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Simon's Tax Briefing

IHT Changes for Non-doms

Graham Wilde explains the Finance Act 2013 changes.

In addition to modifications regarding deductions for certain debts in estates (to be covered in the next issue of this newsletter), FA 2013 introduced significant changes to the inheritance tax legislation for non-UK domiciled spouses and civil partners of UK domiciled individuals.

The nil rate band will remain at £325,000 until 6 April 2018.

Non-dom spouses and partners

Prior to the FA 2013, where a UK domiciled individual had a non-UK domiciled spouse or civil partner, the main inheritance tax reliefs available were the nil rate band of £325,000 (perhaps enhanced where it had been inherited from a former spouse) plus the £55,000 non-UK domiciled spouse/civil partner exemption. Subsequently, anyone with a chargeable estate worth more than £380,000 suffered inheritance tax at 40% on the excess. This measure arose because, while a UK domiciled individual is chargeable to inheritance tax on their worldwide estate, a non-UK domiciled individual is only chargeable on their UK situs assets.

Conversely, where both parties are non-UK domiciled or the recipient spouse only is UK domiciled, there was no £55,000 exemption, as a complete inter-spousal exemption applied. It was only an issue where the recipient spouse was non-UK domiciled.

The FA 2013 introduced two changes to this situation, effective from 6 April 2013:

The exemption

The non-UK domiciled spouse/civil partner exemption, i.e. the £55,000, is increased to an amount equal to the nil rate band in force at the time of the transfer. This means the non-UK domiciled spouse/civil partner exemption increases to £325,000.

The election

The non-UK domiciled spouse/civil partner can make an election under IHTA 1984, s 267ZA to be treated as UK domiciled for inheritance tax where their spouse or civil partner is UK domiciled. The election to HMRC needs to be made in writing by the non-UK domiciled spouse or civil partner any time after the marriage or registration of the civil partnership. It needs to state the names, addresses and dates of birth of the individuals.

Where the election is made while both parties are still alive, it will apply to transfers on that day or subsequently. The election can also be made by the non-UK domiciled spouse/civil partner within two years of the death of the UK domiciled spouse/partner and will then apply from the date of death. The date of death needs to be stated in the election.

It is also possible to state that the election should apply from an earlier date; up to seven years prior to the date of the election or back to the date of

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death. This will catch gifts made in the intervening period, so the effect of tax on these gifts will need to be considered first.

Whilst this election will be irrevocable, should the non-UK domiciled spouse/civil partner become non-UK tax resident for a period of four consecutive tax years, it will cease to be valid. This effectively mirrors the particulars of the deemed domicile rule (see below), whereby an individual loses their deemed domicile if they are absent from the UK for four consecutive UK tax years thus breaking the 17 out of 20 years rule.

Considerations

For couples with a combined worldwide estate valued at less than £650,000, where one is a non-UK domiciled spouse/civil partner, the first change on its own should now be sufficient to ensure no UK inheritance tax is payable. However, tax advisers should regularly ask clients to consider the value of their worldwide estates and whether their spouse's domicile status has changed, so that appropriate tax planning solutions can be offered.

The second option – making the election – should be considered very carefully as it will mean a non-UK domiciled spouse/civil partner's worldwide estate could then be brought into the UK's inheritance tax net. If the non-UK domiciled spouse has significant overseas wealth compared to their UK spouse, the election would give rise to a UK inheritance tax charge when previously that overseas value may have been outside the scope of UK inheritance tax.

Tax advisers should regularly ask clients to consider the value of their worldwide estates.

Deemed domicile

There are also the deemed domicile rules to consider, which operate independently of election, and have the following implications:

- Where a non-UK domiciled spouse/civil partner has been UK tax resident for 17 out of the last 20 years, they will have acquired a deemed domicile in the UK for inheritance tax purposes only. Because of the way the tax residency rules work, they may also be caught under this rule if they have lived in the UK for as few as 15 years.
- Where an individual ceases to be domiciled in the UK for other reasons, they are still deemed to be UK domiciled for inheritance tax purposes for the three years after they leave.

