KPMG

Tax Newsletter: KPMG Isle of Man

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We hope you will enjoy this issue of our Tax Newsletter. Our purpose is to try to keep you abreast of topical UK tax issues which may affect you, your business, and/or your clients.

In this issue:

New guidance on exceptional circumstances for purposes of the UK's statutory residence test

An individual's UK tax residency status is determined using the Statutory Residence Test (SRT). Under the SRT, the number of days an individual spends in the UK during the tax year is taken into account in a number of the detailed rules that apply to determine their UK residency position.

In certain (but not all) cases, a day spent in the UK can be considered 'exceptional', and can therefore be disregarded, when counting the number of days an individual has spent in the UK for the purposes of the SRT.

HMRC has published guidance here on when an individual's presence in the UK by reason of the COVID-19 outbreak will be considered to be the result of 'exceptional circumstances'. Many taxpayers and their employers are concerned about the impact that additional unplanned days spent in the UK may have on their UK tax residency status. HMRC's additional guidance provides some welcome clarity in cases where individuals have needed to spend additional days in the UK due to COVID-19-related restrictions.

The new guidance, which should be read in conjunction with current published guidance on exceptional circumstances here has confirmed that an individual's presence in the UK can be considered due to 'exceptional circumstances' in the following four scenarios:

- if the individual is quarantined or advised by a health professional to self-isolate in the UK as a result of the virus;
- if the individual finds himself in a 'lockdown' situation as a result of the virus;
- if the individual is unable to leave the UK due to the closure of international borders; or
- if the individual is asked by his employer to return to the UK temporarily as a result of the virus.

Changes to the deadlines for filing and paying CGT on the disposal of UK property

From 6 April 2020, where CGT is due on the disposal of UK residential property by a UK resident individual or trustees, a new standalone online return will need to be filed, together with payment on account of CGT, within 30 days of the date of completion of the transaction.

For the avoidance of any doubt, HMRC have confirmed that the new reporting and payment regime applies only to taxable gains accruing on disposals of UK residential property made on or after 6 April 2020 (ie in the tax year 2020/21). This means that where contracts are exchanged under an unconditional contract in the tax year 2019/20 (ie in the year ended 5 April 2020) but completion takes place on or after 6 April 2020, the 30 days filing requirement should not apply. Such a gain should be reported in the 2019/20 self-assessment return in the usual way.

Example

Anna, a UK resident individual, exchanges contracts for the sale of her buy to let property under an unconditional contract on 1 April 2020. Completion takes place on 15 May 2020. The gain accruing on the disposal should be included on Anna's 2019/20 self – assessment return. The requirement to file a separate online return within 30 days of completion does not apply because the disposal was made in 2019/20 before the new reporting requirements take effect.

If, however, exchange of contracts takes place on or after 6 April 2020, or the contract is conditional and the condition is not satisfied until after 6 April 2020, Anna will be required to make a return to HMRC within 30 days of completion of the transaction together with a payment on account within the same 30 days' timescale.

HMRC has produced a fact sheet here on the CGT 30-days reporting and payment obligations for UK residents disposing of residential property and for non-UK residents disposing of UK land from 6 April 2020.

The factsheet Q&As include the following question: "*What happens if I don't tell HMRC about the Capital Gain on a UK residential property within 30 days and there is a CGT liability?*"

The answer indicates HMRC is allowing a period of time to adjust and will not issue late filing penalties for CGT payment on account returns received late up to and including 31 July 2020.

For UK residents, this means transactions completed between 6 April and 30 June 2020 and reported up to 31 July 2020. Transactions completed from 1 July 2020 onwards will receive a late filing penalty if they are not reported within 30 calendar days. Interest will accrue if the tax remains unpaid after 30 days.

Non-UK residents must continue to report sales or disposals of interests in UK property or land regardless of whether there is a CGT liability, within 30 days of completion of the disposal. This includes disposals of residential properties, non-residential properties and indirect disposals. From 6 April 2020, there is no longer an option to defer payment of CGT via a Self-Assessment return, and any tax owed must be paid within the 30-day reporting and payment period.

From 6 April 2020 non-UK residents will be able to use the new online service, which will replace the current reporting service.

