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Practical TAX Newsletter

Annual tax on enveloped dwellings (ATED)

Donald Drysdale provides an overview and examines the basics of ATED.

What is ATED?

The annual tax on enveloped dwellings (ATED) is a completely new tax. It was originally to be called the annual residential property tax (ARPT), but was re-named before it started to bite on 1 April 2013. The relevant provisions are contained in Finance Act 2013 sections 94 to 174, and schedules 33 to 35.

FA 2013, sch 33 sets out the procedures relating to ATED returns, enquiries, assessments and appeals. FA 2013, sch 34 addresses HMRC's information and inspection powers, and penalties. ATED is brought within the regime for disclosure of tax avoidance schemes (DOTAS).

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 (SDLT). 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 a follow-up article.

Who pays ATED?

ATED is chargeable on certain 'non-natural persons' including companies, collective investment schemes and partnerships with corporate members. The reason such vehicles have been targeted is that they have been used, typically but not exclusively, by those of overseas domicile, to 'envelope' high-value residential properties, creating opportunities for these properties to be sold on without SDLT being paid.

What is chargeable?

ATED is charged for a chargeable period on the value of a chargeable interest (see definitions) if, on one or more days in a chargeable period, it is a single-dwelling interest with a taxable value of more than £2 million, and the non-natural person meets the defined ownership condition with respect to the interest. If a company is jointly entitled to a chargeable interest (as a member of a partnership or otherwise), then the ownership condition is regarded as met in relation to the whole chargeable interest.

Definitions

A 'chargeable period' is the year from 1 April 2013 to 31 March 2014, or any subsequent year beginning with 1 April.

A 'chargeable interest' includes an estate, interest, right or power in or over land in the UK, excluding certain exempt interests such as any security interest or a licence to use or occupy land.

A 'single-dwelling interest' is a chargeable interest that is exclusively in or over land which consists of a single dwelling or part of a dwelling. There are provisions for looking at a single interest

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in two or more dwellings, or dwellings and non-residential land, as if they were separate chargeable interests. Different interests in the same dwelling held by the same party are to be regarded as one, taken at their merged market value.

A 'dwelling' is a building or part of a building used or suitable for use as a single dwelling, or being constructed or adapted for such use. It includes land occupied or enjoyed with the dwelling as garden or grounds, including outbuildings, and land that subsists for the benefit of the dwelling. However, it excludes residential accommodation for school pupils, students, members of the armed forces, and other specified institutions.

Where part of a building is suitable for use as a dwelling, that part is not prevented from forming part of a larger single dwelling. Similarly, different parts of a single building (including a terrace or a pair of semi-detached houses) may comprise separate 'linked' dwellings. In both these cases there are provisions that may treat the multiple dwellings as a single dwelling, but with some exceptions.

How is it calculated?

ATED is payable annually for each day on which the non-natural person is beneficially entitled to a single-dwelling interest worth more than £2 million, but see below regarding subsequent adjustments.

ATED is calculated using a banding system applied to the value of each single-dwelling interest. The charge is based on the market value at the latest 'valuation date'. Valuation dates include 1 April 2012, or (if later) the first day after 1 April 2013 on which the interest is subject to ATED, and other dates when significant acquisitions or disposals take place. Significant transactions are over £40,000, but looking at linked transactions together and using market value if between connected persons.

Valuation dates will also arise every fifth anniversary of 1 April 2012. Market value is as for CGT purposes, and must be self-assessed, with a requirement to retain records of any valuation. Values may well become a bone of contention, especially at the band margins.

For 2013/14 the amount of ATED payable for a single-dwelling interest is shown in Table 1.

Table 1

2013/14 *ATED payable*	*Property value*
£15,000	over £2m up to £5m
£35,000	over £5m up to £10m
£70,000	over £10m up to £20m
£140,000	over £20m

The annual tax charges are to be indexed in line with the consumer price index (CPI). However there is no provision for indexing the property value bandings, so there is an expectation that more dwellings will fall within the scope of ATED as property values rise in future.

How is it collected?

ATED is a self-assessed tax, administered by HMRC. An ATED return for 2013/14 must be made no later than 1 October 2013 if the interest bringing the person into charge to tax was held on 1 April 2012. If the interest is acquired later, the return must be made by 1 October 2013 or, if later, within 30 days after the interest was acquired. The tax for 2013/14 is payable on or before 31 October 2013 in most cases.

