

# SLAUGHTER AND MAY

## Slaughter and May Podcast

### Tax news highlights: July 2020

<b>Zoe Andrews</b>	Welcome to the first addition of our tax news cast. I am Zoe Andrews, Head of Tax Knowledge.
<b>Tanja Velling</b>	And I am Tanja Velling, professional support lawyer in the tax department. Zoe and I will discuss the Chancellor's statement on the 8 <sup>th</sup> July, recent developments on DAC6 and international tax reform. This podcast is recorded on 9 <sup>th</sup> July and reflects the law and guidance on that date.
<b>Zoe Andrews</b>	So let's start with the 8 <sup>th</sup> July statement, historically tax professionals have had to grapple with numerous changes made throughout the tax year. There have been two fiscal events, an autumn statement and a spring budget and there used to be various anti-avoidance measures announced with immediate effect at any time. The UK government did try and make tax payer's lives easier however by having one fiscal event per year, which was going to be an autumn budget but the Brexit negotiation process, a general election and most recently COVID-19 has wreaked havoc with this new timetable. The 2019 autumn budget ended up taking place in the spring of 2020, on 8 <sup>th</sup> July we then had the summer economic statement which has been referred to by some as an emergency budget, and we will have another budget in the autumn. Tanja what was announced on 8 <sup>th</sup> July?
<b>Tanja Velling</b>	First I should probably clarify that the UK government actually said that the statement on 8 <sup>th</sup> July was not a budget nor any other type of fiscal event that however did not prevent them from announcing two key tax measures, a temporary VAT cut and a temporary SDLT cut. So the VAT cut applies from the 15 <sup>th</sup> July of this year to the 12 <sup>th</sup> January of next year and it means that VAT will be charged at 5% rather than 20% on supplies of accommodation and admission to attractions across the UK and on supplies of food and non-alcoholic drinks by restaurants and pubs, so the SDLT cut will last for a longer period from the 8 <sup>th</sup> July of this year to the 31 <sup>st</sup> March of next year, and it means that the nil rate band of residential SDLT in England and Northern Ireland will be increased from £125,000 to £500,000. Different real estate transfer taxes clearly apply in Scotland and Wales and it is not clear whether similar cuts will be implemented there as well. Now onto our next topic. Zoe do you want to tell us about the joys of DAC6?
<b>Zoe Andrews</b>	Indeed, DAC6 is an EU directive under the terms of the withdrawal agreement, the UK is required to implement and apply DAC6 until the end of this year and the UK government has signalled its intention to continue to apply the rules thereafter. DAC6 requires the advisers or sometimes tax payers report information on certain cross-border arrangements to their local tax authorities. Originally DAC6 required that the first search reports would have to be made this summer but this is no longer the case.
<b>Tanja Velling</b>	That's right for some time it had been rumoured that DAC6 reporting would be postponed in light of COVID-19. At the start of May we got the first official glimpse of what that delay might look like, we saw a proposal from the European commission for a three month delay of the reporting obligation. At the start of June, it was then reported

	<p>that political agreement had been reached on a six month delay. The amending directive was finally published on 24<sup>th</sup> June 2020, which was just a week before 1<sup>st</sup> July which is the date when member state implementing legislation had to come into force. The amending directive gives member states the option of deferring the reporting deadlines initially by up to six months. In certain circumstances the counsel can extend this deferral period by a further three months. Zoe do we know yet whether all member states will make use of this option?</p>
<p><b>Zoe Andrews</b></p>	<p>Well a number of member states including the UK have already announced they will postpone the reporting time limit, but it has also been reported that some member states, for example, Finland and Germany are not going to postpone it, and in practice this means that advisers and tax payers will have to carefully scrutinise the relationship between different national rules. And as I'd see it DAC6 should work so that a reportable cross-border arrangement is reported in the most relevant jurisdiction, and that jurisdiction then exchanges information with all of the others, but this is unlikely to work where the main jurisdiction has postponed the reporting obligation but a jurisdiction that is perhaps only peripherally involved has not opted for the postponement. The legislation amending the UK rules to reflect the delay was made today and comes into force on the 30<sup>th</sup> July just before the first reporting deadline of 31<sup>st</sup> July would have been. The initial HMRC guidance explaining the delay to the reporting deadlines appear to overlook the obligation of privileged intermediaries to notify other non-privileged intermediaries or in some cases, the relevant tax payer where a reporting obligation arises. Instead of requiring this notification as soon as reasonably practicable which would then have started the 30 day clock for the notified person to report, the obligation will be changed to notify as soon as reasonably practicable after 1<sup>st</sup> January 2021. Luckily, however, the UK's tax authorities have already confirmed that they do not intend to charge penalties in this scenario. So Tanja how is the delicate balancing act of international tax reform progressing?</p>
<p><b>Tanja Velling</b></p>	<p>Well by that we really mean the OECDs work on the proposal to address the tax challenges of the digitalisation of the economy, you might remember that in January it was announced that this proposal would be split into two pillars. The second of these pillars concerns the introduction of a global minimum rate of corporate taxation. When I first heard about this, I thought it would be something which could never be agreed but actually it now seems as if it might be agreed before the first pillar. The first pillar concerns a new taxing right which seeks to allocate some revenues to the market or user jurisdiction. This is likely to mean that some of the revenues of US tech companies would be allocated away from the US which is clearly a thorny issue for the US. So much so that it seemed that the US would pull out of the negotiations at the OECD. The latest news however is that the US administration merely needs to focus on economic recovery at the moment, and that there is simply no time to agree pillar one prior to the US presidential elections in November. So the US have also said that they will not agree to any ring-fencing of digital businesses which was proposed by way of a phased introduction of pillar one. So overall this means that any agreement on pillar one is pushed into 2021, but the OECD has said that in the meantime they will continue to facilitate talks to progress pillar one ready for it to be agreed after the US election.</p>