For clients who have lived in the UK for some time or have left within the last three years, their worldwide estate may be caught for UK inheritance tax anyway and the election would probably not benefit them at this stage.

Acquiring UK domicile

UK domicile can be acquired in a number of other ways, making the individual liable to UK inheritance tax, so the above reliefs and election may also be of no use. Briefly, these ways are:

- for couples who were married prior to 1974, the wife will have already acquired her husband's (UK) domicile; and
- if all ties with the other country are cut, HMRC may argue that a domicile of choice in the UK has been acquired.

Providing protection

When considering a FA 2013 election or deemed domicile issues, protection could be put in place by having the non-domiciled spouse set up an excluded property trust when they are still non-UK domiciled, and transferring in the overseas assets. Despite the fact that the individual subsequently becomes liable to UK inheritance tax, the assets in the trust should be protected from UK inheritance tax as it is the settlor's domicile status at the time when the trust is established that is taken into account, not what that domicile later becomes. Of course, there are other issues to consider:

- is the trust practical;
- the set up and running costs;
- remittance basis issues; and
- assuming the non-UK domiciled spouse is UK resident, would there be a UK capital gains tax charge when assets are disposed of to the trust?

There are also certain, mainly government issued UK investments a non-domiciled individual can hold, where the value is not included for UK inheritance tax purposes.

It is also possible that while initially both spouses are non-UK domiciled, one subsequently acquires deemed domicile and the other does not. In these circumstances, the FA 2013 election should be considered.

If couples do not wish to transfer assets between themselves during their lifetime, they may prefer to rely on the "death election" to avoid UK inheritance tax, should the UK domiciled spouse die first. While the non-UK domiciled spouse could then be liable to UK inheritance tax on their worldwide estate if the survivor dies shortly after the first spouse, under the current rules, if the survivor subsequently leaves the UK, this tax charge will drop away after four years of non-UK residency. Thus, making the election will help avoid inheritance tax on the first death, and then avoid it again on the second death if the survivor remains outside of the UK for long enough. The individual could perhaps return after four years and re-set their UK tax residency clock.

Other jurisdictions

As ever, when dealing with an overseas tax issue, the tax effect in the other jurisdiction needs to be carefully considered.

Double tax treaties

Is there a double tax treaty with the non-UK domiciled's home country? While there are not many inheritance tax double tax treaties, those in existence may override UK domicile or take an overseas asset out of the UK inheritance tax net and produce a tax saving. The inheritance tax double tax treaties currently in force are with: the Republic of Ireland, USA, France, Republic of

South Africa, Italy, Sweden, Netherlands, Switzerland, India and Pakistan.

Home country IHT

Is a non-UK domiciled individual with overseas assets also liable to inheritance tax in their home country? If so and double tax relief is given, perhaps no additional UK inheritance tax arises. In addition to relief granted under a double tax treaty, HMRC will allow unilateral relief under IHTA 1984, s 159(1).

Making the election in these two circumstances and exposing the non-UK domiciled individual's worldwide estate to UK inheritance tax may not be too much of an issue, assuming there is no additional tax to pay on their death. The survivor could then elect and inherit their UK domiciled spouse's estate as a wholly exempt transfer.

In conclusion, all the facts and scenarios need to be considered before advice is given as to whether or not a non-UK domiciled individual should consider this new inheritance tax election. **STB**

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ATED-related CGT

Donald Drysdale examines the new CGT charge on non-natural persons.

What is CGTED?

In earlier articles (STB355 and 357) I discussed the new annual tax on enveloped dwellings (ATED) and the reliefs and exemptions available. ATED and the related capital gains tax charge on enveloped dwellings (which I shall call "CGTED") are effectively two new taxes to combat SDLT avoidance, and seem an overly-complex solution.

