A Stirling event

General Features



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Alexander Garden and *Chris Young* report on the topics discussed at the Scotland Branch Conference held in Stirling on 4 and 5 November 2016

Key Points

What is the issue?

Speakers at the CIOT/ATT Scotland Branch Annual Conference addressed recent tax changes and issues pertinent to practitioners in Scotland.

What does it mean to me?

Changes that widen the application of the transaction in securities legislation, information on new Scottish income tax powers from April 2017, the effect of the dividend tax allowance and personal savings allowance on trusts and much more.

What can I take away?

Practical points, including that the dividend tax allowance and personal savings allowance are nil rate bands of tax.

Stirling Castle provided the scenic backdrop for the CIOT/ATT Scotland Branch conference, which took place on Friday 4 and Saturday 5 November 2016.

The conference provided CIOT and ATT members and students with the opportunity to hear from a range of speakers as well as networking with fellow tax professionals from across Scotland. On the Friday evening, guests attending the conference dinner were treated to the musings of Bill Jamieson, former Executive Editor for *The Scotsman*, who provided a light-hearted and entertaining take on politics and society over the last 12 months.

It is a momentous year for tax in Scotland, as the country takes on greater responsibility for raising as well as spending revenue collected north of the border.

New powers over income tax will become effective from this April as a result of changes to the devolution settlement while legislation to introduce a Scottish alternative to Air Passenger Duty, called Air Departure Tax, is to be considered by Parliament in the opening months of the year.
Meanwhile, the performance of Scotland’s other wholly devolved taxes – Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) – will continue to be seen as a precis of the Scottish Government’s overall approach to taxation.

But it isn’t just decisions in Edinburgh that will have a bearing on the fiscal year ahead.

The 662 pages and 191 clauses of the 2016 Finance Act also affect those in Scotland, and at the time of the conference, the Autumn Statement and next Finance Bill were looming on the horizon.

So it was with these in mind that Scotland Hub chair Alexander Garden welcomed the more than 100 delegates and visitors gathered at the Stirling Court Hotel. Topics discussed during the two-day event included:

Professional Conduct in Relation to Taxation (PCRT)

Delegates heard from Bill Dodwell, President of the CIOT, who used his address to conference to focus on the recently updated Professional Conduct in Relation to Taxation (PCRT), which takes effect on 1 March. The most significant change contained within the PRCT, delegates were told, was the addition of a set of Standards for Tax Planning, which reinforce the ethical principles underpinning the code of conduct. Bill explained the rationale behind the update and its likely impacts on members of the seven professional bodies (including CIOT and ATT) that are bound by the code.

Scotland’s devolved taxes – The role of Revenue Scotland and HMRC

Delegates heard from Chris Myerscough, Head of Tax at Revenue Scotland, who provided an overview of the performance of the organisation in its first full year overseeing the administration and collection of Scotland’s two wholly devolved taxes; LBTT and SLfT. Chris noted that Revenue Scotland had collected more than £0.5bn in tax receipts, with 98.1% of returns handled online and they had overseen the introduction of the Additional Dwelling Supplement (ADS).

Aiming to build on this success, preparations are already underway to assume responsibility for the devolved replacement for Air Passenger Duty – Air Departure Tax – when responsibility is devolved from April 2018.

But responsibility for administering devolved tax decisions won't just rest with Revenue Scotland, as delegates heard when Wendy Pringle of HMRC provided an overview of preparations for the devolution of further Scottish income tax powers from April 2017, following the introduction of the Scottish Rate of Income Tax (SRIT) in April 2016.

Wendy provided an overview of the practical challenges faced by HMRC in the first six months of SRIT, including the identification of Scottish taxpayers as well as calculating reliefs for charitable donations and pension contributions. She also outlined the steps that HMRC was taking to prepare for the devolution of responsibility for the setting of rates and bands for income tax in Scotland to the Scottish Parliament, which will take effect from April this year.