DAC6 Update: UK regulations

On 13 January 2020, the final UK regulations for the implementation of the EU Directive on Administrative Cooperation in the field of taxation (DAC6) were issued alongside HMRC's official response to the consultation previously published in July 2019. The regulations come into force on 1 July 2020 and aim to ensure that HMRC are provided with early information about cross-border arrangements which contain certain features, or 'hallmarks', which the EU view as representing potentially aggressive tax planning.

The final regulations follow the release of draft regulations and the aforementioned consultation process, key themes of which were the potential for duplicate reporting, how the regulations will apply in instances of legal professional privilege, the penalty regime, and a general desire for further guidance on when an arrangement might be reportable and by whom. A number of queries around the impact of Brexit were also raised.

The main updates to the regulations and HMRC's official response to the consultation are discussed below.

Overall reduction in territorial scope – The regulations introduce new definitions of 'UK intermediary' and 'UK relevant taxpayer' to ensure that the rules do not apply to intermediaries without a connection to the UK. This is in-line with the intention of DAC6 and should in principle reduce the overall reporting burden.

Territorial scope of 'tax advantage' – The regulations have been amended in order to limit the territorial scope of tax advantages to those relating to taxes within the scope of DAC6 – i.e. direct taxes arising in EU Member States. However, in determining whether an EU tax advantage has arisen, arrangements may still need to be

looked at as a whole which could in turn require non-EU tax advantages to be considered.

Elimination of duplicate reporting – Although HMRC have acknowledged that some duplicate reporting of arrangements is inevitable, the regulations have been amended to ensure that the same intermediary does not have an obligation to report in multiple jurisdictions. In addition, HMRC have advised that their guidance will seek to reduce duplicate reporting in other circumstances. For example, secondary intermediaries (ie service providers) may essentially be able to assume that a report filed by a primary intermediary (ie promoter) includes all of the information that they would need to report, as long as they have evidence that such a report was made.

Legal Professional Privilege (LPP) – The regulations have been amended to ensure a disclosure that would breach LPP does not have to be made. In line with DAC6, the obligation to report should in principle be passed on to another intermediary or relevant taxpayer to whom LPP does not apply.

Penalties and governance – There is a fixed penalty of £5,000 for failure to comply in many cases, and daily penalties of £600 which should in principle only be charged in the instance of a serious failing, such as where the behaviour leading to the failure was deliberate. Penalties may be cancelled if there is a reasonable excuse. The possibility for the Tribunal to increase penalties up to £1 million remains.

Brexit

The final regulations do not directly take account of the fact that the UK should soon cease to be a Member State of the EU. However, in the consultation response HMRC have confirmed that, under the terms of the Withdrawal Agreement, the UK is legally obliged to implement DAC6 prior to the date that the UK leaves and during the subsequent Implementation Period. It remains to be seen how this might change, given the uncertainty surrounding the precise nature of the UK's future relationship with the EU.

HMRC updates SDLT combined steps guidance

Section 75A Finance Act 2003 (s75A) in effect short-cuts or re-casts transactions involving land in England or Northern Ireland that have multiple component steps. If the revised transaction generates more Stamp Duty Land Tax (SDLT) than the actual transactions, that higher amount of SDLT is payable. Previously the section has been understood to be an anti-avoidance provision, only to be applied where taxpayers have avoided tax (deliberately or not).

In the light of the decisions in Project Blue and in particular Hannover Leasing v HMRC in which the Tribunal appeared to agree with HMRC's assertion their guidance in this area was wrong, HMRC have updated this guidance to remove statements that s75A anti-avoidance legislation will not be applied where transactions are taxed appropriately, ignoring s75A. In other words, it appears HMRC will no longer accept arguments that combined steps transactions that result in a reduced liability to SDLT are spared s75A merely because the reduced liability is in line with the overall scheme of the legislation and hence is not avoidance.

Transactions have multiple steps for these purposes where there are 'scheme transactions', that is, transactions involved in connection with the acquisition of the property. The decision in Hannover was that the taxpayer was incorrect to assert that 'scheme transactions' must be read purposively to mean transactions that do down the evident aims of the SDLT charging provisions, so the guidance reflects this by asserting that if the outcome of any sequence of transactions (presumably the outcome being the acquisition of the property) depends on one of those transactions, that transaction is a scheme transaction.

