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Practical TAX Newsletter

RTI and the CIS

Steve Wade explains how these systems interact.

Bumpy start

The introduction of Real Time Information (RTI) has been described as the biggest change in the operation of PAYE since 1944, and as 'only a change in reporting requirements'. These statements may appear contradictory but both describe the basic principle of RTI whereby details of the employees' earnings, tax deducted, NICs and other payments, including tax and NIC free payments, made at the same time as payments liable to tax or NIC are reported to HMRC *on or before* the time of payment to the employees.

In practice this means *on or before the day of payment* to the employee requiring monthly weekly or even daily reports. This 'on or before' requirement has caused many businesses to review the way they operate PAYE, collect and review the data required regarding their employees.

Virtually every employer, with very limited exceptions, will be included in RTI from the biggest retailers to the smallest business employing one individual. Approximately 1.4 million businesses started to report details of PAYE from April 2013 with larger employers (over 5,000 employees) joining by October 2013.

Early confusion

With such a one size fits all approach it would be very surprising if there weren't some teething problems and difficulties as RTI is introduced. HMRC have relaxed the on or before requirement in certain circumstances (see www.lexisurl.com/rtioob).

On 19 March 2013 HMRC also published details of a relaxation for small businesses (fewer than 50 employees). This explained that: 'Until 5 October 2013, employers with fewer than 50 employees, who find it difficult to report every payment to employees at the time of payment, may send information to HMRC by the date of their regular payroll run but no later than the end of the tax month (5th)'. Full details of this relaxation can be found at: www.lexisurl.com/rtismx

This announcement appears to have caused some confusion as a clarification was issued on 25 March 2013 which stressed: "This is a temporary relaxation to give some extra time to small businesses that pay weekly (or more frequently) but who only run their payroll (or use an agent to run their payroll) at the end of the month. This extra time will enable these businesses to adapt their processes or change their arrangements with their payroll service supplier so that they can comply with the new legislation. This is not a withdrawal of the requirement to report PAYE in real time. All employers are still required to operate PAYE in real time and we expect most employers to be reporting PAYE in real time from their first payday on or after 6th April"

HMRC have relaxed the on or before requirement in certain circumstances.

Another area of confusion appears to be the interaction of RTI with the Construction Industry Scheme (CIS).

CIS

Before the introduction of RTI nearly all employers were required to file the PAYE

CONTENTS

year end employer annual return form P35 online. Limited companies filing a return solely to report CIS deductions suffered could file the return on paper. Such companies cannot continue to file on paper under RTI.

Form P35 has two entries relating to tax deducted under CIS. These are:

- deductions made from subcontractors; and
- CIS deductions suffered (limited companies only).

The first is the amount of tax a business deducts from subcontractors as reported on the CIS300 monthly returns, whilst the second is the total of any amounts that have been withheld from payments received by the business. The second amount is only reported on form P35 if the business is a limited company.

The deductions withheld by the business from payments to subcontractors are added to PAYE/NIC deductions from employees wages and increase the amount of tax and NIC due to be paid to HMRC for the year that is reconciled on the form P35. The CIS deductions suffered, (for companies only), reduce the amount of tax and NIC payable as a credit is claimed for the CIS deduction and this is reconciled on the form P35.

Following the introduction of RTI the form P35 will be abolished.

Full payment submission

Under RTI employers have to report details of an employee's earnings, tax and NIC deducted etc 'on or before' the day of payment to the employee. These details are reported in a full payment submission (FPS). These FPSs submitted during the year will contain details of the tax and NIC deducted from employees that were previously reported on form P35 at the year end. There is, therefore, no need to report them again and hence no longer any need for a form P35.

HMRC will add these amounts together and chase any underpayments.

However, the FPSs will not contain the answers to the P35 questions such as 'Did you make any 'free of tax' payments to an employee?' etc unless it is flagged as a final FPS.

A final FPS is something of a misnomer as you can submit more than one final FPS. For example, you may submit a second 'final FPS' to make a correction. Final meaning that no more payments are being made to the employees and that it can contain the answers to the P35 questions. The final FPS for the year ended 5 April 2014 has to be submitted by 19 April 2014 and consequently under RTI the normal P35 filing deadline is brought forward from the current 19 May deadline.

It is important to note that neither the FPS nor the final FPS contain any details of CIS deductions made or suffered.