For 2014/15 and each subsequent chargeable period, an ATED return must be made by 30 April in the period or, if later, by the end of the period of 30 days beginning with first day in the period on which the person is within the charge with respect to the interest. This 30-day limit is extended to 90 days in the case of new interests in new dwellings or dwellings produced from other dwellings.

Because ATED is payable early in the chargeable period, it is payable initially on the basis that the interest will be held for the whole period. If less tax becomes due (eg because of days on which the interest is not held, or other reliefs), the tax charge can be reduced by a claim for 'interim relief' made during the period, and a repayment made. Otherwise the tax is subject to adjustment if it becomes apparent that it should be higher, or if a claim is submitted no later than the end of the following chargeable period, it may be lower.

Acquisitions, disposals and conversions

Where an interest in a dwelling is acquired or disposed of, the effective date of acquisition or disposal for the purpose of determining entitlement to the interest, is the date of completion of the contract or (if earlier) substantial performance. Substantial performance takes place when possession of substantially the whole interest passes, or when a substantial amount of the consideration is paid.

Where an existing building that is a dwelling (or dwellings) becomes a different dwelling (or dwellings) as a result of structural alteration, or as a result of demolition and rebuilding, the old single-dwelling interests remain in being until completion of development, and the first valuation date of the new single-dwelling interests falls on the next day. Where a dwelling is demolished and not replaced, the single-dwelling interest ceases to exist on the date when, as a result of the demolition, the building is no longer suitable for use as a dwelling. In all other cases where a new dwelling is constructed, or created by altering an existing building, its first valuation date is the date of completion or, if earlier, first occupation.

There are separate provisions dealing with conversion of a dwelling for non-residential use, and damage to a dwelling.

Exceptions from ATED

There are a number of reliefs and exemptions from ATED. For example, there are reliefs for residential dwellings which are leased out in a property rental business, held for sale in a property development or trading business, exploited in a trade of permitting the public to visit, stay in or otherwise enjoy the property, or provided for employees to use in the owner's trade. There are also reliefs for charities and exemptions for public and national bodies and dwellings which are conditionally exempt from inheritance tax. The ATED reliefs and exemptions will be the subject of a follow-up article.

Reducing exposure

Non-natural persons liable to ATED, and their proprietors, are potentially within the scope of a wide range of other taxes. Those wishing to reduce exposure to ATED and the related CGT charge will need to give careful thought as to the way their high value residential property interests are held, and it would not be prudent for them to consider ATED in isolation. While options might include dismantling or altering existing ownership structures, other possibilities might come to light as a result of a review of the available ATED reliefs and exemptions. TPT

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Cap on income tax reliefs

Annette Morley explores the extent of this restriction.

Introducing the idea

In the March 2012 Budget we were warned that offsetting of losses to reduce tax on other income was to be curbed. A consultation began in July 2012 and was followed by draft legislation published on 11 December 2012.

Finance Act 2013 introduced the legislation to be included in ITA 2007. New section 24A imposes a limit on certain deductions which may be made at Step 2 of the income tax calculation for individuals in ITA 2007, s 23. It results in a consequential amendment to ITA 2007, s 23 to ensure that s 24A is included alongside s 25 when the reliefs are applied. ITA 2007, s 24A will set out each affected loss relief (s 24A(6)) as well as the calculation method (s 24A(8)).

What will be the effect?

The new restrictions apply to individuals, not companies. The amount of the targeted losses available for relief against general income, of any year, will be limited to the greater of £50,000 and 25% of 'adjusted total income'.

The legislation is effective from 6 April 2013. Although this means that losses made in the tax year 2013/14 are the first to be restricted, the cap will apply to any earlier year to which a 2013/14 loss is carried back.

The restrictions do not supersede other loss relief limitations already in place such as:

- LLP losses limited to capital contribution of member;
- losses of limited partners;
- £25,000 limit on an individual in a non-active capacity;
- five consecutive years of farming losses;
- hobby occupations; and
- losses calculated under the new cash basis accounting.

Which are the capped losses?

There are ten affected losses. Those likely to have the greatest impact are discussed below.

