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Simon's Tax Briefing

ATED Reliefs and Exemptions

Donald Drysdale examines the statutory reliefs and exemptions available.

What is ATED?

The annual tax on enveloped dwellings (ATED) is a completely new tax which took effect from 1 April 2013. In STB355 I provided an overview and examined the basics of ATED. Many amendments were made to the Finance Bill 2013 during its passage through Parliament, and the ATED legislation is now contained in FA 2013, Pt 3, ss 94–174 and Schs 33–35.

The aim of this article is to introduce the main ATED reliefs and exemptions.

Background to the reliefs

Like ATED, the reliefs apply from 1 April 2013. Where a day is a "relievable day" for the purposes of an ATED relief, no tax is due in respect of that day.

In most cases an ATED relief is forfeited as soon as the dwelling is occupied (or available for occupation) by a "non-qualifying individual". That is, an individual entitled to the interest in the dwelling, and various connected individuals, including, in the case of a partnership, qualifying members of the partnership and individuals connected with a qualifying member of the partnership. In other words, anyone connected with the owner.

For ATED purposes interests of connected persons may be looked at together, but following an amendment to Finance Bill 2013 this does not apply to attribute a company with the interest of a connected individual unless the company itself holds a freehold or leasehold interest worth more than £500,000.

Several of the reliefs depend on the existence of a qualifying trade or business. In all such cases the trade or business in question must be carried on commercially with a view to profit.

The ATED reliefs can only be claimed by completion and submission of an ATED return.

Property rental businesses

Relief is due where a dwelling is exploited in a qualifying property rental business as a source of rents or other receipts (other than certain excluded wayleaves, etc), or where steps are being taken to exploit it without undue delay.

Following a period where this relief is due, it continues to be available if steps are being taken to:

- sell or demolish the dwelling without undue delay; or
- convert the dwelling into a different relievable dwelling or into a building other than a dwelling.

For this purpose "relievable" refers to a number of specified reliefs. Any replacement building must to be used in a relievable way.

Restrictions to the relief apply on a "look forward" and "look back" basis. Where a non-qualifying individual is

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permitted to occupy the property and there is continuity of ownership, no further day in that or the next three chargeable periods will be a relievable day unless and until there is a day of qualifying use (ie actual exploitation in the course of the qualifying property rental business). Similarly, no day is relievable in the period running from the start of the preceding chargeable period, to the day of non-qualifying use, to the last day of qualifying use in that period. In other words occupation by a non-qualifying person taints the preceding year, the whole of the current year, and the next three years.

Dwellings opened to the public

A day is a relievable day where the dwelling is exploited as a source of income in a qualifying trade in the normal course of which the public is offered the opportunity to make use of, stay in or otherwise enjoy the dwelling (including a significant part of its interior) on at least 28 days in any year, or where steps are being taken to exploit it in such a way without undue delay.

The requirements for obtaining this relief do not seem unduly difficult to attain. The opportunity must be offered to the public in the course of a trade carried on commercially with a view to profit, but there is no stipulation as to who must carry on that trade. Thus a property manager could offer tours of the property for at least 28 days a year and met the requirements for this relief. Unlike other reliefs, this relief is not forfeited if the dwelling is occupied by a non-qualifying individual.

If part of a property is occupied as a dwelling in connection with running the property as a commercial business open to the public, the whole property is treated as one dwelling and any relief will apply to the whole property.

Property developers

Relief is due where the dwelling is held exclusively for the purpose of developing and reselling the property in the course of a trade that includes buying and developing or redeveloping residential or non-residential property for resale.

The relief is not prejudiced by any intention to let the property prior to sale, but is denied where a non-qualifying individual is permitted to occupy it.

This relief extends to situations where an acquisition in the course of such a trade is part of a qualifying exchange, ie when the developer acquired the dwelling in consideration for a new dwelling which it or a related partnership transferred in exchange.

