

HMRC Capital Taxes Liaison Group Meeting

29 June 2017

**HMRC, 100 Parliament Street, Westminster, London, SW1A 2BQ
Room G/57**

Attendees	
Alex McDougall	CIOT & ACAS
Andrew Cockman	ICAEW
Brian Palmer	AAT
Charles Pascoe	CBI
Katherine Arthur	ICAS
Edward Reed	LS
John Bunker	TACT
Kevin Slevin	ATT
Lynnette Bober	ICAEW
Susan Cattell	ICAS
Emma Nedick	PLT
HMRC	
Adrian Cooper (Chair)	AC
Daniel Butler	DB
Nick Davies	ND
Rob Clay	RC
Stephanie Allistone	SA
Maria Coutinho	Notes

1. Introductions/Welcome

AC welcomed attendees and opened the meeting with an update on the new structure of HMRC. There are now three business areas: Customer Compliance, Customer Service and Customer Strategy and Tax Design. The Assets and Residence Team (encompassing capital gains tax, inheritance tax, trusts and residence and domicile) will now be part of Business Assets and International Directorate and look to build upon synergies around growth, wealth and property.

Due to changes within Assets and Residence Team brief introduction was carried to introduce all attendees.

2. Action Points

January action points have mostly been actioned and information sent out to members.

- Re AP6 (intangible assets held by a mixed partnership): RC acknowledged no progress.
- Re. AP7c (relief for payments under a chose in action): see agenda item 7 below.

- Re: AOB –a (NSC team asserting there was no uncertainty): RC had lost sight of this. See agenda item 3 below.
- Re. AOB-d (ER associated disposals): RC did not comment at the meeting but can confirm that the Capital Gains Manual has been amended (CG64006 and CG63996) to explain HMRC's internal procedure for considering the existence of 'share purchase arrangements' under section 169K TCGA 1992.

AP1.6 AC to advise all regarding announcement of when the Finance Bill will take place.

On Thursday 13 July the Financial Secretary to the Treasury published a Written Ministerial Statement (WMS), reconfirming the government's commitment to legislate for all measures dropped from the pre-election Bill. This includes all the proposed reforms to the non-domicile tax regime which were omitted from the previous Finance Bill in April. Once enacted, these changes will be retrospective in effect from 6 April 2017. Updated legislation for a small number of measures that have had technical changes and adjustments made to the drafting since they were first published before the election is now available on the GOV.UK website [here](#).

See Addendum at the end of the minutes.

The WMS states:

- The Finance Bill introduced in March 2017 provided for a number of changes to tax legislation that were withdrawn from the Bill after the calling of the general election. The then-Financial Secretary to the Treasury confirmed at the point they were withdrawn that there was no policy change and that these provisions would be legislated for at the first opportunity in the new Parliament.
- The Government confirms that intention. It expects to introduce a Finance Bill as soon as possible after the summer recess containing the withdrawn provisions. Where policies have been announced as applying from the start of the 2017-18 tax year or other point before the introduction of the forthcoming Finance Bill, there is no change of policy and these dates of application will be retained. Those affected by the provisions should continue to assume that they will apply as originally announced.
- The Finance Bill to be introduced will legislate for policies that have already been announced. In the case of some provisions that will apply from a time before the Bill is introduced, technical adjustments and additions to the versions contained in the March Bill will be made on introduction to ensure that they function as intended. To maximise certainty about the exact provisions that will apply, the Government is today publishing updated draft provisions.
- The Finance Bill will include legislation for the Making Tax Digital (MTD) Programme. Having listened carefully to the concerns raised by the Treasury Select Committee, parliamentarians and stakeholders, the government is announcing policy changes that will be reflected in the legislation to be introduced. Businesses will not be mandated to use the MTD system until April 2019 and then only to meet VAT obligations. This will apply to businesses with turnover above the VAT threshold. Businesses with turnover below the VAT threshold will not be required to use the system but can choose to do so.

Businesses will also be able opt in for other taxes, benefitting from a streamlined, digital experience.

- The Government will not widen the scope of MTD beyond VAT before the system has been shown to work well, and not before April 2020 at the earliest. This will ensure that there is time to test the system fully and for digital record keeping to become more widespread

Post-meeting Note: Action Closed.

3. Non-Statutory Clearance (RC)

AC introduced Steph Allistone from HMRC Process Design and Excellence, who leads on the policy principles underlying the work of the NSC team. Delegates repeated their concerns expressed at the January meeting, and added that in at least one case an application had not been acknowledged by the NSC team, and in some cases acknowledgments did not carry references which meant an applicant could not easily chase up a response.

SA outlined the way the NSC team was organised and how work was allocated within the team. She would remind the team about the importance of citing references in acknowledgements and adhering to service level undertakings.