Scotland's devolved taxes – Land and Buildings Transaction Tax

Isobel d'Inverno of Brodies LLP examined the operation and performance of LBTT. During its first 18 months of operation, delegates heard that administratively LBTT had been working well and that Revenue Scotland's online system for reporting and filing had been well received. In terms of revenue collected from the new tax, interestingly LBTT collected from non-residential transactions had been higher than that collected from residential transactions.

Concerns had been noted in relation to the residential rates and their impact on the market, although it was noted that one-off factors such as the introduction of the ADS made analysis difficult at this stage.

Finance Act 2016 update

Barry Jefferd of George Hay Chartered Accountants began by reminding delegates of the sheer size and volume of provisions contained in 2016's Finance Act, yet noted wryly that the House of Lords had been able to debate its contents in just 90 minutes.

A whistle-stop tour saw delegates hear about various areas of the Act ranging from the personal savings allowance to the dividend tax allowance, which are actually nil rate bands of tax, as well as a variety of additional new measures including new

exemptions for benefits in kind, the removal of the ability to claim deductions for travel and subsistence when workers are providing services through employment intermediaries, the introduction of alternative five year averaging for farmers and a relaxation of the rules in relation to joint ventures and Entrepreneurs Relief (ER).

Perhaps one of the more contentious aspects explored was Section 79, which concerns the disposal of land and treatment of the profit as income. Although HMRC have indicated that this will not apply to buy-to-let properties being sold, the conditions contained within the Act appear to suggest otherwise, meaning that taxpayers are reliant on HMRC guidance to ensure that these provisions do not impact on them.

Capital taxes update

Chris Whitehouse of 5 Stone Buildings outlined current and future trends in relation to inheritance tax (IHT) and Capital Gains Tax (CGT).

Ongoing changes in the regimes for both, he advised delegates, made it essential for tax practitioners to periodically review arrangements in place for their clients.

While the purpose of some reliefs – including agricultural property relief and business property relief were being questioned, Chris also explained that HMRC continued to restrict the scope of a number of widely used reliefs (such as CGT principal private residence relief). Conference also heard about the example of the Home Loan Scheme (HLS). The HLS was a widely used relief scheme until legislation brought their use to an end (HMRC having never considered them to be effective).

Looking towards the future, Chris explained that the Disclosure of Tax Avoidance Schemes (DOTAS) regime is being extended to cover IHT. While straightforward IHT planning should remain outside the scope of DOTAS, questions remain over the definition of ‘straightforward.’ Changes to the area of domicile and the introduction of the IHT Residential Nil Rate Band (RNRB) were also considered, ahead of the introduction of the latter in April this year.

Transactions in securities

Pete Miller of the Miller Partnership took delegates on a guided tour of the Transactions in Securities (TIS) rules contained in the Finance Act 2016, setting out

the practical implications for tax advisers and their clients.

Pete provided delegates with practical examples of the impact of the new rules changes and how they would impact transactions. Areas explored included management buyouts and reductions in capital rules.

From 6 April, delegates heard that the time limits for opening enquiries and issuing counteraction/no counteraction notices in relation to transactions in securities would change.

Topical insight into HMRC enquiries

Ray McCann, Vice President of the CIOT and Partner at Joseph Hage Aaronson LLP, provided delegates with background to HMRC's approach to enquiries, emphasising that considerable activity was ongoing within HMRC to tackle avoidance and evasion. He explained that legislation focused on those enabling tax avoidance/evasion as well as individual taxpayers themselves.

Ray explained that the recently agreed PRCT rules prohibit Chartered Tax Advisers (CTAs) from undertaking certain activities that may promote or encourage tax avoidance. For example, the rules may now require a CTA to cease acting on behalf of a client who is aware of irregularities but refuses to take remedial action. Failure to act in accordance with the rules may see advisers referred to the Taxation Disciplinary Board.

CTAs will also need to be aware of HMRC guidance which states that taking guidance from a qualified tax professional in itself does not amount to taking reasonable care, while also noting that clients themselves can be liable for carelessness on the part of an agent.

