The height of madness

Employment Tax | Inheritance tax and trusts | Large Corporate | OMB | Personal tax



01 June 2017

Mike Truman reports on the CIOT Spring residential conference in Cambridge

Key Points

What is the issue?

The CIOT Spring residential conference was held on 24–26 March 2017. Speakers addressed the latest changes in tax and other issues affecting advisers.

What does it mean to me?

The conference ran sessions on inheritance tax, MTD, deemed domicile, budget analysis and CGT, to name a few topics.

What can I take away?

The CIOT residential conferences offer an opportunity to listen to experts on a variety of tax topics and enjoy networking with other advisers.

Desiderius Erasmus of Rotterdam, sometime Professor of Divinity in residence at Queens' College Cambridge, wrote at the end of the fifteenth century to a friend that 'You must acquire the best knowledge first, and without delay; it is the height of madness to learn what you will later have to unlearn'.

Gathered at Queens' College shortly before Easter, a few hundred tax advisers were certainly acquiring the 'best knowledge' at the CIOT's spring residential conference, addressed as they were by some of the leading tax practitioners in the country, but they were indeed unlearning what they had previously learned. The height of madness it may be, but tax CPD consists of steadily unlearning the rules that were in place when you passed your exams and replacing them with new rules; then unlearning those rules and replacing them with still newer rules, until, if you are lucky, after a few decades the rules go back to more or less what they were when you first learned them.

The conference started with Chris Whitehead of 5 Stone Buildings taking a wander through the current state of inheritance tax. This is rapidly becoming a bigger factor in the national exchequer, with receipts up 22% in 2015/16 compared to the previous year. As a result, there is a greater emphasis on anti-avoidance. A case is expected shortly to test the validity of the once-ubiquitous home loan schemes, and the DOTAS rules have been tightened. The extension of the IHT charge to all UK residential property potentially imposes significant charges where a non-domiciled individual has set up a typical trust/company/property structure, and maintained it for the IHT advantages despite the introduction of ATED.

Nevertheless, there are still tax planning opportunities. Gifting a long reversionary lease (say 199 years) taking effect in 20 years time, into trust should be effective unless the property has been inherited within the past seven years, but the lease needs careful drafting to avoid conferring benefits on the donor. Giving away surplus income is an underused method of reducing an estate, with many people not realising that it can simply be 'all my surplus income' rather than a fixed amount. Finally, where farm buildings are left unoccupied, consider making a commercial letting, which may then attract business property relief (see *Brander v HMRC* [2010] STC 2666).

Delegates still hoping that Making Tax Digital (MTD) might be further watered down were given little comfort by Rebecca Benneyworth. Although there has been a delay of a year for businesses below the VAT threshold, she explained that HMRC believes this is where the bulk of the £90 million per year of tax unpaid through error is to be found.

A crucial aspect of making MTD reporting work is the ability of software to report information through to HMRC's systems, and vice versa, using an Application Programming Interface (API). Rebecca memorably described these as delivery vans, which load up from your accounting software with information they then unload at the HMRC computers, and then reverse the journey taking information from HMRC's computers to your software. HMRC will build the APIs, but it is the software provider's responsibility to build the 'loading bay' for the deliveries. She knew of at least two developers working on add-ins to Excel for those who still want to work on spreadsheets.

She had better news on the level of reporting required; it could be little more than an itemised bank feed totalled by the categories in the self-employment pages, with adjustments being carried out at the year end. One key issue still undecided was the level of checking that professional agents would be required to carry out before submission. Contrary to the impression given by some of the early reporting, it will not be necessary to take a photo or scan of every receipt.

However, Rebecca saved the worst for last. The overlap between starting quarterly MTD reporting for larger clients and preparing the 2017/18 tax returns for the whole client base will be trying enough, but in 2019/20 all the smaller clients start MTD at the same time as their 2018/19 returns are being prepared, and while year-end adjustments are being done for those already in MTD. Just to make things even more

fun, 2019/20 is also when VAT starts to be processed through MTD.