There was discussion of the need for applications to present plausible alternative analyses of facts and circumstances in order to support their view that there was genuine uncertainty on which they were seeking clearance. Where a detailed technical analysis had been undertaken but HMRC considered there was no uncertainty or the application did not meet the guidelines for a clearance application it may be possible for HMRC to discuss this further with the applicant, either directly or via the CRM/caseworker. SA would discuss internally whether this was a workable option.

RC and AC invited delegates to let them know of new cases in which the service provided by the NSC team caused concern: they would pass them on to SA.

4. Non-Dom

The Government, as stated in April, is looking to legislate for the postponed measures, at the earliest possible opportunity. Thanking organisations and individual stakeholders for bringing potential issues this has caused to HMT and HMRC's attention, DB said they were happy to continue receiving feedback to help shape future policy development.

5. Entrepreneurs' Relief (ER); disposal of trust business assets: time at which an individual must be a qualifying beneficiary -Progress Report (RC) (Action point 2c from January meeting)

RC said that the CG manual (CG63985) had been amended to clarify HMRC's view on the period for which an individual has to be a qualifying beneficiary.

RC explained that the ER helpsheet was updated annually and did not presently go into this level of detail about claims to relief on associated disposals. He had asked the author to consider whether it should do so at the time of the next review.

RC said that HMRC did not regard the letter sent to an agent by the then technical adviser in September 2011 as amounting to publication of a practice or a generally applicable construction of the statute. HMRC will write to the CIOT and to delegates setting out their view of the operation of section 169J and 169O TCGA (this letter is presently in its second draft form). We expect the letter to attract comment and discussion when it is issued. HMRC will also write to the agent who received the 2011 letter to withdraw the advice given and present the revised view along with a full reply to the queries in the agent's original enquiry in terms of that view.

HMRC do not accept that this marks a change in view and so there is no 'new approach' to be applied with effect from a given date. If a customer or agent believes they have been disadvantaged by relying on the interpretation of sections 169J and 169O implicit in the 2011 letter then HMRC will consider representations and evidence to that effect on a case-by-case basis.

6. Update on the position with draft Carried Interest guidance (RC)

RC had spoken to the policy lead. She aims to publish the guidance in September 2017.

7. Equalisation and balancing payments (land pooling) (RC)

RC acknowledged the concerns expressed at the previous meeting and referred to the DCLG White Paper 'Fixing the Broken Housing Market'. He was grateful to the CIOT for supplying a copy of their response to the White Paper, which was interesting and raised several further questions. He briefly rehearsed the three alternative methods proposed by CIOT for addressing the problems created by the present system:

- i) A relief for payments made by a disponent to a third party under a chose in action associated with land pooling arrangements (but RC was concerned by the CGT implications of entering into such arrangements, as well as by their coming to fruition).
- ii) Provision for a special purpose vehicle in which pooled land would be held (but RC was unclear as to the legal character of the vehicle, which seemed to be transparent for income purposes but opaque for capital gains purposes).
- iii) Use of a trust-based structure

RC was keen to progress this as a project, but he warned that he thought it was more than 'grit in the system': it was likely to be a substantial programme of work.

8. Update on guidance on the new distributions TAAR (section 35 FA 2016, section 396B ITTOIA 2005) (RC)

Guidance has been completed and reviewed by lawyers. It is being formatted and prepared for electronic publication, but RC was unable to give a date. It will be in the Company Taxation Manual around paragraph CTM36200.

Delegates expressed the hope that the guidance would contain many examples. Some delegates held the view that the impact of the measure on real life genuine commercial situations had not been considered, or at least not been fully explained. RC said his colleagues were prepared for the debate to be continued.

9. Meaning of Business (RC)

This referred to the third condition ('continuity of business') in Schedule 5AA TCGA. RC said that in the context of section 136 and Sch 5AA, 'business' was undefined and could be taken to refer to total activities of a company, whatever their nature and however slight. Delegates were pleased with this, but pointed out that the guidance at CG52709 implied that 'business' had to consist of a trade and they had experience of the clearance team refusing clearance on the grounds that the company did not have a 'business' in this sense.

AP 2.6 RC said he would ask the author of the guidance and the clearance team to look into this.

Post-meeting Note: The appropriate technical adviser will check with the Statutory Clearance team that there is a shared and correct understanding of the term. The Capital Gains Manual will also be checked.