With effect from 6 April 2013, companies are no longer completely excluded from capital gains tax (CGT). Instead, they are subject to CGTED (and not corporation tax) on any ATED-related chargeable gains accruing to them, after deducting ATED-related allowable losses of that year and any such losses not yet relieved from previous years not earlier than 2013/14. This extension of CGT in the form of CGTED applies to both UK and non-UK resident non-natural persons (broadly, companies and certain collective investment schemes, but excluding certain EEA UCITS) in respect of gains accruing on the disposal of interests in high value residential property that are subject to ATED.

The legislation

The statutory provisions for CGTED were introduced by FA 2013, Sch 25 and are contained largely within TCGA 1992. They rely heavily on the ATED legislation within FA 2013, to which it is necessary to refer for many of the definitions involved. CTA 2009, ss 2, 8, have been amended to ensure that a company's gains subject to CGTED are excluded from its chargeable gains liable to corporation tax.

Confusingly, augmented profits for small profits rate (CTA 2010, s 32) are calculated as though CGTED did not exist. It is unclear how far to pursue this fiction, which might notionally influence decisions on the use of losses in successive years, thus affecting taxable total profits, but this uncertainty may be short-lived in view of plans to unify the main and small profits corporation tax rates from 2015.

CGTED is assessed for each fiscal year ended 5 April, and is not based on the company's accounting periods.

Unfortunately the recent HMRC technical guidance on ATED (www.hmrc.gov.uk/so/ated-tech-guide.pdf) does not mention CGTED.

Relevant disposals

A "relevant high value disposal" is the disposal for more than the "threshold amount" of the whole or part of a chargeable interest which has, at any time during the relevant ownership period, been or formed part of a single dwelling interest which has been within the charge to ATED on one or more days in that period which are not relievable days. The owner will have been within the charge to ATED if, on one or more days in a chargeable period, the interest has a taxable value of more than £2 million, a company, partnership or collective investment scheme meets the ownership condition, and those days are not relievable days. For the purposes of CGTED the threshold amount is derived from this £2 million limit, but reduced where the disposal is a part disposal or there are related disposals within the previous six years (ignoring those before 6 April 2013).

A tapering relief reduces the amount of an ATED-related gain in cases where the CGTED charge might otherwise leave the vendor worse off than they would have been had they sold the interest for less than the threshold amount.

Where a disposal would be a relevant high value disposal but for the consideration being less that the threshold amount, and an ATED-related loss would otherwise result, and the total allowable costs (under TCGA 1992, s 38) are also less than the threshold amount, the disposal is treated as a relevant high value disposal but the ATED-related loss is restricted to the loss which would have arisen had the consideration for the disposal been £1 greater than the threshold amount.

Computational rules

TCGA 1992, Sch 4ZZA contains provisions on how to compute the ATED-related and non ATED-related elements of the gain or loss on a relevant high value disposal, as follows:

- computing the gain or loss using a rebasing formula, when the interest was held at 5 April 2013 (Sch 4ZZA, paras 2–4);
- an election to opt out of the rebasing if desired (para 5);
- computing the gain or loss where a para 5 election is made or the interest is acquired after 5 April 2013 (para 6); and
- updating the CGTED charge if the number of ATED chargeable days is later adjusted (para 7).

The para 5 election is irrevocable. It applies only to the chargeable interest in respect of which it is made, and it must be made in a CGT return (or amended return) for the tax year in which the disposal (or first part disposal) of the interest occurs.

Interests held on 6 April 2013

Where the interest was acquired before 6 April 2013 and disposed of on or after that date, and no para 5 election has been made, the computation proceeds as follows:

(a) Calculate a "notional post-April 2013" gain on the assumption that the interest was acquired at its market value on 5 April 2013. Assume that the person making the disposal was chargeable to CGT, not corporation tax, so there is no indexation allowance (IA).