Property traders

Relief is also due where the owner of the dwelling is carrying on a property trading business which consists of or includes activities in the nature of a trade of buying and selling dwellings, and it holds the property as stock and solely for resale in the course of that business. Again, relief is denied where a non-qualifying individual occupies all or any part of the dwelling.

Financial institutions

A financial institution (defined in ITA 2007, s 564B) is entitled to relief if it becomes entitled to a dwelling in the course of its lending activities and intends to resell the dwelling without delay; for this purpose delay justified by commercial considerations is disregarded. Renting to a non-qualifying individual disqualifies the institution from the relief.

Employees or partners

A day is a relievable day where the dwelling is available for use as living accommodation for one or more qualifying employees or qualifying partners for the purposes of a qualifying trade. These are employees or partners with less than a 10% share in the company or partnership.

This relief also applies where the dwelling is made available to persons who share the accommodation with such an employee or partner as their family. This relief does not extend to occupation by an employee the duties of whose employment include the provision of domestic services in connection with actual or intended occupation by a non-qualifying individual.

Farmhouses

Relief is available where the dwelling forms part of farming land, and a person beneficially entitled to it (or a connected person) is carrying on a qualifying trade of farming or market gardening. The farmhouse must be occupied partly or wholly by a farm worker who occupies it for the purposes of the trade, a former long-serving farm worker or the surviving spouse or civil partner of a former qualifying farm worker. To qualify for this purpose, a farm worker must have a substantial involvement in the day to day work of the trade or its direction and control, and long-serving denotes three consecutive qualifying years or three qualifying years out of any five-year period. HMRC intends to rely on existing case law in determining whether a farmhouse is of an appropriate character to be classed as such.

Providers of social housing

Relief is available if a profit-making registered provider of social housing owns the dwelling and the acquisition was funded with the assistance of a public subsidy. A non-profit registered provider of social housing or a registered social landlord enjoys similar relief if the housing provider is controlled by its tenants, the acquisition of the interest was funded with the assistance of a public subsidy and the acquisition was from a qualifying body.

Charitable companies

There was to have been a relief for charitable companies. However, Finance Bill 2013 was amended to provide instead for charitable companies to be exempt from ATED. This has been achieved by treating such companies as not meeting the “ownership condition” on dwellings held for charitable purposes, except where a donor has made a gift to the company and arrangements exist for the donor or their associate to be allowed to occupy the property on terms existing as a result of the gift.

Other exemptions

Public bodies and bodies established for national purposes are not

regarded as companies for ATED purposes.

Where the whole or part of a dwelling has been designated as conditionally exempt from inheritance tax as a building of outstanding historic or architectural interest and remains so designated, and no subsequent chargeable event for inheritance tax purposes has occurred under IHTA 1984, s 32, the taxable value (for ATED) of the interest in the dwelling is zero.

Conclusion

The legislative provisions for the reliefs and exemptions are far from straightforward. HMRC offer an ATED Helpline on 0845 603 0135, or +44 1726 209 042 from abroad.

ATED is part of a package of anti-avoidance measures introduced by the government to discourage individuals and companies from owning high value residential properties in structures that help them avoid stamp duty land tax. The same package includes an extension of the scope of capital gains tax (CGT) to disposals of high value residential UK property by certain non-natural persons (principally companies) within the scope of ATED. This CGT charge will be examined in my next article. **STB**

Donald Drysdale

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BITCOIN: A Virtual Currency

Graham Wilde explains the tax implications.

With the recent turmoil in markets and world economies resulting in several major bank collapses, it is unsurprising that investors are looking for alternative ways to hold, preserve and transfer their funds around the world. We have therefore seen the emergence of bitcoin.

How bitcoin works

Bitcoin is a virtual currency that, unlike physical currencies such as pounds or euros, exists almost entirely online. The processing of bitcoin transactions is secured and monitored by servers, or bitcoin exchanges. It is effectively a peer-to-peer electronic payment network. Each new user installs a digital wallet on their computer or mobile device. The wallet is simply a software program that generates the user's bitcoin address and that enables the user to start acquiring bitcoins, for example by buying them from a bitcoin currency exchange. Bitcoins can then be used for online transactions with companies that accept bitcoins as payment.

