

## HMRC Capital Taxes Liaison Group Meeting

HMRC, 100 Parliament Street, Westminster, London, SW1A 2BQ  
1 May 2015

### 1) Introductions/apologies etc

1. The chair welcomed the attendees and opened the meeting. Introductions were made and apologies noted.
2. The Chair reminded attendees that the Civil Service was in a period of “purdah” due to the forthcoming General Election. The Chair explained that because of this there were strict limits to what could be discussed and what HMRC could comment on.

### 2) Matters Arising from Previous Meeting

3. The notes of the previous meeting have been agreed. There were no matters arising raised by the Group or by HMRC.

### 3) CGT and Non-Residents

4. HMRC provided a brief background on the measure.
5. The relevant legislation is now in place. HMRC explained that they had worked with stakeholders on much of the legislation through a series of working groups and hope that the changes from the draft exposed last December address most of the concerns that were raised.
6. HMRC acknowledged that the legislation also contains provisions that were not exposed in draft last December (e.g. payments on account; pooling; and interactions with hold-over and roll-over reliefs) and stakeholders are urged to provide feedback on any issues that arise.
7. The form to notify HMRC of the disposal of a property is now on gov.uk at <https://www.gov.uk/capital-gains-tax-for-non-residents-uk-residential-property#reporting-and-paying-capital-gains-tax>. The form will be reviewed and updated in due course. Some stakeholders reported their members had had some difficulty locating the form on gov.uk.
8. HMRC have produced for internal use a document showing the consolidated changes to private residence relief. HMRC agreed to share this with Group members.

**Action Point - HMRC to circulate consolidated PRR legislation.**

9. There was limited feedback from the Group. However, a Group member expressed surprise that PRR final period relief was available in full if a non-resident's use of a dwelling as their main residence occurred prior to April 2015.
10. Some Group members have been approached by clients asking whether they should seek a valuation of their property now, regardless of whether they intended to sell.
11. HMRC confirmed that initially all tax returns will be dealt with by the Self Assessment team in Leicester.

#### **4) Entrepreneurs' Relief Update**

8. HMRC provided an overview of two of the four Entrepreneurs' Relief measures included in Finance Act 2015.

##### Feeder Companies – S43 FA 2015

- 8a. The policy aim of this measure is to stop ER being allowed on shares where the claimant does not have the necessary 5% stake in a company which is either a trading company in its own right or the holding company of a trading group.
9. This is achieved by amending the definition of 'trading company' (taken from s165A TCGA92) so that the activities of a joint venture company are no longer treated as carried on (pro-rata) by the investor company.
10. Instead, HMRC will look at the investing company's own activities, which include the holding of shares in any joint venture companies, and apply the established principles relevant when deciding a company's trading status in other contexts (e.g. substantial shareholding relief).
11. Group members felt that the new rules prevent ER from being claimed on shares in companies which are engaged in bona fide commercial activity. In particular, Group members explained that partnership structures are often used for genuine commercial reasons because it is easier to add or remove partners than it is to add or remove shareholders.
- 11a. Group members expressed the view that companies might adopt less appropriate structures to ensure entitlement to ER is not lost. It was also felt that HMRC may see an increase in requests for non-statutory business clearances.
12. It was stated that within the Private Equity industry, the 5% condition for direct shareholding in a trading company is not seen as a major issue. However, Group members said that they would like to better understand the policy intention behind the 5% rule.
13. HMRC stated that they believe that a 5% shareholding demonstrates a material interest in a company, although they recognised that as companies grow shareholdings can dilute.

14. Group members suggested that an alternative to the 5% rule would be to look at the number of hours an individual worked for a company.
15. HMRC asked whether Group members had been approached by clients that were actually considering changing their company structure as a result of the new rules. Group members replied that in the main customers are awaiting further guidance from HMRC but there is concern that HMRC has “moved the goalposts”.
16. Group members expressed disappointment with the lack of consultation over the new rules and questioned the proportionality of the changes in light of the expected Exchequer impact.
17. HMRC stated that whilst it is desirable to consult on changes, it is not always possible, particularly when changes form part of major fiscal events.
18. HMRC asked Group members to provide comments on the new changes, particularly around arbitrary or unfair outcomes in writing to the Secretary.

**Action Point - Group Members to provide written comments on ER changes.**

Associated Disposals – S41 FA 2015

19. The policy aim of this measure is to prevent ER being due on disposals of privately-owned assets which have not been genuinely used in a business, or when the disposal is not accompanied by a meaningful withdrawal from the business.
20. This is achieved by requiring the qualifying business disposal with which the private asset disposal is associated to be of at least 5% of the shares in the claimant's personal company, or at least 5% of the claimant's partnership's assets.
21. Group members were concerned that the anti-avoidance provision prevents ER being due when a family member retires from a partnership and transfers a privately-owned asset to another partner, for example a multi-generational farming partnership.
22. Group members were unsure how to apply the 5% test because determining ownership is less straightforward with partnerships than with shareholdings.
23. HMRC again asked Group members to provide comments on the new changes in writing to the Secretary.
24. HMRC stated that they are keen that Group members have the opportunity to air their views and they will endeavour to respond quickly.

## **5) IHT Online**

17. HMRC is introducing a new digital system for Inheritance Tax.
18. HMRC explained that the new system is not just a method for filing IHT returns electronically – rather it is part of a larger project aimed at making the whole process more efficient for all parties involved.
19. Beta testing is scheduled to begin in August 2015 for a limited number of cases. HMRC expect the new system to be phased in for the public from September or October 2015, initially with “simple” non-taxpaying estates, with full IHT400 accounts from individuals and agents being accepted from March/April 2016. Over the longer term, HMRC hope to be able to provide access to the service via third party software.
20. Customers will access the service via gov.uk and it is hoped that customers will find the system simple and intuitive. HMRC expect the service to be similar to Self Assessment online, allowing customers to make payments, claim repayments and check statements.
21. HMRC stated that minor legislative changes are required to make provision for the filing of online IHT returns. HMRC also intend to use this opportunity to bring in the interest and penalty regime from Finance Act 2009 for IHT.
22. Group members asked whether it will be mandatory to file online. HMRC stated that it will not be mandatory and paper returns will remain available for those who are unable or unwilling to file online. Group members also asked if there will be a facility to enable individuals to provide details of the assets in the estate before they die, or to pay any IHT due early.

## **6) AOB**

23. A Group member had recently checked his online Trusts account and had noticed that penalties were showing, despite the accounts having been filed on time. HMRC are aware of this issue but will investigate further.
24. Group members expressed disappointment that the “Frankland trap” had not been dealt with in Finance Act 2015.
25. Group members asked if HMRC had a timescale for the consultation on Deeds of Variation announced at Budget 2015. HMRC advised that this is a matter for Ministers.
26. Group members felt that SI 616 of 2015, introducing changes to the method for valuing shares, was not well publicised and asked if there was a difference in the treatment for IHT purposes.

27. A Group member cited a recent case he had been involved with, in which HMRC had issued a revised IHT calculation 8 years after the initial IHT return had been filed. The Group member expressed the view that this situation was unfair.

28. HMRC advised Group members of personnel changes in HM Treasury.

29. The next meeting will be arranged for September or October 2015.

Minutes prepared by HMRC Assets and Residence Policy.