(b) Calculate a "notional pre-April 2013" gain on the assumption that the interest was disposed of at its market value on 5 April 2013. Assume that the person making the disposal was chargeable to corporation tax, and entitled to IA if appropriate.

(c) Calculate the ATED-related part of the notional post-April 2013 gain, based on the fraction CD/TD, where CD = total days chargeable to (and not relieved from) ATED from 6 April 2013 to the date of disposal, and TD = total days from 6 April 2013 up to and including the day before the date of disposal.

(d) The balance of the notional post-April 2013 gain is not ATED-related, and is reduced by an amount of "notional indexation allowance". The notional IA is equal to the difference between the IA that would have been due if the actual disposal were chargeable to corporation tax (and Sch 4ZZA did not apply) and the IA given in computing the notional pre-April 2013 gain (see (b) above), multiplied by the fraction (TD – CD)/TD.

(e) The total ATED-related gain is the sum of the gains under (b) and (d) above.

(f) In the case of a loss the computation follows broadly similar lines, subject to the over-riding rule that IA cannot create or augment a loss.

Other cases

A different set of computational rules applies where the interest is acquired after 5 April 2013, or where it was acquired before that date but an election is made under Sch 4ZZA, para 5. In these cases the computation proceeds as follows:

a) Calculate the total gain, assuming that the person making the disposal was chargeable to CGT, not corporation tax, so there is no IA.

b) Calculate the ATED-related part of the above gain, based on the fraction CD/TD, where CD = total days chargeable to (and not relieved from) ATED up to the date of disposal, and TD = total days up to and including the day before the date of disposal, assuming that ownership began on the day on which the interest was acquired or, if later, 31 March 1982.

c) The balance of the gain is not ATED-related, and is reduced (as before) by an amount of notional IA, also calculated on the basis that ownership began on the day on which the interest was acquired or, if later, 31 March 1982.

d) In the case of a loss the computation follows broadly similar lines, again subject to the over-riding rule that IA cannot create or augment a loss.

Assessment

Gains liable to CGTED are ring-fenced from the company's other chargeable gains, which remain subject to corporation tax in accordance with pre-existing rules. Somewhat surprisingly, CGTED is assessed for each fiscal year ended 5 April, and is not based on ATED chargeable periods ended 31 March or the company's accounting periods. ATED-related losses can be set only against ATED-related gains of the same or subsequent fiscal years. The net gains that fall within CGTED are taxed at 28%, and will have to be self-assessed and reported to HMRC in accordance with normal CGT reporting procedures, on which guidance is to be published later in 2013.

Other provisions

On an appropriation to trading stock, an ATED-related gain or loss arising may not be rolled over under TCGA 1992, s 161(3), but a new provision (s 161(3ZB)) ensures that any non-ATED-related part of the gain or loss (other than a pre-entry loss under TCGA 1992, Sch 7A) may still be deferred.

The no gain/no loss provisions for intra-group transfers do not apply where an ATED-related gain arises (TCGA 1992, s 171(2)(ba)).

TCGA 1992, s 13 (attribution of gains to members of non-resident companies) does not apply to ATED-related gains (see s 13(1A)).

When a company ceases to be UK resident, the deemed disposal of its chargeable assets under TCGA 1992, s 185 may generate an ATED-related gain or loss. The CGTED effect of this is deferred and not recognised until such later time when the company disposes of the asset (TCGA 1992, s 187A). **STB**

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Interest adjustments

Transfer pricing rules require market values to be used for transactions between connected parties. This is compulsory for large businesses and optional for SMEs.

An individual can lend money to a company which they control at an interest rate of say 30%, but will be taxed on the official rate of 4%. The company would get tax relief on 4% interest deemed to be paid to the shareholder, and would pay tax at corporate rates on interest at 26%.

This "compensating adjustment" mechanism also applies when partners pay interest at high rates to a service company which is a member of the partnership. The company then becomes liable to corporation tax on a deemed profit whilst the partnership receives an equivalent deduction, but with relief at a higher rate than the company pays.