It is also possible to receive bitcoins by working for the system, by performing "mining". This involves the recording of bitcoin transactions onto the bitcoin system, which is an involved and resource-dependant process, hence "miners" are paid for their work.

The bitcoin network by-passes financial intermediaries such as the banks and is not regulated by a central authority. This is perceived as an advantage by bitcoin users who can move large balances across borders through their computers or smartphones, without detection. One can therefore imagine the potential in this for illicit or illegal activities and for tax evasion.

Bitcoin has been in existence for four years and is proving popular with some investors as a way to preserve wealth where their home currencies have failed despite attempts at government intervention. For example, in Argentina and Cyprus bitcoin purchases have risen steeply this year. However, various authorities around the world are already looking to stem the flow of bitcoins for fear that tax revenues are being lost, in addition to the side-stepping of anti-money laundering regulations. Indeed, US authorities recently required bitcoin processors to report large transactions and suspicious use, and bitcoin traders in Canada found their Canadian dollar bank accounts closed down. In May 2013, UK government officials met to discuss potential threats from bitcoin use.

One perceived disadvantage of the bitcoin is its increasingly volatile price. Indeed, in early 2013 the bitcoin was trading at $13, peaking at $230 in April. On the upside, total issuance of the bitcoin is limited to 21 million, so it is unlikely to be devalued because of an influx of new bitcoins.

Are profits being made?

Some people have made profits from the bitcoin, such as in the following examples.

The investor

Phil, a retired IT programmer who is UK resident and domiciled, has invested in bitcoins by making several purchases while the price was low and has now sold his bitcoins at a profit. His proceeds are currently held in the bitcoin exchange, denominated in US dollars. How should the profit be declared and taxed? Has Phil been trading in bitcoins, or merely investing?

The miner

Alex is a 12-year-boy, also UK resident and domiciled, and a very talented computer games programmer. His mother told him to make some money

from his online activities, so Alex discovered how to "mine" bitcoins and now has a small number of them. How should Alex be taxed, if at all, on these bitcoins?

How is bitcoin taxed in the UK?

The fact that the bitcoin is internet based should not shroud what we are dealing with – a currency. It is used in a different forum to sterling, but so is any foreign currency. What needs to be considered is how gains or income are made and how they are then taxable.

Returning to the above examples.

The investor

Phil invested in bitcoins, and has now sold them for US dollars. Assuming his intention was to make a profit on his bitcoins then, unless his trading is frequent, he has made a capital gain. For UK capital gains tax purposes, we need to look at the sterling equivalent at the date of disposal less the sterling equivalent at the date of acquisition, which is confirmed by the case of *Bentley v Pike* 53TC590 (1981) and HMRC Capital Gains Manual CG78311. Furthermore, his various acquisitions will be pooled, in the same way as unquoted shares, as currency is regarded as a security under TCGA 1992, s 104. Therefore, any net gains within a tax year will be chargeable to UK capital gains tax as a top slice of Phil's income, that is, where they exceed his annual capital gains tax allowance, and will currently be chargeable at 18% to 28%.

HMRC resists claims that a taxpayer is trading in shares as opposed to investing for gain. It is thus unlikely that individuals will be able to persuade HMRC they are trading in bitcoins, and hence are chargeable to income tax. However, where the taxpayer is holding the bitcoins as part of payment for trading, any gains and losses on foreign exchange are then taken into consideration in their accounts under normal accounting principles. Traders dealing solely in bitcoins will usually try to claim a trading activity where losses arise, as an income tax loss is sought as opposed to a capital loss, but this will no doubt be met by the same resistance from HMRC as are claims by individuals who claim to be trading in shares.

