Mixed partnerships and TCGA 1992, s 162

OMB

01 May 2016

CIOT comments on HMRC's revised position

Since the partnership changes in FA 2014, many 'mixed' partnerships (those whose members included both individual and corporate members) have considered full incorporation by means of the individual members exchanging their partnership interests for an issue of shares in the existing corporate member. In effect, the corporate member would maintain its position but acquire the business and assets of the partnership. In such circumstances the individual members hoped to qualify for incorporation relief under TCGA 1992, s162.

In May 2014, the CIOT wrote to HMRC seeking confirmation that TCGA 1992, s162 relief would be available in such circumstances. HMRC confirmed that it would, subject to all other conditions being satisfied. The correspondence was posted on the CIOT website.

However, in February 2016, HMRC wrote to the CIOT revising its position, stating that incorporation relief under TCGA 1992, s162 is not available given that 'the whole assets of the business' have not been transferred; it being the case that the assets of the LLP which are deemed to be held by the existing corporate partner (which is also the transferee of the LLP's assets) continue to be held by it. HMRC has indicated that this revised interpretation will take effect from 30 April 2016.

The full correspondence can be found here.

The CIOT's capital gains tax and investment income sub-committee is considering the validity of HMRC's revised interpretation. However, irrespective of the correct legal position, HMRC's revised interpretation raises several concerns:

1. Its effect is to potentially place obstacles in the paths of those seeking to dismantle mixed partnerships;
2. Subject to 3 below, it does not allow for any relief for those who, in reliance on HMRC's confirmation that s162 TCGA relief would be available, have incorporated mixed partnerships;
3. It raises issues of legitimate expectation if no grandfathering or other relief is forthcoming.

The CIOT has therefore written to HMRC:

1. To request that HMRC confirms that grandfathering is in place for those who have relied on HMRC's original interpretation;
2. To consider introducing a specific statutory relief so that TCGA 1992 s162 relief is available when mixed memberships incorporate in such circumstances.

Our submission can be found on the CIOT website.