Trade loss relief

It is the prospect of this relief against general income (ITA 2007, s 64) being restricted that has caused most consternation. It includes Lloyd's losses. However, overlap relief and business premises renovation allowances (BPRA) are excluded from the restriction. Losses carried forward against future profits of the same trade are not affected, so the balance of the capped loss would eventually get relief if the trade becomes sufficiently profitable. Of course, there is no guarantee that tax would be saved at the same rate in the future.

Not every eventuality has been identified in the final legislation and explanatory notes. It is uncertain as to whether the new cap would apply to losses relieved under TCGA 1992, s 261B, or ss 261D-E. These sections allow income tax losses claimed under ITA 2007, ss 64, 96, 125 & 128 to be treated as capital losses. I believe the cap would apply equally to s 261B (and ss 261D-E), because of the way 'the relevant loss' is determined in the new legislation. An alternative view is that the income tax loss in excess of the capped amount can be converted into a capital loss. It seems the new restriction might provide fertile ground for tax advisers to challenge HMRC's interpretation of the legislation.

Early years' trade loss relief

This is applicable to the first four years of the business and follows from a trading loss calculated in the same way as the section 64 relief. It is at ITA 2007, s 72 and will be subject to the cap. Similarly to the trading loss under s 64, overlap relief and BPRA are not restricted.

Property loss relief

This has been highlighted by HMRC as a key target alongside trades. Currently, where a person incurs a loss in a UK or overseas property business, he/she may make a claim for that part of the loss relating to capital allowances and agricultural expenses to be set against general income for the tax year in which

Example

2013/14

Abigail has income of £300,000 from employment and £450,000 from a partnership share. She has a property rental business which has led to losses for which she is entitled to relief under ITA 2007, s 120 of £250,000.

Abigail's cap on loss relief is £187,500, being 25% of £750,000, as this is greater than £50,000. She claims this amount against her general income in that year, leaving £62,500 of losses unrelieved. As property loss relief permits claims in the same or next tax year, she is able to offset that balance (subject to income levels and the 2014/15 losses cap) against her 2014/15 income.

2014/15

Abigail has general income of £750,000, and losses from her property business of £100,000. She makes a claim for property loss relief (ITA 2007, s 120) against her 2014/15 income.

Her losses cap in 2014/15 is £187,500 (25% of £750,000). Abigail can claim the full amount of her 2014/15 property loss of £100,000. She can also claim the 2013/14 unrelieved losses of £62,500 against her general income of 2014/15, as the combined losses of £100,000 and £62,500 total less than the 25% cap of £187,500 in that year.

the loss is made or the following tax year, (ITA 2007, s 120). In future that loss will be capped, with the exception of BPRA.

Qualifying loan interest

This is a valuable although specialised relief. Interest can be set against general income where it is charged on certain types of loan. The loans which are most frequently encountered are those used to purchase shares in a qualifying close company or a partnership, see ITA 2007, s 383.

Share loss relief

This relief is available where an individual incurs an allowable loss for capital gains tax purposes on the disposal (including deemed disposal in respect of negligible value) of qualifying shares that meet certain conditions (ITA 2007, s 131). A qualifying capital loss can reduce the individual's taxable income. The new cap will not apply to restrict capital losses on EIS or SEIS shares.

The other affected losses are:

- post-cessation trade relief (ITA 2007, s 96);
- post-cessation property relief (ITA 2007, s 125);
- employment loss relief (ITA 2007, s 128);
- former employees' deduction for liabilities (ITEPA 2003, s 555); and
- losses on deeply discounted securities (ITTOIA 2005, s 446 and s 453).

The cap in practice

The boxed example illustrates how the restriction to loss relief will work and its impact on consecutive years of losses.

Calculating adjusted total income

This calculation is necessary to arrive at the 25% figure to compare with £50,000. It is the greater of those two which will be the cap.

The start point is the total income liable to income tax. Next, adjustments are made to include an individual's charitable donations via payroll giving and to exclude pension contributions. The aim of these two adjustments is to ensure that all individuals are treated in the same way irrespective of whether these deductions are made before or after tax. Employees should be reminded that their payroll giving donations are not reported on their P60s, so if they wish to maximise their 'adjusted total income' and the consequent 25% limit they will need manually to add their donations to their gross salary.

Note that tax relief on charitable donations is not part of the new regime so the amount of gift aided donations eligible for higher rate tax relief will not be subject to restriction.

