hypothetical officer is expected to apply his knowledge of the law to the facts disclosed to form a view as to whether or not an insufficiency exists. Importantly, the test does not require that the actual insufficiency is identified on the face of the return
- the hypothetical officer must be aware of the actual insufficiency from the information that is treated as available by section 29(6). The information need not be sufficient to enable HMRC to prove its case, but it must be more than would prompt the hypothetical officer to raise an enquiry
- the level of awareness is a question of judgement. The information made available must justify raising the additional assessment, or be sufficient to enable HMRC to make a decision whether to raise an additional assessment.

The UT, agreeing with the FTT (albeit for different reasons) held that the HMRC officer could not have been expected to be aware of the insufficiency of tax before the cut-off date, when he ceased to be entitled to enquire into the taxpayer's return.

Section 29(6)
The taxpayer's final ground of appeal was that the FTT erred in its approach to section 29(6), in particular, in relation to whether the existence and relevance of a reason for the "market change condition" could reasonably be inferred for the purposes of the condition in section 29(5). The information that is treated as available to the officer is the information that is contained in

the return or accompanying documents provided by the taxpayer. This is extended by section 29(6)(d) to information the existence of which, and the relevance of which as regards the insufficiency of tax, could reasonably be expected to be inferred by the officer from the return and any accompanying documents. The UT concluded that the "market change condition" was too vague to be able to be inferred from the information available to the officer. It added that, in any event, there had been important judicial development on the "*Ramsay*" principle in *Barclays Mercantile Business Finance Ltd v Mawson* [2005] STC 1 and *Scottish Provident Institution v Inland Revenue Commissioners* [2005] STC 15, cases decided after the taxpayer's return was submitted to HMRC, that would have altered or impacted upon the hypothetical officer's understanding. The UT therefore found for HMRC on this point.

Comment

Most readers would accept that HMRC requires powers to enable it, in certain circumstances, to issue assessments to recover tax where the enquiry window has closed, most obviously in the case of deliberate understatement. However, there is a widespread feeling amongst the tax community that the finality which the self-assessment regime was intended to provide is being undermined by the manner in which HMRC seeks to apply its discovery powers. This decision serves as a warning to HMRC that taxpayers cannot be left in an indefinite state of uncertainty as to whether a discovery assessment will be issued.

Whilst providing some clarity in this area of the law, this case still leaves open the important question of how long a gap can be permitted between the making of a discovery and the issue of an assessment. In *Tooth*, the gap was five years and in Mr Beagles' case it was two-and-a-half years. Both were found to be too long. In *Gakhall v HMRC* [2016] UKFTT 356 (TC), the delay was over three months and that was considered by the FTT not to be too long. Whether a discovery has become stale will of course turn on the facts of each case. Where, for example, HMRC has not acted on a discovery for reasonable and legitimate reasons, for example, because it is awaiting the outcome of a related case, a longer period of time is likely to be permitted by the courts before the discovery becomes stale. If, however, HMRC treats the discovery process as an open-ended period of enquiry, without having regard to the need to raise an assessment to alert the taxpayer to that discovery, it is likely that the discovery will become stale within a matter of months.

It is understood that HMRC are concerned by the concept of staleness in the context of discovery assessments and have appealed this decision to the Court of Appeal where it will no doubt argue that there is no such concept. Given the importance of this issue, a decision from the Court of Appeal clarifying the position and providing some certainty would be welcome.

A copy of the decision can be viewed here.

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Curzon – contractor loan scheme notifiable under DOTAS but scheme administrator not a "promoter"

In *HMRC v Curzon Capital Ltd* [2019] UKFTT 0063 (TC), the FTT has held that a contractor loan scheme was a notifiable arrangement for the purposes of the disclosure of tax avoidance schemes (DOTAS) regime, but that the administrator of the arrangements was not a promoter. Accordingly, HMRC's application for an order that the arrangements were notifiable was dismissed.

Background
The arrangements involved employees becoming members of an offshore limited liability partnership (LLP) and supplying their services to their previous employer through the LLP and a trust. Payment was made through the LLP and trust, with 82% of the gross fee being used to make loans to the employees.

Curzon Capital Limited (Curzon) was a corporate finance adviser. It acted as a sponsor and operator of a number of unregulated collective investment schemes and provided investment advice and financial administration services. Curzon administered the arrangements under consideration in return for a fee. This involved processing standardised partnership and loan paperwork, preparing invoices, distributing profits and providing tax-related information on instruction from the designer of the arrangements. It also prepared and distributed to a large number of IFAs, a “briefing pack”, which explained the arrangements.

HMRC applied to the FTT for an order under section 314A, Finance Act 2004 (FA 2004), that the arrangements were “notifiable” arrangements under section 306, FA 2004, or, in the alternative, that the arrangements were to be treated as notifiable, under section 306A, FA 2004.

FTT decision
HMRC’s application was refused.

The FTT determined that the arrangements fell within section 306(1)(a), on the basis that they comprised “a scheme, transaction or series of transactions designed to enable someone to obtain an advantage in relation to income tax, and the main benefit from the arrangements was the obtaining of that advantage”.

Whether the arrangements were notifiable then depended on whether they fell within any of the descriptions prescribed by the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations SI 2006/1543.

Although the FTT determined that the arrangements were notifiable under the “premium fee” and “standardised tax products” hallmarks, it considered that it was implicit from sections 314A and 306A, FA 2004, that it could only make the order sought by HMRC if it was satisfied that Curzon was a “promoter” under section 307, FA 2004.

The FTT found that Curzon carried on a “relevant business” for the purposes of section 307(2)(a), FA 2004, because its administration of the arrangements, which were a large part of its business, was the provision of services related to taxation.