10. Drown & Leadley v HMRC (RC)

CIOT had asked HMRC to comment on the implications of the recent Upper Tier Tribunal decision in *Drown & Leadley v. CRC* for the treatment of personal representatives in general. RC observed that HMRC made the presumption that the personal reps. stood in the shoes of the deceased for tax purposes unless there were provisions which indicated or required the contrary presumption. The terms of section 62 TCGA were such a provision, as the FTT had confirmed, and it followed that the personal reps. were not the same person as the deceased for TCGA purposes. In contrast, the TMA had no corresponding provision, the presumption ran, and HMRC was able e.g. to serve enquiry closure notices on personal reps. as if they were the deceased.

Delegates asked for a formal statement of this position in the minute of the meeting.

Delegates observed that the provisions at section 142 IHTA 1984 (deeds of variation) appeared to conflict with the distinction HMRC was seeking to draw between the deceased and the personal reps. (and after the meeting it was pointed out that subsections (4) to (9) of section 62 itself provided for similar treatment in deed of variation cases).

AP3.6 RC said he would discuss this with technical advisers.

Post-meeting Note: The technical advisers have explained that the statutory provisions mentioned at the meeting (s.62(6) etc. TCGA and corresponding IHTA provision) are readily

reconciled with HMRC's position post-Leadley. They cater for consequences of instruments of variation agreed and created by beneficiaries, an issue which does not touch upon the status of the personal representatives as standing in the shoes of the deceased (or not doing so.)

11. Speciality Debts - Update

RC reported that the issues raised were still being considered by IHT technical colleagues.

AP 4.6 HMRC hoped to provide a written update to delegates within the next couple of weeks or so.

Post-meeting Note

As at 27 July no update was available.

12. AOB

Company Purchase of Own Shares

KS explained that the issue was whether deferred consideration received by the outgoing shareholder under a staged completion arrangement was capital or income for tax purposes.

AP5.6 KS would write to RC clarifying the question.

ATED

Lynette asked whether an ATED charge can be allowed as a deduction against the rental income computation with respect to the company that holds the UK residential property".

Generally, HMRC would expect a genuine property business to be able to claim full relief from ATED. But occasionally there may be situations where relief doesn't apply, perhaps because a 'non-qualifying' individual occupies a property and pays a commercial rent which in turn is included as income in the company accounts.

This was raised with relevant colleagues who advise that normal principles would apply, and that for an ATED charge to be an allowable deduction it must be incurred 'wholly and exclusively' for the purposes of the property business. There is no rule that prevents ATED charges being deductible in such situations.

Indexation (AC)

John Bunker raised an issue on indexation which was mentioned in the April's Trust and Estate Newsletter regarding 'trusts and taxation of index linked loans'.

AP6.6 JB asked a question regarding trusts and the taxation of index linked loans and whether there was a test case now going through the courts?

HMRC can confirm that there is no test case going through the Courts. It is open to any of the parties to whom closure notices are issued to appeal to the Tribunal.

These arrangements were common before the introduction of inheritance tax transferrable nil rate band and used a trust, settled on the first death, into which property equal to the nil rate band was settled. The trustees then lent the property to the surviving spouse. On the second death the loan was repayable. The loan was usually subject to an uplift when repaid, often tied to some form of index, such as house prices. The issue is whether the indexed uplift on the amount repaid on the second death is interest in the trustees hands.

In respect of the cases under enquiry a decision was taken to issue closure notices in the remaining cases. We have not yet issued closure notices in all cases.

We publicised the change of approach to agents through the T&E Newsletter.

Post-meeting Note: Action Closed.

End

Thursday 13 July, the Financial Secretary to the Treasury made the following statement to the House of Commons:

The Finance Bill introduced in March 2017 provided for a number of changes to tax legislation that were withdrawn from the Bill after the calling of the general election. The then-Financial Secretary to the Treasury confirmed at the point they were withdrawn that there was no policy change and that these provisions would be legislated for at the first opportunity in the new Parliament.

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Action point summary

Action Point	Action Point	Action point completed
AP1.6	Adrian Cooper to advise all regarding announcement of when the Finance Bill will take place.	Closed, see post note in minutes
AP2.6	Rob Clay said he would ask the author of the guidance (Meaning of Business) and the clearance team to look into this.	Closed, see post-meeting note in minutes
AP3.6	RC said he would invite technical advisers to comment further on HMRC's position concerning personal Representatives (confirmed in <i>Leadley</i>) in the light of the statutory treatment of Instruments (Deeds) of Variation.	Closed, see post-meeting note in minutes
AP4.6	HMRC hoped to provide a written update on Speciality Debt to delegates within the next couple of weeks or so.	Open
AP5.6	Kevin Slevin would write to RC clarifying the question he raised – via email – on Company Purchase on Own Shares.	Open
AP6.6	John Bunker to write to HMRC with further details on indexation which was mentioned in the Trust and Estate Newsletter regarding 'trusts and taxation of index linked loans'	Closed, see post-meeting note in minutes.