The limit for the current year will be applied automatically through the self assessment tax return. However, where the limit is applying to an earlier year through a carry back claim a manual calculation must be made. This is the current method for arriving at a prior year claim so there are no new procedures to follow, it is just the calculation that will differ.

What can we do?

According to HMRC's *tax information and impact note* published on 11 December 2012, around 8,000 individuals will be affected by the new measure. How many of those will be your clients? What will they want from you? Ideas, probably.

Some clients (doubtless with your help) took such steps as were possible after the warning was issued in March 2012, perhaps hastening any expenditure that maximised a loss in 2012/13. Going forward, ideas might include the following:

Disclaim WDAs

Claiming capital allowances and, particularly, annual investment allowance, is often carried out automatically. In a high loss year where it is clear the loss will be capped it might be better not to claim any capital allowances, thus maximising a current year loss in subsequent years.

Budgeting

By projecting the pattern of profits and losses the peaks and troughs might be evened out better, rather than finding out too late to take preventive steps that they have spiked in one year and plummeted in the next. Planning ahead in this way might enable:

- non-essential repair work to be timed to the most suitable year;
- salaries and pension payments to family members to be used as an expenses control tool;
- income planning where general income includes that from a manageable source such as a personal company. Perhaps dividends could

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International tax system

The Wyman Symposium held at ICAEW on 3 July posed the question: *Towards a better international tax system: does it require reform or a new regime?* Four distinguished speakers debated the issue:

- Francesca Lagerberg, Head of international tax with Grant Thornton;
- Mike Williams, Director of international tax at HM Treasury;
- Will Morris, Director of global tax policy at General Electric; and
- Chris Sanger, Global head of tax policy at Ernst & Young.

All the speakers agreed that the international tax system needs reform, but a completely new tax regime is not the answer. Mike Williams pointed out that we need to start the journey to reform from where we are. Many of the tax rules work well to support international investment and trade, but some need updating and some areas need fresh thinking.

Will Morris said there is not a lot of hard data about tax base erosion and profit shifting, so it is difficult to know how much is actually wrong with the tax system. However, there are some clear areas of concern:

- the digital economy;
- intellectual property; and
- hybrid instruments which are treated as debt or equity in different jurisdictions.

Chris Sanger and Francesca Lagerberg both emphasised the need for education to improve understanding of the tax system by the general public and politicians.

Will Morris said we have a window of opportunity to reach agreement between the OECD countries, the BRICs and other developing countries, as the economic balance between these groups is changing. The window will close soon, so every party needs to be constructively involved in the reform.

Digital services

HMRC is planning to expand the digital services it provides. It is proposing that from 2015/16 individual taxpayers will be able to do the following online:

- request tax repayments;
- view the make-up of their PAYE code;
- see end-of-year tax reconciliation;
- update personal details; and
- report additional sources of income.

More online services will also be made available to small businesses, but not to the tax agents who represent those taxpayers.

Finance Bill 2013

The House of Commons stages of the Bill were completed on 2 July. The following new clauses and schedules were added to the Bill at the report stage:

- Cl 4 & Sch 1: transfer of deductions;
- Cl 5 & Sch 2: restrictions on buying capital allowances;
- Cl 6: bank levy – high quality liquid assets;
- Cl 7: restrictions on interim payments in proceedings relating to taxation matters.

The government tabled amendments to the Bill at the report stage in the following areas:

- IHT election – to allow individuals who are now treated as being UK domiciled, to make an IHT election to be treated as UK domiciled for period in which that person was not actually UK domiciled. A retrospective election will also be permitted following a divorce.
- Qualifying insurance policies – HMRC's powers in relation to the new premium limit on qualifying insurance policies are widened.
- Tax advantaged share schemes – rules for 'general offer' clarified.
- REITS – to ensure that profits of a property rental business do not include amounts attributable to capital allowances and other tax adjustments where UK REITs invest in other UK REITs.
- Set-off of debts for IHT – only debts and liabilities incurred on or after 6 April 2013 will be caught by the anti-avoidance provisions.

