

Dorsey London Tax Update

23 February 2010

Upcoming and Anticipated Dates

M&S (Group Relief)	Upper Tribunal (hearing)	March 2010
ACT Classes 2 & 4	High Court (judgment)	26 Feb 2010
Prudential (portfolio dividends, FII and life assurance)	High Court (judgment)	Mar-Apr 2010
FID Litigation (cash tax credits)	First Tier Tribunal (judgment)	March 2010
VIC GLO (Compound Interest)	Court of Appeal (judgment/reference)	Ca Mar 2010
CIP Litigation (Compound Interest)	Court of Appeal (hearing)	Ca July 2010
Thin Cap GLO	Court of Appeal (hearing)	Ca Oct 2010
Accor (avoir fiscal)	ECJ (hearing)	Ca Dec 2010

Seminars and Presentations

Tax Litigation- How to win in the new Landscape	24 March 2010	Lexis Nexis	London
The Impact of ECJ Case Law on National Direct Tax Systems	29-30 April 2010	Academy of European Law (ERA)	Madrid

Discounts for Dorsey clients are available to listed Lexis Nexis conferences. Please contact Teresa Allan (allan.teresa@dorsey.com; 020 7826 4591) for details.

Franked Investment Income GLO- Court of Appeal Judgment

The Court of Appeal handed down its judgment in the FII GLO today. The Court has held that the majority of the remaining substantive issues should be referred back to the European Court of Justice ("ECJ") for a second time. This includes the issue of whether tax on dividend income for holdings over 10% was contrary to EU law.

The Court of Appeal has also upheld as lawful the retrospective reduction to limitation periods by s320 FA '04 and s107 FA '07 which reduced time periods for mistake based claims against HMRC from, in effect, 6 years following the relevant ECJ decision declaring the law unlawful to 6 years from the date of payment of the subject tax. It has done so by concluding that only claims for restitution of payments under an unlawful demand (a "Woolwich" claim) protect EU law rights in the area so that mistake claims can be cancelled without the need to honour EU principles. This is so even if claimants had already chosen mistake claims to vindicate their rights as they were entitled to do by UK law.

The options available for the next stage are either an appeal of this judgment to the Supreme Court before any reference to the ECJ is made or vice versa.

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Dorsey's London tax eUpdate is periodically published to inform you of breaking news.

Dorsey ranked top for tax litigation, Legal 500 2009 edition

Dorsey ranked top of "the best in the UK" for contentious tax, Chambers 2008, 2009 and 2010 editions

Dorsey awarded **European Tax Litigation Firm of the Year in 2009 and 2007**

Dorsey wins the **ECJ Award for 2008** and **Editor's Award for 2006** by International Tax Review

Dorsey named the **UK's Tax Team Of The Year 2006** by Legal Business Magazine

Paul Farmer named **Tax Lawyer of the Year 2006** by Lexis Nexis



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New Tribunal decision rules VAT Default Surcharges are recoverable

In January 2010, the First Tier Tribunal ruled that the default surcharge penalty was disproportionate and unduly harsh when compared with other penalties for the late payment of tax. This landmark decision opens the gates to claims from hundreds of businesses who have had to suffer the impact of this inflexible regime.

The Default Surcharge regime was introduced in 1986 to promote VAT compliance and imposes a sliding scale of charges for repeated late filing from 2 to 15%.

This case (Energys Holdings UK Ltd) concerned five penalties for the late submission of balancing payments or returns. The Tribunal criticised the regime for the lack of symmetry between the length of delay and the amount of the penalty imposed as well as the absence of mitigation.

The outcome should mean that other VAT default surcharges should be recoverable. The recommendation is to make protective claims if relevant to you until the further appeals in the case are resolved.

Please contact kanagasabay.savina@dorsey.com or any members of the team if you would like more information on how this impacts your business.

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