Alternatively the P35 questions can be answered in an employer payment submission (EPS).

EPS

The employer payment submissions (EPS) are monthly submissions that allow the employer or business to:

- claim credit for any statutory payment recovered;
- claim credit for any tax suffered under CIS;
- inform HMRC that no payments have been made to employees and consequently no FPS is required – a 'Nil' EPS; and
- answer the P35 questions.

The P35 questions can be answered on the EPS after 19 April following the tax year end. This contrasts with the final FPS where those questions can only be answered up to 19 April.

There is no legal requirement to inform HMRC that no payments have been made to employees and that no FPS is required. However, if HMRC is expecting a FPS it will issue late filing notices and these will need to be dealt with by submitting an appeal on the basis that no payments were due. It may well be easier to submit a 'Nil' EPS than have the administrative burden of appealing against late filing and possibly late payment notices.

Limited companies

Where a limited company has a PAYE scheme and has suffered deductions under CIS from payments received for work in the construction industry, the amounts of the payments are reported on the EPS and credit is claimed as a deduction from the amounts paid to HMRC in respect of PAYE/NIC. HMRC's data guide describes these payments as follows:

> *"You will only need to make an entry if you are a **limited company** that has had CIS deductions made from payments you received for work in the construction industry. Enter the total amount of CIS deductions you suffered in the year to date."*

It also explains that once an amount is included in an EPS, it must be supplied for the remainder of the tax year (YTD). The amount will then be deducted from the amount HMRC expect to be paid based on the FPS and other EPS entries for that PAYE scheme.

Example

A limited company has deducted PAYE tax and NI of £4,500.
CIS tax deducted from payments it has received is £350.
Net PAYE payment due to HMRC by the company is £4,150.
If the EPS is not submitted showing CIS tax of £350 suffered, HMRC will issue demands for £350.

The FPS and EPS submissions both report year to date figures. However, neither the FPS nor the EPS contains the details of tax deducted under CIS from payments made by a business and reported on a CIS300 return.

CIS300 returns

The CIS tax that a business deducts from payments made to subcontractors is reported on monthly CIS300 returns. This process will continue unchanged in 2013/14 i.e. it will be on a monthly basis with the filing deadline being the 19th following the end of the tax month and

not on an 'on or before' basis. This part of the process is completely outside of RTI.

Where the business also has a PAYE scheme HMRC will know the amount of the tax due under CIS from the CIS300 return. HMRC will also know from the FPS and EPS submitted the amount of tax and NIC withheld from any employees that is due to be paid by the 19th (or 22nd for electronic payments) following the end of the tax month. HMRC will add these amounts together and chase any underpayments.

Contractor only schemes

The HMRC guidance explains that contractor only schemes (schemes with no employees) are not included in RTI (see: www.lexisurl.com/RTnss). Such schemes should be set up within HMRC's systems as XP type schemes.

It is not clear whether this flag will mean that HMRC will not require an EPS to suppress the chasing of FPSs that are not required.

Recent regulations

New regulations effective from 6 April 2013, ensure that where a subcontractor is claiming a refund for tax it has suffered under CIS, the subcontractor has to have paid over to HMRC tax they have deducted from other contractors under CIS and any tax and NIC they have deducted from their employees under PAYE.

The regulations also ensure that late submission of an FPS does not automatically lead to a contractor losing gross payment status. **TPT**

Steve Wade

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A game of three halves

Lisa Spearman updates her guidance on the statutory residence test.

There has been so much noise about tax in recent months and so many developments to stay in touch with that it is easy to forget things that were announced a long time ago, but have yet to come into force.

In TPT 32-16 (August 2011) I wrote about the introduction of a statutory residence test in response to the June 2011 consultation document. Since then there have been some changes and in December 2012 draft legislation was issued setting out what we hope is the final format of the test to be introduced by Finance Act 2013, to have effect from 6 April 2013. This seems like a good time to reflect on the latest shape of the test and see where we have got to.

This article is a very brief distillation of part of the draft legislation and guidance published in December 2012, which is subject to change. It is intended as a brief summation of the key points only and no action should be taken or refrained from in reliance on this article.

Three parts

As heralded the test is in three parts and, in the order of priority, the elements are:

1. Automatic overseas residence

If any of these criteria are met the individual is not resident in the UK for the tax year in question.

