HM Revenue & Customs

HMRC Capital Taxes Liaison Group Meeting

HMRC, 100 Parliament Street, Westminster, London, SW1A 2BQ
Room G/57
14:00-16.00 - 04th July 2016

Attendees:
Alison Ward
Andrew Cockman – ICAEW
Arthur Thompson – ACCA
Bill Pagan – Law Society Scotland
Brian Palmer - AAT
Charles Pascoe – CBI
Chas Roy-Chowdhury - ACCA
Robert McLean – Deputy
Diana Davidson – STEP
Edward Reed
Jenny Chambers – Practical Law Tax
John Bunker – TACT
Kate Willis – CIOT
Kevin Slevin - ATT
Laura Kermally - STEP
Louise Speke - CLA
Lynnette Bober – ICAEW
Susan Cattell - ICAS
Tim Hughes
Adrian Cooper (AC) – HMRC Chair
Emma McGuire - HMRC
Alan McGuinness – HMRC
Nick Williams – HMRC
Rob Clay (RC) - HMRC
Danka Wigley - HMRC
Kulvinder Kaur/Danny Anderson – HMRC Secretariat

Apologies:
Tony Zagara- HMRC
Aparna Nathan – CIOT

Introductions/Welcome

AC welcomed attendees and opened the meeting.

Went through action points from the last meeting (21 October 2015)

AP1: Entrepreneurs' Relief: HMRC to check how non-statutory clearances are handled	Clearance applications are distributed to a network of caseworkers, however ER clearances are restricted to those with CGT experience.
AP2: IHT: HMRC to arrange a joint	A joint meeting was held in December. The

meeting to discuss specialty debts.	minutes have not yet been agreed and that this issue is still unresolved.
AP3: ESC D33: HMRC to email those who responded to the consultation.	Done

Capital Gains Tax

Investors' Relief

1. Nick Williams gave an Introduction to the new relief and latest amendments.

2. New relief designed to fill a funding gap where unlisted businesses fund through share issues rather than debt. Focused at external investors. Must be a trading company. Relief is capped £10 million per individual. Tried to make rules as simple as possible.

3. At committee stage it was decided to amend the scheme. Changes allowed investors to subscribe jointly with others for qualifying shares, and (subject to conditions) to become a director of the company they invested in without losing entitlement to relief. Trusts are now eligible for the scheme with the £10m lifetime limit being linked back to qualifying beneficiaries.

4. A number of questions were raised by BDO before the meeting, the committee stage amendments largely resolved these. Although BDO were still concerned about the wide ranging extraction of value rules.

5. An Opposition amendment to the Finance Bill which would have created a 'sunset clause' withdrawing the relief after five years (subject to extension by consent of the House) was withdrawn.

6. The meeting asked at whom the new relief was targeted. RC said that it was not primarily designed to benefit claimants but to help unlisted companies access new investment funds from a range of individuals or trustees with cash to invest. The tax advantages to those investors were a means to that end. Investors' relief was designed to have minimal overlap with entrepreneurs' relief, in the sense that a shareholder would not generally have the choice of two reliefs in respect of shares in the same company.

Entrepreneurs' Relief (ER)

7. RC gave an introduction to the Finance Bill changes to ER.

8. The thrust of the amendments was to mitigate the unintended and adverse effects of the changes made in Finance Act 2015.

9. Clause 73 of the Bill amends the associated disposal rules in section 169K TCGA 1992. Relief will now be due where a material disposal is of less than a 5% stake in a partnership, providing it is a disposal of the claimant's entire partnership interest and he or she has previously held at least 5%. The clause also redefines 'partnership purchase arrangements' so that relief is due in cases of succession to a family business. There is also a new condition, that the

personal asset disposed of must be held for three years prior to the disposal. The changes are backdated to 18 March 2015 (Budget day), but the new ownership condition only applies to assets acquired on or after 13 June 2016. Government amendments to this clause were adopted by the Committee of the Whole House on 28 June.

10. Clause 74 amends section 169LA TCGA 1992, concerning ER on disposals of goodwill on incorporation. Relief will now be available in cases where the claimant holds less than 5% of the successor company's shares. This change is backdated to 3 December 2014 (Autumn Statement 2014) when the FA15 changes were announced and effective. The clause was debated and adopted by the Committee of the Whole House on 28 June.

11. Clause 75 and Schedule 13 amend the definition of a trading company which applies for ER purposes. The new rules are lengthy but mechanical and aim to allow relief where the claimant has an effective stake of 5% or more in a trading joint venture company or partnership held via shares in an investing company or corporate partner. The new rules are effective from 18 March 2015. Government amendments to this clause were adopted by the Committee of the Whole House on 28 June.

