KPMG

Tax Newsletter: KPMG Isle of Man

Issue 50

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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:

Finance Act 2019

The Finance Bill 2018-19 received Royal Assent on Tuesday 12 February 2019, becoming the Finance Act 2019. This includes legislation:

1) introducing the new (and amended) 'economic test' into the definition of personal company for Entrepreneurs' Relief which applies from 29 October 2018;

2) extending, from April 2019

   - the territorial scope of UK Capital Gains Tax (CGT) such that non-residents would pay tax on chargeable gains on all immovable UK property and also on disposals of 'UK property rich companies' where the shareholder has a 25% holding in the company at any time in the 2 years prior to the share disposal; and

   - the 30 day reporting and payment on account rules for most non-UK residents;

3) moving non-resident companies that are non-resident landlords from income tax into the corporation tax regime from 6 April 2020;

4) introducing from 6 April 2020 a new '30 day payment and reporting window' where UK residents dispose of UK residential property; and

5) introducing from April 2019 the new Profit Fragmentation rules.

Extending time limits for offshore non-compliance

As a reminder, the Finance Act 2019 includes new legislation extending the current four and six year time limits such that HMRC will always be able to assess at least 12 years of back taxes for offshore non-compliance.

Historically HMRC have had four, six or 20 years (for mistake, careless or deliberate behaviour, respectively) to assess tax that is due. The new legislation which has effect from April 2019 has extended the four and six year time limits such that HMRC will always be able to assess at least 12 years of back taxes for offshore non-compliance. The four, six and 20 year time limits will continue for onshore non-compliance. Therefore, for the first time there is divergence on periods taxable between onshore and offshore.

This new provision applies to Income Tax, Capital Gains Tax and Inheritance Tax where the lost tax involves an offshore matter or an offshore transfer, both of which are widely drawn and include income or capital gains arising on a source outside the UK, assets situated or held outside the UK and activities carried on outside the UK, or where the income or disposal proceeds are received outside the UK or transferred outside the UK.

This extended time limit does not apply if HMRC has received information from overseas by mandatory automatic exchange before the time limit that would otherwise apply (4, 6 or 20 years) and HMRC could reasonably have been expected to be aware of the lost tax from that information. It is unclear how this will be interpreted.

The new legislation will have effect in relation to Income Tax and Capital Gains Tax for the tax years 2013-14 and 2014-15 in cases where the loss of tax is brought about by careless behaviour and for years 2015-16 onwards in other cases (where not already subject to the 20 year time limit).

They will apply for Inheritance Tax to chargeable transfers taking place on or after 1 April 2013 where the loss of tax is brought about carelessly, and 1 April 2015 for other cases not subject to a longer time limit.

Key actions for non-doms to consider before 6 April 2019

With the new tax year 2019/20 rapidly approaching, KPMG have produced a checklist summarising a number of key actions non-UK domiciled individuals may wish to consider before the current tax year draws to a close. Following the introduction of fundamental changes to the compliance landscape for long term UK resident non-doms applying from 6 April 2017 and with some further changes applying from 6 April 2018 there are many changes for non-doms to continue to be aware of.

The checklist highlights some of the issues to be aware of and explains some of the issues to deal with before 6 April 2019.

Please contact one of the people named at the bottom of the checklist if you would like further information or advice concerning your or your client's personal tax position.

Update: Trust Registration Service

The latest HMRC Trust & Estate newsletter confirms that HMRC intend to start rolling out their new Trust Registration Service (TRS) system at the start of the summer of 2019. This will then be followed by a series of updates which will expand the functionality of the new system including the ability to update the details recorded on the TRS.

HMRC states:

"Currently, it is not possible for lead trustees and their agents to update their registered information or to declare that there have not been any changes.

The work to allow trustees and agents to update their details online is now underway. Following user feedback, we are switching to a new system (a 'micro service') which will be more intuitive, easier to navigate and have several advantages over the current 'iForm' service.

We intend to roll out the new service at the start of the summer of 2019 and functionality will be expanded gradually in a series of deployments, which will include the ability to update details.

In the meantime, if you need to inform HMRC that the lead trustee or trust correspondence address has changed, then please write to us at: Trusts HM Revenue and Customs BX9 1EL.

There is a specific question, question number 20 on the SA900 trust tax return asking if the TRS has been updated. For now, submit completed SA900 forms without answering Question 20 and leave the tick box blank. You will not be penalised for not answering Question 20. Our apologies for any confusion this may cause."

Update: Specialty debts and situs for IHT purposes

The latest HMRC Trust & Estate newsletter also states that following consultation with stakeholders, HMRC has published updated guidance on the IHT treatment of specialty debts.

