INTERNATIONAL TAX REVIEW

Diageo prepares to pay $138 million as it falls foul of UK DPT

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UK multinational and alcoholic drinks producer Diageo is the first company that will have to make an upfront tax payment to UK tax authority, HMRC, before it can challenge preliminary notices of assessment issued under the diverted profits tax (DPT) regime.

Diageo, which owns brands such as Johnnie Walker, Smirnoff, Captain Morgan and Guinness, had been discussing its transfer pricing position and related issues with HMRC to seek clarity on those issues, but the drinks giant said it has learned that the tax authority plans to issue preliminary notices of assessment under the DPT regime, which came into effect in April 2015.

The dispute relates to the company's profits that have been moved from the UK to the Netherlands, where it has 220 employees.

The company will have to pay approximately £107 million ($138 million) in additional tax and interest payments in aggregate for the financial years that ended on June 30 2015 and June 30 2016, it said in a statement.

"Diageo does not believe that it falls within the scope of the new diverted profits tax regime," it said. "Accordingly, Diageo will challenge the assessments when they are received. In order to do this, it will be necessary to pay the full amount assessed up front and then continue to work to resolve this matter with HMRC. The payment of this sum is not a reflection of Diageo's view on the merits of the case and, based on its current assessment, Diageo considers no provision is required in relation to diverted profits tax," the company said.

The controversial tax charges a 25% DPT on the profits of a multinational if the profits are considered to be artificially diverted from the UK. Once HMRC issues a notice to the businesses, the company is required to pay the tax bill before it can challenge the assessment.

John Kavanagh, a director with Enterprise Tax Consultants, said that whilst the size of Diageo's tax assessment was "eye-watering" it did not mark a conclusion to the case and is almost certainly the beginning of a lengthy dispute.

"It's interesting that many of the companies who might be hit with a DPT demand are likely to have very deep pockets and will not necessarily be inclined to roll over and pay up," Kavanagh said. "They may well choose to fight HMRC to the bitter end on this and that means we may not see a resolution to this matter for some years to come."

As this is the first case of a company being forced to pay the UK's DPT, multinationals will surely follow any ensuing dispute closely.