As this article is being written, the ‘usual channels’ in the Houses of Parliament are desperately trying to determine how much of the Finance Bill is to be pushed through, but the CIOT has cautioned against doing so with a complex bill that needs scrutiny.
That much was obvious as Saturday morning started with Emma Chamberlain addressing one of the biggest topics for 2017/18 – the deemed domicile rules. She pointed out that anti-avoidance provisions in the new trust rules had been dropped from the bill and it was not immediately clear whether the plan had been to reintroduce them during its passage (which is highly unlikely to happen now).

She also highlighted the strict rules for Formerly Domiciled Residents (FDRs), widely believed to have been brought in because of Stuart Gulliver and a number of returnees to the UK since the hand back of Hong Kong who claim to still have a domicile of choice there.

There is also a startling anomaly for long-term residents who are not FDRs. As the draft legislation currently stands, it makes a taxpayer deemed domiciled if they have been resident for 15 out of the last 20 years. There is a further relieving provision meaning that someone leaving before 6 April 2017 is not deemed domiciled for 2017/18. However, someone who hits 15 years of residence during 2017/18 cannot then avoid being deemed domiciled by leaving before the end of that year – they are deemed domiciled from 2018/19 regardless of whether or not they have left the country. This is contrary to the briefing given to specialists in July 2015, and might have been expected to be the subject of further discussion in committee had it not been for the election.

Pete Miller looked at the transaction in securities issues involved in winding up companies. The aim of the anti-avoidance legislation has always been to catch situations where accumulated corporate profits were transmuted into capital gains rather than income in the hands of the shareholder, although the relative advantages of doing so has varied over the years.

The revised legislation now includes reduction of capital and distributions in a winding up as possible transactions in securities. It has also has a wider motive test than before, requiring only that obtaining an income tax advantage is the main motive, or one of the main motives, of the transaction. The ‘commercial purpose’

test has been removed, although Pete said that HMRC still consider the existence of commercial reasons for carrying out a transaction as a major factor in demonstrating that tax avoidance was not a main purpose of the transactions.

‘Phil’s first fiscal feelings’ was the title Giles Mooney gave to his post-lunch analysis of the Chancellor’s first budget. Looking at the decreasing corporation tax rate, he pointed out that the provisions of FRS102 help write off costs sooner and postpone revenue until later. Both of these push profit into later years with a correspondingly lower tax bill.

Giles also had some fun with the cycle-to-work provisions, pointing out that they include the provision of an electric bike and also do not require the bike provided to be used for commuting provided another bike is so used. The latter comment does appear to be problematic, however, as the section requires the bike to be used mainly for qualifying journeys.

Out of many interesting points made, the one most delegates were talking about afterwards was the impact of reallocating personal allowances to make the best use of the savings and dividend allowances. While income has to be taxed in a strict order, stacking savings and then dividend income on top of earned/property income, personal allowances can be used in the way that produces the best result. This will often mean offsetting them against dividend income that exceeds the dividend allowance, for example. The position is complicated still further by the decision of the Scottish Parliament not to increase the higher rate threshold, a provision that does not apply to unearned income which is governed by UK rates and thresholds.

Giles explained that his company Absolute Software had been in touch with HMRC about the effect of this on tax return software, where the tax calculation had to match the HMRC calculation for the return to be accepted. While some of their contentions had been accepted, and implemented in HMRC’s calculations, some had not and were exceptions that could be filed on paper with a 31 January deadline.

To round off the day, Bill Dodwell looked at some of the latest issues arising in corporation tax. He pointed out that the new withholding tax obligations for IP royalties was now focused on overseas owners. For those whose view of royalties was still rather old-fashioned, he pointed out that the fee for an app is a royalty payment.