The miner

Despite the fact that he is 12, Alex is still liable to UK tax. However, his circumstances are different to Phil's, as Alex has been working to earn his bitcoins through his "bitcoin mining" activities. Alex is therefore chargeable to income tax and is likely to be regarded as self-employed. Of course, if this is his only source of income, which is likely for a 12-year-old, then he will have personal allowances of £9,440 to cover earnings up to this amount. National Insurance would only be chargeable when he reaches 16, and then only when his earnings exceed the lower annual profit limit or the small earnings exception. If it could be successfully argued that this income is sporadic and so should not be classed as earnings, then it might be possible to avoid National Insurance. The bitcoins would need to be converted at the sterling rate at the date Alex is entitled to be paid, so as to determine his earnings in pounds.

If Alex were then to keep his earnings in bitcoins and look to make more money speculating on an increase in their value, then any gains or losses would be taxable under the capital gains tax legislation, as discussed above for Phil.

The tax consequences of other scenarios that may arise with the bitcoin, are considered below.

Paying for goods and services

What is the intention in acquiring the goods with bitcoins? If it is to acquire goods for a trade and the seller requires payment in bitcoins, then the exchange rates from and back to sterling need to be considered as the asset is purchased. Here, any fluctuations in exchange rates would be incorporated in the traders' accounts to reflect foreign exchange gains or losses.

If the asset is acquired as an investment, then while it is likely that there will be little fluctuation from sterling to bitcoin as the asset is purchased, it is still the sterling equivalent at the date of sale less the sterling equivalent at the date of sale of the investment asset that needs to be considered for UK capital gains tax.

On-line gambling

Any bitcoin profits made using bitcoins for online gambling should be exempt from UK taxation, as gambling and betting are not regarded as a trade. As such, only the gains and losses made as bitcoins are stored would be taxable.

Location of bitcoins

Difficulties could arise where UK resident but non-UK domiciled individuals are concerned, as the bitcoins are not physical, so where are they located and when do we need to consider the remittance basis? TCGA 1992, s 275 provides instruction on certain assets, but are bitcoins deemed to be located on their servers or on the device of their owner? It is unlikely to be the servers as this is just the record of who owns bitcoins. As proponents of the bitcoin champion its "moveability", no doubt bitcoins are located with the owner on whatever storage device he uses and, if the owner is in the UK, the bitcoin profits will have been remitted to the UK.

Most of the furore surrounding the bitcoin is connected with its perceived potential for illegal use, but any currency can be used in this way. Despite the cyber context of this currency, as far as UK taxation is concerned, we already have a set of rules for the taxation of speculation in, or purchases with, non-sterling currency. It is not necessary to create a new set of rules for something simply because it is new and internet based. Current tax legislation for dealing with foreign currency could certainly cover the bitcoin. However, clients will need to be asked specifically if they have undertaken any transaction in bitcoins as they may not realise that a tax liability arises on its use. **STB**

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newsfile

House of Lords report

The House of Lords Economic Affairs Select Committee has issued a report entitled *Tackling corporate tax avoidance in a global economy: is a new approach needed?* It has five main recommendations:

1. Parliament should establish a committee of MPs and Peers, to exercise greater parliamentary oversight of HMRC and the settlements it reaches with multinational companies.
2. The Treasury should urgently review the UK's corporate taxation regime and, in addition to pursuing the OECD's action plan, it should consider other approaches to the taxation of multinational companies' profits, such as a destination-based cash flow tax.
3. The Treasury review should re-examine some fundamentals of the UK's corporation tax regime, including differential tax treatment of debt and equity and the scope for introduction of an allowance for corporate equity.
4. The Treasury review should consider some anti-avoidance measures for the shorter term, such as:
   - regulation of tax advisers;
   - penalties for users of failed tax avoidance schemes;
   - requiring large companies to publish a proforma summary of their tax returns to improve transparency.
5. HMRC should be better resourced to deal effectively with the tax affairs of complex and well-resourced multinationals.