The taxation of trusts

Sean Cockburn, Senior Manager at EY and a member of the CIOT Edinburgh branch, provided an extensive and detailed overview of issues relating to the taxation trusts. Topics covered during the presentation included why trusts are used, who is involved in the process of establishing a trust and what constitutes the definition of a valid trust.

Sean reviewed the income tax regime applicable to interest in possession trusts (IIPs) and discretionary trusts before looking at the impact of the dividend tax allowance and personal savings allowance, allowances that Sean explained trustees do not benefit from and which, for a variety of reasons, can result in increased compliance work for beneficiaries and their advisers.

Other issues covered during the presentation included the capital gains tax position of trusts from their creation and activities occurring during the lifetime of a trust.

Practical case studies for the owner manager

Peter Rayney of Peter Rayney Tax Consulting presented a series of case studies to delegates relating to transactions for owner managed businesses.

Case studies explored the use of liquidations and the obtaining of Entrepreneurs Relief while not falling foul of the ‘anti-phoenixing Targeted Anti-Avoidance Rule’; the purchasing of own shares with multiple completion to pass shares to the next generation; methods of extracting the key elements of sale consideration and their tax effects; and whether profit extractions are more efficient by way of a dividend or a bonus in 2016/17.

International taxation

In his second address to conference, Bill Dodwell commented that there had been some last-minute surprises to the Finance Act 2016, including provision to subject both resident and non-resident companies to tax on their profits from land dealings from 5 July 2016 onwards, where certain conditions are met.

Bill also looked at withholding tax on royalties, noting that definitions had been widened and new measures introduced to prevent the abuse of double taxation agreements in order to gain exemptions from tax on royalties. He also noted that an amendment lodged by opposition politicians at Westminster had been included in the Act. This amendment will enable HMRC, through regulation, to require groups of companies, whether UK headquartered or otherwise, to publish country-by-country reporting on their tax affairs.

The conference heard that provisions requiring groups as well as partnerships, branches and certain small UK businesses that may be part of a larger multinational

group will be required to publish their tax strategy in respect of UK tax obligations. This disclosure requirement will apply only to taxpayers required to comply with Senior Accounting Officer requirements, but will also apply to all taxes for which they are liable. The requirement will cover four areas including risk, governance and dealing with HMRC.

Work continues on base erosion and profit shifting (BEPS). Key themes being explored as part of this work include the widening of the tax base, compliance requirements (such as transfer pricing documentation) and enforcement. Bill noted that a number of items were being progressed in respects of BEPS, including the deduction of interest expense (due at the end of 2016), attribution of profits to permanent establishments (2016/17), transfer pricing (2016/17) and dispute resolution.

VAT

Michael Steed, a senior tax consultant with Kaplan's Leadership and Professional Development Division, provided the conference with an overview of the steps that can be taken to recover input VAT, outlining the circumstances where the tax can be recoverable or non-recoverable. He then provided delegates with a review of the VAT issues that can arise when selling goods and services overseas. Selling goods through the internet, he explained, does not affect basic goods rules, and therefore clients and advisers should consider both who the goods are being sold to (consumer or business) and where these goods are being sold to (within the UK, to an EU member state or a third party country).

In relation to selling services, three main considerations should be taken into account; the type of service being sold, the individual or organisation that the service is being sold to and the country being sold to. Particular attention was paid to digital services following changes to the place of supply rules which took effect on 1 January 2015.

Double tax treaties: what you need to know now

Harriet Brown from Old Square Tax Chambers concluded conference with a look at Double Taxation Treaties (DTTs). During her presentation, Harriet explored examples of recent case law, including a case involving the double tax agreement between

Australia and Ireland where it was concluded a contributory benefit change was neither a tax nor a tax ‘substantially similar’ to income tax. In this situation, the taxpayer affected was unable to benefit from double taxation relief.

Other areas explored during the presentation included changes to existing UK DTTs as well as changes to HMRC guidance. Harriet also examined various arrangements for the exchange of information between countries and concluded with a look at the UK’s international tax obligations following the Brexit vote.

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