Not boring at all...

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Mike Truman reports on the CIOT residential conference at the University of Warwick

Much, I suspect, to the bemusement of the organisers, the attendance at the CIOT residential conferences can be variable. Sometimes demand seems to be high; in other years there are vacancies. For two full days of lectures plus bed and board these weekends are good value. So why are some years more popular than others? I suspect it is not the venues or the speakers, which are all of a consistently high quality – it is probably due simply to whether tax is particularly taxing that year. Two Finance Bills, the second with a range of surprises that significantly affect most

general practitioners' clients, guaranteed a good attendance at the University of Warwick (actually, on the outskirts of Coventry…) in September.

There are always several conferences and events running over the same weekend at Warwick, which can make lunchtime interesting, as delegates share the same dining room. This year, the naturally sedentary tax advisers in relaxed-fit business/smart casual dress were joined by tracksuited teams of netball players attending the England Netball AGM and a conference for coaches and officials. Normally this can make for embarrassing interdisciplinary conversations, as no-one else can really believe that a bunch of people could sit and talk about tax for two whole days. However, this year we were comprehensively out-geeked by an event at the Arts Centre, which CIOT delegates passed each day on their way to the lecture hall – the 20th JCT Traffic Signal Symposium & Exhibition. To quote from its website: 'The JCT Symposium & Exhibition started in 1996 as a way to bring traffic signal practitioners together with manufacturers and to maintain a sense of community amongst signals engineers.' Well, someone has to do it.

Managing a property portfolio in 2015

The CIOT conference started with one of those hot Finance Bill topics as Peter Rayney examined the implications of managing a property portfolio in 2015. Looking at some of the capital tax issues, Peter highlighted the case of *Brander (representative of James (deceased), Fourth Earl of Balfour) v R & C Commrs* [2010] UKUT 300 (TCC), sometimes known as the Balfour case because it involved Lord Balfour.

This was a claim, on his lordship's death, for business property relief (BPR) on the mixed business of a traditional Scottish landed estate. The activities included occupied and let farmland, woodland, shooting and the letting of cottages to estate workers and others. Peter stressed the overwhelming time spent on the trading activities of the business, nearly 80% of staff time, as the main issue in deciding that the estate qualified for BPR. He also explained the importance of the preliminary decision that the estate was one single business and not two separate ones.

However, given the announcements in the July Budget about restricting the deductibility of interest for individuals and partnerships running residential property businesses, the issue of greatest interest was probably that of incorporating a property business. In Peter's view, as long as it could be shown that the business

was being carried on as a family partnership rather than just in joint ownership, the provisions of FA 2003, Sch 15, para 18 should treat the owners as connected with the company they form, on the assumption that the family relationship is a connection (typically a married couple). The normal rules for 'the sum of the lower proportions' should then give a deemed Stamp Duty Land Tax consideration of nil as the properties are transferred to the company. If there is a substantial enough portfolio of properties, TCGA 1992 s 1162 relief should be due to hold over the capital gain on incorporation.

It should be noted, however, that Giles Mooney, in his lecture on the Finance Act and Bill (below) said he understood the government to believe lenders would not be prepared to lend to such companies without strong personal guarantees, which would be enough to make them personal loans.

The new era – non-residents and UK property

Continuing the theme of property ownership, Emma Chamberlain looked at the position of non-residents. She reminded the conference of the change to the IHT rules for deducting debts from the value of UK property for non-doms and stressed the importance of borrowing the money at the time of purchase to make the debt deductible. It is possible to borrow from a connected party and still qualify.

She also considered some of the mechanics of the new non-resident CGT (NRCGT) charge on the disposal of residential property. There is no exemption for let property, rendering it a much wider charge than the annual tax on enveloped dwellings (ATED). The NRCGT return must be submitted within 30 days of the completion of the transaction, and must be accompanied by a self assessment and payment of the tax unless the taxpayer is already required to file tax returns under self assessment. The NRCGT return is required even if there is no liability (for example, if the gain is fully covered by private residence relief).