Adjudicator's report

The Adjudicators Office is where taxpayers can take further any compliant regarding HMRC, the Valuation Office or the Insolvency Service, if they are not satisfied by the complaints handling within the relevant organisation. The Adjudicator has reported on the work of her office in the year to 31 March 2013.

In 2012/13 the Adjudicator received a record number of 2,612 new complaints, of which 98% related to HMRC. Her office closed 1,379 complaints cases in 2012/13, and found that 61% of the complaints about HMRC were upheld or partially upheld.

A large number of the taxation cases reviewed related to the application of ESC A19. The Adjudicator noted that many of the cases included careless and avoidable errors which had not been identified or put right during HMRC's handling of the complaint. HMRC has accepted all of the Adjudicator's recommendations and has paid out total of £144,183 to taxpayers to cover costs, worry and distress and to compensate for poor complaints handling.

Remittance basis advice

HMRC has come under fire from the CIOT and ICAEW for sending taxpayers potentially misleading and incorrect factsheets concerning the remittance basis. The factsheet accompanied a letter to taxpayers who had paid the remittance charge in 2011/12, which was not copied to the tax agents acting for those taxpayers. HMRC has suspended despatch of further remittance basis advice letters until the technical content of the factsheet has been reviewed.

Consultations

SDLT in Wales

This consultation examines the potential impacts of devolving SDLT to the National Assembly for Wales. Views are requested by 10 September 2013.

Fuel duty relief

Retailers of road fuel on certain Scottish Islands and the Isle of Scilly can currently reclaim 5p per litre of duty from HMRC under fuel duty relief. The government is seeking views and data to support an expansion of this relief to other remote areas of the UK.

Childcare support

This is the first stage of consultation on proposals to provide tax free vouchers worth 20% of childcare costs up to £1,200 per year per child. The childcare support provided to families who claim Universal Credit is also addressed in this document.

Responses are requested by 14 October 2013. Legislation will be passed during the period from mid-2014 to early-2015 and the new voucher scheme is expected to go live from autumn 2015.

Authorised investment funds

HMRC is consulting on the conditions under which interest distributions from authorised investment funds may be paid without deduction of tax. Comments are requested by 16 September 2013.

HMRC publications

New telephone numbers

The following HMRC helplines have new 0300 numbers:

CIS Helpline	0300 200 3210
CIS Textphone	0300 200 3219
SA Orderline	0300 200 3610
SA Orderline Fax	0300 200 3610
Payment Enquiry Line	0300 200 3401

Gift aid small donations

Detailed guidance for charities and community amateur sports clubs on the new gift aid small donations scheme has been published. These organisations can reclaim gift aid on cash donations of £20 or less which they receive from 6 April 2013.

Designated stock exchange

The market known as *Global Board of Trade* has been designated a recognised stock exchange under ITA 2007, s 1005 and for inheritance tax purposes from 30 July 2013.

ATED return

The final version of the return required for the annual tax on enveloped dwellings (ATED) has been made available on the HMRC website. The first return for the period commencing 1 April 2013 must reach HMRC by 1 October 2013, and the ATED charge must be paid by 31 October 2013. The ATED return includes a box to nominate a tax agent to act on the taxpayer's behalf in respect of ATED, as this new tax is not covered by any existing authorisations.

Pensions industry update

This newsletter includes:

newsfile

- a report of the pension industry conference on 17 May 2013;
- how to request GMP statements for widows and widowers; and
- new contact numbers for the pensions service within HMRC.

31 October deadline

HMRC has thought it necessary to remind tax advisers of the penalties that can apply if paper tax returns for 2012/13 are not submitted by 31 October 2013. However, the HMRC guidance does not mention that certain tax returns can't be submitted online, and in those cases the 31 January deadline applies.

Employer advice

Annual PAYE schemes

The technical adjustment to the RTI interface that allows PAYE schemes to be registered as annual schemes has now been fixed. HMRC is working through the back-log of requests for annual schemes. However, HMRC will not tell employers when their scheme has been registered as annual.

