

HMRC Capital Taxes Liaison Group Meeting 6 July 2018

G/12 PLW, 1 Horse Guards Road, Westminster, London, SW1A 2BQ

Attendees	
Emma McGuire (Chair)	HMRC (Trusts & CGT Team Leader)
Sue Baker	HMRC (Notes)
Danka Wigley	HMRC (Trusts Product & Process Lead)
Daniel Butler	HMRC (IHT & International Team Leader)
Leah White	HMRC (CGT Policy Advisor)
Martyn Rounding	HMRC (Business Assets & International)
Gillian Banks	PwC
Lynnette Bober	ICAEW (Rawlinson Hunter)
Susan Cattell	ICAS
Diana Davidson	STEP (Farrer)
Charles Pascoe	CBI (BDO LLP)
Edward Reed	Law Society (Macfarlanes)
Louise Speke	Country Land & Business Association (CLA)
Helen Thornley	Association of Taxation Technicians (ATT)
Kate Willis	Chartered Institute of Taxation (CIOT)

Apologies	
Sarah Kelsey	HMRC (Assets, Residence & Valuation Deputy Director)
Katharine Arthur	Haysmacintyre
John Bunker	TACT (Irwin Mitchell)
Jenny Chambers	Practical Tax Law (Thomson Reuters)
Andrew M Cockman	ICAEW (UK Grant Thornton)
Jim Hillan	CMC CMNO
Tim I Hughes	BVCA (Price Waterhouse Cooper)
Simon Jennings	STEP (Smith & Williamson)
Laura Kermally	STEP (Withers Worldwide)
Alexander B McDougall	CIOT
Robert McLean	TACT (Withers Worldwide)
Sue Moore	ICAEW
Aparna Nathan	CIOT (Dev Chambers)
Brian Palmer	AAT
Chas Roy-Chowdhury	ACCA
Arthur Thompson	ACCA (HW Fisher)
Kevin Slevin	ATT (Slevin Associates)

Introductions/Welcome

Emma opened the meeting and explained that Sarah Kelsey was the new Deputy Director but unfortunately could not attend the meeting.

1. Action Points

There were no actions from the previous meeting.

2. IHT

a. IHT Relevant Property Regime Reporting Requirements

This item had been included on the agenda in error and would be covered by the item on Excepted Group Life Policies (see below).

b. OTS Review of Inheritance Tax

The Office of Tax Simplification (OTS) are looking at simplifying the administration of IHT and the Chancellor-commissioned review is on track to report in the autumn. OTS have spoken to many individuals and have received around 4000 responses. They are also looking at IHT guidance and are pleased with the Master Customer Journey work being undertaken by HMRC. Comparisons with other countries will probably also be made. HMRC are yet to hear about the OTS recommendations, although they are expecting a recommended move towards a more digital system.

Forums like this one should help with implementation of the recommendations. HMRC also wants to take time to implement the proposals properly, and hopefully will have more to share as they get more information from OTS.

c. Excepted Group Life Policies set up by a Partnership and IHT Reporting Requirements

HMRC still expect each partner/individual to send in a return for each settlement, and questioned if this created an administrative burden. It was explained that in some cases firms had to deliver several hundred returns even if there was no tax due, or the settlor was terminally ill, or died before the assets were distributed. HMRC explained that the excepted settlement rules won't apply in these cases if the settlor or one of the partners is non-UK domiciled, or if there are related settlements. The trusts are within the relevant property regime and so returns are required.

HMRC asked whether arrangements could be made so they fall within the excepted settlements regulations but this is not possible because they involve single insurance contracts so cannot be split out. HMRC need further evidence of the issues and wanted to know how many such arrangements are in existence but accepted that it's a burden for both parties.

AP1 The Group to provide evidence of the issue and numbers of such large partnerships using EGLPs.

3. Trusts

a. Taxation of Trusts Consultation

HMRC said that at Budget 2017, the Chancellor had announced a Trusts Consultation to be published this year. This is expected to be a Call for Evidence rather than a detailed White Paper, and to be strategic and high level rather than setting out detailed proposals. HMRC will be working closely with the Group and other stakeholders to produce this. There is no publication date yet but it may be published after the summer.

b. 5th Money Laundering Directive (5MLD)

HMRC explained that 5MLD comes into force on 10 July and the requirements will have to be transposed into new legislation with effect from 10 January 2020. The Directive will affect all UK express trusts and some non-EU trusts that have acquired property in the UK. The current Trust Registration Service (TRS) will have to be expanded to enable all relevant trusts to be registered and for information to be shared with 'obliged entities' and those with a 'legitimate interest' in the data. The new TRS service is expected to be available from 10 March 2020. The Group hoped that the mistakes with 4MLD would be avoided and that the IT will be more user-friendly when the new system goes live.