The guidance does not address many of the uncertainties advisers face in this area (and given the difficulty with the legislation and the case law this is understandable). But the guidance does give a clear indication that HMRC proposes to apply what in reality must have been intended as anti-avoidance legislation, without regard to whether the transactions in question defeat the aims of the rest of the SDLT legislation or not.

However, it remains to be seen if in practice HMRC do this or whether they will exercise a discretion, given there are many examples of transactions where the application of s75A would give unintended results. So taxpayers and their advisers remain uncertain of the SDLT costs of many transactions, even relatively straightforward ones.

HMRC publish new guidance for Non-resident corporate landlords

With the exception of companies who have tax deducted at source under the Non-resident Landlord Scheme and are not required to file a tax return, from 6 April 2020, Non-UK resident companies will pay UK Corporation Tax instead of Income Tax on profits arising from a UK property rental business. This includes those who invest in UK property through collective investment vehicles.

HMRC have now published guidance here on the change in legislation. The guidance covers a number of administrative matters including corporate tax registration, payment and return submission, and technical points on relief for finance expenses and transitional rules relating to the transfer of existing capital allowances and losses.

Updated HMRC guidance on non-UK residents directly and indirectly disposing of UK property

A new section of HMRC's guidance on non-UK residents directly and indirectly disposing of UK property, entitled "*Disposals to which relief is available under a Double Taxation Treaty*" details the requirement to claim for double tax treaty relief of the gain from UK tax in a tax return.

Many of the UK's Double Taxation Treaties can determine whether the UK has taxing rights on a disposal of UK land.

Where the Treaty applies to exempt the gain from UK taxation there remains a requirement to file the relevant UK tax return to make the claim to treaty relief.

However, where the disposal is one that has an appropriate connection to a Collective Investment Vehicle (CIV) and the relevant Double Taxation Treaty would apply then HMRC is applying concessionary treatment to exempt the requirement to make the treaty claim by return. Appropriate connection is defined at CG73996J of HMRC's Capital Gains Manual). The updated guidance states that the concession is 'subject to review', although it does not expand on this.

Changes in UK ORI: Impact on loans to and from offshore trusts

The official rate of interest (ORI) for relevant trust matters has stood at 2.5% since 6 April 2017 but will reduce to 2.25% from 6 April 2020. Trustees of offshore trusts, settlors and beneficiaries may need to consider this change carefully because:

- interest paid by the trust to the settlor at the 'old' ORI rate of 2.5% may constitute a taxable benefit or capital payment from the trustee to the beneficiary calculated at 0.25% of amount of the loan;

- a payment of interest to the trust on a loan at the 'old' ORI rate of 2.5% by settlor may constitute an addition to the trust.

Please contact us if you think you and/or your clients may be impacted by the above change to ORI as it may give rise to unplanned UK tax charges, particularly where a trust may be deemed a "protected trust" under the relevant trust tax rules that came into force on 6 April 2017.

Key changes to UK Entrepreneurs' Relief

In addition to the headline reduction in the UK Entrepreneurs' Relief lifetime allowance announced at the 2020 Budget, further measures have been introduced to counteract actions that may have been taken to 'bank' the relief. Perhaps most surprisingly, Entrepreneurs' Relief will now be known as 'Business Asset Disposal Relief'.

The change of name does not have any practical impact on the operation of the relief – it remains a 10% capital gains tax rate on the disposal of certain business assets (including shares in a trading company), where various conditions are met. The change may well simply be defence against the commentary in the lead up to the Budget that the relief has not met its original objective of driving entrepreneurial behaviours.

The most pertinent change in the Finance Bill is the reduction in the lifetime allowance. For disposals on or after 11 March 2020, Entrepreneurs' Relief (or, Business Asset Disposal Relief, as it will be known from the 2020/21 tax year onwards) claims will be limited to the first £1million of lifetime gains – meaning any individual who has already claimed Entrepreneurs' Relief on gains of £1million or more will no longer

qualify for the relief on any future disposals. Similarly, even for those who have never made a claim to the relief previously, only the first £1million will be taxable at 10%, with the remainder subject to capital gains tax at the prevailing main rate, currently 20% (2019/20 rates). At current rates, this makes the relief now worth £100,000, down from £1million at the previous limit.