Once the PAYE scheme is registered as annual only one FPS is required to be submitted for the month when the salary payments are made, and no EPS is required for the other months. To register a PAYE scheme as an annual scheme ring the payment enquiry line on 0300 200 3401, then stay on hold until you are put through to the operator.

CWG2

This booklet, *Employer Further Guide to PAYE and NICs* (CWG2 2013), has been corrected in regard to vouchers given to employee, and the entrance of Croatia to the EU.

CIS repayments

HMRC has published tips for companies to achieve a quick and painless repayment of the CIS tax deducted from their invoices. These tips include:

1. Where the company acts as a contractor as well as a subcontractor under CIS, all its CIS returns as a contractor (forms CIS300) must be up to date before it claims a repayment of CIS tax.
2. If business was incorporated during the tax year for which the repayment claim is submitted, do not submit deduction certificates for periods before the incorporation. Sole-traders and partnerships must reclaim CIS tax deducted through their self-assessment tax returns.
3. If the company has other tax repayments due to it, for say corporation tax or VAT, those amounts should be detailed and supporting documentation supplied with the CIS repayment claim.
4. The right UTR for the company and its name should be quoted on all documents.
5. All CIS deduction statements for the right tax year should be sent, not for any other period.
6. It should be ensured that the P35, or final EPS for the tax year that shows the CIS tax deductions, has already been submitted to HMRC.

HMRC also remind tax agents that they must have authorisation to act specifically for PAYE matters for the company in order to discuss the CIS repayment with HMRC officers.

HMRC manuals

CIRD

A new chapter on disincorporation relief, including how to make a claim for this new relief has been added to the *Corporate Intangibles Research and Development Manual*.

SAOG

The *Senior Accounting Officer Guidance Manual* has been updated to clarify HMRC' s view regarding which companies fall within the SAO rules, and to define various terms such as: turnover, responsibilities of an SAO including the group VAT liabilities, and the penalty provisions of the legislation.

TSEM

Guidance on the Hastings-Bass rule has been updated in the *Trusts, Settlements and Estates Manual*. New guidance on making payments from trust capital has also been inserted in this manual, along with revisions on heritage maintenance funds and flat management companies.

SDLTM

Commentary on how the GAAR applies to SDLT has been added to the *Stamp Duty Land Tax Manual*. In addition, the meaning of 'tenancy at will' and 'chargeable interest under FA 2003, s 48' have been included.

PAYE

Guidance on applying ESC A19 has been amended in the *PAYE Manual*. New text on automatic online penalties for employer returns has also been added.

CA

New guidance on first year allowances for zero emission goods vehicles has been added to the *Capital Allowances Manual*. Also, text dealing with two withdrawn reliefs: flat conversion allowances and safety at sports grounds, has been amended to reflect the demise of those reliefs.

Regulations

Employee shareholder shares

This new type of employment status is has been introduced into the Employment Rights Act 1996 by the Growth and Infrastructure Act 2013, s 31. The new provisions are given effect by order SI 2013/1766 with effect from 1 September 2013.

Chargeable gains

FA 2013, s 66 requires companies to use their functional currency, or in certain circumstances their designated currency, to compute any chargeable gains and losses on disposals of ships, aircraft, shares or interests in shares not covered by the substantial shareholdings exemption. Regulations in SI 2013/1815 bring this provision into effect from 1 September 2013.

Regulations in SI 2013/1843 make equivalent provisions to FA 2013, s 66 to require companies to account for

points of law

G & Mrs L Kofteros v HMRC TC2692

Reasonable excuse for late payment

Mr and Mrs Kofteros appealed against surcharges relating to their substantial tax liabilities for 2009/10. Their accountant had been negotiating a time to pay agreement from 27 January 2011 onwards. The taxpayers were seeking to raise funds to pay the tax due, by selling their shares in a private company.