- resident in one of the three preceding tax years but spends fewer than 16 days in the UK in the tax year in question;
- not resident in one of three preceding tax years and spends fewer than 45 days in the UK in the tax year in question; or
- works full time overseas, and spends fewer than 91 days in the UK and works in the UK on fewer than 31 days.

2. Automatic UK residence

If you are not within part 1 (automatic overseas residence) consider if any of these elements, which will make you UK resident, are in point:

- 183 days of presence in the UK;
- a home in the UK available for more than 90 days and you are present at that home for at least 30 days and there is a period of more than 91 consecutive days when you have no other home anywhere else filling both these requirements; or
- work full time in the UK and 75% of the days you work are days on which you do more than three hours work in the UK.

3. Sufficient ties

If the position can't be determined automatically then the comparison between the number of ties with the UK and the number of days of presence has to be considered. The ties to be taken into account are:

- UK resident dependent family;
- accommodation available;
- work in the UK for more than three hours on more than 40 days a year;
- have spent more than 90 days in the UK in either of the preceding two tax years;
- whether more time is spent in the UK than elsewhere. (This rule applies only to those who are arguing they are leaving the UK).

The comparison table for those who were resident in one of the three preceding tax years is shown in table 1:

Table 1

Days spent in the UK in the year in question to be UK resident	Number of ties needed
16 – 45	at least 4
46 – 90	at least 3
91 – 120	at least 2
Over 120	at least 1

Where the individual has not been resident in any of the three preceding tax years the UK refer to Table 2.

Table 2

Days spent in the UK in the year in question to be UK resident	Number of ties needed
46 – 90	all 4
91 – 120	at least 3
Over 120	at least 2

All clear then? Well, no, perhaps not. There are some key definitions and a few significant changes from previous practice which we need to note.

Key definitions

Work

The HMRC draft guidance published in December 2012 states that 'work' takes its everyday meaning and includes all activities carried out in the performance of your duties but can also include time spent on gardening leave, travelling time and job related training. The key here is that HMRC have gone to some lengths not to be prescriptive, but to suggest that work is self-defining and pretty much everyone knows whether or not they are 'working'.

Working day

To meet the third automatic overseas test you must not work in the UK more than three hours a day on more than 30 days. The problem here in my view is not necessarily defining work but rather how to prove that one was not working. We can all think of cases where that could be hard. You should also note that a working day need not necessarily be a day of presence. Full time work means an average 35 hour week and there are rules set out on how to calculate the average. One of the key changes is that other than for international transportation workers, work is done at the location where it is actually done rather than where an employment is held. Work on a journey is treated as being done within or outside the UK changing at the time of embarkation or disembarkation. For example, say the journey takes eight hours and five of these are spent on a plane leaving the UK, then three hours would count as UK work and five as non UK work.

Presence

As under current rules, a day counts as a day of presence if one is present in the UK at midnight, and in limited cases days in the UK due to exceptional circumstances may be disregarded. However, there is also a new concept of deemed presence. If an individual has more than three ties with the UK, has been resident in one or more of the preceding three years and makes more than 30 visits to the UK on which he is absent at midnight then all subsequent visits in a fiscal year will count as days of presence regardless of their duration. This will be presumably monitored via the tax return entries but is clearly aimed at those trying to argue for non residence where it is not really sustainable.

The problem here is not necessarily defining 'work' but rather how to prove that one was not working.

Dependent family

A dependent family member is the spouse, civil partner or co-habitee of the individual and any minor child. There are specific rules for children at boarding school and for divided families. There are situations in which the residence status of one spouse may determine the residence of the other. Where this happens, for the purpose of breaking the circle only, the residence of the spouse is disregarded.

Home

A home is something more than accommodation and the tests use both words in slightly different senses. A home is a place that a reasonable onlooker would regard as an individual's home whereas accommodation is a place available at certain times but without amounting to a home in any normal understanding of that term. The legislation tries hard not to define the terms too precisely so as to preserve their natural meaning. There are examples given in guidance as to the sort of distinctions to have in mind where the matter is a determinant and specifically at the treatment of holiday homes. It is important when considering the tests to understand what the question is: whether one has a home or merely accommodation.