HMRC has published a technical paper which proposes that the compensating adjustment mechanism will be removed for taxpayers within the charge to income tax where the counter party is a company. This will apply for amounts arising on or after the date the legislation takes effect. It is not clear when this will be. This change could put partnerships which use service companies at a disadvantage.

Your Charter report

HMRC has produced a report on how the taxpayer's charter (aka *Your Charter*), is applied. The report is based on rolling annual surveys of three customer groups: SMES, individuals and tax agents, who were asked about each right set out in the charter. The surveys were conducted in March 2012 and March 2013, and there is a slight increase in positive responses when questioned about each charter right except one.

The exception in the survey referred to the statement: "HMRC can be relied upon to act with honesty and integrity". This generated a reduction in those who agreed with the statement down from 75% to 73% of all customers.

Crackdown on loan schemes

Some workers in service industries, such as IT contractors, have attempted to avoid UK tax by entering into employment contracts with offshore employers, while providing their services in the UK. The workers would often receive a large proportion of their fees from the offshore employer in the form of loans.

HMRC is now opening tax enquires into individuals' tax returns for periods during which they have used such tax avoidance schemes. In some cases HMRC will be issuing tax assessments for the years 2008/09 to 2010/11, to collect the tax avoided.

HMRC taskforces

Four new HMRC taskforce teams have been set up to tackle tax evasion by businesses and individuals in these geographical areas:

- security guards, bouncers and their employers in London and the South East;
- the construction industry in London;
- second-hand motor dealers and the hidden economy in the Midlands; and
- hidden wealth, including off-shore accounts held by people living in the Midlands.

Backlog of disputes

The number of tax and VAT disputes waiting to be heard at the First-tier Tribunal stood at 26,965 for 2012/13. This is an 11% increase on the cases waiting in 2011/12 and more than double the number waiting to be heard in 2009/10.

In 2011/12, the latest year for which figures are available, 1,395 cases were heard at the tax tribunal and HMRC won two thirds of those cases. However, approximately 2,800 cases were resolved without a hearing.

Jason Collins, Head of Tax at Pinsent Masons commented: "Until recently HMRC has taken a deliberately aggressive stance against those who it believes are not paying the right amount of tax, and this is reflected in the continuing upward trend we are seeing in tribunal cases awaiting a hearing."

The roll-out of the ADR process to both SMEs and large businesses (see STB359) should go some way to reduce the backlog of cases, as the average time taken to complete a case with ADR is reduced from 100 hours to 15.

Complaints to HMRC

The ICAEW Tax Faculty has published a guidance document: *TAXtools 4-Making complaints to HMRC*. This covers how to complain and seek redress from HMRC, as well as tips on how to avoid the need to complain. The Tax Faculty are also broadcasting a webinar: *HMRC appeals and complaints* on 10 October 2013, which is free to Tax Faculty members, and £25 for others.

Consultations

Carrier bags

The Government intends to introduce a 5p mandatory charge for single-use carrier bags in England in late 2015. The charging scheme is expected to follow the model introduced in Wales in October 2011, and in Northern Ireland from 8 April 2013. No consultation has been issued for the proposed change, and the charge may be introduced by regulations.

Country by country reporting

Country by country reporting (CBCR) requirements are provided by the EU capital requirements directive (CRD4), so the UK must transpose them into national law. International banks and investment firms will be required to disclose their name, the nature of their activities and geographic location, the number of employees, and their turnover on a country-by-country basis from 1 July 2014.

This consultation sets out the UK Government's approach for implementing the rules in CRD4. Responses should be made to the financial services group within the Treasury by 18 October 2013.

newsfile

New HMRC guidance

Tax return pages

Taxpayers who complete their self-assessment tax return on paper often need several sets of different supplementary pages to report all of their income and gains. However, where a taxpayer has completed those pages for one tax year, it does not follow that the same supplementary pages will be sent to that taxpayer for the next year.

