New £1,000 trading and property allowances (TAPAs)

OMB Personal tax

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These snacks have confusing recipes

November, the Trading and Property Allowances, originally announced at Budget 2016 with the aim of providing *simplicity and certainty regarding income tax obligations on small amounts of income from providing goods, services, property or other assets*, has arrived – and with effect from 6 April 2017.

Tax professionals love acronyms and TAPAs seems to fit the bill admirably. Dictionary definitions of tapas include variously 'spiritual practices that often involve a high degree of self-discipline, solitude and periods of deep meditation' and 'small Spanish savoury dishes typically served with drinks at a bar'. As Schedule 3 of Finance (No 2) Act 2017 involves fifteen pages of legislation, readers may conclude that tax TAPAs are rather larger than might be expected of a light snack. We focus therefore on those aspects of the two recipes which are most likely to require solitude and periods of deep meditation. For a more general understanding of TAPAs, readers may wish to consider related Technical Newsdesk items in the February and March 2017 editions of *Tax Adviser*.

Trading allowance

The feature of the trading allowance legislation which may cause most confusion, particularly for unrepresented taxpayers, is the definition of relevant income – the income which can qualify. This is defined to exclude income from a partnership and rent-a-room income but otherwise includes the whole of an individual's gross receipts from all of the individual's relevant trades for the tax year. In practice, that means that the trading allowance is very unlikely to be of any use to an individual who has a mini-trading activity alongside a normal sole-trader self-employment. ATT

focused on this in written evidence to the Finance Bill Committee.

LITRG's written evidence to the Finance Bill Committee referred additionally to:

- complications with overlap relief and where the individual has not elected for the cash basis of accounting;
- the potential for genuine confusion as to whether or not a tax return is required where gross receipts are no more than £1,000 (a point equally applicable for property income);
- a similar potential for confusion as to what records are needed to be kept where gross receipts do not exceed £1,000;
- the ongoing requirement in relation to Universal Credit for record keeping and the reporting of income even where the trading or property allowance applies for income tax purposes.

One particularly confusing provision applies where gross receipts for a tax year would be above £1,000 if accounted for on a GAAP basis but no more than £1,000 on a cash basis. In that situation, the legislation assumes the existence of a cash basis election, thereby giving full relief on that income but then requiring the application of the transitional rules upon reversion to GAAP in a subsequent year. To displace the assumption, the individual would have to elect out of full relief and, if they wanted to claim partial relief, they would need to elect for that.

Another potentially problematic part of the trading allowance legislation is that concerning exclusion from relief where there is some element of relationship between the individual who runs the mini-trade and a person from whom any part of the mini-trade's receipts is received. The exclusion applies where any such receipt is from:

- an employer of either the mini-trading individual or the spouse or civil partner of that individual;
- a firm in which either the mini-trading individual or a person connected with them is a partner;
- a close company in relation to which the mini-trading individual is either a participator or an associate of a participator.

In the March 2017 Finance Bill version, the employment scenario extended to a receipt from the employer of a person *connected with* the mini-trading individual. In a response to HMRC, ATT contended that this was excessively wide and would for

example preclude access to the trading allowance if a single pound of the relevant income came from the employer of the sister-in-law or brother-in-law of the mini-trading individual’s spouse or civil partner. By comparison, the revised employment provision will be considerably easier to apply.

In the partnership scenario, the connectedness test involves the consideration of ITA 2007 sections 993 and 994. Despite enquiry of HMRC, it remains unclear whether this consideration extends to the general connection test in section 993(2) or whether it is confined to the partnership-specific test in section 993(4). LITRG and ATT are jointly engaged with reviewing draft HMRC guidance on the TAPAs so the point may be clarified then.

The close company scenario adopts the standard definitions used in CTA 2010 but any mini-trading individual (other than a tax adviser) who managed to locate them could be forgiven for not being able to conclude whether they had received income from an excluded close company.

Property allowance

In practice, the property allowance provisions are likely to be less problematic but they will still require methodical consideration. One particular question identified by LITRG is how the property allowance will interact with the calculation of unearned income for student loan repayment purposes. Hopefully this will be clarified in discussion with HMRC.

The property allowance has identical exclusions to those referred to above in relation to receipts from particular payers. In addition, the allowance is not available if the calculation of the individual’s liability to income tax includes a tax-reducer as a consequence of having non-deductible costs of a dwelling-related loan (the provision introduced in April 2017 to progressively deny higher rate tax relief on dwelling-related finance costs).

Conclusion

The overall conclusion is that the TAPAs legislation is surprisingly complex for two very modest allowances which are designed to take some individuals out of charge to income tax and to reduce the record-keeping obligation of others. Specific

professional advice in respect of the availability of either allowance is unlikely to be economically attractive to both taxpayers and advisers. This makes the content, format and accessibility of HMRC guidance on TAPAs critical. LITRG and ATT are working to ensure that the menu translations for these particular tapas are as easy to understand as possible.

Written evidence

The written evidence submitted to the Finance Bill Committee is available on the LITRG and ATT.