No further amendments can now be made before Royal Assent. The amended text of the Bill as it was sent to the House of Lords can be downloaded here: www.lexisurl.com/FB13L

Tax Assurance

Edward Troup, the HMRC Tax Assurance Commissioner has released his first report covering the period from August 2012 to March 2013, which describes the mechanisms for resolving different types of tax disputes. In this first period 22 proposals from taxpayers to resolve the dispute were referred to the assurance commissioners for a decision; half were accepted, and six further cases were accepted with conditions. The report also includes example cases which have been anonymised.

increase income in a high loss year so the cap calculated as 25% adjusted total income exceeds £50,000.

Conclusion

As always with significant amendments to tax legislation, our clients and their reactions must be our focus. It is vital that we at least manage expectations.

If clients have a recurring pattern of loss relief and consequent income tax reduction, ensure they are warned of the change in plenty of time. Suffering the change will be disappointing enough – discovering it after the anticipated tax refund has been spent in advance could be viewed as a tragedy! **TPT**

Annette Morley

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newsfile

Consultations

Gift Aid and digital giving

When charitable donations are made by text message, the recipient charity can only reclaim gift aid on those donations where the donor has made a gift aid declaration. This can mean the charity fails to reclaim up to 95% of the gift aid which would otherwise be available. The government wishes to make it easier for digital donations to qualify for gift aid. One way could be to have a database of universal gift aid declarations. Comments are requested by 20 September 2013.

Employee owned structures

The government wishes to encourage more businesses to be owned by their employees, by means of an indirectly employee-owned company. One way to achieve this is to establish an employee benefit trust (EBT) to hold the shares in the employing company on behalf of the employees. The government has proposed the following tax reliefs to support such employee owned structures.

CGT

Gains arising on the disposal of a controlling interest in a business or a company would be exempt from CGT, where the interest is transferred to an indirect employee-owned structure. Where control of the business does not lie in the hands of one person the relief may be available to all connected owners who transfer their interest to the employee-owned structure. The relief would be available to individuals and personal representatives of deceased individuals.

Income tax

A bonus paid to employees by the employee-owned structure would be free of income tax and NICs. This would be a dividend-like payment as it would relate to the profits of the business, but it would not be a dividend as such. Comments are requested by 26 September 2013.

HMRC publications

Catch-up campaign

HMRC has launched a campaign to encourage individual taxpayers who have not submitted self-assessment tax returns they have been sent for 2011/12 or earlier years, to submit those returns by 15 October 2013.

The incentives for the taxpayer include the avoidance of a determination being raised to collect unpaid tax, and potentially receiving a lower penalties for late submission of returns and late payment of tax. However, these marginally favourable terms are not available to taxpayers who are not registered for self-assessment.

Employee share ownership

Following recommendations made in the *Nuttall review of employee ownership*, HMRC has released the following documents:

- purchase of own shares by non-quoted companies – tax implications for employees selling shares; and
- employee shares trust – introduction to tax issues.

The Department for Business Innovation and Skills has also produced some model documentation for employee ownership.

Fixed rate deductions

From 2013/14 unincorporated business may use prescribed fixed rate deductions in place to calculations of actual expenditure for:

- use of home;
- motoring and motorbike expenses; and
- private use where the proprietors live in the business premises.

Revenue & Customs Brief 14/13 explains what items of expenditure these fixed rate deductions are deemed to cover.

The disallowance for private use of business premises such as pubs or B&Bs has previously been arrived at through board and lodging agreements with local tax offices. These local agreements cannot generally be used from 2013/14. However, as transitional measure where the rate from a local agreement was used in 2012/13 that rate can be used for 2013/14.

Business advice emails

HMRC is offering to send business advice emails to small businesses to remind them to submit tax returns on time, pay taxes by the due date, and to provide them with guidance about the type of financial records to keep. New businesses can sign up to receive these emails when they first register for tax services online. Existing businesses can opt to receive these business advice emails from the HMRC online services page – once they have logged in.

Dishonest conduct

HMRC has revised its guidance on the operation of the legislation to prosecute tax agents for dishonest conduct.

Money laundering regs

The guidance for trust and company service providers who may need to register with HMRC under the money laundering regulations, has been updated.

ATED returns

The annual tax on enveloped dwellings (ATED) will be brought into effect from 1 April 2013, by Finance Act 2013. The first ATED returns are due by 1 October 2013. The ATED return will have to be completed online. A draft version of that return has been released. The final version will go live when FA 2013 is passed.