Spilt years

Again as under the current system, residence status is usually fixed for a whole fiscal year but a year of arrival or departure can be split into resident and non resident periods in certain cases. This is principally where one starts a new job or makes a home in the UK for the first time. The rules are more restrictive than previously and need careful review to ensure they apply where appropriate. Husband and wife are treated separately for the purposes of the test, except for the dependent family point, and also here in the split year section. An accompanying spouse who does not themselves have a full time job overseas can also claim a split year.

Conclusion

Space permits only a very brief resume of the main elements of the statutory residence test and readers will need to check the details carefully for themselves. The message is that the test is simultaneously simple and complex, there are some particular differences in terminology and some interesting record keeping challenges. Whatever the downsides, it will be a relief when the test is finally enacted. **TPT**

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newsfile

PAC report

On 26 April 2013 the Public Accounts Committee (PAC) of the House of Commons published its report: *Tax Avoidance: the role of large accountancy firms*. It raises some important issues which most tax professionals would agree with such as: the UK tax system is too complex, the international tax system is in need of some overhaul, and more transparency in corporate tax affairs would aid understanding. However, the tone of the report and the accompanying press release was high emotive, which has prompted robust responses from the big four accountancy firms, the ICAEW and HMRC.

One of the key accusations in the PAC report is that large accountancy firms have an unhealthy cosy relationship with government. It says: "They second staff to the Treasury to advise on formulating tax legislation. When those staff return to their firms, they have the very inside knowledge and insight to be able to identify loopholes in the new legislation and advise their clients on how to take advantage of them. The poacher, turned gamekeeper for a time, returns to poaching. This is a ridiculous conflict of interest which should be banned in a code of conduct for tax advisers."

The ICAEW pointed out that decisions on tax policy are ultimately for Ministers, and HM Treasury or HMRC have never expressed concerns about potential conflicts of interest. KPMG emphasised that individuals seconded from that firm to the Treasury do not write legislation or make policy decisions, their role is to provide tax technical input and commercial experience so that the authorities can make informed choices on tax policy.

There is already a professional code of conduct for tax advisers which has been jointly prepared by the professional institutes and reviewed by HMRC, published by the ICAEW Tax Faculty as TaxGuide 1/11, but available from all the institutes and large firms. That guidance is currently in the process of being updated, and is likely to include more guidance in the area of tax avoidance and the forthcoming GAAR.

Finance Bill 2013

A Public Bill Committee of the House of Commons has passed the following clauses of the Finance Bill without amendment:

- clause 2: personal allowance for 2013/14;
- clause 4: CT charge and main rate for financial year 2014; and
- clause 5: Small profits rate and fractions for financial year 2013.

NIC Bill

The government is to introduce a new National Insurance Contributions Bill in the coming Parliamentary session, which will:

- introduce an annual £2000 employment allowance for every business and charity;
- extend the GAAR to NICs;
- remove the presumption of self-employment for members of LLPs; and
- prevent offshore employment payroll companies avoiding employer NICs.

Single compliance process

HMRC has agreed to contact the tax agent of individuals and businesses selected for investigation under the single compliance process (SCP) trial. Under the SPC trial HMRC has been corresponding directly with the taxpayer, even if a relevant authorisation was in place. Now HMRC will write to the taxpayer in the first instance, giving them seven days to respond to say whether or not they want to deal directly with HMRC. If the taxpayer doesn't respond, HMRC will contact the taxpayer's tax agent by telephone to progress the case.

MLR businesses

During May and June 2013 compliance officers from HMRC will telephone businesses who are supervised by HMRC under the money laundering regulations 2007. The caller will identify themselves as an HMRC officer and will ask the businesses for their security information. The officer will ask further questions about the business activities and customers, to decide whether a visit is needed to businesses.

Designated stock market

The ICAP Securities & Derivatives Exchange Ltd (ISDX) has been designated as a recognised stock exchange under ITA 2007, s 1005, with effect from 25 April 2013. This applies for income tax, CGT and IHT purposes.

HMRC publications

SRT

HMRC has revised its guidance on the statutory residence test (SRT) and overseas workday relief. A new version of the booklet HMRC6: *Residence, domicile and the remittance basis* will be released soon. HMRC also plan to launch an online residence indicator which will give individuals an indication of their residence status for tax purposes after answering a few questions such as; days spent in the UK and where the taxpayer has a home.

Toolkits

The following HMRC Toolkits have been updated and enhanced for the 2012/13 tax year:

- capital gains tax for shares;
- capital gains tax for land and buildings;
- trusts and estates;
- capital gains tax for trusts and estates;
- chargeable gains for companies
- company losses;
- directors' loan accounts; and
- property rental.

