TCGA 1992 s162 (Roll over relief on transfer of business) non-statutory clearances: HMRC update

OMB

01 September 2018

HMRC will only provide clearances on matters of legal uncertainty and not on fact.

In August 2018 HMRC issued the following statement to CIOT, ATT and other professional bodies clarifying in what circumstances they will consider giving a clearance in respect of 'incorporation relief' under TCGA 1992 s162 (Rollover relief on Transfer of Business).

'It is correct that HMRC consider whether a business is being carried on is a question of fact and HMRC will not give clearance on this question. We acknowledge that some clearances in relation to s162 may have previously been given in error. HMRC only offer clearance where there is uncertainty on HMRC's interpretation of legislation or application of case law and whether or not activities constitute a business is not an area of uncertainty in regards to legislation or case law and, as such, has never been covered by the clearance process.'

Although the above statement indicates (and feedback from some of our members confirms this) that there has been a change in practice at HMRC (since some clearances under s162 have been provided in the past on whether a business is being carried out or not), HMRC have advised us that there has been no change in policy in HMRC's approach to non-statutory clearances or how they apply section 162.

HMRC's guidance on their non-statutory clearance service can be found on GOV.UK.