Pension schemes

Form P53 was used previously to reclaim tax deducted from small pensions taken as a lump sum payment, has been revised. There is now an interactive form to be completed online.

Extra Statutory Concessions

The list of HMRC extra-statutory concessions has been revised and reissued as Notice IR1.

Employer advice

Duplicate employments

Under RTI reporting a number of duplicate employment records have been created erroneously. HMRC has blamed employers for these errors, saying the

points of law

P Manduca v HMRC TC2648

Compensation not capital

Mr Manduca took up employment with Dexia Bank in April 2001. The bank's directors agreed to pay Manduca an investment bonus as consideration for him introducing certain business to Dexia. However, in November 2001 Dexia made Manduca redundant without paying him the promised investment bonus. Manduca began legal action against Dexia, which was settled out of court, and Dexia agreed to pay Manduca compensation for the loss of the investment bonus, in addition to the redundancy payment which Manduca had already received.

In his 2002/03 return, Manduca treated the compensation payment as a capital receipt. Following an enquiry, HMRC issued a closure notice treating it as chargeable to income tax (under Schedule D, Case VI then in force). The First-tier Tribunal dismissed Manduca's appeal, holding that the agreed investment bonus, and thus the compensation payment, was a reward for the part which Manduca had paid in enabling Dexia to acquire additional business, and was not a capital sum.

B Manning v HMRC TC2666

HMRC did not read the rules

Benedict Manning was employed by Tradedoubler Ltd (T) which ran a share options scheme for its employees. On 28 October 2007 Manning notified T that he wished to exercise his option rights over 7998 of shares for which he had paid £7636. The market value of the shares at that time was £111,579. The scheme rules provided that Manning was required to reimburse T for the PAYE due in respect of the option exercise within 30 days, and only after that PAYE was paid would the employee obtain a beneficial interest in the shares.

However, T did not provide Manning with details of the amount of PAYE due from him until 28 March 2008, and as a result of the delay Manning's right to acquire 7998 shares had lapsed. Manning paid the PAYE and NIC due to T on 11 April 2008, and on that date the contract to acquire 7998 shares became unconditional.

In 2011 HMRC issued an assessment on Manning, charging tax under ITEPA 2003, s 222 on the basis that he had failed to reimburse T with the PAYE due

duplicate records have arisen because the employer failed to follow recommended procedures such as:

- failure to include the employment in the alignment return;
- incorrect reporting of starters; or
- a change to employment ID without changing the appropriate indicator.

PDV

Employers who use the PAYE desktop viewer (PDV) should download the new version of this software to enable them to view the latest versions of PAYE notices.

NIC for workers in Croatia

Croatia became a member state of the EU on 1 July 2013. From that date the national insurance position of people who move to Croatia to live and work, or who come to work in the UK from Croatia is governed by EC regulations 883/204 and 987/2009.

P11D(b) returns

Employers who joined the RTI pilot for 2012/13 were not sent a reminder to complete form P11D(b), which was due by 6 July 2013. If this form is submitted by 19 July 2013 it will not attract a late filing penalty.

HMRC manuals

IHTM

Guidance in the *Inheritance Tax Manual* concerning employee benefit trusts has been completely rewritten.

Regulations

Country categories

To establish the level of penalties that may apply to errors or under declarations related to transactions connected with offshore territories, the designation of territories regulations allocates those territories into risk categories: 1, 2 or 3.

An amending order (SI 2013/1618), reclassifies Liechtenstein and Switzerland from category 2 to category 1 with effect from 24 July 2013, to reflect the conclusion of agreements with those countries for automatic exchange of information. A number of other territories with whom the UK now has information-sharing agreements are reclassified from categories 3 to 2.

Corrections

PETs and IHT

Emma Hunt has provided the following clarification of a point in her article: *How to make an effective gift* (TPT 34-11 June 01, 2013).

If all the gifts made by an individual during the seven years before they died are in excess of the IHT nil rate band threshold (£325,000 for 2013/14), IHT will be due on the value of all of the gifts that brought the total above the nil rate band threshold. In this case, the donee will usually have to pay the tax due on their gift. If the donor survived between three and seven years after making the gift, and the total value of gifts made is over the nil rate band threshold, any IHT due on the gift can be reduced by taper relief.

To the extent that the gifts made by an individual during the seven years before they died are lower than the nil rate band threshold, there will be no IHT payable on death.