A specialty debt is:

- a debt made by deed, or
- a deed which records or creates obligations, or
- a debt incurred by way of statute, or

- a certain type of debt that is given the nature of a specialty debt by statute.

Under the common law rules the situs of a specialty debt is where the relevant documentation is situated. However, in 2013, a small change was made to the IHT manuals which caused concern. HMRC claimed that it had been advised that this interpretation was unlikely to be correct and that the debt was situated where the debtor resides.

A major concern had been the impact on non UK domiciliaries where the 2013 change potentially brought an asset into the UK.

The IHT manual has now been updated again and revised guidance published by HMRC. In essence, it says a specialty debt will be situated in the UK if it is secured solely on a UK asset regardless of where the debtor is. An unsecured specialty debt will generally be treated as sited wherever the deed is sited. However, if both debtor and creditor are UK resident and the deed has been removed from the UK then HMRC may challenge the situs.

HMRC has updated the manuals and published this statement:

"*Following ongoing discussions with external stakeholders, HMRC has now published updated guidance on the Inheritance Tax (IHT) treatment of specialty debts. The revised sections of the IHT Manual can be found at IHTM27079, IHTM27080 and IHTM27104*." …

Non-UK domiciliaries should therefore look at their affairs with regard to specialty debts and the new situs definition to assess if they need to bring their tax affairs up to date, for example there may be inheritance tax charges to report.

Please contact Justine Howard or Katie Kneale for further detail in relation to this matter.

The new UK double tax treaties with the Crown Dependencies

On 19 December 2018 the new Isle of Man – United Kingdom Income Tax Treaty (2018) and the new Jersey – United Kingdom Income Tax Treaty (2018) entered into force. A few weeks later, on 7 January 2019, the new Guernsey – United Kingdom Income Tax Treaty (2018) also entered into force.

The previous treaties were some of the oldest in the UK's treaty network, the Channel Islands treaties having first entered into force in 1952, with the Isle of Man following in 1955. The new treaties have been brought up to date and are broadly drafted in line with the OECD's 2017 edition of the Income and Capital Model Convention and Commentary.

For UK tax purposes the new treaties will apply for different taxes on different dates as follows:

- for taxes withheld at source, from 1 February 2019;
- for income tax and capital gains tax, from 6 April 2019; and
- for corporation taxes, from 1 April 2019.

Under the new treaties, full relief is provided for withholding tax suffered on qualifying interest and royalties, subject to the application of a new principal purpose test for treaty benefits (in line with Action 6 of the OECD's BEPS project). Companies looking to rely on this relief will therefore need to assess whether the principal purpose test is satisfied, based on their existing or proposed arrangements.

The new treaties also all now include a non-discrimination clause (Article 24) and should in principle be considered 'full treaty countries' for UK tax purposes going forward. Multinational enterprises should therefore look to consider the impact of this change in respect of double taxation relief claims, application of the branch exemption election, and the forthcoming offshore receipts in respect of intangible property legislation.

NRCGT: Draft HMRC Guidance

From April 2019, the scope of Non Resident Capital Gains Tax (NRCGT) is extended to include all UK immoveable property, including commercial property and other UK land. This affects all non-UK resident property investors (whether individuals, companies or other entities). The legislation for this change is included in FA 2019.

In January 2019 HMRC published draft guidance on the new NRCGT rules. The CIOT has now submitted comments to HMRC on this draft guidance. Of particular interest is para 3.1 in relation to non-UK resident landlord companies which make a capital gain between 6 April 2019 and 5 April 2020 which states:

'*Where non-resident companies disposing of UK land or make an indirect disposal between 6 April 2019 and 5 April 2020, guidance is requested on the reporting obligations. Section 2 indicates that companies are subject to corporation tax on chargeable gains and not*

to capital gains tax, which suggests that the new reporting requirements of Schedule 2 do not apply to non-resident companies. However, until April 2020, non-resident companies with UK property income will be filing UK income tax returns as non-resident landlords, rather than filing CT returns. Presumably, they will therefore need to register for corporation tax under the normal CT notification of chargeability rules and submit a CT return in order to report the gain, in addition to submitting the normal NRL income tax return? Clear guidance on this point is requested.

It would be administratively easier if companies in this situation could report the gain on the NRL income tax return, paying CT on it rather than CGT. Is this possibility under consideration?'

Consultation on SDLT non-resident surcharge

A consultation on introducing a 1% Stamp Duty Land Tax (SDLT) surcharge for purchases of dwellings in England and Northern Ireland made by non-UK resident buyers has been published.