HMRC were looking at a number of policy issues including the definition of express trusts, the information sharing requirements with obliged entities, Customer Due Diligence (CDD) requirements and what constitutes 'legitimate interest'. HMRC would prefer to have a narrow definition of legitimate interest which assists with anti-money laundering activity yet still complies with the access requirement. It was agreed that HMRC had to ensure that access is provided on the basis of an appropriate legal test.

STEP have raised concerns that the definition of a 'business relationship' would be very broad. HM Treasury were looking at the scope of this term although the EU may want the definition to be quite broad. HMRC will work with the group and manage expectations. The Group had concerns that non-UK trusts needing advice (and hence having a 'business relationship') could go elsewhere resulting in UK advisors losing business. HMRC commented that it would be helpful to have some evidence of the scale of the problem.

HMRC are also looking at getting more resources to sort out any practical IT problems with the new registration and reporting requirement. They acknowledge that thorough user testing will be needed and would like trustees to test the new TRS system. HMRC would also welcome input on the design and implementation of the expanded TRS requirements and will be in touch on this in due course.

AP2 The Group to provide any evidence of the extent of the 'business relationship' problem, and scale of any business loss, and if possible, any contacts who would be willing to test the system.

AP3 HMRC to contact the Group about their input on the design and implementation of the new TRS system.

4. CGT

a. Entrepreneur's Relief: Dilution Consultation

HMRC said that the technical consultation on allowing entrepreneurs' relief after dilution had run from March until May. HMRC had received 21 responses and the response to the consultation had been published today (6 July 2018) along with draft legislation.

AP4 The Group to send any thoughts on the draft legislation to HMRC.

b. Tax Gains made by Non-Residents on Immovable Property

A response document to the consultation was issued today along with draft legislation. Parliamentary Counsel are rewriting part one of TCGA to accommodate the NRCGT legislation. The rewrite is a simplification of part one only so is not a complete rewrite and is not intended to make any changes of substance to the existing provisions. HMRC will provide detailed guidance, and will liaise with the group at an appropriate time HMRC provided attendees with a suitable paragraph with which to confirm to colleagues and members that the rewrite does not make any changes of substance, to ensure the publication of the rewrite did not cause undue concern.

AP5 The Group to provide any comments on the draft legislation.

c. CGT Payment on Account

The draft legislation was being published today (6 July 2018). HMRC welcomed comments on the draft and the Group mentioned these were expressed in responses. The group regretted that the government had chosen not to alter the design of this new policy in line with consultation responses, but recognised the government's rationale.

d. ESC D33

Any work on consideration of legislating ESC D33 is currently on pause. Customers can rely on the concession in its present form for the foreseeable future.

The Group asked which version of ESC D33 they should be using and whether they could rely on what is in the yellow books. HMRC confirmed that the published version should be used. The Group raised that there was a published version which reverts back to the original wording of paragraph 11, with the £500,000 limit taken out. HMRC thought it likely that an old version was published in error.

AP6 HMRC to check that the correct wording of ESC D33 is on GOV.UK, and confirm what the current wording is.

Post-meeting note: *There was a version of ESC D33 on gov.uk which had never been updated to include the 2014 amendment to paragraph 11. This has now been corrected. The £500,000 limit in paragraph 11 is still in place and has never been removed.*

5. AOB

a. Future meetings

HMRC would like agenda items to have sufficient detail so that the matter can be fully considered before the meeting. A VAT template could be adapted for attendees to use. HMRC also explained that the forum should be used for policy issues, not administrative, technical or operational ones. The Terms of Reference agreed with the Technical Group could be modified accordingly to use for this Policy Group.