<p><b>Zoe Andrews</b></p>	<p>A failure of the OECD's project and in particular of pillar one is likely to lead to a proliferation of unilateral measures, such as the digital services taxes. These have already been enacted in a number of countries. The UK's digital services tax legislation will shortly be enacted in Finance Act 2020. UK DST will be charged with effect from the 1<sup>st</sup> April 2020 at a rate of 2% on the revenues, from certain digital services activities to the extent attributable to UK users, although no payments are actually required until 2021. Unsurprisingly like the OECD's pillar one DSTs are a particularly contentious issue for the US given that predominately US groups are expected to have to pay these DSTs. The US trade representative has started a so-called section 301 investigation into the UK's DST and a number of others. It seems not unlikely that this investigation will reach the same conclusion as the section 301 investigation that was concluded in respect of the French DST. That investigation concluded that the French DST discriminated against US companies, and 100% tariffs on certain French goods were threatened by the US. The introduction of such tariffs has however been suspended as France postponed the payment deadline for its DST in order to allow negotiations at the OECD to run their course.</p>
<p><b>Tanja Velling</b></p>	<p>And this really underlines the importance of reaching agreement on pillar one at the OECD level, otherwise there is a real risk of an increase in international trade tensions which would seem particularly relevant to a post-Brexit UK. In a way it would seem reasonable to think that when the UK is trying to secure a free trade deal with the US, now may not be the best time to introduce a DST in the UK, but so far as we are aware it seems that at least the UK side sees no relationship or one might say tension between the UK's introduction of a digital services tax and its efforts to negotiate a free trade deal with the US. Rather it seems that the UK DST and other unilateral DSTs can be used as leverage to get the US to agree to a global measure.</p>
<p><b>Zoe Andrews</b></p>	<p>Meanwhile of course there could be agreement reached on pillar two by the end of the year, although not everyone is keen on pillar two and some like the UK see it very much as part of the package with pillar one. Pillar two is supposed to address the remaining BEPs challenges linked to the digitalisation of the economy but do you think it is a justified tax avoidance measure or is it actually an attack on tax competition?</p>
<p><b>Tanja Velling</b></p>	<p>I think pillar two goes further than tackling tax avoidance and that is because unlike the UK CFC rules for instance, it does not contain exceptions for profits that are really generated in a low tax jurisdiction, so it certainly looks more like big countries ganging up on smaller ones to prevent tax competition. Look for instance at how successful Ireland's low tax business model has been in generating rare business investment there. So Zoe what is coming up next that can be of interest to us and our listeners?</p>
<p><b>Zoe Andrews</b></p>	<p>Well other than any news of free trade agreements being agreed by the UK, which I expect everyone is eagerly awaiting, I wanted to highlight some items to look out for. The Finance Bill has been passed to the House of Lords and is expected to pass quickly through the formality of the lord stages. The Lords cannot of course amend a Finance Bill, and so the version published on the parliament website on 2<sup>nd</sup> July is now the final bill and it looks like royal assent should be possible before Parliament rises for the summer recess on 22<sup>nd</sup> July. In normal times, we would have expected draft legislation for the Finance Bill 2021 to be published this month, but as the consultation deadlines</p>

	<p>on new tax policies announced at Budget 2020 were extended to August because of the pandemic, publication of the draft legislation will likely be delayed so as to take on-board any responses to these consultations. On 14<sup>th</sup> July the Court of Appeal is scheduled to hear the tax payer’s appeal in the Irish bank resolution corporation case. This case concerns the attribution of a notional level of capital to UK permanent establishments. The upper tribunal found in favour of HMRC but such notional attribution as required by UK law, rather than looking at the actual capital attribution is in fact compatible with the terms of the UK Republic of Ireland treaty. So it will be very interesting to see whether the Court of Appeal agrees. On the 3<sup>rd</sup> July the OECD published its model rules for reporting by platform operators with respect to sellers in the sharing economy. It will be interesting to see which jurisdictions will opt to implement these rules. The rules are intended to provide tax authorities with information on the income of those offering accommodation, transport and personal services through an on-line platform. The information will be collected by the relevant platform. The platform would then pass the information to the tax authority in its jurisdiction and that tax authority exchanges the information with the other relevant tax authorities.</p>
<p><b>Tanja Velling</b></p>	<p>That leaves me to say thank you for listening. If you have any questions, please contact Zoe or me or your usual Slaughter and May contact. Further insights from the Slaughter and May tax department can be found on the European tax blog <a href="http://www.europeantax.blog">www.europeantax.blog</a> or you can follow us on Twitter at Slaughter and May tax.</p>