The First-tier Tribunal accepted their evidence and allowed their appeals. Sir Stephen Oliver found that HMRC had received the couple's application for time to pay, but had failed to reach a decision, and that the couple had "had reasonable grounds for expecting that a time to pay agreement would be reached".

J Myers v HMRC (and related appeals) TC2703

Tax avoidance scheme fails

In 2006 Mr Myres entered into a tax avoidance scheme organised by NT Advisors. The scheme intended to create a large capital loss which would be translated into an income tax loss under ICTA 1988, s 574 (now ITA 2007, s 131).

Myres exercised an option to buy shares in Stony Heating Ltd a trading company, for a nominal price of £6 million. This nominal price was payable to a discretionary trust of which Myres was the principal beneficiary, and whose assets consisted mainly of that debt. Accordingly, the economic effect of the scheme was to transfer almost £6 million of Myres' assets into that discretionary trust. A few days later Myres sold the shares for £552.

On his 2005/06 tax return, he claimed that he had made a tax loss of £5,999,448 on the transaction, which would be available for offset against his income. HMRC issued an amendment rejecting the claim.

The First-tier Tribunal substantially dismissed M's appeal. Judge Hellier observed that TCGA, s 38(1) provided that there should be a deduction for consideration given "wholly or exclusively for the acquisition of the asset". On the evidence and in the context of the scheme, Myres had not paid £6 million wholly and exclusively for the shares in Stony Heating. He held that the only sum given wholly and exclusively for those shares was their redemption value of £600. That was their acquisition cost for tax purposes, so that Myres had only made a loss of £48, rather than the amount claimed.

R Morgan v HMRC (and related appeal) TC2720

Daily penalties not correctly charged

Mr Morgan filed his tax return for 2010/11 in paper form on 27 April 2012, when the due date was 31 October 2011. HMRC imposed a penalty of £100 under FA 2009, Sch 55, para 3, and daily penalties of £870 under FA 2009, Sch 55, para 4. Morgan paid the £100 penalty under Sch 55, para 3, but appealed against the penalties imposed under Sch 55, para 4.

exchange gains and losses arising on a loan relationship or derivative contract, in their functional currency, also with effect from 1 September 2013.

Creative industries

The Cultural Test (Television Programmes) Regulations (SI 2013/1831) apply cultural tests for TV programmes with effect from 13 August 2013, to allow those productions to qualify for the tax relief for creative industries introduced by FA 2013, Sch16.

HMRC has also produced guidance on film tax relief, animation tax relief, high-end television tax relief and video games development relief.

Life Insurance

The Life Insurance Qualifying Policies (Statement and Reporting Requirements) Regulations 2013 (SI 2013/1820) sets out details of the statutory declarations required from the insurers or policy issuers, and from the beneficiaries of qualifying life insurance policies, in respect of new policies issued on or after April 2013, or modifications to existing policies after that date.

FA 2013, Sch 9 introduced an annual premium limit of £3,600 for qualifying policies from 6 April 2013. HMRC has issued guidance on the new annual premium limit for investors who hold such qualifying policies, or who are thinking of taking out such a policy.

Capital Allowances

Orders (SIs 2013/1763 and 2013/1762) that amend the lists of plant and machinery eligible for enhanced capital allowances came into effect from 7 August 2013.

Data gathering powers

HMRC is given a wide range of data gathering powers under FA 2011, Sch 23 and SI 2012/847. Those regulations have been amended by SI 2013/1811 to require retailers to provide HMRC with credit card data collected from their customers. This power comes into effect on 1 September 2013.

International tax

Double taxation relief

Draft orders have been issued for comments, which will bring into effect or amend double taxation conventions with the following countries:

- China;
- Spain;
- Brunei Darussalam;
- India; and
- Marshall Islands

A new first-time comprehensive double taxation agreement between the UK and Panama was signed on 29 July 2013.

