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AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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A PUBLICATION FROM THE BDO UK/US TAX DESK

SUBJECT

UNITED KINGDOM TAX AUTHORITY ISSUES CONSULTATION DOCUMENT SEEKING VIEWS FROM ALL STAKEHOLDERS ON HOW THE UNITED KINGDOM SHOULD RESPOND TO ACTION ITEM 4 OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT ("OECD'S")/ G20 BASE EROSION AND PROFIT SHIFTING PROJECT (THE BEPS PROJECT) WITH RESPECT TO INTEREST DEDUCTIBILITY

SUMMARY

On October 22, 2015, the United Kingdom tax authority, Her Majesty's Revenue & Customs ("HMRC"), issued the consultation document "Tax deductibility of corporate interest expense: consultation."

The consultation document is in response to Action Item 4 of the BEPS Project with respect to interest deductibility, which sets out a best practices approach of how interest deductions should be limited to prevent base erosion through the use of interest expense.

The consultation document seeks views on how and when the United Kingdom should address BEPS issues, arising through interest deductions, for consideration in the development of a future business tax roadmap.

BACKGROUND AND DETAILS

On October 5, 2015, the OECD released the final report (the "Report") of the BEPS Project. Action Item 4 of the Report sets out a best practices approach to the design of domestic rules to prevent base erosion through the use of interest expense.

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The recommended approach is for countries to adopt a mandatory fixed ratio cap on interest deductions, whereby net interest is disallowed where it exceeds more than a fixed percentage (suggested as somewhere in the range 10 percent to 30 percent) of earnings before interest, tax, depreciation and amortization ("EBITDA").

The report also suggested that countries may want to include an alternative restriction calculated by reference to the net interest/EBITDA ratio of the worldwide group, as well as a de-minimis threshold, targeted rules, if considered necessary and optional rules around carry forward/back of excess interest capacity and/or disallowed deductions.

The consultation document issued makes it clear that the UK Government wishes to tackle BEPS involving interest expense, but, at the same time, there is a strong desire that the UK remains competitive and an attractive place for inbound investment.

The consultation document therefore sets out the key aspects of Action Item 4 and poses questions to stakeholders designed to frame a discussion around the UK domestic policy in this context. The responses to the consultation document, due January 14, 2016, will be considered in the development of a future business tax roadmap.

At this stage, the UK Government has not given any indication as to whether it will introduce any changes to the UK interest deductibility rules in response to Action Item 4 of the BEPS Project given that this would be a major change to the UK corporate tax regime. However, the document does state that if changes are to be made then these will not be effective until at least April 1, 2017.

BDO INSIGHTS

Companies will need to carefully monitor how the UK and other OECD countries adopt the recommendations detailed in the Report and evaluate their current financings and structures. BDO will provide updated alerts as more guidance is released.