Trusts & Estates newsletter

The April edition of the Trusts & Estates newsletter contains a discussion of the tax treatment of usufructs (the right to use someone's property). The HMRC view is that the creation of a usufruct is an interest in possession settlement under IHTA 1984, s 43(2). The creation of a usufruct in favour of another person will be an immediate chargeable transfer for IHT purposes and no spousal exemption would be available.

Other topics dealt with in that newsletter include:

- the tax liability of deceased person's estate;
- new form IHT 408; and
- post scanning.

SA and PAYE queries

Tax agents are requested to use certain primary and secondary paragraph headings from a list published by HMRC, in letters concerning self-assessment or PAYE issues. These headings help HMRC direct the query to right area within the department and to the person with the correct level of technical knowledge, see www.lexisurl.com/ltrheads.

ISA bulletin

Bulletin number 52 includes articles on:

- changes to ISA regulations
- reimbursing commission; and
- restatement of funds withdrawn during the RBS computer outage.

RTI guidance

End of 2012/13 year reports

Where the PAYE scheme was not in RTI for 2012/13 HMRC has made clear that the employer does not have to close off that year and submit the 2012/13 end of year reports before submitting the first RTI report for 2013/14. However, most payroll software, including the HMRC's *Basic PAYE tools* will not permit the employer to switch over to RTI submissions before the 2012/13 end of year reports have been completed.

New PAYE schemes

PAYE schemes that commenced in the last quarter of 2012/13 (and sometimes earlier) were automatically placed in the RTI pilot, but HMRC did not make this clear to the employer or to the employer's tax adviser. This meant that those employers could not file P35 and P14 end of year returns for 2012/13 as they were already (unknowingly) in the RTI pilot, so should have filed FPS returns under RTI by 19 April 2013.

The final FPS for 2012/13 is now late, and the RTI system will not accept late FPS returns. The solution under RTI is to submit an earlier year update (EYU) or an employer payment submission (EPS) showing the final submission for the year indicator, by 19 May 2013. However, many software packages, including the HMRC's PAYE Basic tools, do not yet offer the EYU report. There is some urgency about this as penalties can be charged for a late FPS which is not replaced by either an EPS or EYU by 19 May 2013. The HMRC basic tools software will not include the EYU functionality until the end of May 2013. HMRC apologise for this and offer a convoluted solution in their RTI pilot supplementary update for April 2013: www.lexisurl.com/EYU13

An alternative solution is to move the new PAYE scheme out of RTI for 2012/13 by resetting the RTI joining date to 6 April 2013. To do this the employer or their tax adviser needs to ring the HMRC employer helpline on 0300 200 3211. However, the call centre operators can only deal with up to five PAYE schemes in one telephone call. Once out of RTI for 2012/13, the employer can submit the end of year returns: P35 and P14 for 2012/13 online in the usual way.

Misaligned payment dates

Some employers are reporting the payment date for employees as the date the payroll was run. This is incorrect and can lead to the PAYE shown as due for a tax month on the FPS being misaligned with the amounts reported on the EPS. All PAYE deductions should be calculated and reported by reference to the date the employees are paid, not the date the payroll was run, unless those dates are the same.

For example, where employees are paid on 7 May but the payroll was calculated on 3 May the FPS should give:

- payment date as 7 May; and
- tax month as 6 May to 5 June.

HMRC has provided guidance on how to correct earlier errors created by this misunderstanding: www.lexisurl.com/paydates

Correction of errors

The CIOT has provided additional guidance on how to correct errors made on an FPS. The overriding rule is that if the correction requires an additional payment to the employee, the employer must submit an additional FPS on or before the payment date. If no additional payment is required the error can be corrected by either:

- using a revised year to date figures on the next FPS; or
- submitting an additional FPS for the pay period for the employees the error relates to.

The fundamental requirement is for the year to date figures for the latest RTI submission to be as accurate as possible. HMRC and DWP will use the most recent year to date values to update their systems.

Employer payment summary (EPS)

There is much confusion about the EPS report, when it needs to be completed and why. HMRC has produced additional guidance about the EPS here: www.lexisurl.com/EPSnew

The EPS cannot be submitted during the tax month, it must be submitted after the end of the tax month and before 19th of the following month. If no employees are paid in the month a nil EPS must be submitted, unless the PAYE scheme has been successfully registered as an annual scheme (see TPT 34-09 May01). End of year scheme information can be reported on an EPS or FPS, but those reports do have different reporting deadlines.

