

The background of the top section of the page is a photograph of a person's hand in a grey sleeve resting on a blue bookshelf. The books are blue with white text on their spines. The lighting is soft, and the focus is on the hand and the books.

## Weekly Tax Matters

23 July 2010

KPMG LLP (UK)

### **A UK tax round-up for the period ending 23 July 2010**

- Government launches Office of Tax Simplification
- HM Treasury announces the membership of Tax Professionals Forum
- Finance Bills – Progress Report
- Finance Bills – naming conventions
- Abolition of age 75 annuity requirement: Treasury consultation published.
- Judgment - *Commission v United Kingdom (C-582/08)* – compatibility of UK's domestic implementation of the Thirteenth Directive
- *Marks & Spencer*: what does the latest decision mean?
- HMRC Corporate Finance Manual updates
- Draft Statutory Instruments implementing double taxation and tax enforcement arrangements between the UK and various countries.
- Other KPMG Publications
- Press releases – period ending 22 July 2010
- Key contacts

## Government launches Office of Tax Simplification

The Government has announced the establishment of the Office of Tax Simplification (OTS). The OTS is charged with identifying areas where complexities in the tax system for businesses and individual taxpayers can be reduced.

The following individuals have been appointed as Board Members of OTS:

- Michael Jack (former Conservative MP and Treasury Minister) (Chairman); and
- John Whiting (Tax Policy Director at the CIOT and ex PWC partner) (Tax Director).

The OTS will also draw on external expertise from the tax and legal profession over the coming months.

The OTS will undertake two initial reviews over the coming year. [The first one will focus on tax reliefs](#) and the initial findings of its work will be published in late autumn 2010. It will review a list of all reliefs, allowances and exemptions, applying to both businesses and individuals, and identify those reliefs that should be repealed or simplified to support the Coalition's Government agenda for a simpler tax system. [The second review will focus on small business tax simplification including IR35](#) and its initial findings will be published by the 2011 Budget.

### *Truly radical approach required*

Commenting on the announcement, Anneli Collins Head of Tax Policy at KPMG in the UK has said:

"Simplifying the tax system is a laudable goal – after all what's not to like about making a fiendishly complicated set of rules easier to understand and more workable? But achieving this ambition is no mean feat as there are layers upon layers of tax rules to consider and even the smallest change to a single area runs a risk of unintended consequences somewhere else".

She adds

"But whilst simplifying the system presents a major challenge, if it can be achieved the potential prize is huge. Business has been clamouring for reform and today's announcement suggests that the government has listened. What will be crucial in this process is that the reforms are comprehensive and that business has a chance to consider all possible options. Now is the time for radical thinking, the time to ask just what tax rules could be scrapped in favour of what changes elsewhere. Rearranging the deckchairs won't do it. But a truly radical approach stands a chance of success."

A key question will be how far the simplification will go - options range from merely rewriting the current rules to make them easier to understand (unlikely given the recent work of the Tax Law Rewrite Project) to revisiting whether current laws are needed, or whether they could be consolidated (say into a General Anti-Avoidance Rule) or scrapped (for instance in the case of a relief which could be deemed to add little value for its complexity).

### *Participating in the process*

	<p>KPMG in the UK hopes to be involved in the reform process, including participating in the consultations. For more information, please speak to your usual contact at KPMG in the UK's Tax &amp; Pensions practice. We will include further details in subsequent editions of <i>Weekly Tax Matters</i>.</p>
<p><b>HM Treasury announces the membership of Tax Professionals Forum</b></p>	<p>In the June Budget the coalition government <a href="#">published a paper setting out proposals for a new approach to tax policy making</a>. In that paper the Government announced it would be establishing:</p> <p style="padding-left: 40px;">"a forum of tax professionals who will meet bi-annually with Treasury Ministers. The making of tax policy will be a standing agenda item. The Government will initially use this forum to:</p> <ul style="list-style-type: none"> <li>• discuss the overall approach set out in this discussion document; and</li> <li>• drive forward implementation.</li> </ul> <p style="padding-left: 40px;">However, it will also expect the forum to challenge the Government if the new approach set out in this discussion document is not being followed or is not having a demonstrable effect on the predictability, stability and simplicity of the UK tax system."</p> <p><a href="#">The membership of this forum</a> has now been published. Jane McCormick, head of Corporate Tax at KPMG in the UK has been appointed as a member. The first meeting is expected to be held in September.</p> <p>The Government has also announced the members of the <a href="#">Business Forum on Tax and Competitiveness</a>.</p>
<p><b>Finance Bills – Progress Report</b></p>	<p>The Finance Bill received its <a href="#">Third Reading in the House of Commons on Tuesday 20 July 2010</a> and has now passed to the Lords. This means that the Bill is now substantively enacted. Royal Assent to the Bill is expected by the time the House of Commons rises for summer recess on Tuesday 27 July 2010. <a href="#">Click here</a> to access the dedicated page on the Parliament website for Finance Bill 2010.</p> <p>Further updates will be provided in subsequent editions of <i>Weekly Tax Matters</i>.</p>
<p><b>Finance Bills – naming conventions</b></p>	<p>HM Revenue &amp; Customs (HMRC) have published a <a href="#">useful note about all the Finance Bills published in 2010</a>. At the moment, three Finance Bills have been published this year</p> <ul style="list-style-type: none"> <li>• Finance Bill 2010 was published by the previous Labour Government on 1 April 2010 and it received Royal Assent on 8 April 2010 and therefore became <a href="#">Finance Act 2010</a>;</li> <li>• <a href="#">Finance Bill 2010 was published on 1 July 2010</a> containing draft legislation for some of the proposals announced by the Chancellor in the emergency Budget on June 22 2010. HMRC have advised that because this Bill falls into a new Parliamentary session (A new Parliament was formed after the General Election on 6 May 2010), it is still called Finance Bill 2010; and</li> <li>• Finance (No2) Bill 2010 was published on 12 July 2010 as draft legislation on tax measures inherited from the previous Labour Government. <a href="#">These drafts</a> were published as an informal consultation and comments have been invited by 3 September 2010. This Bill will be introduced in Parliament in autumn.</li> </ul>