After a short video presentation from Tolley (featuring the ongoing travails of a fictional tax advisory practice now named Byrne & Jones) delegates broke out to discuss issues arising from the two sessions. Before dinner there was a minute's silence to remember tax professionals Peter Cussons, James Bullock and Andy Wells, who died recently.

OMBs – making the most of tax reliefs

Next morning delegates arose fresh and rested, or sleepy and hungover, depending on how they had spent the time after dinner. Either way, they made their way to the lecture hall for Paul Howard's thoughts on the reliefs for small businesses. He advised them to keep enterprise investment scheme (EIS) company structures simple in order to avoid pitfalls. He referred to *Finn and others v HMRC* [2015] UKFTT 144 (TC) where EIS relief was lost. A company, Photonstar, which had shareholders still within the clawback period for relief, wanted to take over another qualifying company, Enfis. However, Enfis had an AIM market listing that Photonstar wanted to retain, so it structured the deal as a reverse takeover. The result was that, technically if not economically, Enfis took over Photonstar. Photonstar had therefore come under the control of another company and EIS relief was lost.

Paul also looked at the application of the substantial shareholdings exemption (SSE) when Holdco 1 owns Holdco 2, which owns the rest of the group companies. If Holdco 1 sells Holdco 2, then, although Holdco 1 is not trading after the disposal, SSE is given as long as Holdco 1 winds up as a part of the sale. However, if Holdco 2 disposes of the subsidiaries, Holdco 1 and Holdco 2 form a non-trading group after the disposal and no relief is due because the disposing company was not the top company of the group.

The pensions minefield

Dean Wootten spoke about the latest in a long line of changes to pensions. Although many delegates had grasped the point that death before 75 meant that a pension fund could be passed to a nominated beneficiary who could draw on it tax-free, few had realised that this status could change as the fund was then passed on again.

Dean gave the example of James, aged 68 when he died with a pension in flexi-access drawdown. He nominated a 77-year-old friend, Beth, to take the fund on his death. She can draw on the fund tax-free – it is James's age that matters, not Beth's. However, if Beth dies before the fund is exhausted and nominates her son, Frank, he is taxed on anything he draws out of it because Beth was over 75 (even though the original pensioner, James, was 68 at his death). Finally, if Frank dies at 74 and nominates his daughter, Amy, she can draw from the fund tax-free.

Dean referred to such funds as 'golden tickets', an expression that resonated with those in my workshop session as we discussed Paul's and Dean's lectures. Many were attracted by the possibilities, but also felt that it was 'too good to last', and a

discussion followed on the difficulty of advising about long-term planning when it was highly likely that provisions would change before it came to fruition.

Dean also looked at the changes to pension input periods (PIPs) announced in the July Budget. These start a new PIP for all schemes on 9 July, allowing a carry forward of up to £40,000 from the doubled £80,000 annual allowance given to money purchase schemes in the pre-alignment tax year. The net result is that a further £40,000 in contributions can be paid from 1 July 2015 to 5 April 2016, regardless of what had already been paid. However, an accurate calculation depends on knowing the PIPs for clients' schemes. This is not information that advisers have frequently recorded.

Double the Acts, double the interest?

The post-lunch session on Saturday can be one where people begin to flag, but Giles Mooney's now traditional tour de force analysing the Finance Act and Bill ensured that they didn't. From the challenging (dividend taxation? 'Get over it'…), through the hilarious insights into the workings of his company's childcare voucher scheme, to the frightening implications of restricting the relief on interest deduction for let residential properties, Giles was consistently entertaining and informative.

Undoubtedly, one of the most problematic parts of the July 2015 Budget is the restriction on buy-to-let interest. Giles went through some calculations showing how catastrophic the result will be when the full effect of the change is implemented, particularly for those with significant gearing and large portfolios. Even where the current economic reality is that the net income (after interest) means the individual is a basic rate taxpayer, the effect of giving interest relief only as a basic rate tax reducer can take them not just into higher rate but into the loss of personal allowances or even additional rate tax. Giles was pessimistic about the prospects of avoiding this trap by incorporation.