Tax Faculty guidance

The ICAEW Tax Faculty has brought together all its advice, news and online training course about RTI on one webpage: www.lexisurl.com/TxtcRTI

Employer guidance

Local bus services

Guidance on how employers can provide tax and NI free support to help employees use local bus services to get to work, has been clarified.

Employers can work with bus operators to provide say: additional bus stops, bus services at times to suit workers' shift times, or free or discounted journeys for workers on supported bus routes.

The support can be provided in the

points of law

S Bradley v HMRC TC2560

Temporary home not PPR

Mrs Bradley and her husband lived in a house in Ashley Road which they jointly owned. Mrs Bradley also owned a flat on Weston Way and a second house on Exning Road, both of which had been let to tenants.

In August 2007 she separated from her husband and moved into the flat on Weston Way. In March 2008 she advertised the property in Exning Road for sale. In April 2008, after her tenants had moved out, she moved into the Exning Road property and began redecorating it. In November 2008 she moved back to Ashley Road with her husband. In January 2009 she sold the Exning Road property.

HMRC issued an assessment charging CGT on the gain. She appealed, contending that the Exning Road house had been her principal private residence from April to November 2008. The First-tier Tribunal rejected this contention and dismissed her appeal, observing that she had already advertised Exning Road for sale before she began living there. Judge Aleksander found that 'she never intended to live permanently at Exning Road; it was always only ever going to be a temporary home, and therefore it was never her only or main residence'.

Lord Howard of Henderskelfe's Executors v HMRC UT [2013] FTC/02/2012

Painting was wasting asset

Lord Howard died in 1984. During his lifetime he allowed Castle Howard Estate Ltd to use a painting he owned by Sir Joshua Reynolds. The company bore the costs of insurance, maintenance, security and restoration of the painting. In 2001 his executors sold the painting

form of a season ticket paid for by the employer for a specific bus route, the cost of which may be incorporated into a salary sacrifice arrangement. However, free bus journeys can't be provided by means of a bulk purchase of tickets, or by zonal or regional tickets.

If a salary sacrifice arrangement was in place before 30 April 2013 based on a zonal or regional bus pass, that arrangement can continue until the end of the employee's bus pass agreement, if that is within 12 months. Any renewal of bus pass arrangements must meet the clarified conditions for the tax exemption.

Short term business visitors

The PAYE arrangements for short term business visitors to the UK have been updated from 6 April 2013. Details are given in the PAYE manual at para PAYE82000.

Payment booklets

The final batch of payment slip booklets for 2013/14, that employers to use when paying PAYE by cheque, has been delayed. Employers who have not received a payment slip in time for the 19 May 2013 payment date are advised to pay electronically by 22 May, or print a payment slip from the HMRC website and pay by post.

P11D forms

Employers who were part of the RTI pilot in 2012/13 will receive their P11D(b) forms and payslips slightly later this year.

Regulations

Purchase of own shares

The Companies Act 2006 has been amended by regulations (SI 2013/999) with effect from 30 April 2013, to make it easier for companies to buy back their own shares from employees who have participated in an employee share scheme. Private limited companies will be able to use cash to do this, without having to designate those amounts as distributable reserves, within limits. The purchase price for those shares can be paid in instalments. Only 50% of the shareholders are required to approve a resolution to buy back shares.

Forum minutes

Pension industry

The Pension Industry forum met on 17 October 2012 and discussed the following:

- migration to RTI and information for pension providers;
- cumulative tax codes that deduct more than 50% of income;
- revision to registered pension schemes manual;
- life time allowance fixed protection; and
- cost of implementing the Scottish rate of income tax.

International tax

Global action needed

Prime Minister, David Cameron, has written to Herman Van Rompuy, President of the European Council, setting out the case for radical global action to tackle tax evasion and aggressive tax avoidance. The letter, copied into leaders of all EU member states, sets out the PM's ambition that the May European Council will inject the political will to tackle the problem and restore confidence in the fairness and effectiveness of our tax system, and calls for action in four key areas:

- a global standard for multilateral information exchange;
- increased transparency in beneficial ownership;
- reform of global tax rules through the G20 and OECD; and
- to help developing countries collect their own taxes.