<p><b>Abolition of age 75 annuity requirement: Treasury consultation published.</b></p>	<p>The Chancellor's emergency Budget in June announced that the existing rules that create an effective obligation to purchase an annuity by the age of 75 will end from 2011/12. Legislation has been included in Finance Bill 2010 that will provide transitional rules to enable those reaching the age of 75 on or after 22 June 2010 to defer their decision on what to do with their pension savings until after the new rules are finalised.</p> <p>HM Treasury have now published a <a href="#">consultation document</a> on proposals for the new rules to replace existing requirement to purchase an annuity by the age of 75. The measures are largely concerned with adding greater flexibility for scheme members. However, there is also a proposal that would increase the tax charge on members with unsecured pensions who die before the age of 75 from 35 percent to 55 percent; at the same time, there would be some tax reduction for those dying after the age 75. Comments have been invited by 10 September 2010. For more information, please speak to your usual contact at KPMG in the UK's Tax &amp; Pensions practice.</p>
<p><b>Judgment - <i>Commission v United Kingdom (C-582/08)</i> – compatibility of UK's domestic implementation of the Thirteenth Directive</b></p>	<p>The European Court of Justice (ECJ) has released its Judgment in the long standing infringement case against the UK's refund of domestic VAT to non EU businesses. The ECJ has dismissed the Commission's complaint, supporting the UK's domestic legislation which excludes non EU businesses from recovering input VAT incurred in relation to non EU insurance or financial transactions.</p> <p>The Commission highlighted a number of arguments that suggested the UK should allow non EU businesses to claim such UK VAT. Amongst these were facts such as the ability of EU businesses to make such a claim, and the general acceptance that VAT should not be a cost where supplies are exported from the EU and hence not consumed in the EU. However the ECJ focused on the actual wording of the Thirteenth Directive - the UK had not departed from the text of that Directive and so could not be reproached. The ECJ was content that the wording of the Directive was not a mistake, and that nothing had been accidentally omitted from it, as there would have been ample time to correct any such error or omission and nothing had been done. As the Thirteenth Directive was not inferior in legislative hierarchy to the VAT Directive, the principles of the VAT Directive did not have overarching power.</p> <p>To read a more detailed summary of the case please see KPMG in the UK's <a href="#">Indirect tax Update 28/10</a>.</p>
<p><b>Marks &amp; Spencer: what does the latest decision mean?</b></p>	<p>In a recent <i>Tax Journal</i> article, Chris Morgan partner in International Tax Services at KPMG in the UK analyses the recent decision of the Upper Tribunal in <a href="#">Marks &amp; Spencer</a>. This article provides comments on two of the key issues in determining when a claim for cross-border relief is valid: the "no possibilities" test and issues around time limits. It also discusses the implications of this decision for existing claimants and potential new claimants. <a href="#">Click here</a> to access this article.</p> <p>A more detailed look at the key issues that emerged from the decision of the Upper Tribunal can be <a href="#">found here</a>.</p>

## HMRC Corporate Finance Manual updates

HM Revenue & Customs have updated their Corporate Finance Manual (CFM). The changes include:

- amendments to the guidance on debt for equity swaps (section 322 CTA 2009). At paragraphs 33200 and 33201 of the CFM, it is said that section 322 (4) CTA 2009 "will not apply if, on the facts, the creditor has no interest in being a shareholder in the debtor company and is releasing the debt gratuitously, with shares being issued merely to obtain a tax advantage for the debtor company";
- there is some guidance on the release of unconnected party loans in consideration for the issue of warrants and options (at CFM 33200). "the issue of an option or warrant is unlikely to represent consideration for the debt release if its terms, or the surrounding circumstances, are such that it is unlikely ever to be exercised"; and
- the final version of the guidance on debt buy backs has been published.

