

## **UPDATE – Equicap Filmco One, Two and Ten Limited**

Since our last update on 29 May 2018 TFO Tax has received confirmation from HM Revenue & Customs (HMRC) that the civil enquiry has now recommenced and correspondence will be issued to investors in the near future.

HMRC has advised that a settlement opportunity will be available to investors. The full terms of the settlement opportunity have not been made available to TFO Tax at this time. However, we can advise the following:

- The settlement opportunity will be based on investors making a full withdrawal of any claims for tax relief. This will include the claim for income tax relief on the investment loss as well as any loan interest relief that may have been claimed.
- HMRC is denying income tax relief for the personal cash contribution made by investors. This is on the basis that:
  - the shares were not qualifying shares;
  - the companies did not exist wholly for the purpose of carrying on one or more qualifying trades; and
  - the companies did not conduct a trade on commercial basis and with a view to the realisation of profits.
- HMRC is also denying capital loss relief on the basis that:
  - the loss accrues as a consequence, or otherwise in connection with, any arrangement; and
  - the main purpose, or one of the main purposes, of the arrangement is to secure a tax advantage.
- Statutory interest will be charged on any income tax which is payable from the due date as a result of the settlement opportunity being accepted. Given that the interest is statutory it cannot be appealed. HMRC's position is that investors had the ability to either make a payment on account or purchase a Certificate of Tax Deposit which would have prevented any interest accruing.
- HMRC has the statutory power to issue penalties to investors for "inaccuracies in returns and documents". Penalties will be considered on a case by case basis and investors will be notified by HMRC if they feel the issue of penalties needs to be explored. If a penalty is to be charged it will be based on a percentage of the potential lost revenue to HMRC.

Should investors decide to accept HMRC's settlement opportunity then they will be required to sign a Deed of Settlement to conclude their position. The Deed of Settlement is a legally binding document and is irrevocable once signed. The tax, interest and any penalties, where applicable, will be due for payment within 30 days of HMRC's written confirmation of receipt of the signed Deed of Settlement unless a time to pay arrangement is agreed. Should a time to pay arrangement be required the investor will be asked to put a proposal forward to HMRC outlining the payments to be made over a period of time. Typically, if a time to pay arrangement is not to exceed 12 months HMRC tend to agree them without further information being required. However, for longer HMRC usually request a statement of assets and liabilities. We are now seeing HMRC insisting that payments under a time to pay arrangements are made by direct debit.

Should investors decide not to accept HMRC settlement opportunity then it is our opinion that HMRC will eventually issue enquiry closure notices which unless appealed will see HMRC's position become final. We would add that this is our opinion at this time although we cannot rule out HMRC pursuing other potential action as outlined in our update of 11 May 2018.



Appealing an enquiry notice will formalise matters and require the civil enquiry to be taken forward to litigation through the courts and at significant cost to investors. In a case of this nature TFO Tax anticipates the associated costs of a hearing at the First Tier Tribunal will be in the region of £750,000 to £1m. In terms of how long it will take to proceed to litigation is difficult to say but investors should anticipate a period of up to 2 years from the date it is requested before a hearing may be listed at the First Tier Tribunal. If litigation were to proceed then HMRC are likely to select a number of lead cases to take forward. Leave to appeal a judgement from the First Tier Tribunal to a higher court if required will incur further significant costs for investors.

You will appreciate that TFO Tax cannot comment on the likely success of any litigation for investors and ultimately the outcome may be no better than HMRC's settlement opportunity. This is a judgement call to be made by the investors. To assist investors in this regard TFO Tax would strongly recommend that an opinion is obtained from Tax Counsel which will comment on the likelihood of litigation being successful. There will be a cost to investors in obtaining such an opinion.

It would be remiss not to mention, given HMRC's success in the courts where perceived tax avoidance is involved, that the appetite of taxpayers to litigate against HMRC has been limited. It follows that if there is insufficient appetite and funding from investors then litigation is unlikely to proceed. Before entering into discussions regarding the cost of an opinion from Tax Counsel, the cost of litigation to the First Tier Tribunal and how those costs should be allocated between investors we would like to canvass investors' appetite for litigation. It would be useful if you could advise by way of email whether or not you would be inclined to accept HMRC's settlement opportunity or to litigate. Emails should be sent to [tfotax@tfotaxglobal.com](mailto:tfotax@tfotaxglobal.com)

We would stress that this update and our previous one are unlikely to have reached all investors. Your assistance in forwarding this update to any investors you may know of and professional advisors would be greatly appreciated.

As mentioned in our update of 11 May 2018 the contents of our updates are generic. However, we would be pleased to discuss any investor's individual position on a case by case basis, but this would be subject to an engagement with a fee being payable. Once HMRC issue settlement opportunity letters to investors there may only be a short period of time in which to make an informed decision. It would therefore be prudent for investors to establish their likely position prior to receipt of the settlement letters.

**TFO Tax**

**24 July 2018**