Springtime in Cambridge

General Features



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Mike Truman reports on the latest CIOT residential conference

Key Points

What is the issue?

The latest changes in tax were addressed at the CIOT spring residential conference in Cambridge

What does it mean to me?

New income tax calculations to deal with the dividend allowance; the traps in entrepreneurs' relief; the ongoing march of HMRC's digital agenda, and lots more

What can I take away?

as just one example, ensure that at least £1 of EIS income tax relief is claimed to protect CGT exemption

Let's face it, Cambridge in springtime is a rather more attractive proposition than Coventry in the autumn. Given that the CIOT's autumn residential conference at the University of Warwick had been well-attended, it's not surprising that the lecture hall for the spring conference at Queens' College was almost full, with a good number of delegates attending for the first time. 6' 4" Stephen Fry is a notable alumnus of Queens' (yes, that is where the apostrophe has gone since 1823, they explain it at great length in the welcome pack…); quite how he would fit into the 'RyanAir' seating now in the auditorium I'm not sure. But otherwise the facilities are excellent; accommodation for delegates is mostly in the newer half with all mod cons (including ubiquitous WiFi – more of that later), but they can explore the mediaeval buildings of the original college by crossing the Mathematical Bridge over the Cam, stopping to giggle at the efforts of first-time punters.

The new dividend allowance

So the conference got underway on Friday afternoon, with CIOT Deputy President Bill Dodwell in the chair. The first speaker was Paul Martin, tackling a subject that most people thought they knew until he highlighted its complications – the new dividend allowance and its impact on dividend taxation. He pointed out that it is really misnamed; the allowance is actually a nil-rate band, as shown by one of the HMRC examples of someone with non-dividend income of £40,000 and dividends of £9,000 for 2016/17. After the non-dividend income has been taxed, £3,000 of the basic rate band remains. This and the next £2,000 are taken up by the dividends within the dividend allowance, and therefore taxed at 0%, but the remaining £4,000 dividends are in the higher-rate band and are therefore taxed at 32.5%.

This effect carries through to the amendments made for the transferable part of the personal allowance. If one spouse or civil partner has dividend income completely covered by the dividend allowance, but which takes the total income over the basic rate threshold, then it will not be possible to make a transfer because he or she is treated as a higher-rate taxpayer despite no tax actually being paid at the higher rate. A similar situation arises when looking at the high income child benefit charge – dividends covered by the dividend allowance can still give rise to a liability by taking income over the £50,000 limit.

‘What’s new in inheritance tax’

Chris Whitehouse’s subject was ‘what’s new in inheritance tax’. He commented on the advantages of the new trust regime; there is no longer a problem, from an IHT point of view, moving between interest in possession and discretionary trusts. There might be tax reasons for doing so or personal reasons such as a spendthrift beneficiary of an interest in possession settlement, where the trustees might want to make the settlement discretionary if they had the necessary power. Delegates might have been surprised (and very pleased) to find that Chris’s notes included two drafted precedents, one for exercising a power to convert a discretionary trust into an interest in possession trust, and one for exercising the power that was prudently inserted in the first precedent to revoke the appointment to one life tenant and substitute another.

Chris also looked at the new rules for ‘pilot’ trusts, and explained that they still leave possibilities for planning where the current asset is not chargeable, for example where business property relief (BPR) applies. If a £5m business will be sold in the foreseeable future, the owner can set up 20 pilot trusts. The shares can then be transferred into the trusts on consecutive days (not the same day, when the new rules would bite) for no IHT charge as BPR is available. When the shares are sold, each pilot trust has £250,000 of assets and a full nil rate band.

Capital allowances

Bright and early on Saturday morning, after an ‘Ask the Experts’ Q&A session, John Lovell looked at capital allowances, in a lecture that left us in no doubt about the advantages of using specialist firms such as his in this area. He pointed out that many of the issues were practical rather than technical; for example that only one in

ten clients ask for a breakdown of costs for capital allowance purposes when property redevelopment work is carried out. Fortunately it is possible to reverse engineer the cost apportionment by having a surveyor examine the finished building and calculate the appropriate percentages, but it would be far better if detailed financial evidence were kept from the start. The percentages of expenditure qualifying as plant and equipment for capital allowances will depend very significantly on the type of building being constructed: a large new-build retail 'shed', let bare to a retailer for fitting out, might only have 5–10% allowable expenditure; a fully-functional high-tech data centre could be as much as 90%.

Cases always make for interesting lecture material, and Paula Tallon focused on the lessons from the courts in her lively capital gains tax round up of the past twelve months. She looked at the case of *Blackwell* [2015] UKUT 0418, where a payment to release a major shareholder from a 'first refusal' agreement he had entered into with another company was not allowable in the CGT computation of the eventual sale to a different purchaser. Paula explained that the case was going to appeal, and was expected to be heard by the Court of Appeal in October.

She also told the sorry tale of Mr Ames (*Robert Ames* [2015] UKFTT 337). He was a skydiver, who helped set up a company to provide indoor skydiving training, and then fell out with the other shareholders. When they eventually bought his shares, he was liable for CGT despite the company qualifying for EIS. He had not claimed EIS income tax relief because his income was below the personal allowance, and the CGT relief is dependent on at least some such relief being claimed. The judge quoted Mr Ames' comment that 'someone who has £1 of taxable income can have 100% CGT exemption, but someone with no income has no CGT exemption'. The only practical way of achieving this, given that most software will automatically claim the personal allowance in preference, is to disclaim some of it by a note in the white space on the return.

Admitting you are a tax adviser?

