

## Pricing Knowledge Network\*

July 23, 2009

# PKN Alert United Kingdom - HMRC-Dixons settle out of court

Our previous PKN dated May 4, 2009 provided an overview of the judgement in the UK's first transfer pricing case dealing directly with the application of the arm's length principle. The case related to the transfer pricing arrangements between the UK's biggest electrical retailer (DSG) and the group's captive insurer in the Isle of Man. It was heard before the Special Commissioners (now the First Tier Tax Tribunal).

The judgment was broadly in favour of HMRC but stopped short of a final determination of the tax liability and the case was adjourned to allow the parties to agree what the adjustment should be.

In an initial press release issued by DSG, it was stated that the group expected to appeal the decision. However, in a further press release issued by DSG on 25 June 2009 the group announced that an agreement had been reached with HMRC. The case has therefore been settled out of court.

The Special Commissioners decisions have no legally binding precedent value. However, as an appeal will not be heard in the High Court HMRC will be encouraged by the result; will place emphasis on its conclusion in current and future transfer pricing enquiries; and are likely to cite it in support of positions they may take (especially where they would like to take a profit split approach). For taxpayers, the case is instructive in terms of how future transfer pricing cases are likely to be played out.

Although the case is primarily concerned with insurance and reinsurance transactions, its relevance stretches far beyond the insurance industry. In particular, the case is a clear signal that HMRC will seek to understand the overall contribution of all parties as well as their relative negotiating position. It clearly demonstrates a high threshold of comparability if the intention is to rely on transfer pricing analysis that looks at only one side of the transaction(s) or, taking the industry or business analysis into account, gives a counter-intuitive result.

The case also encourages HMRC to continue to challenge a number of types of arrangements with increased vigor, and there is potential that it will become a reference case outside the UK in relation to insurance or re-insurance transactions.

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