ESC A19

John Kimmer, technical officer of the ATT, has commented on Andrew Rainford's article: *Reasonable belief for ESC A19* (TPT 34-12 June 02, 2013). 'HMRC has never considered forms P14 information for the purposes of concession A19. HMRC will use the receipt of the form P14 as the trigger date for the timing condition, but it does not accept that the information on the P14 is relevant.'

John Kimmer has led a team which has been negotiating with HMRC in relation to ESC A19 and PAYE reg 72 for a number of years. He hopes to report results from these long negotiations in TPT later this year.

points of law

within the statutory 90-day time limit. Manning appealed, contending that he had reimbursed T within a month of T informing him of the liability. The First-tier Tribunal allowed Manning's appeal, finding that the 'relevant date' for the purpose of s 222(4) was 28 March 2008, rather than 28 October 2007, as HMRC had asserted.

Judge Sir Stephen Oliver observed that s 222 was 'penal in its effect' and that 'where it applies, it brings into charge to tax notional amounts that would otherwise have no place in the taxing system'. HMRC had 'conducted their PAYE investigation without apparently troubling to look at the scheme rules. The result was that, unless Manning had appealed, HMRC would have earned a substantial windfall gain at his expense.' Judge Oliver concluded that 'when Parliament introduced section 222, they expected it to be properly and carefully exercised', and that it should not be treated as 'mechanistic' in its effect.

EM Ramsay v HMRC [2013] UKUT 226(TCC)

Incorporation relief due

Mrs Ramsay owned a large house in Belfast, which was divided into ten let flats. In 2004 she transferred the letting business including the property to a company, claiming incorporation relief under TCGA 1992, s 162. Following an enquiry, HMRC issued a ruling that incorporation relief was not due, on the grounds that the activities were more akin to those carried out by a passive owner of an investment property, than those of a business owner.

The Upper Tribunal allowed Ramsay's appeal (reversing the FTT decision), saying the concept of business in the context of incorporation relief is very broad; it does not have to amount to a trade and there is no exclusion for an investment business. Judge Berner summarised the factors which indicate whether the activities amount to a business for incorporation relief as:

- a serious undertaking or occupation earnestly pursued;
- something that is actively pursued with reasonable or recognisable continuity;
- a certain amount of substance in terms of turnover;
- are conducted in a regular manner and on sound business principles; and
- are of a kind which, subject to differences of detail, are commonly made by those who seek to profit from them.

J Berner held that the activity which Ramsay had undertaken in respect of the property letting business outweighed 'what might normally be expected to be carried out by a mere passive investor' and was sufficient in nature and extent to amount to a business for the purpose of TCGA 1992, s 162.

Trustees of David Zetland Settlement v HMRC TC2690

BPR not due

A trust held a leasehold interest in a commercial property, and also owned 11 residential properties. The trustees appealed against a charge to IHT under IHTA 1994, s 64, contending that the properties qualified for business property relief (BPR).

The First-tier Tribunal dismissed the appeal, holding that the trust was carrying on a business which consisted mainly of making or holding investments, within IHTA 1994, s 105(3), so that the land was not 'relevant business property' for the purposes of BPR.

Scotts Atlantic Management Ltd v HMRC (and related appeals) TC2704

Payment to EBT not deductible

Two associated companies, which promoted film financing schemes, claimed deductions for substantial payments to employee benefit trusts (EBTs) in favour of their controlling directors. HMRC rejected the claims, considering that in reality the payments were distributions of profits, rather than expenses incurred for the purpose of earning profits. The companies appealed.

The First-tier Tribunal reviewed the evidence in detail and dismissed the appeals. Judge Nowlan found that the companies had engaged in a 'highly contrived scheme' in the hope of 'achieving the precisely opposite corporation tax treatment for the EBT contributions than the result intended by Parliament'. He observed that 'the deliberate and all-pervading objective of achieving a corporation tax deduction makes it impossible to treat the corporation tax result sought for the contributions as the "ordinary, intended or realistically expected outcome" of making salary, bonus or equivalent payments'. He also found that one of the company directors (an accountant who had subsequently been declared bankrupt) had 'admitted that he had lied to the tribunal' when giving evidence as to the date of certain documents, and appeared also to have fabricated evidence and forged certain documents.

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