He spent some time on the changes to the substantial shareholdings exemption, which is now concentrated in its focus on the selling company or group rather than on the company being sold. In particular, the requirement for the company being sold to remain part of a trading group has gone.

In the hybrid mismatch rules, applying from January this year, the lack of any commercial purpose test makes the impact wider, as the rules apply mechanically without any need for a main purpose of UK tax avoidance. However, a tax haven entity lending to a UK borrower should be outside the scope of the mismatch rules as long as the loan is not a hybrid financial instrument.

On Sunday morning, Robert Jamieson looked at several recent CGT cases and changes to HMRC practice. There have been a number of cases on entrepreneurs' relief, one of them being *Castledine v HMRC* [2016] UKFTT 145. The taxpayer had been called back in to his former company after he had retired following a sale to Dome Holdings. He helped to arrange a financial rescue of the company, which involved him getting 5% of the share capital of Dome Holdings. He later disposed of the loan notes he had acquired at the takeover, and claimed entrepreneurs' relief based on his 5% shareholding.

Unfortunately Dome had, on legal advice, created deferred shares as a mechanism for removing the ordinary shares that had been given to senior employees if they left. The terms of the shares were such that they were, and would remain, worthless for all practical purposes. However, they were still technically ordinary shares, and reduced the taxpayer from a 5% to a 4.99% holding, and therefore he did not get his relief.

This can be contrasted with the case of *McQuillan v HMRC* [2016] UKFTT 305, where the taxpayer advanced the novel argument that redeemable preference shares entitled to no dividend should be treated as entitled to a fixed rate dividend of zero percent. This was accepted at the First-tier tribunal, but Robert thought it likely that the case would go to appeal.

He also highlighted a new argument being put forward by HMRC to attack a common method of paying for purchase of own shares in tranches. The advice commonly given is to enter into a single contract but with multiple completion dates. For CGT purposes the argument is that the disposal takes place at the contract date, and if all the other conditions are met, entrepreneurs' relief will be due.

HMRC’s new argument is that company law requires such shares to be cancelled on acquisition. The result is that the company does not ‘acquire’ the shares as required by TCGA 1992, s 28, and therefore the normal substitution of contract date for completion date which that section provides for does not apply. This argument can be advanced even if a clearance has been granted under CTA 2010, s1044, as that simply confirms that the transaction is not an income distribution. However, Robert understood that HMRC was reconsidering its position, and had dropped the case that it had been about to take to tribunal.

Caroline Fleet started by emphasising how London-centric SDLT is – 45% of the take comes from London. It has also become significantly more complex; there are potentially 11 different rates that can apply on the purchase of a property when all the combinations are taken into account.

Looking at the additional rate on second residential properties, Caroline said the key issue for those buying land with residential planning permission was not to put a spade into the ground until after completion, as once construction has started the property is treated as residential.

Other pitfalls include putting a family home into joint names when remortgaging, if husband and wife already own another property. The acquiring spouse has effectively given consideration by taking on obligations under the mortgage, and does not meet the test of having disposed of a previous main residence. The 3% charge will be due on the existing share of the mortgage taken on by the acquiring spouse.

The conference was rounded off by Keith Gordon, answering the question ‘how much should I tell HMRC?’ He admitted that his views had hardened in recent years, and gave several examples, not all of which were in the public domain. He highlighted the complications if judicial review is to be applied for: not only is this an expensive process, but it also has strict time limits.

And so we all returned to our offices, heads brim-full of new information – the many points listed above are but a fraction of everything that was said. Those of us who still rather like our legislation in Yellow and Orange books on the (recently reinforced) bookshelf no doubt took down the already dog-eared volumes and started to find the sections we had been referred to and make notes in the margin. Erasmus would have approved: ‘I consider as lovers of books not those who keep their books hidden in their store-chests and never handle them, but those who, by

nightly as well as daily use thumb them, batter them, wear them out, who fill out all the margins with annotations of many kinds.’