12. The meeting asked about non-statutory Clearance Applications under the new rules. RC reminded the meeting that this had been discussed at a meeting with the CIOT-convened working group. The new rules mean that whether a company is a trading company or not may depend on the circumstances of each individual claimant, rather than always being determinable by reference to the company's own circumstances. This means that the ability of the non-statutory business clearance team to confirm a company's status may be more limited than previously. Where it is necessary to take account of the activities of joint venture companies or partnerships then, if the team is able to help at all, it is likely to be on the basis of explicit assumptions as to the company's shareholders (e.g. that it has two equal shareholders who have no other direct or indirect interests in the JVCo or partnership). The meeting speculated that the mechanical nature of the new rules might mean that the team declined to give a clearance on the grounds that there was insufficient uncertainty.

    Review of the ER trading test:

13. RC said the review was still ongoing. It was not a 'consultation', though it may develop in that direction. The current definition of a trading company was based wholly on the activities of the company in question and not on the assets it owns. There is evidence that the value of shares in some companies is being inflated by assets which are not involved in any activity (trading or otherwise), so that the company in question may be a trading company and ER may be due on gains on those shares. This is likely to be contrary to policy intentions behind ER.

14. Consideration is being given to making eligibility to ER, or the amount of ER due on a claim, dependent on the prevalence of 'trading' assets over other assets on the company's balance sheet. One possibility is a binary condition, so that no relief is due of the ratio of trading to other assets is below a certain figure. Another possibility is an apportionment of the amount computed under section

169N(1) by reference to the fraction trading/other assets, perhaps subject to a threshold above which no apportionment is required.

15. The meeting observed, and HMRC recognised, that defining trading (and hence other, non-trade) assets could be challenging, that the definition would have to recognise diverse requirements of different markets and sectors, and that a commercially acceptable definition should reflect the position of the company in its life cycle (most obviously during its liquidation).

16. RC reminded the meeting that the old retirement relief rules had included provision for restricting the relief available by reference to the presence of 'non-trading' assets.

Inheritance Tax

DOTAS & IHT hallmark

17. DW explained that the draft IHT hallmark had been revised as a result of previous comments, and had been published in April as part of a wider DOTAS consultation. The revised draft was simpler and now had 2 conditions linked more closely to abnormal or contrived arrangements so it should be more targeted on avoidance rather than ordinary tax planning. It was acknowledged that the revised draft was an improvement but concerns were raised about the meaning of 'abnormal' and 'contrived'. Many solicitors and advisors will not be familiar with DOTAS reporting so these terms need to be explained in guidance along with examples of non-disclosable (or disclosable) situations to reduce uncertainty and unwanted disclosures. DW said that a 'white list' of acceptable planning arrangements might be too limiting but she would consider including more examples of acceptable arrangements or areas.

18. The timing of disclosure was discussed. This would be when the arrangements were entered into or promoted, not when the tax advantage arose (often on death), although it was not clear whether a revision to a will would trigger a disclosure especially if the tax advantage no longer arose. Again, this needs to be clarified in guidance. DW also said that HMRC are looking at the reporting process and how it should be matched to notification of the SRN on IHT returns, which could occur much later on when the person who had entered into the arrangements has died. Comments on the revised draft IHT hallmark were welcome as well as examples of situations that should not be disclosed.

Residence nil-rate band (RNRB)

19. DW pointed out that the FB16 downsizing provisions were due to be debated in Committee the next day and that some amendments to clause 82 & Schedule 15 had been tabled to take into account concerns from CIOT and others. Where there were multiple interests in the former residence, these would qualify for a downsizing addition if they were disposed of on the same day, or the PRs could nominate one day if the disposals were made on different days. A new section 8HA is being added to deal with property held in an interest in possession and a disposal of the former residence by trustees or the ending of the interest. An

amendment also clarifies that a disposal occurs when a reservation of benefit ceases.

20. DW accepted that the provisions were very complex and said she was working on guidance to explain the application of the RNRB to the public and advisors in more detail following hundreds of queries. There were some issues with how this could be published on gov.uk without being too 'simplified' and DW is looking at ways in which the style restrictions could be circumvented. HMRC have also developed a calculator to work out the amount of the RNRB and are looking at how it can be published and made available to the public.

Looking Forward

AC invited discussion/views from stakeholders on the way capital taxes function in the round, in terms both of their inclusions/exclusions, and the way they are operated. In particular he was interested in better understanding the grit that gets in the way of taxes operating efficiently.

AOB

Tribunal cases on definition of Share Capital

HMRC said that their preferred view was that of the Tribunal in the Castledine case, and they were hoping to appeal the McQuillan decision. Meanwhile, the uncertainty created by the conflicting decisions was unfortunate. A named contact in HMRC (**victor.j.baker@hmrc.gsi.gov.uk**) would be happy to deal with specific enquiries.

Quality of guidance and material on gov.uk website

It was universally agreed by non-HMRC attendees that the quality of material dealing with capital taxes published on gov.uk was poor. HMRC are aware of shortcomings, but these were the result of constraints imposed by the CDIO and gov.uk editors. Attendees were invited to make written submissions to HMRC which would be put to the rule-makers.

Action point summary

07/16.AP1	***Views on what attendees would change the current capital tax system and why should be directed to:*** ***capitalgains.taxteam@hmrc.gsi.gov.uk***	
07/16.AP2		