In the view of the FTT, the contacts made by Curzon with the IFAs were “marketing contacts” within the meaning of section 307(4B), FA 2004, and therefore each contact amounted to a “firm approach” for the purpose of section 307(4A), FA 2004. However, as Curzon was reliant on the designer of the arrangements to make them available for implementation, Curzon was not a “promoter” because the definition of “promoter” required, as HMRC’s own guidance confirmed, that Curzon make the firm approach with a view to making the arrangements available for implementation. Curzon did not make the arrangements available for implementation, it was the designer of the arrangements who did that.

Comment
This decision is the first time the meaning of "promoter" has been considered by the FTT. Whilst the FTT's conclusion that Curzon was not a promoter is not surprising given the definition provided in the legislation and HMRC's own guidance, the decision does provide helpful guidance on who will qualify as a "promoter" for the purpose of the DOTAS regime. Of particular interest is the FTT's broad interpretation of "relevant business".

A copy of the decision can be viewed here.

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Jimenez – information notices have extra-territorial reach

In *R (oao Jimenez) v HMRC* [2019] EWCA Civ 51, the Court of Appeal has confirmed that HMRC can issue an information notice to a taxpayer under paragraph 1, Schedule 36, Finance Act 2008 (FA 2008), even if the taxpayer is non-resident.

Background
Mr Jimenez (the taxpayer) is a UK national who is resident in Dubai. On 18 May 2016, HMRC issued to the taxpayer a notice under paragraph 1, Schedule 36, FA 2008 (the Information Notice), requiring him to provide bank details and a record of his visits to the UK between 2004 and 2013. The Information Notice was directed to the taxpayer's address in Dubai.

The Information Notice had been approved by the FTT, following a without notice application by HMRC. The FTT considered that HMRC was justified in issuing the Information Notice and that the information requested was reasonably required to enable HMRC to investigate the taxpayer's domestic affairs. As the Information Notice had been approved by the FTT, the taxpayer had no right of appeal.

The taxpayer issued judicial review proceedings in the High Court challenging the FTT's decision to approve the Information Notice.

High Court judgment
The judicial review claim was successful and the Information Notice was quashed.

The taxpayer argued that HMRC's information gathering powers do not have extra-territorial effect, such that, as he was resident outside the UK, he could not be subject to the Information Notice.

HMRC contended that it had the power to issue an information notice to any non-resident UK taxpayer to assist it in establishing that person's UK tax position and there was no territorial limit on such power.

The High Court held that, absent any specific territorial provisions, the general principles of statutory interpretation were to be applied. Schedule 36, FA 2008, was silent on territorial provisions and HMRC's information powers were therefore limited to the UK.

Our blog on the High Court's decision can be viewed here.

HMRC appealed to the Court of Appeal.

Court of Appeal judgment
The appeal was allowed.

The taxpayer contended that Schedule 36, FA 2008, must be construed by reference to international law. Parliament would not have conferred powers on HMRC which, when exercised, would be a breach of international law. Accordingly, HMRC did not have the power to enforce the Information Notice outside the UK.

The Court of Appeal disagreed. In its view, the absence of territorial scope did not prevent particular legislation from being construed as having extra-territorial effect. The language of the statute and its purpose had to be considered in determining whether it had extra-territorial reach.

The Court also rejected the argument that HMRC could rely on mutual assistance arrangements to obtain information from a non-UK resident taxpayer. In the view of the Court, the existence of mutual assistance arrangements did not limit the Information Notice to domestic application. Such arrangements provide additional assistance to HMRC to exercise its information powers overseas. It would require a strong policy reason, in the form of a relevant principle of international law, to construe paragraph 1 as having no extra-territorial application.

In reaching its decision, the Court was heavily influenced by *R (KBR Inc) v Director of the Serious Fraud Office* [2018] EWHC 2368, in which the High Court decided that the SFO was entitled to serve a notice requiring a person to provide documents relevant to its investigation under section 2(3), Criminal Justice Act 1987, extra-territorially. This was because the relationship and payments between KBR's holding company and its UK subsidiaries were sufficient to establish a sufficient connection between the company and the jurisdiction. The need to investigate serious fraud provided sufficient public interest to justify section 2(3) being interpreted as having extra-territorial effect.

Similarly, in the instant case, the Court was of the view that there was a strong public interest in paragraph 1, Schedule 36, FA 2008, being construed as having extra-territorial effect. Applying *Re Seagull Manufacturing Co Ltd* [1993] CH 345 and *Bilta (UK) Ltd v Nazir (No. 2)* [2015] UKSC 23, the Court held that there was an obvious public interest in securing the purpose for which Parliament thought it necessary to confer the relevant powers on HMRC, namely, maintaining public revenue.

Further, there was no express territorial restriction in paragraph 1 and the Court therefore concluded that the Information Notice did have extra-territorial effect.

Comment
This judgment will be welcomed by HMRC as it will enable it to issue information notices under paragraph 1, Schedule 36, FA 2008, to UK taxpayers living outside the UK.

Significantly, the Court of Appeal said it was clear that Parliament had not intended for the scope of each individual provision of Schedule 36 to be identical. There were some provisions in the legislation which, if given extra-territorial effect, would infringe international law.

The application of extra-territoriality to paragraph 1 will not necessarily be applied to the whole of Schedule 36. It is to be hoped that, for example, should HMRC seek to enter premises outside the UK which are occupied by a UK taxpayer, the UK courts would consider such action to contravene state sovereignty and would not sanction it.

A copy of the judgment can be viewed here.

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