

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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SUBJECT

HER MAJESTY'S REVENUE & CUSTOMS ISSUES REVENUE AND CUSTOMS BRIEF IN RESPONSE TO THE UNITED KINGDOM'S SUPREME COURT DECISION IN THE ANSON CASE

SUMMARY

On September 25, 2015, the United Kingdom tax authority, Her Majesty's Revenue & Customs ("HMRC"), issued Revenue & Customs Brief 15 ("Brief 15") in response to the United Kingdom Supreme Court's (the "Court") decision in the case of Anson (Appellant) v. Commissioners for Her Majesty's Revenue & Customs (Respondent), [2015] UKSC 44. The case concerned the United Kingdom tax treatment of a specific Delaware limited liability company ("LLC") of which Mr. Anson was a member. The Court found that the income of the LLC accrued to the members as it arose, and thus United States tax suffered on that income should be available for double tax relief in the United Kingdom.

The decision that the income accrued to the members of the LLC as it arose was contrary to HMRC's long-standing practice of treating LLCs as opaque entities. It therefore led to uncertainty over how LLCs should be treated more generally for United Kingdom tax purposes going forward.

Brief 15 confirms that HMRC will not seek to challenge the tax treatment of existing LLCs and will consider claims for double tax relief from individuals in a similar position to Mr. Anson on a case-by-case basis.

BACKGROUND AND DETAILS

The United Kingdom tax treatment of LLCs has often caused uncertainty for United Kingdom taxpayers, in particular, whether they should be regarded as companies with issued ordinary share capital, which is important for U.K. corporate tax grouping purposes.

CONTACT:

For further information or a discussion about the impact of the case and Brief 15 on your particular circumstances, please contact Ingrid Gardner or your usual BDO tax advisor.

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HMRC's long standing view is that LLCs should be regarded as opaque entities where a Delaware LLC issues membership certificates, and other factors relating to the company (e.g. the terms of the LLC members agreement), suggest that the entity has share capital. The Court in the Anson case found that income arising in the LLC in question should be regarded as accruing directly to the members rather than belonging to the LLC itself. While this was good news for United Kingdom resident individuals wishing to claim double tax relief for the United States taxes suffered on LLC income also taxable in the United Kingdom, it introduced uncertainty over how LLCs within corporate groups should be treated. See the [International Tax Alert - July 2015](#) for more details.

HMRC confirmed in Brief 15 that, in their view, the Court's judgment in the Anson case is fact specific rather than having wider application. As such, where LLCs have been treated as companies within a group structure in the past, HMRC will continue to treat them as such, and where an LLC has itself been treated as carrying on a trade or business, HMRC will continue to treat it as carrying on a trade or business.

While Brief 15 has taken away the uncertainty for groups with existing LLCs, there is no specific guidance as to how HMRC will treat new, or newly acquired, LLCs. Groups should therefore continue to seek advice where new LLCs are brought into the group.

For individuals in a similar position to Mr. Anson who may wish to rely on the case to claim double tax relief on LLC income, HMRC have said that they will consider the decision on a case-by-case basis.

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