The changing world of employment taxes

One of the dangers in dealing with employment status highlighted by David Kirk, in the last lecture of Saturday, is that by the time HMRC investigate it the money has often gone. He referred to *Demibourne v R & C Commrs* [2005] STC (SCD) 667, in which a £15,000 bill arose for PAYE over five years for just one maintenance man wrongly treated as self-employed, even though the income tax element of it had

already been paid. Despite changes in the law, David warned that getting employment status wrong can be hugely expensive for clients.

Saturday's dinner was preceded by a meeting for those in small practices where speakers from HMRC explained some of the department's plans for dealing with agents. Less heated than these discussions can sometimes be, delegates nevertheless seemed unconvinced that the current direction of travel has agents at its heart.

The guest speaker at dinner was Hilary Davan Wetton, who related his experiences as a choir and orchestra conductor to management in a novel and entertaining talk. Along the way he divided the audience into those on his left and those on his right, and also those over 45 and under 45. He proceeded to conduct this four-part orchestra in clapping or tinging their glasses with a coffee spoon to demonstrate how a conductor induces musicians to do what he or she wants.

HMRC's digital strategy – where is it all heading?

On to Sunday and a misty, moisty morning as delegates made their way to the lecture hall for the last time. Andrew Hubbard picked up where the session with HMRC had left off, looking at the digital future and how it will affect agents. Andrew's main message was that the proposals for taxpayer online accounts, outlined as a five-year plan in the first Budget, will be making an impact much sooner. This was not going to be one 'big bang' project; it was going to be a number of incremental changes starting in months not years.

In particular, it was now clear that the agent strategy is not proceeding at anything like the same speed, and indeed seems to be going round and round the same issues. It was therefore almost certain that taxpayers will obtain access to information and the ability to deal with their tax affairs through their online account before agents get the same facilities, even though this is counter to past assurances given to the profession by senior HMRC officials.

VAT and trading on the internet

Michael Steed reminded the conference that, when dealing with imports and exports, VAT is not the only issue. He looked at some of the differences between customs duty and VAT on goods from outside the EU. Customs duty is charged only

on the cost of getting the item to the ‘point of introduction to the Community’, whereas VAT is due on all the other transport costs, as well as on the customs duty.

He also looked again at the ever-problematic digital services rules; problems that will multiply further as the EU moves to a ‘location of the customer’ rule more generally.

Entrepreneurs’ relief – under attack?

The final talk was on entrepreneurs’ relief (ER). John Endacott argued that it is now under attack. John explained the new bar to combining holdings of less than 5% through a multi-shareholder company and warned that it could have a serious impact on joint-ventures. However, HMRC will not challenge a claim to ER when the shareholder has a 5% holding at the start of the day and it is diluted to less than that during the sale by the end of the day. It is also possible in some cases to use Enterprise Management Incentive options to give shareholder directors a less than 5% shareholding that still qualifies for ER.
John also queried whether, on the basis of *Jeremy Rice v HMRC* [2014] UKFTT 0133 (TC), *M Gilbert v HMRC* [2011] UKFTT 705 (TC) and *Carver v R & C Commrs* [2015] UKFTT 168 (TC), the sale of one furnished holiday let property from a portfolio would qualify for ER. His answer was that ‘it depends’: the property needed to be one that could be operated as a business on its own.

And so, after thanks all round to those involved in organising and running the conference (particularly John Preston for chairing it), the delegates headed for home after lunch, with stomachs well fed by the catering staff at Warwick, and professional expertise well fed by the practical but comprehensive programme of lectures and workshops. The next residential conference is 18–20 March 2016, and has the bonus of being at Queens’ College in the middle of Cambridge (which, even as a Midlander born and bred, I have to admit just has the edge on Coventry). Perhaps I’ll see you there.