In addition, the 2020 Budget announcements introduced retrospective anti-forestalling measures which may impact transactions which have exchanged and not completed and which restrict the ability of individuals to bring non-cash consideration into the charge of tax.

The new Finance Bill makes these anti-forestalling measures even more wide-ranging, such that they now also apply to share reorganisations which may have taken place more than 11 months before the Budget.

In particular, these 'anti-avoidance' measures could impact transactions that occurred between 6 April 2019 and 11 March 2020, and may subject these transactions to the new £1million lifetime limit. The measures are also wide reaching and may, perhaps unintentionally, catch commercial and non-tax motivated transactions and company restructurings that happened as far back as April 2019.

Alternative reliefs

Investors' Relief, which enables qualifying shareholders to benefit from a 10% rate of capital gains tax on the first £10 million of capital gains, is to continue unchanged. Investors' Relief is available to investors in qualifying shares of an unlisted trading company (or the holding company of a trading group) but, unlike Entrepreneurs' Relief, it is only available to investors who are not employees involved in the running of the business.

Shareholders may also want to consider whether they could introduce an 'Employee Ownership Trust' to their company. Where a shareholder sells a controlling interest in their company to such a trust, and various conditions are met, a 0% tax rate is available on any gain that arises on the sale.

UK Trust Registration Service (TRS) Update

The TRS came into being as a result of the Fourth Anti Money Laundering Directive, the implementing legislation being Statutory Instrument 2017/692.

New legislation, the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 came into force on 10 January 2020 in order to reflect the Fifth Anti Money Laundering Directive (5MLD).

Missing from these new regulations effective from 10 January 2020 is legislation governing how the TRS will be updated in the future in order to be compliant with 5MLD. In order to assist with determining this, HMRC published their technical consultation on the extension of the TRS, the consultation closed on 21 February 2020.

How is the TRS going to change?

Very broadly, UK trusts that pay tax and non-UK trusts with a UK tax liability currently have to register on the TRS. New trusts have to register on the TRS in order to get a unique tax reference number and existing trusts have to register on the TRS in line with the self-assessment tax return deadlines.

5MLD requires the UK to register all UK resident express trusts, with no carve out, exemption or de-minimis thresholds and registration is required regardless of whether the trust has a UK tax liability or not.

As well as non-UK resident trusts with UK tax liabilities continuing to need to register on the TRS, 5MLD will also require that non-UK resident express trusts that enter into a new business relationship with an obliged entity on or after 10 March 2020 will have to register on the TRS. HMRC propose such a business relationship would have to encompass working interactions of 12 months or more.

The technical consultation also includes information about when third parties can make a request to HMRC in order to see the data on the TRS.

What do we know about changes to registration deadlines?

As having a UK tax liability will no longer be necessary to register on the TRS, the TRS registration deadlines will need to stop following the tax return deadline.

The technical consultation provides the following information (which is not yet supported by legislation).

Trusts in existence at 10 March 2020	***Must register on TRS by 10 March 2022***
Trusts set up after 10 March 2020	***Must register on TRS within 30 days or by 10 March 2022, whichever is later***
Trusts set up on or after 10 March 2022	***Must register on TRS within 30 days***
Until 10 March 2022	***Trusts that need to register on TRS as they have a UK tax liability for the first time, should continue to register on TRS under current process***
Once registered on the updated TRS	***Trustees will have 30 days from when they are aware of any changes to update the TRS***

Changes to information on register

HMRC has now launched its online 'Manage your trusts registration service' here, which trustees should now use to notify HMRC of any changes to the information given about their trust at registration. This includes changes to settlors, trustees or beneficiaries. A 'digital handshake' is required for agent authorisation.

SDLT increased rate for non-UK residents

One change announced in the UK Budget 2020 that is set to (exclusively) affect non-UK residents, or at least those intending to purchase residential property in England or Northern Ireland, is the introduction of a 2% Stamp Duty Land Tax (SDLT) surcharge for purchases made on or after 1 April 2021. When combined with the existing 3% surcharge applying to second homes, an Isle of Man resident could be faced with a top rate of SDLT of 17%. Given the graduated nature of SDLT, such a rate would only apply to the proportion of the purchase price in excess of £1.5m (and thus only affect a privileged minority). However, the combined 5% surcharge on standard SDLT rates for non-UK residents buying a second home of any value will significantly increase the overall cost of such deals.