HMRC has confirmed it will send out a maximum of three different sets of pages with the personalised paper tax return to any taxpayer, even if that taxpayer used four or more sets of supplementary pages for the previous tax year. The taxpayer must request the additional sets of supplementary pages required from HMRC, by either ordering those pages from the SA orderline (0845 900 0404), or by downloading them from the HMRC website.

Withholding repayments

Revenue & Customs Brief 28/13 sets out the new HMRC policy of withholding tax repayments where it believes the taxpayer has used a tax avoidance scheme. This policy does not affect repayments of NICs.

Where the taxpayer, or their tax agent, is concerned that a tax repayment has been withheld they can ask HMRC's anti-avoidance group (tel 020 7438 6733) whether the delay is due to a suspected tax avoidance scheme. If this is the case HMRC will open a tax enquiry into the tax return, but this enquiry may not commence until the end of the enquiry window, if the particular tax scheme has been used by many taxpayers.

HMRC logo

Accountancy firms who advertise their services using the HMRC logo, or state that they are "registered" or "authorised" agents of HMRC are laying themselves open to prosecution. HMRC do not approve, endorse or accredit any accountants or tax advisers, although some firms may be registered with HMRC for anti-money laundering purposes. HMRC has said it will take legal action against any firm which makes misleading claims in its advertising.

New disclosure campaigns

HMRC is due to announce two new disclosure campaigns this autumn for:

- landlords of residential property; and
- healthcare professionals who are not doctors or dentists.

HMRC publications

Results of disclosure campaigns

HMRC has published a table of the amounts of tax collected as a result of the various completed tax disclosure campaigns. The highest grossing campaigns were those for offshore disclosure, totalling over £927 million. The tax return initiative brought in £80 million. The lowest grossing direct tax campaign (not VAT) was for direct selling, which netted approximately £252,000.

Indexation allowance

Tables of indexation allowance to be used in the calculation of chargeable gains made by corporates in the months June and July 2013 have been published on the HMRC website. The value of RTI used in those tables is 249.7 for both months.

Form P85

This form should be completed by individuals who are leaving the UK, either for a full-time employment in another county which is expected to last at least one tax year or for permanent residence. A revised version of form P85 has been issued to take account of the statutory residence test which is effective from 6 April 2013.

Employer advice

CIS repayments

HMRC has issue a leaflet for sub-contractor companies in the CIS, which provides the ten top tips for securing a repayment of CIS tax, including:

1. Ensure all the documents submitted show the taxpayer's correct name and UTR number.
2. 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.
3. If business was incorporated during the tax year for which the repayment is claimed, do not submit deduction certificates for periods before the incorporation.
4. If the company has other tax repayments due to it, for say corporation tax or VAT, detail those amounts and supply supporting documentation with the CIS repayment claim.

Employer bulletin

Issue number 45 includes a list of all the HMRC telephone numbers an employer may need, and 19 other topics including:

- end of age exception certificates;
- child maintenance deductions; and
- automatic cancellation of PAYE schemes.

RTI survey

The HMRC survey into the operation of the "on or before" rule for RTI reporting closed on 20 September 2013, but many professionals felt the questions in that survey were too narrowly focused, and did not allow space for further comments. The CIOT has set-up an independent online survey to collect views on a wider range of issues relating to RTI: www.lexisurl.com/CIOTRTIsvy.

RTI helpsheets

The ICAEW Tax Faculty has updated their RTI helpsheets which cover the following issues:

- outline questions and answers;
- company directors; and
- no payment or low payments to employees.

Employment related securities

Bulletin number 10 on this topic includes articles on:

- the employee shareholder scheme;
- securities disposed of for more than market value; and
- FA 2013 changes to share schemes.

points of law

R Smith v HMRC TC02768

Discovery upheld

Robert Smith participated in a marketed tax avoidance scheme to create a tax deductible capital loss of £532,695. This scheme was broadly similar to that which was subsequently held to be ineffective in *Drummond v HMRC* [2009] STC 2206. Smith had made a detailed disclosure of the scheme on his tax return for 2000/01, submitted on 22 January 2002, but no enquiry was opened into the return before the enquiry window closed on 31 January 2003.