[Click here](#) for further details.

## Draft Statutory Instruments implementing double taxation and tax enforcement arrangements between the UK and various countries.

The following Statutory Instruments that bring into effect the arrangements made by the Government of the United Kingdom and the Governments of the Principality of Liechtenstein, Anguilla, Gibraltar, The Bahamas and the Turks and Caicos Islands on tax information exchange have been published on the Office of Public Sector Information site together with explanatory notes.

- [The International Tax Enforcement \(Liechtenstein\) Order 2010 \(Draft\)](#) and [Explanatory memo](#);
- [The International Tax Enforcement \(Anguilla\) Order 2010 \(Draft\)](#) and [Explanatory memo](#);
- [The International Tax Enforcement \(Gibraltar\) Order 2010 \(Draft\)](#) and [Explanatory memo](#);
- [The International Tax Enforcement \(Bahamas\) Order 2010 \(Draft\)](#) and [Explanatory memo](#);
- [The International Tax Enforcement \(Turks and Caicos Islands\) Order 2010 \(Draft\)](#) and [Explanatory memo](#).

Further the following Statutory Instruments that bring into effect arrangements for amending the existing agreements between the UK and Mexico, the Sultanate of Oman, Austria, Switzerland and Singapore on double taxation and tax information exchange have also been published. The arrangements with Mexico and Oman include a new Article providing for assistance in the collection of taxes.

- [The Double Taxation Relief and International Tax Enforcement \(Mexico\) Order 2010 \(Draft\)](#) and [Explanatory memo](#);
- [The Double Taxation Relief and International Tax Enforcement \(Oman\)](#)

	<p><a href="#">Order 2010 (Draft)</a> and <a href="#">Explanatory memo</a>;</p> <ul style="list-style-type: none"> <li>• <a href="#">The Double Taxation Relief and International Tax Enforcement (Austria) Order 2010 (Draft)</a> and <a href="#">Explanatory memo</a>;</li> <li>• <a href="#">The Double Taxation Relief and International Tax Enforcement (Switzerland) Order 2010 (Draft)</a> and <a href="#">Explanatory memo</a>;</li> <li>• <a href="#">The Double Taxation Relief and International Tax Enforcement (Singapore) Order 2010 (Draft)</a> and <a href="#">Explanatory memo</a>;</li> </ul> <p>These arrangements will come into force as soon as the various legislative procedures have been completed by the respective Governments. For more information, please speak to your usual contact at KPMG in the UK's Tax &amp; Pensions practice.</p>
<p><b>Other KPMG publications</b></p>	<p>You may also be interested in the following recently released publications:</p> <ul style="list-style-type: none"> <li>• <a href="#">Indirect Tax Update 28/10 – week commencing 19 July 2010</a> – KPMG in the UK's weekly update on indirect tax matters.</li> <li>• <a href="#">M &amp; A Tax Matters – Issue 73</a> – KPMG in the UK's newsletter on topical issues impacting transactions.</li> <li>• <a href="#">International survey of audit committee members – European results June 2010</a> - This survey covers views of audit committee members from the UK and across Europe on recession related and general audit committee issues. This survey is sponsored by KPMG in the UK.</li> </ul>
<p><b>Press releases for the period ending 22 July 2010</b></p>	<p>20 July 2010 – HM Treasury – <a href="#">Office of Tax Simplification</a>  This press release announces the establishment of the Office of Tax Simplification. See article titled: <i>“Government launches Office of Tax Simplification”</i> above for details.</p>

## Key contacts for this week's edition

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<b>Andrew Scrimshaw</b> <b>Simon Mayho</b>	Abolition of age 75 annuity requirement: Treasury consultation published.	020 7311 3102 020 7311 3177	<a href="mailto:andrew.scrimshaw@kpmg.co.uk">andrew.scrimshaw@kpmg.co.uk</a> <a href="mailto:simon.mayho@kpmg.co.uk">simon.mayho@kpmg.co.uk</a>
<b>Stephen Powell</b> <b>Karen Killington</b>	Judgment - <i>Commission v United Kingdom (C-582/08)</i> – compatibility of UK's domestic implementation of the Thirteenth Directive	020 7311 2746 01293 652 083	<a href="mailto:stephen.powell@kpmg.co.uk">stephen.powell@kpmg.co.uk</a> <a href="mailto:karen.killington@kpmg.co.uk">karen.killington@kpmg.co.uk</a>
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