AP7 HMRC to draw up a Terms of Reference for the Policy Group and produce an agenda template for the meetings.

b. Domicile Enquiries (raised by Kate Willis)

The Group raised concerns about the unprofessional tone of some compliance questions. Clients are initially happy to comply but as enquires continue they go elsewhere. Examples were given of insensitive and upsetting questions. Domicile enquiries should not go on and on. Another issue was that HMRC are asking for replies within 30 days yet not responding to those replies for a year. Advisors are reluctant to escalate this as they do not want to provoke the inspector. Some concerns were also raised about the Requirement to Correct advice letters being issued by compliance units, which carry a threat of 200% penalties. These needed to be amended or to explain the contents better.

HMRC acknowledged the potential escalation difficulty but any concerns should be brought to their attention either directly in relation to cases or through this forum. HMRC should make enquires in a professional manner, and invited the Group to send in examples where this has not happened.

AP8 The Group to provide examples of any unprofessional questions and their domicile compliance concerns which HMRC will pass on to the relevant management.

c. Collective Enfranchisement Issues (raised by Kate Willis)

The CIOT Property Taxes Sub-committee had been discussing the complex tax issues that can arise in relation to enfranchisement. They receive a steady stream of enquiries on this and there is very little guidance on it. They wondered if the issues arising are the policy intent, and whether there is scope for an approach on this topic.

AP9 Kate Willis to forward the relevant correspondence on collective enfranchisement issues to Emma and Leah.

d. Shares and Assets (death by a taxpayer) (raised by Kevin Slevin)

HMRC were asked whether the rule that personal representatives can't make section 24 negligible value claims on behalf of the deceased could be changed. HMRC confirmed that they had considered the issue and don't think a change is necessary. Section 24 is quite unique in

that it is a claim to deem a disposal rather than a claim to a relief, so this is not a case of just claiming a relief the deceased could have claimed. Assets pass to personal representatives at market value on death, wiping out both gains and losses, so it would not be consistent across the piece to allow losses to be accessed in one particular set of circumstances.

e. Entrepreneurs' Relief following a share exchange (raised by Kevin Slevin)

Kevin Slevin had previously raised with HMRC that he has a different technical view on how the qualifying conditions for entrepreneurs' relief apply following a share exchange (to which section 127 applies). He had asked that HMRC's position be formally confirmed at the meeting. HMRC confirmed their view is that you can 'look through' the exchange to test whether the conditions at section 169I (6) have been met throughout a one year period. This is stated in HMRC guidance at CG63975, and applies to both the 'personal company' and 'officer or employee' tests. Charles pointed out that Kevin's view was a tenable one, so there are legitimate concerns about what would happen if this issue went to Tribunal. HMRC thought their view was unlikely to be challenged given that it is how everyone would want it to work. HMRC officers should follow the position stated in the guidance, so stakeholders should escalate it if someone is taking a case against the published view.

f. Technical issues

Some matters regarding distributions and liquidations were raised but details of the issue were not available. HMRC asked that if there was an issue concerning group members then it should be put on the agenda for the technical meeting with full details.

g. Next Meeting

The next meeting of the group would be on **Tuesday 8 January** from 11am - 1pm. If HMRC cannot secure a meeting room in 100 Parliament Street the meeting may have to take place in one of the offices of the members. Details of the venue would be provided in due course.

Summary of action points

No	Action Point	Owner	Action completed
AP1	Excepted Group Life Policies: The Group to provide evidence of the issue and numbers of such large partnerships using EGLPs.	Group	
AP2	SMLD: The Group to provide any evidence of the extent of the 'business relationship' problem, and scale of any business loss, and if possible, any contacts who would be willing to test the system.	Group	
AP3	SMLD: HMRC to contact the Group about their input on the design and implementation of the new TRS system.	Emma McGuire	
AP4	Entrepreneur's Relief: dilution consultation: The Group to send any thoughts on the draft legislation to HMRC.	Group	
AP5	Tax Gains made by non-residents on immovable property: The Group to provide any comments on the draft legislation.	Group	
AP6	ESC D33: HMRC to check that the correct wording of ESC D33 is on GOV.UK, and confirm what the current wording is.	Leah White	Completed
AP7	Future meetings: HMRC to draw up a Terms of Reference for the Policy Group and produce an agenda template for the meetings.	Danka Wigley	
AP8	Domicile Enquiries: The Group to provide examples of any unprofessional questions and their domicile compliance concerns which HMRC will pass on to the relevant management.	Group, Daniel Butler	Completed
AP9	Collective enfranchisement issues: Kate Willis to forward the relevant correspondence on collective enfranchisement issues to Emma and Leah.	Kate Willis	Completed