

PwC's Law Firm Services News Alert

UK Highest Court's Recent Ruling in *Anson v Commissioners for Her Majesty's Revenue and Custom* may Affect UK Tax Treatment of US LLCs Utilized in Structuring the UK Operations of US Law Firms and UK Partners that hold an Interest in a US LLC



July 17, 2015

The UK Supreme Court has held that a UK individual (Anson) is entitled to double taxation relief in the UK for US tax paid on profits of a Delaware Limited Liability Company (LLC) in which he is a member. Based on the First Tier Tribunal's (FTT) earlier finding of fact that the members of the LLC have an interest in the profits of the LLC as they arise, the Supreme Court held that Mr. Anson's UK tax liability is computed by reference to the same income that was taxed in the US, and he is therefore entitled to relief from double taxation under the terms of the UK-US income tax treaty.

This judgement may have an impact on both law firms operating with a US LLC within their structure and the taxation of UK resident individuals with a membership interest in a US LLC.

Background

Mr. Anson was a member of a Delaware LLC, which was classified as a partnership for US tax purposes. As such, Mr. Anson was liable for US federal and state taxes on his share of the LLC's profits.

Anson was also liable for UK income tax on his income from the LLC, subject to any double taxation relief which might be available.

HMRC argued that Mr. Anson was not entitled to double taxation relief on the basis that the US tax was charged on the profits of the LLC, while Mr. Anson was charged UK tax on his distributions from the LLC. The FTT found in favor of Mr. Anson, holding that the combined effect of the LLC agreement and the Delaware LLC Act, (under which the LLC had been formed) was that his interest in the LLC was more akin to a partnership interest and that profits of the LLC belonged to members as the profits arose. Mr. Anson was therefore taxed on the same income in both the UK and the US and entitled to double taxation relief for US taxes paid.

This ruling was overturned by the Upper Tribunal and later by the Court of Appeal. However, the Supreme Court recently ruled in favor of Anson, reversing these decisions.

How will this affect law firms?

The decision in Anson may affect:

- Law firms which have a US LLC in their structure currently filing as a corporate entity in the UK; and/or,
- UK resident individuals who have a membership interest in a US LLC.

In the first instance, the question will be whether the LLC is opaque or transparent for UK tax purposes, which will have two main consequences: (1) whether the LLC should continue to file a UK corporation tax return and pay UK corporation tax on entity profits or whether the stakeholders should each file a UK personal tax return and pay UK income tax on their share of the profits arising in the accounting period; and (2) whether double tax relief will be available for non-UK resident partners in their local territory for UK taxes paid. Like the Anson case, this second point focuses on whether a UK resident member is entitled to double tax relief in the UK for US taxes paid on the profits of the LLC.

However, there are certain matters of fact in Anson which could have an influence on the application of this ruling to other scenarios. In particular, the Supreme Court noted that it was necessary to consider both the terms of the particular LLC agreement and the Delaware LLC Act to determine whether the LLC members were automatically entitled to their share of the LLC's profits as they arose or, the profits belonged to the LLC in the first instance and are then transferred to its members. There is wide freedom

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when drafting LLC agreements, so different tax treatments may be possible depending on the particular circumstances and terms. Whether Anson applies will need to be determined on the facts of each case.

Our colleagues at PwC UK have spoken to HMRC to understand what their approach to LLCs will be going forward. HMRC are still considering the judgement and plan to issue guidance on their approach, although the timing of this guidance is uncertain.

Contact PwC's Law Firm Services for further details

PwC can assist your firm in evaluating the potential impact of the *Anson* decision. Please give us a call to start the conversation.

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