

Revenue & Customs Brief 15/2015: HMRC response to the Supreme Court decision in *George Anson v HMRC* (2015) UKSC 44

HMRC Revenue and Customs Briefs > Revenue & Customs Briefs > 2015

1. Readership

Individuals who may wish to claim Double Taxation Relief (DTR), and have interests in US Limited Liability Companies (LLCs). Businesses, charities and pension funds, and their advisers, which make use of US LLCs in group and commercial structures.

2. Background

In *George Anson v HM Revenue and Customs* (HMRC) the Supreme Court considered the question of whether Mr Anson was entitled to DTR for US tax against his UK tax on income received from a Delaware LLC of which he was a member.

In accordance with long standing practice, HMRC contended that what Mr Anson received was a distribution from the LLC, an entity, and no DTR was due because the US tax was charged on a share of the profit rather than on a distribution of it. The Supreme Court agreed with Mr Anson, restoring the decision of the First-Tier Tribunal (FTT), that the profits belonged to members as they arose and hence Mr Anson was taxed on the same profits in the UK as had been taxed in the US. DTR was therefore due.

3. HMRC practice announcement

On 1 July 2015 the Supreme Court gave judgment in favour of Mr Anson in the case of *George Anson v HMRC* (2015) UKSC 44. This case concerns the application of the double taxation agreement with the US to payments received by Mr Anson from a US Limited Liability Company HarbourVest Partners LLC registered in the state of Delaware. Lord Reed delivered the unanimous judgment of the court and he made clear that he relied on the facts found by the FTT, in particular those regarding the rights of Mr Anson that arose from the Delaware LLC Act and LLC agreement.

The FTT made findings that the profits of the LLC did not belong to the LLC in the first instance but the members became automatically entitled to their share of the profits as the profits arose and before any distribution. The FTT also found that the interest of a member in the LLC was not similar to share capital.

HMRC has after careful consideration concluded that the decision is specific to the facts found in the case. This means that where US LLCs have been treated as companies within a group structure HMRC will continue to treat the US LLCs as companies, and where a US LLC has itself been treated as carrying on a trade or business, HMRC will continue to treat the US LLC as carrying on a trade or business.

HMRC also proposes to continue its existing approach to determining whether a US LLC should be regarded as issuing share capital. Individuals claiming double tax relief and relying on the *Anson v HMRC* decision will be considered on a case by case basis.

4. Contacts

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Date issued 25 September 2015

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