AUTUMN STATEMENT – IHT, TRUSTS & ESTATES

Tolley®Guidance

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Autumn Statement 2013 — IHT, Trusts & Estates

Produced by Tolley

The Chancellor delivered his Autumn Statement on 5 December 2013. The provisions relating to inheritance tax, trusts, and charities are set out below, together with other proposals which will be of interest to private client practitioners.

Inheritance tax and trusts

Simplifying charges on relevant property trusts

The proposal to simplify charges on relevant property trusts has been on the agenda for at least two years. There have been two consultations and the government is now promising a third. It appears that changes will be postponed until 2015, although some proposals will be included in Finance Bill 2014.
Autumn Statement , para 2.62

The charges at issue are the ten year or periodic charges made on 'settlements without qualifying interests in possession', together with the exit charges incurred when property leaves such a settlement. The calculations are complex and require information which may not be easily available to trustees, or their advisers. The most recent consultation had 3 key proposals:

- To dispense with the requirement for historical information on the settlor's previous transfers and to compensate for this by splitting the nil rate band between all the settlor's trusts in existence

- To apply a flat rate of 6% to all periodic and exit charges instead of the variable (lower) rates required by the calculations

- To treat undistributed income as automatically accumulated (and therefore capitalised) after two years. The proposal is in conflict with trust law which allows for retention of income with distribution to income beneficiaries many years later. The accumulated income would become subject to IHT charges

The proposals received a great deal of criticism from the profession. The objections are set out succinctly in the CIOT response to the consultation.

The government is now promising a further consultation on splitting the nil rate band, so it appears that it has acknowledged the difficulties but is nevertheless intent on pursuing this measure. Aside from simplification, the recognised purpose in splitting the nil rate band is to extinguish the tax planning opportunities offered by Pilot trusts.

No comment has been made on the rate of tax to be applied to the chargeable property. Details may be published in the draft legislation on 10 December.

The Autumn Statement does include a definite proposal to treat income which remains undistributed for 5 years as part of the trust capital when calculating the 10 year charge. It has therefore moved from its initial position of 2 years, but it is still a long way from the ICAEW's proposal of 21 years in its response (Taxrep 39/13). No detail is available yet on whether the income tax consequences will be addressed.

IHT compliance

As suggested in the consultation, the government intends to simplify filing and payment dates for relevant property trust charges.

Even more useful is the proposal to provide an online service for IHT from 2015–16. Currently, all IHT returns are submitted on paper. HMRC does provide electronic versions on its website which can be filled in on-screen but they have to be printed, signed and posted. These forms are notoriously difficult to navigate. It is to be hoped that a change to an online service will provide an opportunity to streamline the requirements.

Vulnerable beneficiaries

The Chancellor promised further concessions in relation to vulnerable beneficiaries, indicating that it would broaden the definition of qualifying trusts and explore further ways of safeguarding property for vulnerable people.
Autumn Statement , para 2.63

The only specific provision mentioned in the statement was an immediate application of the CGT 'uplift' provisions to apply on the death of a vulnerable beneficiary. Under TCGA 1992, s 62 the assets of a deceased person are deemed to be disposed of and re-acquired at market value at date of death. The same relief from capital gains tax applies in the case of trust assets in which a beneficiary has an interest in possession. As a vulnerable beneficiary's interest is often discretionary, a change to the law is required to give them the preferential treatment.

Capital gains tax

The Annual Exemption for capital gains tax will be increased to £11,000 in 2014–15, and to 11,100 from 2015–16. The exemption for trusts will be £5,500 and £5,550 respectively.

Private residence relief

The government will reduce the final period of exemption from 36 months to 18 months from April 2014. Legislation will be introduced in the Finance Bill 2014.
Autumn Statement , para 2.58

Currently, when a property is sold which has qualified for private residence relief at any time during the period of ownership, the last 36 months of ownership is exempt, regardless of how the property has been used during that period. The provision was originally intended to help those who needed to move and had difficulty in selling their home, but it has become a widely used planning tool for those with two qualifying residences. Indeed MPs accorded the provision some notoriety with their custom of 'flipping' their London and constituency homes.

The published information indicates no other change to private residence relief other than a reduction in the final exemption period. All the other valuable principles of the relief will remain. Nevertheless, the curtailment of the exemption could have a fairly significant effect on the amount of tax payable on properties which have been owned and lived in for just a few years.

In order to avoid tax on their main residence, homeowners will need to accelerate their decision on whether to sell the property when they move to another part of the country or abroad. See also the comment on Non-residents below.

Non-residents

As widely anticipated, the Chancellor announced that the government will introduce a charge to CGT on future gains made by non-residents disposing of UK residential property.
Autumn Statement , para 2.59

The basic principle of CGT has always been that it is a charge on those resident in the UK. However with the popularity of the UK, and London in particular, as a property investment destination for the worldwide wealthy, the principle is now seen as a 'loophole' in the context of property. It is generally accepted that it is foreign investment in London property which is driving prices upwards to the disadvantage of those who are (or would like to be) resident in the city.
TCGA 1992, s 2

Finance Act 2013 introduced the annual tax on enveloped dwellings and the related capital gains tax charge on residential property held by non natural persons — typically companies. Those measures went some way towards addressing what was seen as unacceptable tax planning in relation to property, but they apply only to properties worth in excess of £2 million. The current proposal adopts the rather more direct, and obvious, remedy of imposing a CGT charge on all residential property in the UK (subject to available reliefs such as private residence relief).

The change in the law is scheduled for April 2015 and the government will publish a consultation document on how best to introduce it in early 2014. Clearly, there will be a number of issues to address:

- **Compliance** HMRC will have to ensure that non-resident owners of residential property are aware of their reporting obligations.

