



# KPMG's weekly tax briefing

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*For further information about any of the items mentioned, please get in touch with your usual contact from KPMG LLP (UK).*

## A UK Tax Round-up for the period ending 3 July 2009

### Code of Practice on Taxation for Banks: Consultation Document Published

The Government announced in Budget 2009 that HM Revenue & Customs (HMRC) would publish a Code of Practice on taxation for the banking sector to encourage banks to comply with both 'the letter and the spirit of the law'. HMRC have now published a consultation document titled 'A Code of Practice on Taxation for Banks'.

The consultation document is structured into five parts: general introduction; the Government's explanation of why a Code of Practice is needed; scope of the Code of Practice and specific issues relating to its administration; implementation and enforcement of the Code of Practice; and the questions for consultation. Comments on the issues raised in the consultation have been requested by 25 September 2009.

[Click here](#) to access the consultation document.

### Court of Appeal Decision on *Prudential PLC* Published

The Court of Appeal judgment in *Prudential plc v HMRC*<sup>1</sup> was published on 25 June 2009. The Court of Appeal found in favour of HMRC, following the decisions of the Special Commissioners and the High Court.

The case revolves around hedging transactions involving off-market swaps. In 2002 Prudential entered into currency swap arrangements with the Royal Bank of Scotland and Goldman Sachs International. The swaps operated as hedges of two foreign exchange exposures in Prudential. Prudential made upfront payments of £65m and £40m and were seeking a tax deduction for the total of £105m paid up front in the accounting periods in which the payments were made. The legislation in question (foreign exchange rules in Finance Act 1994) has now been repealed but the Special Commissioners decision was of interest because of its analysis of the unallowable purpose test. However there has been no further discussion on this point in either the High Court or Court of Appeal decisions. This case is, however, a reminder that the interpretation of a single phrase cannot be done in isolation without regard to the logic of the relevant area of legislation even in cases where the tax legislation is highly prescriptive.

<sup>1</sup> The full citation of the case is *Prudential PLC v Commissioners for Her Majesty's Revenue & Customs* [2009] EWCA Civ 622

Please speak to your usual Tax & People Services contact to discuss the implications of this case in more detail. [Click here](#) to read the case.

## Business – Government Forum - Minutes of the latest Meeting Published

The minutes of the 1 June 2009 meeting of the business-government forum on tax and globalisation have now been published on HM Treasury (HMT) website. At the meeting, presentations were made to attendees on the following subjects:

- UK Economy: Analysis and Trends – two short presentations titled '*expected trends for the UK economy*' and '*New Industry, New Jobs*' by HMT and the Department for Business, Enterprise & Regulatory Reform were made to attendees.
- Taxation of Knowledge Economy [Intellectual Property (IP)] – The presentation was titled '*The knowledge economy and the balance of taxation of innovative activity*'. It provided a little more information on the IP review promised at the 2009 Budget albeit with very little detail at this stage.

[Click here](#) to access the minutes and other information including the slides for these presentations.

## IMF Publishes Paper on Taxation of Corporate Debt

The International Monetary Fund (IMF) recently published a paper titled *Debt Bias and Other Distortions: Crisis-Related Issues in Tax Policy*. The Paper considers channels by which tax distortions (focusing on the strong tax incentives for corporations to use debt rather than equity) are likely to have contributed to excessive leveraging and other financial market problems that came to the forefront during the current financial crisis. The paper also draws broad lessons for structural tax reform arguing for firmer action on long standing distortions. Some of the emerging general conclusions from the IMF paper include:

- Corporate-level tax biases favouring debt finance, including in the financial sector, are pervasive, often large – and hard to justify given the potential impact on financial stability;
- The differences in national tax rates, bases and practices create substantial opportunities for international tax arbitrage, further increasing opacity and reinforcing tax biases towards debt;
- The development and use of complex financial instruments was generally driven by non-tax considerations, but was in part a response to, and shaped by underlying tax distortions (such as relatively favourable treatment of capital gains and cross-country tax differentials); and
- Tax measures can have significant effects on asset price dynamics, but are unlikely to be the best way to deal with unwelcome price developments.

[Click here](#) to read the IMF paper.

## Protocol to the UK /Belgium Double Taxation Convention

HMRC have announced that a Protocol to the Double Taxation Convention (DTC) between the UK and Belgium was signed in Paris on 24 June 2009. The Protocol updates the exchange of information provisions of the DTC to bring it in line with current Organisation for Economic Cooperation & development (OECD) standards and practice. The other important features include: provision for a new dividend article that grants a zero percent withholding tax for direct investors and pension funds and provisions for a new interest article that removes withholding tax on all interest paid between enterprises.

The text of the Protocol will be presented to Parliament for approval and the Protocol will enter into force after both countries have completed their legislative procedures. The provisions of the Protocol will then take effect from the next calendar year.

[Click here](#) to access the Protocol to the DTC.

## Double Taxation Agreement with the State of Qatar

HMRC have just announced that a first comprehensive Double Taxation Agreement (DTA) between the governments of the United Kingdom and the State was signed in London on 25 June 2009. The provisions in the DTA meet the OECD Model Tax Agreement and covers taxes including income tax, corporation tax and capital gains tax. The important provisions in the DTA include :zero rate of withholding tax on dividends (except for Real Estate Investment Trusts); and zero rate of withholding tax on interest but with a provision to ensure the benefits of the interest article can only flow to Qatari residents and companies owned by Qatari residents.

A draft statutory instrument will be laid for consideration by the House of Commons and the DTA will enter into force thirty days after both countries have completed their legislative procedure. The provisions of the DTA will take effect on the first day of January of the calendar year following the year in which the DTA enters into force.

[Click here](#) to access the text of the DTA.

## Press Releases – Period Ending 2 July 2009

### 1 July 2009 – HM Revenue & Customs – Revenue & Customs Brief 39/09

This Brief announces a change in HM Revenue & Customs (HMRC) interpretation of the legal provisions that apply the zero-rate to new buildings used for a relevant charitable purpose, and the withdrawal of Extra Statutory Concession (ESC) 3.29 and two related concessions.

[Click here](#).

### 1 July 2009 – HM Revenue & Customs – July Tax Credit Reminder

This press release reminds families and individuals currently receiving tax credits that they need to renew their claims by 31 July – otherwise their payments could stop.

[Click here](#).

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