HMRC raised a discovery assessment in respect of 2000/01 on 29 November 2006. Smith appealed against this assessment on the grounds that it was not validly made.

The Tribunal compared this case to *Charlton & Others v HMRC* [2011] SFTD, where the tax scheme used was very similar to that used by Smith, and in that case the discovery assessment was held to be invalid. Judge Kempster observed "in *Charlton* the taxpayers' returns included the scheme reference number that had been allocated by HMRC when the tax avoidance scheme had been registered by the scheme promoters".

Furthermore, in the *Charlton* case, by the time the tax returns were submitted the Special commissioners had decided the *Drummond* scheme had failed. However, for this case the decision in *Drummond* "was still several years away when the enquiry window closed in January 2003", and "the relevant law relating to the scheme adopted by Smith was of a degree of complexity such as to make it unreasonable for the officer to be aware of an insufficiency on the basis of the information contained in Smith's tax return". The appeal was dismissed.

Dean & Reddyhoff Ltd v HMRC TC02767

Relief for contaminated land

A company constructed a marina at Portland in Dorset. It incurred expenditure on the construction of a sea wall, the construction of a plinth on the dry part of the site as a base for buildings, and the construction of floodwater drainage systems. It claimed land remediation relief under FA 2001, Sch 22 on the basis that this constituted "qualifying land remediation expenditure". HMRC rejected the claim on the grounds that "the land in respect of which the expenditure was incurred was not in a contaminated state within the terms of the relief." The company appealed.

The First-tier Tribunal allowed the appeal in part, holding that the company was entitled to relief for work carried out on the foreshore. However, the construction of a breakwater on the seabed, and work carried out on land above the tidal high-water mark, failed to qualify for relief. Judge Sadler observed that the law relating to land remediation relief was amended with effect from 1 April 2009 to provide that "land is now in a contaminated state only if the contaminating substance is present as a result of industrial activity, and not by reason of natural processes". The company would not now be entitled to relief, since its claim was based on land having been contaminated by seawater.

Regulations

Unauthorised unit trusts

Draft regulations have been laid to give effect to changes to the tax rules for unauthorised unit trusts (UUTs) and their investors. The rules define different tax treatments for "exempt" and "non-exempt" UUTs, bringing the latter within the charge to corporation tax from April 2014.

RTI for excluded employers

Specialised PAYE schemes for examiners (the EXAM scheme) or election returning officers (the ELECT scheme) will have to report under RTI from 6 April 2014. A direction under regs 2A(1)(b) and (2) of the PAYE Regulations (SI 2003/2682) was issued to this effect on 20 August 2013.

RTI relaxation

Regulations (SI 2013/2300 and SI 2013/2301) have extended the relaxation of RTI reporting for PAYE and NICs purposes to 5 April 2014. Under this relaxation businesses with fewer than 50 employees are permitted to send PAYE information to HMRC by the date of their regular payroll run, but no later than the end of the tax month.

Pension schemes

The Registered Pension Schemes and Overseas Pension Schemes (Miscellaneous Amendments) Regulations (SI 2013/2259), apply new reporting requirements on qualifying recognised overseas pension schemes (QROPS), with effect from 14 October 2013. Updated pension scheme forms have been published on the HMRC website to take account of these new rules, which include:

- the need to report compliance to HMRC every five years;
- penalties for non-compliance; and
- a relaxed benefits tax relief test.

International tax

DTAs

Draft regulations have been issued to bring into effect double taxation relief agreements and protocols with the following countries:

- Albania;
- The Netherlands;
- Panama; and
- Norway.