Overseas territories

The British overseas territories: Anguilla, Bermuda, British Virgin Islands, Montserrat and Turks & Caicos Islands, have agreed to pilot the automatic exchange of tax information with the G5 nations (UK, France, Germany, Italy and Spain).

Taxing multinationals

This HMRC Issues Briefing document outlines the work of the HMRC transfer pricing group and refers to the OECD's on-going review of profit shifting between countries.

points of law

for £9.4 million. They declared the gain on their self-assessment tax return, but subsequently sought to amend the return on the basis that the painting was a wasting asset and thus sale of the painting was exempt under TCGA 1992, s 45.

HMRC refused the claim that the painting was 'plant' and a wasting asset, and the First-tier tribunal agreed with HMRC. The Upper Tribunal held that 'the painting satisfied the tests as to function and as to permanence in the established test as to the meaning of plant' and that TCGA 1992, s 44(1)(c) deemed it to be a wasting asset. The taxpayers' appeal was allowed.

Land Securities Plc v HMRC UT [2013] UKUT 124

Capital loss scheme fails

Land Securities Plc entered into a series of transactions between March and September 2003, disposing of nine shares which it had acquired in 1969 and reacquired them six months later. The transactions were intended to exploit a perceived loophole in TCGA 1992, s 106 (repealed by FA 2006) and create a capital loss for tax purposes of £200 million.

HMRC rejected the claims on the basis that the value-shifting provisions of TCGA 1992, s 30 applied to diminish the loss. Land Securities appealed and the both the First-tier and Upper Tribunal dismissed the appeals.

Roth J held that, for the purpose of TCGA 1992 s 30(9), the 'relevant acquisition of the asset' was the reacquisition of the shares in September 2003, rather than their original acquisition in 1969, so that this was 'a case in which the disposal of an asset precedes its acquisition'. TCGA, s 30(5) required 'an increase to be made to the consideration for the disposal on 31 March 2003'. There was 'no logic to a partial adjustment to consideration', and 'in the circumstances of this case, having regard to the scheme undertaken by Land Securities, and the tax-free benefit which the scheme delivered and which enabled the company to claim the loss in question', the requisite adjustment was 'to increase the consideration for the disposal of the nine shares to the extent necessary to eliminate the loss'

P Degorce v HMRC TC2593

Film scheme fails

A bank marketed a tax avoidance scheme whereby, in a complex series of transactions, a film company (GF) sold the rights in two films to an individual: Degorce for a nominal price of £21.9 million. Similar transactions were undertaken with 11 other taxpayers in relation to other films.

Degorce was required to pay £4.8 million and borrowed the balance of £17.1 million from a company associated with GF. Later on the same day Degorce assigned the rights to GD (another company associated with GF) for £881,000. Dagorce claimed the difference as a trading loss.

HMRC rejected his loss claim on the basis that Degorce was not trading, and that the aim of the transactions was not to make profits but to 'generate artificial tax losses for the participants'. Degorce appealed, contending that he was carrying on a trade of acquiring and exploiting film distribution rights.

The First-tier Tribunal rejected this contention and dismissed Degorce's appeal, holding that Degorce was not carrying on a trade. Judge Blewitt held that 'the sole purpose of the scheme, and therefore the sole purpose of Degroce's participation therein, was to shelter his taxable income'.

Cairnsmill Caravan Park v HMRC TC2580

Resurfacing was repair

A partnership operated the Cairnsmill caravan park. It claimed a deduction for the cost of resurfacing part of the 51 acre park, replacing the about 3 acres of grass surface with a hardcore surface. The purpose of this change was to provide better access to touring caravans. HMRC rejected the claim for the cost of resurfacing on the basis that the expenditure was capital.

The First-tier Tribunal allowed the partnership's appeal. Judge Reid observed that the entirety of the caravan park consisted of open land, a shop and recreational areas. The new hardcore surface covered only a relatively small area. It did not appear to be an improvement to the entirety of the park, as the new surface had less aesthetic appeal, was not suitable as a recreational area for children, and had generated customer complaints. He held that the expenditure should be treated as revenue rather than capital.

Feedback request

Are you satisfied with the contents of this newsletter? Are there topics or issues which are being ignored, or which are covered too frequently? Please let me know your views by writing to me at address shown below.

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