Customs duties

HMRC will be jointly hosting a conference on customs compliance and authorised economic operator (AEO) certification on 19 to 20 November 2013, in London. Small businesses can register separately for the one day forum: *Customs Compliance for SMEs: Achieving AEO Authorisation*.

points of law

The First-tier Tribunal allowed his appeals, finding that HMRC had failed to give him the notice "specifying the date from which the penalty is payable", as required by Sch 55, para 4(1)(c). Judge Mosedale specifically rejected HMRC's contention that a form SA326D fulfilled the conditions of para 4(1)(c). She held that "Parliament intended taxpayers to be given clear warning that they would be liable to daily penalties from a specified date. The form SA326D failed to do this as in the context of the whole document as the warning was in the small print and the actual wording was ambiguous over whether HMRC were telling the taxpayer that daily penalties would be charged or merely could be charged".

W Llewellyn v HMRC TC2726

No permanence in occupation

Llewellyn and his partner purchased a property in Netley Terrace as tenants in common in 1976, and occupied it as their main home from 1977. In 1996 the couple were having difficulties, and with help from his mother and sister Llewellyn purchased a property in Henderson Road, which was in poor condition. In November 1996 he moved into the Henderson Road property and renovated it over a year. In September 1998 he moved back to Netley Terrace and let the Henderson Road property until 2005. From 2005 to 2007 he undertook major repairs and improvements at the Henderson Road property, and in May 2007 sold it.

HMRC subsequently began an enquiry and issued a closure notice charging CGT on the sale. Llewellyn appealed, contending that he had occupied the Henderson Road property as his principal private residence for 16 months in 1997 and 1998. The First-tier Tribunal reviewed the evidence in detail and dismissed Llewellyn's appeal, finding that he had begun to let the property during 1997 and that "there was no independent evidence to show that his occupation of the property amounted to residence there with some degree of permanence, some degree of continuity or expectation of continuity".

SC Willey v HMRC TC2731

Administrator was liable

Mr Willey is the scheme administrator for the Hesco Military Products Pension Scheme (the scheme). In 2006 the scheme made an unauthorised payment of £100,000 to one of its members. HMRC issued an assessment on Willey under FA 2004, s 255 for £15,000.

The First-tier Tribunal dismissed Willey's appeal against the assessment. Judge Cannan noted that Willey was a chartered accountant and a chartered tax adviser. Willey had failed to observe the statutory reporting requirements and "had delegated day-to-day control of the schemes for which he was the scheme administrator to another individual". Judge Cannan observed that "one of the reasons for the tax charges which arise where a pension scheme makes unauthorised payments is to safeguard the tax-relieved funds in the scheme for the provision of retirement benefits."

Ben Nevis (Holdings) Ltd v HMRC (and related appeals) [2013] EWCA Civ 578

Overseas tax debt enforced in UK

The South Africa Revenue Service (SARS) obtained judgment for more than £200 million against a company (B) which was registered in the British Virgin Islands. SARS formed the opinion that B's assets had been transferred to another British Virgin Islands company (M), and that more than £7 million of this money was held in a London bank account. SARS asked HMRC for help in recovering the amounts due, in accordance with Article 25A of the Double Tax Convention between the UK and South Africa.

In February 2012 HMRC and SARS obtained freezing orders against B, M, and a Guernsey company (H), which was the registered holder of the shares in B and M. The companies appealed, and the Court allowed the appeal by H, but dismissed the appeals by B and M.

B and M appealed to the Court of Appeal contending that FA 2006, s 173 should not be treated as having retrospective effect and that SARS' claim was unenforceable in the English courts. The Court of Appeal unanimously rejected these contentions and dismissed the appeals. Lloyd Jones LJ held that the tax claims which HMRC and SARS were seeking to enforce fell within Article 25A of the Double Tax Convention, and that there was "no unfairness in Article 25A permitting the enforcement of pre-existing tax liabilities". The tax enforcement arrangements were authorised by FA 2006, s 173.

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