The consultation, announced at the Autumn Budget held on 29 October 2018, contains more information on the proposal, including a new deemed residency test for individuals and borrowing existing residency tests for trusts and companies. No exemptions are proposed other than one for Crown employees (for example, members of the armed forces) posted overseas. Individuals would be entitled to reclaim the surcharge if they become UK resident in the 12-month period beginning with their purchase.

The consultation raises a number of issues which are discussed below.

The rules have the potential to add considerable complexity to the SDLT rules in an area which is often dealt with by non-tax professionals (conveyancers). In fact, under the proposal, the number of alternative sets of tax rates and bands for residential property transactions would almost double. There would be 11 sets of tax rates and bands covering a range of scenarios with tax rates ranging from 0 percent to 16 percent.

The deemed residency test proposed for individuals is specific to SDLT. An individual would be treated as UK resident for these purposes only if they have been in the UK (at midnight) on 183 days or more in the year preceding their purchase. So an individual may be treated as UK resident for income tax purposes but non-UK resident for SDLT purposes.

It is pertinent to also point out that:

- non-UK resident individuals would not avoid the surcharge by using a UK-resident company to make the purchase. There would be a 'look-through' for UK-resident close companies;
- the proposal is specific to purchases of dwellings in England and Northern Ireland. There are no plans (as yet) to introduce such a surcharge for purchases in Scotland or Wales; and
- the timing of the surcharge is not known. An announcement is expected in the summer. It may be affected by the UK's withdrawal agreement from the EU.

The consultation will end on 6 May 2019. Stakeholder meetings are expected to be run before that date.

SDLT filing and payment deadlines reduce from 1 March 2019

From 1 March 2019 Stamp Duty Land Tax (SDLT) filing and payment deadlines reduce from 30 to 14 days.

The new filing and payment window for SDLT returns has been cut from the current 30 day period from the 'effective date' of a land transaction to 14 days for transactions which have an effective date of 1 March 2019 onwards. The 'effective date' is usually completion. This change will apply to all purchases of land in England and Northern Ireland.

First return

Where a transaction becomes notifiable for the first time, the 14 day filing and payment deadline will apply instead of the 30 days deadline that applied prior to 1 March 2019.

Deferment applications

The deadline for applying to defer payments of SDLT has been maintained at 30 days from the 'effective date' (usually completion) of the land transaction. Such applications are typically made when later instalments of the price for a land acquisition will or may be paid more than six months after the purchase and the amounts payable are not known on the effective date.

Further returns and amendments of returns

Where a further return is required in respect of a chargeable transaction that has previously been notified

or the original return needs to be amended, then the 30 day deadline for filing and payment still stands.

Domicile Case re factors supporting change of domicile

Although not specifically a tax case, the April 2018 case of *Proles v Kohli ([2018]* provided a useful reminder that to acquire a domicile of choice, there not only has to be actual residence in a country but also an intention to reside permanently or for an unlimited time in that country.

In this case the life of the deceased, Mr Kohli, was examined in some detail to determine, as a preliminary matter, whether his minor child from an extra marital affair had a claim on his estate on the basis that Mr Kohli held an UK domicile of choice, displacing his Indian domicile of origin, at the time of his death.

The High Court concluded in April 2018 that Mr Kohli died domiciled in the UK and not India and his child was therefore entitled to some of his estate. In our opinion, this case does not appear to establish any new principles that need to be considered in determining domicile. It does, however, highlight that the weight attached to particular or assumed evidence can be hard to assess and that just telling someone that you intend to do something is not enough. The Judge noted that Mr Kohli had made a number of statements of his intentions relating to his domicile; however, in his judgment, they were '*self-serving and little weight should be given to them…*' because there is usually an ulterior motive, for tax or succession reasons, to take a certain domicile position.

The Kohli case decided that the intention to reside permanently meant more than intention to die in a certain place. It was noted that even though Mr Kohli maintained connections to India, eg an Indian passport, ID card and had a limited visa to live and work in the UK, none of those in themselves was inconsistent with a settled intention to remain in the UK.

Notwithstanding that Mr Kohli ultimately died in India after spending the last few months of his life there, the Judge was satisfied from the evidence provided that that when Mr Kohli decided to go to India, he intended to return to the UK. The Judge stated that even if Mr Kohli had travelled to India to die there, this would not, in his judgment, be an abandonment of his domicile of choice on the basis that "*..where, for practical purposes, a person has no life left to live, then a decision to go to his/her country of origin to die, is not a decision to spend any significant part of one's life ("the end of one's days") in that country – it is a decision that the specific event of his/her death should be in that country."*

On 6 February 2019 the High Court refused permission to appeal and hence the April 2018 decision stands. Some additional points of interest arising as a result of the oral application for permission to appeal the April 2018 High Court decision have been summarised below.