- **Tax collection** HMRC will have limited powers of enforcement against non-residents and may be expected to instigate a tax collection scheme comparable to the Non-resident landlords' scheme. Under that scheme, agents and tenants are obliged to deduct income tax at basic rate from rental income unless the non-resident landlord complies with self assessment. By comparison, capital gains tax could be collected, as is Stamp Duty Land Tax for purchasers, when the transfer of property is registered.

- **Apportionment of gains** The Chancellor emphasised that tax would be charged on *future* gains. Where the period of ownership straddles April 2015, the gain will have to be apportioned to the chargeable and non-chargeable period. This could be done on a time apportioned basis as with private residence relief. Alternatively, chargeable gains could be based on a valuation of the property as at 6 April 2015.

The popular image of a non-resident property owner is of a very wealthy foreign investor. Indeed the tax has already been dubbed the 'oligarch's tax'. It should not be overlooked that the tax will apply equally to British nationals, temporarily living overseas, and to those emigrating and retiring abroad. Currently, if a person leaves the UK without selling his home, the sale will be free of CGT if he does not return within five years. After April 2015, that exemption will be lost. Combined with the revision to the private residence relief rules, those leaving the UK will need to make an early decision on whether to sell their home.

The stated aim of the charge is to help create a fairer tax system. Part of the attraction for foreign investors is the capital gains tax free status of UK property. The loss of that benefit may encourage additional sales, thereby increasing the supply of available housing for residents.

Charities

Gift aid

The government is looking at ways to encourage Gift Aid claims on eligible donations and to simplify compliance for donors. One of the plans is to allow intermediaries to co-ordinate Gift Aid Declarations, so that donors do not have to make a declaration for each charity they support.
Autumn Statement , para 2.65

Charities will be able to make a joint registration with the Charity Commission and HMRC, facilitating their claims for tax relief.
Autumn Statement , para 2.68

Community Amateur Sports Clubs (CASCs) will be able to claim tax relief on gifts from companies as they will become eligible for corporate Gift Aid from April 2014.
Autumn Statement , para 2.67

SDLT relief

The government will clarify the legislation relating to charity relief from stamp duty land tax in Finance Bill 2014. Where a charity purchases a property jointly with a non-charity, it is exempt from SDLT on its share. This is the current law established in June 2013 by the Court of Appeal in the case of The Pollen Estate Trustee Company Ltd and Kings College London v HMRC. Relief on joint purchases had previously been refused by HMRC and it is now inviting retrospective claims for overpaid tax. See HMRC's news item .

Anti avoidance

In a reaction to recently published avoidance schemes, notably the Cup Trust scheme , the government has announced that it will amend the definition of a charity for tax purposes so that entities which are established purely for tax avoidance will not be able to claim charitable tax reliefs . It is expected that the new definition will focus on the charitable actions of the entity as opposed to its purpose. The Cup Trust raised over £170 million but distributed only £55,000 to good causes.
Autumn Statement , para 2.130

Tax avoidance and evasion

Application of decisions in test cases

As previously announced in Budget 2013, if HMRC is successful in challenging an 'avoidance case' in court, it will be able to send a notice to taxpayers who have used the same avoidance scheme or similar **requiring** them to acknowledge that the judgment applies to them and either:

- amend their Returns accordingly, or
- confirm to HMRC that their cases can be distinguished from the litigated case and that they stand by their original Returns

A tax-geared penalty would be charged if the taxpayer takes the latter action but is later found not to have a reasonable basis for that conclusion.

Following a consultation which closed on 4 October 2013, Finance Bill 2014 is expected to contain these provisions. However, the Chancellor went further than this in Autumn Statement 2013 and announced that, in addition to the above, HMRC will also be able to issue 'pay now' notices. These notices will "initially" be used in relation to tax avoidance schemes which have already been defeated in the courts but there will be a consultation in 2014 to widen the criteria under which the notices can be issued.
Autumn Statement, para 2.138–2.139

It does not appear that HMRC will be required by the new legal provisions to accept a taxpayer's Tax Return as filed if another taxpayer is successful in a similar avoidance case.

High-risk promoters

As previously announced in Autumn Statement 2012, high-risk promoters of tax avoidance schemes are to be targeted with a raft of new measures including information powers, penalties and the power to publish the promoter's details.

Following the consultation which closed on 4 October 2013, draft legislation is expected to be released next week which will include objective criteria to be used to determine whether promoters are considered to be 'high-risk'. Once a promoter is classified 'high-risk', their clients must identify themselves to HMRC. 'High-risk' promoters will find themselves subject to a higher standard of reasonable excuse and reasonable care.
Autumn Statement, para 2.137

Given that clients of high-risk promoters will be required to identify themselves as such to HMRC, the likelihood is that these taxpayers will be under greater scrutiny by HMRC. This may lead to these taxpayers disassociating themselves from these promoters and, when combined with the provisions accelerating the tax payments in tax avoidance cases and requiring taxpayers to accept the ruling of a test case, could put these promoters out of business if they do not moderate their behaviour.

There is a parallel here with the attitude that HMRC has been taking with regard to high volume agents. By seeking to get high volume agents to enter into a memorandum of understanding to apply specified standards of scrutiny concerning clients' business records and returns, HMRC is looking to change the behaviour of both the agent and the client. For more details, see 'Sign here, or else' by Guy Smith in Taxation magazine 3 July 2013.

Information exchange

The Chancellor reported that the government has expanded the network of jurisdictions with which it exchanges information to tackle offshore tax evasion. It now includes many of the Crown Dependencies traditionally thought of as offshore havens such as Guernsey, Jersey, and the Cayman Islands. Agreements with Switzerland and Liechtenstein continue to be pursued.