FTT

The legal service of the Council of the European Union has issued a widely leaked opinion on the proposed financial transaction tax (FTT). The legal opinion is reported to say the proposal is contrary to "the norms of international customary law", it infringes on the tax competences of non-participating member states and is discriminatory and likely to lead to distortion of competition to the detriment of non-participating member states.

points of law

BS Chahal v HMRC TC02772

Actual costs paid are deducted

In 1983 two business partners: Boota Chahal and K Bhara, each purchased 50% of a house, each paying £7,500. The property was not a partnership asset. In 1999 Chahal bought Bhara's share of the house for £26,000, and at that time he declared on this tax return that he had disposed of his half share and acquired the whole property.

In 2006 Chahal sold the house for £147,500. In his 2006/07 tax return, he claimed a deduction for £52,000, which was the market value of the whole house in 1999. HMRC issued an amendment reducing the deduction for the cost of the property to the total of the amounts actually paid by Chahal to acquire the two half shares of the property in 1983 and 1999. The First-tier Tribunal dismissed Chahal's appeal.

A Headley v HMRC TC02779

House sale not a trade

Anthony Headley purchased a house in September 2001, let it to tenants, and sold it in December 2005. HMRC issued an assessment charging CGT on the gain. Headley appealed, contending that he should be treated as carrying on a trade of dealing in property.

The First-tier Tribunal rejected this contention and dismissed his appeal. Judge Walters found that Headley's acquisition of the house "was motivated to a significant extent by the prospect of the rental income to be derived from it (an investment motive)", and that he had continued to hold the house as an investment until he sold it.

S Kitching v HMRC TC02781

Trade not commercial

Steven Kitching was a keen runner, so when made redundant in 1989 he began a small business selling running kit. He opened a shop in 1990, but it consistently made net losses, for which Kitching claimed relief against his income from his full-time employment as an accountant for the tax years 2007/08 to 2009/10.

HMRC rejected his loss relief claims on the basis that Kitching had not met the conditions of ITA 2007, s 66(2)(b), since he was not trading "with a view to the realisation of profits". Kitching appealed, contending that the business would be profitable if he could achieve a turnover of more than £28,000, which he still hoped to do.

The First-tier Tribunal dismissed Kitching's appeal. Judge Cannan held that ITA 2007, s 66 should be construed so that "a taxpayer is not permitted relief where it is anticipated that at some future date the way in which the business is carried on will or may change, enabling profits to be generated in the future". He expressed the view that the evidence did not indicate that a turnover of £28,000 was "reasonably achievable", that Kitching "must have known that the business could not make a profit until he was able to devote more time to the business", and that Kitching had operated the shop because "it offered an exit strategy from his job as an accountant".

Project Blue Ltd v HMRC TC02777

SDLT avoidance scheme failed

In April 2007 Project Blue Ltd (P) agreed to purchase the freehold of a Chelsea Barracks from the Ministry of Defence. In January 2008 P entered into a sale and leaseback agreement with a Qatari financial institution (M). Two days later M and P entered into put and call options requiring or entitling P to repurchase the freehold at the end of a "finance period" of 999 years and 2 days. The Ministry of Defence conveyed the freehold to P, then P conveyed the freehold to M, and M leased the property back to P for the "finance period".

On the following day P granted a 999-year lease to an associated company. P failed to account for SDLT on its acquisition of the property. HMRC began an enquiry, and issued an amendment on the basis that SDLT was chargeable on consideration of £959 million. P appealed. HMRC subsequently issued an amendment to their Statement of Case, contending that the effect of FA 2003, s 75A(5) was that the chargeable consideration had in fact been £1,250 million (the amount paid by M to P for the subsale of the freehold).

The First-tier Tribunal upheld HMRC's amended Statement of Case, holding that the effect of FA 2003, s 75A was that P was chargeable to SDLT in respect of a notional land transaction, and that the chargeable consideration in respect of that notional land transaction had been £1,250 million. The assessment for SDLT was increased to £50 million.

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