1) 'Sole or chief residence' in the UK

This is probably the most interesting point in the permission to appeal application – summed up in para 10 as follows:

'*what is important for the significant factor relied on…("sole of chief residence") is not necessarily the quality of living in any particular house at any particular moment, but the concept of making this country the "sole or chief residence". A series of temporary homes, occupied while they were redeveloped to be sold at a profit, is not inconsistent with an intention to make England and Wales a person's "sole or chief residence"*.'

2) No proper finding as to where the deceased "wished to spend his last days"

It is noted that Mr Kohli came to the UK from India (his domicile of origin) and he returned to India (when he knew he had cancer and was probably was reaching the end of his life) and died in India. The Judge found that the contemporaneous evidence that the deceased intended to return to England was very strong.

The Appellant argued that the Judge failed to reflect the proper test in relation to abandonment. She submits that the concept of abandonment of a domicile of choice does not require the establishment of another particular domicile in the same way that a domicile of choice arises. All that is required is an abandonment, at which point the domicile of origin arises again automatically. The domicile of origin would arise by simply ceasing to reside in the domicile of choice and/or by ceasing to intend to reside there permanently or indefinitely. One does not have to form the same intention of permanent residence as had to be formed for a domicile of choice.

Nonetheless she clearly found that he had not intended to cease to reside permanently in England; he had retained his residential connections there. In those circumstances he had not abandoned his domicile of choice. The Judge reflected on the fact that a man who realises that he has not got long to live might have other things on his mind than the sort of things which

go to make up an intention to reside for domicile purposes… In those circumstances it may not be possible to attribute to him the relevant intentions to abandon the domicile of choice from the mere fact that he had gone somewhere else to live out his last days. That seems to me to be a perfectly sensible contrast to draw. '

3) *A failure to give any or any proper effect to the fact that the deceased would not have been allowed re-entry into England and Wales once he had left for India in 2015.*

As a matter of fact Mr Kohli's visa had expired before he made his final trip to India, and as a result he would not have been allowed to return to England. However, this was not considered to be a significant flaw in the previous High Court judgment.

'*I accept that the point is not dealt with in the judgment. It is not an irrelevant point. However, a first instance judgment on a trial cannot be successfully impeached by drawing attention to each and every point that might have been relevant but was not dealt with in the judgment. The Judge made no findings about the deceased's understanding and intention in respect of his visa and rights of re-entry. She did, however, make a finding that he said he intended to return for his medical appointment. That is a finding which is inconsistent with the hypothesis that the deceased knew he would not be allowed to re-enter and therefore must have intended to abandon his English domicile. It is actually consistent with the opposite case…I do not think that this omission by the Judge is a significant flaw in the judgment.'*

Acquisition of a bungalow not suitable for use as a "dwelling"

An important decision was made at a First Tier Tribunal (FTT) in January 2019 in the case of *PN Bewley Ltd V HMRC [2019]*.

PN Bewley Ltd purchased a bungalow and a plot of land in Weston-super-Mare for £200,000 in January 2017. The intention was to demolish the existing bungalow and build a new dwelling for which planning permission had been obtained.

A demolition survey conducted in December 2016, identified asbestos. The recommendation of these materials was "urgent removal". The survey also described the property as "a derelict bungalow to be demolished".

The property was connected to water, gas, drainage and electricity bu the heating system, copper pipes and floorboards had been removed.

Higher rates of stamp duty land tax (SDLT) normally apply to a residential property either where the property is a person's second property or, as in this case, when the property is acquired by a company. But the Bewleys argued that they should only pay the non-residential rate of SDLT on the property, since the bungalow was clearly derelict and not suitable for occupation.

The FTT concluded that there should be no 3% SDLT surcharge on the acquisition of a dilapidated bungalow as it was not suitable as a 'dwelling'. Soon after the bungalow was acquired, it had to be demolished due to asbestos and was deemed uninhabitable due to there being no heating system, pipes or even floorboards. The FTT noted dwelling status for ATED, ATED related CGT and VAT.

In addition, as the bungalow was unsuitable for use as a dwelling, the FTT stated that it could not be classed as residential and, therefore, the SDLT rate to be applied should be that for non-residential property. The FTT therefore reduced the SDLT below even that self-assessed by the company (on the basis that the property was residential but the surcharge did not apply).

This case provides helpful guidance on what should and should not be treated as a dwelling for SDLT purposes. It is also worth noting the Judge's comment (given the stated aim of the surcharge is to support the UK housing market) that "*we should be slow to find that a corporate purchase is liable to the higher rates of SDLT, especially by a developer as in this case who was to and did create a habitable and suitable dwelling on the site after demolition of the bungalow.*"