John Barnett asked delegates whether they admit that they are tax advisers to their friends, acknowledging that the tax profession has been on the receiving end of a bit of a battering in the last few years. He noted that the introduction of GAAR and its vague notion of 'double reasonableness' has understandably led to some practices inserting a clause within their engagement letter confirming that they would not

consider the implications of GAAR when providing advice. John was clear that advisers simply cannot do this, and encouraged his audience to caveat advice appropriately instead. Given its introduction was back in 2013, he felt the first GAAR panel cases should be coming through soon. Finance Bill 2016 saw penalties of 60% of the tax avoided being introduced to the legislation, but these will not be charged if GAAR was self-assessed: even more of an incentive to consider a white space note in a tax return, as a bare minimum.

When turning to DOTAS, it would seem that the new regulations that came into force on 23 February 2016 have the effect of widening the net in terms of those arrangements that are potentially caught. Advisers should not assume that DOTAS only applies to ‘dodgy promoters’ and ‘aggressive schemes’, said John. In simple terms, an arrangement must be disclosed to HMRC if there is a promoter and if there is a notifiable proposal or arrangement. A promoter is an individual who has designed and made available a tax arrangement which has the primary purpose of obtaining a tax benefit and that has the hallmarks of a scheme as prescribed by HMRC. So, in this case, could it be that an adviser who prepares a standard document which he issues to clients when advising them to incorporate may fall into this category? John noted that it is the concept of ‘design’ that could easily trip up advisers on a day to day basis, as its definition is not limited to the creation of a brand new scheme, but extends to a simple bespoke solution for a particular client. That said, when considering the generic hallmarks that HMRC will look for it seems they do still fall in line with the profession’s understanding of what a ‘tax scheme’ really is; confidentially clauses, a premium fee, and standardised tax products.

Budget 2016

The set piece of the afternoon was Chris Jones’ lecture on the highlights of Budget 2016. The decision to have the conference before what was an early Easter meant that he had to prepare his talk in just a couple of days. He therefore enlisted the help of his young son Charlie, whose considered opinion (based on the ‘sugar tax’) was ‘I hate George Osborne’…

Commenting on the new £1,000 trading and property income allowances, Chris explained that these would help those engaged in the ‘sharing economy’ by renting out rooms on Airbnb or selling on eBay, but that simply disposing of your unwanted possessions online was unlikely to give rise to a trade in the first place.

The budget included more information on the roll-out of the Making Tax Digital programme, which Chris urged advisers to engage with, as it is at the centre of HMRC's plans for the future. Quarterly reporting will apply from 2018, with 'voluntary' pay as you go being offered to taxpayers so that they do not face a large tax bill some considerable time after earning the money. Chris repeated his previous presidential statement that 'If Making Tax Digital is to proceed as planned, and on time, then the Government must make sufficient resources available to ensure that high quality education and support is available to every taxpayer who needs it.'

I mentioned previously that there is WiFi available throughout Queens'. This meant the after dinner speaker, Robbie Glen, had to drag diners' attention away from their mobile phones and tablets streaming the English rugby team's successful assault on the Six Nations Grand Slam. However, as a former Governor of Barlinnie Prison, Robbie was used to misbehaviour, and soon had the whole room laughing, both with tales of his work and by weaving the names of the top table guests into his jokes.

VAT

What better for a hungover Sunday morning than an analysis of recent problems with VAT and groups? Well, perhaps not everyone's first thought, but Mike Thexton managed to make a complex subject both understandable and entertaining. He pointed out the many possibilities of VAT groups, including the possibility of grouping two subsidiaries without including the holding company. Unfortunately, the effect of an accidental failure to group a subsidiary can be disastrous, as the case of *Copthorn Holdings Ltd* shows. This has now been considered twice by the FTT; by John Clarke as TC02605 and Howard Nolan as TC04582. In both cases the tribunal has been highly critical of HMRC's policy not to allow retrospective applications for grouping even when, as in this case, VAT was accounted for on the basis that the group included a property development company when it had accidentally been omitted. Both times the appeal has been allowed, but the only effect is to remit the case to HMRC to be reconsidered, and in both cases it has refused to allow retrospective grouping.

Mike also dealt with the highly topical issue of branches and subsidiaries caused by the CJEU decision in *Skandia America Corp*, which concluded that a Swedish branch was not considered to be part of the American company for VAT purposes, because it was part of the single entity that was the Swedish group. While this depends in

part on the particular way that Sweden has implemented grouping, Mike said that there was a possibility that the rules would be harmonised across the EU, although the UK was likely to resist any such change.

Corporation tax

The task of delivering the closing lecture of the conference fell to Pete Miller, looking at recent corporation tax cases. He started with the case of *Leekes* TC 04298, where the First-tier Tribunal decided that what was then TA 1988, s 343(1) did not apply to restrict the claiming of brought forward losses after a trade is transferred to profits from the same business. Pete echoed the comment of others that it was surprising HMRC had not argued on the basis of s 343(8) instead, where there is a clear requirement to stream losses. The issue will be irrelevant for future losses after the changes announced in the budget, but Pete said that he understood the case was still being taken to appeal by HMRC.

Turning to the case of *Terrace Hill (Berkeley) Ltd* TC 04282, it was clear that the question of whether the company had made a trading sale or had disposed of an investment property was finely balanced. The tribunal found in favour of the company which disposed of the issue completely, but had it not, the most worrying feature was that HMRC had alleged negligence and imposed a £1 million penalty. The tribunal made it clear that there would have been no question of negligence even if the taxpayer had been wrong.

And so another residential conference came to an end, with delegates well-informed and full of ideas to put into practice when returning to their offices. The latter was a refrain I heard several times from delegates; one saying that she had spent the whole of one lecture simply writing clients’ names against the points raised on the slides to remind her which files she needed to deal with the following week! In such a time of change, the two main residential conferences are an excellent and cost-efficient way for those in practice to keep up to date. And, perhaps surprisingly for those who have not yet attended one, good fun too.